

**TOWN OF EPSOM
PLANNING BOARD MEETING
Epsom Fire Station, 1714 Dover Rd, Epsom, NH
January 24, 2024, 6:30 PM**

PRESENT

Kathy DesRoches, Chair
Bob McKechnie, Vice Chair
Cheryl Gilpatrick, Board of Selectmen Representative
David Goulet, Member
Betsy Bosiak, Member
Dan McGuire, Member
Sean Heichlinger, Member

ALSO PRESENT

Jennifer Riel, Recording Secretary
Laura Spector-Morgan, Esq., Town Counsel
Jason Johnson, resident
Rob Topik, resident
Patricia Rhodes, resident
Steven Rhodes, resident
Meadow Wysocki, resident
Virginia Drew, resident
Bill Acheson, resident
Lisa Acheson, resident

CALL TO ORDER

Chair DesRoches called the meeting to order at 6:36 PM.

AGENDA REVIEW

Chair DesRoches made a correction to the agenda.

MOTION: To accept the agenda as amended. Motion by Ms. Gilpatrick. Second by Mr. McKechnie. Motion passed unanimously.

APPROVAL OF MINUTES

January 10, 2024 – Edits were made. **MOTION: To approve the minutes as amended. Motion by Ms. Gilpatrick. Second by Mr. McGuire. Motion passed 5-0-2.**

PUBLIC HEARING -Proposed Zoning Changes 2024

The Board discussed the proposed amendment for Home Occupations. Chair DesRoches noted the public input portion of the hearing was closed at the last public hearing and the Board agreed to continue deliberations to this meeting.

Vice Chair McKechnie stated there was a lot of back and forth in considering the proposed changes; he stated some people become passionate about certain topics and he wants everyone to

be ensured the Board listens to the public. He stated the definition has been in place for fifty years and everyone seems to agree changes and updates are needed but right now they need to step back to allow time for more work on it. He suggested they discuss whether the Zoning Compliance Officer (ZCO) be given the authority to grant permits for minor or major home occupation applications. Vice Chair McKechnie stated a Technical Review Committee (TRC) is in the process of being formed and suggested this would be a good committee in making a decision between major and minor home occupations. He suggested postponing this zoning change. Mr. Goulet stated he agrees with postponing the amendment to this ordinance; he has researched other towns for these types of zoning ordinances and agrees a TRC would be good for additional input; he also suggested getting the public more involved earlier in the process. He stated the level of emotions have come to the point where there can't be rational decisions. Ms. Bosiak stated she agrees with Mr. Goulet and Vice Chair McKechnie. She stated she believes there are other things they didn't explore further enough and agrees with postponing.

Mr. McGuire stated he is opposed to postponing this amendment; he stated the current ordinance is out of date and obsolete; he stated the complaints against the proposed amendments are purely hypothetical. He stated the Town of Pembroke has experience with this type of ordinance and have not experienced any of the problems suggested. Mr. Heichlinger stated he agrees with Mr. McGuire and believes there need to be updates; he stated if it doesn't work, it can be tweaked.

Ms. Gilpatrick stated she believes they should give further consideration to the public input made at the last public hearing; she stated she also spoke with the ZCO about the proposed amendment. His biggest concern is that the ordinance would be subjective and would like to see more refined definitions for making determinations; he doesn't receive a lot of inquiries for home occupations and doesn't believe it will over-burden his position.

MOTION: To table the proposed Zoning Ordinance amendment for Home Occupations. Motion by Mr. Goulet. Second by Ms. Bosiak. Motion passed, 5-2-0.

Chair DesRoches stated there are two proposed zoning amendments, Cluster Developments and Workforce Housing; the Board discussed the proposed amendments with Town Counsel, who has advised the amendments could be problematic and advised they do not proceed with these proposed amendments.

MOTION: To not move forward with the proposed amendments to the Zoning Ordinance regarding Cluster Development. Motion by Mr. Heichlinger. Second by Mr. Goulet. Motion passed unanimously.

Chair DesRoches stated Town Counsel has advised the proposed amendment for Workforce Housing could be problematic. She stated if there is no Workforce Housing Ordinance, it defaults to the Elderly Housing Ordinance. Ms. Gilpatrick noted the suggestions from Town Counsel is that the proposed amendment is too restrictive, but the intent is to be less restrictive.

Mr. McGuire stated he disagrees with the suggestions from Town Counsel; he stated comparisons are made to multi-family housing, but workforce and elderly housing are different. He is not opposed to postponing the amendment.

MOTION: To not move forward with the proposed amendments to the Zoning Ordinance regarding Workforce Housing. Motion by Mr. Heichlinger. Second by Mr. Goulet. Motion passed unanimously.

Chair DesRoches gave an outline of the public hearing process for the Citizen Petition warrant articles. She stated the amendments will be placed on the ballot as submitted and no changes can be made. She stated the presenter will be given five minutes to present the proposed amendment then the hearing will be opened to the public for input for three minutes.

Chair DesRoches opened the public hearing for Amendment A at 7:11 PM.

Rob Topik, resident, presented Amendment A:

Are you in favor of Amendment # __ to the Epsom Zoning Ordinance, as proposed by an Epsom Citizen , to add gun dealers as a restricted use in a Residential/Agricultural zone; to also add gun dealers to Article II.C, Table of Uses, as not permitted in Residential/Agricultural Zone (R/A) and to add gun dealers as permitted use in Residential/Commercial Zone (R/C) and Residential/Light Commercial Zone (RLC)?

Mr. Topik stated Mr. Keeler's amendment is similar to an amendment he presented; he stated it should have said "permitted with Special Exception".

Stephen Rhodes, resident, stated there have been home-based Federal Firearms License (FFL) holders in Epsom for more than a decade and questioned why it is now being redefined.

Mr. Topik stated the late Peter Muse, a resident in Town, had an FFL and while he has heard there are other license holders, Mr. Muse is the only one he knows for sure; he stated Mr. Muse stopped selling to anyone other than military or police because of problems.

Jason Johnson, resident, asked if Mr. Topik is aware of RSA 159:26 which is a State law that restricts towns and cities from making any sort of ordinance or changes that apply differently from firearms businesses to other businesses. He stated he doesn't see how this amendment would be legally enforceable. Mr. Topik stated he disagrees with that interpretation.

Chair DesRoches closed the hearing to input from the public at 7:18 PM.

Mr. McGuire stated he researched the history of RSA 159 and the purpose and intent behind it. He stated he also spoke with the sponsor of the statute and confirmed that only the federal and state governments should be regulating firearms; towns and cities can regulate characteristics of a business but can't treat a gun business as a unique and separate kind of business. McGuire stated he doesn't believe this ordinance would be enforceable.

Ms. Gilpatrick stated she agrees with the statute, and that it would be difficult to restrict a gun or firearms dealer as a use; she stated if a person is a licensed dealer and they want to live in a residential agricultural area, but the business is located in a commercial area, this amendment implies the person can't live in that zone. She agrees it would be difficult to enforce.

MOTION: To not recommend proposed Amendment A. Motion by Mr. Heichlinger. Second by Mr. Goulet. Motion passed, 6-1-0.

Chair DesRoches opened the public hearing for proposed Amendment B at 7:21 PM.

Rob Topik, resident, presented proposed Amendment B:

Are you in favor of the adoption of Amendment # __ to the Zoning Ordinance as proposed by citizen petition as follows: To add a definition of Federal Firearms Licensee as any person, firm or corporation engaged in the business, as defined in 18 U.S.C. 921, of selling, importing, manufacturing, or dealing in firearms and having a license as an importer, manufacturer or dealer issued by the federal government?

Mr. Topik stated the RSA was not drafted well; he stated this is just a definition for what a licensee is and applies to the next amendments.

Chair DesRoches opened the hearing to input from the public at 7:26 PM.

Mr. Rhodes asked why other definitions aren't being revised and only the ones related to firearms. Mr. Topik stated he doesn't want Mr. Rhodes to be a licensed firearms dealer down the road from him.

Chair DesRoches closed the hearing to the public at 7:28 PM.

Ms. Gilpatrick stated she doesn't believe adding this definition would have relevance within the ordinance.

MOTION: To not recommend proposed Amendment B. Motion by Mr. Heichlinger. Second by Ms. Bosiak. Motion passed, 6-1-0.

Chair DesRoches opened the public hearing for Amendment C at 7:29 PM.

Mr. Topik presented proposed Amendment C:

Are you in favor of the adoption of Amendment # __ to the Zoning Ordinance as proposed by citizen petition as follows: To add a definition of Firearms Dealer as a building or establishment used by a Federal Firearms Licensee for the business of wholesale and retail firearms sales, gunsmithing, and as the place for merchandise to be transferred into the hands of end-users after any required background check, including the merchandise which is purchased on location or off-site from the licensee, as well as shipped in for local transfers from sales by other licensed manufacturers, wholesalers, and dealers?

Mr. Topik stated this amendment is for a definition for what he is trying to regulate; he stated the FFL defers to local zoning as do the state statutes. He stated the RSA does not restrict towns from regulating the location of businesses.

Chair DesRoches opened the hearing to the public at 7:32 PM.

Patricia Rhodes, resident, stated she doesn't see why they are wasting time on this; the State statute provides the regulations regarding this.

Chair DesRoches closed the hearing to input from the public at 7:33 PM.

Ms. Gilpatrick pointed out that in the definition includes "building and establishment" but the Alcohol, Tobacco and Firearms (ATF) defines a dealer as any person engaged in the business of firearms and it is not a building but a person; she stated this definition doesn't define what a dealer is as it's a person not a building.

MOTION: To not recommend proposed Amendment C. Motion by Mr. Heichlinger. Second by Ms. Bosiak. Motion passed, 6-1-0.

Chair DesRoches opened the public hearing for Amendment D at 7:35 PM.

Mr. Topik presented proposed Amendment D:

Are you in favor of the adoption of Amendment # __ to the Zoning Ordinance as proposed by citizen petition as follows: To add a definition of Firearms Manufacturer as a building or establishment used by a Federal Firearms Licensee for the business of both a Firearms Dealer as well as a manufacturer of federally regulated firearms and/or firearms components by means of using a 3-D printer or otherwise?

Mr. Topik stated any person, firm or corporation is an establishment and a building could be a house.

Chair DesRoches opened the hearing to the public at 7:36 PM.

Mr. Johnson stated producing your own firearms is perfectly legal; they can't sell it, but they can retain it; he stated it could happen anywhere in any home, in any neighborhood.

Mr. Topik stated anybody can sell a firearm from their collection and that doesn't make them a dealer but the premise is to separate residential from commercial use and what Mr. Johnson said is accurate but only to a point.

Mr. Rhodes stated he has never seen anyone trying to sell 3D printed firearms as it's just not safe.

Chair DesRoches closed the hearing to input from the public at 7:39 PM.

MOTION: To not recommend proposed Amendment D. Motion by Mr. Heichlinger. Second by Ms. Bosiak. Motion passed, 6-1-0.

Chair DesRoches opened the public hearing for Amendment E at 7:40 PM.

Mr. Topik presented proposed Amendment E:

Are you in favor of the adoption of Amendment # __ to the Zoning Ordinance as proposed by citizen petition as follows: To amend Article II, C. Table of Uses underneath the last use number 41. Brewery in the last sub-table, to add a new sub-table of uses titled Federally Licensed Uses, and further to add uses number 42. Firearms Manufacturer and number 43. Firearms Dealer into the new sub-table, and further to add regulation for a Firearms Manufacturer the same as was listed for a Brewery, that being to not allow Firearms Manufacturers in the Residential/Agricultural Zone, permit them with special exception in the Residential/Commercial Zone, and not allow them in the Residential/Light Commercial Zone, and further to add a lesser restriction for a Firearms Dealer, that being to not allow Firearms Dealers in the Zone, and permit them with special exception in the Residential/Light Commercial Zone?

Mr. Topik stated he doesn't think it's a stretch to expect a firearms manufacturer to be regulated the same as a home brewery; he stated it is less restrictive than the ordinance for a home brewery.

Chair DesRoches opened the hearing to the public at 7:42 PM.

Mr. Rhodes asked for a definition for manufacturing; he stated a CNC shop can carve out a component of a firearm and that would be a level of manufacturing; he stated simply attaching a flashlight is per ATF, defined as manufacturing. He asked if they are looking to restrict adding an accessory such as a flashlight or to have a machine for manufacturing. Mr. Topik stated that would be defined by ATF and the line is drawn according to the State law, where the feds draw the line.

Meadow Wysocki, resident, asked if there are other businesses that would be federally licensed. Mr. Topik stated he is only referring to firearms in the amendment.

Chair DesRoches closed the hearing to input from the public at 7:46 PM.

Ms. Gilpatrick stated she finds the wording confusing and cumbersome so it will be difficult for voters to understand.

Mr. McGuire stated there are other things that are federally licensed; he referenced RSA 159 which is comprehensive, indicating the State's jurisdiction as far as allowed by federal regulations. He stated the permitting is a state and federal function and not a local function.

Chair DesRoches stated every area in town is residential; there is no commercial-only zone.

MOTION: To not recommend proposed Amendment E. Motion by Mr. Heichlinger. Second by Ms. Bosiak. Motion passed, 6-1-0.

Chair DesRoches opened the public hearing for Amendment F at 7:49 PM.

Mr. Topik presented proposed Amendment F:

Are you in favor of the adoption of Amendment # __ to the Zoning Ordinance as proposed by citizen petition as follows: To amend Article II after sections C. Table of Uses, D. Motorized Vehicles Sales Facilities, E. Manufactured Housing, and F. Ground Water Protection District, to add a new section G. Firearms Manufacturers and Dealers., and to add paragraph 1. Firearms Manufacturers and Firearms Dealers, measured in a straight-line from the closest point of their building or structure, are not to be allowed within 500 feet of school-grounds, intending to mean the land on which a school is located?

Mr. Topik stated other businesses are restricted to where they can be located and believes its reasonable do to so with firearms dealers.

Chair DesRoches opened the hearing to the public at 7:51 PM.

Ms. Rhodes stated there is an FFL dealer that is located directly across the street from the school currently.

Mr. Johnson asked what Mr. Topik believes the intent is for RSA 159. Mr. Topik stated it is to restrict local regulations.

Mr. Topik stated they also need to consider what is a customary use and just because there is one or two businesses, doesn't make it customary.

Chair DesRoches closed the hearing to input from the public at 7:54 PM.

Mr. Goulet stated this amendment is different and focuses on the school; he stated he thinks it's a good idea to have some protection around the school. Chair DesRoches asked what a school by definition is. Mr. Goulet stated it would only be the Epsom Central School. Ms. Bosiak stated she is concerned whether this would include daycare or afterschool programs and would only want to see it limited to schools.

Mr. McGuire stated the problem is that it presupposes that somehow the firearms business is more dangerous or deadly to its local neighborhood than any other kind of business; he stated in general a gun is not sold loaded; a gunsmith doesn't work on a loaded gun etc. and only a loaded firearm is a possible danger. He stated there are houses within 500 feet of a school and plenty of people have guns in those houses and doesn't see any practicality behind this amendment.

Ms. Gilpatrick stated everyone can agree with keeping certain things out of the area of a school, and agreed with Mr. McGuire. She doesn't believe this amendment makes any sense without the other amendments.

MOTION: To not recommend proposed Amendment F. Motion by Mr. Heichlinger. Second by Ms. Bosiak. Motion passed, 6-1-0.

Chair DesRoches opened the public hearing for Amendment G at 7:59 PM.

Mr. Topik presented proposed Amendment G:

Are you in favor of the adoption of Amendment # __ to the Zoning Ordinance as proposed by citizen petition as follows: To amend Article II, G. Firearms and Dealers., if adopted, to also add a paragraph 2. It shall constitute grounds for appeal or for denial or revocation of the applicable local permits if, on the application for a Federal Firearms License, the firearms applicant certifies compliance with local zoning at the location applied for without first meeting the requirement that the local permits, as may be required by the Board of Selectmen, the Planning Board, the Zoning Board, and/or the Zoning Compliance Officer, have all been issued and remain in place without formal appeal therefrom within the 30-day appeal period, and which appeal, if any, must have been brought to the applicant's attention in writing no later than postmarked by first class certified mail within the 30-day appeal period?

Mr. Topik stated per the FFL application, an applicant must get local approval before getting certification and stated the Rhodes have not followed the process and are putting the cart before the horse. He stated this amendment will make sure everything is in place before getting the FFL. He stated he wants to make a change to the wording as there is a typo. Town Counsel stated no changes can be made to petition zoning amendments and must go on the ballot as written per RSA 675.

Chair DesRoches opened the hearing to the public at 8:05 PM.

Ms. Rhodes stated Mr. Topik alluded that they are putting the cart before the horse however they were given the go-ahead since the last appeal was denied.

Chair DesRoches closed the hearing to input from the public at 8:06 PM.

MOTION: To not recommend proposed Amendment G. Motion by Mr. Heichlinger. Second by Ms. Bosiak. Motion passed, 6-1-0.

Chair DesRoches opened the public hearing for Amendment H at 8:07 PM.

Mr. Topik presented proposed Amendment H:

Are you in favor of the adoption of Amendment # __ to the Zoning Ordinance as proposed by citizen petition as follows: To amend Article II, G. Firearms and Dealers., if adopted, to also add a paragraph 3. In reference to any firearms business application that has been granted local approval(s), that within the 30-day appeal period, and/or especially after having received written notice of intent to appeal that approval, and/or especially with having knowledge that an appeal of that firearms business approval is officially pending, the Zoning Compliance Officer shall not then advise the Chief of Police to the contrary that the firearms applicant is good to go from a zoning perspective in order for the Chief of Police to rely upon this advice to issue a state license to that applicant to sell pistols and revolvers?

Mr. Topik stated he would like to explain the purpose of this amendment and started to outline the timeline for his lawsuit and appeal. Chair DesRoches advised Mr. Topik that the subject of his appeal does not pertain to the proposed zoning amendment.

Chair DesRoches opened the hearing to the public at 8:11 PM.

Chair DesRoches closed the hearing to input from the public at 8:12 PM.

Ms. Gilpatrick stated the way this is written it seems to change the 30-day appeal period, which is contrary to State statute.

MOTION: To not recommend proposed Amendment H. Motion by Mr. Heichlinger. Second by Ms. Bosiak. Motion passed, 6-1-0.

Chair DesRoches opened the public hearing for Amendment I at 8:13 PM.

Mr. Topik presented proposed Amendment I:

Are you in favor of the adoption of Amendment # __ to the Zoning Ordinance as proposed by citizen petition as follows: to amend Article VI, C. Zoning Compliance Officer., after 1. Description., and after 2. Authority., to add a paragraph 3. Records. In reference to any structure or use that requires official approval to generate business income, when the Zoning Compliance Officer (ZCO) issues a permit, or refers a business-interested party either to the Board of Selectmen, the Zoning Board, and/or to the Planning Board for a business inquiry, subdivision or site plan review, a written note of this permit and/or a written record of this as shall be filed in the associated property file if applicable?

Mr. Topik stated this will allow residents to go into the town offices to inquire about a property without going through the property files; he stated this would be a file for business inquiries and home occupations.

Chair DesRoches opened the hearing to the public at 8:16 PM.

Chair DesRoches closed the hearing to input from the public at 8:17 PM.

Mr. Goulet asked if there is a filing system for this type of information regarding home occupations. Ms. Gilpatrick stated currently any permit issued in the Town is placed in its property file; when the Zoning Compliance Officer decides where an application needs to go, the recommendation is indicated on the application. She stated an additional file would be cumbersome and ensuring multiple copies are maintained would create more work. Ms. Bosiak stated in the past, the ZCO kept his own files as well. Ms. Gilpatrick stated she isn't aware of any filing that is kept by the ZCO except for open and pending cases, which the land use clerk keeps until its finalized. She stated it would create additional work and processing. Chair DesRoches stated it is confusing as it references business income and then goes on to reference subdivision. Mr. McGuire stated he understands this amendment to be a request for the ZCO to keep a logbook of sorts that outlines inquiries. He stated an RSA 91 request could be made for business inquiries. Town Counsel noted an RSA 91 request cannot request a form that does not exist. Vice Chair McKechnie stated the business inquiry was created to make the process clear for new business to Town so they can discuss what is going to be required from the Planning Board. Chair DesRoches stated there are files kept for properties or people who come before the Board with a business inquiry.

Ms. Bosiak asked how the ZCO keeps records of things that are never approved or permitted or whether there is a log of his work. Chair DesRoches stated that is a discussion for another time.

MOTION: To not recommend proposed Amendment I. Motion by Mr. Heichlinger. Second by Ms. Bosiak. Motion passed, 6-1-0.

Chair DesRoches opened the public hearing for Amendment J at 8:26 PM.

Mr. Topik presented proposed Amendment J:

Are you in favor of the adoption of Amendment # __ to the Zoning Ordinance as proposed by citizen petition as follows: To add directly before or after any other adopted definition of internet sales from this ballot, and/or if none other, to add a definition of internet sales as a home business use which does not need any business permit to operate from within a residence if none of the items to be sold for the business require a state or federal license to sell, and all of the items to be sold will be shipped to purchasers directly from manufacturer, wholesaler, or dealer business inventories elsewhere, and that therefore traffic generated to and from the residence is all customarily incidental to the primary use as a residence unless traffic is also due to an approved Home Occupation at that residence, in which case every use not the primary use is subject to the requirements for uses permitted as a Home Occupation?

Mr. Topik stated it has been suggested there are hundreds of home occupations in Town; there has been no problem until the current case regarding home occupations. He stated there haven't been complaints about other home businesses. Mr. Topik stated a permit is not needed for a home office for bookkeeping for other businesses and doesn't think the ordinance needs to be changed.

Chair DesRoches opened the hearing to the public at 8:25 PM.

Mr. Rhodes stated his issue with the wording of this amendment is that if someone engages in retail sales and gave an example of someone selling items on eBay or Amazon. He stated this is not clearly defined and is very restrictive on internet sales.

Mr. Topik stated lines have to be drawn somewhere and this amendment is in regard to a business use in a home. He stated selling a single item is not a retail sale but engaging in ecommerce as suggested, that crosses the line into retail and is not a customary home occupation.

Chair DesRoches closed the hearing to input from the public at 8:33 PM.

Mr. McGuire stated the wording of the amendment refers to "something else on the ballot" and suggested this proposed amendment wouldn't apply. Ms. Gilpatrick stated the amendment was attempting to preempt the proposed home occupation ordinance changes by the Board, which are no longer appearing on the ballot.

Ms. Gilpatrick stated although she believes they definitely need to update the Home Occupation ordinance, but she believes this is very restrictive, noting there are many state and federal licenses required for various professions and businesses. She stated it would restrict any of those who need to order items over the internet for their profession if it requires State or federal license.

Chair DesRoches stated she sees many people at the post office with piles of packages of items they are selling, and this could potentially restrict their ability to do so.

**MOTION: To not recommend proposed Amendment J. Motion by Mr. Heichlinger.
Second by Ms. Bosiak. Motion passed, 6-1-0.**

NEXT MEETING

February 14, 6:30 PM – Epsom Fire Station Meeting Room.

Vice Chair McKechnie adjourned the meeting at 8:38 PM.

Respectfully Submitted,

Jennifer Riel

Jennifer Riel, Recording Secretary