



PLANNING BOARD
TOWN OF EAST KINGSTON
New Hampshire

2014-2015
Joe Cacciatore, *Chairman*
Dr. Robert Marston, *Vice Chairman*

MINUTES
Regular Meeting 18 September 2014
7:00 pm

AGENDA:

- ◆ **Call to Order**
- ◆ **Public Hearing** for lot line adjustment for Davis Finch and Jean Topping, 91 South Road, East Kingston for MBL 10-05-05 (60 Fish Road), MBL 13-01-03 (96 Fish Road) and MBL 13-01-04 (98 South Road), East Kingston
- ◆ **Public Hearing** for Home Occupation application for Christopher and Dawn Mierswa, 61 Main Street, (MBL 14-02-01) for landscaping business and associated office functions.

CALL TO ORDER: This meeting of the East Kingston Planning Board was called to order at 7:10 pm.

ROLL CALL:

Members Present: Vice Chairman Dr. R. Marston, Mr. J. Bath, Mr. C. Delling and Ex-Officio Mr. R. Morales. Chairman Mr. J. Cacciatore was excused. The Board welcomed Dr. Marston back to the table.

Advisors present: Rockingham Planning Commission (RPC) Senior Planner Ms. J. LaBranche and East Kingston Conservation Commission Chairman Mr. Dennis Quintal.

Also Present: Applicants Davis Finch and Jean Topping and their representative Mr. Corey Colwell; applicants Dawn and Christopher Mierswa; abutters James and Karen Groetz and Dennis Quintal; and prospective Planning Board member Bill Caswell.

As Chairman Cacciatore was absent, Planning Board Secretary Barbara White conducted the meeting.

Public Hearing for lot line adjustment for Davis Finch and Jean Topping, 91 South Road, East Kingston for MBL 10-05-05 (60 Fish Road), MBL 13-01-03 (96 Fish Road) and MBL 13-01-04 (98 South Road), East Kingston

Mrs. White opened this public hearing and invited Mr. Colwell to clarify the purpose of the lot line adjustment. Mr. Colwell explained the applicants owned approximately 138 acres of land, currently in five separate tracts, which are depicted on the lower left of the plan. The existing configuration is in the upper box and proposed is the lower box. Two of the lots are currently in a conservation easement. They would like to add a good portion of the land to the existing conservation easement but will need to combine parcels to accomplish this goal.

They propose establishing new boundaries around the existing house and barn, which would make it a 3.8 acre lot and eliminate the possibility of any future subdivision of that lot without requiring variances. When all the lots are combined, there would be a total of 134 acres in preservation.

Mr. Colwell presented a letter from David Viale of the Southeast Land Trust, the holder of the conservation easement, who was unable to attend this meeting. The letter explained the background of the conservation

easement and how the proposed lot line adjustment relates to the easement. This letter was read into the record and will be an addendum to the minutes. The most important factors were the restrictions which include: the property shall not be further divided; no structure or improvement shall be constructed on the property; and the property shall not be used to satisfy density requirements of any applicable zoning ordinance or subdivision with respect to the development of any other property.

Mr. Colwell indicated if the lot line adjustment was approved, they would set monuments on the newly created lot corners, a mylar would be produced and then recorded at the registry of deeds. They would then draft a new conservation easement plan which would also be recorded.

Ms. LaBranche asked about the right-of-way associated with lot 13-01-04. Mr. Colwell noted the right-of-way runs with the land and cannot be eliminated. It affords Mr. & Mrs. Groetz to access their landlocked parcel (MBL 10-05-03). Mr. Groetz affirmed he uses the right-of-way for access to his wood lot. Ms. LaBranche asked when the right-of-way was established; Mr. Colwell noted it went back as far as to the 1700s or 1800s.

Ms. LaBranche requested the dimensions and location of the easement, any references to existing documentation and a description be included on the plan and noted they should also be included on any conservation documents. She surmised that a narrative description was most likely what was in existence at the present time.

Mr. Colwell noted the deed describes the parcel and reads "Subject to this right of these owners to cross this property get to their land", and does not specify exactly where that crossing would be or the dimensions. Ms. LaBranche asked if there was already a certain place (on the property) the Groetz's use for their access; Mr. Groetz answered there was a road he uses.

Ms. LaBranche suggested the easement documentation be modified to state the place where the right-of-way would be located as the way it reads at the present time, the land could be crossed anywhere and could be in opposition to conservation easement restrictions. Modifying the easement for clarity would not take away the right-of-way and would not eliminate the original document. It would only clarify the exact location. Ms. LaBranche also suggested that measurements (how wide) be included.

Ms. LaBranche further noted that Tract 1 was to become part of the merged tract and eliminated, therefore making the verbiage of the original right-of-way confusing. She suggested new easement documentation be created specifying the location and dimensions of the easement and identifying the party responsible for the maintenance of the right-of-way.

Mrs. White opened the floor to abutters; there being none, she closed the floor to abutters.

Mrs. White asked for a motion to take jurisdiction of the plan.

MOTION: Mr. Bath **MOVED** to take jurisdiction for the lot line adjustment for Davis Finch and Jean Topping, 91 South Road, East Kingston for MBL 10-05-05 (60 Fish Road), MBL 13-01-03 (96 Fish Road) and MBL 13-01-04 (98 South Road), East Kingston; Mr. Morales seconded. The motion passed unanimously.

The applicant has requested three waivers; a) a waiver from the scale; b) a waiver from showing jurisdictional wetlands and brooks; and c) a waiver from showing building setbacks from property lines and very poorly drained soils.

Ms. LaBranche noted a new lot line is being created around the existing developed piece of property with a barn, house, septic system and the balance of the property will be undeveloped and under a conservation easement. The property is large enough to assume it has plenty of frontage, and has plenty of upland outside of what looks to be jurisdictional wetlands and would not be creating an unbuildable lot. Ms. LaBranche noted the three waivers are tied to the same condition of the land, it appears they can be motioned together.

Ms. LaBranche noted in accordance with RSA 674:36, II (n) Subdivision Regulations: Regulations can include provisions for waivers of any portion of the regulations. The basis for any waiver granted by the Planning Board shall be recorded in the minutes of the Board. The Planning Board may only grant a waiver if the Board finds by majority vote, that: (a) Strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations; or (b) Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

The Board will need to determine if either of the above applies to this waiver request. Ms. LaBranche indicated that number 2 appears to apply for this request.

Mr. Moreau noted it appeared that the new frontage would now be on a class 6 road as opposed to the Class 5 road it is currently on. Mr. Morales agreed. Mr. Colwell pointed out the line on the plan that pointed out where the Class 5 road ended and the Class 6 road began and noted there was 218 feet of frontage on the Class 5 road for the new lot. Upon reviewing the plan again, Mr. Moreau and Mr. Morales agreed it was on a Class 5 road with the correct amount of frontage.

Mrs. White asked for a Motion on the waiver request.

MOTION: Mr. Morales **MOVED** to approve the following waivers: a) a waiver from the scale; b) a waiver from showing jurisdictional wetlands and brooks; and c) a waiver from showing building setbacks from property lines and very poorly drained soils for the lot line adjustment as it meets requirement (b) of RSA 674:36, II (n) which states "*specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations*". Mr. Bath seconded. The motion passed unanimously.

The following conditions will be part of this lot line adjustment approval:

1. Granite monuments will be installed at the corners of the newly created lot lines and reviewed by the Building Inspector.
2. The location and dimensions of the right-of-way easement will be shown on the plan with a notation stipulating the responsible party for maintenance of the ROW and will also be included on the deed.
3. A final executed copy of the Conservation Easement plan and deed will be supplied for the file.

Ms. LaBranche asked if there was a preference by Mr. Finch, Ms. Topping or the Groetz's as to how the right-of-way would be worded. Mr. Colwell interjected his thought was locate the existing trail and show it to both parties. If both parties agree that is the location of the easement, a new document would be drafted stating the original granted right-of-way is hereby extinguished and the new grant is the one shown on this plan.

Ms. LaBranche asked if the road was to be a driveway. Mr. Groetz noted it was backland and his wood lot; an unbuildable lot. He only uses the road for access to bring out wood in his truck.

Mrs. White asked for a Motion.

MOTION: Mr. Bath **MOVED** to approve the lot line adjustment for Davis Finch and Jean Topping, 91 South Road, East Kingston for MBL 10-05-05 (60 Fish Road), MBL 13-01-03 (96 Fish Road) and MBL 13-01-04 (98 South Road), East Kingston with the following conditions: 1) Granite monuments will be installed at the corners of the newly created lot lines and reviewed by the Building Inspector; 2) The location and dimensions of the right-of-way easement will be shown on the plan with a notation stipulating the responsible party for maintenance of the ROW and will also be included on the deed; and 3) A final copy of the Conservation Easement plan and deed will be supplied for the file. Mr. Morales seconded. The motion passed unanimously.

Mrs. White closed this public hearing.

Mrs. White explained to the Groetz's that they would not be coming back before the Board but that they would receive easement paperwork from Mr. Colwell. Mr. Colwell thanked the board for their time.

Public Hearing for Home Occupation application for Christopher and Dawn Mierswa, 61 Main Street, (MBL 14-02-01) for landscaping business and associated office functions.

Mrs. White opened this public hearing, explaining to the Board that office functions were included; she would have Mr. Mierswa add that to the application. She invited Mr. Mierswa to explain the application.

Mr. Mierswa stated he runs a landscaping business by the name of "*Sea of Green Lawn Care*". At the present time he rents space in Massachusetts where he houses his trucks and equipment. All his trucks are either pickup trucks or vans and all are registered as passenger vehicles.

He has purchased the house at 61 Main Street, which has 40 acres and three out buildings in the back yard, two of which are garages with doors that open towards the back of the property. He would like to store his trucks and equipment in the existing garages after making renovations. Nothing would be stored on the property until he completed renovating the garages. He would also like to repurpose the smaller out building for use as the office for the business now.

Ms. LaBranche asked where on the property the buildings were located. Mr. Mierswa noted as you were looking at the house, one was located to the left about 200 feet down the hill and the other one is located behind the house.

On his application he states 4 employees; Mr. Morales noted he is allowed that number as he is located on a state road. There would be no sign as customers would not be coming to him; he goes to his customers.

Mr. Mierswa stated the days and hours he would like; the Board suggested he ask for the most hours he would contemplate needing in the future so he would not need to come back before them. They suggested 7:00 am - 5:00 pm, Monday through Saturday. Mr. Mierswa agreed he would like to change the hours on his application to the Board's suggested hours.

Mr. Morales asked if he would be conducting any maintenance on his vehicles at the property; Mr. Mierswa stated he would not. He brings his vehicles to a garage if they need repairs. He may, on occasion, work on a piece of lawn equipment.

Mr. Bath asked if he was planning on bring any lawn waste back to the property; Mr. Mierswa stated he was not.

Mrs. White opened the floor to abutters. Mr. Dennis Quintal, 43 Main Street owns the land just west of Mr. Mierswa's property spoke. Mr. Quintal remembered when the Board was approached by an applicant from Willow Road for a landscaping business. Their proposal was similar, but they wanted to store stockpiles of stones, and chips and therefore was considered a commercial operation in a residential zone and as such was denied. As he understands it, Mr. Mierswa's business would be invisible and all equipment and vehicles would be stored inside a building. He has no objection as long as it stays an invisible business.

The Board discussed the conditions for this home occupation:

1. All standards listed under Article XVI, Paragraph C. - Home Occupation Standards with any required building permits obtained from the Building Inspector.
2. Business vehicles and equipment shall be stored in garages at the rear of the property with the exception of the one allowed vehicle per household.
3. Hours of operation shall be 7:00 am to 5:00 pm, Monday through Saturday.
4. No sign will be allowed as it qualifies as an invisible business.

Mrs. White asked for a Motion.

MOTION: Mr. Bath **MOVED** to approve to send a letter of recommendation to the Selectmen for the invisible Home Occupation of Christopher and Dawn Mierswa, 61 Main Street, (MBL 14-02-01) dba "Sea of Green Lawn Care" for landscaping business and associated office functions with the above noted conditions. Mr. Morales seconded. The motion passed unanimously.

Mrs. White closed this public hearing.

She explained the process to the Mierswa's. The Planning Board would send a letter of recommendation to the Selectmen and the Selectmen would approve the home occupation. Their first year's fee of \$25 as an invisible business is included in their application fee. Thereafter, each year they will be contacted by the Selectmen's Office when their renewal fee is due.

The Mierswa's thanked the Board for their time.

Other Board Business

Minutes

Mrs. White asked for a motion to approve the August minutes.

MOTION: Mr. Bath **MOVED** to approve the August minutes as presented; Mr. Delling seconded. The motion passed unanimously.

Brad's Site Plan

At the August meeting, the Board came to a consensus to not approve any more building or occupancy permits for 14 Powwow River Road until the plan was received and approved. The plan was updated and submitted to Ms. LaBranche for review. She made some slight changes and Mr. Quintal will provide a finalized plan and mylar for recording. Mrs. White already has the checks needed for recording. Would the Board like to make a motion to tell the Building Inspector he can issue the Occupancy Permit for the addition and any future building permits for work already approved?

Mr. Morales noted his thought was the Board should have a final review of the plan before recording. Mr. Quintal distributed the most recent plan to the Board for review.

Mr. Morales asked if the storm water detention pond was done; Mr. Quintal noted to a certain degree but it was not complete. There was also some grading for the swale in the rear that was not complete. Mr. Morales opined the Board should not allow any occupancy permits until all the work indicated on the plan was completed. Mr. Quintal suggested they not include the proposed storage building or green house in the rear as that was to be future expansion.

Mr. Quintal noted when Ms. LaBranche had reviewed the plan she suggested the unit numbers be left on the plan but the current usage names were removed as that could/would change in the future. Ms. LaBranche reminded the Board Mr. Jamieson is also required to supply new water usage calculations with each new tenant.

The proposed leach field and contours in the rear have been done and labels were changed to existing. The Board noted some other minor changes to be made to the plan.

MOTION: Mr. Morales **MOVED** that the storm water retention area and the swale at the rear of the property at 14 Powwow River Road need to be completed as depicted on the plan and inspected by the Building Inspector before any more occupancy permits are allowed to be issued. Mr. Bath seconded. The motion passed unanimously.

It was the consensus of the Board that when the changes are made on the mylar, it can be recorded.

Maplevale Builders / Woldridge Lane

Mrs. White noted that this Public Hearing was not included on the agenda as they had gotten notification from the Town Attorney that the NH Supreme Court has affirmed the Superior Court's decision denying Maplevale Builder's LLC Planning Board appeal. Ms. LaBranche noted the Public Hearing would still need to be closed. It will be noticed on the next month's agenda and then officially closed.

Ms. LaBranche read portions of the report from the Town Attorney to the Board.

Ortiz Home Occupation - Personal Trainer

There had been a complaint from a neighbor regarding a home occupation. It will be up to the complainant to provide his allegations on this issue. Mr. Ortiz has been approved as an invisible home occupation which means no sign; there is a sign where one is not allowed. Mrs. White asked what the Board would like to do.

Board consensus was for Mrs. White to send a letter to Mr. Ortiz stating he is in violation of the approval of his Home Occupation as an invisible home occupation with a \$25 yearly fee. Since he has a visible sign, the home occupation no longer qualifies as an invisible HO and therefore his yearly fee will be \$50 and he owes the Town \$25 for this year.

Potential New Member

Bill Caswell, resident for many years, was present and explained he would like to get more involved with the Town. He would like to serve on the Board as an alternate member. It was the consensus of the Board to accept Mr. Caswell as an alternate member; Mrs. White and will send a letter of recommendation to the Selectman. Ms. LaBranche noted there would be training available for new members in the Spring that would be paid for by the Town. The Board welcomed Mr. Caswell as a member.

Question on Change of Use

Mrs. White had received a call from the tenant at 17 Haverhill Road asking what was needed for permission to put up a sign for auto detailing. This is the former location for Auto Sales and is located in a commercial zone. Would this be considered the same use and not need to come before the Board, or would he need to go through the process and pay \$200? It was the consensus of the Board this was a different use and would need some specific conditions attached to any approval. He could come and speak to the Board for direction, but if he decided to pursue this as a business, he would need to come before the Board for a public hearing.

ADJOURNMENT

MOTION: Dr. Marston **MOVED** the Planning Board adjourn; Mr. Morales seconded. The motion was unanimous.

The meeting was closed at 8:50 pm. The next Planning Board meeting will be October 16.

Respectfully submitted,

Barbara White

Barbara A. White
Planning Board Secretary

Minutes approved October 16, 2014

Mr. Cacciatore, Chairman