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3 **KENSINGTON, NEW HAMPSHIRE**
4 **KENSINGTON PLANNING BOARD**
5 **WEDNESDAY, JUNE 21, 2023, 6:30 P.M.**
6 **At Kensington Town Hall 95 Amesbury Road, Kensington, NH**
7 **Meeting – Minutes**
8

9 **In Attendance: Vanessa Rozier, Chairwoman, Justin McLane, Vice Chairman, Carly Fenton, Marty Silvia, Bob**
10 **Solomon, Selectmen’s Representative, Glenn Greenwood, Planner Absent: Mary Smith, Josh Preneta**
11

12 **V. Rozier opened the meeting at 6:30pm.**

13 **PUBLIC HEARINGS:**

14 **Planning Board Public Hearing:**

15 **Owner: Peter Frank and Tracey Lane**

16 **21 Amesbury Road**

17 **Kensington, NH 03833**

18 **Map 14 Lot 26**

19 The applicant is requesting that the Planning board grant a conditional use permit as stated Article III, Section
20 3.2.3 of the Kensington Zoning Ordinance to allow a free-standing detached dwelling unit.
21

22 V. Rozier read the above. G. Greenwood reviewed the application but did not write a comment letter for the
23 board.

- 24 • The board waived the 11x17 plans, there was a plot plan included in the application. C. Fenton stated
25 that it looks like that plan included contains the setbacks for the lot. The current abutters were not on
26 the provided plot plan.
- 27 • J. McLane stated that the agenda states that the building is detached/free-standing, but there is only one
28 building on the plan.

29 Tracey Lane- Owner of 21 Amesbury Road, explained that it is a detached building. This building is an existing
30 building on the lot and has been there for 7-8 years according to the applicant.

- 31 • J. McLane stated that the drawings all show an L-shaped building and not another building on the lot.
32 G. Greenwood explained his thought is that the plan is only showing the existing house.

33
34 T. Lane was unsure if the provided plan shows the building proposed for the accessory dwelling unit and she was
35 under the impression that the town would have all the necessary documentation of where the buildings are on
36 the lot.

- 37 • G. Greenwood stated that they should accept the application, and V. Rozier asked the board for
38 feedback on accepting the application when all the materials are not presented. J. McLane stated
39 that he is unsure about accepting the application when the building for the accessory dwelling unit is
40 not indicated on any of the plans.

41
42 T. Lane stated that she was not given any information other than she needed to attend the meeting tonight. She
43 did not receive a copy of the checklist, or she would have provided the necessary information. G. Greenwood
44 informed T. Lane that the burden is on the applicant to provide the board with all the necessary information
45 needed for the application.

- 46 • G. Greenwood acknowledged that this is an existing accessory dwelling unit and that the town might
47 have existing information in the property file.

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T. Lane explained that she could show the board where the building is located on the plot plan. She approached the board and talked with V. Rozier about where the existing building is located. J. McLane stated that it is important to note that if they open the public hearing it will start a time clock. If they don't open the public hearing then that clock does not start and there is no time limit placed on the applicant to get the information needed back to the board. If additional time is needed, they would be helping her by not opening the public hearing. T. Lane stated that she had an email that stated that she was all set and had everything in it that she needed.

- J. McLane explained that there is no plan showing what they are trying to approve as an accessory dwelling unit, it is not on any of the plot plans provided. G. Greenwood explained to the board that there are several ways to prove where the building is located on the property, Google Maps or photographs of the property were a few mentioned. T. Lane approached the board to explain where it is on the map on the screen, an online tax map was shown to the board and will be added to the file. The board also viewed google maps of the area to show where the house was located. G. Greenwood reminded the board that the building is about 24x36. V. Rozier explained that the board could waive the requirement if the board would like to do that. K. Felch brought up Google Maps on the projection screen. Any images viewed will be added to the applicant's file. T. Lane sketched out where the buildings were located on the plot plan for V. Rozier. G. Greenwood stated that it looked as though the existing garage/accessory dwelling unit was located on the other side of the septic design provided. J. McLane would like to get a proper plan, the board needs to understand where the building is, as well as where it is in relation to the existing septic area. V. Rozier explained that part of the consideration for the accessory dwelling approval is adequate septic and the septic reserve area. T. Lane showed V. Rozier where the septic is located, she was unaware of where the reserve area is located. There is a potential concern that the building is located in the septic reserve area. T. Lane showed the board where the septic reserve area was notated on the plan. She explained that the letter on the septic explained that the septic was set up for a 5-bedroom house and would accommodate the ADU. V. Rozier explained the jurisdiction of the application to the applicant and that once that happens the applicant has 65 days to complete the project with the board. J. McLane explained that the application that was submitted has a checklist within the application stating what the board needs.

T. Lane is just asking for a trash can and was told that the ADU had to be approved before issuing another trash cart.

- G. Greenwood explained that there is not necessarily a plot plan with all the buildings located on it within the town hall. V. Rozier stated that they will continue going through the checklist.
 - Location of all the existing structures on a plan
 - Residential zones need to be listed on the plan or the application.
 - Building setbacks could be waived.

M. Silvia stated that it is the applicant's responsibility to supply the needed information. Glenn Greenwood will reach out to the owner and work on the application with them. The application was not deemed complete by the board, and they did not open the public hearing. B. Solomon stated that it is not the board's responsibility to pull all this information together right now. It is up to the applicant if they want to start the time clock. T. Lane explained that she will come back in a few months and start the clock then. J. McLane stated that we can't approve the application at this time.

T. Lane left the meeting.

- J. McLane stated that a plan showing where the buildings are is what is needed to accept the application at this time. Google Maps can show the structures and how far they are from the boundaries. J. McLane stated that the septic information needs to be provided and where the septic connects to the ADU. G. Greenwood will work with the applicant on the submission information.

98 **Owner: Stephen O. Nelson**
99 **183 South Road**
100 **Kensington, NH 03833**
101 **Map 05 Lot 05**

102 The applicant is requesting that the Planning Board grant a conditional use permit as stated in Article III, Section
103 3.2.3 of the Kensington Zoning Ordinance to allow a free-standing detached dwelling unit.

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105 The next application is for a freestanding ADU. V. Rozier asked the applicant to explain the project.
106 Stephen Nelson attended the meeting to present to the board the application for an ADU. There is a large garage
107 and his granddaughter that lives with them wants to live in an apartment on the property. The building is existing.
108 S. Nelson explained that there is a septic letter that can be provided. His contractor has the letter and he thought
109 that it was with the building inspector. The septic was installed in the late '70s. K. Felch went to look for the
110 septic letter in the building file. It was not found.

111 V. Rozier explained that they can waive this letter for the checklist but make it part of the conditions that one be
112 provided to the town. M. Silvia explained that septic companies usually have someone that can inspect the septic
113 system. It was explained that the septic with additional stress on the field can fail. This inspection tells the board
114 if the septic can handle the additional load of an ADU. The board does not have the knowledge to certify the
115 septic, so they rely on the inspector. There is a plot plan and abutters were listed on the plans.

116 **J. McLane made a motion to accept the application for Nelson Seng Irrevocable Trust, seconded**
117 **by M. Silvia. All in favor.**

118
119 V. Rozier opened the public hearing and went through the criteria with the board.

- 120 • Agreed that separate facilities are included in the drawing.
- 121 • Owner occupied in one of the units.
- 122 • Shall be no more than 900 square feet. It is 720 square feet and complies.
123 It is the entire detached garage building. The square footage matches the square footage on the tax map.
124 The drawings provided confirm that.
- 125 • Evidence of Adequate septic. G. Greenwood will email S. Nelson the criteria that will need to be met for
126 septic adequacy and condition; the board needs a septic inspector to inspect the septic. It has a state
127 permit and was installed in 1994.
128 He will have to have the septic designed as a condition.
129 A septic design for a 4-bedroom can be allowed if it passes the inspection, but the applicant will then have
130 to provide the town with a plan for a replacement system that would be for a 5-bedroom septic in case
131 this one fails.
- 132 • Parking is included and there is a new service just put on the home.
- 133 • Shall not be used as an in-home occupation.

134
135 **J. McLane made a motion to approve the application for the Detached ADU at 183 South Road Map 5 Lot 5 with**
136 **the following conditions:**

- 137 1. Existing septic to be inspected.
- 138 2. Replacement Septic Design presented to the town, per state statute, for the existing home and the
139 Accessory Dwelling Unit.
- 140 3. Conditions to be completed within 120 days of the approval by the planning board, and prior to
141 obtaining a building permit for the accessory dwelling unit.

142 **M. Silvia seconded all in favor.**

143
144 **J. McLane made a motion to close the public hearing at 7:36 pm, seconded by M. Silvia all in favor.**
145

146 V. Rozier read the section in the zoning that applies to the preliminary review. Whatever they say as a board, or
147 the applicant says is non-binding.

148 **Planning Board Public Hearing: Preliminary Discussion**

149 **Emmanuel Engineering**

150 **Owner: Julian Dunlop**

151 **45 Stumpfield Road**

152 **Kensington, NH 03833**

153 **Map 07 Lot 20**

154 The applicant is requesting that the Planning Board grant approval for a condominium subdivision as stated in
155 Article III, Section 3.3 of the Kensington Subdivision Regulations.

156
157 Bruce Scammon explained the process for the preliminary review and that the application is a condominium
158 subdivision and that this was the best way to present this application. The reasoning for them presenting the
159 application now is that they have a year to come back before the board with any changes to the application and
160 have another public hearing. This application is protected from any changes that might be made to the
161 subdivision regulations prohibiting this type of application. They are aware that the board has not seen this type
162 of application before and wanted to get their feedback. They would like to see if the board sees this as a
163 positive way to move forward. They will come back anytime within the next year with a final application for a
164 subdivision. They thought that this would be better than a traditional subdivision and preserve the site better.

165
166 S. Wilson, an abutter, asked if the abutters would be notified again when the applicant comes back before the
167 board with the final plan. B. Scammon stated that they will notify all of the abutters again if they come back
168 before the board.

169 **M. Silvia made a motion to open the hearing for 45 Stumpfield Road, C. Fenton seconded all in favor.**

170 B. Scammon presented the plan to the board. He is representing the owner and handed out the board an
171 additional set of drawings for them to review. He indicated where the buildings are on the lot and explained
172 that the barn had burnt down at one time. There is conservation land surrounding the parcel and they are
173 trying to maintain the integrity of the old house and the barn.

174 There is plenty of land for 2 lots, but they wanted to have a home in the rear of the lot that will be secondary to
175 the main home. He stated from the road that there is just going to look like another structure further down in
176 the back of the lot. He presented different scenarios that they had gone through and breaking the lot up would
177 not be the best use of the land. There would be a limited common area and the presented maps were
178 explained. The maps will be added to the applicant's file.

179 They are here to see if the board has an interest to do the condo subdivision vs the traditional subdivision.

180 Glenn Greenwood sent the board to the relevant section of the RSA 365:B-5, which states that the board can't
181 forbid condominiumization, and if you are going to forbid the use you must do it by ordinance. What they are
182 proposing meets the law. B. Solomon asked what the applicant is gaining by doing the condominiumization. G.
183 Greenwood stated the benefit is not to have the 200 feet frontage or 2 acres. This would give them the ability
184 to sell a piece of land without subdividing but having to have common land and an agreement. This will give
185 them frontage flexibility.

186 B. Scammon stated that they discussed having the barn removed, but then they would lose the continuity of the
187 farmhouse and the barn, they didn't want to split them up. M. Silvia asked what the barn was used for now, and
188 Mr. Dunlop stated that it is used for storage and a garage.

189 J. McLane stated that he understands why this is being presented this way. Is this the intent of the
190 condominiumization? He thinks this proposal creates a denser environment. G. Greenwood stated that this is
191 still within the state law. V. Rozier opened the hearing up for public comment.

192
193 S. Wilson- 42 Stumpfield Road- stated that you can't use the condominium law to circumvent the town
194 regulations. If you can see that it can be subdivided and that the applicant can have two homes on this property
195 then the condominium would be allowable. He continued that there is a residence in the barn and that people
196 are living there. So, this would be the third residence on the property. S. Wilson stated that you could accept
197 this application, but the application has to prove that they could subdivide the lot and have the 2 residences and
198 meet all of the zoning requirements. And that there is already another unit on the property. J. McLane stated
199 that the current use of the barn is not part of this application. The town does not allow for two residences on a
200 property.

201 G. Greenwood stated that they can unequivocally prove that they can subdivide the lot within our regulations.
202 S. Wilson has a concern about the interpretation of the law. B. Scammon stated that they could easily split this
203 lot in half and create two separate lots. What that would do is split the ownership, but they want to keep the
204 ownership the same. They are here to talk about the application and not the use of the barn, if they need to
205 come back to address that they will, but tonight they are looking to explain the condominiumization. V. Rozier
206 explained that there is one off of Osgood Road currently and is still one today. J. McLane asked if the shared
207 driveway would have to be adjusted and but in our current regulations, the driveway would not need to be
208 updated. They will be putting the unit down behind the home. V. Rozier asked if the steep slopes would be an
209 issue. In the regulations, it states that if a driveway or development is within the steep slopes there would be
210 restrictions and further review by the board. She suggested he review that section.

211 S. Wilson stated that behind the home the driveway would drop down and would take a lot of fill. He does not
212 believe that the slope in the back is as steep as the roadway. He also asked if they could have as many houses
213 on this property as they want to.

214
215 B. Solomon asked if the planning board would be treating this as a subdivision and if the applicant would come
216 to the board for waivers.

217 G. Greenwood explained that our zoning does not state that if you do the condominiumization you have to
218 follow these guidelines, and the state law says that you have to adopt the standards by way of ordinance and
219 not regulations. V. Rozier stated that it would have to be proposed as an amendment to the zoning. B.
220 Solomon asked about the sharing of the driveway and if that is allowable because it is a condo. G. Greenwood
221 stated that you could share a driveway in a subdivision, and any subdivision regulation can be waived for cause.

222 B. Scammon stated that they could separate the driveways, but they were looking to limit the impact on the lot.
223 He asked if they should limit the common area and not have it come out to the road. Why do they need the
224 long strip out to the road? Maybe that could be where the driveway for the other structure could go. J. McLane
225 sees the value in preserving the existing two structures on the lot.

226 If they were to come back and ask if more of these buildings could be built would that be allowable?

227 G. Greenwood believes that under the current zoning regulations, they could. This brings forward an important
228 issue for the town to address.

229 S. Wilson asked if they could have as many houses on the property as possible.

230 G. Greenwood stated yes, with this proposal. The town would have to change the structure of the zoning. S.
231 Wilson stated it would be incumbent on the applicant to prove that and he would like to have an attorney

232 review this section of the zoning and have the interpretation of the statute not come from just the members of
233 the board.

234 V. Rozier stated that it would be helpful for G. Greenwood to read the section to all those in attendance.

235 **356-B:5 Municipal Ordinances.** – No zoning or other land use ordinance shall prohibit condominiums as such by
236 reason of the form of ownership inherent therein. Neither shall any condominium be treated differently by any
237 zoning or other land use ordinance which would permit a physically identical project or development under a
238 different form of ownership. No subdivision ordinance in any city or town shall apply to any condominium or to any
239 subdivision of any convertible land, convertible space, or unit unless such ordinance is by its express terms made
240 applicable thereto. Nevertheless, cities and towns may provide by ordinance that proposed conversion
241 condominiums and the use thereof which do not conform to the zoning, land use and site plan regulations of the
242 respective city or town in which the property is located shall secure a special use permit, a special exception, or
243 variance, as the case may be, prior to becoming a conversion condominium. In the event of an approved conversion
244 to condominiums, cities, towns, village districts, or other political subdivisions may impose such charges and fees as
245 are lawfully imposed by such political subdivisions as a result of construction of new structures to the extent that
246 such charges and fees, or portions of such charges and fees, imposed upon property subject to such conversions
247 may be reasonably related to greater or additional services provided by the political subdivision as a result of the
248 conversion. **Source.** 1977, 468:1, eff. Sept. 10, 1977.

249 S. Wilson commented that there still has to be the correct acreage and setbacks. J. McLane would like to have
250 legal weigh in on the application. V. Rozier would like to have the applicant pay for the legal review. B.
251 Scammon does not advise the applicant to pay for the review for the planning board and suggestions for zoning.
252 V. Rozier clarified that the board needs a legal interpretation of the state statute and how the planning board is
253 to apply the town's regulations to this particular application. V. Rozier asked for any further comments or
254 concerns from the board, public, or applicant on this project.

255 B. Scammon stated that they are trying to minimize the area of view.

256 S. Wilson stated that the view will be different for him and the abutters. B. Scammon stated that all structures
257 will be included in the plan, and the heights of the roofs and the interiors will all be part of the condo
258 documents. V. Rozier asked if they would limit the area that is green space as part of the condo documents. B.
259 Scammon replied that to amend the condo documents they would have to come back to the town for any
260 changes. M. Silvia has a problem with the barn and the barn was listed as a potential living space when the
261 home was for sale. V. Rozier stated that the space is a separate issue. S. Wilson does not believe that is a
262 separate issue.

263 Discussion continued on the condominium documents. The board might make the documents for the
264 condominium a condition of approval and the applicant will need to come back to the planning board before any
265 changes are made to them. V. Rozier would like to get a legal interpretation of what the board can request be
266 included in the condo documents. Is the word conversion in the RSA saying that it is a building being converted
267 or does it include the land conversions?

268 B. Scammon has a concern about livestock. He would think that they could have horses and why wouldn't they
269 be able to do that? He is concerned with limiting the structures and sighted livestock, chickens, and horses as
270 reasons to have additional structures on the lot. Living and residential structures are what are important to the
271 board.

272 V. Rozier explained that the town needs to understand what to apply and then they could give some more
273 concrete feedback. J. McLane asked would the applicant be willing to put in the documents that this parcel
274 could not be further subdivided or further condominiumized to include no additional residences on it.

275 B. Scammon stated that you have no idea what is coming in the future, if they would be able to add structures
276 by coming back to the board that might be okay. B. Scammon would recommend a condition like that saying

277 that they could not put any more residences on the lot until they come back before the board or as the zoning
278 allows in the future.
279 V. Rozier stated that there is a potential ADU on the lot and the ADU might not be approved because it would be
280 more than 900 square feet. It will be an important piece for the applicant to consider.

281 **C. Fenton motioned to close the public hearing. M. Silvia seconded all in favor.**
282

283 T. Lane of 21 Amesbury Road returned to the meeting and stated that she had obtained her property file and
284 that Peter Frank was here at the town hall for an hour visiting with Colleen, and she stated that he only needed
285 the septic letter. She thought that everything was here for the board to be able to review the application. She is
286 here to state that she did not receive the checklist. She was under the impression that the board had all of the
287 information that was needed for their application. Glenn Greenwood will get in touch with T. Lane and help her
288 with the process. V. Rozier suggested that if they know someone else in town that can act on their behalf, they
289 could do a letter of authorization for someone else to present the application to the board if they are unable to
290 make the meeting.

291 T. Lane does not believe that will work for them, and she will wait for G. Greenwood to contact her.
292

293 • M. Silvia asked when a person asks for the application, does anyone say here is the checklist, and please
294 fill this out so that you are sure you have all of the information that the board will need? J. McLane
295 stated that is supposed to happen. V. Rozier stated that the staff has to be very careful about accepting
296 the application and stating that everything is there. The board is the only body that can state that the
297 application is complete. How do we make it easier for the applicant? J. McLane stated that the septic is
298 the area that is the most confusing for the applicants. G. Greenwood stated that if the information is
299 adequate or makes the board comfortable the board can accept that.
300 C. Fenton stated that there will still be people that are going to need guidance from the board.
301 V. Rozier would like the reviews to come from Glenn before the board meeting, so the members have
302 time to review his comments.
303

304 • M. Silvia asked if someone has an illegal ADU, and how are they on the tax rolls. K. Felch stated that
305 there is a difference in the valuation for the ADUs that are identified within the town. J. McLane states
306 that is not a planning board issue, it is a code enforcement issue.
307

308 **J. McLane made a motion to approve the meeting minutes for the Planning board for April 19, 2023, as**
309 **written, on the condition that the page numbers be corrected, M. Silvia seconded, all in favor. Also, to keep**
310 **the recording for one year.**
311

312 V. Rozier asked to have Owen confirm all the meeting minutes from this year have been approved. If there are
313 any that are not approved, please forward them to the board and then add them to the July agenda.
314

315 **Next Regular Monthly Meeting:**
316 • **Wednesday, July 19, 2023, at 6:30 pm**
317 ○ Review the Rules and Regulations updated by Mary and the checklists.
318
319 **Motion to adjourn made by J. McLane at 9:21 pm, seconded by M. Silvia, all in favor.**
320
321 Respectfully submitted,
322
323 Kathleen T Felch

APPROVED