

Town of East Kingston Planning Board Minutes
November 16, 1995

FILE

Attending: Chairman Richard Smith, Catherine George, Roby Day, and Andrew Berridge.

Others Attending: RPC Circuit Rider - Sarah Campbell.

This meeting opened at 7:29 PM.

Public Hearing on Home Occupation application for Peek-A-Boo Day Care (Kim Kemp) opened at 7:30 PM.

Mr. & Mrs. Kemp were present to discuss their application. When asked by Chairman Richard Smith, Mrs. Kemp said she cares for twelve (12) preschool children, and three (3) after school with fifteen (15) children total. Mrs. Kemp said she does employ one day care aid.

It was noted the applicants had not formally applied before. Their daycare was in operation since 1979, before the town's ordinance was adopted. Mr. Berridge explained to the Board, when the Selectman realized the Kemp's had a business without a permit, they were asked to comply with the ordinance, by applying for a business permit.

Mrs. Campbell referred to the home occupation ordinance, and noted she (Kemp) does need a permit, however she (Kemp) does not need to comply with other provisions of the ordinance with the exception that status of the business shall not increase after the date of when the ordinance was adopted.

Mrs. George asked Mrs. Kemp if her business was the same, and confirmed that nothing had changed. Mrs. Kemp said nothing has changed in sixteen (16) years.

Mrs. Campbell noted that Mrs. Kemp's limit of children in her care was below the maximum limit of seventeen (17) children. She added that since Mrs. Kemp was in business prior to when the ordinance was adopted, she could not be forced into compliance, other than to obtain a permit, which would require an annual review with the Selectmen.

Motion: Mrs. George motioned to recommend to the Selectmen to grant the Home Occupancy permit due to the business being established prior to the adoption of the ordinance, and has children in her day care below the maximum limit. Mr. Day second. Mr. Berridge abstained from the vote. The motion passed. (3-0)

This public hearing ended at 7:45 PM.

Prior meeting minutes of October 19, 1995: Mr. Roby Day pointed out that information was not properly documented in the minutes pertaining to Mr. Bioteau's preliminary discussion on a request for lot line adjustments. Mr. Day clarified, by moving the lot line through a culvert in the driveway, the piece of the parcel that would be amended by another lot line adjustment would preserve the 200' frontage requirement.

Mr. Bioteau was present and concurred that information was correct.

Motion: Mr. Berridge motioned to accept the October 19th minutes as amended. Mrs. George second. The motion passed unanimously.

Mel Keddy's framed Death Resolution was hung in the Town Hall by Selectman Andrew Berridge. This same framed resolution will be forwarded to the children of the late Mr. Keddy. A copy will also be provided to the Police Department, and Mr. Richard Smith signed the cover letters to the Keddy children, and to the Police Chief.

Lawrence Smith selected to receive Volunteer Award: It was noted on this day, Mr. Lawrence Smith was scheduled to receive an award. Mr. Lawrence Smith was nominated by the Selectmen for an award presented by the New Hampshire Municipal Association. A letter was forwarded to the association documenting the various committees, and projects that Mr. Lawrence Smith was involved in. Mr. Smith was one of eleven (11) candidates chosen for the award.

Public Hearing for James Bioteau application for Lot Line Adjustments: This public hearing convened at 8:04 P M. Mr. Bioteau presented four (4) maps to the Board. He noted the bounds designated as "set", are in deed only scheduled to be "set" this week. Mr. Bioteau will submit a mylar once the bounds are "set".

The Board reviewed the maps, and the maps were consistent with what was discussed during the preliminary discussion on October 19, 1995. It was noted the driveway was missing on the map, and would not require the engineer to re-do the maps for this issue only, but should be added if the other conditions would warrant the engineer to make changes.

Mr. Bioteau said he could put a three (3) foot metal stake (similar to what is used with circus tents) in the center of the driveway, flush with the ground. Mr. Bioteau was reminded to have the location of the iron stake in the driveway written into the deed. Mr. Bioteau agreed, and noted Mr. Steve Herman would do this. Mrs. Campbell suggested having the Building Inspector look at the bounds when they are "set".

Motion: Mrs. George motioned to accept the plans for Mr. Bioteau's lot line adjustment subject to satisfactory inspection of the four (4) bounds (including center driveway) as set by the Building Inspector. Mr. Day second. The motion passed unanimously.

This public hearing ended at 8:18 PM

Zoning Amendments: Mrs. Campbell asked the Board to review some changes (handout dated November 14, 1995 - attachment to file minutes) made to the zoning amendments as discussed at the November 2nd Master Plan meeting. Mrs. Campbell noted there were no changes to item #1.

On item #2, regarding section 10.3.3 of Article X, the addition of boldface text, (the use of the word "adequately" caused some discussion). Mrs. Campbell noted in section 10.4 the distance of 350' was amended from the 400' discussed at the prior meeting (11/2/95). Mrs. Campbell reminded the board that the amendment would relax standards, also felt the 350' was high figure, perhaps 300' would be more reasonable in her opinion.

On item #3, Mrs. Campbell made reference to the "and" part, and noted there had been no discussion on this part of the section.

On item #4 and #5, the applications procedures, no change.

On item #6, there was no prior discussion at the 11/2/95 meeting. This discussion on zoning amendments will be postponed till later in the evening.

Public Hearing for Kenneth Terry - Home Occupancy application: This meeting opened at 8:30 PM. The chairman asked the abutters to identify themselves. It was noted that the following were present; Mrs. Garcia, Ms Morrison and Ms Magnanti, Mr. & Mrs. O'Bara, and Mrs. Goudreau. Mr. & Mrs. Poole were also present.

Mr. Terry advised the board, as per his preliminary discussion, it was his intent to use the lower portion of the barn (the cow area) to be converted to a shop area, where the electronics will be set up to repair machines. This is where service of instruments brought in for repair would be performed. (For the record, the Terry's have a purchase and sale pending for the Poole's property on Willow Road.)

Mr. Terry explained that his business is service, repair and calibration of testing equipment which measures gold, silver, cadmium, and other metallic plated things. These machines measure millionths of an inch. These are very fine tuned machines that sell for about \$48,000 new. The calibration is similar to the scales used in the market. These machines have to be calibrated once a year, and must be traceable to the national bureau of standards. Mr. Terry said their territory is as far down as New Jersey and up to New York, and all of New England doing this service and repair work.

If they (Terry) find equipment that is "down", and can't be fixed on location, they (Terry) provide loaner equipment, and bring the equipment to the shop for testing. There are x-ray tubes in this equipment. These machines excite the materials, and a signal comes off the materials that is read to obtain the measurements. The largest machines measure 2'x 3'. They do come with monitors and printers. Their business is solely for thickness testing, and nothing else.

Mr. Terry reported the upper part of the barn would be used for an office for bookkeeping, by his daughter-in-law.

Mr. Richard asked if Mr. Terry was successful regarding the frontage issue with the Registry. Mr. Terry reported that he was not. He added this was not essential regarding the permit, that he needed a surveyor and would investigate later, next spring.

Mrs Campbell asked Mr. Terry if he would be in compliance with the provision regarding not more than two non-resident employees. Mr. Terry answered that there would be himself, his son and daughter-in-law, and a man from Exeter who works in the field doing calibration work, not necessarily in the office. He added that his wife will no longer be working with them, that she recently underwent surgery for a kneecap replacement, agreed she needed the time off. In summary, he would have three (3) external employees.

When asked about commercial vehicles, Mr. Terry responded they use their own personal vans without markings, other than vanity plates (TRS1, TRS2, and TRS3).

Mrs. Campbell asked about by-products or waste associated with x-rays.

Mr. Terry said they would have oil that comes out of the x-ray tubes, which he has had checked for PCB's. He does turn the oil over to his brother-in-law to recycle. He maintains this oil in a 55 gallon drum, which is only half full after two years. Mrs. Campbell asked Mr. Terry if he needs to be shielded from the x-ray tubes. Mr. Terry answered yes, but that they are very safe, because the fixed target is only ten thousands in diameter, and that radiation survey meters are used.

Regarding other waste products, Mr. Terry said they do clean the machines with a strong soap, and does have a concern about the septic system, which may have require some thought about making arrangements to have the solvents picked up.

Mr. Terry asked if the abutters could voice their feelings, stating that he and his family wanted to make sure the community was receptive to them, and wished to be up front with the neighborhood.

Ms Morrison spoke up to say as a neighbor directly across the street, her concern was with the noise, hours of the day operation, and traffic.

Mr. Terry said the biggest traffic would be the UPS. Their business would be 8-5 during the week, and few Saturdays, only to do some paperwork. He added about 80% of their work is done on the road. The bookkeeper would be doing office work normally.

Mr. Henry O'Bara thought this business sounded like it could be classified as technological, or industrial trying to get established in a residential area. His concern is that Willow Road is a quiet, country area with a lot of acreage, and horses, and that this is not a commercial zone.

Mrs. O'Bara spoke up to say she had concerns regarding the subdivision of the land.

Mr. Terry appreciated his (O'Bara) concern, and said his company is not a manufacturing company. Regarding the subdivision, Mr. Terry said he has three sons, and hopefully in the future, one parcel would be for he and his wife to retire on. The existing home would then be available for the grandchildren. Mr. Terry offered to show the proposed map with the lot delineation. The abutters took the opportunity to review the map.

Mr. Berridge explained that home occupation permits are reviewed by the Selectmen annually, with a safety mechanism to see that there are no changes in the business. If an abutter makes a written complaint, the Selectmen are obligated to investigate the complaint.

Mrs. Garcia of Willow road spoke up to say that she makes her husband (a truck driver) pay to park his tractor trailer elsewhere, other than in their driveway. Her point was that she moved from the city to live in a quiet residential neighborhood, and is not comfortable with the little businesses cropping up everywhere.

An abutter asked if it was possible for the Planning Board members to visit the business in operation at the Amesbury address?

Mrs. Campbell advised Mr. Terry that the Rockingham Planning Commission was currently reviewing the ordinance for the Town of East Kingston, and provided him with a handout copy of the draft ordinance amendments. She explained the intent was to make the ordinance more flexible, but did not think it would affect him.

Mr. Day said the Planning Board is at an impasse regarding the number of employees, and is not in any position to approve anything that deviates from the ordinance, and could not personally justify approving the issuance of a home occupation permit to Mr. Terry.

Mr. Terry asked if the board could agree to deny the permit, in order for Mr. Terry to request an appeal (from an administrative decision from the appeals board).

Mr. Berridge, Mrs. Campbell, and Mrs. George felt that they agreed with Mr. Day.

Motion: Mr. Berridge motioned to recommend to the Selectmen that they deny the Home Occupancy application due to non-compliance of Article X, Section 10.2.4 regarding the employment of not more than two (2) non-resident employees. Mr. Day second. The motion passed unanimously.

Mr. Terry invited the board to visit the existing premises of his shop/business. Mr. Day did not understand what purpose that would serve, and directed the question to the abutters.

Mrs. O'Bara wanted to know if the board approves of the business? From what she witnessed, she understands the business was not approved based on the number of employees only, and that the board did not have any concerns about the business itself.

Mr. Day said the decision was based on the extent of their (Planning Board) authority, and that they were following the ordinance.

Mrs. O'Bara finds it interesting that not one abutter voiced one concern about the number of employees, and the Planning Board is following the letter of the law on the number of employees. Mr. O'Bara agreed that they were more concerned about the sophisticated equipment, and the number of pieces of equipment to be used in a country setting. Mr. O'Bara said there are a number of businesses on Willow Road, and they do not have large pieces of equipment.

Mr. Terry said the use of the word industrial indicates something is being manufactured. Mr. Terry added that he also understands there is a body shop on Willow Road, and his machines are not as big as a car, to which Mr. O'Bara suggested Willow Road is turning into a commercial zone.

Mrs. Campbell spoke up to explain the Planning Board is in the business of holding public hearings. The Planning Board then recommends to the Selectmen based on the results of the public hearing, and the Selectmen then makes a decision about the permit. If the Planning Board recommends to deny the application, the applicant can go to the Zoning Board of Adjustments to appeal that decision.

Mrs. Campbell also explained the Planning Board will not hear this case again, that the decision is up to the Selectmen, and if the applicant is granted a variance to this provision of the ordinance, it can only be done by the Zoning Board of Adjustments (also known as Board of Appeals). She advised that if the applicant goes to the Zoning Board for a hearing, the abutters will receive notification on the Zoning Board public hearing only. All selectmen meetings are open to the public, but are not required to notify anyone, other than to post the time and place, when the meetings are scheduled.

Mr. Day offered to visit the operation in Amesbury, and asked what mechanism of feedback are the abutters looking for. The suggestion was made to forward the results of the visit to the Selectmen, since they ultimately will or will not approve the permit.

Ms Mantigani spoke up to say that she works in Newburyport, and does know of individuals that are aware of the current operation by Mr. Terry. For the record, she has never heard anything but positive comments regarding his business, but agrees it would be helpful if someone would visit the business.

This public hearing ended at 9:14PM.

Public Hearing for Catherine Gilman - Application for Home Occup ation Permit: this public hearing convened at 9:15PM.

Mr. Richard Smith asked the abutters to identify themselves. Mr. & Mrs. Batal were present and stated that they were next door neighbors. Mrs. Nancy Mayotte spoke up to say she was also an abutter.

Mr. & Mrs. Gilman were present. Mr. Richard Smith asked Mrs. Gilman how many children did she have (in the daycare). Mrs. Gilman replied that she was licensed for 45 children.

Mr. Richard Smith asked if she worked there herself (as a resident employee). Mrs. Gilman replied that she is the only resident employee, and has ten (10) employees.

Mrs. Campbell wanted to clarify that this daycare did have a permit at one time. Mrs. Gilman stated yes in 1989, and that it was before the zoning ordinance came into effect, she was in business, and felt she should be grand-fathered.

Mr. Berridge stated in 1989 there was an application for a home application permit, at which time Mrs. Gilman was told she did not need a permit because she was below the maximum requirement for the number of children.

Mrs. Campbell stated the file indicates the daycare started in June 1989. Mrs. Gilman said yes. Mrs. Campbell then said the ordinance was adopted in March 1989, and was amended in 1990. Mrs. Campbell said a town report would reflect those dates.

Mrs. Gilman said this is the first time she became aware that there was a problem with her daycare. She explained the Selectmen were aware that she had a "center" in 1992 and felt she could provide paperwork that supported that statement. She added the Selectmen signed the paperwork required for the state (reflecting that she was now a center) without noting any restrictions.

Mrs. Gilman said the Fire Department and Health Inspector have to sign paperwork every year and are aware of how many children the center cares for. She showed a paper in her files signed by Nancy Marden in 1992; Mr. Conti in 1994 for twenty(20) children; and in 1995 signed by the new Chief in May of 1995 for forty-five (45) children.

Mrs. Campbell asked when Mrs. Gilman first got her permit, if she was permitted for a certain number of children. She (Mrs. Campbell) noted the file documented in May of 1990 that Mrs. Gilman signed a paper that she complied with the six (6) preschool, and three (3) after school requirement.

Mrs. Gilman said in June of 1989, she started with six (6) children.

Mr. Day noted in May of 1990 in a note to the Board of Selectmen, that Mrs. Gilman was providing for six (6) preschool and three (3) after school children, and that she acknowledged that she was in compliance. Mr. Day suggested that it would appear that May of 1990 is after the amendment to the home occupation zoning ordinance that indicates the twelve (12) preschool, plus the five (5) after school character of the business. Mr. Day said based on that information, he would have to assume that Mrs. Gilman understood the provision at that time.

Mr. Day asked Mrs. Gilman if she attended town meetings? Mrs. Gilman replied no. Mr. Day explained that is where the ordinances and amendments are voted on.

When asked if Mrs. Gilman had received letters from the Selectmen, other than the most recent correspondence, Mrs. Gilman said not to her knowledge, she does not have a copy in her paperwork.

Mr. Berridge said to Mrs. Gilman in 1992, Mrs. Gilman was in compliance when Mrs. Marden signed the paperwork, given her knowledge of the size of the daycare operation, because Mrs. Gilman did not inform her (Marden) that she (Gilman) had grown to a larger size. Mrs. Gilman argued that the paperwork indicated that she was a daycare "center", that the state has three (3) types; family daycare and group daycare which were two of the types. She said "you have the codes right in here from the daycare book from the state".

Mrs. Campbell clarified that Mrs. Gilman was trying to say the state codes are referenced in 10.3.5 section of the article.

Mr. Berridge told Mrs. Gilman that the paragraph in 10.3.5 gives her the parameters with which she has to follow.

Mrs. Gilman said this is the first time she honestly has seen these zoning laws.

Mr. Gilman spoke up to say the person in the office (Mrs. Marden) should have been aware of the laws, to direct his wife to go to the Planning Board (in 1992). He said his wife told her (Marden), simply by providing a paper that said "center" (this would indicate that her daycare had grown).

Mrs. Campbell asked if the number of children is on the form that says center.

Mrs. Gilman said no, but it is on the form signed by the Health Officer, and Fire Chief.

Mrs. Campbell said the problem is we have an ordinance that says one thing, and an occupation that does not comply, and we need to determine where do we go from here. Mrs. Campbell also read from the ordinance, quoting form 10.5, regarding the date this ordinance was posted January 6, 1989, and this is the date it (ordinance) became official. It appears this (home occupation) fell through the cracks; in between the initial date the home occupation became permitted in 1989, and when the non-compliance took shape.

Mr. Day said it is not the board's place to go into the home to inspect everyone's business. Everyone shares a responsibility to understanding the ordinance.

Mr. Gilman said your fire and health officials come into our home up to twice a year, and knows how many children are there. Mr. Gilman's argument is that these officials of the town should know the town's codes and laws.

Mr. Day said "I would hazard to say, they (health and fire officials) are not looking for those types of things, that they are looking to see that you are providing a safe environment for those children".

Mr. Berridge said the Fire chief is not expected to know the health rules, the Health Officer is not expected to know the fire rules, probably neither one of them knows the zoning requirements.

Mr. Gilman asked "How are we going to fix this, do we have to go the Board of Adjustment"?

Mr. Day replied that it was straight forward, that the Planning Board is not in a position to approve the issuance of a home occupation permit simply because the Gilman's are outside the parameters of the ordinance.

Mr. Berridge said there was nothing personal intended, that once the fact became public knowledge, that the daycare was operating without a permit, it had to be addressed.

Mrs. Batal, an abutter, wanted to say they were notified in the beginning when the daycare started, and they did not feel any concerns at that time. Mrs. Batal added "... this thing has gotten out of hand, and regarding Andrews Lane, I think there are too many kids for that street, too much traffic, and it is a dead end street".

Mr. Batal said that it starts early in the morning, with people dropping their kids off. In the afternoon, coming home from work, there are twenty-five (25) kids walking down the street to go onto the playground. Mr. Batal said they like kids, but then 6:00 at night, people are coming in and out, (to pick up their children). It's not fair to the abutters he said.

Mr. Batal continued that everyone has a right to own a business to make money, ten (10) to fifteen (15) kids are no problem, but forty-five (45) kids is a bit much. He was under the impression the daycare had a permit to operate. As a next door neighbor, he is very close to the daycare, and sometimes feels like he is next to a school yard. Mr. Batal considers the Gilmans good neighbors, and understands the situation they (Gilman) are in, and does not want to create hard feelings. It is not the children themselves causing his concern, it is the volume of children.

Mr. Batal said if he wanted to sell his home, it (daycare) might interfere with that sale. He appreciated the opportunity to voice their concerns, and hoped his neighbors did not harbor bad feelings, and that he (Batal) is willing to live with the outcome. He ended by saying he is happy to see the kids, he would just like to see it scaled down a little.

Mrs. Mayotte (abutter) spoke up to say she resides further down the street, and she does not hear the cars coming down the street. She purchased her home in May, and stated they did not realize the daycare existed except for the discreet sign. She does not consider the play area in the rear of the daycare a disturbance.

Mrs. Mayotte inquired if the three (3) state classifications were written down anywhere. Mrs. Gilman said yes, that a family is six (6) preschool) and three (3) after school; a group is twelve (12) preschool) and five (5) after school; and the last group is a center. Mrs. Mayotte wanted to know if the town had that information.

Mr. Berridge and Mrs. Campbell explained that the ordinance does reference the codes from the state, in order to comply with the standards.

Mr. Day inquired how much parking was available at the daycare, and how many cars can be accommodated at any given time.

Mrs. Gilman replied that they had a horseshoe driveway, and cars are parked along the sides, and in the middle. Cars come and go, and the same amount is not in the driveway at all times. Up to six to eight cars can fit at once, and because the daycare is open from 6:00 AM - 6:00 PM, the number of cars changes all the time. Mr. Gilman said the cars are not lined up at one time, and do not go into the street at a specific time.

Mr. Day asked if the Gilman's had heard from any neighbors regarding the traffic. Mrs. Gilman said no, and that she was surprised to hear the Batal's comments. At least three other neighbors had stopped by to offer support to Mrs. Gilman, but they were not present at the hearing.

Mrs. Campbell said using quick arithmetic, that if forty-five (45) children were transported at least two trips a day, and if ten employees make one trip a day, that is equivalent to 200 trips a day, and Mrs. Campbell felt that was excessive.

Motion: Mrs. George motioned to recommend to the Selectmen that they do not grant the Home Occupation permit for the Gilman's daycare pursuant to Article X, Sections 10.3.5 and 10.2.4. Mr. Day Second. The motion passed unanimously.

This public hearing closed at 9:50 PM.

Proposed Zoning Amendments continued:

Motion: Mr. Berridge motioned to post a notice to hold a public hearing on December 21, 1995, to discuss the proposed 1996 zoning amendments. Mr. Day Second. The motion passed unanimously.

Mrs. Campbell brought up for discussion the current practice of sending notice of decision to all abutters after a public hearing. She suggested it was only necessary to notify the applicant in writing, together with a posted notice in two public locations. The members agreed it was appropriate to only notify the applicant in writing regarding the notice of decision.

Motion: Mr. Berridge motioned to adjourn. Mrs. George second. The motion passed unanimously, and the meeting adjourned at 10:30 PM.

Respectfully submitted:

Sandra Johnson
Administrative Assistant