



PLANNING BOARD
TOWN OF EAST KINGSTON
New Hampshire

2017-2018
Joe Cacciatore, *Chairman*
Dr. Robert Marston, *Vice Chairman*

MINUTES
Regular Meeting 21 December 2017
7:00 pm

AGENDA:

- ◆ Call to Order
- ◆ **Public Hearing** - Application for Home Occupation - James Watkins, 130 Sanborn Road, East Kingston, NH (MBL 07-03-06) Jamco Excavators LLC, for a home office and storage of excavating machinery - EK PB HO/03

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, Josh Bath, Chris Delling, Bill Caswell, Ex-Officio Richard Poelart

Advisors Present: RPC Senior Planner Julie LaBranche, East Kingston Building Inspector John Moreau, Assistant Building Inspector Tom Welch, and Conservation Commission Chairman Dennis Quintal.

Board Business

Public Hearing - Application for Home Occupation - James Watkins, 130 Sanborn Road, East Kingston, NH (MBL 07-03-06) Jamco Excavators LLC, for a home office and storage of excavating machinery - EK PB HO/03

Chairman Joe Cacciatore opened the public hearing at 7:00 pm and read the public hearing notice. Mr. Cacciatore asked the applicant Mr. James Watkins to present his Home Occupation application to the Board. Mr. Watkins and his attorney Keri Marshall presented the Home Occupation proposal to establish a home office and storage of excavation equipment and vehicles for his business Jamco Excavators, LLC. Jamco is located in South Hampton, NH with 25-30 employees and a fleet of commercial construction equipment and vehicles at this location. He stated it is not his intent to move the entire business to his East Kingston property. He wants to establish a home-based office and store an undetermined number of business equipment and vehicles on his property, primarily in the garage. He stated there would not be daily truck traffic to and from his property.

Ms. Marshall explained that Mr. Watkins proposes to establish the same type of business operation previously undertaken by Mr. Rossi, the prior property owner, and that this use, an excavation and construction business, was a grandfathered nonconforming use which was established in 1969 and permitted as a Home Occupation since 1989. Ms. Marshall maintained that this nonconforming use follows with the land, not the property owner. Mr. Rossi's Home Occupation permit expired in June 2017. Mr. Watkins did not specify the number of pieces of commercial equipment or vehicles he intended to store on his property.

Ms. LaBranche asked Mr. Watkins and Ms. Marshall if they had knowledge of the number of pieces of business-related equipment and vehicles kept on the property previously by Mr. Rossi. Both replied they had no such information. A member of the audience, Caren Rossi, Mr. Rossi's daughter, offered that during full operation of his business her father kept 2 smaller dump trucks, 3 6-wheel dump trucks, a back hoe and excavator, a septic pumping truck most of which were stored in the large garage on the site. She estimated equipment and vehicles were moved to and from the site at approximately 20 trips per day. She explained that by 2011 her father had downsized his business keeping 8-10 pieces of equipment and vehicles on the site.

Chairman Cacciatore opened discussion from the Planning Board. Mr. Bath asked how much of the combined gross floor area of the home and accessory buildings would be used for the business and storage of equipment and vehicles, as Article XVI.C.7 limits use to 25% of the gross floor area including the home and accessory buildings. He noted that the application stated the gross floor area as 2,800 square feet. Ms. Marshall stated that the home office would occupy 144 square feet in the home and an undetermined area of the garage would be used for equipment and vehicle storage. Ms. LaBranche noted the importance of establishing how much gross floor area was used by Mr. Rossi in conducting his nonconforming use/business as the "baseline" as Mr. Watkins application stipulates that he proposes to continue the nonconforming use now that he owns the property.

Mr. Bath stated that the weight limit posted for Sanborn Road and Willow Road is 10 tons and asked if any equipment or vehicles would exceed this weight limit. Mr. Watkins replied that some equipment and vehicles would exceed this limit but also noted that when full home heating oil delivery trucks exceed this weight limit.

Mr. Caswell asked what time of day equipment and vehicles would be moved to and from the property, as the application states hours of business as 6:30 am to 5:00 pm Monday through Saturday, and asked if equipment and vehicle traffic would be steady during the hours of business. Mr. Watkins reiterated that he does not intend to bring his entire business to East Kingston and intends to maintain a residential atmosphere on the property as a home for himself and his family. He reported investing quite a sum of money already to improve the house and property.

Ms. Marshall noted that she received reports that Planning Board members had discussed and commented on this case, outside the public hearing, to members of the community and that that activity is not appropriate.

Mr. Caswell stated that the town's attorney should have been consulted for this case. Ms. Marshall asked what the Board's typical procedure was for requesting advice from town counsel or having them present for the public hearing. Ms. LaBranche stated that she did not seek town counsel's advice as there was not enough information in the application submitted to formulate relative legal questions.

Ms. LaBranche asked Mr. Watkins specifically how many pieces of commercial equipment and vehicles he intended to store on the property, for example 10 as Mr. Rossi had or more. Mr. Watkins stated he was not prepared to name a specific number and did not state a number on his application.

Mr. Moreau asked if there would be equipment and vehicle maintenance conducted on the property. Mr. Watkins stated that yes maintenance would occur when equipment or vehicles stored on the property at any given time needed repair. Maintenance would be performed in the existing shop located in the garage. Mr. Moreau asked if any fuel or other chemical would be stored on site. Mr. Watkins replied that no such materials would be stored on the property except for those needed for repairs.

Chairman Cacciatore asked if the Board had any other questions. Hearing none, he opened the public comment period. The following persons offered comment:

Mr. Cacciatore entered into the record a comment letter submitted by Peter and Katherine Datillo (sp?) expressing “strong opposition to the proposed office and heavy equipment parking and travel on Sanborn Road.”

Tracey Vandemere, 136 Sanborn Road – As a new property owner in town, she had not anticipated heavy truck traffic in her neighborhood and the traffic and safety issues with children in the neighborhood that might result. She has not observed other businesses having more than 10 trucks on their property.

Ron Vandemere, 136 Sanborn Road – He enjoys the rural peaceful nature of his neighborhood and has not observed commercial trucks on the Rossi property. It does not seem that Mr. Watkins answered the question about how many vehicles and type of equipment he intends to store on his property. He’s concerned about the number and frequency of heavy traffic causing damage to local roads. The property should be a residence not a business.

Tracey Vandemere asked if the hours of operation would be different than the 6:30am-5:00pm reported on the application. Mr. Watkins replied they would not be.

Mr. Bath noted that Home Occupations are permitted at any residence providing the use is accessory to the primary use as a residence.

Richard Henshaw, 66 Exeter Road – He asked that when the house was on the market, was it listed as a home business. Mr. Cacciatore stated that the property was a private sale and never listed on the MLS.

Nancy and John Grenier, 75 Sanborn Road – They have concerns about safety on the road, particularly animals that cross frequently, and can’t image heavy truck traffic through the neighborhood.

George Henshaw, 82 Little River Road – He spoke on behalf of his mother who is an abutting property owner. He stated that the Jamco website describes a variety of commercial services beyond excavation/construction such as snow removal, fuel and propane. He questioned how the nonconforming use would impact the neighborhood. He questioned why the number of vehicles and equipment to be stored on the site has not been determined or stated specifically by Mr. Watkins.

Caren Rossi, 38 West Mill Pond Road, Lee, NH – Her mother Anne Rossi would not have sold the property to Mr. Watkins if she thought he would “trash it”. In fact, since purchasing the property, Mr. Watkins has already invested quite a lot of money to improve it.

James Powers, 6 Partridge Lane – He questioned whether fuel would be stored in the workshop on site as he didn’t think this question was answered completely. He offered concerns how heavy truck traffic might impact the condition of local roads and who would pay to repair them if damaged by such use. He offered that the proposed use does not fit the town or comply with the Home Occupation ordinance.

Matt Gallant, 120 Sanborn Road – He owns a septic waste disposal business and keeps two tank trucks at his property. For 30 years, he observed that Mr. Rossi’s business and worked for him from 2000-2004. During that time, he estimated that Mr. Rossi kept about 15 pieces of equipment and vehicles on his property. He noted that there used to be only 4 houses on Sanborn Road where now there are 35 houses. As the former road agent for East Kingston, he believes businesses are an asset that benefit the town in that they often provide much need equipment for emergency response and repairs, plowing etc.

Wes Schuler, 76 Sanborn Road – He moved to East Kingston in 2004 to retire. He walks Sanborn Road daily and wants to keep the quiet nature of the neighborhood not have heavy truck traffic every day. He quoted the Home Occupation ordinance, Article XVI.C.2 which states the “Variation from the residential character is prohibited”. Because of the prior commercial use on the Rossi property, he believes a soil test is necessary to determine if any spills or leakage have occurred that could pollute the soil and groundwater, and referenced

Article XVI.C.5 which lists offending conditions that are not permitted. He believes heavy truck traffic is not consistent with the provisions of Article XVI.C. 6 regarding impacts to the condition, safety access or traffic of existing roads. There is also a railroad crossing on Sanborn Road that is in poor condition and difficult to navigate now.

Caren Rossi stated the well was tested before the property was sold and no pollutants were found.

Richard Henshaw, 66 Exeter Road – lived at 136 Sanborn Road for 31 years (moved last July) and during that time observed that Rossi had begun downscaling his business and reduced the number of vehicles kept on the property to 4-5 in the last few years. The property at 130 Sanborn Road is very visible from abutting properties.

Kevin Fry, 12 Forest Drive – He offered that there seems to be a legal issue [about the grandfathered nonconforming use] that needs a reasonable compromise. He reported observing that Rossi kept only a few vehicles on his property with little daily activity, some occasional noise.

Catherine Carlson, 56 Sanborn Road – She opposes the proposed use. She is concerned about the safety of walkers, cyclists and children with heavy traffic every day, and the size and number of heavy equipment moved to and from the property. She is concerned about heavy vehicles traveling over the railroad crossing.

Jan Smith, 129 Sanborn Road – Over the years, she has observed an increase in vehicle traffic with increase in homes constructed on Sanborn Road. She noted that Mr. Rossi provided many valuable services to the town and had no incidents on his property over the years that impacted people or animals. She supports Mr. Watkins application to have a home business.

Kathy Gonet, 132 Sanborn Road – She lived next to Mr. Rossi in 1998 and never had a problem resulting from his business activity although there was occasional vehicle noise. She believes property owners should be allowed to have a home business.

Mr. Marston asked Mr. Watkins what the weight of a dump truck loaded with sand is. They both agreed it would be about 35 tons.

Nathan Maher, 3 Robin Lane – He asked whether the town did annual inspection of home-based businesses and whether a Home Occupation permit could be revoked. Ms. LaBranche stated that she was not aware that the town conducted inspections of any kind for permitted home occupations, and that if the town was informed of any violation of a permitted home occupation that the Code Enforcement officer and Board of Selectmen would address the matter.

Caren Rossi offered that her father worked up to the day of his death and at that time she observed he stored 8-10 vehicles and equipment on his property.

Matt Gallant asked what use description is on Mr. Rossi's home occupation permit. Ms. Marshall offered that from 1989-2017 Mr. Rossi's permit was the same and did not include a use description. He questioned how the nature and scale of the Rossi business seems to have changed over the years, and asked when and how it was downscaled over the years, and how does the downscaling issue affect or would be applied to Mr. Watkin's application for a nonconforming use.

Ms. Marshall will provide older/original version of the Rossi's home occupation permit for the record.

Amanda Allen, 103 Willow Road – She stated that her home, where she's lived for 12 years, is diagonal from the intersection of Willow and Sanborn Roads. During this time, she observed a reduction in vehicle traffic from the Rossi business and always had good relations with Mr. Rossi.

Anne Rossi, 38 West Mill Pond Road, Lee, NH – She stated there was never a space on the home occupation application to describe what type of equipment or business activity was being permitted.

Mark Brinkerhoff, 32 Burnt Swamp Road – He is currently the town’s road agent. He stated that Mr. Rossi had a home-based business permitted as a home occupation since 1989. He observed that in 2004-2005 due to the economic downturn, many businesses downscaled their operations.

Matt Gallant stated in 2003/2004 he submitted a Home Occupation application to the Planning Board for review and was granted a permit for his septic waste disposal business.

Chairman Cacciatore asked the number of employees expected on site for the business. Mr. Watkins replied himself and 2 others (nonresidents) for a total of 3. Having only 3 staff on site would essentially limit the number of vehicle trips each day. Mr. Watkins agreed that not all vehicles would be active at any time. Ms. LaBranche commented it would depend on the needs on any given day what equipment would be used.

James Watkins, 175 Garland Road, Rye, NH – As the applicant’s father, he offered factual information about Jamco’s business operations. He stated that most of the trucks travelling to and from 130 Sanborn Road would be empty, and many would remain on site with not every vehicle in service on any particular day. He offered that the condition of Sanborn Road is a result of it not having a proper foundational subbase. It is underlain by clay which swells and contracts during freeze/thaw events over the years which has weakened it overall causing buckling and pavement breakage at the margins.

Hearing no additional public comment, Chairman Cacciatore moved the discussion to the deliberative phase and asked the Planning Board members for their opinion about whether there was adequate information to make a determination on the application. Mr. Bath stated that acceptable parameters need to set for the proposed home-based grandfathered commercial use based on the scale of the use and a maximum number of equipment and vehicles comparable to what Mr. Rossi had when he owned the property and operated his (grandfathered nonconforming use) business. He hoped the Board and Mr. Watkins could agree upon a reasonable compromise for number of vehicles and equipment.

Ms. LaBranche reiterated her recommendation that the Board seek legal advice about how to establish the “baseline” by which to determine the nature and scale of the preexisting grandfathered nonconforming use on the property. She added that once the baseline is established, the next step may be that the Board request that Mr. Watkins agree to a specific list of equipment and vehicles he will store at his property. She asked Mr. Watkins why there was need to store equipment and vehicles on his residential property if he had such a facility in South Hampton. Ms. Marshall stated that the grandfathered non-conforming use entitles Mr. Watkins to store commercial equipment and vehicles on the property. Ms. LaBranche read Article XVI.H. which refers to nonconforming uses and that “any noncompliance in effect as of January 6, 1989 shall not increase”. The Board unanimously concluded that guidance from the town’s attorney was needed to proceed with the application and determine a “baseline” for the proposed home-based grandfathered use. Ms. Marshall asked that there be transparency with respect to the Boards legal advice with her client and the public given there’s already been what she reported as a “fair amount of discussion prior to this meeting which is not appropriate”. Ms. LaBranche replied that it is not clear whether such legal correspondence would be confidential or not but that she and the town would do their best to coordinate and, if appropriate, share the legal response when received. Ms. Marshall is concerned that the previously scheduled public hearing did not take place because of an error in the public notice and hopes the Board will move forward with the application in a timely manner.

Mr. Caswell asked about how Mr. Watkins would manage his staff and their access to and keys for the equipment and vehicles stored on the property. Mr. Watkins stated that certain staff have access based on their job classification which determine what equipment and vehicles they use and operate, and some keys would be open access while others are in his possession. Mr. Caswell asked how closely he’d manage staff as

they come and go from the property. Mr. Watkins replied it's his business and he knows where his people are.

Ms. LaBranche asked Mr. Watkins if continuing the hearing until January to allow the Board to do some fact-finding and obtain legal advice would pose any problems given that he is not currently living at the property. Mr. Watkins stated that he had made arrangement for a salt and plowing contractor in town to store a vehicle at his property. Ms. LaBranche asked a follow up question to clarify whether this activity - storage of a commercial vehicle on Mr. Watkins property – would be a commercial use absent the home occupation permit to allow a business use. Ms. Marshall questioned how storage of a commercial or town vehicle would be prohibited in this case, and it would be no different than parking her car or truck at the property. Mr. Caswell asked if that would constitute a business arrangement. Ms. Marshall replied that a business arrangement implies compensation which there will not be. There was no further discussion about this item.

Chairman Cacciatore asked if the Board any further questions or discussion and noted that a lot of new information was provided at the hearing. Mr. Bath stated he didn't think the Board was ready to vote on the application and, if asked to do so, the applicant may be not be happy with the outcome. He offered that the Board consider a motion for continuation in order to get more information.

MOTION: Mr. Bath **MOVED** to continue allow the Planning Board to request advice and get more information from the town's attorney about the application. Mr. Caswell seconded. The motion passed unanimously.

MOTION: Mr. Bath **MOVED** to continue the public hearing for the Watkins Home Occupation application to January 18, 2018. Mr. Bath seconded. The motion passed unanimously.

Other Business

Ms. LaBranche updated the Board on follow-up on the Masone property site visit and draft letter which she'll provide for the January meeting. Ms. LaBranche advised the Board not to discuss the Watkins case with anyone. If asked, please reply that "you can't discuss or comment on the case". Mr. Delling asked if the Board needed to review the Home Occupation ordinance to clarify or change it to be more concise. Ms. LaBranche addressed the Board with a recommendation, in light of deliberations and public comment on the current Home Occupation application, that the Board revisit the Home Occupation ordinance in 2018 to determine whether amendments are necessary. Mr. Caswell replied that we need to clarify what the nonconforming use is based upon, not just consideration of square footage of space a use occupies.

Mr. Bath and Mr. Caswell asked when the Master Plan Subcommittee would meet next. Ms. LaBranche stated she would schedule a meeting in January 2018.

Adjournment

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

Dr. Marston closed the meeting at 9:15 pm.

The next Planning Board meeting will be on January 18, 2018 at 7:00pm at a location to be determined pending availability of the East Kingston Elementary School.

Respectfully submitted,

Julie LaBranche

Joseph Cacciatore

Circuit Rider Planner

Chairman

Minutes approved February 15, 2018