

**TOWN OF EPPING, NEW HAMPSHIRE
PLANNING BOARD MEETING**

THURSDAY January 8, 2009

PRESENT – Greg Tillman, Mike Morasco, Tom Dwyer, Steve Colby; Planner Clay Mitchell; Planning Board Secretary Phyllis McDonough.

CALL TO ORDER – Chairman Tillman called the meeting to order at 6:05 p.m.

DISCUSSION: Weekend brunch hours
Owner/Developer: David & Maureen Kennedy (Holy Grail).
Location: Church Street/64 Main Street **Map 012 – Lot 319**

Maureen Kennedy came before the Board to request extending hours at the Holy Grail. Maureen Kennedy asked about extending the hours on certain evenings such as holidays for an extra hour and on weekends to be able to open at 9:00 am for brunches and to have the same hours to be open as the weekends for holidays.

Maureen explained their hours of operation at this time are Tuesday, Wednesday, Sunday 11:30am to 11:00pm, with Thursday, Friday and Saturday open until midnight.

Chairman Tillman stated he did not see a problem with the request and noted he felt this calls for a public hearing.

Mitchell explained he received a site plan from an abutter to the Holy Grail, and advised that the Kennedy's reconsider the access with the abutter which would give the Holy Grail extra parking. Mitchell explained the proposed abutting business would be open during the day whereas the parking for the Holy Grail could be used during the evening. Mitchell informed Maureen that this abutter expressed he didn't feel the Kennedy's were in favor this idea. Maureen Kennedy explained she thought it was a good idea and felt it could have just been miscommunication. She informed the Board she would discuss this with Mr. Kennedy and they would get together with the abutter to discuss this issue.

DISCUSSION ZONING AMENDMENTS – Zoning amendments were discussed. A public hearing will be held on January 20, 2009 (attachment).

MINUTES OF OCTOBER 23, 2008 FOR APPROVAL – Morasco moved, Dwyer seconded the motion to approve the minutes as amended. The motion carried unanimously.

MINUTES OF NOVEMBER 13, 2008 FOR APPROVAL – Morasco moved, Colby seconded the motion to approve the minutes as amended. The motion carried 3 – to – 1 with Dwyer abstaining.

MINUTES OF DECEMBER 17, 2008 FOR APPROVAL – The minutes of December 17, 2008 will be reviewed at the January 20th meeting.

GATCHELL BILL FOR CORE2 WORK FOR APPROVAL - \$6,700.00 – Dwyer moved, Colby

seconded the motion to approve the payment of \$6,700. The motion carried unanimously.

CORE 2 DETAIL (OFFICER RICHARD NEWMAN) FOR APPROVAL - \$137.50 – Dwyer moved, Colby seconded the motion to approve the payment of \$137.50. The motion carried unanimously.

CORE2 KAZ'S FINE LINES BILL FOR APPROVAL - \$690.00 – Dwyer moved, Colby seconded the motion to approve the payment of \$690.00. The motion carried unanimously.

COMMENTS BY THE BOARD – Chairman Tillman expressed his opinion on a decision made by the Board of Selectmen to put a warrant on the Town ballot for the people to vote for a “forensic audit” to be done concerning the Core2 project. He stated, although he has no problem with the account being audited, he felt the Planning Board has done their best to do a project they felt would benefit the whole Town. He stated that the Selectmen should take a longer view to work with other Boards to get things done, to look out for the Town’s reputation, and to look out for the best interest of the Town. Chairman Tillman stated with this he is disappointed in the Selectmen’s approach to this project.

Dwyer stated he did not see the discussion from the Board of Selectmen’s meeting and asked for further explanation. Chairman Tillman explained he was not sure of the figure for the “forensic audit” but thought it was approximately \$10,000 to \$20,000. Dwyer stated that there is still work to be done on this project, such as the top coat in the parking lot, and the granite curbing on Water Street. Dwyer spoke about the energy deficiencies in the Town Hall that was all taken care of, the parking, and reminded the Board that the Town authorized the purchase of the land. Dwyer stated he is very disappointed in the Selectmen for their decision to put before the town to do a “forensic audit.” Dwyer stated that amount to be spent on this audit is half of what is needed for a backhoe for the Town.

Morasco asked Mitchell about the binder he put together for the Selectmen. Mitchell explained it is a 320 page document. Morasco asked if this document is black and white and asked if anyone wanted to sit and read the document that everything is spelled out. Mitchell stated that is correct. Mitchell explained the Board authorized expenses not to exceed an amount, and stated there were a couple of things not approved in advance that the Board went back and looked at. Morasco asked Mitchell if there is a penny not accounted for. Mitchell answered “no.” Morasco asked if the Selectmen each have a copy of the report. Mitchell answered “yes.”

Chairman Tillman noted, “No good deed goes unpunished.”

ADJOURNMENT – The meeting adjourned at 7:20 P.M.

Respectfully Submitted,

Phyllis McDonough
Planning Board Secretary

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attachment

AMENDMENT 1:

This proposed amendment will recognize the difference between the sales of small recreational vehicles and standard automotive dealerships. Recreational vehicle sales will be defined as those sales activities that are exclusively indoor uses and permitted in new districts in town. Changes will be made to Article II, VI, and XII to effectuate this change. Automotive dealerships and Recreational Vehicle Sales Establishments with large outdoor displays will be limited to other districts as already provided in the ordinance.

Article XII

RECREATIONAL VEHICLE SALES ESTABLISHMENT: a retail vehicle (including ~~but~~ and limited to boats, snow mobiles, motorcycles, *off highway recreational vehicles (OHRV)*, campers, and camper trailers) dealership that is ~~primarily~~ *exclusively* housed in a structure and characterized by a mixture of secondary supporting uses; however, the principal use of the site shall be the marketing and display of new vehicles, whether by sale, rental, lease or other commercial or financial means. *Primary and Secondary supporting uses may include an inventory of used vehicles for sale or lease on-site and on-site facilities for the repair and service of vehicles previously sold, rented, or leased by the dealership as defined under "Service Station" and shall be carried out on the site within the structure, no outdoor storage, display or other activity shall be permitted under this definition without specific site plan approval for limited areas and activities.* No abandoned vehicles shall be stored on the premises. *Recreational vehicle sales establishments with outdoor storage and/or activities shall be considered "Auto Dealerships" as defined in this ordinance.*

Article II

4. CENTRAL BUSINESS ZONE

(...)

4.3. PERMITTED USES:

(...)

17. *Recreational Vehicle Sales Establishment.*

Article VI

(...)

2. Auto Dealerships ~~and Recreational Vehicle Sales Establishments.~~

(...)

(1) No new facility of ~~either type~~ shall be located within 2,000 feet of an existing facility of ~~either type~~.

AMENDMENT 2:

This change will remove the requirement that single family detached dwellings have garages in open space developments. Townhouses and multifamily units will still require garages.

Article XV

(...)

15.14 General Requirements

15.14.1 Uses – Only residential uses shall be permitted in Open Space Developments.

a) Single-family detached homes are permitted.

b) Townhouse units shall be permitted up to a unit count of 4 per building or structure. These are units must structurally joined and share walls with no yard between units. The walls shall meet all code requirements for firewalls. (Amended Town Meeting 2008).

c) Manufactured housing units as defined in RSA 674:31 are not permitted.

(...)

15.14.6 Parking – Off-street parking shall be provided for two (2) cars per unit.

AMENDMENT 3:

This change will permit multi-family housing in the Industrial-Commercial district where appropriate in accordance with a Conditional Use Permit. The purpose of this amendment is to provide an opportunity to develop new housing as a secondary use to Commercial/Industrial uses in areas where conflicts can be minimized as part of a master planned facility where water and sewer are present or planned for development.

Article III**SCHEDULE II****ZONING SCHEDULE OF USES FOR THE
INDUSTRIAL/COMMERCIAL ZONE.****INDUSTRIAL:****PERMITTED PRINCIPAL USES:**

(...)

PERMITTED ACCESSORY USES:

(...)

5. Multi-family Housing as a part of a Flexible Use Development by Conditional Use Permit and in accordance with the requirements of Article VI.

COMMERCIAL:**PERMITTED USES:**

(...)

PERMITTED ACCESSORY USES:

1. Customary Accessory Uses Incidental to a Permitted Use.

2. Expansion of a non-conforming lot.

3. Multi-family Housing as a part of a Flexible Use Development by Conditional Use Permit and in accordance with the requirements of Article VI.

3.9 FLEXIBLE USE DEVELOPMENT (Adopted 3/10/98)

Pursuant to RSA 674:21, the planning board is hereby authorized to grant a Conditional Use Permit to allow for a flexible use development in accordance with the restrictions and requirements of this section. A flexible use development may not permit the establishment of a use specifically prohibited by this section.

A. Purpose - This section is to provide a flexible method to permit commercial uses that are consistent with the intent of the underlying zoning district that are not specifically enumerated in the permitted use section. All developments seeking a conditional use permit shall be administered by the Planning Board to insure that flexible use development opportunities do not adversely impact neighboring properties, the citizens of Epping, or other business opportunities.

1. Conditional Use Permits. All Flexible Use Developments shall obtain a conditional use permit from the Planning Board. The conditional use permit shall clearly set forth all conditions of approval and shall clearly list all plans, drawings and other submittals that are part of the approved use. Everything shown or otherwise indicated on a plan or

submittal that is listed on the conditional use permit shall be considered to be a condition of approval.

2. Application Procedure. Applications for conditional use permits for a flexible use development shall be made in accordance with the procedures set forth in the Site Plan Review Regulations of the Planning Board. Applications shall comply with all requirements of the Site Plan Review Regulations and Subdivision Regulations, as applicable.

3. Approval of Applications. A conditional use permit shall be issued only if a flexible use development complies with all of the requirements of this section. The Planning Board may condition its approval of planned unit developments on reasonable conditions necessary to accomplish the objectives of this section or of the Epping Master Plan, Zoning Ordinance, or any other federal, state, town resolution, regulation, or law, including a reduction in allowed density, or reasonable increase in required frontage, setbacks, or any other requirement if necessary to accomplish said objectives.

4. General. The flexible use development provisions of this ordinance provide applicants with an alternative development approach intended to promote flexibility and innovation in land planning. Within this context, the regulations that are established are intended to be a minimum consideration of allowable impacts. Each tract of land possesses different, unique development characteristics and limitations, and the use allowed on any particular tract will be a function of innovative land planning and building design interacting with the special characteristics and limitations of the site.

5. Thus these provisions shall not be construed as establishing any legal right to a given use. Those who wish to pursue their "rights" to a certain use of land should consider developing their land with the traditional, permitted use approaches, or through the variance procedure as provided for by New Hampshire law.

6. Standards for approval - All standards below must be met or impacts mitigated to the satisfaction of the Planning Board prior to the granting of a Conditional Use Permit.

a. The permit is in the public interest.

b. There will be no greater diminution of neighboring property values than would be created under any other use permitted in the zone by 1.3.

c. That there are no existing violation of the Epping zoning ordinance on the subject property.

d. That the character of the area shall not be adversely affected.

i. Architecture

ii. Transportation

iii. Scale of coverage

iv. Scale of building size

v. Consistency of uses

e. That granting the permit will not result in undue municipal expense.

f. That the proposed use will be developed in a manner compatible with the spirit and intent of the ordinance.

g. That the capacity of existing or planned community facilities and services (including streets and highways) will not be adversely impacted.

h. That the general welfare of the Town will be protected.

i. That the following impacts have been mitigated to the extent practical:

i. Noise

ii. Light

iii. Transportation

iv. Visual effects

j. Landscaped or other appropriate buffers of sufficient opacity and materials shall be required if deemed reasonably necessary for the welfare of neighboring properties or the Town.

7. Additional provisions for Accessory Multi-family in the Industrial-Commercial District. The purpose of these provisions is to meet the obligations of the Town of Epping to provide a reasonable and realistic opportunity for workforce housing that is not only affordable to build but also stable in its costs to own and operate with respect to energy expenses and supporting facilities that may not be located within immediate proximity of these developments.

a. The developer shall submit evidence and a written report to the Planning Board showing that the proposed units will assist the Town of Epping in insuring compliance with the mandate of RSA 674:58-61. The report shall provide evidence that the conditional use permit has provided a reasonable and realistic opportunity for the development of workforce housing, including rental and multi-family housing.

b. All structures shall be in compliance with the provisions of Article 22 as if the facility were a commercial building.

c. Shared facilities, including but not limited to parking, green space, and recreation facilities shall be required and constructed on the site.

d. No more than 15% of the buildable land on any parcel, or group of parcels under common ownership, shall be committed to multi-family uses, structures, or facilities. No more than 10% of the entire existing dwelling unit count in the Town of Epping as determined by the most recent published estimates from the OEP may be approved under this provision.

e. Public water and sewer shall be available to the site.

f. All proposed developments shall be constructed with adequate facilities to address concerns related to off site impacts such as noise, visual impacts, odors, etc.

g. Pedestrian access networks shall be constructed within the development and shall connect with current and future planned networks and developments off site.

h. The Planning Board may consider existing and reasonable future uses and impacts resulting from these uses when considering the appropriateness of residential developments. Mitigation for such impacts may be considered by the Board but not all locations are suitable for multi-family developments.

8. Any Conditional Use Permit shall expire if: (1) the use is not in place within one year of

the date of issuance of such permit; or, (2) if the use is discontinued for any reason for more than two (2) years. In such cases, a new application for a Conditional Use Permit must be completed.

AMENDMENT 4:

This change will adjust the boundaries between the High Density Residential District and the Residential District. The land added is “backland” that is isolated from road access through parcels or areas of the same parcel that already partially zoned High Density Residential. Several parcels are already developed with a high density of development and this change promotes flexible use of these properties and increased use of the water and sewer facilities and a diversity of housing types. The proposed changes are shown below and will be reflected in textual changes in the ordinance:

AMENDMENT 5:

This change will limit drive through restaurants in the Central Business Zone. This change will permit restaurants of all types but will prohibit drive-through facilities to protect from unreasonable increased traffic impacts and preserve pedestrian focus for the core business district in Town.

Article II**4. CENTRAL BUSINESS ZONE**

4.0. **PURPOSE:** To provide for the continuation of establishments offering retail sales and service.

(...)

4.3. **PERMITTED USES:**

(...)

7. Restaurants (*drive-through windows shall not be permitted in the Central Business Zone for restaurants that do not have direct access to NH Route 125*).

AMENDMENT 6:

This change will authorize the Planning Board to set hours of operation and construction for any commercial use in the Town of Epping to protect abutting properties and uses from undue impact resulting from development and use.

ARTICLE 6**SUPPLEMENTARY REGULATIONS FOR CERTAIN USES****6.15 Hours of Operation and Construction**

As part of any site plan approval required under the regulations of the Planning Board and in accordance with RSA 674:43, the Planning Board shall be authorized to adopt regulations to limit the hours of operation for any commercial use developed in the Town of Epping and the hours of construction for the development of approved site plans in order to protect the health safety and welfare of abutting persons and preserve the quiet enjoyment of land.

In adopting these regulations, the Board shall specifically consider the zone where the site is located and the site's location with respect to abutting land and land uses and may adopt default hours.

AMENDMENT 7:

This change will authorize the Planning Board to permit and regulate residential wind turbines. In the past year, the NH State legislature passed a law that required towns to permit wind turbines for residential uses. This ordinance fulfills the requirements of that law and places permissible limitations on height, noise and setbacks as provided for by the state law. See RSA 674:62 – 66.

Article XXIII

Small Wind Energy Systems

23.1 Purpose:

This renewable energy systems ordinance is enacted in accordance with RSA 674:17(I)(j), 674:62-66, and the purposes outlined in RSA 672:1-III-a as amended and effective July 11, 2009. The purpose of this ordinance is to accommodate renewable energy systems and distributed generation resources in appropriate locations, while protecting the public's health, safety and welfare. The Town of Epping intends to facilitate the State and National goals of developing clean, safe, renewable energy resources in accordance with the enumerated policies of NH RSA 374-G and 362-F that include national security and economic and environmental sustainability. In addition, this ordinance provides a permitting process for wind energy systems to ensure compliance with the provisions of the requirements and standards established herein in accordance with treatment under state law referenced above and in accordance with the conditional use process as authorized by NH RSA 674:21.

23.2 Definitions:

Meteorological tower (met tower). Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

Modification. Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

Small wind energy system. A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

System height. The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.

Tower. The monopole, guyed monopole or lattice structure that supports a wind generator.

Tower height. The height above grade of the fixed portion of the tower, excluding the wind generator.

Wind generator. The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

23.3 Procedure for Review:

1. Building Permit: Wind energy systems that are 75 feet or less in height shall only require a building permit for installation.

Conditional Use Permit: Wind energy systems that exceed 75 feet but are less than 120 feet in height are subject to conditional use permit approval by the Planning Board in all permitted zoning districts. The conditional use permit shall clearly set forth all conditions of approval and shall list all plans, drawings and other submittals that are part of the approved use. Everything shown or otherwise indicated on a plan or submittal that is listed on the conditional use permit shall be considered to be a condition of approval.

2. Permitted Zoning Districts: Wind energy systems, and where applicable met towers, shall be permitted by conditional use in all zones and under the application requirements specified under Section 23.4:
3. Met Towers: A met tower, used solely for collecting wind resource data that does not produce any distributable electrical power and will stand no higher than 120 feet high may be erected within wind energy system permitted zones upon obtaining a building permit from the building inspector and shall be permitted on a temporary basis not to exceed 2 years, unless extended for one additional year, from the date the building permit was issued. In the event the submitted building permit appears to exceed the definition of a met tower, the building inspector may request the applicant obtain a conditional permit from the Planning Board. Upon such action, the building inspector must provide a description to the Planning Board identifying why the proposed met tower exceeds the provided definition.
4. Application: All applications for a wind energy system submitted to the Town of Epping for a building permit or for a conditional use permit shall contain the information specified below:
 - A. Property lines and physical dimensions of the applicant's property (a survey is not required).

- B. Location, dimensions, and types of existing major structures on the property.
- C. Location of the proposed wind energy system, foundations, guy anchors and associated equipment.
- D. Tower foundation blueprints or drawings.
- E. Tower blueprints or drawings.
- F. Setback requirements as outlined in this ordinance.
- G. The right-of-way of any public road that is contiguous with the property.
- H. Any overhead utility lines.
- I. Wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
- J. Sound level information provided by the wind generator manufacturer or qualified engineer.
- K. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the applicable building code for the Town of Epping.
- L. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.

5. Abutter and Regional Notification: In accordance with RSA 674:66, the Town shall notify all abutters and the local governing body by certified mail upon application submittal to the Town for a conditional use permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for a building for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV.

23.4 Standards:

1. The planning board or building inspector shall evaluate the application for compliance with the following standards;
 - a. Setbacks: The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

Minimum Setback Requirements			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads

0	1.5	1.1	1.5
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i) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.

ii) Guy wires used to support the tower are exempt from the small wind energy system setback requirements.

b. Tower: The maximum tower height shall be limited by operation of Section 23.3(1).

c. Sound Level: The small wind energy system shall not exceed 60 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.

d. Signs: All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs, which shall not exceed 3 square feet.

e. Code Compliance: The small wind energy system shall comply with all applicable sections of the Town of Epping Building Code.

f. Aviation: The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.

g. Visual Impacts: It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.

i) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment.

ii) The color of the small wind energy system shall be a non-reflective, unobtrusive color that blends in with the surrounding

environment. Approved colors include but are not limited to white, off-white or gray.

- iii) A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.

h) Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

23.5 Abandonment:

1. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.

2. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. "Physically remove" shall include, but not be limited to:

a. Removal of the wind generator and tower and related above-grade structures.

b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.

23.6 Violation:

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance.

23.7 Penalties:

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties in accordance with New Hampshire law.