

KENSINGTON PLANNING BOARD MEETING  
95 Amesbury Road, Kensington, NH 03833  
TUESDAY FEBRUARY 18, 2020 – 7:00pm  
Meeting Minutes - Approved - 4/23/2020

In attendance: Peter Merrill, Chair; Mary Smith, Vice Chair; Robert Chase, Member; Jim Thompson, Member; Therese Wallaga, Member; Vanessa Rozier, Selectman's Representative; Julie LaBranche, Rockingham Planning Commission

At 7:08pm, Peter called the meeting to order.

***Continuance of Application for Buxton Family Realty Trust from January 21, 2020.***

*Buxton Family Realty Trust, Map 12 Lot 45A, located on Drinkwater and Osgood Roads in Kensington, NH. The intent of this application is to subdivide the 7.85 acre parcel located on Drinkwater and Osgood Roads in Kensington, NH, into 3 Lots. Pursuant to RSA 674:35.*

Peter Landry of Landry Surveying addressed the Board representing the Buxton Family, who are in attendance. Mr. Landry explained that since the last meeting, there was a site walk conducted and he has filed the waivers that were requested by the Planning Board at the most recent meeting. Mr. Landry has also been in contact with Fire Chief True regarding one of the waiver, though he has not heard back from Chief True since last Friday. Mr. Landry explained that the applicants do not have an objection to Chief True's suggestion to install sprinklers in lieu of a cistern. It was explained that Chief True had recommended several specific models of sprinklers, depending on if a single family home or single family home with an in-law apartment would be built. The Board briefly discussed the possibility of an ADU, and that it could be attached or detached and the appropriate model would need to be selected.

Mr. Landry addressed the concerns regarding the age and credibility of the test pits due to the fact that they were done in 2014. It was stated that Mike Cuomo from Rockingham County Conservation District, who witnesses test pits, said they are good for up to 20 years. Christian Smith of Beals Associates also had mentioned that DES acknowledges test pits are good for up to 20 years.

Mrs. Rozier, Mr. Merrill, Ms. LaBranche, and Christian Smith all attended the site walk. IT was explained that due to site conditions, it was impossible to make a reasonable evaluation of all of the culverts as snow was an issue. Mr. Chase said that the culverts appear to be relatively new, however there are 3 that should be draining onto the York property, going under Wild Pasture Rd. from the abutter's property which appear to be dysfunctional. It appeared that the Osgood Rd culverts were functional. Mrs. Rozier explained that there are plans to have an excavator on site in conjunction with fire hoses to clear out the culverts in that area.

Alex Raslavicus of 80 Wild Pasture Rd. stated that aside from aesthetics, the water that is on his property is concerning. Mr. Raslavicus asked if there is any consideration taken if there have been alterations to surrounding areas, pertaining to the 20-year acceptance of test pit data. Ms. LaBranche explained that she spoke with the Director of the Rockingham County Conservation district about the test pits, explaining the situation, and still had confirmation that they would be accepted within the 20-year timeframe. Ms. LaBranche added that there were two test pits that did not pass and thus are not submitted by the application. There is a signed report attesting to the test pit information from Rockingham County Conservation District.

It was explained that during the site walk attended by Mrs. Rozier, Mr. Merrill, Ms. LaBranche, and Christian Smith, the proposed driveway locations were carefully considered to get a feel for sight distances. Collectively the group felt that the driveway for proposed Lot 2 should be as far up the hill as possible, eliminating the need for a culvert, though there is some vegetation that would need to be addressed. The group thought that the driveway for proposed Lot 1 should be moved to the West (left) slightly just to the edge of the wetland setback, which would give a few extra seconds for reaction and added visibility. A culvert would be required for proposed Lot 1 and it was recommended that the specifications shown for size of the culvert be shown on the septic plan.

The Board reviewed Christian Smith's email dated February 18, 2020:

Item #1 in the email suggests that stormwater management for the lots could be stone drip edge trenches to contain and infiltrate roof runoff and a small diversion swale on Lot #2. It was recommended that these items, along with erosion control plans could be placed on the septic design plans.

Item #4 in the email references wetland delineation. Because the wetland delineation was completed more than 5 years ago, there are not wetland flags in place anymore. It was recommended that before a building permit is issued, the wetland setbacks need to be delineation and reflagged.

Item #7 in the email suggests that Beals Associates review that septic designs, exclusively for review of stormwater management and erosion control design and specification prior to submission to RCCD for septic review. The Board discussed that a condition of approval would require that the subdivision approvals would happen after the conditions of approval were met.

Vanessa said that she spoke with the Road Manager regarding his recusal on this application if the driveway permit is a condition of having the plan recorded. She explained that he felt that the driveway permit is not something the applicants would handle and at that point his conflict of interest would not longer exist as it would be a developer involved and not the applicants. The Road Manager understands the driveways in town and part of his job description, and what he is paid to do is handle the driveway permits. If there is no conflict, there should not be a need to pay an outside engineer. There was clarifying discussion on the location of the driveways and changes based on the proposed location after the site walk, in addition to discussion of the intersection and stop signs in the vicinity.

The Board reviewed Julie LaBranche's email memo dated February 14, 2020:

Item #1 - The Board will review Item #1 pertaining to sprinklers when they address the waiver regarding the same.

Item #2 – A portion of the property is located in the Aquifer Protection District. Mr. Landry said that the buildable areas will not be in the Aquifer Protection areas. It was recommended that there be a condition of approval referencing Zoning Article VI Section 6.3 Aquifer Protection and section 6.3.3.C Maximum Lot Coverage and 6.3.3.D Septic System Design Installation.

The Board clarified that a security is not required as there is no infrastructure that the Town would become responsible for in the future.

Mr. Raslavicus said that aesthetics aside, his concern is the water issue and it's a concern he has brought to different forums in town, yet it has not been addressed. Mr. Raslavicus stated his displeasure with the Tannery Way development and procedures. He expressed concerns about the safety of the homes and the intersection nearby. Mr. Raslavicus also said that if the water issue is not addressed, there will be larger problems than those that already exist. He adamantly opposes any subdivision without a plan in place to handle the water. The Board acknowledged his concerns and explained that a large part of the site walk that took place was to look at the culverts to the best of their ability. The Selectman will be further reviewing the issue of culverts with the Road Manager. Vanessa offered to meet with Mr. Raslavicus to provide additional information regarding the paving and culverts in the area in question. There was brief discussion amongst the Board pertaining to grading of the lots and of the Tannery Way drainage.

The Board reviewed the waiver request for Town of Kensington Subdivision Regulation, Section 3.3, H. Soils-Based Lot Size Determination. There was discussion as to why the waiver is required as general conversation with Christian Smith was that the lots are large enough. Ms. LaBranche explained that there are Rockingham County Soil Maps that are available for use. Another method is to use High Intensity Soil Survey (HISS). This waiver is requesting to use the County Soil Maps instead of HISS. Ms. LaBranche explained that Soil Based Lot Size typically comes into play for cluster subdivisions and are less applicable to larger lots. She also explained that the wetland provisions can come into play, but these building lots are upland, and as a result there is a building area that is sufficient. Mr. Landry explained that most towns no longer use the HISS mapping and instead use the Rockingham County Soil Maps (DES Soil Conservation). **At 8:27pm, Mr. Thompson made a motion to grant the waiver for Subdivision Regulation, Section 3.3, H. Soils-Based Lot Size Determination. Mrs. Rozier seconded.** There was discussion amongst the Board on the criteria that would be used to grant the waiver. Ms. LaBranche suggested that the more general soil maps that the county have are sufficient as there is enough upland area and suitable soils on the lot to not have to use the HISS mapping methods and additional soil surveys, therefore strict conformity to the regulation would pose unnecessary hardship to the applicant.

**At 8:35pm, Mr. Thompson rescinded his motion and Mrs. Rozier rescinded her second. At 8:35pm, Mrs. Rozier made a motion to grant the waiver for Subdivision Regulation, Section 3.3, H. Soils-Based Lot Size Determination as strict conformity to the regulation would pose an unnecessary hardship to the applicant and would not be contrary to the regulations. Mr. Thompson seconded. All voted in favor, the motion passes.**

The Board reviewed the waiver request for Town of Kensington Subdivision Regulation, Section 3.3, M. Tree Clearing Regulation. Mr. Landry explained the waiver request is a result of discussions from the January Planning Board meeting. Ms. LaBranche stated that this Board has not used this regulation much in the past. The idea of this regulation is to ensure that existing forests are preserved as much as possible, and in this case, the trees on the proposed lots are minimal in the developable envelope and in wetlands where there is restricted cutting anyway. The waiver request acknowledges that the majority of the lot is "open field". Mrs. Rozier suggested that the spirit of the regulation is to protect and preserve the natural environment. **At 8:43, Mr. Thompson made a motion to not support the Tree Clearing waiver. There was no second.** There was discussion on why a waiver is needed. There was concern that granting the waiver would allow a developer to clear cut, which the Board did not want. Ms. LaBranche stated that the property is a field that has grown up, and suggested a modified waiver stating that only trees within the development envelope could be removed. The Board discussed that this waiver to the subdivision would continue for a future owner and the impact that it could have on a future owner. The applicant said that they do not intend to cut. Mr. Chase suggest not granting the waiver, as there have been other subdivisions that have not asked a forester to do a tree plan as this regulation requires. It was suggested that this regulation was intended for a large parcel of land which contained mature forest. Mr. Merrill proposed modifying the waiver to state that clearing would be limited to the building envelope for each lot.

Mr. Raslavicus expressed concern that cutting any trees would change the character of the neighborhood and asked about provisions for scenic roadways in Kensington. Gary Milbury, one of the applicants, said that they would not want to tell someone who buys the property what they could and could not cut on their land.

Mrs. Rozier said it was still unclear whether this waiver would prohibit future owners from cutting trees. Ms. LaBranche stated that it would. There was concern that this could be taken too literally and would unfairly limit a future owner's ability to manage and maintain their property. The Board considered referencing a certain size of tree that would be prohibited from being cut, however after discussion the Board felt this would be too complicated. Mr. Chase stated that his understanding would be that this waiver would apply to the subdivision and the eventual owner would not be bound. Ms. LaBranche stated that she feels this section is concerned with preservation of forests and large trees and does not have significance to this particular property. Mr. Thompson suggested denying the waiver. Mrs. Rozier suggested granting a modified waiver and requiring that a tree clearing plan be provided prior to issuance of the building permit. The Board felt that this would potentially require the same process multiple times. The Board viewed aerial maps of the property via online satellite images. Mr. Chase felt that if the waiver would exist in perpetuity, the waiver shouldn't be granted. Mr. Thompson suggested granting the modified waiver, or no waiver at all. Mrs. Wallaga preferred that no waiver would be granted at all for no restriction on the homeowner. Mrs. Smith stated that she would be in favor of a waiver for only the buildable area. **At 9:30pm, Mrs. Rozier made a motion to grant the waiver for Subdivision Regulation, Section 3.3, M. Tree Clearing Regulation, with the exception that existing vegetation illustrated on the Landry Surveying Plan for the Buxton Realty Trust Subdivision remains intact, unless within a driveway area, or the development envelope, or within an area requiring clearing for drainage consideration, as this regulation would pose an unnecessary hardship to the applicant. Mr. Thompson seconded.** There was continued discussion on what the impact to future owners would be. Mrs. Smith stated that if there was no waiver in place, they would be required to hire a forester, following the regulation, though there would be no impact to future owners. **A vote was called: 3 voted in favor, 2 opposed, 1 abstained. The motion passes.** Mr. Landry expressed concern that the intent of the waiver was that this is not a forested lot, instead it is an open field and wetlands, and because of that they were trying to avoid doing the forestry plan, not that if trees grow the owner cannot cut them down

The Board reviewed the waiver request for Town of Kensington Subdivision Regulation, Section 3.3, J.1 Fire Protection-Cistern. Ms. LaBranche explained that Chief True had told the applicant they would need to apply for a variance, but she thinks that Chief True meant a waiver instead, though she does not believe that a waiver is necessary. She explained that the applicants need to provide a credible fire protection suppressant, and the applicant has agreed to require an

acceptable sprinkler system based on Chief True's recommendation. Chief True will need to clarify what the exact recommended sprinkler systems are. This would be a condition of approval and note on the plan. Sprinklers meet the requirement for fire suppression, as an alternative to cisterns. The Board felt that the request for the waiver would be withdrawn by the applicant. **At 9:52pm, Mrs. Rozier made a motion that the waiver does not apply. Mr. Thompson seconded. All voted in favor.**

The Board reviewed the waiver request for Town of Kensington Subdivision Regulation, Section 3.3, B Lot Shape Regulation. **At 9:55pm, Mr. Thompson made a motion to grant the waiver for Town of Kensington Subdivision Regulation, Section 3.3, B Lot Shape Regulation because the waiver does not go against the intent of the regulation as the lot shape meets the intent of the regulation. Mr. Chase seconded. All voted in favor.**

The Board reviewed the proposed conditions taking into consideration the email memo from Ms. LaBranche dated 2/14/2020 and the email memo from Christian Smith of Beals Associates dated 2/18/2020. Ms. LaBranche suggested that the conditions be divided into three categories: conditions that must be met before signing of final plan, requirements that must be met before issuance of a Building Permit, and required notes to be added to Final Plan.

The Board categorized conditions as follows:

*Conditions that must be met before signing of the final plan:*

1. The Kensington Fire Chief shall provide specifications for sprinkler systems to be installed in dwellings on Lot 1, Lot 2 and Lot 3 to the requirements of the Subdivision Regulations Section 3.3.J Fire Protection.
2. Provide a completed Certificate of Monumentation and inspection of lot boundary markers by the Building Inspector.
3. All fees including professional review of the application and materials must be paid before the final plan is signed by the Planning Board.
4. Provide a copy of the NHDES Subdivision approval.
5. Plan Revision: The driveway for Lot 2 shall be relocated to the crest of the hill on Drinkwater Road. The driveway for Lot 1 shall be relocated as far down the slope toward the controlled intersection at Wild Pasture Road without impacting wetlands and maintaining a minimum of 5 feet from the nearby utility pole guy wire.

*Requirements that must be met before issuance of a Building Permit as noted:*

6. Issuance of a Driveway Permit from the town.
7. Installation of a stable driveway/construction entrance and drainage conveyances on Lots 1, 2 and 3 prior to construction.
8. Driveway culvert design and specifications shall be provided with the Driveway Permit Application for Lot 1 and Lot 3.
9. Wetland boundaries shall be re-delineated and flagged and development setbacks and development envelopes shall be marked prior to construction on Lot 1, Lot 2 and Lot 3.
10. A plan shall be provided for each Lot 1, Lot 2 and Lot 3 which shows stormwater management and erosion control practices and specifications. The plan shall include stone drip edge trenches to contain and infiltrate roof runoff on Lot 1, Lot 2 and Lot 3. The stormwater management plan for Lot 2 shall include a diversion swale on the downslope side of the driveway. The Town Engineer shall review the plan for each Lot.

*Required notes to be added to the Final Plan:*

11. Lots 1, 2 and 3 are subject to requirements of the Kensington Zoning Ordinance Article VI Section 6.3 Aquifer Protection including Section 6.3.3.C Aquifer Protection and Section 6.3.3.D Maximum Lot Coverage.
12. Lots 1, 2 and 3 are subject to Article VI Section 6.1 Wetland and Hydric Soils Conservation District including structure setbacks from poorly and very poorly drained soils.
13. All residential dwellings on Lots 1, 2 and 3 will be installed with sprinkler systems to meet the requirements of the Subdivision Regulations Section 3.3.J Fire Protection. [The Kensington Fire Chief shall provide specifications for sprinkler systems to be installed in dwellings on Lot 1, Lot 2 and Lot 3 to the requirements of the Subdivision Regulations Section 3.3.J Fire Protection to be noted on the plan.]
14. Wetland boundaries shall be re-delineated and flagged and development setbacks and development envelopes shall be marked prior to construction on Lot 1, Lot 2 and Lot 3.

15. Plans shall be provided for Lot 1, Lot 2 and Lot 3 that detail stormwater management and erosion control practices and specifications. The plan shall include stone drip edge trenches to contain and infiltrate roof runoff. The Town Engineer shall review these plans for each Lot. The stormwater management plan for Lot 2 shall include a diversion swale on the downslope side of the driveway.
16. Construction vehicles servicing development of Lot 1, Lot 2 and Lot 3 shall follow a route via the shortest distance to and from North Road to Route 150.

Ms. LaBranche suggested that the Selectmen adopt a policy having to do with truck routes. Ms. Wallaga asked if there is an ordinance posted pertaining to the truck routes. It was explained that the repetitive use of town roads by machinery and construction vehicles causes unnecessary wear and tear on roads that the town maintains

**At 10:32pm, Mrs. Rozier made a motion to approve the subdivision application for Buxton Family Realty Trust, Map 12 Lot 45A with the following conditions:**

***Conditions that must be met before signing of the final plan:***

1. The Kensington Fire Chief shall provide specifications for sprinkler systems to be installed in dwellings on Lot 1, Lot 2 and Lot 3 to the requirements of the Subdivision Regulations Section 3.3.J Fire Protection.
2. Provide a completed Certificate of Monumentation and inspection of lot boundary markers by the Building Inspector.
3. All fees including professional review of the application and materials must be paid before the final plan is signed by the Planning Board.
4. Provide a copy of the NHDES Subdivision approval.
5. Plan Revision: The driveway for Lot 2 shall be relocated to the crest of the hill on Drinkwater Road. The driveway for Lot 1 shall be relocated as far down the slope toward the controlled intersection at Wild Pasture Road without impacting wetlands and maintaining a minimum of 5 feet from the nearby utility pole guy wire.

***Requirements that must be met before issuance of a Building Permit as noted:***

6. Issuance of a Driveway Permit from the town.
7. Installation of a stable driveway/construction entrance and drainage conveyances on Lots 1, 2 and 3 prior to construction.
8. Driveway culvert design and specifications shall be provided with the Driveway Permit Application for Lot 1 and Lot 3.
9. Wetland boundaries shall be re-delineated and flagged and development setbacks and development envelopes shall be marked prior to construction on Lot 1, Lot 2 and Lot 3.
10. A plan shall be provided for each Lot 1, Lot 2 and Lot 3 which shows stormwater management and erosion control practices and specifications. The plan shall include stone drip edge trenches to contain and infiltrate roof runoff on Lot 1, Lot 2 and Lot 3. The stormwater management plan for Lot 2 shall include a diversion swale on the downslope side of the driveway. The Town Engineer shall review the plan for each Lot.

***Required notes to be added to the Final Plan:***

11. Lots 1, 2 and 3 are subject to requirements of the Kensington Zoning Ordinance Article VI Section 6.3 Aquifer Protection including Section 6.3.3.C Aquifer Protection and Section 6.3.3.D Maximum Lot Coverage.
12. Lots 1, 2 and 3 are subject to Article VI Section 6.1 Wetland and Hydric Soils Conservation District including structure setbacks from poorly and very poorly drained soils.
13. All residential dwellings on Lots 1, 2 and 3 will be installed with sprinkler systems to meet the requirements of the Subdivision Regulations Section 3.3.J Fire Protection. [The Kensington Fire Chief shall provide specifications for sprinkler systems to be installed in dwellings on Lot 1, Lot 2 and Lot 3 to the requirements of the Subdivision Regulations Section 3.3.J Fire Protection to be noted on the plan.]
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15. Plans shall be provided for Lot 1, Lot 2 and Lot 3 that detail stormwater management and erosion control practices and specifications. The plan shall include stone drip edge trenches to contain and infiltrate roof runoff. The Town Engineer shall review these plans for each Lot. The stormwater management plan for Lot 2 shall include a diversion swale on the downslope side of the driveway.

**16. Construction vehicles servicing development of Lot 1, Lot 2 and Lot 3 shall follow a route via the shortest distance to and from North Road to Route 150.**

**Mr. Thompson seconded. All voted in favor.**

Josh Gould of 7 Moulton Ridge Rd. (Lot #5) explained to the Board that he bought this new construction home in June and is seeking advice from the Board. He stated that there is a grading issue on the property and that he is concerned that the septic plan was not followed based on the water that runs across his property, especially across the driveway. As a result, he thinks that the septic is settling in a manner that it shouldn't be and it is causing problems. Mr. Gould is seeking advice from the Board as to what his course of action should be. He believes that based on the septic design plan, there should be a culvert near the end of the driveway, but there is nothing there of that sort. He has concerns that grass coverage will not remedy the issue and is not sure if there is any recourse against builder. Mr. Merrill suggested starting with the designer of the septic plan to review the plan against what was installed. Mr. Merrill explained that Dennis Quintal was an outside engineer that was brought in for this project, but did not believe that he did septic inspection. Mr. Gould explained that the outgoing baffle is in a different place that it should've been, according to the plan. Additionally, there was so much pressure that happened that there was sagging of the system. The Board recommended that he get a second opinion from an independent septic install to assess and compare the system to the plan, as he received DES approval for the plan. Mr. Gould feels he can take care of the septic issue but has concerns about the grading. He explained that it was seeded but there isn't enough vegetation growing and his neighbor has same issue but it is not as severe. The Board explained the developer would've submitted a plan for erosion and sediment control as part of the grading plan with the building permit. Mrs. Rozier suggested that he review with the Board of Selectman if he sees differences between the approved plan and the installation.

Karen M. Martell of 285 North Haverhill Road addressed the Board for a consult on a waiver for the lot width requirement. **Mr. Merrill recused himself at 11:05pm.** Ms. Martell explained the history of the issue, including her consult with the Planning Board at the December 2019 meeting. She provided the Board with a site map with her own measurements of the proposed new lot line. She is informally asking the Board if they would support a waiver to the lot width requirement. Ms. Martell understands that nothing stated tonight by the Board is binding or a promise to vote in any particular way. It was pointed out that the lot is already a nonstandard lot shape. There seems to be general support from the Board for her to pursue the waiver and the possibility that the regulation may pose a hardship. Ms. Martell thanked the Board for their feedback. **At 11:21pm, Mr. Merrill rejoined the board.**

The Board will review minutes from January at the next meeting which will be held on March 17, 2020 at 7:00pm.

**At 11:22pm, Mrs. Rozier made a motion to adjourn. Mr. Thompson seconded. All voted in favor.**

Respectfully submitted,

Chelsea Lalime