

**KENSINGTON, NEW HAMPSHIRE**  
**KENSINGTON PLANNING BOARD**  
**TUESDAY**  
**February 16, 2016**  
**7:30 P.M. AT THE**  
**KENSINGTON ELEMENTARY SCHOOL LIBRARY**  
**122 Amesbury Road**  
*Meeting Minutes-Approved March 15, 2016*

**In Attendance:** Jim Thompson, Chairman; Joan Whitney, Vice Chairman; Bob Solomon, Michael Schwotzer; Peter Merrill, Selectmen's Representative; Julie LaBranche, Rockingham Planning Commission Representative

Department Heads in Attendance: Norman Giroux, Building Inspector

Jim called the meeting to order at 7:35pm.

**New Business:**

Issuance of building permits:

The board went into the discussion on the zoning book issues. Peter explained that they would be discussing the overall issue of why Norman Giroux is attending the meeting. These issues came forward as a result of the article that was proposed by the Board of Selectmen, there was a citizen that came forward and informed the board that they did not have the authority over that, they could raise the article, but before the article can become official the planning board will need to have a public hearing on the proposed changes as well. They have the jurisdiction over the zoning ordinance amendments. It is possible that the authority to oversee the building permits was not ever transferred over to the board of selectmen. Where is it in the zoning that states that the board of selectmen are anything other than the enforcing body? Julie explained that under the zoning on page 97 under 9.1.3 it states that:

**9.1.3 ADMINISTRATION**

General: The provisions of the Kensington Zoning Ordinance shall be administered by the following:

- A. Building Inspector for building permits;
- B. Planning Board for subdivision, site plan review and conditional use approval; and
- C. Zoning Board of Adjustment for special exception approval and any variances granted from the ordinance.

Peter explained that administration is not defined in the zoning ordinance. Julie went on to explain that the Board of Selectmen are responsible for the enforcement of the ordinances. Peter questioned why the board of selectmen are approving the permits and then making the determination on what boards the applicant might need to go to. There have been instances in the past that should not have been allowed by the board. Julie explained that administration is where you make the determination of where the application needs to go next. She would use the standard definition of administration/administer. It is not stated in the book who is responsible at this time. Mike explained that the prior building inspectors did not want to be the code enforcement officers. It was read and understood that the permits were under the purview of the board of selectmen. Administration to him is guiding the process up to the point that there is an approval and then dealing with process after that. If you have one person dealing with A-Z then there are no checks and balances. The definitive action needs to be made so that the building inspector is aware of who he needs to go before with the building permits, would he be going to the board of selectmen for the approval or just for enforcement. Mike pointed out that building permits are part of the zoning ordinance and the selectmen are responsible for the enforcement according to section 9.1.4 Enforcement, so he believes that they are the responsible party for building permit issuance. Julie handed out some statutes: Towns ability to appoint officers the second is if the town adopts its own building code then they have certain responsibilities.

Julie explained that statutes state that if you adopt a building code and appoint a building inspector they have the authority to approve building permits.

Joan explained that the building inspector issues the building permits in other towns. If there is something that is questionable then the inspectors from the other towns will go to the board of selectmen or the planning board. Bob explained that the building inspector could come to the planning board for a consultation if needed. Julie suggested a checklist that would go through the different sections of the zoning, and if there is something checked on the list it would raise a question that the permit being applied for might need to see one of the land use boards. There are two distinct zones in Kensington and the zone should be listed on the checklist. Mike

explained that no decisions can be made without a quorum of the planning board, not any one member can be making any decisions on their own.

Norman Giroux explained that he has a lot of experience in the building field and his experience has been that the building department will issue the building permit, but if there are questions they would direct the permittee to another process. He explained that he checks on the flood zones and the aquifer for each application. The current process says that he has to go before the selectmen with even a \$50.00 permit, when he knows that the permit would be fine for the resident to start on. He indicated that the current process is getting too complicated and getting too many people involved. The Board of Selectmen stated at their meeting last night that he is allowed to approve the permits on his own now, but suggested that he go to the Planning Board meeting for clarity. Norman indicated that he is present because he is not the one that will be changing or writing the zoning, but it will affect him. There are a lot of things that need to be changed, and whatever is written should be clearer and not so complicated. Peter explained that Norman is trying to find a way to simplify and expedite the process of obtaining a building permit.

Peter asked how this would be enacted. Joan explained that the board of selectmen are allowed to instruct the building inspector on what needs to be done to obtain the permit. Joan suggested a job description. Is there a job description within the Building Ordinance RSA? Julie read a section of RSA 155-A:3 to the members that stated what the building inspector is responsible for. If an applicant does not agree with the interpretation the building inspector has made of the zoning ordinance they can appeal to the Zoning Board of Adjustment for clarity. Mike explained that when the section is read, the building inspector *shall* have the authority to issue building permits, the word shall in the RSA means that he will have the authority and there is no question about that. Peter questioned why the permits have been going in front of the Board of Selectmen. It was explained that that was what was always done. There have also been changes to the administration and staff. With the new information that has been brought forward, there is now no question that the building inspector has the authority to issue the building permits. If there is a question about enforcement, he should go to the Board of Selectmen, if there is a question on zoning he should come to the planning board. If the applicant is denied a building permit they can apply to the zoning board of adjustment stating administrative error. **Jim asked the board if they were all in favor of the building inspector approving the building permits on his own. All were in favor.**

Norman stated that if the planning board would like to design a checklist for him to go over with each application he would gladly accept it, and any questions would be referred to one of the boards. Julie gave the building inspector the section that is on the ballot about non-conforming uses. From this point on, Norman will sign the building permits on his own. Julie will draft a zoning determination form for Norman to review.

#### **149 South Road-Wild Willow Restaurant and Tavern:**

Norman informed the board that the restaurant manager is looking to come before the planning board to expand the area outside the restaurant to be allowed drinking and dining. He met with them and it was clear that they needed different inspections. Currently they do not have an occupancy permit from the building inspector. They do have an assembly permit that was issued by the fire chief. He is concerned that the drinking might be allowed in the parking lot, where it is not permitted. Mike asked for clarity about the business operating without an occupancy permit. They are currently not in compliance and he recommended that the Selectmen put the business on notice. Mike explained that there needs to be a barrier of some sort between the outside area and the parking lot. Norman explained that there was a misunderstanding with the issuance of the place of assembly. He believes that the manager/operator was under the impression that they did not need the occupancy since they had the assembly permit. Mike explained that in the zoning section 8.1.7, a certificate of occupancy should be supplied.

Norman explained that he needs the following to issue occupancy permits:

- Sign offs from the electrical and burner permits on the yellow card
- Assembly permit
- Septic approvals
- FEMA application in flood zone; if applicable

Joan asked for a section to be added to the assembly permit that stated if the occupancy permit has been issued yet, or a place for the building inspector to write in the date of issuance of the occupancy permit.

The building inspector has asked the owner of the property to fill out the flood zone application that needs to be turned in before the occupancy permit can be issued. He has not received this back yet. He would like to have a meeting with all the other departments, so that they all know he has to be the last one to sign off on the occupancy.

He will make an appointment with the operator within the next two weeks. Jim asked if there were any issues with the property, and Norman did not think that there was anything major. He did notice just quickly that they need to have the handicap parking marked on a pole.

Mike asked if there is an expiration on the building permit? It is believed that it is one year, but if two years pass you need to fully apply again and pay fees. Julie did explain that if they want to expand outside they need to come back to the planning board for a site plan review.

**Warrant Article:**

Peter explained that there is a warrant article that was proposed by the board of selectmen, and there is an issue with the process that was taken to have it on the warrant, they needed to have the planning board have a public hearing on the permit section as well.

The warrant will stay on the ballot but will not be enacted because of the process. Mike explained that if the selectmen were to have another ballot for the article in September, they would have to petition the court for a special meeting. Julie explained that the board of selectmen did have the public hearing on the article, but they did not have the planning board have the public hearing for their comments/approval.

The section that states: That do not meet the criteria defined in A1 is what should be removed from the permits not required section.

Julie explained that anything that is \$2,000 or more would need a building permit, but that was not the intent, it intended for those actions to be exempt. If you reroof, shingle, or residing a permit is needed. Mike explained that the permit can be issued at no fee, but the inspector is paid on fees. Kathy explained that people have been charged the minimum permit fee. Peter explained that Norman is doing a lot of work. Peter read the proposed article to the board that indicated the criteria for getting a building permit. It was also questioned if this section on permitting should even be in the zoning book. This will go on the ballot again next year. Kathy will put it on the agenda for July or August 2016.

**Sign Ordinance:**

Joan informed the board that the current sign ordinance will have to be adjusted, due to current court cases. You can regulate the signs, but can't regulate what is on them. The special exception can be done for the sign, but the board can't tell the applicant what they can put on the sign. Julie explained that Commercial signs all have to be the same size, residential signs have to all be the same size, but you can state how many they are allowed. We currently have definitions and different signs in the ordinance that will have to be redone. If the town wants to allow the farmers signs for vegetables and eggs they would have to create something that will fit. It was suggested to have the town's counsel review the signs ordinance, but she would like to have the board work on it and then send to counsel after it has what the board would like to include. This will be pages 31-35 for next meeting. Kathy and Julie will get the pdf's of the meeting to the board.

**Accessory Dwelling Units:**

Joan updated the board on the new accessory dwelling legislation. Anywhere that the town allows single family dwellings they will have to allow accessory dwelling units. They board will have to remove the current In-Law wording and replace it with the accessory dwelling unit stipulations.

- They can stipulate that it is never a condo, both sides have to be common owners.

- Can state that it has to be attached.

- Has to meet septic requirements

- Door inside that attaches the units, but can't say that it is to be unlocked.

- They can state that there is only one front door.

- Has to meet current building codes and have sufficient sewage (can't state sewer system is brought to code.)

- Somehow define that trust is okay; beneficiary

- Define word attached

- Can require specific parking

- May adopt zoning ordinance to require special exception

- Does not have to be immediate family member; can limit number of unrelated people.

- May not limit to less than 750 sq. feet

- Define residence

Julie redlined the changes for the board; there are not a lot of things that need to be changed. She will reference each section with the legislative changes. In the legislation it states that it may not be restricted to less than 750 sq. feet. East Kingston just changed their restriction to 900 sq. feet. There was quite a bit of discussion on the changes. This new legislation will go into effect June of 2017. The board will continue to review the sections and change them to allow for the new parameters. The board talked about having a public workshop to see what the residents want to have allowed in these units. Kathy informed the board that there are inquiries on the multifamily regulations.

Mike made a motion to approve the January 19, 2016 meeting minutes as presented, Bob seconded, all in favor.

Jim wanted to discuss the changes in the positions. Kathy will bring the appointments for the next meeting.

**In Home Businesses:**

Joan expressed that East Kingston sends out letters for the in home businesses and gives the residents certificates if they are still operating and they need to state if there were any changes to the property in the last year. If this is something that the board would like to pursue, than the town's zoning would have to be changed.

Mike asked about the building across from the Farm Stand. Joan would like to request that again. Peter clarified what the letter is about. It should list out what all the uses were that it was approved for and ask if there have been any changes to the original approval.

Kathy informed the board that there will be two applications coming before the board next month. There is an application going before the Zoning Board March 1, 2016 for a Cosmetology shop located on Amesbury Road that will then have the site plan review with the planning board if approved, and also a subdivision off of North Haverhill Road. Kathy passed the plans to Julie for her to comment and review. She informed the board that the applicant that is going to the zoning board is aware that they need to have zoning board approval before presenting the site plan to the planning board.

**Peter made a motion to adjourn the meeting at 9:38pm, seconded by Joan, all in favor.**

Respectfully submitted,

Kathleen T Felch  
Planning Board Clerk