



PLANNING BOARD  
TOWN OF EAST KINGSTON  
New Hampshire

2016-2017  
Joe Cacciatore, *Chairman*  
Dr. Robert Marston, *Vice Chairman*

**MINUTES**  
Regular Meeting 17 November 2016  
7:00 pm

**AGENDA:**

- ◆ **Call to Order**
- ◆ **Review** of proposed changes to the Accessory Dwelling Unit Ordinance
- ◆ **Review** of the Home Occupation Ordinance
- ◆ **Review** of the Growth Management Ordinance and elderly housing
- ◆ **Reschedule** date for January Planning Board meeting.
- ◆ Other Board Business

**CALL TO ORDER:** This meeting of the East Kingston Planning Board was called to order at 7:00 pm.

**Members Present:** Chairman Joe Cacciatore, Vice Chairman Dr. Robert Marston, Joshua Bath, Chris Delling, Bill Caswell and Ex-Officio Mr. Richard Poleart.

**Advisors present:** East Kingston Building Inspector Mr. John Moreau, Assistant Building Inspector Tom Welch and Rockingham Planning Commission (RPC) Senior Planner Ms. J. LaBranche.

Also Present: Julian Dunlop and Attorney Keri Marshall.

**BOARD BUSINESS**

Mr. Cacciatore opened the meeting at 7:00.

**Minutes**

Mr. Cacciatore asked for a **MOTION** to approve the October minutes.

Mr. Bath **MOVED** to approve the October minutes as presented; Mr. Delling seconded. The vote was unanimous.

**General Discussion with Julian Dunlop re: Carmen's Restaurant**

Mr. Dunlop thanked the Board for fitting him in tonight so he could have this discussion. Mr. Cacciatore invited him to address the Board.

Mr. Dunlop was before the Board to ascertain if they had any suggestions for him for use of his property as the restaurant was not a profitable endeavor at the present time. It does not generate enough to pay for itself.

He was aware of the fact that since the restaurant was a non-conforming use in a residential zone, once the use as a restaurant ceased for a period of one year, the use would revert back to residential only. He was considering voluntarily ceasing the present use.

He was entertaining other possible uses for the property and has come to the Board for suggestions on two things: a) what would he need to do to make the restaurant use more viable and/or b) what other choices would he have for uses on his property should he decide to close the restaurant.

He suggested other possible uses such as:

- Removing the existing house on the property and having an apartment above the restaurant. This way there would only be one residence on the property. *The Board noted this would constitute changing a nonconforming use as there was never living quarters in the original restaurant.*
- Removing the existing house and building a new 3 bedroom house in its place to be a condo, and if the restaurant was returned to a residential use, turning it into a condo also. *That would end up with two residences on one piece of property, which is not allowed. And the lot is not large enough to allow it to be turned into a condo.*
- If the restaurant building was turned into a residence, use it as subsidized housing. *Mr. Cacciatore noted then he would be putting 2 houses on 2.14 acres.*
- Mr. Dunlop understands it cannot be changed to a commercial zone, and wants to know what the Board would like to see there if there was no restaurant. What do they think would work? *If the restaurant building became residential, the other house would need to be removed as you can only have one house on a piece of property.*
- Ms. Marshall argued putting an apartment above would eliminate a building (the old house) and the "footprint" would be the same as it is now; it would lessen the density of the use and lessen impervious soils. Why would the Town not want to see the dilapidated house removed and allow an apartment over the restaurant? It would be consistent with the intent and spirit of the ordinance. *Ms. LaBranche explained the current configuration is what is grandfathered. What they were discussing would change the configuration. The way the law is now, you cannot change, modify or expand an existing non-conforming use. You would be changing the use of a configuration of a non-conforming use on a piece of property and the Town does not allow mixed-use buildings.*
- Ms. Marshall stated that they did with home occupancies. *Ms. LaBranche noted that home occupancies were not the same as a commercial business. And the restaurant could not be considered a home occupation; it was a commercial business. Ms. LaBranche noted that what Ms. Marshall was stating sounds logical, but the goal of non-conforming provisions in zoning was actually to phase out and eliminate them in the future.*
- Ms. Marshall noted the goal of the Town was also to have mixed use and encourage people to utilize buildings and town space so there is less burden on the taxpayer. And there is clearly less burden on the taxpayer for a business as opposed to multiple residences or a larger residence. A smaller residence with a building underneath is more in keeping with the Town perspective and the Town's intent to try to have mixed use within the Town. *Ms. LaBranche noted the Planning Board articulated that very vision for the Town Center District, but Mr. Dunlop's property did not fall into the Town Center District. Mr. Cacciatore stated they had presented to the Town for mixed use to be available on all the state roads, but with the exception of the small portion of Depot Road/Main Street from Willow Road to Freeman Street, the residents voted against it.*
- Ms. Marshall still did not understand why the Town would not prefer to see the old house removed and an apartment installed above the restaurant. *Ms. LaBranche noted Mr. Dunlop's piece of property is in a zone and he is stuck with what's permitted in that zone right now regardless of whether it meets the spirit and intent of other zones in the Town or even what's stated in the Master Plan. It is what it is today. Their remedy would be to go to the Zoning Board for a variance .*
- Ms. Marshall asked if they would need a rejection from the Planning Board to go to the Zoning Board for a variance. Mrs. White said they would not. Knowing that the Planning Board could not address the problem, they could go directly to the Zoning Board.

Mr. Caswell asked Mr. Dunlop what would help his business now; did he feel his business was being restricted in some way? Mr. Dunlop noted there was no foot traffic and it simply did not generate enough business to sustain itself at the present time.

Discussion ensued and several suggestions were made to Mr. Dunlop as to the types of food he could be offering, the amount of choices, making sure there were regular hours the restaurant was open and being open when they said they would be, not having unreasonable wait times for beverages and food, and having the people working there accommodate their customers in a friendly manner. It was stressed that consistency was very important. Some different themes were also discussed. It was noted coffee shops were good gathering places that could offer light lunches also. The Board opined that a coffee shop seemed to be what might work.

Mr. Dunlop noted he would try some of the suggestions offered by the Board. He was going to open for breakfast and lunch. He would be open starting at 7:00 am. Mr. Cacciatore noted it was hard as he was not the person running the restaurant, but the person who was renting to others to operate a business.

Mr. Dunlop asked about the neon signs that had previously been on Carmen's restaurant. He was informed that those signs were not approved the last time the Board made a decision for the signs would be on the building, so they could not be used. Mr. Dunlop would need to petition the Planning Board for the neon signs if that was what he wanted to do as signs were covered in the site plan review section and not the ordinance.

Mr. Dunlop and Ms. Marshall thanked the Board for their time.

#### **Review of proposed changes to the Accessory Dwelling Unit Ordinance**

Ms. LaBranche distributed an updated version of the revised Accessory Dwelling Unit ordinance.

Purpose: Added new letter e. which states "one of the purposes of this ordinance is to maintain the rural agricultural character of neighborhoods and the Town."

Special Exception Criteria 4.d.: Added a description for attached. "Attached means having a shared wall or connected by a covered and enclosed structure."

There was lengthy discussion regarding the definition of "interior door". According to Building Inspector Moreau there is a big difference in what is considered an interior door and an exterior door according to building codes. An interior door such as you can purchase at a home improvement store is a hollow door, which is not allowed by building codes in this case. The wording was changed to read "there shall be connecting doors between the primary dwelling unit and the accessory dwelling unit."

Septic facilities and water: Refined the statements regarding septic systems to read: "The property owner shall have their existing septic system inspected by a licensed septic inspector and provide a report of the inspection results. If the existing septic system is found to not be fully functional at that time, the property shall have the system replaced.

We are deleting section F. and replacing with a new section on Accessory Dwelling Units. Mrs. LaBranche will write up the warrant article. The current ordinance (500 sf) is in effect until this gets voted on in March.

#### **Review Change to Non-Conforming Lots, Structures and Uses**

Mr. Moreau referred to Article XXI.B.1. and noted that when he issued permits they were alteration permits and the article as it reads states "may not be enlarged or altered in any way". He was wondering if the term altered could be changed for clarification so as not to be confused with the name of the permits he issues.

The Board agreed on the following language: "1. No such non-conforming building or structure may be extended such that it becomes more non-conforming..."

### **Review Change to General Provisions, Article VII**

Mrs. White reminded the Board that the Building Inspector requested Article VII, D.1. be updated to read that the minimum size for a septic tank for a home up to 4 bedrooms was 1,250 gallons and a 5 bedroom home would require a minimum size septic tank of 1,500 gallons.

The new D.1. will read as follows: "*Homes of 4 bedrooms or less shall have a minimum size septic tank of 1,250 gallons. Homes with 5 or more bedrooms shall have a minimum size septic tank of 1,500 gallons.*"

### **Review of the Growth Management Ordinance/Elderly Housing Ordinance**

Mrs. White has updated Table 1 and Table 3 of the Growth Management Ordinance to reflect the 3 new houses that have been built this year. Ms. LaBranche will update the other numbers and we will review in December.

Review of the Elderly Housing Ordinance, Article VI.B.3. is continued until the December meeting.

### **Review of the Home Occupation Ordinance**

Ms. LaBranche had asked the Board to take another look at the Home Occupation ordinance as several items were identified as needing more deliberation.

1. Auto repair shops are not consistent with statements in the Master Plan. *See discussion for #6.*
2. Prior public outreach and vision sessions identified the importance of maintaining rural character. *See #6*
3. Consider limiting the number of non-residential parking spaces / number of customers at any given time. *This was not discussed.*
4. Consider limiting delivery vehicles. *Mr. Bath noted Fremont had a good requirement in their home occupation regulation which East Kingston might want to use. "The home occupation shall not require regular need for delivery of materials to and from the premises by commercial vehicles over 12,000 pounds GVWR. The intent is to permit delivery vehicles such as UPS vehicles but to exclude tractor trailers and other large heavy commercial vehicles." The Board agreed this should be added to C.3.*
5. Consider storage on the property of limiting heavy equipment used for the Home Occupation/Business. *Not discussed.*
6. Review the list of permitted uses, particularly sections E.10, E.12 and F. Should funeral homes be prohibited? *Mr. Bath opined perhaps funeral homes should only be permitted on state roads. Mr. Cacciatore noted this might be considered spot zoning. The Board decided to strike funeral homes.*  
Section E.10 covers administrative support for a business where all of the business is conducted off site. In the past, the Board had discussed if a permit for this was even necessary. After discussion, the Board agreed a definition of invisible and invisible home occupation as far as what they were doing would be a good thing to add (not just a sign and no sign). And to include under Exceptions that if they were only doing administrative support for their business, they would not need to have a permit.  
Section E.12 covers occupations not listed above. There had been concern for certain types of occupations being considered home occupations. *Mr. Bath reminded the Board that as per the Master Plan, garages and vehicle repair was not consistent with what the townspeople wanted. There were zones created to accommodate commercial and light industrial businesses. Auto body repair was not something the residents wanted in their neighborhood. Is it not the duty of the Planning Board to uphold what the towns' vision of the community is? They wanted specific districts for these types of activities.*

*After more discussion, the majority of the Board decided that vehicle repair and maintenance should be included as a permitted use, but vehicle body shops and restoration were a commercial use and would not be permitted as a home occupation.*

Mr. Cacciatore **MOVED** to limit the number of vehicle allowed for vehicle repair and maintenance to not more than 3 vehicles - 1 inside and 2 outside; Dr. Marston seconded. Mr. Bath opposed. Motion passed.

7. Consider adding a requirement to have "no impact to the character of the neighborhood and town". *Mr. Bath opined perhaps this should be included under standards. All home occupations should comply fully with the following standards to protect public health and safety and shall have no impact to character of the neighborhood or town. This was added.*
8. Do "invisible" home occupations/home businesses be required to have a permit? *See discussion for #6.*

Ms. LaBranche recommended that Board make a motion to accept the changes they discussed this evening and a motion to take them to public hearing on December 15.

Mr. Bath **MOVED** to accept the changes to Article VII. General Provisions, Section D.1; Article VIII. Uses Permitted, Section F. - Accessory Dwelling Units; Article XVI - Home Occupations; and Article XXI - Non-Conforming Lots, Structures and Uses, Section B.1 and take them to public hearing in December; Mr. Delling seconded. Unanimous.

#### **Reschedule date for January Planning Board meeting.**

Mrs. White reported that the Board would need to change the date for their January meeting from the 15th to January 5th. Ms. LaBranche noted that would only be necessary if they made more changes to the just approved ordinance updates to meet the deadline the Selectmen's Office has for the warrant articles. Mrs. White reminded her they also needed to accommodate any Citizens Petitions that came in; Ms. LaBranche agreed. Citizens petitions are accepted from Nov. 14 to December 14. If one came in on December 14, it would be too late to notice for the December meeting and would need to be noticed for January. And they would need the earlier date to satisfy the warrant article deadline. If no petitions came in late, they would not need to change the meeting date. All members agreed they could make January 5. We will know by the December meeting if the change of date is necessary.

#### **Other Business**

##### **Freeman Shared driveway question**

Mr. Blunt had been before the Board earlier this year for a subdivision to divide off a lot for each of his two daughters. At that time, they asked if it would be possible to use the existing woods road which goes across Mr. Blunt's property as part of the driveway for her lot and not create an entire new driveway the length of the property. They discussed there was wetlands at the front of the property and had thought there would be less of an impact to utilize the existing woods road. Mrs. White had distributed a portion of the plan from that subdivision so the Board could see where they intended the driveway to be located.

The Board had discussion regarding this question. It was noted that since that time, a culvert had been installed along the frontage of the property on that road. It was also discussed that shared driveways can work when between family members, but that might not always be the case and could cause problems in the future. They recalled Mr. Blunt had put a large portion of his property into a conservation easement and did not know what the rules are for having a driveway on a conservation easement. They came to the consensus for Mrs. White to inform Mrs. Freeman 1) they would prefer the driveway to be located all within her property; 2) the culvert had been installed; 2) they recommend she contact whoever holds the conservation

easement to see if what they are proposing is allowed. The Town does not know what is allowed on conservation easements. Mrs. White will inform her of the Board's decision.

**Stumpfield Road**

Mrs. White informed the Board that the question they had inquiring if a business is operating on Stumpfield Road from last month had been taken care of. There will be no home office going in there..

**Town Report**

The Town Report is due on December 9. Mrs. White and Ms. LaBranche will work on this. Revisions to the Accessory Dwelling Unit Ordinance and the Home Occupation Ordinance, plus the number and types of applications will be included in this report..

**Adjournment**

**MOTION:** Dr. Marston **MOVED** the Planning Board adjourn; Mr. Bath seconded. The motion passed unanimously.

Mr. Cacciatore closed the meeting at 9:25 pm.

The next Planning Board meeting will be on December 15, 2016.

Respectfully submitted,

*Barbara White*

Planning Board Secretary

Joseph Cacciatore

Chairman

Minutes approved December 15, 2016