



PLANNING BOARD
TOWN OF EAST KINGSTON
New Hampshire

2015-2016
Joe Cacciatore, *Chairman*
Dr. Robert Marston, *Vice Chairman*

MINUTES
Regular Meeting 18 February 2016
7:00 pm

AGENDA:

- ◆ **Call to Order**
- ◆ **Discussion** with a resident if a certain activity constitutes a home occupation.
- ◆ **Discussion** regarding the Home Occupation Ordinance.

CALL TO ORDER: This meeting of the East Kingston Planning Board was called to order at 7:00 pm.

ROLL CALL: Mrs. White called the roll.

Members Present: Chairman Joe Cacciatore, Vice Chairman Dr. R. Marston, Mr. J. Bath, Mr. C. Delling, Mr. B. Caswell and Ex-Officio Mr. R. Morales.

Advisors present: Rockingham Planning Commission (RPC) Senior Planner Ms. J. LaBranche and East Kingston Building Inspector John Moreau..

Board Business

Mr. Cacciatore opened the meeting at 7:00.

Minutes

Mr. Bath **MOVED** to accept the January Planning Board minutes as presented; Mr. Delling seconded. Motion passed unanimously.

Discussion with a resident if a certain activity constitutes a home occupation.

Mr. Mark Chetwynd was asked to speak to the Board regarding a business advertised to the internet. The Board asked him to explain what it was he did so they could ascertain whether or not it qualified as a home occupation.

Mr. Chetwynd explained his business was e-commerce; people ordered through him via the web site he built. He would send an email to his distributor, and have the item dropped-shipped to the customer via a distributor. There was no traffic and no store front. He has no actual product at his home. His business address was an Exeter P.O. Box. He did not think what he was doing was considered a home occupation.

Mr. Cacciatore asked if he owned the business; Mr. Chetwynd answered that he did. Mr. Cacciatore explained that anything that generates an income is considered a business. Mr. Chetwynd had read the home occupation ordinance and he noted there was nothing in it regarding e-commerce.

Mr. Bath noted the definition of a home occupation is "a professional or service occupation or business carried out from the home." What he was describing to them met the definition of an invisible home occupation according to the ordinance.

Mr. Morales explained the process was to submit an application and have a public hearing with the Planning Board. Abutters would need to be noticed, as well as a notice published in the newspaper. There was a \$200 application fee which covers newspaper noticing and abutter noticing. If he was approved as an invisible business there would be a \$25 yearly fee going forward.

Mrs. White had already provided him an application form and will let him know when the deadline to submit his application is.

Mr. Chetwynd thanked the Board for their time.

Accessory Dwelling Units

SB 146 relative to accessory dwelling units is on the Governor's desk for signature. When signed, it would not take effect until June of 2017 so there will be plenty of time to rework the ordinance and bring it forward at the 2017 Town Meeting on a warrant article.

Roman numerals I through VI state the following: properties in single family residential zoning districts will have the ability to have an accessory dwelling unit on the property. There can be no requirements for new lot sizing or frontage, but there can be additional requirements such as location, construction, parking, etc. The Town is not required to allow more than one accessory dwelling unit per lot. An interior door between the principal dwelling unit and the accessory dwelling unit is required. A Town may require the owner to occupy one of the units, but cannot specify which one. You cannot require any familial requirement to occupy the unit. These stated items are already included within the East Kingston Accessory Dwelling Unit ordinance.

There can be standards for accessory dwelling units as far as aesthetic continuity with the principal dwelling unit and there have to be adequate provisions for water supply and septic system requirements; separate systems cannot be required but are up to the discretion of the homeowner. The Board had discussion on adding stipulations regarding whether the size of the existing septic system would support the accessory dwelling unit as well as the main residence if it was to be all on one system. Mrs. White pointed out this was already in the ordinance and that the ZBA has the applicant show them they have an adequate system to support both. Mr. Moreau explained to the Board his process for accessory dwelling units, which includes identifying a place for a replacement system should the existing one fail. Ms. LaBranche noted that might be beneficial to include this in the ordinance.

The following items are different than what is in the ordinance: VII - states the minimum size of any accessory dwelling unit cannot be less than 750 feet. Mr. Morales asked if that number should be included in the ordinance; Ms. LaBranche noted it would be beneficial to be included. The Planning Board has a warrant article in place for this year expanding the size of an accessory dwelling unit to 900 sf. IX - states an accessory dwelling unit cannot be limited to one bedroom; that will need to be updated in the ordinance. X - states a municipality may permit detached accessory dwelling units, but it is not mandated. Board consensus was that detached unit *should not* be allowed; Ms. LaBranche noted then a definition of "attached" should be incorporated into the ordinance.

Included in the ownership paragraph should be a clause that the unit could not be sold as a condo and must remain in the ownership of one person. In the present ordinance, reference to "mother-in-law" apartments would need to

be removed. The reference to family members needs to be removed, but the term "dormitory-style facilities should stay in. Ms. LaBranche will find out if it is possible to limit the number of **occupants** in an accessory apartment. Also, the pre-existing paragraph conditions would need to be removed.

The Board agreed there was a lot of economic benefit for homeowners associated with these changes.

At the present time accessory dwelling units are processed by special exception by the Zoning Board. The Board discussed whether or not this should actually fall under the purview of the Planning Board.

Sign Legislation

Ms. LaBranche informed the Board there had been recent sign legislation as a result of a Supreme Court ruling. The new standard states that sign regulations must be content neutral on face value, but cannot contain sexually explicit references or profanity. Ms. LaBranche had reviewed East Kingston's ordinance and commented it was the best she had reviewed and needed the least additions/changes. As signs are now allowed in all residential areas, the ordinance should contain the sign sizing requirements in those areas.

She identified 3 items that would need to be added to the sign regulations: 1. A severability clause; 2. A purpose statement for the sign regulation that at a minimum references traffic safety and aesthetics, and 3. A substitution clause to allow any message on one type of permitted sign to be substituted on any other type of permitted sign.

Ms. LaBranche will review the ordinance and make some change recommendations based on the Supreme Court ruling at the next meeting. Mr. Morales noted that the existing sign regulations are in the business section of the ordinance; would they need to insert a separate sign section in the ordinance to address the legislation? Mrs. LaBranche noted they would not; they would just need to add the section referring to residential signs. Mrs. White noted at one time she had identified where sign references were in the ordinances and regulations and will forward that list to Ms. LaBranche.

Mr. Moreau asked if they would need to come to the Planning Board. Discussion ensued that could become quite cumbersome on the Board if everyone who wanted a sign needed to come before them. Mr. Bath suggested adding a statement to the regulation that if signs did not adhere to regulation, they would be required to remove it.

Mr. Morales opined the State Representatives for the small towns should know what type of burden something like this could have on the towns.

Discussion regarding the Home Occupation Ordinance

In the ordinance it refers to administrative support for a business that takes place off the premises. The Board has had discussion previously as to whether or not this really constitutes a home occupation or not. Mr. Cacciatore noted it could be determined according to whether or not any business equipment is kept at the home.

Mr. Morales noted if this is really the place you conduct your business from, then he agrees it applies. If not and all you are doing is your paperwork from your offsite job, he does not think it qualifies. He opined it needed a better definition.

Mr. Caswell asked if you were selling items on eBay periodically or on a regular basis, could this be construed as a business? Mr. Morales opined if you were selling your own items, he did not think so. If you were purchasing other items to specifically sell, that would be a business.

Ms. LaBranche noted the definition of home occupation means you are conducting some sort of activity where you are doing it at your home, solely there. There is also a grey area; the people who do all their work outside their home and just do their paperwork at their home. Mr. Delling argued whether it was right to charge one person and not charge another. The way the ordinance is at the present time, their office work qualifies as an invisible home occupation.

Ms. LaBranche suggested finding out how many home occupations, both invisible and invisible, they have and how much revenue the home occupations produce. The Board might want to consider doing away with the invisible category altogether and focus on the visible ones as they have the potential to impact on their neighbors.

The Board had lengthy discussion on what to include and exclude. They discussed whether or not a list of the "types" of businesses would suffice rather than trying to identify which specific ones. Ms. LaBranche suggested instead setting the criteria for what would constitute a home occupation and also what types of business would not be allowed at all. Mr. Morales suggested also a paragraph that states that the Planning Board would have the final authority to determine if anything outside the criteria would be allowed.

Ms. LaBranche will draft something and send to the Board members for review before the next meeting.

When this is presented to the residents, they should need to state the reasons they are suggesting changing the ordinance: to protect the character of residential neighborhoods and the character of the town, and allow some flexibility to have a home business if you want one.

The Board also discussed various methods of getting some survey information out to the residents regarding this and get feedback.

Other Business

Violation at the Light Industrial Park

A couple of months ago, the Code Enforcement Officer stated there was a report a person was "living" in one of the rental units at the light industrial park. The Fire Chief had observed during his annual inspection that at that time it did not appear anyone was actually living there. The Planning Board had given permission during winter plowing season that someone could "rest" for a few hours between shifts.

Since that time, the owner of the Park reported that indeed one of his tenants was living in his rental unit. When Code Enforcement and the Fire Chief went to re-inspect, they found a wooden structure had been constructed within the unit and appeared someone could be living there as there was now a kitchen and laundry facilities. No permits had been acquired for any of the work, and as it is a business complex, you are not allowed to live there.

In the meantime, a person plowing snow in the industrial park backed into the rolling door of the unit which tore the door down and opened up the side wall; it is now open to the weather and wires are hanging. Code Enforcement, the Fire Department and the Police responded; Unutil was called to pull the meter. As the owner of

the industrial park is responsible for what goes on in his park, Code Enforcement issued him a Notice of Violation. Mrs. White read the Notice of Violation to the Board.

Mr. Moreau asked if in the future when the Board approves tenants for the rental units, could they impose a timeframe that no one is allowed to be there - say from 9-10pm to 5am? Then if someone is there outside of the approved times, the Police can do something about it.

Ms. LaBranche noted going forward it might be helpful to include in the notice of decisions for change of tenant that any deviation from the approved conditions of approval are the responsibility of the tenant and any enforcement action necessary will be the responsibility of the property owner. She also suggested adding to the application could state that tenants are responsible for maintaining their conditions of approval.

Adjournment

MOTION: Dr. Marston **MOVED** the Planning Board adjourn, Mr. Bath seconded. Unanimous approval.

Mr. Cacciatore closed the meeting at 8:50pm.

The next Planning Board meeting will be on March 17, 2016.

Respectfully submitted,

Barbara White

Planning Board Secretary

Joseph Cacciatore

Chairman