

**KENSINGTON BOARD OF ADJUSTMENT  
KENSINGTON, NEW HAMPSHIRE**

**August 4, 2015  
7:30 PM  
At Kensington Elementary School Library  
MEETING MINUTES-Draft**

In Attendance: John Andreasse, Michael Schwotzer, Joan Skewes, Richard Powers

Other in attendance: Att. Derek Durbin, Christopher Albert of Jones and Beach, abutters.

Joan opened the meeting at 7:30pm, and read the following to all those present.

**NEW BUSINESS:**

1. Thomas and Tammi Mohn, 268 North Haverhill Road, Kensington, NH, Map 13 Lot 2-2 for a variance. Intent is for the Mohn's to be able to construct a septic and home within setback of the hydric soils requirements for wetlands.
2. Thomas and Tammi Mohn, 268 North Haverhill Road, Kensington NH, Map 13 Lot 2-2 for a Special Exception. The intent is for the applicant to be able to construct a home and septic within the setbacks of the hydric soils and wetlands.

Joan then asked the applicant to approach the board. The representative Christopher Albert approached the board and explained that the Parsons would like to purchase the lot from the Mohn's. Mr. Albert explained that he had attended the Conservation Commissions Meeting on July 14, 2015 and they had some suggestions for him, one included the addition of porous pavement. The new plans dated 7-18-15 were distributed to the board, which included the Conservation Commissions suggestions.

They did a correction change to the articles because the newer version of the zoning was not available.

Two permitting issues were discussed; the variance items were the leach field itself and grade up front.

They are asking for a 10 foot variance of the wetlands setback of 75 feet. The other one is the leach field to be replaced as a separate item. The plan would meet the state requirements but does not meet the Town requirements. The building setbacks are 100 foot and they are looking for 84 foot relief and the seepage relief instead of the 50 feet they are within 31 feet. They have submitted the plans to the wetlands bureau, and have signed off from the Conservation Commission.

The have a notification from the state wetlands bureau that the plan has been accepted for a 30 day minimum expedited review. Mike Cummo was asked to look at the plan, and sent a letter on July 28<sup>th</sup>, and was followed up with an email that stated that the plan is all set if the variances and special exceptions are approved by the Zoning Board. Mr. Albert explained to the board that if the house was moved from the proposed location it would create a hardship, because it would be on the side of the hill.

Joan asked the board if they had any questions. Mike asked if it was an existing lot of record; Mr. Albert confirmed. Mike asked about the existing paved driveway that accesses the property next door, and is there an agreement for the use of the paved area. Mr. Parsons stated that the driveway would go straight up from the road to access the house and they would not need an agreement. Joan stated that she is on the Conservation Commission and that they did review this plan and given that it is a lot or record they proposed that there would be porous pavement between the 100 foot elevation on both sides of the culvert and Mr. Albert explained that the new drawings show that addition. That was the only restriction noted by the Conservation Commission. John asked about the letter received from the state. Mr. Albert clarified that the plan would be approved if the variances and special exception were granted.

Joan questioned the agenda and the wording. The agenda should have read that the proposal is within the setbacks for the hydric soils not within the hydric soils. **Mike made a motion that the item 2 agenda item should have read "within setback of hydric soils and wetlands", John seconded all in favor.**

Joan opened the meeting up for the public.

Peter Merrill, asked about the conservation commissions statement that the only place for the home was where it was currently proposed. Joan clarified, that it could not be on the other side of the driveway or the road side of the driveway you would have the same or similar setbacks. Mr. Albert explained that the diminution of surrounding properties would be grater having it out in the field instead of tucking back up into the wooded area. They are trying to protect the abutting property rights and values.

Irene Greenburg, expressed that if the home was rotated 90 degrees that it would be within all of the setbacks. Mr. Albert explained that the difficulty with that is that the soils that are there and that the Town of Kensington requires 34 inch separation and a 4 foot separation, with the 2 test pits that they had they are in the best location. Rotating the way suggested would make the slope issue worse and storm water runoff as well.

Janet Merrill asked how they are planning to control the run off during construction and Mr. Alberts answered that they are doing a typical silt fence. And it will be a tight footprint. She was unsure of what the footprint was. 80x100 will be the final footprint, and the contractor would remove the soil and take off site.

There is no room for storing of material. Mrs. Merrill explained that she has seen barriers for the environment not work in the past and what kind of guarantee would the contractor provide that this will not destroy the environment. Mr. Albert explained that it is a wetlands permit, and that the owner would be responsible and then they would pursue the contractor for any damage occurring as a result of construction.

Marybeth Dinicola asked if the only reason for not having the home in the field was because it was not pretty there, would it meet all of the requirements if it was placed there instead. Mr. Albert explained that there would be variances need for the field as well. Mr. Parsons explained that a lot of the field itself is considered wetlands as well.

Janet Merrill asked what the precedence is for granting these types of variances. How often does this type of application happen? Joan stated that the Conservation Commission has not reviewed any of these applications in years. Mike commented that he has been on the board for years and he has maybe done one. Mike explained that each application is taking individually and they listen to the proposal and the abutter's comments, then the criteria must be applied. He is also taking into consideration the steep slopes and the best approach for the land, abutters and the owners.

Irene Greenburg stated that she has been an abutter for years. The pond is in her backyard and is very wet around it. She is concerned how the septic system and the leaching off into their well water will impact her property. She appreciates the thoughts of putting the home in the area it is and it does look like the best place. Mr. Albert addressed that they did 2- 18 inch culverts that are for the overflow in the case of heavy rains. The impact is only 1000 square feet, there will be no change in the drainage path due to this system.

Peter Merrill, 275 North Haverhill Road, because of the steep slopes his is concerned with the salt that will be used and run off into the wetlands. They can't do the porous pavement on the steep slope, so Mr. Merrill wanted to know what will happen with the run off. Mr. Alberts explained that there will be process to keep the water from sheeting across the driveway to limit the amount of salt needed. Mr. Merrill is concerned about the concentrations of the salt used, and then running into the wetlands. Mr. Alberts explained that the salt will stay where it is put. Mr. Merrill explained that the sun hits his driveway and the sun never hits the other side of the road so more salt will need to be utilized.

Joan asked if there were any other questions and concerns.

Marybeth Dinicola, an abutter commented that zoning was put in place by the town for good reasons, and it should be honored.

Peter Merrill expressed that the letter that he received dated July 10, 2015, from the wetlands bureau did not state the correct address, 268 North River Road, not North Haverhill Road. Mr. Alberts apologized if there was a typo on the address, but the Map and Lot should have indicated the correct Map and lot.

Joan closed the public comments section of the hearing, and asked the board if they had any questions.

Richard Powers asked if the person that owns the land has the ability to put some kind of salt stopping mechanism in place, and should the board consider that.

Mr. Albers addressed the question and knows of no idea of how to suppress the salt. He indicated that you can't salt porous pavement continuously.

The board went through the criteria on the application as well as on the worksheets provided.

All questions for the special exception and variance were answered and are located in the property file as well as the application file for the proposal.

Mike stated that since all the criteria have been met on this proposal he would like to make a motion.

**Mike made a motion to grant the special exception and variances of in that the structure would be located at 84 feet vs the 100 feet from Hydric A soils, and that within Article VI 6.1 the structure would be 31 feet from Hydric B soils vs the required 50 feet. John seconded all in favor.**

No conditions were imposed on the applicant.

Maribeth Dinicola asked about a comment that the board had made to the lot existing. Joan stated it is an existing lot of record. Ms. Dinicola asked if it is an existing lot of record does that mean it is buildable.

Joan and Mike stated that it is. Mike explained that the lot of records states that they can build on it if they meet the current regulations.

3. Lia and Raymond Parkhurst, 9 Old Amesbury Road, Kensington NH, Map 3 Lot 6 for a variance from setback requirements. The Parkhurst's are looking to install as septic system that is higher than the regulation standard of 4 feet and closer than 35 feet to the abutting property. They are also requesting a variance from the 25 foot requirement in 3.2.2C.

Joan read the legal notice to all those remaining. Derek Durbin approached the board as a representative for the Parkhursts. He explained that the applicants are seeking a variance from the 35 foot setback requirements to an abutting property line, which deals with the placement of the septic system. As well as the distance to the seasonal high water tables, which is 4 feet in the Town of Kensington. After the applicants acquired the property they discovered that the septic was failing and that it is located with the 75 foot buffer. It is also with the 35 foot buffer to an existing swimming pool located on the property. The proposed system is outside of those buffers but does require additional variances to be located outside of them.

A variance for 2 feet from the seasonal high water table, and 10 foot plus or minus variance from the abutting property line. The septic designer and installer determined that there is not another feasible place to put the septic system on the property. It is a conventional stone and pipe system that will last 25-50 years. The location of the design is to blend in with the existing contour of the property.

There is currently a shed in the location of the proposed septic plan and the shed looks to be encroaching the property boundaries, which will be removed.

In order to put another system in they would have to locate the optional system closer to the home. They would have to construct a significant slope and would not be within the 35 foot setback and the new system would not last as long, and it would diminish the usability of the backyard.

There are a lot of things in the backyard that is driving the positioning of the proposed location.

Att. Durbin went through the questions on the application with the board.

Joan commented that there was not a wetland boundary located on the plan, and that the property line says approximate and if they are looking for a variance from that line, they will need to know the exact distance for the variance sought. Att. Durbin explained that there was not a survey done, because it was cost prohibitive for the Parkhurst. The stream is +/- 3 feet for the wetlands of the stream. He stated that the septic designer is stating that the line indicated is the 75 foot mark. Mike explained that just the one line to the side of the lot that the relief is needed should be set. Mike asked the board if setting that one line would be in agreement with the board. Joan agreed, and asked if there is a reason the septic could not be pushed back further up the slope. Att. Durbin asked the applicant Ray Parkhurst, why the system can't go back further. Mr. Parkhurst explained that the grade was too uphill to pump the system that far. Joan asked what the applicant meant about double pumping. Joan would like something from a certified designer that it can't be put further away. She is wondering if there is an alternative available where they would not need the variance. Joan stated that if they are looking for a wetlands waiver they would need the wetlands delineated on the plan. Att. Durbin stated that the applicant does meet the wetlands boundary. He also stated that if the board was uncomfortable they might be able to get a letter stating that they are not within the wetlands delineation. Mike explained that the variance is requesting Article III, Section 3.2.2C and read what it states. He went to the definition of structure; which did not include septic systems. He believes that request is not required, so this side lot line is not a question.

But under Article VII, Section 7.1 D (3)c 3; the 35 foot setback would be needed.

John reiterated that they are within the 35 feet of the property line to set the septic. Beyond that where is the requirement for them to look at anything else. Joan asked if the can even grant a variance of a health standard. Att. Durbin stated that in the zoning it states that you have a distance from the bed bottom of the system to the seasonal high water table of 4 feet, and they need 2 feet that is allowed by the state.

Article VII, Section 7.1 D (3)a-states the distance needed is 4 feet. This is part of the application; they may have been overzealous to include the 25 foot setback.

John does the board feel they are able to move forward with the discussion.

Joan opened to the public.

Kathy Conti, spoke on behalf of her mother, Arabella Tuttle who is an abutter to the proposed application. John does not see her property coming into play with the proposed application. Mrs. Tuttle was not sure how close it will come to the property and if it will affect her. The board discussed if it would impact her property. Mike brought the town map and plan over to the abutter and showed her where the septic system is going and that it would be further away from her property than it is now.

Att. Durbin expressed that DES does not require a boundary survey and the costs associated with it and would like the board to keep that in mind. Joan is concerned that tax maps are not accurate and she is concerned with the delineation of the line. John asked what the variance is that would be sought. Joan explained that it could be off as much as 10 feet. Att. Durbin explained that the deed descriptions do match with what is described, and there was a title search done at the time of property transfer. Att. Durbin is unsure if the surveyor can set one line without setting them all.

All the criteria was reviewed and agreed upon except for the boundary line. All questions for the variance were answered and are located in the property file as well as the application file for the proposal.

Joan closed the public session of the board.

**Mike made a motion to remove the part of the application referring to Article III, Section 3.2.2C, does not need relief because it does not meet the definition of a structure; Seconded by Rich, all in favor.**

**Mike made a motion that on the request it should read Article VII; Section 7.1.3.3a;vi; which deals with the minimum 4 foot separation to change the request after the little a add the vi, seconded by John, all in favor.**

The board went through the variance criteria for the issues presented.

All sections were satisfied.

Mike suggested the condition be as follows:

1. Certification of boundary line by a licensed surveyor that septic system sighted as depicted on plan dated July 6, 2015.

**Joan made a motion to approve the sight distance from the boundary variance request with the condition that the affected boundary is certified by a licenses surveyor and that septic system is depicted as on plan dated July 6, 2015. Mike seconded, all in favor.**

4. Pinnacle Leadership Foundation, 16 Cottage Road, Kensington NH, and Map 5 Lot 16 for a variance from the setback requirements. They are looking to build a cabin within the setback requirements.

**Mike made a motion that this application is null and void because the proposed use meets the criteria stipulated in the town's zoning, John seconded all in favor.**

**John motion to adjourn 9:48pm, Rich seconded, all in favor.**

Respectfully Submitted,

Kathleen T Felch  
Planning Board Clerk