

TOWN OF WATERBORO
PLANNING BOARD

WATERBORO, MAINE

SPECIAL MEETING

WATERBORO PLANNING BOARD

JUNE 22, 1988

MEETING CALLED TO ORDER BY VICE CHAIRMAN JOHN ROBERTS AT 7:40 P.M.

I ROLLCALL: Anna Jackson, Roland Denby, Dwayne Woodsome and John Roberts, Vice Chairman. Karen Lovell, Town Attorney was also present.

II COMMUNICATIONS:

1. Letter from Karen Lovell Re: Owens Property

7:30 P.M. Elwyn and Kevin Owen

Present were Mr. Elwyn and Kevin Owen with their attorney Mr. Ronald Ayotte.

Letter from DOT Re: Goodwins Mills Road width as recorded may have an impact on the lot size. A copy was given to Mr. Owen for his records and a copy to Mr. Ayotte.

May 11, 1988 meeting the Board voted to send the survey to the Town Engineer. This done and notes made between Mr. Owen's engineer and the Town's engineer. At that time a meeting was requested. Mr. Ayotte requested that letter dated 5/18/88 be made part of the record. Nine days following:

#1. Had agreed that this would be taken care of at the time of installation of the new tank.

#3. To comment later

#4. Letter of 6/7/88 Mr. Ayotte placed on file and read in answer to 5/18/88 letter from Town Attorney.

DEP set standards they will be met and the entrances changed to two all requirements met. Opinion of the Board was for oil and water separator. CEO was asked as to what could be put in. Unless drainage was such that drainage could not go into states drainage, the unit of drainage does not pertain to this type for the situation. D. N. Brown and DEP insured Mr. Owens that their requirements were sufficient. Mr. Owen would like to be used as everyone else.

This site is not a usual site. Pollution a definite problem in the surrounding area. A #1 in the State. (Waterboro Patent Site named an uncontrolled site by DEP)

Smith & Elliott, P.A.

ATTORNEYS AT LAW

199 MAIN STREET - P.O. BOX 1179

SACO, MAINE 04072

207-282-1527

103 MAIN STREET - P.O. BOX 980

KENNEBUNK, MAINE 04043

207-985-2690

May 18, 1988

ROGER S. ELLIOTT
ALAN S. NELSON
RANDALL E. SMITH
CHARLES W. SMITH, JR.
TERRENCE D. GARMER
KAREN B. LOVELL
PETER W. SCHROETER
RICHARD P. ROMBO
ROBERT H. FURBISH
THOMAS S. COWARD
WILLIAM S. KANY
JOHN H. O'NEIL, JR.
HARRY B. CENTER II

**COPY FOR YOUR
INFORMATION**

CHARLES W. SMITH
(1915-1983)

DANIEL E. CROWLEY
OF COUNSEL

SAMFORD
207-334-1560

PORTLAND
207-774-3199

FAX
207-283-4412

Ronald E. Ayotte, Esq.
P.O. Box 555
Saco, Maine 04072

Re: Owen Matter

Dear Ronnie:

I met with the Planning Board Chairman yesterday morning, with regard to the application presently pending before the Planning Board, seeking approval for the installation of gas pumps adjacent to the Milk Room convenience store. I have been instructed to inform you that the final hearing on this application will not be scheduled until the Planning Board is provided with certain additional evidence. That is as follows:

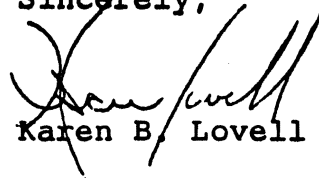
- 1) Written confirmation that there are no presently existing underground petroleum tanks on the site. A number of years ago Mobil gasoline was apparently sold at this location. Many of the private wells in this part of Waterboro are already contaminated by leaking underground tanks. As a matter of public health and safety, therefore, the Board wants to be absolutely certain that all storage tanks on or adjacent to the Milk Room property have been removed before installation of new tanks takes place.
- 2) The Board has sent your proposed drainage plan to Sebago Technics for review and evaluation. It will need to have received Sebago Technics' report on that proposal before the Board can satisfactorily evaluate its sufficiency, and make an informed decision on the project.
- 3) The Planning Board is requiring that you provide a plan for gasoline drainage and safety measures to be taken in the event of a gasoline spill. This information will need to be

submitted and, if the Board concludes it is necessary, evaluated by an engineering firm for the Town, before the Planning Board can render its final decision.

4) Mr. Owen will need to revise his plan so that there are only two entrances to the property, one on each of the two roads abutting it. Section 5.04 of the Town's zoning ordinance requires that each of these entrances be at least fifty feet from the road intersection.

We will be in a position to schedule the final decisional hearing on the Owen application, once you have provided the additional information requested in this letter, and the Board has had sufficient time to seek such professional evaluation of that evidence as it feels to be appropriate.

Sincerely,



Karen B. Lovell

KBL/mkc

cc: Andrew Timmis

Ronald E. Ayotte

ATTORNEY AT LAW

P.O. BOX 555
SACO, MAINE 04072
(207) 284-4310

June 7, 1988

Karen B. Lovell, Esq.
Smith & Elliott, P.A.
Post Office Box 1179
Saco, Maine 04072

COPY

Re: Owen Matter

Dear Karen:

This letter is in response to your letter of May 18, 1988, and in confirmation of our telephone conversation this day. I will address the concerns and requests for information as they are listed.

1. Concern about possible existing underground tanks. Mr. Owen has agreed to have the D.E.P. present at the site at the time of the installation of the new tanks. At this time he would have a licensed excavator and installer, at which time the concern would be investigated and if found to exist, removed.

To address this concern now, as requested in your letter, Mr. Owen had an excavator on site, together with a D.E.P. engineer, who had a metal detector. It was determined that there were no existing underground petroleum tanks on the property. The costs to Mr. Owen to have the equipment on site and the work done was \$350.00. Mr. Raymond Dyer the chairman of the Hazardous Waste Commission was present at the site with D.E.P.

2. Sebago Technics have reviewed our drainage plan as recommended minor changes which were adopted. I understand that they have reported that the drainage is adequate.

3. Mr. Owen has applied for and obtained a permit from the D.E.P. for the installation of the gasoline tanks and pumps, all in compliance with the provisions of M.R.S.A. Title 38, Section 563. The design and installation standards for new and replacement facilities are now set forth in Section 564, and the issuance of a permit by the D.E.P. is confirmation that all these prescribed standards have been met.

4. Mr. Owen has revised his plan to comply with the Town's Zoning Ordinance, as requested.

Page 2

Re: Owen Matter

At the Board meeting of May 11th, 1988, which was the last hearing held on the matter, the board indicated to Mr. Owen that once the matter had been reviewed by the Town Engineer, Mr. Owen would be brought back under old business.

At this time, I would urge that the matter be heard under old business at the next meeting which is scheduled for June 8, 1988.

Very truly yours,

Ronald E. Ayotte, Sr.

REA/bt

cc: Andrew Timmis
Doug Foglio, Sr.
Elwyn Owen

Smith & Elliott, P.A.

ATTORNEYS AT LAW

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June 14, 1988

Douglas Foglio, Sr.
Chairman
Planning Board
P.O. Box 130
Waterboro, Maine 04087

Re: Elwyn Owen Application

Dear Doug:

The purpose of this letter is to confirm Roger's and my opinion on Elwyn Owen's application to add self-service gas pumps to the Milk Room property.

It is our understanding that this proposal is before the Planning Board pursuant to zoning ordinance §2.08, which requires Planning Board approval of construction on substandard nonconforming lots. The Milk Room convenience store has for many years occupied a substandard lot on Route 202 in the South Waterboro business district. Fairly recently an adjacent building was torn down. Mr. Owen now proposes to add self-service gasoline pumps to the site. Sale of gasoline from those pumps would be handled through the Milk Room. No other automobile service facilities are proposed to be provided.

It is our opinion that your zoning ordinance prohibits the Planning Board from granting the Owen application. The third paragraph of subsection 2.08 provides that a grandfathered substandard lot may be used "to construct, renovate, or reconstruct a primary use structure." The ordinance does not allow construction of secondary or supplemental use structures on nonconforming lots. A primary use structure, the Milk Room itself, already exists on the property. The proposed gas pumps would be secondary uses to the convenience store use, and clearly

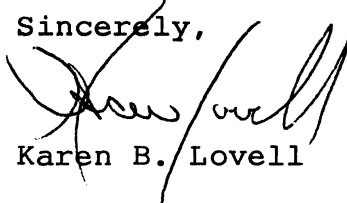
Douglas Foglio, Sr.
June 14, 1988
Page 2

fall within the zoning ordinance's definition of "structure." The zoning ordinance would therefore not permit this secondary use to be made of this substandard lot.

There is also a second related basis for the Planning Board's denial of this application. The fact that the Milk Room was in operation prior to enactment of the zoning ordinance allows that operation to continue, even though the lot is substandard and falls far short of meeting applicable area requirements. The Milk Room's legally nonconforming or "grandfathered" status is strictly circumscribed, however. It is well established under Maine law that a nonconforming use cannot be expanded unless the expansion complies with all requirements of zoning, or unless a variance is obtained. That variance would, of course, need to be considered by the Zoning Board of Appeals. The Zoning Board of Appeals also would have jurisdiction to determine whether or not the addition of gas pumps to the Milk Room would constitute an illegal expansion of the nonconforming status.

It is my understanding that the Planning Board will be making its final decision on this application at its June 22, 1988 hearing. At your request, I have planned to be present at that hearing. If your receipt of this letter eliminates the need for my attendance, I trust you will let me know.

Sincerely,



Karen B. Lovell

KBL/mkc
cc: Andrew Timmis

Was the Board aware that two tanks were put in at the school? Is there a oil and water separator at this site? To the Boards knowledge these tanks were installed without Towns knowledge. SS Title 38 UNDERGROUND OIL STORAGE AND PROTECTION 570C. If town does not have ordinance then the state statutes cover this. The Board should not selectively create requirements for any particular situation. If legal opinion is needed before decision rendered Board to go into Executive Session.

Oil and water separation system refused to be placed. Mr. Ayotte stated, if after Executive Session Board decides that this should be a condition this could be included as a condition for the Conditional Use Permit. Section 4.02 read from the Waterboro Zoning Ordinance.

Mr. Ayotte commented that DEP had suggested design was appropriate. Mr. Timmis commented that the standards being used for Mr. Owen were minimum standards, DEP if asked would probably agree. Mr. Ayotte: the Law says that DEP is to design, as the Town they have to accept. Standards, the town could make stronger Karen Lovell, town attorney to advise during Executive Session.

The only question concerned with was gas spill. Legal and town and people in the town want. Mr. Owen commented overwhelming comments in favor of the gas pumps.

Anna Jackson moved to go into Executive Session. Dwayne Woodsome seconded the motion. Vote was unanimous (3) in favor.

Mr. Ayotte read from DEP information concerning the State Law. Town was asked to read letter dated 6/14/88 and to be part of the record. Letter was read, response from Mr. Ayotte and/or Mr. Owen was requested.

Application was made in September or October if these questions were raised this could have been addressed before this meeting. It was made known that the intention of the building being torn down was to put gas pumps in. The CEO was informed of gas tanks, he noted it was no concern of the town's so therefore went to the State.

Mr. Ayotte commented that the board was exchanging expansion and tearing down of the building. He felt that the executive session was Re: State Statutes. Counsel advised not to condition the use. This letter to weigh on the decision. Mr. Owen exited with his attorney for legal consultation.

Mr. Ayotte in full disagreement of the legal opinion from the Town counsel. Section 3.04.02 of Zoning Ordinance referred to by Mr. Ayotte. This section covered gas stations, all convenience stores selling, completely unfair to after four hearing and spending monies to comply with the Board's requests. Mr. Ayotte requested that a decision to let Mr. Owen know results through Town counsel. Not expanding an original lot expanding by increasing lot size by ten times. Still substandard but grandfathered. Relying on ordinance that allows adding a product with ten times more parking. Excuse found but not a reason.

Roland Denby moved to deny the request for Conditional Use on the findings provided on the advise of Town Counsel's letter of 6/14/88. Dwayne Woodsome seconded the motion. Four in favor. Request denied.

Mr. Ayotte commented that there was no question where this will be taken from here. Mr. Owen thanked the Board for rendering a decision. Also thanked the Board for their time.

Meeting adjourned at 8:37 P.M.

Respectfully submitted,

Lawrence Jacobsen
Secretary/Treasurer

John W. [Signature]
Lawrence Jacobsen
Roland E. Denby