

TOWN OF EAST KINGSTON, NH  
PLANNING BOARD MEETING MINUTES  
May 17, 2001

FILE

AGENDA  
NO SCHEDULED APPOINTMENTS

**Members attending:** Richard A. Smith, Sr. – Chairman, Beverly A. Fillio – Vice-chairman, Dr. Robert Marston, AND David G. Morse.

Absent: John L. Fillio – Ex-officio, J. Roby Day, Jr., and Alternate Edward C. Johnson.

**Others attending:** Maura Carriel – RPC Planner, Fire Chief Alan Mazur, Peter Riley and Melissa Fay.

Chairman Smith opened this May 17, 2001 planning board meeting at 7:24 p.m. with the role call. He noted that Mr. Day was absent from the meeting because he was attending an impact fee workshop hosted by the RPC on behalf of the board.

**1 Stumpfield Road Home Occupation:** Peter Riley and Melissa Fay of 47 North Road met with the board to discuss their concerns regarding a home occupation permit that was recently granted to the property owners of 1 Stumpfield Road. The business in question was described as a firearms dealership. Mr. Riley expressed concern regarding the storing of firearms and ammunition at the premises as well as his determination that the business did not fall within the permitted home occupation uses outlined under Article 10.5. He stated that ammunition storage should be inspected by the fire department and that at a minimum, the business proposal should have undergone the public hearing process so abutters could be made aware of the product the homeowner is handling.

Fire Chief Mazur stated that the fire codes provide that after a specific number of firearms (he recalled it being 6 or 7), the building must be inspected by the fire department and the weapons must be stored in a locked fireproof vault.

Board members responded that the homeowner clearly indicated that he would not keep an inventory of firearms on the premises; they would be purchased on an as-requested basis and then forwarded to the appropriate party. The homeowner had informed members that much of the firearms business was operated over the Internet, thus the business could be considered as an office-type business. Mr. Riley disagreed.

He then went on to address another concern he had with the property. He stated that the property owners of 1 Stumpfield Road use the semi-circular driveway located on North Road on a daily basis and that one of the conditions of the approval of that original subdivision was to remove and reseed that driveway. The NHDOT granted three new cuts along Route 108 conditional on the abandonment of the semi-circular driveway. The asphalt was removed as required for the purposes of meeting the conditions of the subdivision, however, white stone was later put down to re-create the driveway after the plan was recorded.

Mr. Riley stated that he believes it is within the Planning Board's jurisdiction to order a cease and desist of the continued development of the other lots within the original subdivision until this lot is brought back into conformity.

Fire Chief Mazur added that the Building Inspector could withhold issuing an occupancy permit on the other properties within the development until the driveway issue is addressed.

Mr. Riley stated that a letter indicating the developer's failure to comply with the subdivision conditions could be recorded at the Registry of Deeds. This would likely affect the sale of the other lots, as when a title search is done prior to the purchasing of those properties, mortgage companies would be flagged that the subdivision conditions were not met. He then noted his concern regarding the safety issue of having too many driveway cuts along that part of Route 108 where visibility is so poor.

Chairman Smith stated that the board would take Mr. Riley's concerns under advisement and inform him if any board actions are taken. Mr. Riley thanked the board and he and Melissa Fay left the meeting.

**Planning Board Minutes:** The board reviewed minutes dated April 19, 2001. Those present at that meeting and available to vote on their acceptance were Chairman Smith, Dr. Marston, Mrs. Fillio and Mr. Morse. Ms. Carriel noted corrections.

**MOTION:** Dr. Marston motioned to approve the Planning Board minutes dated May 19, 2001 as corrected. Mrs. Fillio seconded. With no further discussion, the motion carried 4-0.

**Incoming Correspondence:** Chairman Smith acknowledged the following incoming correspondence:

1. RPC notice of annual dues;
2. Charles Sills letter of available mapping services;
3. RPC notice of impact fee workshop;
4. NHDOT & Statewide Bicycle and Pedestrian Advisory Board annual bike and walk NH conference – it was noted that RPC was offering scholarships for this event; and
5. Memo from Ms. Carriel regarding nonconforming uses.

**Nonconforming Uses:** Discussion then transpired on nonconforming uses and whether or not the East Kingston Zoning Ordinance allowed for its expansion or alteration. It was noted that at the last meeting Mr. Day had expressed his concern about giving direction to an applicant regarding a nonconforming property (Carmen's Fried Chicken). Ms. Carriel has done extensive research on the subject and offered the following:

The East Kingston Zoning Ordinance prohibits the expansion of nonconforming uses and structures, however, case law allows for the natural expansion of use, but not anything beyond that. Via the site plan review process, the board can determine whether or not the proposed use is a continuation of use or an expansion of the structure. If the planning board cannot approve the application, then the applicant can seek relief from the Zoning Board of Adjustment.

She continued to say that the demolition and relocation of a building raises issue of conformity – once the building is razed, any new structure would have to be brought into conformity as far as all codes and setbacks are concerned. She reviewed Article XIII, which states:

*In the event of damage, destruction or demolition of any building no conforming to this ordinance, said building may be rebuilt for its former nonconforming use in the same manner and extent, provided construction is started within one year of its damage, destruction or demolition and is completed within two years.*

The determination of "same manner and extent" is at the discretion of the planning board. As far as the footprint issue is concerned, the courts found that the addition of floors to an existing building constituted an expansion of the building and was not allowed.

Board members discussed adding up the sum of the square footage of all the existing buildings on the Sciris property and creating one building using that total. Because specific plans regarding this proposal have not been submitted, members agreed that it would be difficult to determine whether or not all setbacks could be met. They questioned if the board could legally allow the removal of all buildings and the construction of a new one for the same use (restaurant). Members agreed that they would be combining two legal uses – there is no questions as to the whether they are allowed – the use of the property is grandfathered. However, if the buildings are removed and reconstructed, they must meet all regulations (zoning and building codes). The consensus of the board was that the demolition and reconstruction of the restaurant would be allowed, as long as all the setbacks and building codes could be met for the new building – that includes parking setbacks as well. Members noted that they could even hold a public hearing to rezone the Carmen's parcel, the Amundsen parcel, and the Ewald parcel to commercial. Past attempts to rezone areas of North Road were noted.

Members stated that the combined use of the property, residential and commercial restaurant, could continue. It was questioned at the last meeting if a new restaurant with an apartment overhead could be constructed to replace the existing house and restaurant. Members agreed that it could as long as all setbacks could be met. It was also agreed that the existing structures could also be remodeled as they currently stand.

Ms. Carriel then noted that other towns offer their planning boards guidelines as to whether or not a proposed use is a continuation of an existing use. Certain criteria must be met. This board may want to consider adding such language to their own ordinance should this issue come up repeatedly – it gives structure to the determination. Excerpts from Brentwood's and Epping zoning ordinance were noted. Members would review the language and discuss it later.

**Member Status:** It was noted that Ed Johnson (alternate member) has given his verbal resignation to the recording secretary. Members agreed to post a vacancy for an alternate position in the EK Newsletter.

**I Stumpfield Road – continued discussion:** Mrs. Fillio stated that she felt some sort of fraud was presented to the board regarding the driveway of 1 Stumpfield Road, though she could not determine whether it was the developer or the homeowner. She stated that the board must do whatever it can within its jurisdiction to bring the driveway issue into conformity. The NHDOT required the abandonment of the semi-circular driveway as a condition of the issuance of three other driveways. Once the subdivision was

recorded; someone (either homeowner or developer) recreated the driveway. Members agreed to Chairman Smith forwarding a letter to the NHDOT regarding this violation. Some members felt that a cease and desist order on the continued development of the remaining lots should be issued by the Board of Selectmen until the issue is resolved.

As far as the home occupation on the property was concerned, all board members present felt that the use (under a professional office) was a permitted use and that since the business did not create any visual traffic, etc, it fell under the invisible clause.

Ms. Carriel stated that the concern regarding notification to abutters regarding businesses is valid. One way to address this issue is to send out abutter notices to all home occupation applicant's neighbors regardless of whether the business is invisible or not – similar to the procedure of a minor lot line adjustment. Just charge abutter's fees to all (invisible clause) applicants. It was noted that some businesses should require abutter notification based on the nature of the business itself. Ms. Carriel would research the appropriate language to implement this plan. Chairman Smith stated that he thinks every home occupation applicant should have a full public hearing regardless of whether they are invisible or not.

**Work Session:** Members scheduled a work session to be held on Thursday, May 31<sup>st</sup> at 7:00 pm at the Town Hall. The agenda would include the Growth Management Chapter and the CIP. CIP worksheet submission status was noted.

**ZBA Application:** Members noted the ZBA application of Suzanne Ryan regarding property at 131 Haverhill Road. It was noted that other variances might be required in addition to the one outlined in the application. Variances from Article XIII.D and Article VI.A.2 were needed to address the reconstruction of a nonconforming structure (Art. 18) and possibly from the nonconformity itself (2 acre parcel required – Art. 6.2). Members reviewed the plan and expressed their concern over the size of the proposed dwelling considering the size of the lot (.65 acres). Chairman Smith stated that the allegation of the planning board conducting an incomplete review of the Growth Control Ordinance was erroneous.

**Impact Fees, Variance, Growth Control Literature:** Literature regarding impact fees and variance criteria changes were distributed. This information was submitted to the board from Mr. Day who attended the recent OSP Annual Spring Conference. Ms. Carriel also distributed literature regarding an analysis of Sandown's growth control ordinance – an important tool for the board when drafting East Kingston's Growth Management Chapter.

**Town Hall Lighting and Sound:** Members expressed their concern over the insufficient lighting and sound acoustics of the town hall building. Though it was noted that new light bulbs had been installed throughout the meeting area, the lighting was still not satisfactory. Members have gone so far as to rearrange the tables and chairs set up to attempt better lighting schemes. These attempts have been unsuccessful. In addition to the lack of lighting in the room, and because of the configuration of the building, sound is also a concern. Members find it difficult to hear others speaking, and it has been reported that members of the public find hearing board members very difficult. A letter to the Selectmen requesting a remedy to this issue was signed by members present.

**Colanton Site Plan Review Status:** It was noted that the mylars for Kington Fairways Golf Course were submitted to the board for review, approval and signature. Members reviewed each of the ten sheets and noted that corrections to sheet #1 were needed. They included verification of the bounds surrounding MBL# 4-1-20, MBL# 4-1-16 should be changed to 4-1-18, and 4-1-16 should be noted on the plan. Sheets #2-6 were approved as presented. Sheet #7 was missing a reference note regarding netting behind the 6<sup>th</sup> green. Sheets #8-10 were approved as presented. Members also requested that Larry Smith review the plan. The recording secretary would inform James Lavelle & Associates of the required changes and then submit the plans to the Kingston Planning Board for their approval and recording.

With no further business,

**MOTION:** Dr. Marston motioned to adjourn. Mrs. Fillio seconded. With no further discussion, the motion carried 4-0 and this May 17, 2001 Planning Board meeting ended at 9:45 p.m.

Respectfully submitted,

Catherine Belcher, Secretary

Minutes completed and on file April 22, 2001.

Approved: 6/21/01