

TOWN OF EAST KINGSTON, NH
PLANNING BOARD MEETING MINUTES
February 18, 1999

FILE

AGENDA

- 7:30 Gary Hinz – Main Street Home Occupation Proposal – Discussion
- 7:45 Subdivision Amendment – Cistern Capacity (Section IV.Q) – Public Hearing
- 8:00 La Noria Dev. Corp./Thomas Gage – Powwow River Road Subdivision – Continued Public Hearing
- 8:30 Marie Robie – Burnt Swamp Road Lot Line Adjustment – Public Hearing
- 8:45 Jerry Storm – Rosenburg Conference Center Proposed Use – Discussion
- 9:00 Charlie Marden – Havelil Road Site Plan Review - Discussion

Members attending: Richard A. Smith Sr. - Chairman, Edward C. Johnson – Vice Chairman, and Dr. Robert Marston.

Absent: John L. Fillio – Ex-officio, Beverly A. Fillio, and Alternates Robert Nigrello and Peter A. Riley.

Others attending: Sarah Campbell – RPC, Glenn P. Clark – Building Inspector, Lawrence K. Smith – Conservation Commission Chairman, J. Roby Day – Selectman, Gary Hinz, Kenneth Kuster, Alan Mazur – Fire Chief, Sue Mazur, Thomas Gage, Marie Robie, Quin DaGraca, Jerry Storm, Laurie Carbone, Wayne Couture, Charlie Marden and Becky Hanna – Seacoast Newspapers Correspondent.

Chairman Smith called to order this February 18, 1999 public planning board meeting at 7:30 PM with the roll call.

Minutes: It was decided that since member attendance was so low, the approval of the January 21, 1999 and January 28, 1999 minutes would be tabled until the March 25, 1999 meeting, thus giving an opportunity for other members to present their comments and review.

Gary Hinz – Main Street Home Occupation Proposal – Discussion: Mr. Hinz stated that he inquired with the building inspector about applying for a building permit to construct a 26'x26' garage with a 14'x26' office/studio off the back. He stated that the building inspector advised him to seek approval of this office/studio prior to his issuance of a building permit.

Chairman Smith advised Mr. Hinz that this meeting is purely conceptual and that he could not receive an official decision on the proposed business without a public hearing and notification to abutters.

Mr. Hinz replied that he realized that but was inquiring as to whether or not he met the provisions of Article 10.6 which states that businesses who can demonstrate that they do not create any traffic, visual, or other impacts on the neighborhood, may be exempted by the Selectmen from these permitting procedures.

He continued to say that his proposed landscaping business would consist of an office/studio and that he has no equipment. He explained that 20% of the business is done in the office and 80% is done in the field. He employs two part-time employees, who work out of their own houses; he usually meets them at their homes or at the work site. He stated that there would be little or no traffic impact.

Mr. Hinz additionally stated that he is replacing the existing garage that is falling down. He then inquired if it would be possible to begin the construction of the new garage prior to the approval of the business.

Building Inspector Glenn Clark informed the board that once Mr. Hinz divulged the use of the building for business purposes, he refused to issue a permit until the proposed business was approved. Had the proposed use been strictly for residential purposes, he would have issued the permit right away. He then asked the board if his refusal of the permit was appropriate.

Members agreed that the building inspector was procedurally correct in refusing to issue a building permit for a building to be used for a business prior to the business' approval.

Mr. Hinz stated that his office is currently located in Stratham and that he proposes to move it to East Kingston. He again stated that no clients would be coming to the office. The only work related traffic generated would be that of subcontractors, once every one to two weeks. He stated that most of his field work is done in the seacoast and northern region.

He further stated that he does not have a sign now, but may consider one at a later date.

Members explained the intent of the "invisible" clause under the home occupation provisions. It was noted that this provision was directed towards the resident who could show no visible evidence of a business on the property. Members stated that although the proposed business seems invisible now, it might not be in the future. They advised Mr. Hinz to apply for a home occupation permit as outlined in Article X of the East Kingston Zoning Ordinance.

Mr. Hinz stated that he would apply for the permit as directed, but asked if the board would consider allowing the construction of the garage prior to the business's approval. He noted that he hoped to have the garage completed by the time of the next planning board meeting.

Members agreed to approve the issuance of a building permit for the garage, but clearly stipulated that the building must NOT be used for the business until the business' approval is received. Members also noted that although the business appears to be a permitted use during this conceptual discussion, this approval of issuing a building permit now in no way implies that the planning board will approve this home occupation proposal later. Only after a duly noted public hearing will the planning board make its recommendation to the selectmen about whether or not to approve the business. The construction of the office/studio portion of the garage is strictly a risk Mr. Hinz can take in anticipation of the business' approval or non-approval.

The board further ordered that a building permit not be issued until they have received Mr. Hinz's completed home occupation application (including fees paid).

Mr. Hinz stated that he understood and would agree to these conditions.

Subdivision Amendment - Cistern Capacity (Section IV.Q) – Public Hearing: Chairman Smith opened the public hearing to amend Subdivision Regulations Section IV.Q at 7:45 PM. He invited Fire Chief Alan Mazur to expound on this proposed amendment.

Fire Chief Mazur stated that in keeping with the recommendations of the Insurance Service Organization (ISO), he is requesting that cistern capacity be increased from 10,000 gallons to 30,000 gallons. He stated that fire ponds are currently required to be at 35,000-gallon capacity. In keeping with the ISA ratings, this would decrease abutting homeowner insurance premiums. He continued to say that existing cisterns would be grandfathered from this new amendment, but all new construction must be in compliance.

MOTION: Mr. Johnson motioned that the Planning Board approve the amendment to Subdivision Regulations Section IV.Q to increase the minimum capacity of cisterns from 10,000 gallons to 30,000 gallons and add at the end "and to be recognized as an approved water source by the Insurance Service Organization (ISO)". Dr. Marston seconded. With no further discussion, the motion carried 3-0.

Incoming Correspondence: Chairman Smith acknowledged the following incoming correspondence.

1. Citizens for NH Land and Community Heritage.
2. Attorney Dan Jones – Brandolini case. Members reviewed a letter dated January 29, 1999 from Atty. Jones on behalf of Thomas Brandolini, which requests a rehearing on the matters decided on January 21, 1999.

Members noted that this issue has been before the board in 1991, 1998 and 1999 and that it should move on to the Zoning Board of Adjustment.

Mrs. Campbell quoted RSA 674:33 which states

The zoning board of adjustment shall have the power to hear and decide appeals if it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16...

Members agreed that the next step for Mr. Brandolini is to appeal to the zoning board of adjustment.

MOTION: Dr. Marston motioned that the Planning Board deny Atty. Jones' Request for Rehearing based on 1) the Planning Board has heard this case in 1991, 1998, and 1999; and 2) the board believes the matter is now under the jurisdiction of the zoning board of adjustment. Mr. Johnson seconded. With no further discussion, the motion carried 3-0.

It was noted that the recording secretary would advise Atty. Jones of this decision.

La Noria Dev. Corp./Thomas Gage –Powwow River Road Subdivision– Continued Public Hearing Chairman Smith opened the continued public hearing at 8:03 PM for La Noria Development Corporation. Thomas Gage owner of La Noria, submitted revised plans of his 6-lot subdivision proposal to be located on Powwow River Road.

Mr. Gage stated that the plans are the same as last month's plan, except for the requested change in the curve in the beginning of the proposed road. He noted that a couple lot calculations have also been modified to reflect this change. He stated that he has filed his Dredge & Fill application with the Town Clerk and the abutter's notices have gone out. He noted that Parker Survey designed the fire pond to be at 30,000-gallon capacity as part of the Dredge & Fill application.

He then reminded the board that this subdivision application is at the 90-day status and that he is looking for conditional approval. He stated that Conservation Commission Chairman has submitted an intervention letter along with the Dredge & Fill application.

Mr. Smith stated that the intervention letter basically gives the Conservation Commission more time to look at the plan. It gives them approximately 40 days to get their comments back to the Wetlands Bureau. He then noted the following items on his application that needed attention.

1. There were no cross-sections shown on the plan for the fire pond and wetlands.
2. The 4,000 K areas were not noted on the plan.
3. Response from the Natural Heritage Inventory was not provided.

He stated that this additional information might be required prior to the Wetland Bureau's consideration of the application.

Members reviewed the plan noting the fire pond easement area. It was determined that this fire pond would be maintained by the fire department and that this should be indicated in the deed. Fire Chief Mazur requested that the fire pond easement area for the parking of fire apparatus be at least 13-ft. wide and flared (road apron).

The DOT permit was reviewed, noting the DOT's jurisdiction. Mr. Gage stated that he would only move the stone wall along the deceleration lane; the rest of the wall by the Kuster property will remain. He stated that he would also relocate the stones on the stone wall, which run through the proposed road.

Discussion then focused on the existing ROW easement leading to the Bakie property. Mr. Gage informed the board of this ROW's history and stated that he intends for the Charlesworth heirs to designate a new ROW along the proposed road, past the cul-de-sac and into the Bakie property.

Members agreed to have the road plans submitted to the town engineer to double check the road bond estimate and its design. Members suggested the road plans also be submitted to the road agent for his review. Mr. Gage stated that the road profile plans should be ready to send to the town engineers and road agent within a month.

Further review of the plans resulted in the following list of items to be addressed by the applicant.

1. correct the abutter's address on the plans (Galecki & Bakie are in Kingston, not East Kingston);
2. Dredge and Fill approval is still needed;
3. indicate the cul-de-sac's total length on the plan;
4. change or shade the easement areas (both the fire pond easement and drainage easement);
5. have Town Counsel review the fire pond easement language;
6. show road apron at the fire pond easement area;
7. note that the stone wall running through the proposed roadway and proposed entrance will be relocated;
8. mail copy of DOT's approved road plan to the Planning Board;
9. State Subdivision approval is still needed;
10. concrete or granite bounds must be shown on the plan;
11. have Town Counsel review the easement language for the ROW;
12. name the abutter located between West and Paoletta on the plan;
13. submit 3 sets of the plans with the road profile to the Planning Board (1 for PB, 1 for TE, 1 for RA); and
14. plans must receive soil scientist stamp.

At the request of the Planning Board, Mr. Gage extended the 90-day clock provisions regarding this subdivision to March 25, 1999. Chairman Smith advised the abutters present that this public hearing will be continued to March 25, 1999 at 8:30 PM at the Town Hall.

Marie Robie – Burnt Swamp Road Lot Line Adjustment – Public Hearing: Chairman Smith opened the public hearing for Marie Robie's proposed lot line adjustment at 9:04 PM. Ms. Robie is proposing a minor lot line adjustment between her lot MBL# 10-5-2 and the abutting lot MBL# 10-5-9 (owned by Quin DaGraca).

Ms. Robie stated that back in 1997 while subdividing the back part of her property, it was discovered that her driveway and garage encroach on Mr. DeGraca's property. She stated that she is proposing to trade off land at the back of her property for some of Mr. DeGraca's frontage. The plans submitted indicate that Mr. DeGraca's total frontage of 240' will be reduced to 200', thus conveying 40' of frontage to her parcel. She in turn will convey 2.06 acres to the back of his parcel.

MOTION: Mr. Johnson motioned that the board invoke jurisdiction on the proposed lot line adjustment plan submitted by Marie Robie. Dr. Marston seconded. With no further discussion, the motion carried 3-0.

Members reviewed the plan and noted the following items:

1. plan must receive LLS stamp;
2. show old and new frontage calculation (total of each property); and
3. remove "proposed" from the 30' easement access.

MOTION: Mr. Johnson motioned that the Planning Board approve the application for a lot line adjustment between lots MBL# 10-5-2 and 10-05-9 as presented, contingent on the three conditions noted above. Dr. Marston seconded. With no further discussion, the motion carried 3-0.

Jerry Storm – Rosenburg Conference Center Proposed Use – Discussion: Chairman Smith opened discussion with Jerry Storm at 9:14 PM. Dr. Storm introduced himself as a Developmental Pediatrician living in Brentwood, with an office in Kingston. He stated that he has an interest in helping non-traditional learners; children of normal intelligence, but fragile learners. He stated that his dream is to establish a small setting tutorial program rooted deeply in agriculture and nature.

He continued to say that this is where the Rosenburg Conference Center property comes into play. This property seems to consist of the perfect elements for his teaching facility. It offers natural components that will compliment his small farm and small outward-bound program. He noted that he has received endorsement from UNH and several members of its staff.

Dr. Storm then expounded on the type of curriculum proposed for this learning facility. Although it will offer year-round schooling, no boarding will be necessary. He stated that students enrolled in this facility would not burden the East Kingston school system in any way.

The facility would be a non-profit organization named "Turning Point Farm". He stated that he would participate on site and in residence. He further explained the types of students that would be enrolled in the programs. He then inquired how the Planning Board feels about such a proposal.

Answering questions from members, Dr. Storm stated that he is proposing 15 to 20 students coming and going with a small daycare and kindergarten program. He intends to construct a large barn close to where the existing loafing shed is located to accommodate a room for tack, sheep, woodworking shop and fish farming equipment. He noted that this would be a full time teaching day.

He further stated that UNH wants to sell the property and they have no interest in holding the mortgage. There will be no connection with UNH except for collaborative teaching. Including the kindergarten, daycare, and tutorials, there may be as many as 40 students total and fire codes will need to be addressed.

Members were unsure as to what zoning this proposal falls under. The proposal is clearly agricultural in nature, but its total picture may not fit into the home occupation provisions.

Further discussion resulted in members suggesting that Dr. Storm approach the abutters of this property to get their feedback. It was noted that a public informational meeting could be held, informational mailings could be sent to North Road residents, and info could be placed in the EK Newsletter.

Charlie Marden – Haverhill Road Site Plan Review – Discussion: Chairman Smith opened discussion with Charlie Marden at 9:50 PM. Chairman Smith noted that the trucking terminal enterprise currently located on Mr. Marden's property on Haverhill Road is not on file.

Mr. Marden replied that he thought the trucking company was there prior to the subdivision regulation amendment that states new tenants or changes of use shall be submitted in writing to the planning board. He further stated that the sawmill business he used to operate had as many as 20 trucks going in and out of the property. He stated he has since paved the driveway and removed the gate, which has helped keep the noise down.

Mr. Marden also stated that the town came to him to rezone his property light industrial and that trucks are considered light industrial. He said that he thinks there is less noise generated from his property now than when the sawmill was in operation. He further offered to do noise studies.

Members stated that the subdivision regulation to inform the board of change of tenants was adopted in December 1997.

Mr. Marden stated that he was not sure when the trucking company moved in, he would have to research it.

Mrs. Laurie Carbone stated that as an abutter directly across the street from the property's entrance, there is traffic going in and out of the property at all time during the day and night. She stated that she does not have a problem with the daytime traffic, it is the nighttime noise she is concerned about. She said that she has been before the planning board and the selectmen and hasn't gotten any relief from this problem. She questioned who enforces the noise ordinance.

She went on to say that other towns implement hours of operation for their businesses. She has already submitted a video of trucks going in and out of the property during the night and asked what more proof does the town need?

Members reviewed Mr. Marden's Site Plan Review file and noted that authorization to conduct a trucking terminal has not been given, nor has approval been applied for.

It was determined that at a previous meeting, Mr. Marden may have mistaken approval for a business when only approval to issue a building permit was given. Members recalled that Mr. Marden requested a building permit to renovate a building in anticipation of possibly leasing the building out. The Planning Board allowed the renovations but stipulated that site plan review would be needed prior to the usage of the building.

Mr. Marden stated that another problem he is having is with the old road running through his property. He would like to modify this road to make a better driveway for his property, but his attempts to get assistance from the selectmen to resolve this have been unsuccessful.

After much discussion about this road, the meeting was redirected back to the need for site plan review of the trucking terminal operation. Members clarified that when a potential tenant comes to Mr. Marden, he (Marden) must inform the Planning Board in writing of this proposed use, then the Planning Board will determine whether or not a full site plan review is needed.

Mr. Marden agreed to apply for site plan review regarding the trucking terminal. The recording secretary advised Mr. Marden of the 21-day submission deadline.

With no further business before the board,

MOTION: Dr. Marston motioned to adjourn. Mr. Johnson seconded. With no further discussion, the motion carried 3-0 and this February 18, 1999 public planning board meeting ended at 10:27 PM.

Respectfully submitted,

Catherine Belcher
Secretary

Minutes completed and on file February 22, 1999.

Minutes approved March 25, 1999.