



PLANNING BOARD  
TOWN OF EAST KINGSTON  
NEW HAMPSHIRE

2004-2005:  
*James Roby Day, Jr., Chairman*  
*Richard A. Smith, Sr., Vice Chairman*

MINUTES  
(Work Meeting of 6 January 2005)

**ORDER OF BUSINESS:**

- 7:00PM- Board Business  
Work subject: Various ordinance change recommendations  
9:00PM- Adjournment

**CALL TO ORDER:** Chairman Day called the work meeting of the East Kingston Planning Board to order at 7:03PM, noting he will take notes for recording the minutes due to snow and ice on the roads in Epping.

**ROLL CALL:** Mr. Day called the roll.

Members present – Mrs. CE Belcher, Mr. JD Burton, Mr. JR Day, Mr. JL Fillio, Dr. RA Marston,  
Mr. RF Morales  
Advisors present – Mr. RR Donald, East Kingston Building Inspector

**BOARD BUSINESS:**

**Materials-** Mr. Day noted the following materials for the members' information, discussion, and action:

- 16 December 2004 Planning board minutes to be approved at the next meeting
- Zoning ordinance change pages for insertion in zoning ordinance books describing change recommendations heard at the 16 December 2004 meeting
- Subdivision application to be heard at the 20 January 2005 meeting from Bowley Realty LLC involving a proposed cluster housing project. Mr. Day noted that the application is incomplete on its face for the lack of a plan sheet showing existing conditions, and proof of ownership of property necessary to the proposal.
- NH DOT letter re: Osgood driveway application for the 20 January 2005 meeting
- Board of Selectmen letter to Julian Dunlop regarding the sale of alcoholic beverages at Carmen's Diner, 89 Main Street. It was noted that the Planning Board had no part to play until the former applicant suggested a proposal different from what was approved by the Board.
- RPC report regarding impervious surface cover as addressed in East Kingston ordinances and regulations. It was noted that East Kingston received fairly good marks for its regulatory guidance dealing with the creation of impervious surfaces. There are actions which can be proposed with the advice and consent of the Conservation Commission.
- Proposed Planning Board report for the 2004 Town Report. Mrs. Belcher suggested a more thorough description of the purpose and utility of the Elderly Housing ordinance in the report. She noted the public's apparent misapprehensions about elderly housing in East Kingston, and the possibility that such might explain the plethora of citizens petitions for Town Meeting 2005. After some discussion, and at Mr. Donald's suggestion, it was agreed that Mr. Day would prepare an information broadsheet to be included in the Town Report as an insert. The Board shall review the insert before its submittal.

**Correspondence-** Mr. Day indicated that he will attend an all-day seminar on 21 January 2005 which shall address storm water management during construction. Board members are encouraged to attend.

**WORK SUBJECT:**

As was decided at the 2 December 2004 Planning Board work meeting, zoning ordinance Article XI – SINGLE FAMILY CLUSTER RESIDENTIAL DEVELOPMENT (hereinafter the “Cluster” ordinance) and Article XII – ELDERLY HOUSING would be compared and examined in detail to ascertain what improvements could make each a better planning tool. A proposal regarding a provision for accessory dwelling units (hereinafter “ADU”), known colloquially as mother-in-law apartments, would also be considered for inclusion in zoning ordinance Article VIII – USES PERMITTED.

**Cluster development and elderly housing-**

Discussion first began with the Board noting that paragraph G.1 of the Cluster ordinance conflicted directly with Article VI – WETLANDS CONSERVATION DISTRICT regarding setbacks from poorly drained and very poorly drained soils.

The following change proposal was accepted and voted to be heard on 20 January 2005:

→ 1. Article XI – SINGLE FAMILY CLUSTER RESIDENTIAL DEVELOPMENT

*AMEND* Paragraph G.1 to read:

1. No dwelling unit or accessory structure shall be located closer than ~~(50)~~ **15** feet from poorly drained soils and ~~(75)~~ **30** feet from very poorly drained soils. *Septic system leach field boundaries shall be located no closer than 50 feet from poorly drained soils and 75 feet from very poorly drained soils. (Amended 3/05)*

*Planning Board comment: This ordinance presently conflicts with Article VI – WETLANDS CONSERVATION DISTRICT provisions, and does not address setbacks of septic systems from wetlands.*

The Board continued to discuss the innovative land use Articles XI and XII, noting that improvements can be made relating to frontage setbacks, landscaping and buffers, parking provisions, and the use of common land/open space, to effect a better balance between the two ordinances while preserving their functional distinctiveness (see attachment #1 worksheet). Important differences between the two approaches to development were acknowledged to involve the application of growth control measures, subdivision/site plan application requirements to establish dwelling density, a variety of density bonuses, the requirement for a community center, and residency and occupancy restrictions which affect demand for municipal services.

The following additional change proposals to Article XI – SINGLE FAMILY CLUSTER RESIDENTIAL DEVELOPMENT were accepted and voted to be heard on 20 January 2005:

→ 2. Article XI – SINGLE FAMILY CLUSTER RESIDENTIAL DEVELOPMENT

*AMEND* Paragraph E. Minimum Tract Size. 2. to read:

- K. Frontage is required on an existing Town approved road or a State highway. For the purpose of this ordinance, a Town road shall be defined as a road that has been accepted by the local legislative body at the annual Town Meeting. *No housing units or other structures are to be built on land encompassed by the development within 200 feet of any development entrance as measured from the originally existing public or private road. The land precluded from any construction by virtue of this provision may be included, assuming it is otherwise eligible, in the development calculations for the required common land/open space. Two planning goals are thereby satisfied, i.e. 1) higher residential density offset by using common land/open space, and 2) privacy enhanced and traffic noise pollution abated in the neighborhood from adjacent highways. (Amended 3/05)*

*Planning Board comment: Increasing the frontage setback from 100 to 200 feet is explicitly attributed to planning goals focused on environmental factors.*

→ 3. Article XI – SINGLE FAMILY CLUSTER RESIDENTIAL DEVELOPMENT

AMEND Paragraph K. Landscape Buffer. to read:

- L. Landscape Buffer. A cluster development shall have a one hundred foot landscaped buffer around its entire perimeter to provide an adequate division of transition from abutting land uses and existing town roads. *This landscaped buffer, which shall include the frontage setback from a development entrance, may consist in whole or in part of existing natural growth. The Planning Board shall determine whether the type of landscaping proposed is acceptable in light of local geographic and topographic features.* (Amended 3/05)

*Planning Board comment: Preservation of natural vegetative environments, enhanced privacy, and noise abatement for residents are planning goals.*

→ 4. Article XI – SINGLE FAMILY CLUSTER RESIDENTIAL DEVELOPMENT

AMEND Paragraph L. Parking. to read:

- L. Parking. Provisions for parking shall allow for not less than two (2) spaces per single dwelling unit, each at least 9 feet wide and 20 feet long exclusive of traffic and manoeuvring space. Access driveway design and proposed parking locations shall be subject to Board approval. (Amended 3/05)

*Planning Board comment: The ordinance presently requires parking areas be paved, leaving no discretion for more creative, attractive, and environmentally sound solutions. The Elderly Housing ordinance defers to the regulations regarding road design and construction for such specifics, allowing greater leeway for effective planning.*

→ 5. Article XI – SINGLE FAMILY CLUSTER RESIDENTIAL DEVELOPMENT

AMEND Paragraph O. Use of Common Land. to read:

- O. Use of Common Land. Such common land shall be restricted to conservation and passive, non-motorized, recreational use. Setbacks, front, rear, and sides, are considered part of the common land, and no use is permitted that would disturb the natural vegetation within these areas (see paragraph H.3. Restrictions. above). These restrictions of the use of the common land (including the landscaped buffered area), shall be stated in the covenants running with the land. (Amended 3/90, 3/05)

*Planning Board comment: A greater awareness today of the need to conserve and protect open space compliments the very intent of this ordinance. Presently the ordinance allows uses such as tot lots, parks, swimming pools, tennis courts, playgrounds, playfields and golf courses in the common land which subverts the original intent to preserve the natural environment of open space.*

The following change proposals to Article XII – ELDERLY HOUSING were accepted and voted to be heard on 20 January 2005:

→ 6. Article XII – ELDERLY HOUSING

AMEND Paragraph B. General Standards. 15. to read:

15. The perimeter of all such elderly housing developments shall be treated with a landscaped buffer zone of a minimum of one hundred feet (.100') which may consist in whole or in part of existing natural growth. *The Planning Board shall determine whether the type of landscaping proposed is acceptable in light of local geographic and topographic features.* (Amended 3/05)

*Planning Board comment: The increased minimum acreage for an elderly housing development provides the opportunity to enhance the planning goals of preserving environmental integrity, privacy, and noise abatement.*

→ 7. Article XII – ELDERLY HOUSING

*AMEND* Paragraph C. Common Land/Open Space. Subparagraph entitled “Use of Common Land” to read:

*Use of Common Land. Such common land shall be restricted to conservation and passive, non-motorized, recreational use. Setbacks, front, rear, and sides, are considered part of the common land, and no use is permitted that would disturb the natural vegetation within these areas. These restrictions of the use of the common land (including the landscaped buffered area), shall be stated in the covenants running with the land. (Amended 3/05)*

*Planning Board comment: A greater awareness today of the need to conserve and protect open space compliments the very intent of this ordinance. Presently the ordinance allows uses such as parks, swimming pools, tennis courts, and golf courses in the common land which subverts the original intent to preserve the natural environment of open space.*

In further discussion, Board members debated what municipal services, such as snow plowing and garbage pick-up, should be addressed in the Cluster and Elderly Housing ordinances. The questions are complex to a degree that defies simple solutions, the Board noting, for example, that within one elderly housing development presently nearing completion there are both private and public roads. Consensus amongst Board members was the subject might best be addressed in the subdivision regulations.

**Subdivision Regulations-** Mr. Donald noted that in Subdivision Regulation Section VII – GENERAL REQUIREMENTS FOR THE SUBDIVISION OF LAND, paragraph N., reference is made to the Health Officer providing a report regarding septic seepage and other tests. He suggested the responsible person should be the Building Inspector, and the Planning Board as well. The Board agreed, and noted that a correction shall be made in the course of a future subdivision revision.

**Accessory Dwelling Unit (ADU)-**

The Board began the discussion by considering the reasons for including an Accessory Dwelling Unit provision into Article VIII – USES PERMITTED. Anecdotal information with which all the Board were familiar indicates that there is a need for affordable housing in East Kingston, and that it is difficult in today’s economic environment for extended and multiple-generation families to remain together. The Board also took into consideration the State’s strong encouragement of municipalities to provide regulatory opportunity for a varied housing stock using innovative land use techniques. The ADU proposal is such an one.

Points of discussion the Board explored included likely abuses of an ADU provision, conflicts with existing provisions for multiple residences on a single property (i.e. duplexes, condominium ownership), and restrictions which could preserve the intent of the proposal without compromising other ordinance provisions. The Board used a table comparing six New Hampshire towns’ ADU provisions (see Attachment #2) to consider what concerns those towns deemed important enough to codify in an ordinance, and developed the following proposed ordinance amendment for East Kingston which compliments the Town’s existing housing provisions.

The following change proposal to Article VIII – USES PERMITTED was accepted and voted to be heard on 20 January 2005:

→ 1. Article VIII – USES PERMITTED

*AMEND* by ADDING a new paragraph:

- F. Accessory Dwelling Units. (Adopted 3/05) Colloquially described as “mother-in-law apartments”, accessory dwelling units can help maintain the integrity of family groups, and provide relief from pressures for affordable housing. Such a second dwelling unit, attached to, and integral with, a dwelling structure, is distinguished from duplex dwellings in East Kingston by provisions which include ownership, occupancy, construction, living area configuration, and lot acreage requirements.

Accessory dwelling units shall be permitted in East Kingston by SPECIAL EXCEPTION which, if granted, shall be recorded in the Rockingham County Registry of Deeds. An accessory dwelling unit is permitted on any approved building lot, other than lots which are a part of elderly housing unit developments and single family cluster residential developments, provided the East Kingston Zoning Board of Adjustment (hereinafter "ZBA") is satisfied the following conditions are met:

1. Ownership. The owner of the property shall occupy one of the units as a primary resident, and be owner/landlord of the secondary, accessory dwelling unit (*special exception condition*). These ownership and residency provisions shall not change in the event the property is sold. Without limiting any other restriction herein, any kind of condominium ownership arrangement for the accessory dwelling unit and/or the principal residence is prohibited.
2. Living Area Configuration. Total living area floor space for an accessory dwelling unit shall not exceed 500 square feet, and shall consist of not more than one (1) bedroom, one (1) kitchen/living area, and one (1) bathroom/water closet. The accessory dwelling unit shall be clearly secondary to the principal residence. (*special exception condition*).
3. Construction. Only one accessory dwelling unit is permitted per residential lot, and it must be built within or attached to the principal dwelling to preserve the appearance of a single-family dwelling. An outside entry way to the accessory dwelling unit shall not be placed on the front/street-side of the principal residence, and interior passage through the dwellings' common wall(s) shall provide for safe egress. (*special exception condition*).
4. Manufactured Housing. The addition of an accessory dwelling unit to a manufactured housing dwelling is prohibited. The use of a manufactured housing dwelling as an accessory dwelling unit attached to a conventional principal residence is prohibited.
5. Occupancy. All occupants of an accessory dwelling unit shall be members of one family, and in no case shall more than one family reside in it. The owner shall provide documentation for the Board of Selectmen to establish that all tenants, and any change of tenants, conform to this requirement. Dormitory-style facilities are expressly prohibited, whether seasonal or otherwise.
6. Parking. Off-street parking shall be available for a minimum of two automobiles for the principal residence and two automobiles for its accessory dwelling unit. Room for vehicle ingress, egress, and turn-around on site shall be provided. A new curb cut for the accessory dwelling unit is prohibited. (*special exception condition*).
7. Septic facilities and water. An accessory dwelling unit shall conform to all applicable structural, water and sanitary standards for residential structures. Prior to a dwelling renovation or accessory dwelling unit construction, the owner shall provide evidence to the East Kingston Building Inspector that septic facilities are adequate for two families, and satisfy Town standards. If deemed necessary by the Town officials, such evidence shall be in the form of certification by a State of New Hampshire licensed septic system designer. The owner shall also provide evidence that there is adequate potable water according to State standards.
8. Certificate of Occupancy. When renovation or construction is complete, or an accessory dwelling unit is ready for occupation, the owner shall request a Certificate of Occupancy from the Building Inspector. Occupancy of the accessory dwelling unit (or the primary residence if the entire dwelling is new construction) is prohibited until a Certificate of Occupancy is obtained.
9. Pre-existing conditions. Any pre-existing accessory dwelling unit in a non-complying residence (i.e. an accessory dwelling unit in existence before March 8, 2005) must be shown to conform to the requirements of this ordinance within six months of its passage, and the owner obtain a Certificate of Occupancy. (*special exception condition*).

*Planning Board comment:*

- 1- *RSA 674:33 describes the Zoning Board of Adjustment authority to grant special exceptions to applicants where certain conditions are satisfied. Given that an accessory dwelling unit contradicts the requirements of Article IX – LOT AREA AND YARD REQUIREMENTS paragraphs D. and G., this amendment describes the conditions which must be met for the ZBA to grant a special exception.*
- 2- *Elderly housing and cluster developments are exempted from this proposed amendment as a consequence of the Board's concerns regarding population densities, impact on localized environments, water and septic system limitations.*
- 3- *The prohibitions regarding manufactured housing takes into account the Article II – DEFINITIONS description of such a dwelling. A manufactured housing unit could be as small as 320 square feet, and an ADU of 500 square feet would render the principal residence to be secondary. Such an arrangement would conflict with Article IX – LOT AREA AND YARD REQUIREMENTS Paragraph E.*
- 4- *The ADU occupancy requirement stating tenants be of one family does not narrowly define who constitutes a family group. The Board understood that tenants could be in-laws, some other familial relationship, a married couple, or student, not necessarily connected to the owner/landlord.*

**ADJOURNMENT:**

**MOTION:** Dr. Marston **MOVED** the Board adjourn. Mrs. Belcher seconded, and the motion carried unanimously at 9:35PM.

Respectfully submitted,

James Roby Day

Minutes approved **20 January 2005**

**Enclosures:**

- Attachment #1 – Single Family Cluster Residential Development v. Elderly Housing comparison worksheet
- Attachment #2 – Article VIII– USES PERMITTED (Accessory Dwelling Unit) worksheet