

TOWN OF EAST KINGSTON, NH

PLANNING BOARD

May 21, 1992

Present: Mr. Smith, Chairman; Dr. Marston, Catherine George, Mr. Keddy, Mr. Donald, Ex-Officio

Others present: Mr. Conti, Building Inspector and Mr. Bird, RPC

Call to order: Mr. Smith called the meeting to order at 7:38pm and conducted the roll call.

Mr. Smith noted that the agenda for this evening was Greg Swanton, Home Business Application. Mr. Pica cancelled his appointment with the Board.

Greg Swanton-Public Hearing for Proposed Home Occupation

Mr. Swanton was not present at this time.

Timothy Bodwell-Discussion Purposes only

Mr. Bodwell was present and presented the Board with a letter from Mr. Vern Dingman stating that he does not have the mylar and that he has searched everywhere for it. He asked that the Board search their files to see if they have possession of it.

Mr. Smith stated the mylar is not in the possession of the Board. He stated the only time the Board accepts the mylar is when they will sign the mylar for recording at the Registry. He stated the mylar is too valuable and there is too much responsibility for the Board to keep it.

Mr. Bodwell stated that the Board had granted conditional final approval.

Mr. Smith stated the Board did not accept the mylar.

Mr. Bodwell pointed out that the letter states that it was released at that time. He noted that he was listed in the Town Report as an approved subdivision.

Mrs. George noted that conditional approval was given in 1990, almost one and one half years ago.

The Board reviewed the minutes and it was not noted in the minutes that the Board had accepted the mylar. The minutes indicate that the fire pond had to be added to the mylar along with the installation of certain boundaries and DOT curb cuts.

Mrs. George stated that these corrections would have to be made to the mylar.

Mr. Bodwell stated the last set of plans that he has shows the fire pond on the plans and ~~this~~ ~~is~~ was dug.

Dr. Marston stated it was not on the plans and it had to be put on the plans as well as the boundaries.

Mr. Bodwell asked if the mylar would be all that he would need for the next meeting.

Mr. Smith stated yes.

Mrs. George reminded Mr. Bodwell to also place the curb cuts on the plans.

Greg Swanton-Public Hearing for a Proposed Home Occupation-26 Main Street-Giggs Landscaping

Mr. Swanton was present. Mr. & Mrs. Swanton, Mr. & Mrs. Fillio, and Attorney Morse ~~was~~ ^{were} present.

Mr. Smith opened the Public Hearing and asked Mr. Swanton to explain his business.

Mr. Swanton stated he has a landscaping business. The business included a truck, trailer, mowers and a tractor.

Mr. Smith asked Mr. Swanton if he meets the requirements of 10.2.1.

Mr. Swanton stated he does not work from the home, the work is conducted off-site. He stated he brings his truck, trailer and equipment to his home at night and then leaves in the morning to go to work.

Mr. Smith asked Mr. Swanton if he meets the requirements of 10.2.2.

Mr. Swanton states his truck has lettering on it, and is visible when he parks it there overnight. He stated he does not have a sign. He further noted that he also has a personal vehicle which has his business name lettered on it.

Mr. Smith asked Mr. Swanton if he meets the requirements of 10.2.3.

Mr. Swanton stated that he does not use the home. He stated he uses the parking area outside to store his equipment overnight. He explained the turn-around area.

Mr. Smith asked Mr. Swanton if he meets the requirements of 10.2.4.

Mr. Swanton stated he has no employees, that he is self-employed.

Mr. Smith asked Mr. Swanton if he meets the requirements of 10.2.5.

Mr. Swanton stated he has one truck and his personal vehicle.

Mr. Keddy asked if his brother works with him.

Mr. Swanton explained his brother has a business which is based in Newfields and when he conducts business in the area he uses the parking area to park his equipment and conduct his business.

Mr. Keddy asked Mr. Swanton if he expects his business to grow.

Mr. Swanton stated for this year it will be just himself. He cannot predict the future. He explained he has lived there for 25 1/2 years, parks his equipment in the yard, leaves in the morning to go to work, and is trying to make a living.

Mr. Keddy asked about commercial vehicles.

Mr. Swanton explained he has his truck, a trailer, tractor and mowers.

Mr. Smith asked Mr. Swanton if he meets the requirements of 10.2.6.

Mr. Swanton explained he has plenty of off-street parking. He explained that there was a pile of dirt which he leveled to create the parking area. He stated that he placed stone on the area to keep down the dust and mud. He noted the stones do abut the street. He stated they do not use the stone area to pull out onto Route 108, they used the paved area for this. He stated the stoned area is about 12ft. x 30ft.

Mr. Smith asked about Mr. Swanton's brother's business.

Mr. Swanton explained that business is based out of Newfields and he sometimes parks in the yard to conduct business in the area. He noted that several people use the parking area, including the garbage trucks to get out of the street and not hinder the traffic.

Mr. Donald arrived at 8:00pm.

Mr. Keddy asked if Mr. Swanton's brother stores equipment overnight.

Mr. Swanton stated no.

Mr. Smith asked about the tractor/trailer that was stored there.

Mr. Swanton stated the tractor/trailer belonged to him and that he moved it about a month ago. He noted it was a registered vehicle.

Mr. Donald asked Mr. Swanton about Article 10.2.2.

Mr. Swanton stated that he has a sign on his truck and the only outside evidence is the vehicle. He noted that his personal vehicle also has a sign.

Mr. Donald asked about the wood business and the stock pile of wood.

Mr. Swanton stated that was his parents fire wood supply for the winter. He noted that this is not part of the business this time of year. He noted he did sell wood last winter.

Mr. Donald asked about 102.3

Mr. Keddy stated he has no office in the house and that the business is all exterior.

Mr. Donald asked Mr. Swanton if he falls under the category of the Zoning Ordinance for Home businesses.

Mr. Swanton stated yes.

Mr. Swanton explained that he parks his equipment at the house overnight; is out in the field working during the day and returns home in the evening.

Dr. Marston stated that his business is the same type of that as a plumber or electrician.

Mrs. George asked Mr. Swanton when he leaves in the morning.

Mr. Swanton stated he leaves at 7:30pm.

Mr. Donald stated he has concerns over the equipment being parked at the home and the parking of the equipment out front. He stated he drives by and sees the equipment, the stacks of wood and the parking lot is full of vehicles and "large" vehicles. He stated he does not think it fits into the residential character.

Mr. Swanton stated the parking area was made to allow for parking. Everyone uses it and it allows for snow storage in the winter months. He stated when he received complaints about the dust, he put down stone and feels it helps everyone.

Mr. Donald stated there was processing of wood, loading of wood and moving of wood last winter and this is a concern of the neighbors.

Mr. Swanton stated this is not part of the business. He stated he did that last winter to make a living and make a week's pay.

Mr. Donald stated Mr. Swanton needs to meet the Zoning Ordinances and must be legal.

Mr. Swanton stated he is cooperating.

Mr. Donald stated that the main business is lawncare.

Mr. Swanton stated the business is lawncare and he just stores the equipment and parks at the home.

Mrs. George asked about the hours of operation.

Mr. Swanton stated he leaves at 7:30am and arrives home about 7:30pm or dusk. He states he is home by sunset.

Mrs. George asked Mr. Swanton if he has associated any other problems with regard to the dust.

Mr. Swanton stated he has placed stone and has moved the trailer.

Mr. Donald asked Mr. Swanton if he is a resident of East Kingston.

Mr. Swanton stated he has lived in East Kingston for 25 1/2 years.

Mr. Smith asked if any other Board member had questions.

There were no further questions at this time.

Attorney Morse introduced himself and stated that he was representing the Fillios. He stated he is representing them in opposition to the Home Business and noted the reasons for opposition to be that it is an inappropriate use and a violation of the Zoning Ordinance. He reviewed Article III of the Zoning Ordinance. He stated the purpose of the Home Occupation Ordinance was to eliminate businesses springing up around the community and to strictly control and limit them.

Attorney Morse stated that the nature of the Home Business was for the operation in a dwelling unit and not the surrounding property. He stated Mr. Swanton is in violation as it is not conducted within the dwelling unit and storage is outside. He stated he drove by the residence this evening and noted that there was a truck, trailer, and tractor with several mowing units. He also noted a large pile of wood. He stated that the wood has been sold commercially on the site and feels that Mr. Swanton was not truthful.

Attorney Morse stated the number of commercial vehicles that are allowed is one and that there is more than one. He stated the tractor and the truck are commercial and that he assumed the trailer could not be considered commercial because it cannot propel itself. He did comment on the size of the trailer as being large and being stored outside the dwelling. He stated the use is visible at all times as the personal vehicle is stored there. The Ordinance states that only one commercial vehicle may be parked there overnight.

Attorney Morse addressed the parking area and noted the parking area is within 25ft. of an abutting parcel. He feels the use should be restricted to the paved area and feels that the stone turn-around exceeds the provisions. He also asked if the state is aware of the turn-around and if there was a residential curb cut allowed for this site.

Attorney Morse addressed the uses that can be allowed for a Home Occupation. He noted that the use is not in the interior of a building. He noted the natural products provision in the Ordinance.

Dr. Marston asked Attorney Morse if wood was a natural product.

Attorney Morse stated according to the East Kingston Ordinance it is not a natural product unless it comes from East Kingston.

Attorney Morse addressed the comparison of the business to that of a plumber or electrician. He stated that the later professions can keep the materials within the confines of the vehicle or inside. He stated they are not kept outside. He stated that the proposed use considering the equipment used is not within the provisions of the Ordinance and is a great stretch from what the townspeople adopted.

Attorney Morse stated that he has been told that 1-2 people do work for Mr. Swanton. He stated that employees are not defined within the Ordinance.

Attorney Morse addressed the issue of expansion. He stated the Mr. Swanton has one truck now, but the business has been observed having more than one on occasions. He stated the Fillios believe the business to be intrusive and that even though the business is not large, the business could grow, have more crews, more equipment and more vehicles stored on the premises. He asked that the Board not approve this request tonight.

Mrs. George asked how many vehicles there were.

Mr. Swanton stated his personal vehicle does have lettering for the business on it. He stated it is not a commercial vehicle.

Mr. Donald stated if it has lettering on it, it is commercial.

Mr. Donald stated the wood harvesting is still an issue and it is not on the application. He stated that if the wood problem re-ignites without a permit then something will have to be done. He further stated that the business does fall within the parameters of 10.3 and the parking area is allowed. He stated the trailer and equipment are not commercial and that the time that Mr. Swanton leaves in the morning is not unreasonable.

Mr. Swanton stated that he will take the lettering off his personal vehicle.

Mr. Keddy asked that Mr. Swanton talk with the State with regard to the stone area and that he should talk with the insurance agency with regard to liability. He also noted that the parking area cannot be within 25ft. of an abutting property.

Dr. Marston stated he feels that the profession is the same as an electrician or plumber and that plumbers sometimes have trailers and can be called out in the middle of the night to fix a problem.

Attorney Morse stated that regardless of the decision tonight, there will be a change of use at the residence and structures. He stated that Mr. Swanton should be required to go through the Site Plan Review process and have a hearing because it is a change of use. He stated that Mr. Swanton should comply with the Site Plan Review guidelines. The second issue with Mr. Swanton is if he really is an East Kingston resident. He stated he may be a resident, but feels that Mr. Swanton uses his parent's home to operate a business, store the equipment and spends nights elsewhere.

Attorney Morse stated the third consideration is that this operation is kind of small now, but Mr. Swanton could have employees and grow. He asked what would happen when there was a second tractor and the business got larger and larger. He stated it is too much for this area. He asked the Board members if they would like to see this type of business next to them.

Mr. Donald stated this business is governed by law and to see this type of business across from him has no bearing on the law.

Mr. Swanton stated he is a resident of East Kingston in that he receives his mail here, has his vehicles registered at this address, his license is issued to this address and he lives there. He stated he does not have another separate residence.

Mr. Donald made a motion based on the information presented tonight that the Planning Board recommend to the Board of Selectmen that the permit for this application be approved with the following stipulations:

1. Usage of the property be closely monitored and that one commercial vehicle be at the premises on a regular basis or overnight.
2. Wood harvest or other activities related thereto cease and desist.

3. Outside area of building does not look like a storage area for equipment.

Mr. Donald noted that when Mr. Swanton was asked by the Selectmen to remove the large truck in two weeks, it took him five weeks. Mr. Donald noted that if the Ordinance is violated, then the permit would have to be withdrawn.

Mr. Keddy added the following conditions:

4. Any stone or gravel parking area abutting a neighbor's land remain 25 ft. from the lot line.
5. Receive clearance from the State that the length of the driveway access is permitted.

Dr. Marston and Mr. Donald discussed what natural products were and how they are applied with regard to the Home Business Ordinance.

Mr. Keddy second.

The motion passed unanimously.

Mr. Donald explained that this is only a recommendation and that the Selectmen must act to issue the Home Occupation Permit. He stated that this may be done at the next Selectmen's meeting.

Attorney Morse asked about penalties being imposed for the wood cutting business.

Mr. Donald explained that the Board of Selectmen did not take action because of an original mistake and they asked him to proceed with the Hearing process.

Incoming Correspondence

1. Letter from Dr. Anthony Scapicchio stating that he will pay for any fees related to the review process.
2. Discussion was held with regard to FMR. Mr. Conti explained the manufactured housing that Mr. Decker would like to place on the lots. The Board discussed the building of private roads to Town specifications without engineering review and inspections. The Board discussed the additions of garages. The Board briefly discussed changing the Cluster Ordinance with regard to the size of buildings allowed.
3. Letter from the Conservation Commission to Delbert Downing with regard to culverts in Town.
4. Rockingham Planning Commission bill for dues. \$1025.
5. Brochure from Dept. of Employment Security enclosing results of Economic and Labor Market information.

Acceptance of Minutes

Mrs. George motioned to accept the minutes for April as presented.

Dr. Marston second.

The motion passed unanimously.

Memo from Sarah Campbell re: Kingston Realty Trust & Ron Pica, Engineer

Mr. Bird noted that this information has been presented to the developer. The developer feels this is excessive.

The Board reviewed the memo and noted several changes made by Ms. Campbell.

It was noted that Mr. Pica will attend the June meeting.

Partnership
KV Association

The Board discussed briefly the Articles of Association, Covenants and private and publicly owned roads.

Mr. Keddy motioned to adjourn at 9:35pm.

Mr. Donald second.

The motion passed unanimously.

Respectfully submitted,

Susan J. Rice (for Nancy J. Marden)
Substitute

Typing completed: May 22, 1992