

**KENSINGTON, NEW HAMPSHIRE
KENSINGTON PLANNING BOARD
TUESDAY**

October 18, 2016

7:00 P.M. AT THE

KENSINGTON TOWN HALL

95 Amesbury Road

Meeting Minutes- Approved November 15, 2016

In Attendance: Jim Thompson, Chairman; Bob Solomon, Joan Whitney, Julie LaBranche, Rockingham Planning Commission Rep.

Others: Dennis Quintal, Civil Engineering; Steve Ellis, Counsel for Lambert; Jonathan Ring, Jones and Beach; David Lambert; other public

PUBLIC HEARING- Lambert/Trabucco Subdivision

Bob made a motion to open the public hearing at 7:05pm, seconded by Peter, all in favor.

Jim did a brief recap of the previous meetings. The last special meeting being a joint meeting with the Board of Selectmen on October 3, 2016 which covered the drainage pipe under Moulton Ridge. He stated that there were no funds available to fund this project this year. Kathy explained that Brian Schutt, NHDOT-District 6, had not had a chance to respond to the board and will be sending the plans to his engineer.

Jon Ring made his presentation and introduced Mr. Ellis to the board, and stated he was there answer questions if there were any on the project or the easement.

Mr. Ring stated that the town seemed favorable to pay for the drainage pipe replacement. The town vote to approve funding will not be had until March 2017, so they decided to provide the 40 foot drainage easements on lots 5&6, and drafted an easement deed for the board to review. In note #18 they added that lots 4, 5 and 6 need to have the drainage berm in place before the occupancy permit is issued. He explained where the berm would be and how it would divert the water around the Hansard/Peacock lot. If the vote were to fail Mr. Lambert will install the berm without the pipe and drainage fixed under Moulton Ridge Road. Mr. Ring stated that he would like the town's legal to review the easement deed. Jim asked if the date within the easement could be moved back. It was explained that the language is generic and can be amended.

Mr. Ring addressed the Historical Society's letter of concern about the drainage onto the Old Brick School House lot and potential damage to the foundation of that historical building. Mr. Ring showed the board new calculations and the old calculations of the water flow onto that lot, and stated that there would be decrease in the flow onto the lot with the proposed drainage.

Steve Ellis spoke on behalf of Mr. Lambert and explained that he has been following this project and it has taken longer than expected. This proposal satisfies whatever water issues there might be from this subdivision, and Mr. Lambert has given the town the right to come onto the property to insert the culvert and do the work necessary. They put the August date in the easement so that the landowner has a deadline of the time the work will be completed by.

He believes that is a reasonable time limit for the work to be completed. They would like this to be moved to the final phase and not hold the project back for an existing condition.

Jim doesn't believe that if the date was moved back until 2018 it would be burden on the buyer. Joan commented that the area the easements are in is wet and would like to see the date moved back as well. There should also be stakes installed to mark the area off so that there is no landscaping done in the area. Dennis agrees with the calculations but would recommend to wording be changed slightly for the ability to modify the design or change the design in the future. The easement will be there forever, and there is a sense of urgency to fix this issue, with the culvert under Moulton Ridge Road, that has been ongoing for years. Peter expressed concerns with the wording used that stated the application was dragged out/longer than expected. Mr. Ellis retracted the statement.

Peter commented that he doesn't feel comfortable making a decision without the State giving their input on the drainage. Mr. Ellis stated that they could move on with the subdivision and leave the easement for

discussion. If the state comments that there needs to be a larger culvert they would be willing to work with that. Peter is concerned that the most appropriate design is used so that the water will not just be pushed onto someone else. Dennis stated that some things were referred to in the easement deed that were not noted on the plan. Mr. Ellis explained that the drainage wording can be changed, and this is just a draft to be worked on. He is trying to let his client move forward, but is still willing to work with the board. They are also willing to rewrite the easement and can reference the 9-22 revision of the plan for the base of the work to be done. Mr. Ring commented that the state uses the 10 year storm, and the town is more stringent and uses the 100 year storm. Joan questioned the contours, but Dennis believes that they are clear on the plan and the cross sections are not needed for the contractors to understand the plan.

It was reiterated that Mr. Lambert would not be building the berm until after the town vote in March 2017 to see if the funding will be available to do the whole project at once.

If the town does not vote the project through then he would put the berm in. The board feels more comfortable with the wording in note #18 to read building permit not occupancy permit. Mr. Ellis stated that they would rather it state the occupancy permit in the note. Mr. Ellis asked if the board was comfortable with granting a blanket easement, subject to the town engineer and town attorney. Joan is concerned that if the project is not approved it might be awhile before it can be completed.

Joan made a motion to approve the application with the following conditions:

- 1. Remove from the Drainage Easement Deed the paragraph describing an expiration date for the drainage easement, and add the following 'There shall be no structures or land alteration within the drainage easement except as shown on the approved subdivision plans.**
- 2. Easement Deed shall be accepted by the Planning Board and town Attorney.**
- 3. Note #18 on sheet A1 of the subdivision plan set shall be revised to read Building Permit and not Occupancy Permit.**
- 4. Relocate the building setback line on Lots 4, 5 and 6 outside of the drainage easement area (by approximately 5 feet).**
- 5. Add a note on sheet A1 of the subdivision plan set referencing the Drainage Easement Deed and its Registry recording number.**
- 6. Completion of the Certification of Monumentation.**

Discussion of the motion: Julie stated that there should be no structures or alterations should be within the easement language and approved by the town engineer and the town attorney. Mr. Ellis stated that the language should be run by legal counsel for the town.

The drainage will open up at the back of lot 39. Ms. Hansard is concerned with what happens to the water after it exits the pipe in the back of the property, and how close it will be to the back line.

Mr. Ring explained that some trees might have to come down on Mr. Lambert's property for the drainage to work properly. She is concerned that the water will come onto her property, according to the plan the back of the Hansard property is higher than the Lambert's. Dennis asked if the building setback line could be changed so that it is clear that there can be no building within the easement. Bob asked if they could review what the motion was.

Bob seconded the motion. Peter amended the motion to state that the drainage easement line parallels the property line should be a construction set back. Mr. Ring will move it 45 feet so that it can be seen. Bob stated that there was discussion of Mr. Lambert not doing construction until after the vote. It will be kept in the minutes and not as a condition. Julie suggested that some of the language in the easement, be changed to add site inspections and maintenance. The easement should also be recorded with the plan for reference. Mr. Ring will forward the updated easement to the chairman who will review with the board. Mr. Hansard asked about the trees. Julie stated that the road agent and the designer can work within the easement to accommodate the trees the best they can. Ms. Hansard is aware of the easement across her property being needed and agreed it would be okay to do. She also asked if there was a location for the homes to be built; the board responded that they would have to fit within the setbacks. Peter expressed that if the lot 6 owner can cut trees down on their property, and Julie clarified that they could not cut them within the easement area. Mr. Ellis stated they would not build anything, but might need to cut the tree

down. Julie stated that if they left the stump and did not disturb the ground then that should be okay. **The motion was approved and all in favor.**
The applicant thanked the board for their time.

The board took a 5 minutes recess to fill out the needed paperwork at 8:10pm.

Accessory Dwelling Unit-

Julie passed out the new ordinance language that included the definitions. The changes were made that were discussed last meeting. Julie suggested developing a specific application and checklist for this new regulation because it will be very different than the special exception or variance. The septic regulations were discussed, size including when they need to be replaced. The state definition of septic's is RSA Section 485-A:38.

Donna Carter asked what the process is for the approval of the Accessory Dwelling Unit. It was explained that the board is working through the information and will go to a public hearing, if no changes are made it will then go to the voters, if changes are made at the first public hearing it will then go for another public hearing where no further changes can be made. Donna stated that she is asking the board and pushing for the accessory dwellings to be able to be contained within existing detached buildings. Bob clarified that at the deliberative session no changes can be made to the article. The submission for a citizen's petition can be accepted by the board of Selectmen in December for zoning articles. Peter expressed that the reason this definition was used was because the planning board feels that if the definition was too overreaching it might be too much too soon and it might not get passed. If it does not pass the defacto is what the state has for a definition. Donna feels that if the building is already existing and detached it would not harm the character of the town. Jim stated that as long as you are not building another building and using an existing barn, why not use it. Bob asked if it is legal to state just existing buildings, and not new ones. Peter stated that all approved in-law apartments will now be called accessory dwelling units. He also stated that if this gets approved and you want to amend it after then the board is able to do that. Donna is looking at it differently, so that the residents don't have to jump through hoops to get things approved. She is concerned because if the planning board denies the application, you can't go to the zoning board you would have to go to the courts.

Julie stated that the towns decide now whether it is detached or attached. She stated there is an issue with that because if you were to allow the accessory dwelling units were to be in existing buildings would you still have to keep the original use, such as barns staying barns. It could be an enforcement nightmare. It also would be penalizing someone for not having a barn. Donna stated the difference is if the building is there you can't move it to be attached to the house, but if you build new you can start with it attached.

What would the justification be for one person to have an existing barn be used and someone build a new one and they can't. It was also brought up that some of those existing structures are not built for living space and not structurally strong enough. Peter explained that this is for people who can't afford to build otherwise, and they should not be put into substandard structures. The board believes that it would be an enforcement nightmare.

There are three choices for the planning board to determine who sees the applications, the building inspector, the zoning board of adjustment or the planning board. This board has determined that they would like the applications to come before the planning board.

Donna stated that there are detached in-law apartments that have been approved by the town. Julie questioned how the town approved them being detached from the home. It was discussed and it was determined that it was before the new wording. Donna asked what happens if the town does not pass this article in March? It would revert to the state definitions and regulations. It was stated that it would be allowing them on any single family lot.

Julie recommended that once the board has the wording the way they want it there should be some education done on this article.

Joan asked about having the wording in the regulation to state that they could not be condo's. You have to maintain ownership of both units. Julie stated that Attn. Buckley cautioned the town's to not put this wording in the regulation. Section f is another new section that states that the septic needs to demonstrate adequate facilities and that you need to install a new septic. Donna commented that the state has it written that it doesn't need to be installed, but you do need a design on file, and only have to install when it fails. She quoted RSA section 485-A:38. Julie suggested that there be a provision for it to be inspected. There was a lengthy discussion on the state law. RPC recommends that the septic be updated because of the addition of bedrooms and facilities.

Julie suggested an amendment to read a site visit to prove it is functioning efficiently.
Julie will make the suggested changes for the next meeting. Discussion will continue.

Jim had some edits to the September minutes.

Peter made a motion to approve the July, August and September meeting minutes as edited, Bob seconded, all in favor.

PB10-18-16

November 15, 2016 will be the next meeting of the board.

Bob made a motion to adjourn at 9:23pm, seconded by Peter, all in favor.

Respectfully submitted,

Kathleen T Felch
Planning Board Clerk

APPROVED