

KENSINGTON ZONING BOARD OF APPEAL MEETING
95 Amesbury Road, Kensington, NH 03833
TUESDAY December 3, 2019 – 7:30pm
Meeting Minutes - Approved 03/03/2020

In attendance: Janet Bunnell, Mark Craig, Bill Ford, Mike Schwotzer, Joan Skewes

At 7:33pm, M. Schwotzer called the ZBA meeting to order.

1. *152 Drinkwater Road, LLC, 152 Drinkwater Road, Kensington, NH, Map 15 Lot 7 request an appeal from an Administrative Decision of the Planning Board pursuant to RSA 676:5, III.*
 - **At 7:34pm, M. Schwotzer made a motion to open the Public Hearing for 152 Drinkwater Rd. J. Skewes seconded. All voted in favor.**
 - A letter was received by the Board from the applicant requesting a 30 day extension to January 7th at 7:30pm.
 - **At 7:35pm, J. Skewes made a motion to continue the Public Hearing to January 7th. B. Ford seconded. All voted in favor.**
 - **At 7:36pm, M. Schwotzer made a motion to close the Public Hearing. J. Skewes seconded. All in favor.**
2. *Andrew and Arryn Vogan, 4 Lamprey Road, Kensington, NH, Map 6 Lot 40 request a variance to the setback requirements as stated in Article III, Section 3.2.2 C1 of the zoning ordinance to permit construction of an addition within the setbacks.*
 - **At 7:37pm, M. Schwotzer opened the Public Hearing.**
 - Mr. and Mrs. Vogan explained to the Board that they are hoping to build an addition on the back of the home they moved into approximately 5 years ago. They love Kensington, but their current home is not meeting the needs of their growing family. They provided the Board with drawings and images by the prospective contractor. The existing home is approximately 8 ft. from the lot line, which the Vogans realize does not meet the Zoning Ordinance. Their intent is to remain within the current zoning footprint of 8 ft. from the lot line with the addition. There was brief discussion on the Vogan's knowledge or lack thereof of the non-conforming status of the property at the time they purchased it. There was also brief discussion confirming that there would be an egress in the addition as the deck that is partially in the space the proposed addition would be built would need to be removed. The Board reviewed the Checklist. The Board agreed that all responses on the Checklist were in favor of a variance.
 - **At 7:57pm, B. Ford made a motion to grant the applicant their request for a variance to the setback requirements as stated in Article III, Section 3.2.2 C1 of the zoning ordinance, Case #2019640. J. Bunnell seconded. All voted in favor.**
 - **At 8:01pm, M. Schwotzer made a motion to close the Public Hearing. J. Skewes seconded. All voted in favor.**
3. *Bounleua Douangnouanexay, 4 Amesbury Road, Kensington, NH, Map 17 Lot 23-1 request a variance to the setback requirements as stated in Article III, Section 3.2.2 C1 of the zoning ordinance to permit sheds less than 25 feet from the lot line.*
 - **At 8:01pm, M. Schwotzer opened the Public Hearing.**
 - The applicant, not present at the meeting, submitted a letter to the Board authorizing her daughter, Ladda Douangnouanexay to represent her. Ms. Douangnouanexay explained that her mother currently has three sheds on the property for her livestock (chicken and ducks) hobby. Two of the sheds are 10'x12' and one shed is approximately 8'x15'. The Board reviewed a drawing provided by the Building Inspector showing the locations of the sheds on the property. The applicant has recently purchased the property and has added the sheds to her property. Ms. Douangnouanexay stated that there were discussions with the Building Inspector regarding the material to use for the foundation, but not the setbacks. She states that the sheds are pre-built and the delivery person was to measure and place the sheds, but the homeowner was not present when the sheds were installed. She also stated that there is a water pump and propane tank in the backyard and the sheds could not be placed on top of those.
 - Mark asked what type of foundation the sheds have. Ms. Douangnouanexay responded that they are on raised cinderblocks, gravel, and cement and would likely be destroyed in the process of moving, if required. B. Ford

said request is to grant the use of the sheds as they exist. The request for a variance came to the Building Inspector's attention when a neighbor felt the sheds were too close to the lot line. Mark asked how long the sheds have been there. Ms. Douangnouanexay responded that the two plastic sheds were installed in the June/July timeframe and the wood shed was installed around Memorial Day. The Board questioned why they could not be moved if they were delivered pre-assembled.

- Building Inspector Norman Giroux addressed the Board stating that all three sheds are small enough that they do not require a permit. The property is a small grandfathered lot.
- Linda Blood of 8 Amesbury Rd stated that the entire lot is 0.4 acres and all three of the sheds are closer to her property than they should be based on the zoning ordinance. There was some discussion on possible options for configuration. Ms. Douangnouanexay was asked if one of the three sheds could be eliminated in order to meet the zoning setbacks. She stated this was not feasible as they need to separate the livestock and they do not want to eliminate one shed, in addition to the concerns of the underground propane tank and water pump (well). The Board asked Ms. Douangnouanexay questions as to the capacity of each shed for the livestock.
- Richard Elwell of 8 Amesbury Rd stated that Ms. Blood gave him permission to address the Board on her behalf, she acknowledged this. Mr. Elwell and Ms. Blood feel that it is not proper for the Town of Kensington to grant a variance for 3 storage sheds on 100ft of property. They feel that is not the intent of the zoning ordinance to let things like that happen and feel the sheds need to be moved. They stated that they would be willing to settle for something less than 25ft, but not as close as the sheds are currently to the property line. They have livestock themselves and are not against that.
- Peter Merrill of 275 North Haverhill Rd and Chair of the Planning Board stated that there is a larger issue in town that if the sheds are less than 120 sq. ft. no permit is required and there are many zoning violations relating to sheds as a result. He suggested addressing the permitting process in the future regardless of square footage. Building Inspector Giroux stated that he is currently working on this with the Board of Selectman and Planning Boards.
- The Board reviewed the Checklist. J. Skewes expressed that she has concerns with granting a variance. The Board briefly discussed other placement options for the sheds and the removal of one of the sheds. Ms. Douangnouanexay stated that any movement would be a financial hardship for her mother. The Board agreed that due to multiple non-conformities, a variance would not be in the best interest of the public. The Board agreed that the spirit of the ordinance would not be observed. The Board felt that the gain to the general public by adhering to the town ordinance is greater than the loss to the applicant. The Board agreed that the value of surrounding properties could be diminished based on the proximity to the lot line.
- **At 8:49pm, B. Ford made a motion to deny the applicant a variance to the setback requirements as stated in Article III, Section 3.2.2 C1 of the zoning ordinance based on information presented Case #201917231. J. Bunnell seconded. All voted in favor.**
- The applicant is now in violation of the ordinance and the Board of Selectman will need to address the matter.
- **At 8:51 pm, J. Skewes made a motion to close the public hearing. J. Bunnell seconded. All voted in favor.**

4. *Karen M. Martell, 285 North Haverhill Road, Kensington, NH, Map 13 Lot 3-2 request a variance to the setback requirements as stated in Article 3.2.2, Section C-1 of the zoning ordinance to permit an encroaching structure to be permitted by easement with 25' setback.*

- **At 8:52pm, J. Bunnell opened the public hearing. M. Schwotzer recused himself.**
- Brian Barrington of Coolidge Law Firm addressed the Board representing Ms. Martell. Mr. Barrington stated that Ms. Martell's property is composed of approximately 30 acres on 3 separate lots. The poolhouse, the structure Ms. Martell is seeking a variance for, was constructed in 1998 and is within the 25' setback of the adjacent property. Ms. Martell is planning to sell one of her lots. The poolhouse would be within 25' of the driveway to the adjacent lot. The applicant does not feel that this variance would diminish property values as this would only impact the driveway of the adjacent lot and not a useable part of the property. The applicant feels that this is not a public interest concern because she feels the ordinance is in place to prevent density and crowding. There is no abutter that would have an adverse opinion to the variance. This particular lot is large, but with a small amount of useable frontage, a special condition related to the characteristics of the property. It was explained that the pool house is built on a full foundation. Ms. Martell stated that she has considered moving the poolhouse and it would be impossible without destroying the poolhouse and pool. She feels that this variance would not adversely affect potential owners of the property. She is trying to preserve the farm and

needs to be able to sell this lot. The Board asked for clarification as they felt the plans presented are difficult to read. They asked for clarification on locations and received unclear responses. Ms. Martell explained all of the lots are currently under the same ownership and the subdivision has already been approved by the Planning Board but this setback needs to be addressed prior to selling the property.

- Peter Merrill of 275 North Haverhill Rd and Chair of the Planning Board presented the Board the signed subdivision presented to the Planning Board in 2017 when it was approved. There is no drawing or notation of the poolhouse.
- Ms. Martell stated that there was discussion with the Planning Board regarding the poolhouse and at the time she thought she could move it. J. Bunnell requested the minutes from the 2017 Planning Board meeting when the subdivision was approved.
- **At 9:16pm, J. Bunnell made a motion to continue the hearing to the next meeting. Lars Larson of 281 North Haverhill Rd stated that he feels it is reasonable for the Board to request more detailed information. B. Ford seconded. All voted in favor.**
- **At 9:17pm, J. Skewes closed the hearing and M. Schwotzer rejoined the Board.**

The Board reviewed minutes from the 2/9/19, 5/7/19, and 8/19/19 meetings. M. Schwotzer pointed out that there was a member of the Board that is no longer a member present for the 2/19/19 meeting and suggested the minutes be tabled.

At 9:19pm, B. Ford made a motion that the 2/19/19 minutes be tabled. J. Bunnell seconded. All voted in favor.

At 9:20pm, B. Ford made a motion to approve the 5/7/19 minutes. J. Skewes seconded. All voted in favor.

At 9:20pm, J. Skewes made a motion to approve the 8/19/19 minutes. M. Schwotzer seconded. B. Ford abstained. All but B. Ford voted in favor.

At 9:21pm, B. Ford made a motion to adjourn. J. Bunnell seconded. All voted in favor.

Respectfully submitted,

Chelsea Lalime