

**KENSINGTON BOARD OF ADJUSTMENT
KENSINGTON, NEW HAMPSHIRE
MEETING MINUTES
TUESDAY
AUGUST 2, 2016
7:30 PM
At Kensington Elementary School Library
Draft-subject to board approval**

In Attendance: Janet Bunnell, Michael Schwotzer, Bob Nolls

Others in attendance: Joe Addario, James Simmons, Charles Mabardy, Art Wiggin

Michael Schwotzer chaired the night and opened the meeting at 7:38pm.

Michael read through the following public notices to all those present. Chairman Schwotzer asked all board members if they would allow the applications to be concurrent. All agreed.

NEW BUSINESS:

1. Eastman's Corner Foundation Inc., 267 South Road, Kensington, NH, Map 3 Lot 30 for a variance from setback requirements as stated in Article III Section 3.3B 3 for relief of the current zone setbacks. Intent is for Eastman's Corner Foundation Inc. to be able to expand the current building footprint.
2. Eastman's Corner Foundation Inc., 267 South Road, Kensington, NH, Map 3 Lot 30 for a Special Exception as stated in Article III Section 3.3A&B for Commercial Business in a Residential/Agricultural zone. Intent is for Eastman's Corner Foundation Inc. to be able to expand the current commercial use by expanding the building footprint.

Mr. Cilley approached the board with the plan submitted to the board and explained that he would like to expand the business within the setbacks and wondered the thoughts of the board on this.

Chairman Schwotzer explained that Mr. Cilley had been recommended to do these applications by the Planning Board. He explained the history of the property and the issuance of the building permit for the original building and that it was considered an agricultural venture so the agricultural setbacks applied. He also explained that the need to clarify the frontage on the lot. The road frontage definition states that:

- The length of the lot bordering on and providing access to a Class V (or Better) highway but excluding limited or restricted access highways, or a street, as defined and as used in Title LXIV, Planning and Zoning, of the Revised Statutes Annotated, shown on a plat approved by the planning board. Footage requirements as specified by this ordinance shall be continuous. In the case of corner lots, frontage and front lot lines shall mean the dimensions and lines on both intersecting streets.

So for this lot the frontage would be on both streets for Map 3 Lot 30.

Chairman Schwotzer asked if there were any questions from those present. Charles Mabardy asked to see the plan and approached the board to view the proposed plan and was satisfied with the proposed plan.

Others in attendance approached to view the plan. No comments were made to the board at this time.

Chairman Schwotzer then explained that in March of 2016 there was an ordinance added to the town's zoning on Non-conforming lots and uses of them. He directed the board's attention to the Section 4.4.1 on lot of records and C-expansion which reads:

- **Continuance:** A non-conforming use, structure or building shall be allowed to continue as long as its purpose, manner and extent does not change.
- A lot of record which met the requirements of the zoning ordinance for area, frontage and dimensions at the time of its approval and is shown on an approved subdivision plan, and is developed, may be further developed providing such new development or redevelopment meets all of other town and state requirements, and the lot has sufficient and practical frontage to access the property. Existing non-conforming structures and buildings on such developed lots of record may only be expanded by variance granted from the Zoning Board of Adjustment.
- **Expansion:** Expansion of a non-conforming use or structure is prohibited except by variance granted by the Zoning Board of Adjustment. The non-conforming use or structure, if granted a variance by the Zoning Board of Adjustment, may be physically extended, reconstructed, enlarged or structurally altered but only in conformity with the requirements of the zoning ordinance.

Chairman Schwotzer explained that it is his belief that this structure is non-conforming so would fall within the newly adopted ordinance.

The farm stand was built with good intentions, but misunderstandings by the building inspector at the time as to what set back should be followed. He indicated that since this is a non-conforming structure, as stated above any addition/expansion would have to fall

within the requirements of the zoning ordinance to be able to be granted.

He asked the boards opinion on if it is a non-conforming building and if section C: Expansion is applicable. Bob and Janet agreed with Chairman Schwotzer and his interpretation of the ordinance. He does not believe that they can grant the request because it has to be conforming in regards to the setbacks. If it was just a straight variance from the setbacks it would be a different situation, but with the new ordinance it makes them unable to be granted.

Bruce asked if the second request could be granted. Bob asked if the use is agricultural or commercial. Bruce explained that was another issue. Under the state RSA they are agricultural, and are now being asked to follow the commercial setbacks going forward when they were previously approved for an agricultural use with agricultural setbacks. Chairman explained that if it is an agricultural use then the issue of going into the agricultural zone would not be an issue.

Mr. Cilley explained that they need to figure out what will be going into the addition to be able to get the approval of the use. It was suggested for them to continue the application until November to give the applicant time to bring back a next plan for the property.

Chairman Schwotzer made a motion to deny the first application for the variance to the setback requirements for the following reasons:

- 1. Original building is in the commercial setbacks and is therefore considered to be non-conforming and under section 4.4.1C Expansion, any additions, reconstructions or enlargements must be within the requirements of the zoning ordinance. The application is requesting to be within the setbacks, so under the new section they would have to deny the application. Bob seconded, all in favor.**

Chairman Schwotzer asked to have the application for the Special Exception for a commercial business in an Agricultural/Residential zone continued. **Mike made a motion to continue the second application for the Special Exception in the commercial business in the Agricultural/Residential zone until November 1, 2016, seconded by Bob, all in favor.**

Mike recommended that the 100foot setbacks be on the plan for the next meeting.

Meeting Minutes:

The board reviewed the minutes from the previous meetings and approved the following:

Mike made a motion to approve the 4/5/2016 meeting minutes as presented, Bob seconded, all in favor.

Bob made a motion to approve the 6/8/2016 meeting minutes as presented, Janet seconded, two for, one abstention.

Mike made motion to adjourn at 8:01pm, Bob seconded, all in favor.

Respectfully Submitted,

Kathleen T Felch
Zoning Board Clerk