

Town of Kensington
ZONING BOARD OF ADJUSTMENT
Kensington Town Hall
95 Amesbury Road
Kensington, NH 03833
Tuesday, March 3, 2020
7:30 pm
Meeting Minutes - Approved - 5/5/2020

Chairman Schwotzer called the meeting to order at 7:31 pm. Stating that this was a Public Hearing of the Zoning Board.

First on the agenda is the Application by Stephanie Artigliere of 48 Stumpfield Road, Kensington, NH Map 7 Lot 19-1, requesting a variance for an Accessory Dwelling Unit that is not restricted to 900 square feet of living space. This request is from Article 3, Section 3.2.3 (A), (4), (f), of the Land Use Ordinance to permit renovation inside of an existing structure for use as a detached Accessory Dwelling Unit.

Nathan Kenison-Marvin spoke on behalf of the applicant. He opened with a statement for the record that there were not 5 members present for the meeting, which has happened repeatedly. He would like to make a proposal to the Board. Every town needs to meet the obligation to provide a reasonable opportunity to convene a 5 member Board. He continued that the inability to meet that obligation creates a prejudice to the applicant who is waiting and unable to proceed. His proposal is as follows: 1. To stay this meeting and continue, using judicial means to enforce, citing RSA 673:3. After presenting the case and deliberation period if the Board does not approve the application with 3 voted, the request is to continue to the next months meeting. If the Board is not amenable to this, then the applicant will continue by whatever means are necessary.

Mr. Schwotzer addressed the Board to explain the proposal and ask the Boards thoughts. Mr. Ford asked the clarifying question regarding if any new information would be presented in any potential future discussions. The answer was that the applicant and representative would rest on the record tonight. Mr. Ford reiterated that no new information would be presented even if at the next meeting a 5 member Board was present.

Member Skewes added that while she did not have an objection to this proposal, she did have a concern that waiting until the next meeting risks that someone else may be sick and unable to attend. Mr. Ford added after the date of the next meeting was verified that he would in fact be out of town. Ms. Skewes proposed to move forward with the application. **A motion was made to proceed with a 4 member board this evening with the condition as stated by Mr. Marvin. Member Ford seconded. All in favor of the motion.**

Mr. Marvin presented documents to the clerk regarding his proposal. He also presented the Board with a binder of exhibits to help document the intentions of the application. These documents will be part of the original record on file in the Assessor's office.

Mr. Marvin went on to go through the binder and point out the tabbed contents. Tab 4 refers to the Zoning Ordinance. He went on to discuss how this application does not go against the public interest. Referencing Real Estate comparisons documenting mean/acre in the neighborhood. He stated that public health and safety are not an issue in this case. With regard to Substantial Justice, he states that the private loss to the applicant is not outweighed by the public gain. Under Tab 2 and repeated in Tab 3, it would be allowed to build a new 900 square foot structure. What is sought by the applicant is contained within the footprint of an existing structure. He then pointed out that member Schwotzer requested visuals to better understand the applicants intent and referenced Tab 8. Discussion of the documents presented were concluded. The spokesman for the applicant repeated his name for the record. Nathan William Kenison-Marvin.

Mr. Schwotzer asked the board if anyone had any questions. No response from the board was given. He then read a letter presented to the Board by an abutter to be entered into the record. The letter represented several reasons that the abutter objected to the application. The letter from Karen and Steven Wilson is available as part of the original record.

Norman Giroux, the Building Inspector was also present at the meeting and offered comments. He stated that he had visited the property. The letter from the abutter citing compliance with code issues were true, although the building itself is structurally sound. He added that he has concerns about the second floor and that it will need a lot of work to make it safe for a living space. He noted the issue of the distance of the property line being less than 25 feet, but added that he did not measure it exactly. Mr. Marvin spoke up to clarify, that would be a Planning Board issue. Mr. Giroux continued that whether the space was 900 square feet or 1500 square feet the impact to the neighbor would be unchanged. Discussion continued on the details of the structure. Mr. Giroux added that it is a Wood Structure building. Mr. Schwotzer inquired further to clarify that this space is a safe/livable potential space. Mr. Giroux stated yes, with enough money to bring it up to code.

The Applicant's father, Jerome Artigliere spoke regarding code concerns, stating that everything was brought up to code in 2005. Discussion continued regarding building permits.

Mr. Schwotzer asked if there were any further comments. Mr. Marvin added that they want to use the space and will do what is necessary to bring it to code. Mr. Schwotzer referred to page 15 of the Zoning Ordinance (f) stating that only 2 bedrooms are allowed. Mr. Marvin agreed to that as an acceptable condition and that everything is understood.

Member Skewes then began completing the Variance worksheet with board input.

1. This application would not be contrary secondary to the existing structures that were historically residential. Mr. Schwotzer added it maintains the rural and residential character.
2. Spirit of the Ordinance - meets all 5 criteria of the ADU and reasonable expansion of the current structure.
3. Would do substantial justice because it is less of an impact than the permissible use. I.e: no new structures.
4. Professional opinions state this would not diminish the surrounding property value.
5. Unnecessary Hardship - The proposed use is reasonable because it utilizes an existing structure, the size of the property and maintains the rural character.

Ms. Skewes adds that given the outcome of the worksheet, she makes a motion to grant the variance. Mr. Schwotzer then opens the discussion to any possible conditions. Conditions discussed included:

1. Expansion include ONLY 2 bays of the garage as nearest the living area. This was agreeable as it was outlined in the documents presented in the binder.
2. Applicant would apply for a conditional use permit from the Planning Board for the criteria outlined in Section 3.2.3 for the ADU except the 900 square feet.

Mr. Ford seconded the motion on the floor. All in favor and the motion carries.

The second application on the agenda is for Wendy Osgood, located at 62 Osgood Road, Kensington, NH. Map 12 Lot 45-B1. This application is to request a variance for a shed 10 feet from the property line.

The floor was open for the applicant to present her application. She stated that when the house was built 25 years ago, it was surveyed incorrectly. Her house is 10 feet from the property line. Other areas on her property are not conducive for placement of a shed. She would like the shed next to her house as presented in her maps. Mr. Schwotzer asked questions to clarify why the shed would not be able to be placed in a different area. Ms. Osgood returned that based on the property and future improvements the proposed area is necessary. There were no comments from the public. The fact sheet section of the application was discussed.

Ms. Skewes added that with the house actually being 10 feet from the property line, she did not see any impact to the abutters.

Mr. Craig stated that the variance for the house sets precedence for the shed.

Mr. Ford asked Mr. Giroux to verify regarding the wetlands on the property, he confirmed that there was no restriction due to Hydric A/B soil. Measurements were conducted and that was ok.

Ms. Skewes continued to complete the Variance worksheet with input from the Board.

1. Not contrary to the public interest. The shed is hidden and there would be no objections from the public, the distance from the lot line would be the same as the residence.
2. Spirit of the Ordinance would be observed. Mr. Craig added that the size and placement does not effect the esthetics. Mr. Schwotzer asks that the shed will be parallel to the lot line consistently.
3. Would do substantial justice as it allows the owner to utilize the property with minimal impact on current use. I.e: view, light, minimal utility work.
4. Values of surrounding properties. There is no evidence to the contrary.
5. Unnecessary Hardship - This is fair as the shed would be consistent with the distance of the residence and the shed would not be changing any distance to the abutters. This is reasonable as the size of the structure is minimal in relation to the size of the lot.

Conditions:

1. The shed must be consistently 10 feet or more from the lot line in all places.
2. A building permit will be required.

Mr. Ford made a motion to accept this application. Ms. Skewes seconded the motion. All in favor. The motion carries.

Discussion continued with the applicants interest in joining the Zoning Board as a member.

The Third item on the agenda this evening is the 152 Drinkwater Road LLC application for 152 Drinkwater Road, Kensington, NH. Map 15 Lot 7 requesting a continuance of the ZBA hearing, pending the outcome of the upcoming March 17, 2020 Planning Board Hearing.

Ms. Skewes made a motion to continue the application for 152 Drinkwater Road, LLC. Mr. Ford seconded, all voted in favor.

Old Business:

Minutes to be approved - **Mr. Ford made a motion to approve the minutes from 12/3/19. Mr. Craig seconded. All in favor.**

Mr. Ford made a motion to approve the minutes from 1/7/20. Ms. Skewes seconded, all in favor.

Ms. Skewes made a motion to approve the minutes from 2/4/20. Mr. Craig seconded and Mr. Ford abstained as he was not in attendance for that meeting. The motion passes 3-0-1.

The next meeting of the ZBA will be April 7, 2020 at 7:30. Mr. Ford will not be able to attend.

Mr. Ford made a motion to adjourn the meeting tonight. Mr. Craig seconded. All in favor. Meeting adjourned at 8:50 pm.

Respectfully Submitted,

Sarah J. Wiggin
Assessing Clerk