

**KENSINGTON PLANNING BOARD
TOWN OF KENSINGTON, N.H.
KENSINGTON ELEMENTARY SCHOOL LIBRARY
TUESDAY, January 20, 2015
7:30 PM
Meeting minutes-Approved 2-17-2015**

In Attendance: Joan Whitney, Vice Chairman; Peter Merrill; Michael Schwotzer; Jim Thompson; Bob Solomon; Kate Mignone; Julie LaBranche Rockingham Planning Rep.

Visitors: Sean McCarthy; Peter Rizzo, Gene and Mary Larson; Bruce Cilley.

Joan opened the public hearing at 7:30pm.

The board introduced themselves, and Joan read the public hearing notice to all those present.

PUBLIC HEARING

Pursuant to NH RSA 675:7, notice is hereby given of a public hearing to be held by the Kensington Planning Board on Tuesday, January 20, 2015, beginning at 7:30 p.m. at the Kensington Elementary School Library, 122 Amesbury Road, Kensington, NH. The purpose of the meeting is to hold public hearings on the following:

- 1) Acceptance of the recodification of the Zoning Ordinance and Land Use Regulations
- 2) Amending existing definitions and adding new definitions to the zoning ordinance and land use regulations as follows:
 - a) Clarify current explanation of the Expansion of Use within the Septic Regulations Article VII Section 7.1D(7);
 - b) Replacing the current definition of Dwelling Unit within Article II, Dwelling Unit
 - c) Replacing the current definition of Engineer within Land Use Regulations Article I Section 1.2 (M & M1);
 - d) Adding definition of Alteration to add to Zoning Ordinances Article II, and Land Use Regulations Article I Section 1.2;
- 3) Application for a Lot Line Adjustment for Pinnacle Leadership Foundation, at 24 Muddy Pond Road, M5 L28-4, and Gene and Mary Larson M5 L31-4; they are proposing to add 1.002 acres to the M5 L28-4 parcel and take 1.002 acres from M5 L31-4. This will allow M5 L28-4 to contain 27.525 acres, M5 L31-4 to have 2.003. This adjustment is in accordance with Chapter III Subdivision Regulations, Section G for a minor lot line adjustment.

Joan indicated that she will have to recuse for the upcoming lot line adjustment.

Joan opened the public hearing on the recodification of the Zoning Ordinance and Land Use Regulations Book, and explained the recodification has been going on for a while.

Zoning Ordinance Public Hearing:

Mike made a motion to accept the recodification of the Zoning Ordinance and Land Use Regulations, seconded by Jim, all in favor. Joan asked for public comments. None.

Mike made a motion to accept the recodification as presented, Jim seconded, all in favor.

Definitions Public Hearing:

Mike made a motion to open the public hearing on the amendments as listed in the existing definitions, Kate seconded all in favor. No public comments.

Mike made a motion to amend the existing definitions under section 2) of the public notice, and that the definitions in the Zoning Ordinance will be going to the Town Meeting, Kate seconded, all in favor.

Mike assumed the chairman position.

Public Hearing on Pinnacle Lot Line Adjustment:

Mike made a motion to open the public hearing on the Lot Line Adjustment for Pinnacle Leadership Foundation, seconded by Jim, all in favor.

Joan recused herself for the lot line adjustment.

Bruce Cilley approached the board as the Pinnacle Leadership Foundations representative.

He explained the Lot Line Adjustment and where the line was to be removed and moved. Mike questioned if the acreage to be added to Map 5 Lot 28-4 was the unbuildable lot and Bruce confirmed. He also asked what areas are in Conservation and Bruce showed him the sections indicated on the plan. Mike asked the board if they had any questions on the proposed Lot Line Adjustment. The board discussed the lines and where they are adjusting the lines. Bruce explained to the board that the properties with the Kensington

Leadership Center Trust named as the owner can resell the property, but if the property is put into the Pinnacle Leadership Foundation ownership they are unable to resell the property. Kate asked if the rebar will be set, and Bruce confirmed that it would be when the back property is accessible. Mike asked if there were any comments from the public, and Joan brought up the indication that the spelling of Trimble Trail was wrong. Bruce will have that fixed. Kathy informed the board that there were two abutters that had contacted her. One wrote a letter in favor of the proposed adjustment and the other would like Bruce to call him. Bruce said that he would follow up.

Kate made the motion to approve the Lot Line Adjustment as presented, with the required change of plan to have Trimble Trail spelled correctly. Bob seconded with all in favor.

Bob made a motion for the Acting Chair to sign the plan when it is completed, seconded by Jim, all in favor.

Joan reassumed the chair.

New Business:

Peter Rizzo- 135 South Road- Question on combined lots

Peter Rizzo approached the board and explained he was representing his mother Alice Rizzo.

He explained to the board that Dearborn Properties had done a subdivision of land back in 1985, and he showed the board which lot the Rizzo's currently have a home on. Dearborn had subdivided the farm and on the plan that was recorded it stated that the 1.91 acres adjacent to the Rizzo property was to be combined with the current 1 acre lot. There is a legal deed for the separate lot that indicated on the plan. He explained to the board that he has been to see the Selectmen and they were instructed by legal counsel to have him come before the planning board. He read through a few of the minutes that were taken back then when the subdivision was approved. Bob said that in one of the set of minutes from that subdivision it stated that the 1.91 was not a buildable lot. Mr. Rizzo explained that when the subdivision was first done they were told to do test pits for them to have it as a buildable lot, and they did not have the funds to do that at the time. It specifically says in the minutes from 1985 that "*the lot would need test pits and soils information or not a building lot*". Bob explained that on the plans and all of the other subdivided lots have 150 foot frontage, so it looks like the 1.91 acres was a fragment left over from the subdivision, because it only has 85 foot frontage. He is unsure of what the developer was thinking with this lot, and is unsure if this could have been a lot then. Mr. Rizzo pointed out that the deed shows driveway access, and asked if a back lot was able to be built on today. The board explained that they would need frontage. Joan wondered what the frontage is for the smaller 1 acre lot that is depicted on the plan; the dimensions are 200 x 200. Mike explained that all the lots are over 1.5 acres as well. Joan asked if any test pits have ever been done, Mr. Rizzo confirmed they have not. Mike and Bob think that the lot was to be combined because there was not enough frontage, and it would have been creating a non-conforming lot. Mike explained if they are correct about the frontage being the factor, the board would have been approving the other lots and the one deeded to the Rizzo's would have been the left over section, not necessarily a lot. Joan asked if the Rizzo's were receiving one tax bill. Mr. Rizzo explained that the tax assessor at the time explained that if they combined the taxes not the lot, that it would be cheaper. Mr. Rizzo re-read the minutes where they indicted the status of the lot. Mr. Rizzo explained the way he is seeing this is that if it needed test pits it was a building lot. Peter observed the plan and the board members that signed the plan; he would like the two that are still in town contacted. Mike questions if this board has the authority to make that conclusion. He believes that this is a legal issue. Bob sees that the minutes state that this is not a buildable lot, from the final minutes of the subdivision, along with the note on the plan.

Mike is unsure of what board should be hearing this, whether or not it is a buildable lot would be up to the board of Selectmen. Peter informed the board that Town Counsel told the Selectmen that Mr. Rizzo should appear before the Planning Board. Mike asked Mr. Rizzo what he wants for this lot, and he replied that he wants it to be a building lot for him to build a house on it. Mike explained that he would vote against this board declaring that the lot is buildable. Mike explained that this is history; it is not a current subdivision. Bob doesn't think that the rational of what they were thinking back then is relevant. The board discussed the old meeting minutes. Peter explained that for building lots that were back lots would have had to exist prior to the Town having zoning, and this lot was created after that. Now the town would need it to declare what the zoning was then to determine what the ordinance stated at the time of the creation of the subdivision. Bob read the current ordinance and when it was amended. Joan believes that the board should ask the members at the time of the subdivision and find out what the zoning was for that time. Joan asked if the ZBA could deem this lot a building lot. The board said that he could get a variance from the ZBA,

but it would have to meet the criteria. Julie explained that the notes were vague, but they do state that the parcel will be conveyed to Mr. Rizzo and is not currently a building lot, which is consistent with the note on the plan. She stated that if the board finds out that the minimum frontage at the time was 150 feet then that lot could not have been a building lot. Mr. Rizzo has a deed for the piece of land with driveway access, why would it say that if it was not a buildable lot at the time.

Joan explained that they will have Mr. Rizzo on the agenda for next meeting and the zoning will be researched to see what it was at the time of the acceptance of the subdivision. Bob does not think that this board should minimize what is written on a plan, the board has had things written on plans before, and that is more solid than the minutes. Mr. Rizzo asked why that line was in the plan if it was intended for the lots to be combined. Mike explained that had to be there for the subdivision process, they had no authority to remove it at that time. Legal counsel had suggested that Mr. Rizzo could go to the Planning Board and see if the indication on the plan could be stricken from the plan that stated that the lots were to be combined. When the board was asked about this they replied that was not something that they could do as a board. Joan let Mr. Rizzo know that the board would be contacting him. Julie let him know that he could go to the ZBA but there would have to be a mistake, oversight or negligence in the approval of the subdivision, and you would have to find that. The criterion for the ZBA is high and one of those things would be reason for looking into it. Jim asked about the protective covenant that was referenced in the deed, it was stated that it would be good to find that document. Bob explained that the tax stamp was \$30, and at that time that was the minimum for a parcel with value less than four thousand dollars in price. Mr. Rizzo explained that his parents were the ones who sold all of the property; Mike explained that this lot was probably intended to be a buffer for the Rizzo's. The board was concerned with the advice from legal counsel. Julie thought that was something that was more for the board and not the property owner, Peter explained that it was not marked confidential and the Board of Selectmen felt it was not confidential it could be shared. Kathy asked if that has been done in the past, removing wording from a recorded plan. This board has not seen that before.

The board would like Kathy to research the zoning books from that time period to see what the requirements were for a building lot, and contact the board members remaining from that subdivision and ask them to attend the next meeting. The board does not have the authority to make a decision on this.

Articles for Ballot in March 2015:

Write up Articles to present to voters in 2015 use the same description as the public hearing. Joan will discuss the items for the board at the deliberative session which will be held on Wednesday February 4, 2015 at 7:30pm, Kensington Elementary School Gym.

OTHER BUSINESS:

Approval of December 16, 2014 meeting minutes.

Jim made a motion to approve the December 2014 meeting minutes. Joan seconded all in favor. Mike abstained. Next Meeting February 17, 2015.

Storm Water Management-

The board would like Julie to move forward with crafting the wording. Joan asked the board to think about what they would like the trigger for this to be.

Motion to adjourn made by Peter at 8:40pm, seconded by Jim, with all in favor.

Respectfully Submitted,
Kathleen T Felch, Planning Board Clerk