

TOWN OF EAST KINGSTON, NH
PLANNING BOARD MEETING MINUTES
August 17, 2000

AGENDA

- 7:15 David Morse & Dick Cook – Elderly Housing Ordinance
7:30 Randall Skaal – Powwow River Road Home Occupation - Discussion

Members attending: John L. Fillio – Ex-officio, Dr. Robert Marston, and Alternate David Morse.

Absent: Richard A. Smith, Sr. – Chairman, Edward C. Johnson – Vice-Chairman, Beverly A. Fillio and Alternate Members Peter A. Riley and Robert Nigrello.

Others attending: Lawrence K. Smith – Conservation Commission Chairman, Fire Department Captain Andy Conti, Dick Cook, David Sullivan, and J. Roby Day – RP Commissioner.

Acting Chairman Dr. Marston opened this August 17, 2000 planning board meeting at 7:03 with the role call. Noting the absence of three regular members, he designated Alternate David Morse to participate in any voting matter before the board.

Planning Board Minutes: The Board reviewed minutes dated July 20, 2000. It was noted that corrections were made to the Clay Pond Development paragraph on page one at the request of Conservation Commission Chairman Larry Smith.

MOTION: Mr. Morse motioned to approve the July 17, 2000 Planning Board minutes as corrected. Mr. Fillio seconded. With no further discussion, the motion carried 3-0.

Incoming Correspondence: Acting Chairman Dr. Marston acknowledged the following incoming correspondence:

1. RPC – Matching Grant application completed and prepared by Sarah Campbell.

The application was requesting matching funds for the updating of the Capital Improvements Plan. The total cost to update the CIP is \$1,500 (\$750 to be paid by the town and \$750 matched by RPC if awarded).

David Morse & Dick Cook: Acting Chairman Dr. Marston opened discussion with David Morse and Dick Cook at 7:09 p.m. regarding the newly adopted Elderly Housing Ordinance. Mr. Morse noted that he is currently preparing to propose an elderly housing development on his property located on Willow Road and that he has run into some problems with the 8-bedroom per acre placement restriction. He explained that the State would not allow more than two buildings in a development without requiring a community (or municipal) water supply. The State would allow two buildings with fourteen units each with single water and septic facilities; however, the town's 8-bedroom per acre placement rule would make this impossible. Furthermore, the cost and annual testing/maintenance of installing a community water and septic system would not make the overall proposal economically feasible.

He stated that he has considered subdividing the elderly housing parcel and placing a building on each lot – there would be a drastic change in the open space – much more than if four buildings were proposed. He further explained that the State uses 1.5 persons per unit to calculate the water supply necessary for each building – proposing two buildings instead of four would keep below the number necessary to avoid a community water system – but once again the restriction of 8 bedrooms per acre would not allow this. He then presented two conceptual plans (one with four buildings and one with two buildings) for the board to view.

Mr. Fillio stated that it is important to get some sort of documentation about the actual cost of a community water supply so that should the board consider proposing an amendment to the ordinance there are facts to support them.

Mr. Morse went on to say that the total parcel for the elderly housing development is thirteen acres with nine of that being upland. He would propose 2/3 of the units to contain two-bedrooms and 1/3 to contain single bedrooms noting many older couples do not share a bedroom. He questioned if he could manipulate the plan to comply with the 8-bedroom per acre restriction (calculating pie-shaped acres to show bedroom placement on separate acres).

Mr. Cook stated that he too is considering proposing an elderly housing development on land he owns in the light industrial zone. He noted that once the federal government was brought in for such a proposal – costs and red tape would eventually undermine the

project. He would want to deal with only the State and the local government— he would work very closely with them. Even the terminology of calling the development “elderly housing” could bring in the federal government. “Retirement community” would be more appropriate. He explained that he has three choices when it comes to developing the 33-acre parcel in the light industrial zone:

1. Develop light industrial buildings and business –20,000 square foot buildings – deal only with the planning board;
2. Subdivide and build thirteen houses – he does not wish to do this; or
3. Develop an elderly housing/retirement community that would benefit the town.

He reiterated that moving forward with such a proposal would mean keeping the development at the local (and State where required) level. He stated that he would abide by all laws however there are areas of discretion where the planning board must take the initiative. The type of retirement community he would like to propose is a million dollar project that would be carried out over years. He does not want to invest the time or the money if he has to deal with the federal red tape. The engineering costs for that parcel have added up to over \$10,000 and they haven't “turned a shovel” yet.

Mr. Filio stated that the intent of the ordinance is to encourage one type of development and discourage another. If modifications need to be made to the ordinance to make it more viable than that could be done, but the board needs to know what type of amendments to consider.

Further discussion noted the following items needing consideration for further discussion and possible amendment:

1. Include density bonuses for elderly housing development like the ones offered in the cluster development ordinance – one should not be penalized for proposing an elderly housing plan versus a cluster development plan (elderly housing would not burden the school system);
2. Clarify the 8-bedroom per acre placement restriction and amend if necessary;
3. Allow elderly housing in the light industrial zone or rezone the light industrial district to elderly housing district; and
4. Allow assisted living facilities.

Mr. Cook continued to say that his conceptual plan (presented for review) shows an entire elderly housing/retirement community with recreation hall, maintenance shed, and written rules (association). He said that both his and Mr. Morse's projects are doable as long as there are no hassles – these are good for the town. Community wells require annual testing costing \$4,000 per year. Elderly housing is far better for the town than the other options noted.

It was noted that amendments to the ordinance could be proposed at the March 2001 Town Meeting with public hearings held in November and December. Work sessions would need to be scheduled and a plan would need to be implemented outlining what amendments would be considered.

Mr. Filio stated that an elderly housing community is not conducive to an abutting trucking business/light industrial businesses.

Mr. Cook replied that he would like to include that parcel in the retirement community. He may consider purchasing Marden's land. Both parcels would make up the retirement community – no more light industry. He said he also has option to purchase the land across the street from the light industrial zone (abutting the post office). He would like to build a pond on the light industrial side and trade it off for some minor wetland crossings. This pond would serve for both aesthetic and fire suppression purposes.

He stated that he and Mr. Morse need the planning board's interpretation of the ordinance as they need direction. He then thanked the board for their time.

Randall Skaal – Powwow River Road Home Occupation Proposal – Discussion: Acting Chairman Dr. Marston opened discussion with Randall Skaal of 101 Powwow River Road regarding a proposal to operate a graphics design business from his home.

Mr. Skaal stated that he is a self-employed web designer and is currently working from his residence. He stated that he has converted the in-law apartment of the home into an office; he has no signs nor plans to, and has one non-resident employee who comes four days a week (10-hour days). He said he has reviewed the invisible clause of the ordinance and feels the only part of the business that is questionable is the non-resident employee.

Members reviewed the home occupation criteria and received the following responses from Mr. Skaal:

1. About 25% of the total floor space of the home is being used -- location on a State road allows for 50%.
2. There are no signs.
3. There are no commercial vehicles.
4. There are 2 resident employees (Mr. & Mrs. Skaal) and 1 non-resident employee.
5. Supplies are shipped Fed-Ex once or twice a month (members noted that this was comparable to resident shipments).
6. There would be no customer traffic as all work is posted on the web with security and passwords, and clients are visited at their (the client's) offices. Presentations are posted on a whole web server located in Dover.
7. There is no noise, smoke, refuse, etc. emitted from the premises.

Members discussed the type of business and noted it was a permitted use. They also noted that the *one* employee was consistent with the normal traffic flow of a residence.

MOTION: Mr. Fillio motioned to recommend the Selectmen exempt the graphics design business operated by Randall Skaal from the permitting procedures based on the board's determination that the business does not create any traffic, visual or other impacts on the neighborhood (above and beyond those impacts resulting from the residential use of the property). Mr. Morse seconded. With no further discussion the motion carried 3-0.

Mr. Skaal was then informed that the final approval for this exemption would be at the discretion of the Board of Selectmen and that it was probable this issue would be placed on their next agenda. It was suggested that he contact the Selectmen's office for that confirmation and for an appointment if he wished to be present when the issue was addressed. He was also informed that should the business grow or change in any way, the Selectmen's office would need to be notified.

Mr. Skaal stated that his goal is to eventually move the business to an office location in Portsmouth.

10 North Road: The board acknowledged a memorandum from the Board of Selectmen regarding Atty. Keri Marshall's inquiry into the possible grandfathered status of 10 North Road. The Selectmen were requesting the Planning Board review Atty. Marshall's letter and report its recommendations of the subject matter back to them.

The board reviewed past property cards of the parcel and noted the changes in ownership over the last 30+ years including when the property went to tax deed and was owned by the Town of East Kingston. During this time the property was abandoned and empty. The town also spent \$25,000+ to have the parcel environmentally cleaned. Types of businesses that operated from the premises over the years included auto repair, auto sales, organ pipe manufacturing, and woodstove sales. An excerpt of NHMA's "Grandfathered!" The Law of Nonconforming Uses and Vested Rights was read:

*A "grandfathered" right can be lost if it is abandoned by the owner. Look at **Lawlor v. Town of Salem**, 116 N.H. 61 (1976). One Mr. Cousins owned a mobile home in an area, which was later, zoned to prohibit mobile homes. Cousins left the town in 1965, and the mortgage bank got the property. The mobile home became vandalized and uninhabitable, and was taken off the land in 1969. Lawlor bought the land through foreclosure in 1971, and wanted to put in a new mobile home. The court said he couldn't, because the nonconforming mobile home use had been abandoned.*

"Abandonment depends upon the concurrence of two factors: (1) an intention to abandon or relinquish the use, and (2) some overt act or failure to act which carries the implication that the owner neither claims nor retains any interest in the use... The decisive test is whether the circumstances surrounding such cessation of use are indicative of an intention to abandon the use and the vested rights therein." (116 N.H. at 62, citations omitted)

Members stated that there are no facts to support the property has been continuously used as an auto repair business since the 1960's thus its grandfather status for such a use is clearly questionable.

MOTION: Mr. Morse motioned to recommend the Selectmen inform Atty. Marshall that there are no grounds to confirm a claim of a grandfathered automotive repair use for the property located at 10 North Road. Mr. Fillio seconded. With no further discussion the motion carried 3-0.

With no further business,

MOTION: Mr. Fillio motioned to adjourn. Mr. Morse seconded. The motion passed 3-0 and this August 17, 2000 Planning Board meeting ended at 8:13 p.m.

Respectfully submitted,

Catherine Belcher
Secretary

Minutes completed and on file August 20, 2000.

Approved: Oct 19, 2000