

TOWN OF EAST KINGSTON, NH
 PLANNING BOARD MEETING MINUTES
 April 19, 2001

AGENDA

- 7:05 Karen (Rossi) Pressey – Carmen’s Restaurant Proposal – Discussion
 7:15 Michelle Plante– 15 Rowell Cove Road – Home Occupation – Discussion
 7:30 Albert Wright– Powwow River Road & Lane Lot Line Adjustment– Public Hearing
 8:00 Robert Forrest– 1 Stumpfield Road – Home Occupation - Discussion

Members attending: Richard A. Smith, Sr. – Chairman, Beverly A. Fillio – Vice-chairman, Dr. Robert Marston, David G. Morse and Alternate J. Roby Day, Jr.

Absent: John L. Fillio – Ex-officio and Alternate Edward C. Johnson.

Others attending: Maura Carriel – RPC Planner, Lauren K. Smith – Conservation Commission Chairman, Deputy Fire Chief Rob Carter, Fire Department Lieutenant Andy Conti, Karen Pressey, Dennis Quintal, PE, Richard Cook, Michelle Plante, Albert Wright, Carol Wright, Deborah Wright, Robert Forrest, and Dana & Deborah Merchant.

Chairman Smith opened this April 19, 2001 planning board meeting at 7:06 p.m. with the role call. He designated Alternate Roby Day to vote in the absence of Ex-officio John Fillio.

Karen (Rossi) Pressey – Carmen’s Restaurant Proposal: Chairman Smith opened discussion with Karen Pressey at 7:07 PM regarding proposed plans to rebuild the Scliris property. Mrs. Pressey indicated that she would be representing her employer, Julian Dunlop who is requesting the board’s direction on his plans to reconstruct the restaurant known as Carmen’s Fried Chicken. She stated that such plans include the razing of the existing house, barn and restaurant, and then constructing a new restaurant. Mr. Dunlop has a purchase and sales agreement on the property. She further stated that this proposal would include two entrances to the business with parking to be located in back of where the existing house is located.

Members acknowledged that the restaurant closed in February 2001. Mrs. Pressey continued to describe the new restaurant as a two-story building measuring 72’x36’ which could accommodate seating for 60 customers and 10 restaurant employees. The footprint of the new building would not be the same as the footprint of the existing building (restaurant). She stated that the land would be flattened and the new restaurant would be built from scratch.

Ms. Carriel stated that the East Kingston regulations state that non-conforming uses or structures cannot be enlarged or expanded, however, the courts allow for reasonable expansion. Significant increases in traffic and noise would not be allowed.

Members commented that East Kingston could use a nice restaurant. They also reviewed a conceptual sketch submitted by Mrs. Pressey that showed the restaurant layout (both 1st and 2nd floors), and the layout of the parcel.

Mrs. Fillio asked if the sum of the square footage of the existing house, barn and restaurant was more or less than the proposed new restaurant’s square footage. Mr. Morse stated that he thought the new restaurant would be smaller.

Mr. Day responded that as a matter of law, grandfathered entities can be improved, but they cannot be expanded. The restaurant cannot be demolished and rebuilt and still stay within the confines of the law.

Ms. Carriel stated that some communities do allow for such changes as long as there is no increase in the non-conformity, however East Kingston does not allow for expansion or enlargement. This would require a variance.

Mr. Day went on to say that grandfathered cases are typical topics of discussion at the OSP conferences. Grandfathering is a delicate issue and that he is uncomfortable advising the applicant to go ahead and spend money on this project when he is not convinced the change is allowed.

Mrs. Pressey inquired if the restaurant could be demolished and rebuilt within its current footprint. It was questioned as to whether the sum of the footprint of the house and barn and the footprint of the restaurant could be combined into one new restaurant building, or whether they had to stay intact.

Chairman Smith commented that it would be better to move the building away from the road. He further noted that two additions have been placed on the restaurant to date.

Ms. Carriel stated that according to the Zoning Ordinance, non-conforming uses cannot be expanded (see Article XVIII).

Mrs. Fillio then noted that the sketch reflects the 2nd floor of the proposed restaurant housing three apartments. Chairman Smith stated that the restaurant may be grandfathered but apartments are not allowed. Mrs. Fillio went on to say that she loves the new restaurant idea, however, the board needs to research the laws regarding grandfathering. The proposal for apartments are a change of use from restaurant use.

Chairman Smith stated that the parcel contains three dilapidated buildings that are ready to fall down – the buildings should be rebuilt. He stated that he thinks the restaurant idea is a good one – he could go along with that, but not with the apartments on top. He said that the town should not keep turning businesses away.

Mrs. Pressey stated that the restaurant portion of the plan is the most important part. Mrs. Fillio agreed with Chairman Smith and added that the apartments are difficult to justify.

Mr. Day noted that two-family dwellings are allowed in town, however, with only 2.1 acres, the property in question does not meet the duplex provisions – a minimum of three acres is needed, thus only one apartment could be allowed.

Mrs. Fillio reminded the board that this session with Mrs. Pressey was only non-binding discussion and that the board needs to look at the ordinance. The board is open to having a nice restaurant on the corner as long as it is in keeping with what has been there for many years. The business may be grandfathered, but the parcel is zoned residential/agricultural – not commercial.

Mr. Morse stated that he would be interested in seeing the comparison of square footage from the total of the old buildings to what is proposed in the new building.

It was again noted that this meeting was non-binding discussion and that the definitive answers Mrs. Pressey might be seeking may not be obtainable in this conceptual forum.

Mr. Day reiterated that he was uncomfortable with some of the questions of what can be done with a grandfathered business and he suggested the board take this plan, research permissible options, and give Mrs. Pressey some form of answers on her questions. Mrs. Fillio suggested that Mrs. Pressey acquire a copy of the ordinances to see what types of approaches are allowed and/or how to get them allowed.

Ms. Carriel directed the board to the appropriate section of the Zoning Ordinance, Article 18, and then read it aloud:

This ordinance shall in no way affect any dwellings, buildings, or recorded lots that are legally existing or substantially constructed at the time of its passage. A non-conforming use or structure shall not be:

- A. Altered for use for a purpose or in a manner substantially different from the use to which it was put before alteration.*
- B. Once changed to a conforming use, revert to a non-conforming use.*
- C. Re-establish after abandonment of land for one year and a structure for two years, except to use and/or structure conforming to this ordinance.*
- D. In the event of damage, destruction or demolition of any building not conforming to this ordinance, said building may be rebuilt for its former non-conforming use in the same manner and extent, provided the construction is started within one year of its damage, destruction or demolition and is completed within two years.*
- E. Enlarged or expanded either in use or structure.*

Mrs. Pressey thanked the board for their time and left the meeting at 7:16 PM.

Michelle Plante – 15 Rowell Cove Road – Home Occupation Proposal – Discussion: Chairman Smith opened discussion with Michelle Plante at 7:17 PM. Ms. Plante indicated that she was interested in operating a jewelry business from her home and that it's operation would be undetected by her neighbors. The nature of the business is to string beads and stones which are to be sold at fairs and shops. She resides at 15 Rowell Cove Road and plans to make most of her beads herself as she has a kiln to process the stones. She would design and assemble the jewelry items at home.

She went on to say that she would not use a sign. At the inquiry of board members she stated that her house consists of only three rooms and that she would be using the smallest room for her work. This room measures about 8'x10' – her other rooms include a livingroom/dining room and a bedroom. She would be the only employee and that she is currently employed full-time at a large company.

When asked if her home meets all the necessary building and fire codes, she responded affirmatively. She stated that there would be no traffic to and from her home for the business. Her business would not emit smoke, fumes, noise, etc. The electric kiln she spoke of runs on a 110 electrical outlet. No parking is needed, as she would not have customers coming to and from the home.

She stated that she has spoken to her neighbors about her proposal and they have no problem with it.

MOTION: Mrs. Fillio motioned recommend the Board of Selectmen exempt this home occupation proposal for Michelle Plante from the permitting procedure as the nature of the business falls under the invisible clause of the Home Occupation Ordinance. Dr. Marston seconded. With no further discussion, the motion carried 5-0.

Ms. Plante was then informed that the Board of Selectmen would make the final determination on the home occupation exemption and that she could expect to see the matter before them at their next meeting. She was advised to contact the Selectmen's office for more information regarding their agenda.

Albert Wright – Powwow River Road & Lane Lot Line Adjustment – Public Hearing: Chairman Smith opened the public hearing on Albert Wright's lot line adjustment plan at 7:33 PM. Dennis Quintal, PE presented the lot line proposal for Mr. Wright, who was also present. Mr. Quintal began by reviewing the plan and noting the area of land conveyance. He explained that currently Mr. Wright, his wife and daughter own parcels MBL# 2-6-10 (which is part of a Kingston parcel – R27-5A) and parcel 2-6-12. The applicants are proposing to convey two acres from the 2-6-12 parcel to the 2-6-10 (R27-5A) parcel which would result in creating a total acreage of 2.5 acres for the 2-6-10 (R27-5A) parcel and 2 acres for the 2-6-12 parcel. This would also make the non-conforming 2-6-10 (R27-5A) parcel conforming.

Mr. Quintal further stated that once this proposal receives East Kingston approval he will go to the Town of Kingston for their approval. He then noted the line on the plan that would be eliminated. At the inquiry of board members, he stated that some of the land on the Kingston side was swampy and that there are absolutely no plans to construct a house within the area between the town boundary and the new lot line. Mr. Wright indicated that because that lot is located on a class VI road, he cannot build a house there – there is no town road frontage.

Abutter Lawrence Smith stated that he had no problems with the proposal. Mr. Wright stated that he pays taxes on the 1/6 tenths of an acre located in East Kingston (the 2-6-10 piece).

MOTION: Mr. Morse motioned to invoke jurisdiction on the lot line adjustment plan for MBL# 2-6-10 & 2-6-12. Mrs. Fillio seconded. With no further discussion, the motion carried 5-0.

Members then expressed some concern over the location of the newly proposed boundary line and the existing town boundary line. This concern was based on the possibility of whether or not a house could be built on this parcel – although the configuration of the lot line adjustment was to add acreage to the parcel in Kingston. RSA 674:53 was cited:

An owner of contiguous land which is located in more than one municipality may treat a municipality boundary line as an existing boundary between lots, tracts, sites or other divisions of land for purposes of this title unless the existing or proposed use of land or arrangement of structures in one of the municipalities requires and is dependent upon land or improvements located in the other municipality or municipalities in order to fulfill the land use ordinances or regulations of the first municipality with respect to such matters as lot size, density, frontage, uses or accessory uses, set-backs or access, or in order to comply with applicable state or federal regulations...

It was also noted that once land is combined to create a more conforming lot, it cannot be re-subdivided to create a non-conforming lot. Mr. Quintal stated that the town line has never served as a boundary line regarding these parcels. He also said that if conditional approval were granted by the board he would edit the plans as required, go to the Kingston Planning Board and get their endorsement, then he would bring the plan back to East Kingston for final approval.

MOTION: Mr. Morse motioned to approved the lot line as presented for MBL# 2-6-10 & 2-6-12 with the following conditions:

1. The correct MBL# (2-6-15) be noted on the plan for the lot in East Kingston and also note the parcel's area calculations;
2. The plan receive the endorsement and signature of the Kingston Planning Board; and
3. The bounds be set and verified by the Building Inspector and the Certification of Monumentation form be submitted. Mrs. Fillio seconded.

DISCUSSION: Members noted the reference pin at the high water mark. Mrs. Fillio stated that she wanted to see some sort of documentation that once the lot between the Kingston line and the lot line (to be identified as MBL# 2-6-15) is created, it will remain a part of the Kingston parcel and not become a house lot for East Kingston.

Mr. Wright stated that the purpose of this lot line adjustment is to convey the East Kingston parcel (2-6-12) to his daughter and make his lot in Kingston more conforming. He said he tried to get board approval years ago for this but was denied. He has come forward with a different approach in hopes of completing this goal.

Again it was noted that parcel 2-6-15 would be made part of the Kingston parcel and it could not be separated to create a non-conforming lot.

Chairman Smith called the vote. The motion carried 5-0.

Robert Forrest – 1 Stumpfield Road – Home Occupation – Discussion: Chairman Smith opened discussion with Robert Forrest at 8:01 PM. Mr. Forrest proposed the operation of a gun dealership from his residence of 1 Stumpfield Road (formerly the Rosenberg property). He stated that his cover letter submitted to the board was self-explanatory regarding the operation of his business. The letter indicated that he is a federally licensed firearms dealer and that his business is limited to firearms and accessories for sportsmen, competition shooters and law enforcement. He does not conduct retail sales that is open to the public and that his customers are generally other firearms dealers, police departments and collectors. He does not keep an inventory. All items are special order and are delivered by UPS. He does not advertise the business or use signs.

He further indicated that the area in his home to be used for the business is approximately 800 square feet. At inquiry from the board he stated that this is not a full-time job. He is also an attorney. Business operations consist of receiving orders by telephone or Internet where he is asked to access specific firearms. He then picks up the item or orders it. If ordered it is delivered by UPS to his home and then he transfers the item to the other party. He is not a firearms appraiser, nor does he repair them. Shipments to his home may total one a month or one every three weeks – this is not a very active business. He deals with high-end items specialized for law enforcement, competition sports, etc. He noted that as requested he submitted a photograph of the front and back of his residence.

Members then questioned the driveway shown in the picture of the front of the residence. It was noted that as a condition to the recent subdivision of that property, the driveway located in the front of the premises was to be removed and re-seeded. This was a requirement by the NHDOT in issuing three other driveway permits to parcels that were subdivided off the original parcel. Even the address of 44 North Road was changed to 1 Stumpfield Road as the North Road access was to be abandoned.

Mr. Forrest responded that he purchased the house like this (with driveway shown in photo). He stated that he cannot use his front door if he has no access to it.

Mrs. Fillio stated that this driveway is not supposed to be there –if UPS uses this driveway for his business, she has a problem with it.

Mr. Day stated that the business issue is separate from the driveway issue.

MOTION: Mr. Day motioned recommend the Board of Selectmen exempt this home occupation proposal for Robert Forrest from the permitting procedure as the Planning Board has determined the business falls under the invisible clause of the Home Occupation Ordinance. Mr. Morse seconded.

DISCUSSION: At Mrs. Fillio's inquiry, Mr. Forrest repeated that he had no intentions of using a sign – he does not want to advertise his business. Mrs. Fillio asked the chairman to move the question.

Chairman Smith called the vote and the motion carried 5-0.

Cook/Sullivan Dredge & Fill Plan: At the April 12 work session, members acknowledged notification of a Dredge and Fill application for the Cook/Sullivan property. Chairman Smith requested a copy of that plan be submitted to the Planning Board for

review. As a result of that request, Dennis Quintal, PE presented a copy of the plan and noted that the intent of the wetlands application is to connect two roads to an access road on the 35-acre parcel located across the street from the post office. As reported at previous meetings, landowners Richard Cook and David Sullivan intend to develop an elderly housing community on that parcel. Mr. Quintal stated that in order to create the development's layout, the road needed to be modified to meet town specifications thus small wetland crossings were required. The design also included plans for a fire pond, thus they applied for a Dredge and Fill Permit from the State.

Mr. Quintal continued to say that he has spoken to the Fire Chief who indicated he didn't have a problem with the plan. He stated that the timeframe for formal submission of the site plan to the board is at least a couple of months away as State permits (both wetland and water supply approval) are needed. Once those are received a water treatment plan and a pump house must be designed. And the road must be constructed in order for the well rigs to access the areas for wells.

Conservation Commission Chairman Larry Smith stated that the timing on the Dredge and Fill Permit could take as long as three months and that the Conservation Commission hasn't reviewed the plan yet. There are five small crossings and a fire pond with a total impact of about 11,000 square feet.

Ms. Carriel noted that Dredge and Fill permits do not preclude the town's approval and recommendations.

Growth Management Chapter: At the last meeting (April 12th) members were asked to read through the draft Growth Management Chapter written by Glen Greenwood of the RPC. Mrs. Fillio stated that she did read it and that it seemed fine. Mr. Day stated that he thought it was too wordy and thought that the board could draft a similar chapter with half the words. He then asked for a copy of the chapter on floppy so he could begin drafting East Kingston's growth management chapter. Mrs. Fillio and Mr. Morse requested a copy of the chapter be forwarded to them via email. This item was then placed on the agenda for the next work session yet to be scheduled.

Capital Improvements Plan: Members again noted the departments whose completed CIP worksheets have not yet been submitted to the board. Members would again contact department heads for their input.

Sabatini Subdivision: Mrs. Fillio recommended the board generate a letter to the Board of Selectmen regarding the driveway status at 1 Stumpfield Road as it appears the homeowner intends to use the driveway that was ordered to be abandoned, asphalt removed, and area re-seeded as a condition of subdivision approval. She expressed her frustration that there is no follow-up to the conditions agreed to and set by the board. Though the Planning Board has no jurisdiction to enforce it, the Selectmen do. It was suggested that the State be contacted as a condition set by them was also in violation. Members requested that a copy of the Sabatini driveway permit be reviewed at the next work session.

Work Session: Members scheduled a work session to be held on Thursday, May 24th at 7:00 PM at the Town Hall. The agenda will include the CIP, the Growth Management Chapter, and the Sabatini driveway issue.

Incoming Correspondence: Chairman Smith acknowledged correspondence from UNH regarding land use workshops to be held at the college. Course costs were noted.

Planning Board Minutes: The board reviewed minutes dated March 15, 2001. Those present at that meeting and a valable to vote on their acceptance tonight were Chairman Smith, Dr. Marston, and Mrs. Fillio.

MOTION: Mrs. Fillio motioned to approve the Planning Board minutes dated March 15, 2001 as written. Dr. Marston seconded. With no further discussion, the motion carried 3-0.

The board reviewed minutes dated April 12, 2001. Those present at that meeting and a valable to vote on their acceptance tonight were Chairman Smith, Dr. Marston, Mrs. Fillio and Mr. Day.

MOTION: Mrs. Fillio motioned to approve the Planning Board minutes dated April 12, 2001 as written. Mr. Day seconded. With no further discussion, the motion carried 4-0.

OSP Annual Spring Conference: It was noted that Mr. Day would be attending the OSP Annual Spring Conference on Saturday, May 12, 2001.

Zoning Book Status: Ms. Carriel stated that she has recently spoken with the Selectmen's administrative assistant regarding the timeframe of when the books would be completed and the number of copies ordered. She stated that before the books went to the printer, she had a question regarding a checklist page within the Home Occupation Ordinance. Members reviewed the page and noted that the board has not used the checklist in years. They stated that as long as the items of the checklist were covered in other areas of the ordinance the checklist could be eliminated. Ms. Carriel agreed to research the items of the checklist, specifically item # 10.3.

Mrs. Filio then stated she wanted it on record that the board recognizes how the recording secretary goes above and beyond the outlined tasks of her responsibilities. She noted that the photos of a recent home occupation case were taken and produced by recording secretary without any compensation.

Exeter Region Cooperative School District & Impact Fees: Ms. Carriel announced that there would be a meeting of the ERCSD and area towns on May 17th regarding the issue of impact fees. An impact fee expert will be there to inform the area towns within the school district of how to create and write impact fees to assist in the costs of developmental burdens to the school district. Mr. Day expressed an interest in attending but noted he was already attending the OSP Annual Spring Conference. Ms. Carriel stated she would check the time of the impact fee meeting and get back to the board.

Waldron LLA Status: Members reviewed the status on the lot line adjustment plan for Monique Waldron that was approved with conditions on November 16, 2000. It was noted the driveway was constructed on the boundary line of Kensington and East Kingston and that this was approved by the State. In addition to this driveway, the State also issued a permit for the East Kingston parcel. It is the intention of the property owner to access the East Kingston parcel via the driveway constructed on the town boundary line. Members approved the driveway plan but indicated it must meet approval of the Fire Chief before the plan can be signed. Conservation Commission Larry Smith stated that the bounds have been set. It was agreed that once the Fire Chief approved the driveway plan, the procedure for recording the plan could be executed.

With no further business,

MOTION: Dr. Marston motioned to adjourn. Mr. Filio seconded. With no further discussion, the motion carried 5-0 and this April 19, 2001 Planning Board meeting ended at 9:45 p.m.

Respectfully submitted,

Catherine Belcher, Secretary

Minutes completed and on file April 22, 2001.

Approved: 5/17/01