

March 19, 1992

Members in attendance: Richard Smith, Sr., Chairman; Catherine George, Raymond Donald, Robert Marston, and Melvin Keddy

Others in attendance: Stephen Bird, RPC; Amanda Rossi, Alternate; Fire Chief David Conti, Deputy Fire Chief James Davis

The meeting was opened at 7:30pm.

Minutes Corrections to the minutes of February 20, 1992 were suggested by Sarah Campbell as follows:

Pg. 5, Paragraph 6: add phrase, "prior to tying into the pond" at the end of the sentence.

Pg. 6, Paragraph 8: add phrase, "prior to issuing building permits Ms. Campbell read a letter from Ed Smith agreeing to that requirement".

Ms. George motioned to accept the minutes with the suggested corrections.

Mr. Donald second.

The motion passed 4-0.

Correspondence Mr. Smith opened and read correspondence as follows:

Audubon Society Wetlands Workshop notification.
South Hampton Planning Board notification of their approval of the Arthur Kokaras subdivision.

Information re: Cablevision statistics:

290 EK residents subscribing in 1990

322 EK residents subscribing in 1991

Mr. Smith suggested Selectmen's meetings be televised.
FMR modular housing update. Mr. Donald gave a Selectmen's update regarding continuing litigation.

Dr. Marston arrived at 7:35pm.

Scapicchio Mr. Pica telephoned a status report on the proposed cluster off Andrews Lane:

Condo documents were sent to Town Counsel for review.
The well has been drilled, testing is in process now.
Dr. Scapicchio and his engineer are sitting down to work out a proposal for the Impact fee.
Pins are set as requested on the Andrews Lane end.

Mr. Pica requested to be placed on the April agenda.

Mr. Donald expressed his concerns with traffic on Andrews Lane during construction. He wants the Board to make sure bonds are posted if access is not begun from the Route 107 end. Access from 107 would impact the school the least.

Mr. Smith noted they are supposed to start from the Route 107 end.

Mr. Donald noted his concerns with adverse impact on the schools.

Mr. Smith concurred with bonding and noted there isn't much road there now.

Ms. George requested that the Board see the Condominium Articles prior to acceptance of the plan.

Mr. Donald said these articles would have to be accepted by the Board prior to them becoming law.

Public Hearing-Ed Warren The Public Hearing for Ed Warren opened at 7:46pm.

Mr. Smith recognized Mr. Warren to speak about this request for Home Occupation permit.

Mr. Warren stated that he runs a part time general auto repair business out of the garage. He said he is a professional truck driver and this is an alternative income for him. He cited the bad economic times in his prime occupation and therefore, he relies on the garage business to help with his expenses.

Mr. Keddy arrived at 7:50pm.

Mr. Warren addressed the articles on the checklist and began to have problems with interpretation of 10.5.

Mr. Donald explained article 10.5 and asked if Mr. Warren was in business prior to January 3, 1989.

Mr. Warren said yes, he was.

Mr. Donald noted the rest of the sentence is grandfathering and not applicable at this time. He explained that Mr. Warren did approach the Selectmen to obtain grandfathered rights but did not present enough evidence to support it and was subsequently denied this status by the Selectmen.

Mr. Warren stated the regarding 10.3, no category defines general auto repair.

Mr. Smith asked for questions from the abutters.

Mr. Harvey Purington spoke to the fact that there are now four garages in town, two part time and now they are full time and they don't meet zoning regulations.

Hanscomb and Merrill were named as being in violation of zoning. Mr. Donald noted that they were grandfathered.

Mr. Purington objected to the fact that he pays a different rate on his taxes because he is zoned commercial.

Mr. Donald noted the Hanscomb and Merrill are in Residential Zones. He further noted that they were grandfathered and accepted as legal businesses when the ordinance was accepted.

Mrs. Purington also raised questions as to the fairness of zoning and its effectiveness to protect residences from business.

Mrs. Barbara Fillio asked with the area Mr. Warren is addressing is in a Residential Zone.

Mr. Smith answered yes.

Mrs. Fillio requested the outline of the business section of the Town.

Mr. Smith gave a very detailed explanation/description of the zone and stated that was the proposal and that the Town so voted it.

Mrs. Fillio asked when the permit was issued to build the Warren's home and asked if there were any regulations as to what could be built on the area. She further questioned the size of the garage building.

Mr. Smith and Mr. Donald stated there was no ordinance against the size of any building as long as setbacks are adhered to.

Mr. Fillio stated he objected to the issuance of the requested Home Occupation. He noted they moved to East Kingston some nine years ago and they chose East Kingston for the residential area. He noted it now appears they are being surrounded by business and he questioned if they are spot zoning "helter skelter". He objected to the general precedent being set. He noted they have a vested investment in their home which they feel is being eroded.

Mr. Fillio noted that he has read Article 10 and he feels the spirit and intent is that home occupations should be non-obtrusive, aesthetically pleasing and allows for home service type businesses. He doesn't think that auto repair fits. He does not feel there is a need for more garages within the town. He applauded Mr. Warren for trying to do something to help his economic situation, but not in his backyard. He objected again to the issuance of this permit.

Mr. Daniel Guilmette spoke to the issue that we live in changes, people move in and there are no guarantees in life. Things do not remain the same. He questioned if some people were leery of competition. He sees it as healthy and the objections were not appropriate. He noted that his property would suffer the most with the garage. He attested to the cleanliness, with no outside cars, well maintained, doors are always closed. He noted he has shared his ideas to maintain a non-intrusive atmosphere and he noted they have never had a problem with Mr. Warren's business.

Mrs. Fillio wanted the records to show that Mr. Guilmette and Mr. Warren are related. She noted that she also has no problem with the way Mr. Warren conducts the business per se, there is a hill between them. She did note that it tends to become the trend and that the property across from her will have to have a permit.

Mr. Donald asked if the Fillio's concern was with Mr. Warren or with the property across the street from them. He stated they are totally separate issues. He said the Selectmen are taking corrective action with the property across the street from the Fillios.

Mr. Fillio noted that there is a cumulative issue, there is an impact on his property.

Mr. Keddy noted there was no reason to object to Mr. Warren being in business, and noted that as Mr. Donald had stated, if anyone were to address a problem with the Selectmen, time is made to correct the infraction and if not done, the Selectmen can pull the permit.

Mr. Fillio said "we will have to play policemen".

Mr. Donald said, no, that is not the intent of the ordinance. The permit process is annual so that corrective action can be taken if required.

Mr. Fillio stated that this doesn't allay his fears. He noted the use doesn't fit in the list of Home Occupations.

Mrs. Fillio stated she agrees with Mr. Guilmette's statement, there is no noise, they (the Warrens) are fine neighbors, she is concerned with the trends. She noted she has to object to protect our economic situation.

Ms. Rossi asked if Mr. Warren has generated any complaints or noise since he has been in business.

Mrs. Fillio stated there has been no noise, she is concerned with what is going to happen. She said she is unhappy with the whole thing and cited past activity problem.

Mr. Donald said prior to Zoning Ordinance there was no doubt that was the way things went, people did what was best for themselves. This has not been the case since Zoning Ordinance and some business have been stopped.

The revision process to Zoning was outlined.

Mrs. George noted that there was no proof of business when denied grandfathering by the Selectmen and asked if he was able to provide proof now.

Mr. Warren stated he still has no paper trail, but people remember things. He cited he used generic forms and there was no way to tie them to his business and it was not enough to support his position.

Ms. George asked how long the Fillio's have been aware of the business.

Mr. Fillio stated since the garage was built, it also looked like a business garage.

Mr. Guilmette stated the garage was built prior to 1988. The house was built in 1986.

Fire Chief David Conti noted that he can attest (and show paperwork to support his statements) that he was in business in June 1988. He noted that Mr. Warren is the only one who serviced his Suburban and he has the dates of service at his home. Mr. Conti also stated that he feels a man's home is his castle and if he makes no disturbance he should be able to do anything that he wants. He cited residences where no home occupations exist, but the property still devalues the neighboring properties. He expressed his opinion that there are too many constraints within the Town regarding ordinances.

Mr. Fillio asked if there was no increase in any level of the operation allowed.

Mr. Keddy stated no increase in the size.

Mr. Fillio asked if Mr. Warren changes oil and what he does with the oil.

Mr. Warren said he does change oil and contracts with Waste Oil Treatment to pick it up in 55 gallon drums when he calls them for pickups.

Mr. Keddy motioned to recommend approval to the Selectmen due to the extenuating circumstances.

Ms. George second.

The motion passed 5-0. Mr. Donald did not vote on this motion.

Mr. Warren thanked the Board for their time.

The Public Hearing was adjourned at 8:25pm.

Wayne Ewald Mr. Ewald presented a Lot Line Adjustment between himself and Francis Colanton. Lots 14-03-12 and 14-03-15, dated February 18, 1992 drawn by Walter J. Zwearcan, LLS for signatures of the Board.

Mr. Donald motioned to sign the Lot Line Adjustment between Mr. Ewald and Mr. Colanton as action was taken to approve the plan in the January 1992 meeting of the Planning Board.

Mr. Keddy second.

The motion passed 5-0.

General Mr. Donald addressed two recommendations to the Rockingham Planning representative:

1. Bylaws/procedures dealing with Alternates
 - a. Question..the voting status of Alternates when all members are present?
2. What are the obligations of the Fire Dept. & Wetlands Board?
3. Can the Board ever turn down Home Occupations?
4. What are the intentions of "Home Occupations Ordinances"?
5. Proceed with discussion for changes.
6. Update the Master Plan.

There was a long discussion about Home Occupations, their values and their impact on surrounding propeties.

