



7
PLANNING BOARD
TOWN OF EAST KINGSTON
NEW HAMPSHIRE

2007-2008
James Roby Day, Jr., Chairman
Catherine Ellen Belcher, Vice Chairman

MINUTES
(Public Hearing 31 January 2008)

AGENDA:

- 7:00PM - **Board Business**
- 7:05PM - **Public Hearing** for proposed revision to Zoning Ordinance Article XII – ELDERLY HOUSING
- 7:15PM - **Discussion only** regarding Zoning Article XVI – Home Occupations
- 7:30PM - **Continued Board Business**
- 7:31PM- **Adjournment**

CALL TO ORDER: Chairman Day called the regular meeting of the East Kingston Planning Board to order at 7:00PM.

ROLL CALL: Mrs. White called the roll.

Members present- Mr. JR Day, Chairman; Dr. RA Marston, Mr. RA Smith.

It was noted that Mrs. CE Belcher, Vice Chairman, and Mr. R Caron, ex-officio, were not present.

Alternate members present –Mr. EA Lloyd, Mr. RF Morales and Mr. D Sullivan.

Advisors present – It was noted that Mr. LK Smith, Conservation Commission Chairman; Mr. Eric S. Steltzer, Planner, Rockingham Planning Commission (RPC); Mr. Andy Conti, Captain, East Kingston Fire Department; and Mr. RR Donald, Building Inspector were not in attendance.

Voting members –Chairman Day assigned Mr. Sullivan as a voting member this evening, ensuring a full Board for voting purposes.

BOARD BUSINESS

Mr. Day reviewed the handouts with the Board.

January 17th Minutes – Members were not prepared to review the minutes of the last meeting; therefore approval of the 17Jan08 minutes, as well as the 31Jan08 minutes, will take place at the February meeting on 21Feb08.

Elderly Housing Materials - Mr. Day distributed a copy of the completed Article XII Elderly Housing Zoning Ordinance Change Proposal with a Planning Board comment, to be included in the Town Report. Mr. Day asked the Board to remind him that the signature sheet needed to be signed and given to the Town Clerk to make the change official.

CIP –Mr. Day reminded the Board they had commissioned Mr. Steltzer to redo the CIP. He and Mr. Steltzer had met and ascertained there was much information in the CIP that was not necessarily useful in terms of analysis. It includes the last 6 years of information, but there is no historical picture. They had revised the information from 1990 to this year and revised the tables to read in 5-year increments.

PUBLIC HEARING FOR PROPOSED REVISION TO ZONING ARTICLE XII – ELDERLY HOUSING.

Mr. Day opened the public hearing for a proposed change to Zoning Ordinance Article XII – Elderly Housing. He directed the public's attention to the information regarding this proposed revision on the table at the entrance so they could follow along.

Mr. Day explained that the Board had conducted their annual review of this ordinance in December, looking at the proportions of elderly housing versus standard residential dwellings. They had decided the effects of elderly housing

on the demography and culture of the Town has not been in keeping with what the Town has been saying year-to-year in the Master Plan. As a consequence, the Board looked at how they might address that. The biggest issue was the proportions. If the Town maintains their present proportion, they might be better able to assimilate the elderly housing population and adjust services and the culture of the Town to the impact of the elderly housing and the changes as a consequence.

The biggest factor is the increase and demand on municipal services, which can be demonstrated. History has shown that the population of children in schools isn't driving the school expenditures. It is other factors, and some of those other factors are exogenous to the community and to what we think is required. As a consequence, school population is not growing, but school demands are. Given that, the Board has decided to propose a change that would decrease the proportion of elderly housing to standard dwelling units from 25% to 15%. Another change is that the annual review of this portion of the ordinance will be conducted in October or earlier, to allow time for any anticipated changes.

Mr. Morales asked if the annual review would be directed to the entire ordinance, or just to paragraph B.3. Mr. Day reviewed that only paragraph B.3. stated that it was to be reviewed, but if the Board should deem the need to change anything else in the ordinance they could do so at that annual review.

Mr. Day asked if there were any comments, question, additions or deletions from the Board; there were none.

He opened the floor to public comment; there being none, he closed the floor.

Mr. Day pointed out he had prepared a Warrant Article form of the article for the Board to review. Mr. Day had also added a Planning Board comment he opined clarified and justified the decision for the change. It was the consensus of the Board that the comments explained it quite well. Mr. Day explained that ultimately, any provision must stand legal scrutiny.

Mr. Day entertained a motion to place the change recommendation on the Warrant for Town Meeting 2008.

MOTION: Mr. Morales **MOVED** to approve Article XII - Elderly Housing and the proposed amendment to Paragraph B.3. as written, along with the proposed Planning Board comments that explains the reason for the change, and to place it on the Warrant for Town Meeting 2008. Mr. RA Smith seconded; the motion passed unanimously.

Mr. Day passed around the signature sheet.

Mr. Day closed this public hearing.

DISCUSSION ONLY REGARDING A HOME OCCUPATION.

Mr. Day explained that because this was a "discussion only", the Board was bound by statute and could not discuss individual pieces of property. The Board is limited to discussing the home occupation article itself, and how the Board understands and interprets it. They could help with the understanding of what the East Kingston home occupation ordinance is all about; to speak specifically would constitute the need for a public hearing.

Mr. Day welcomed Mr. Micah Gummel, owner of M&E Gummel Chairworks, Castine, Maine, and Sheila Kennedy, Mr. Gummel's real estate representative on the proposed buyer's side from Nancy Kingston Realty. Also present were Mr. Tony Ioia, property owner John Ioia's son, and Mr. Ioia's real estate representative on the seller's side Kim Decker from Coldwell Banker Walsh Realty.

Mr. Ioia reflected he recalled many a Halloween party and other events at the Town Hall when he was young.

Mr. Ioia explained that his Mother had had a gift shop located on the property at 42 East Road. In fact, it was the first business in Town. Mr. RA Smith reflected that at the grand opening of the gift shop, there had been a ribbon cutting with all the Town Selectmen present. Mr. Ioia went on to explain that the gift shop had progressed to a by-appointment only status as his mother had gotten older, and when she passed in 1995, his father had lost interest in it. Mr. John Ioia now lives in Exeter and wishes to sell the property. Mr. Gummel has a contract on the property contingent on his being able to pursue his chairmaking on the property.

Mr. Ioia explained this progression in the hopes that the gift shop enterprise could be considered somehow a grandfathered use, such as Jewett's Store. Mr. Day explained that Jewett's Store was in a different category, as it was in the Town Center District, which is an overlay district and allows for other land uses. He also reiterated that Board could not discuss particular pieces of property as per statute. Mr. Day explained that they needed address the Board of Selectmen about the question of grandfathered use.

Mr. Day clarified that most of East Kingston is zoned agricultural/residential, which means anyone could grow vegetables in their garden and sell them in their front yard. He explained that when East Kingston first established zoning in 1952, there were no real defined zones of use; defined zones did not come to fruition until around 1972. The Planning Board recognized that there was quasi-commercial activity sprinkled around Town in various forms such as auto garages and various shops. In 1989, they decided that existing activities were grandfathered, but future activities would need to fall into certain parameters to preserve the residential/agricultural charter of the community. That is what the home occupation article is all about. As a consequence, there were restrictions placed as to what could and what could not be done. One light industrial zone and two commercial zones were defined at that time.

As the ordinance defines home occupation, *"A Home Occupation is a professional or service occupation or business carried out from the home which is clearly accessory and subordinate to the residential use of the property. A Home Occupation is the provision of services and /or the production or selling of a product on the premises."*

Mr. Day explained there was a difference in a property located on a town road as opposed to being located on a state road in respect to home occupations. If a property were located on a state road, there could be two non-resident employees and the home occupation could utilize up to 25% of the gross floor area of the property. If it were located on a state road, there could be up to four non-resident employees and the home occupation could utilize up to 50% of the gross floor area of the property.

Mr. RA Smith recalled that in 1989, the Planning Board wanted to shut down all the home occupations. The Selectmen said no, and grandfathered all the home occupations. Mr. Smith was not sure if the gift shop would be considered grandfathered or not, and suggested they approach the Selectmen with that question. Mr. Morales offered that when a business was stopped for a period of time, it was considered *"abandoned"* and the grandfathered use would no longer apply. Thereby grandfathering does not always apply to the new homeowner.

Mr. Morales noted that the Planning Board has no authority to approve Home Occupations; they only recommend a Home Occupation to the Board of Selectmen who decides whether or not to approve it. Mr. Lloyd noted that the occupations listed in paragraph E of the ordinance were quite liberal. He suggested Mr. Gummel look to see if what he proposed fit into one of the listed categories before broaching the question of grandfathering.

Mr. Day clarified that the uses grandfathered by the Selectmen in 1989 run with the land, Home Occupations do not. Home Occupations are a permit an individual gets so that he can do something in his backyard. This is a matter of case law. If something is grandfathered, the state kicks in and mandates that the use stay the same and the footprint also needs to stay the same.

Mr. Morales stated that Carmen's Restaurant was a good example of a grandfathered use. It had been a chicken place many years ago, but went out of business and stood dormant for a period of time. When the new owner approached the Board to open a restaurant in the same place, he found that he could not move the building and had to keep the same footprint. Grandfathering works sometimes as a double-edged sword. Mr. Morales also noted that the location is not in the commercial district. Mr. Day noted that if that restaurant closed down now and was abandoned for a period of year, the only thing it could be used for in the future would be a house or a farm. There could not be another restaurant there.

Mr. Day read the permitted listed uses from the list. *"Medical and dental offices; other professional offices, including lawyer, engineer, architect; tailor, seamstress; artist or musician; day care; bookkeepers, accountants, secretarial services; real estate and insurance offices; beauticians and barbers; art, craft, hobby and antique shops; administrative support for businesses and services conducted off-site; and occupations not listed above that are of a similar nature and only if the Board of Selectmen finds the occupation meets the provisions of this section."*

Mr. Day explained that the types of proposals for home occupations that have come before the Board in the past have been many and varied, but when they start nibbling up against light industrial or commercial use, that is when the Board needs to decide that the proposed use does not fit into a home occupation category.

Mr. Morales proposed Mr. Gummel might want to put a purchase and sales agreement on the property contingent upon the Board agreeing his home occupation. Mr. Day explained that the Board needed 21 days in which to look at a proposed home occupation and make all the necessary notifications for a public hearing, and as the deadline for the February meeting has passed, the next meeting they could come before the Board would be the March meeting.

Mrs. Kennedy asked how long after that meeting the Selectmen would look at the proposed home occupation and Mr. Lloyd answered that the Selectmen meet every other Monday night. Therefore, the next Selectmen's meeting after the Planning Board meeting on March 20 would be held on March 31.

Mr. Day explained that when you come to a public hearing, you would need to explain to the Board how what you are hoping to do fits into one of the permitted uses. If the Planning Board recommends the home occupation to the Board of Selectmen, they could consider it at their next meeting.

Mr. Ioia asked if the home occupation falls into one of the listed categories, was it usually approved. Mr. Day answered yes; the Board would have no reason not to approve it. They are bound to uphold the ordinance. Mr. Lloyd interjected that they were discussing if the nature of business fit into one of the categories. He also noted that there was a *Standards* section of the ordinance that describes the scope of the business and how you would conduct it. There will be a lot of questions to make sure the proposed home occupation fits within the standards.

Mr. Day recommended that Mr. Gummel obtain a copy of the article and study and understand it, and also go before the Selectmen to ask if there would be any grandfathered use of the property. Mr. Morales stated Mr. Gummel could go the Selectmen's Office Friday and get on the agenda for February 5th for the next Selectmen's Meeting. Mr. Day stated they could also go to the Selectmen's Office and ask if there is a Home Occupation history for the address.

CONTINUED BOARD BUSINESS

Next Month's Agenda. Mr. Day explained that the only items on the agenda for next month's meeting were two lot line adjustments, one for the Osgood's and one for Peter Riley, who has his house on the market.

ADJOURNMENT:

MOTION: Dr. Marston **MOVED** the Planning Board adjourn. Mr. Morales seconded, and the motion carried unanimously at 7:45 pm.

Respectfully submitted,

Barbara A. White
Recording Secretary

J. Roby Day
Chairman

Minutes approved February 21, 2008.

