

KENSINGTON PLANNING BOARD  
TUESDAY, MAY 15, 2018  
MEETING MINUTES  
*Approved 6/19/2018*

In attendance: Bob Wadleigh, Selectmen's Representative, Jim Thompson, Chris Chetsas, and Julie LaBranche, Rockingham Planning Commission Representative.

Mr. Thompson introduced Board members to the audience. He also informed those in attendance that the Board is in need of new members. Mr. Wadleigh made a motion, seconded by Mr. Chetsas, to appoint Mr. Thompson as Acting Chairman for this meeting. Motion passed with Mr. Thompson abstaining.

Mr. Thompson read the notice for the public hearing, as follows:

"For the Local Utility Company Unitil to remove and trim trees on Kensington's Scenic Roads, Stumpfield Road, Muddy Pond Road, TrundleBed Lane, Moulton Ridge Road, North Road, Osgood Road, Wild Pasture Road, and Hilliard Road; Pursuant to RSA Chapter 231:157 and RSA 231:158. Public Notification is required on Scenic Roads within Kensington pursuant to Article IV; Section 4.3.2 of the Zoning Ordinance and Land Use Regulations. Full copies of the trees to be trimmed are available at the Town Office located at 95 Amesbury Road."

7:10 p.m. Mr. Wadleigh made a motion, seconded by Mr. Chetsas, to open the public hearing. Motion passed unanimously.

Christopher Moultroup, Forestry Supervisor, spoke on behalf of Unitil. This process will be routine maintenance grooming. The last time it had been done was 5 years ago. He said that trees will be trimmed 15 feet above, 10 feet below, and 10 feet to the side of the powerlines. A list of hazardous trees that Unitil wants to have removed in addition to the pruning was also presented to the Town. The work will be done by Asplundh and will be completed by the end of the year.

Ms. LaBranche commented that the trees being removed were mostly dead, leaning on lines or presenting some other hazard.

Cindy Heal, 47 Osgood Rd., asked if all the trees on the list were being cut down. Mr. Moultroup responded in the affirmative and noted that all those trees have been marked with an orange ribbon. He also noted, in response to Mr. Thompson's question, that the identification numbers on the utility poles are the yellow ones.

Joan Skewes, 132 Drinkwater Rd., asked if the trees were on Town property or private. Mr. Moultroup stated it was probably about 50/50 but that permission would be requested from the land owners. Asplundh will get signed permission before doing any cutting. Mark O'Day, 61 Wild Pasture Rd., said that he had not given permission the last time grooming was done. However, he stated that during a snow storm the tree was cut to the base. Mr. Moultroup said that permission was not required during an emergency. He said that if pruning is allowed, the tree should not be a problem during a storm. Mr. Moultroup's contact information was made available to anyone who wished to have further discussion with him. He said that once the grooming was completed, he would return to audit the process. He also informed residents that if anyone wanted the cut wood to remain, that would be done.

Mr. Chetsas made a motion, seconded by Mr. Wadleigh, to allow Unitil to meet with landowners to obtain approval to remove trees noted on the Hazard Tree Reporting Forms submitted with the application. Motion passed unanimously.

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7:25 p.m. Mr. Thompson read the public notice for the second hearing as follows:

"Briana Grieco, 56 Osgood Road, Kensington, NH, M12, L45B3, for a change in use of an approved Home Occupation, in accordance with Article III, Section 3.3C of the Kensington Zoning Ordinance. The applicants propose to change the use from a pottery studio to be able to operate yoga classes from their residence."

Mr. Wadleigh made a motion, seconded by Mr. Chetsas, to open the public hearing. Motion passed unanimously.

Mr. Thompson reported that Ms. Grieco's application had been approved by the ZBA with the following conditions: no more than 10 cars per day, classes must end at 8:30p.m., no more than 2 classes per day and the operation must be limited to 5 days per week. Mr. Thompson invited Ms. Grieco to present her information. She stated that the previous owner had built a kiln shed for his pottery workshop. This is the building she will use for her Yoga studio. She also purchased the 11 acre lot next to her from Mr. Buxton so that no one else could build on that property and create additional traffic flow on the street. She stated that she wouldn't even be having classes 5 days per week. She teaches at other places. They recently had a birthday party and 15 cars were parked at their home without any problem. Mr. Thompson asked if she had prepared a Plat to show that there was adequate space. Ms. LaBranche stated that a Plat would only be required for a commercial enterprise, not a home business. Ms. LaBranche asked Ms. Grieco to point out on the pictures she provided exactly what building would be used and how the building is approached coming up the driveway.

Mr. Thompson asked if there were any questions or comments from those in attendance. Skip and Cindy Heal, 47 Osgood Rd., stated that they do not want to have a home occupation in the neighborhood. Mrs. Heal read a letter that she requested to have included as part of the minutes (See attached).

Mr. Thompson stated that the ZBA hearing would have been the proper avenue to address these comments. Mr. and Mrs. Heal were out of town at the time of that hearing but the letter was presented at the hearing. The only responsibility of the Planning Board is to make sure that the lot is adequate to do what the ZBA approved.

Mrs. Heal asked if she and her husband could request that the Planning Board postpone their decision or could the Board kick it back to the ZBA. Ms. LaBranche explained that it is a statutory requirement to process the application without delay except for a good reason.

Mr. Chetsas suggested that the Board make a site visit in order to make sure there is adequate parking room. He made a motion to that effect, seconded by Mr. Wadleigh. Motion passed with Mr. Thompson opposed. A visit is scheduled for Thursday, May 24 at 6:00 p.m. Ms. Grieco was informed that she could not operate until a final decision was made.

Mr. Chetsas made a motion, seconded by Mr. Wadleigh to have the public hearing continued until next month's meeting on June 19. Motion passed unanimously.

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Review of Lambert sub-division: Chris Albert, project manager from Jones & Beach Engineers, Inc., presented a Grading and Restoration Plan dated May 14. He also presented receipts from Rockingham County Conservation District for septic system inspections (passed final inspection) and Approval for Operation of Individual Sewage Disposal System from New Hampshire Department of Environmental Services. Mr. Thompson read an email from Town Engineer for this project, Mr. Dennis Quintal (see attached). Mr. Quintal must be contacted for a site inspection to insure that the work is done according to the Plan. Mr. Albert informed the Board that it had been calculated that 1496 yards of material (88 truckloads @ 17 yards per load) had been removed from the site. Application for State Excavation Permit has been provided to Mr. Ragonese.

Mr. Chetsas stated that it is imperative that no more material be taken off the site. There is a note on the Plan to that effect. There is also a second note on the Plan that the Town Engineer be on site during the restoration. Mr. Chetsas also inquired about the applicant's response to the Board's previous question about the perimeter drains. The drains will be going to a dry well.

Mr. Wadleigh made a motion, seconded by Mr. Chetsas, to accept the May 14, 2018, Grading and Restoration Plan as proposed as long as the Town Engineer, Mr. Quintal, is present and no further material is removed. Motion passed unanimously.

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Mr. Thompson stated his concern that the Planning Board currently consists of only 3 members. He read the following from "New Hampshire Planning and Land Use Regulations":

673:2. Planning Board II "In other towns, the planning board shall consist of 5 or 7 members as determined by the local legislative body. The membership shall be filled by one of the following procedures: (a) The Selectmen shall designate one selectman or administrative official of the town as an ex officio member and appoint 4 or 6 other persons who are residents of the town, as appropriate"

Ms. LaBranche will make inquiries and look into this situation to see if there is any legal issue.

During review of the April draft minutes, Mr. Chetsas noticed an error. In the last paragraph on the first page, "Mr. Chetsas questioned" should be replaced with "The Board questioned". Mr. Wadleigh made a motion, seconded by Mr. Chetsas, to approve the minutes with the stated correction. Motion passed unanimously.

Mr. Thompson agreed to accept the position of Acting Board Chairman for one more month.

Linda Bennett, Moulton Ridge Rd., had a question concerning the Lambert Subdivision discussion. She said she had been away all winter and when she came home there was a huge trench and piles of earth. She asked if there was any penalty for this excavation. Mr. Thompson stated that the planning Board is not the enforcement board for the Town. The Board of Selectmen issued a cease and desist order as soon as they were made aware of the problem.

Leslie Hansard, 3 Moulton Ridge Rd, asked Mr. Wadleigh about the status of the swale for lot 6 of the Lambert Subdivision. She said she had talked with Dave Buxton, the Town's Road Agent, and he had agreed that the trees should stay. She wanted to know if she should revoke the easement she had granted. Mr. Wadleigh responded that he would check with Mr. Buxton and Mr. Quintal and do a site visit.

Mr. Wadleigh presented the Board with a question from the Board of Selectmen. They wanted an update on the status of the unit on North Haverhill Road. How far should it be pushed? Ms. LaBranche said that we don't as yet have a response from the Town's Attorneys with a legal opinion on the proposed new wording for the Accessory Dwelling Unit (ADU) policy. Mr. Wadleigh responded that the response had just come but no one had chance to review it. Ms. LaBranche suggested that if the unit is being used and rented it is a direct violation even though the new policy allows for detached units as it is way over the maximum square footage allowed. Mr. Wadleigh said the Board would ask the attorney how to proceed.

Ms. LaBranche made a suggestion that the Board set up a workshop discussion and talk with the ZBA about making changes to the ADU policy for next year.

8:45 p.m. Mr. Wadleigh made a motion to adjourn. Motion was seconded by Mr. Chetsas and passed unanimously.

Respectfully submitted,

Mary F. Smith

May 15, 2018

Dear Members of the Planning Board:

Re: Request from Briana Grieco, 56 Osgood Rd Kensington, NH M12, L45B3

We would like to submit this letter to the Planning Board for inclusion in the May 15, 2018 minutes.

In regard to the request form Briana Grieco, of 56 Osgood Rd., for a change in use of an approved home occupation, in accordance with Article III, Section 3.3C of the Kensington Zoning Ordinance, "to operate a yoga business from their residence", 3.3C states that "Home products and produce may be bought and sold ..... by special exception as granted by the Board of Adjustment."

Although the Board of Adjustment granted approval with some restrictions, we still have concerns about this business being located on a residential scenic road. At the May 1 meeting, Mr. Ford stated that "he does not have a problem with increased cars on Osgood Rd.; that there is a business operating across the street, why should one be allowed and not the other."

Regarding the first part of that statement, Osgood Rd. is used by many locals and visitors for recreational running, biking and walking. We would consider this to be out of character for Osgood Road and it's current use, so although Mr. Ford does not have an issue with increased traffic on Osgood Rd., we do. I would like to say there is no basis for that statement being made by one person, as we have lived here for almost 40 years, and to our knowledge, no traffic study has ever been conducted to establish whether this increased traffic would be excessive or not.

Regarding the second part of that statement referring to a business across the street, I would like to say that this lacks authenticity, as we live across the street and we do not have a business on our property. Also, it is inappropriate to bring up the issue of an unnamed business on Osgood Rd.

If this property is to be considered for business approval, it should be required to meet the requirements of the Purpose, Description and Specifications of the Commercial and Industrial Use District, Section 3.1.1A under Uses Permitted which states it applies to "Service and professional businesses, including retail shops, stores, personal service shops, etc." We believe that a yoga business would be considered a personal service shop and therefore, if approval were to even be considered, a warrant article should be presented to the voters of Kensington to see if they approve of the use of Osgood Rd., or any other residential road, to be considered a business district and therefore meet those guidelines. Thus residents would be given the chance to vote on whether or not they would want a business to be operating across the street from where they live.

56 Osgood Rd. as described in Article III, Section 3.1.2 B of the Zoning Ordinance, does not meet the Commercial District Definition, and therefore would not be applicable to Article III, Section 3.1.3 which permits personal service shops. Approval of this adjustment would also set a precedent for future applications of the same nature from any business operation asking for an exception to be located on a residential road.

We would also like to mention that Ms. Grieco has already begun operation of her business without getting the proper approval from the Planning Board. For someone who has lived in this town for less than a year, we feel the appropriate steps have not been



taken to allow this. It is an extreme insult to anyone who has to meet all the requirements set forth in the Zoning Ordinance before proceeding with something that has yet to meet full approval. Therefore, we would like to submit this letter to the Planning Board to bring our objections to your attention so that our input may be considered when the Board makes a decision on the application. We feel this application should be denied, unless there is a legal document allowing a business on a residential road, or until the residents of Kensington approve a zoning change.

Respectfully submitted,

  
Gordon and Cindy Heal  
Residents, 47 Osgood Rd., Kensington, NH

Addendum:

We request the Board address the following issues relating to Article III:

- Section 3.1.6,B,5 regarding the permitting of special exceptions, this section states that "granting of such exception will not adversely affect abutting or nearby property values." We feel that our property value will go down if a business is permitted across the road. How does the Board determine this will not happen?

- Section 3.2.1 states "Regulations are for the purpose of regulating the use of land for the preservation of rural charm." How does the Board equate the establishment of a business on a residential road as meeting the interpretation of rural charm?"

- Section 3.3,A states "special exceptions for uses other than single-family dwellings will be made providing that no use will be permitted if 1) the use could cause any adverse impacts to neighborhood property values. 2) the use is not compatible to the nature and quality of the neighborhood. 3) the use is offensive to the public because of excessive traffic." Similar to the above Section 3.1.6,B,5 issue, 1) How does the Board know there will not be any adverse impact to neighboring property values? 2) How does the Board determine a business to be compatible to the nature and quality of a neighborhood? 3) How does the Board determine that the special exception is not offensive to the public because of excessive traffic?

- Section 3.3,C,1,b states that a permitted sign could be allowed not to exceed 4 sq. ft. How would the Board equate a potential sign of this size in keeping with the "rural charm" of the neighborhood?

- Should this be approved, the Board of Adjustment limited the amount of cars to 10, 2x per day, 5 days per week and this did not exclude Sat. & Sun. That equates to approximately 5,000 cars per year. How does the Board determine this amount is not "excessive traffic"? Also, how would this regulation be enforced and maintained"?

- Does the Board think that a Warrant Article should be proposed to ask residents in the Town of Kensington to vote if they would approve of businesses being located on all residential roads?

- Would the Board issue a cease and desist for a business that is operating but has not obtained approval through all the proper channels?