

KENSINGTON PLANNING BOARD MEETING  
Virtual Meeting due to COVID-19  
TUESDAY December 15, 2020 – 7:00pm  
Meeting Minutes - Approved - 1/19/2021

In attendance: Rob Chase, Chair; Mary Smith, Vice Chair; Therese Wallaga, Member; Jim Thompson, Member; Mike Schwotzer, Member; Vanessa Rozier, Selectman's Representative; Christine Ouellette, Alternate; Julie LaBranche, Rockingham Planning Commission

*All members were alone for the meeting.*

At 7:05pm, Robert called the meeting to order. At the time the meeting started, there were 20 participants on the call. Robert read through the NH Checklist for Virtual Meetings and took roll call.

**At 7:10pm, Rob made a motion to open the Public Hearing for the Felch Family Trust and read the following aloud:**

*Felch Family Trust, Franklin and Kathie Felch, Trustees with a physical lot address of 137 Amesbury Road, Kensington, NH further identified as Map 9 Lot 2, for a Minor Subdivision in accordance with Article III Subdivision Regulations for the Town of Kensington. The intent is for the property owners to subdivide one 2.01-acre parcel from the 26.5-acre parcel know as Map 9 Lot 2. CONTINUED FROM NOVEMBER 17, 2020*

**Jim seconded. Mike noted that he would be recusing himself from Public Hearings 1, 2, and 3. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, and Rob voted yes. The motion passes.** Rob noted that the Board received a letter from the Felch Family Trust stating that they have not received the updated plan from the engineer and need to request that this hearing be continued to January 2021.

**At 7:13pm, Therese made a motion to allow Christine Ouellette to act as a full voting member for this meeting only. Jim seconded. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, and Rob voted yes. The motion passes.**

**At 7:13pm, Vanessa made a motion to continue the Public Hearing for the Felch Family Trust to January 19, 2021. Mary seconded. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, Christine voted yes and Rob voted yes. The motion passes.**

**At 7:14pm, Rob made a motion to open the Public Hearing for the Felch Family Trust and read the following aloud:**  
*Conditional Use Permit in accordance with Zoning Ordinance Article VI Section 6.2 Steep Slopes District for Felch Family Trust, Franklin and Kathie Felch, Trustees with a physical lot address of 137 Amesbury Road, Kensington, NH further identified as Map 9 Lot 2, to allow 5,870 square feet of disturbance to steep slopes to permit a driveway and access easement across Map 9 Lot 2. CONTINUED FROM NOVEMBER 17, 2020*

**Jim seconded. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, Christine voted yes and Rob voted yes. The motion passes.**

Rob noted that the Board received a letter from the Felch Family Trust stating that they have not received the updated plan from the engineer and need to request that this hearing be continued to January 2021.

**At 7:16pm, Mary made a motion to continue the Public Hearing for the Felch Family Trust to January 19, 2021. Jim seconded. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, Christine voted yes and Rob voted yes. The motion passes.**

**At 7:17pm, Therese made a motion to close the Public Hearing. Christine seconded. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, Christine voted yes and Rob voted yes. The motion passes.**

**At 7:17pm, Rob made a motion to open the Public Hearing for Stephanie Artigliere and read the following aloud:**

*Stephanie Artigliere with a physical address of 48 Stumpffield Road further identified as Map 7 Lot 19-1. The applicant is applying for a Conditional Use Permit under Zoning Ordinance under Article III, Section 3.2.3 Accessory Dwelling Unit to allow for a detached accessory dwelling unit within an existing structure. CONTINUED FROM NOVEMBER 17, 2020*

**Jim seconded. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, Christine voted yes and Rob voted yes. The motion passes.**

At the last meeting, the applicants had been asked to outline their position as it related to the possibility of a non-conforming use and an updated plan of the proposed ADU showing the windows and doors. The applicant provided both items and the Board reviewed. Additionally, a memo was received from Attorney James Scully, representing abutter Mr. Steve Wilson.

The memo from Attorney Scully challenges that the setback was approved. Rob explained that the town attorney was not permitted to provide an opinion as he was involved in another opinion with this applicant before the ZBA. A professional opinion from an acquaintance was sought by Rob as to the language of the ordinance. 11:15. Section 3.2.2. (c) was read aloud as it is referenced in Section 3.2.3 (K). Rob feels that section 3.2.2 (c) relates only to new structures or relocation of existing structures. It was noted that the structure in question is not being relocated and is not new.

Ms. Artigliere and Attorney Nathan Kenison-Marvin explained their memo dated December 3, 2020 and that they believe the original subdivision created and approved a setback for the accessory structure, that structure is now immune to zoning setbacks. Atty Kenison-Marvin stated that it was their understanding that the Board had closed the evidence and it would be Mr. Wilson's burden to provide evidence prior to the meeting and that the Board should not consider new evidence from Mr. Wilson at this time. Atty Kenison-Marvin asked that a standing objection to consideration of any new evidence presented by Mr. Wilson or his Attorney. The applicant summarized the previous ZBA case regarding the variance to the square footage and made it clear that regardless of the variance the proposed plan adheres to the 900 square foot maximum requirement.

Atty Scully addressed the Board explaining his memo to the Board dated December 15, 2020 and stated it is his opinion that the burden of proof of the lot line from 1986 is on the applicant and not Mr. Wilson. It was noted that a variance will run with the land for a period of time. Atty Scully explained his memo and that it is his opinion that the applicant would require relief from Section 3.2.3 (k) and understands that there is no new construction or moved structures, but believes that would mean there are no setback requirements for this ordinance, and doubts that that was the intent of the ordinance. Atty Scully stated that at minimum, a title search should be completed to determine when the lot line was created.

There was discussion on the ZBA case regarding an ADU at the same property. Julie questioned the procedures of the ZBA on this case. The Board asked Mr. Wilson and Atty Scully for clarification of why when the lot line was created is of particular concern. Atty Scully stated that he and his client are of the opinion that the issue is whether the lot line was created in 1986 with the structure pre-existing in 1986, which would potentially mean this is an expansion of a nonconforming use. The Board reviewed multiple plans of the property. The Board generally agreed that the language in Section 3.2.2.C pertains to new structures or relocation, and this case is neither. It was noted that the intent of the regulation was to provide more housing in town, and this does that without changing the exterior or footprint of the structure. Atty Kenison-Marvin stated that he believes that because the town did not enforce the 25-foot setback when the 1986 plan was filed and approved, the property would not fall into the nonconforming category at this time.

The Board discussed possible conditions. The Board, Building Inspector, and applicant discussed the plans for the unheated non-living space noted on the plan. It was decided that the 900 square feet requirement should only be factoring in the heated living space. It was suggested that Mr. Wilson's wishes that there be no expansion or change to the structure along the eastern property boundary become a condition of approval. Mr. Wilson noted that he feels there was no reason for Mike Schwotzer to recuse himself from the meeting as he knows the history of the property. Additionally, Mr. Wilson felt that there should be no added light to the exterior of the property and the presented

floorplan should represent the applicant's intent, drawing attention to the note on the proposed plan. Mr. Kenison-Marvin said that the applicant's intent is to respect the Wilson's request for privacy on their own property. It was explained that Mike had recused himself because he sat on the ZBA Board that was previously involved with the Artigliere ADU. Christine agreed with the Wilson's position that they deserve the right to privacy and although a porch in the unheated area sounds nice, it would be important that nothing changes on the eastern side of the structure.

**At 9:00pm, Rob made a motion to approve the Artigliere application for an 895 square foot ADU with no expansion or modification on or along the eastern aspect of the property, this would include no new windows, doors, porches, or exterior lighting. Christine seconded. Rob amended the motion to use the word "structure" instead of "property. Christine seconded the amendment. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, Christine voted yes and Rob voted yes. The motion passes.**

**At 9:04pm, Jim made a motion to close the Artigliere ADU public hearing. Mary seconded. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, Christine voted yes and Rob voted yes. The motion passes.**

The Board took a 5-minute recess at 9:05pm. Mike rejoined the Board at 9:10pm.

**At 9:11pm, Rob made a motion to open the Public Hearing for Kevin Rosencrantz Sr. and Wesley R. and Bonnie B. Rosencrantz and read the following aloud:**

*Kevin Rosencrantz Sr. with a physical location of 188 South Road, Kensington NH, further identified as Map 2 Lot 3 and Wesley R. and Bonnie B. Rosencrantz with physical location of 15 Highland Road, and further identified as Map 2 Lot 4, have submitted a Lot Line Adjustment application in accordance with Article III Section 3.2 G1 of the Kensington Subdivision Regulations. The intent is for the property owners to adjust the current property lines and lot acreage by reducing the area of Map 2 Lot 4 by 13.14 acres to result in 44.58 acres and enlarging Map 2 Lot 3 by 13.14 acres to result in 16.182 acres.*

**Mike seconded. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, Mike voted yes, Christine voted yes and Rob voted yes. The motion passes.**

The Rosencrantz's summarized their application. Kevin Rosencrantz is seeking to purchase land from his uncle that has been rented and used for his beef cattle. It was noted that the tax card for Map 2 Lot 3 states Special Exception was granted for a garden center. Mr. Rosencrantz explained that the garden center is no longer in operation and the only current commercial activity on the property is the display of equipment. Kevin Rosencrantz explained that he is now focused on the agricultural use of his land. Kevin Rosencrantz summarized the commercial activities on other surrounding lots.

Chris Chetsas of 172 South Road expressed to the Board that he has a concern about the continuous issue of noise coming from the abutting property. Mr. Chetsas provided a brief history of a 2004 ZBA approval and subsequent hearing in 2010 regarding the Rosencrantz business that required noise reduction elements be put into place. There is concern that the noise will continue on the properties in question at this hearing. Mr. Chetsas explained that the noise is coming from Map 2 Lot 2 and Map 2 Lot 1. Mr. Rosencrantz reiterated that his use of his new larger lot is only for agricultural use. There was brief discussion between the applicant and the abutter, where Rob noted that the Planning Board has no enforcement ability pertaining to any ongoing noise issue on another lot. Mr. Chetsas asked for peace after 10:00pm.

The application is for a lot line adjustment and would not allow for any expansion of a grandfathered commercial use or special exception. Julie noted that the agricultural use of the property is not prohibited by a lot line adjustment and would need to follow best practices outlined by the State. There was discussion of the PSNH easement area. There were no other comments from the public. There is an existing stone wall between the Rosencrantz and Chetsas properties. Kevin Rosencrantz plans to leave a buffer between his property and the abutter's property. The Board proceeded through the Lot Line Adjustment checklist.

**At 9:49pm, Mike made a motion to accept the Rosencrantz Lot Line Adjustment application as complete. Mary seconded. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, Mike voted yes, Christine voted yes and Rob voted yes. The motion passes.**

There were no further comments by the Board or the public.

**At 9:50pm, Mike made a motion to approve the Lot Line Adjustment for the Rosencrantz application with the condition that a Note 9 be added to the plan noting the Special Exception with the date granted. Therese seconded. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, Mike voted yes, Christine voted yes and Rob voted yes. The motion passes.**

**At 9:52pm, Mike made a motion to close the public hearing for the Rosencrantz application. Therese seconded. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, Mike voted yes, Christine voted yes and Rob voted yes. The motion passes.**

#### NEW BUSINESS

5. New Zoning Books – The Board discussed new zoning books. Books should have been ordered in the fall and the Board may not be able to get their desired amount. The total number requested is 16 (PB, BOS, ZBA, 1 town copy). Chelsea will get this request to Annette at RPC and see how many are available.

#### UPDATES ON PRIOR BUSINESS:

6. Status Report(s) on Prior Applications' Conditions of Approval, when applicable – No updates.

7. Subcommittee Updates

a. Growth Management – No updates

b. Application Process Improvement – The subcommittee has been working to differentiate between a Minor and Major Site Plan Review and a Major and Minor Subdivision. It was decided by the Board that one element of the differentiation should be that the subdivision would "yield 3 or fewer lots". The subcommittee will continue to work on this task and provide updates to the Board.

#### OTHER BUSINESS:

**At 10:20pm, Jim made a motion to approve minutes from the November 17, 2020 meeting with a minor spelling correction. Therese seconded. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, Mike abstained, Christine voted yes and Rob voted yes. The motion passes.**

The next meeting will be on Tuesday, January 19, 7:00pm via Zoom.

There was discussion regarding how Julie tracks her time to charge back to applicants if needed. Currently the RPC contract is at about 50%, which is on track for the year.

**At 10:25pm Jim made a motion to adjourn. Mary seconded. moved to adjourn. Rob took a roll call vote. Mary voted yes, Therese voted yes, Jim voted yes, Vanessa voted yes, Mike voted yes, Christine voted yes and Rob voted yes. The motion passes.**

Respectfully submitted,  
Chelsea Lalime