

East Kingston Board of Adjustment

May 17, 1995

Attending: David Ciardelli, Acting Chairman; Joseph Conti and Norman Freeman, Alternate
Edward Cardone, Prospective Alternate

This meeting opened at: 7:40pm.

Public Hearing for Judith & Timothy Bodwell (1995-01)

Attorney Robert Donovan was present to represent Mr. & Mrs. Bodwell. Mr. & Mrs. Bodwell were also present. Others from the public present were: Catherine George, Planning Board Member and J. Roby Day, Planning Board Alternate.

The Public Hearing was opened at 7:40pm.

Mr. Ciardelli assumed the role of Chairman upon the excused absence of Chairman John Daly. Mr. Ciardelli read the Public Notice aloud in its entirety as sent to the abutters. He also apologized to Mr. & Mrs. Bodwell and their counsel for the error of not sending the notice of Public Hearing to them. The apology was accepted and they were sympathetic to the cause (new secretary under training did not send a copy to the applicants).

Attorney Donovan gave a memorandum to Mr. Ciardelli and members in attendance to support the Bodwell's position noting two issues which are presented within the memorandum. He stated that the Bodwell's do comply with the requirements for a Home Occupation permit. The proposed use is situated where they live, for office use. The business is actually located on another site. The property has 8ac +/- and the accessory structure would be used as an office as the Home Occupation permitted business. When reading the ordinance it is a soft and non-disturbing request as with any site. Phone calls, dealing with customers while negotiating the pre-work business will be the business conducted. The actual septic site work would be done off site. There would not be traffic, noise, or parking problems as most of the business is actually conducted off site.

Page 3 of the memorandum cites responses through 10.2.1 in that the Home Occupation must be in a dwelling unit or other structure. It is clear that the manufactured housing is a structure by definition (building and dwelling are well defined) and it fits perfectly.

10.2.2 No change to the exterior other than the permitted sign. Use as an accessory building would bring no noise, traffic or parking problems.

10.2.3 Requires the accessory structure be no more than 25% of available space. When calculated the building, basement and accessory building are within the limits. Figures were used from the Town's tax records. 3660 sq. ft. Includes all floor areas, and excludes porches and decks. 915 sq. ft. Is calculated to be the maximum and the mobile home is actually 780 sq. ft.

10.2.4 Requires non-resident employees to two. There will be one non-resident and the residents.

10.2.5 There will be only one commercial vehicle.

10.2.6 Parking off street. There will be only the Bodwell's vehicle, possibly two for non-residents (employee and perhaps a client).

10.2.7 The Bodwell's will be running the business.

10.2.8 The intended use is for office space and will not be offensive.

The Ordinance clearly does not say "office for separate business", but it list others premised out of an office. The use would be consistent as office use is permitted by the Home Occupation Ordinance.

10.3.12 Home office is a typical process similar to this listed.

Attorney Donovan stated that it is clear that the Board should grant the Home Occupation permit. He said he felt the Board decided not to hear was because of the court case pending in Superior Court regarding the denial of the use of the mobile home as a second dwelling and they decided to follow the cause no matter what. Attorney Donovan stated that he sent a document to Town Counsel and the Court so stating the withdrawal and therefore there is no reason to afford denial to their (Bodwell's) request for use.

Mr. Ciardelli asked if there were abutters present. There were none.

Mr. Conti asked if there were any trucks being held on the premises.

Mr. Bodwell stated that all were next door at his father's (Dan Bodwell). Mr. Bodwell stated that he runs the septic business and that Danny(?) is also involved.

Attorney Donovan stated that the office is on their property and that they run the business. Mr. Bodwell nodded in agreement.

Mr. Conti stated that according to the Home Occupation only one commercial vehicle could be on site and asked if Dan Bodwell was then in violation of the Home Occupation Ordinance because he has no Home Occupation permit.

Mr. Bodwell explained that Dan Bodwell is grandfathered for all three businesses that he runs.

Attorney Donovan noted that the business is clearly in existence.

Mr. Conti noted that in 1989 there was only one vehicle, and now there are three.

Mr. Bodwell stated there are the same amount of vehicles now as then.

Attorney Donovan stated the ZBA is being used for the purpose of making a decision, regarding the septic business.

Mr. Ciardelli read the charge to the ZBA and stated that he understands the appeal is for denial in error from the Board of Selectmen; they are appealing the denial of a hearing by the Selectmen.

Attorney Donovan stated that what the Selectmen did was a denial of the permit, a denial of the hearing was also a denial of the Bodwell's right to due process and they are seeking the approval through the ZBA to protect their rights.

Mrs. Catherine George stated the Selectmen denied a hearing so you (the ZBA) should reverse and allow a hearing to come before the Planning Board.

Mr. Ciardelli read a letter dated April 10, 1995 and went on to say....my concern is...(left unspoken).

Attorney Donovan asked Mr. Ciardelli and the Board members to read the ordinance as it does not mention the Planning Board involvement at all.

Mrs. George noted that all Home Occupation applications come before the Planning Board.

Mr. Ciardelli noted that he wants to hear from the Board of Selectmen.

Attorney Donovan stated that the Selectmen knew of the hearing and they are not present this evening.

Mr. Conti noted that the Home Occupation goes before the Planning Board and then goes to the Selectmen.

Attorney Donovan again noted that there is nothing in the Ordinance that states it goes to the Planning Board.

Mr. Conti asked if Mr. Bodwell runs the business from his house (now).

Mr. Ciardelli stated this may seem laborious, but there is a process to get (application) before the Planning Board and Selectmen. He was not sure if the denial of the hearing was based on past and the fact that you withdrew from the Superior Court and the Selectmen not having all of the information would do an injustice. He stated he would entertain a motion to send the Bodwell's application back to the Selectmen.

Mr. Conti agreed to motion to refer it back to the Board of Selectmen and let them go through the process.

Mr. Freeman stated he thought it seemed like the Bodwell's were being given the run-around.

Attorney Donovan agreed, and stated it seems like that to him also. He asked the ZBA to give them a hearing. It was contrary to their constitutional rights. They applied in March and now it is May. The Selectmen flat denied them.

Mr. Freeman asked if the ZBA could overrule the Board of Selectmen.

Mr. Ciardelli stated he would second Mr. Conti's motion to send it back to the Board of Selectmen and instruct them to give the Bodwell's a hearing.

Attorney Donovan asked what happens if they are denied again. The ZBA is forcing two months wait or appeal to the Superior Court and stated that decision is as bad as the one the Selectmen made.

Mr. Ciardelli noted their decision may have been in error; and based on the facts that the former court case is now gone and that this new information just became available he wants to remand it to the Selectmen.

Attorney Donovan stated the ZBA is trying to guess why the Selectmen made the decision they did, and not one of the Selectmen are here.

Mr. Ciardelli noted historically if it comes back and the administrative decision was a denial, he wants to see it go back that way and wants its to be beneficial to the Bodwell's and give the Bodwell's a fair hearing.

Attorney Donovan stated it was not the Bodwell's fault, they were cut off at the pass.

Mr. Freeman stated he was not sure of the other Board members, but he was of a different feeling, that he hates to see people given the run around. The ZBA still has to face the issue, and it any be right back here (to this ZBA Board).

Mr. Conti noted the Bodwell's did not go through the process; Mr. Bodwell already had the space in his house to do the septic (office) work. That's why he needs to go before the Planning Board and go through the process. Further, if the Planning Board refuses to recommend granting a permit, the Bodwell's can come to the ZBA for a rehearing.

Attorney Donovan again reminded Board members there is nothing in the Ordinance for a Planning Board hearing, that concept is wrong, nothing in the Ordinance so states.

Mr. Ciardelli stated the ZBA is putting it back into the hands of the Selectmen for a proper hearing.

Mr. Conti asked if this would be a Public Hearing. Answered affirmative. Mr. Conti then withdrew his motion to go to the Planning Board for process and restated the motion to refer back to the Selectmen to get a Home Occupation Permit (hearing).

Mr. Ciardelli withdrew his initial second, and then made a second to the new motion.

J. Roby Day stated he felt the issue was to correct the procedural error and therefore the Selectmen need to be told to comply with the Ordinance.

Attorney Donovan noted that only the Bodwell's suffered, as the body slammed the door and now they are here to preserve the rights of the Bodwells to correct the erroneous Selectmen's decision.

Attorney Donovan again stated the Selectmen have to hold a Public Hearing and give notice, etc.

Mr. Ciardelli, Mr. Conti voted in favor of the motion. Mr. Freeman opposed.

The motion passed 2-1.

The Public Hearing closed at 8:15pm.

Public Hearing for Kevin Jones (1995-02)

The Public Hearing for Kevin Jones opened at 8:18pm.

Mr. Ciardelli read the Public Notice aloud in its entirety as sent to the abutters. He also apologized to Mr. Jones for the error of not sending the notice of Public Hearing to him. The apology was accepted.

Mr. Jones submitted a letter from Carol Jones, his wife, as owner of record of the property, giving him authorization to conduct business on her behalf.

Mr. Jones stated three weeks ago he went to the Selectmen to get a building permit for work on his shed. He noted he sided, put in electricity and a porch, bathroom and heating system. The space is intended to be used in place of space lost because of a new child. He would set up his computer to be used there. He will also use the space to accommodate the visits from his in-laws when they visit from Florida. He noted there was no problem with the remodeling of the shed, but with the bathroom. He felt the Board perceived this as rental space, but assured that there is and would be no kitchen space. The main issue for the bath was for his personal use and for the convenience of his guests. He said the Selectmen claim that this is a two family residence. He is not requesting the permit for rentable space.

Mr. Jones stated he talked with Peter Dow in Exeter and asked his opinion and Mr. Dow stated that they issue a certificate of occupancy stating that the property is not to be used as rentable property.

Mr. Jones stated there is no problem from the abutters, and noted it was never intended to be rented.

Mr. Ciardelli read the motion by Mr. Donald (Selectmen's minutes) appealing that decision.

Mr. Jones agreed and stated that he had no other choice at that point in time until he did his homework and feels it is unfair to make him remove it.

Mr. Conti stated the Mr. Jones never did apply for a building permit, and still have none. He noted that if there are three bedrooms in the big house he needed to combine the fourth bedroom and would need to enlarge the septic system because it was not large enough to handle the fourth bedroom.

Mr. Jones stated the fourth bedroom would not increase the use.

Mr. Conti stated the house would need to be brought up to the NH Water Pollution standards.

Mr. Jones noted that a friend has added a bedroom and bathroom and there was no problem. He named the friend as Mr. Ruocco.

Mr. Conti noted that Mr. Ruocco has three bedrooms and told him there would only be three total. He noted that Mr. Jones stated the room within the shed was a bedroom and with the fixtures, it is a bedroom. Mr. Ruocco stated his house was only a three bedroom house and if there is a change, he will also come into compliance. The septic system has to be designed to accommodate the number of bedrooms.

Mr. Jones asked how he can find out what his septic system will handle because of its age. He stated it may already be sized for four bedrooms, he doesn't know.

Mr. Freeman asked if he could put in a bathroom and not use the room as a bedroom or call it a bedroom.

Mr. Conti said it was a guest room.

Mr. Ciardelli read the ZBA rules and noted that Board must decide if the decision was made in error.

Mr. Conti stated the decision was not made in error.

Mr. Freeman asked if it was a full bathroom.

Mr. Jones stated yes, the provision for a shower is there strictly as a convenience; he wanted a spot for his in-laws.

Mr. Conti told him to attach the shed to the house.

Mr. Jones stated this was once a plan and originally considered to attach with a hallway, but he deems this as splitting hairs.

Mr. Conti motion that the Administrative decision would hold to deny Mr. Jones a permit.

Mr. Freeman second. He then added that he suggests that Mr. Jones come back , appears to be honest and not trying to put anything over on the town and he sees no reason to play games, come back with an alternative.

Mr. Conti stated if attached to the building, when the septic fails, you must go to a four bedroom system.

The motion passed 3-0.

Mr. Ciardelli noted that Mr. Jones needed to find the right road to go down.

Mr. Jones stated that he should have talked with the Building Inspector.

The Public Hearing closed at 8:40pm.

Respectfully submitted,

Nancy J. Marden, Administrative Assistant