

TOWN OF EAST KINGSTON, NH  
PLANNING BOARD MEETING MINUTES  
January 20, 2000

FILE

AGENDA

- 7:30 Zoning Amendments (elderly housing, wetlands, backlots) – Public Hearing
- 8:00 David Sabatini– 44 North Road Subdivision – Continued Public Hearing
- 8:30 Citizen’s Petition (hours of operation in Light Industrial zone) – Public Hearing
- 8:45 Julian Dunlap– Carmen’s restaurant property - Discussion

**Members attending:** Richard A. Smith - Chairman, Edward C. Johnson – Vice-chairman, John L. Fillio – Ex-officio, Dr. Robert Marston and Alternate Peter A. Riley (7:55 PM).

**Absent:** Beverly A. Fillio and Alternates David Morse and Robert Nigrello.

**Others attending:** Sarah Campbell – RPC Planner, Lawrence K. Smith – Conservation Commission Chairman, Christian Smith, PE, Richard Cook, and Julian Dunlap.

Chairman Smith called to order this January 20, 2000 public planning board meeting at 7:04 PM with the roll call.

**Minutes:** The Board reviewed the December 16, 1999 Planning Board minutes.

**MOTION:** Mr. Johnson motioned to approve the December 16, 1999 Planning Board minutes as presented. Mr. Fillio seconded. With no further discussion the motion carried 4-0.

The Board then reviewed the January 6, 2000 Planning Board work session minutes and noted that there was not a sufficient number of members present this evening that were present at the January 6<sup>th</sup> meeting. Approval of these minutes will be table until the next regular meeting.

**Signature Sheet:** For the record, the board applied their signatures to a site plan review and subdivision amendment sheet indicating the adoption of amendments on December 16, 1999 to Subdivision Section VI.J, Section II Definitions, and Site Plan Review Section IV.J.

**171 Haverhill Road:** The Board was informed that the Building Inspector was seeking approval from the Board to approve a driveway permit (issued by the state) for 171 Haverhill Road, a parcel with road frontage on both Haverhill Road and Ashlie Road. It was noted that the Building Inspector was concerned that the proposed driveway location may have been assigned to front on Ashlie Road; however, the current wetlands on the parcel make it difficult for the property owner to do so. He was looking for guidance from the Planning Board.

Conservation Commission Chairman Larry Smith stated that when that lot was originally designed, the driveway was intended to be fronted on Haverhill Road because of the wetlands on the Ashlie Road side of the parcel.

Board members conceded that the driveway, having already received state approval and because of the wetland situation, should be accessed from Haverhill Road.

**Sabatini Plan:** Chairman Smith acknowledged two memos from Town Counsel indicating that both the fire pond access and maintenance easement and the common driveway easement language for the proposed 7-lot subdivision of 44 North Road is legally sufficient to execute.

**Wetland Amendments:** Mrs. Campbell informed the board that the zoning amendments concerning the newly adopted soils and wetland data language needs further modification, beyond what is scheduled for public hearing this evening. Additional changes need to be made to Article IV.7 (receiving layer and receiving soil), however, legal notification requirements have not been met to do so. She recommended the board hold another public hearing before February 8<sup>th</sup>. (See attached.)

**MOTION:** Mr. Johnson motioned to hold a public hearing to amend Article IV.D7 to be consistent with the newly adopted soils and wetlands data language on Monday, February 7, 2000 at 6:15 PM in the Conservation Commission Office. Mr. Fillio seconded. With no further discussion, the motion carried 4-0.

**Colanton Update:** Chairman Smith acknowledged correspondence from the NH DES regarding the Colanton golf course. He informed the board that he, Larry Smith, and Ed Johnson would be attending a Kingston Planning Board work session meeting on

Tuesday, February 1<sup>st</sup>, at 7:00 PM at the Kingston Town Hall to discuss the status of this case. It was noted that the Wetlands Bureau has the authority to fine wetland violators up to \$2,000 and then turn the case over to the Attorney General's Office who can fine a violator up to \$10,000 per day.

**Farms, Businesses & Home Occupation List:** Each board member received, for informational purposes, a copy of the master list of farms, businesses, and home occupations acknowledged in town as of August 1999.

**Zoning Amendments – Public Hearing:** Chairman Smith opened the public hearing at 7:33 PM for proposed amendments to the Zoning Ordinance. Mrs. Campbell presented the amendments as follows:

**ELDERLY HOUSING ORDINANCE:** The Board held extensive discussion in reviewing the proposed Elderly Housing Ordinance. They reviewed Town Counsel suggestions regarding its language as well as recommendations submitted by Mrs. Campbell. The following was noted:

1. Bedrooms would be defined as "a room with an interior door and a closet". (Interior added)
2. Elderly housing developments would be permitted in residential/agricultural districts only.

Members agreed that in order to keep incompatible uses separate, an elderly housing community should be located in a residential zone. It must be protected from the commercial disturbances of a commercial and/or light industrial district. They noted that this is the very problem with the current light industrial/residential district on Haverhill Road.

Mr. Richard Cook stated that he had looked at the idea for land he owns in the light industrial zone. He said that the configuration of his parcel offers a natural buffer between his parcel and the other light industrial zoned parcels and that an elderly housing development could be a better use of the property.

Mr. Fillio responded that the existing problem with the light industrial zone abutting a residential zone includes problems with the younger generation's intolerance to noise. Older people tend to be even less tolerant to it, thus maintaining the separation of incompatible uses is necessary. He said that most elderly housing communities are tucked away in a remote, quiet corner; not next to a commercial or light industrial zone.

3. Assisted living/extended care facilities would not be allowed.

Members agreed that the intent of this ordinance was for elderly housing units and not an assisted living/extended care scheme – nothing similar to a nursing home, as that would be considered a commercial use.

At this time Mr. Riley entered the meeting and Chairman Smith designated him to participate in any voting matters before the board.

4. The Town's growth control ordinance would be substituted for Section 406 of the draft ordinance.
5. Dwelling units may be owner occupied or rented, however all residents of all elderly housing units shall be at least 55 years of age.
6. Provide for open space/common land to be owned by the association of the development. Possibly use protective covenants to ensure this.

The Board then focused on the allowed density for this ordinance. The current town's density allows for one dwelling on a 2-acre parcel (approximately 4 bedrooms per 2-acres). Plans for an elderly housing development would need to increase this number. Members discussed soil types and the State's allowed density and determined that in calculating the density for one or two bedroom elderly housing units, very poorly soils could not be used and only 60% of poorly drained soils could be to satisfy the total acreage requirements. Upon final calculations for an elderly housing development, the Board agreed to a maximum of 4 bedrooms per acre with a density bonus maximum of 8 bedrooms per acre.

Members also expressed their desire that any elderly housing development should include interior sidewalks.

**MOTION:** Mr. Fillio motioned to place the Elderly Housing Ordinance as presented on the March 2000 ballot. Dr. Marston seconded. With no further discussion, the motion carried 5-0.

**WETLAND ORDINANCE:** Mrs. Campbell explained that to be consistent with the newly adopted wetlands and soils language data, the following amendments must be made to the Town's Wetland Ordinance (Article VIII):

- Amend Article VIII.B.1.e (page 13) by removing the terms "Hydric A" and "Hydric B";
- Amend Article VIII.C.1 (page 14) by removing the terms "Hydric A" and "Hydric B";
- Amend Article VIII.C.2 (page 15) by removing the term "Hydric A Soils"; and

Amend Article VIII.E.3 (page 16) by replacing two references to "Hydric A" with "very poorly drained" and replacing two references to "Hydric B" with "poorly drained".

**MOTION:** Mr. Johnson motioned to place the amendments to the Wetlands Ordinance as presented on the March 2000 Ballot. Mr. Fillio seconded. With no further discussion, the motion carried 5-0.

BACKLOT PROVISIONS: Mrs. Campbell explained that the intent of the backlot provisions in Article IV.B was that the driveways for those parcels be located within the 40-ft. area on which the parcel has road frontage, NOT to encourage poorly designed easements across other parcels. A new paragraph would be added to Article IV.B to read:

*Driveways must be located and accessed on the road on which the lot has road frontage.*

**MOTION:** Mr. Johnson motioned to place the amendment to Article IV.B as presented on the March 2000 Ballot. Mr. Fillio seconded. With no further discussion the motion carried 5-0.

**David Sabatini- 44 North Road Subdivision- Public Hearing:** Chairman Smith opened the public hearing at 8:35 PM for David Sabatini's proposal to subdivide 33.2 acres into 7 lots located at 44 North Road, MBL# 15-3-3. This hearing is continued from December 16, 1999. Professional Engineer Christian Smith representing the applicant began his presentation by stating both Sabatini's attorney and Town Counsel have agreed on easement language for the access and maintenance for the fire pond and for the common driveway. He then submitted four sets of revised plans.

He stated that the plan shows the easement encompassing the entire pond as recommended by Town Counsel and it shows changes to the fire pond detail indicating piping on top of the gravel vs. beneath it as recommended by the Fire Chief.

Members reviewed the plans and noted the following:

1. Need to show the edge of the water on the legend of sheets #1 and #2 (for clarification);
2. Remove the existing horseshoe driveway (fronting on North Road for lot 15-3-3) from the plan and from the parcel;

Members stated that if the intent of the developer is to not use the driveway to comply with the State's requirements, then it should be physically removed from the property.

Mr. Smith stated that this was not a problem as the pavement could be removed and the soil seeded.

3. Proposed and existing driveways must be shown on sheet #1 as well as sheet #2;

At the inquiry of board members, Mr. Smith stated that the barn located on the boundary has been removed and the barn farthest down in the field will remain.

4. Remove the paved connector between lots 15-3-3 and 15-3-10 from the plan and from the parcel to 20 feet either side of the property line.

Members felt that the connector to both lots could be easily mistaken as a common driveway.

5. All fees for Town Counsel and Town Engineer services are to be paid before recording;
6. All corner and new point bounds are to be set and verified before recording the plan; and
7. State Dredge and Fill approval must be received for the fire pond upgrade.

With no further comment from the board or from the public,

**MOTION:** Mr. Fillio motioned to grant conditional approval of the subdivision plan for MBL# 15-3-3 as presented with the seven stipulations aforementioned above. Mr. Johnson seconded. With no further discussion, the motion carried 4-0 (Mr. Riley abstaining).

**Citizen's Petition- Public Hearing:** Chairman Smith opened the public hearing at 9:09 PM for a citizen's petition regarding the regulation of hours of operation for businesses located within the light industrial zone.

It was noted that the purpose of this public hearing, as provided for in RSA 675:4, was to review the petition and then determine whether or not the Planning Board wished to endorse it. "A notation on the ballot stating the planning board's approval or disapproval shall immediately follow the question's description."

Mrs. Campbell read aloud the petition:

*Are you in favor of the adoption of Amendment No. 1 as proposed by Citizen's Petition to amend the East Kingston Zoning Ordinance as follows: (TO BE VOTED ON BY BALLOT)*

*Regulating hours of operation in the Light Industrial Zone so that residents abutting this zone could be afforded the same conveniences and comforts of their property as other East Kingston residents by:*

*Amending Article XII – LIGHT INDUSTRIAL/RESIDENTIAL DISTRICT (Adopted 3/89) by inserting a new paragraph 4 (below) and renumbering the subsequent paragraphs:*

4. *Hours of operation for all businesses located within the Light Industrial District shall be kept within the following hours:*
  - a. *6AM to 6PM Monday through Friday;*
  - b. *8AM to 4PM Saturday; and*
  - c. *Closed on Sundays.*

Mr. Cook stated that he would like to ask the board NOT to recommend this proposal because it is not right to micromanage the entire industrial park. He said he understands the reasons behind the enactment of this petition. The problems between the abutters and the Marden property were handled badly by both parties - compromises should have been reached. It isn't right to rule on a temporary situation, as everyone else also has to live by those rules.

He went on to say that as far as the holiday restriction is concerned, his business had to work on Martin Luther King Day. If he does not meet the deadlines of his customers they will go elsewhere. The types of businesses that he originally proposed for the light industrial park were 1 to 5 men shops of whom most would hold regular jobs elsewhere and work these shops as a second job. With this citizen's petition, this could not be done. The Planning Board has the authority to control the hours of operation on each individual business proposal that comes forward via the site plan review process. Strict hours should not be mandated for the entire zone – it is not practical.

He further stated that doing so would place a burden on the business owner. This zone was approved and adopted by the town and the majority of homes abutting it were built AFTER it was adopted. Low impact businesses should not have to conform to those hours. When he was before the board to begin the development of his parcel back in 1998, he submitted to the board a 200-signature document reflecting East Kingston residents desiring to see the light industrial zone developed. Imposing such restriction would make its development very difficult. He again asked the board not to recommend the adoption of this petition.

Mr. Julian Dunlap stated that though he is not an East Kingston resident, if the town approved the zone in the first place, it would not make sense to restrict it now.

**MOTION:** Mr. Filio motioned NOT to recommend the adoption of this citizen's petition because it is not specific to the situation at hand and it is unfair to curtail it to all businesses. Dr. Marston seconded. With no further discussion, the motion carried 4-1 (Mr. Riley opposed).

**Julian Dunlap – Carmen's Restaurant proposal - Discussion:** Chairman Smith opened discussion with Julian Dunlap at 9:27 PM. The purpose of Mr. Dunlap's meeting was to get feedback from the board about the possibilities to improve the restaurant, land and its buildings.

Mr. Dunlap explained that he was a resident of Kensington and that he was interested in purchasing the Carmen's Restaurant property, but was unsure of what could be done with it. He wanted to know what the town wanted to see happen to the property. He stated that the house and barn are beyond repair and the restaurant itself needs serious improvements.

Chairman Smith stated that the property is zoned residential. The restaurant was originally a teahouse that was expanded into a restaurant in 1975. The restaurant is grandfathered.

Mr. Riley explained that the Planning Board had attempted in the past to rezone that area commercial but was unsuccessful.

It was noted that "nonconforming uses may be expanded, where the expansion is a natural activity, closely related to the manner in which a piece of property is used at the time of the enactment of the ordinance... However, enlargement or expansion may not be substantial and may not render premises or property proportionally less adequate..." (Grandfathered! The Law of Nonconforming Uses and Vested Rights.)

Mr. Dunlap stated that currently the total square footage of all the buildings on the property combined is 6,000 sq. ft. If all the buildings on the property were removed and a new 6,000 sq. ft. building was constructed that met all the requirements, would the town allow it?

Members stated that this proposal would substantially alter the flow of traffic and use of the building.

Mr. Fillio stated that the size is the question here. The use of the property is grandfathered and allowed, but whether one can actually remove the existing building and reconstruct is another matter.

Mr. Cook stated that he had the opportunity to tour the property and he found that the house and the barn are structurally unsound and the restaurant is also in bad shape. It is economically unfeasible to improve the existing buildings. He thinks Mr. Dunlap's proposal to remove the old buildings and rebuild is in the best interest of the town.

Chairman Smith stated that parking and the dangerous intersection are issues to consider.

Mr. Dunlap stated that this is all part of his consideration.

Members questioned whether Mr. Dunlap could double the restaurant's capacity and still be consistent with the terms natural expansion.

It was noted that NHMA handbook on grandfathered issues states, "Where there is no substantial change in the use's effect on the neighborhood, the landowner will be allowed to increase the volume, intensity or frequency of the nonconforming use. For example, a law firm in a building constituting a nonconforming use could increase its number of lawyers or clients, its internal and external use of its premises or amount of work activity. Similarly, a nonconforming restaurant could add more tables and chairs or serve more dinners"

Members noted that Mr. Dunlap should research the requirements of the state for a restaurant, i.e. land size and septic requirements to determine if the project was viable before any formal consideration from the town. It was also noted that a community well services the existing house and restaurant. Should Mr. Dunlap wish to continue, then the site plan review process would be the next step, which could take a couple of months to process if the proposal were permitted.

With no other business before the Board,

**MOTION: Dr. Marston motioned to adjourn. Mr. Johnson seconded. With no further discussion, the motion carried 5-0 and this January 20, 2000 public Planning Board meeting ended at 9:541 PM.**

Respectfully submitted, / . . .

Catherine Belcher  
Secretary

Minutes completed and on file January 22, 2000.

Minutes approved on 3/16/00.