

August 17, 1995

**Town of East Kingston Planning Board**

**Attending:** Chairman Richard Smith, Andrew Berridge, J. Roby Day, Catherine George, Dr. Robert Marston (7:46), and Amanda Rossi-Lashoones.

**Others:** Selectman Raymond Donald, Conservation Commission Chairman Lawrence Smith.

Mr. Richard Smith opened the Public Hearing at 7:30 PM.

The first Public Hearing scheduled was for **Timothy & Judith Bodwell**, requesting **Home Occupation Permit**, and is represented by Attorney Robert Donovan, also present.

Attorney Donovan submitted to the Board a Memorandum filed by Timothy A. and Judith A. Bodwell in support of request for a home occupation permit (Attachment to the minutes). Abutters Daniel & Joyce Bodwell were present.

Chairman Richard Smith took a few moments to read the memorandum, and started the discussion by pointing out that the mobile home appeared to be an odd accessory building, and also pointed out that the mobile home was never moved, as was required by the town of East Kingston in the past (going back to 1993).

Attorney Donovan responded that the issue is not what was said in the past, but stated the fact is that the Selectmen have forwarded this application to the Planning Board for a hearing on a request from the Bodwells that they be granted a home occupation permit for the structure that sits on their property.

He noted that the memorandum presented, was a matter of preface, and the provisions of Article X - Home Occupation were addressed. In addition, Attorney Donovan referenced the amendment in March 1995 (to add a provision to Article X, 10.2.9 regarding hazardous traffic conditions). Attorney Donovan says in the presentation, there will be a couple of cars, and he feels that will not constitute a hazardous traffic condition.

Attorney Donovan was present to discuss the ordinance, and that East Kingston's ordinance pertains to the use of the property, and in East Kingston a home occupation is permitted provided certain criteria are met.

Mr. Donovan said the Bodwell's have a structure on their property that is not now used, which does not violate the ordinance at all. He asked the Board that they approve this application for a home occupation permit. Attorney Donovan suggested that there isn't anything more "soft" a use in the home occupation sense as an office. He added the intent of the structure is to be used as an office for business conducted at another location.

Chairman Smith asked Mr. Donovan about the driveway for this structure.

Mr. Donovan wanted to know if there was anything in the Home Occupation ordinance that addressed driveways, that he did not find anything specifically addressing driveways.

Mr. Richard Smith said each dwelling unit requires it's own driveway, as per his interpretation of the entire ordinance, and not just the Home Occupation ordinance.

Selectman Raymond Donald asked the Chairman for an opportunity to speak. Mr. Donald wanted to clarify that the Selectmen refused to grant a home occupation permit because the building being

considered is not legally there to begin with. This file was forwarded to the Zoning Board of Adjustment (ZBA), and their decision was to refer the file back to the Selectmen.

Mr. Donald stated that Mr. Bodwell was to remove the mobile home upon the completion of his new stick built home completed in 1993. He did not remove it then, and has not removed it to date.

Mr. Donald quoted from Article X, paragraph 10.2.2, "Variation from the residential character is prohibited". He continued that if Mr. Bodwell is allowed to keep that extra building on the property that appears to be a mobile home situated adjacent to the stick built home varies from the residential area. He said there are now two homes much too close together, and on the same piece of property.

Mr. Donald said that Mr. Donovan's argument is that the mobile home exists, and ignores the fact that it is illegally there. Mr. Donald also supported the Chairman's comments on driveways.

Attorney Donovan directed the Board to Article X, paragraph 10.2. "The Board of Selectmen will issue a Home Occupation Permit after a public hearing, ...provided the provisions of this section are met". He added this section 10.2 of Article X says nothing about driveways, and that is not relevant to this permit process. Mr. Donovan asked the Board not to amend this ordinance tonight, and had no problem if the Board felt this ordinance needed such amendments in the future.

Addressing the statement pertaining to the mobile home being an "odd accessory dwelling", Mr. Donovan suggested the ordinance language does not exclude manufactured housing, and thus defines the mobile home as a property structure, referencing 10.2.1.

Mr. Donald wanted to know if one would have to acquire a permit for the building to be there, before trying to use it.

Mr. Donovan answered that there was nothing in the ordinance to prohibit him from putting a mobile home in his field, and not use it. He pointed out that the key issue was it *was not being used*, and when an effort was made to use it, the use of the ordinance would then be triggered.

Mr. Donovan then cited a catch-22 scenario that would happen by going to the Building Inspector to get a permit to have the mobile home there, would not issue the permit because he would say a home occupation permit is needed, and direct the Bodwells back to the Selectmen.

Mr. Donovan felt the Bodwells have a legitimate request, are not asking to change anything, are not going to cause traffic noises or dust, just want to utilize something, and incidentally would generate tax income. To establish the Bodwell's case, Mr. Donovan covered the ordinance as outlined in his memorandum one by one.

He illustrated that the mobile home meets the definition of structure and there would be no exterior changes except for a sign. With regards to the percentage use, the calculations were based on tax records in the assessors office.

With respect to the calculation, Mr. Richard Smith asked for the square footage of the mobile home. Mr. Donovan replied the size of the trailer was 780 square feet.

Mr. Donovan continued with his presentation picking up with section 10.2.4. There will be no more than two non-residents employed, and no more than one commercial vehicle will be kept overnight. All parking will be offstreet, and by residents, employees, or an unplanned occasional car. The home occupation will be conducted by Bodwell, and is non-offensive.

With respect to section 10.2.3, Mr. Donovan pointed out that this section of the Home Occupation ordinance did not pertain to the Bodwells. Mr. Donovan suggested the Board grant this request, and added making changes at town meeting in March.

Mr. Donald referred to the business down the street at another location. Mr. Donovan clarified that the business is conducted down the street at 79 North Road, home of Daniel Bodwell.

Mr. Andrew Berridge felt that past history appeared to be a stumbling block (in making a decision), and asked how could this accessory structure be made a legal structure, and personally felt it inappropriate to vote on allowing a home occupation in an illegal structure.

At this time Mr. Donovan suggested again that this was an unreasonable catch-22 scenario, as it was probable the Building Inspector would not grant a permit unless permission was granted by someone (Selectmen). Mr. Donovan emphasized the structure is presently there, and would go to the Building Inspector to get approval *to put an accessory structure there*.

A question was posed to Mr. Bodwell from Mr. Donald as to whether Timothy had an existing permit to run the septic business at 79 North Road. Mr. Berridge thought the permit for the septic business was for Daniel Bodwell. Discussion was distracted, and clarification was not provided.

Mr. Roby Day posed the question to Mr. Bodwell as to whether or not he received a letter from the Selectmen in June of 93 to remove the mobile home from the premises, and noted the mobile home is still there.

Mr. Donovan interjected that the issue at present was Article X, and that Mr. Bodwell is not in violation. He is not using the mobile home even though, He stated the mobile home is usable as a residence, but that currently it is an unused shell. Mr. Bodwell is applying for a home occupation permit to use it as an office.

Mr. Day suggested he would need to be convinced that the mobile home is no longer useable as a residence because it currently is, and therefore is in violation of the ordinance.

Mr. Donovan addressed Mr. Day, and asked if he were going to deny the application based on bad faith, and not on the presentation.

Mr. Day responded that he simply felt there was a violation of Article VI (Lot Area and Yard Requirements) Paragraph G (Two Family Dwellings).

Mrs. Catherine George commented that she felt the accessory structure is illegal, and felt she could not approve something that was not supposed to be there.

Mr. Donovan said the mobile home has been situated on the property for a long time, and that the ordinance does not contain any language at all when an accessory structure is determined, or how and when it becomes an accessory structure. He added the mobile home is not an illegal structure, and isn't so until it is used.

Mrs. George was quick to say but he did (use it).

Mr. Donovan said Mr. Bodwell does not use it for any purpose at this point.

Mrs. George said all along the structure was not supposed to be there. Mrs. George suggested an illegal situation, if you built a barn on your property without obtaining a building permit, it would be illegal.

Mr. Donovan said he (Bodwell) does have a permit for the mobile home, but felt it was not the issue.

Mr. Berridge thought it is a normal understanding that one would anticipate a mobile home to be moved once their home was built. He suggested this is not like setting a precedent that you can't use a mobile home as an office, accessory structure, or for storage. The issue seems to Mr. Berridge that individuals are not accepting that this building ought to be there.

A solution according to Mr. Berridge was abiding by what is in the ordinance, going through the motions and make the accessory structure legal. He felt the Board needed to be convinced that the structure was OK to be there.

It did not make any sense to Mr. Bodwell to have the mobile home jacked up, removed from the premises, and ask for the right to put it back, just so the Selectmen and this Planning Board could say "now we can sleep at night".

Mr. Day referred to the issue of having more than one residence on a lot, and suggested if one is looking for spirit of intent, made reference to page 8 of the Ordinance, specifically Article IV (General Provisions), Paragraph I (Temporary Manufactured Housing). Mr. Day felt the intent in this section was to permit two residences on a single lot until such time it was appropriate to remove the temporary dwelling.

Mr. Day agreed with Mr. Berridge, that if the Board can be convinced that is in fact how to look at this, then we (the Board) might find a way around this.

Mr. Donovan underscored the point that the mobile home *is not a second residence*.

Mr. Berridge wanted to know if there was an operable kitchen, and if the mobile home could be made incapable of being a residence.

Mr. Donovan answered that his office in Exeter has a refrigerator, stove, compactor, coffee maker, etc...

Mr. Berridge was looking for an avenue to consider to get reassurance that it was not a residence.

Mr. Donald pointed out that one of the purposes of the building inspector was to make sure the building complies with ordinances, and BOCA codes, and felt no effort has been made to see that the mobile home complies.

Mr. Donovan answered that there is no provision that requires periodic inspections from the inspector to certify the building is in compliance, and felt the Board was belaboring a point.

Mr. Berridge suggested that this hearing be postponed until next month (September 21), and ask Mr. Bodwell to obtain a building permit. The Board might feel it more appropriate to grant the application with the issue of the "illegal" structure addressed, and the issuance of a permit.

Mr. Donovan pointed out that other Home Occupations in town did not have to appear before the Building Inspector unless they were building something new.

Motion: Andrew Berridge motioned that the Board postpone their decision on the Home Occupation Permit for Mr. & Mrs. Bodwell on 96 North Road for one month, and advise them to apply for a building permit for an accessory structure and come before the Board again in one month. Roby Day second. The motion passed unanimously.

The public Hearing on the Bodwell Home Occupation application closed at 8:30 PM.

Public Hearing on the Master Plan School Section opened at 8:34 PM.

Chairman Richard Smith noted all changes and corrections made to the Plan, and advised the Board members they could vote to adopt, and attest with signatures, or continue the Public Hearing to September 21 by announcing the date and time to the Public.

Typographical errors were located on pages 6, 15, and 16.

Motion: Mr. Andrew Berridge motioned to continue this Public Hearing to September 21, 1995 in anticipation of errors being fixed. Mr. Roby Day second. The motion passed unanimously.

The Public Hearing on the Master Plan closed at 8:40 PM.

Mr. Richard Charlesworth came forward for a preliminary discussion on subdividing his 44 acres located at Powwow River Road. He reported that he had a contract with Veda Paoletta for about half of it, and presented a map dated August 1977 showing his parcel.

Mr. Charlesworth felt he had about 900 feet of frontage, and in the past had sold property in big pieces with hopes to keep the character of the area as much as they could. He thought Ms. Paoletta intended to carry on with her business of boarding horses. Mr. Charlesworth added that his family has resided in East Kingston for the better part of 200 years.

Conservation Chairman Lawrence Smith was available for questions while previewing the map provided by Mr. Charlesworth. Mr. Lawrence Smith noted three drainage ditches dating back to the 1960's and the wetland area locations.

Mrs. George inquired as to the only existing house currently along that stretch. Mr. Charlesworth responded it was the Kuster family, and an additional home located in Kingston (Galicky). With the approval for subdivision into two parcels, the new lot will have a house and a barn according to Mr. Charlesworth. He added that in the future, may consider again to subdivide his remaining parcel in half.

Mr. Charlesworth requested a copy of the town ordinance for his engineer, and arrangements to provide him with one will be made when he submits his official application for subdivision.

Mr. Charlesworth will be placed on the September 21st agenda at 7:30 PM, and advised he will not present. His brother, Roger Charlesworth will be present at that time. He received information on what was required from him for the application, and what the timeframe deadlines were. Mr. Charlesworth thanked the Board for it's time.

Mr. Lawrence Smith reminded the Planning Board that his appointment as East Kingston's representative to the Rockingham Planning Commission was due to expire in August 1995.

Motion: Mr. Andrew Berridge motioned the Planning Board nominate Lawrence K. Smith as East Kingston's representative to the Rockingham Planning Commission. Mrs. George second. The motion passed unanimously. An appointment will be drawn up for the Selectmen's signatures for their next meeting of August 21, 1995.

Mr. Richard Smith informed the Board of incoming correspondence.

\*Hampstead Planning Board Public Meeting - August 21st.

\*Transportation Enhancement and Congestion Mitigation Air Quality Program for grant money.

\*RPC has approved a block grant for planning assistance to the Town of East Kingston in the amount of \$2,700. This is the application prepared by Sarah Campbell, RPC Circuit Rider.

\*Municipal Law Series for 1995 (Oct. 18, 25, and Nov. 1st.) at the Portsmouth City Council chambers. Mrs. George and Mr. Day indicated an interest in attending all three lectures.

\*Discussion on recent House and Senate Bills of relative interest to the Planning Board passed recently, and published in the July/August issue of Town of City.

Motion: Andrew Berridge motioned to accept the July 20th Planning Board Minutes. Mrs. Second. The motion passed unanimously.

Motion: Dr. Robert Marston motioned to adjourn. Amanda Rossi-Lashoones second. The motion was passed unanimously, and the meeting was adjourned at 9:27PM.

Respectfully submitted,

Sandra Johnson,  
Administrative Assistant