

**KENSINGTON, NEW HAMPSHIRE
KENSINGTON PLANNING BOARD
TUESDAY
December 20, 2016
7:00 P.M. AT THE
KENSINGTON TOWN HALL
95 Amesbury Road
Meeting Minutes-approved 1/17/2017**

In Attendance: Jim Thompson, Bob Solomon, Joan Whitney, Kate Mignone, Julie LaBranche, Peter Merrill, Michael Schwotzer, Glenn Ritter

Others in attendance: William Buxton, and Pete Landry

Jim read the following to all present:

PUBLIC HEARING:

1. William G Buxton, Trustee of the William G Buxton Trust of 2011, of 175 Drinkwater Road, Map 12 Lot 45B, on Tuesday, November 15, 2016 at 7:00 p.m. at the Kensington Town Hall to review and act upon a Two Lot Subdivision application. The intent is for the owners to subdivide a 51.56 acre lot into two lots.

Bob made a motion to open the public hearing and Joan seconded, all in favor.

Jim updated on the review of the plan from last month. There was a note to have the Fire Department, Police Department and the Road Manager review the driveway. Beal's and Associates, Christian Smith sent a letter to the board on his recommendations on the subdivision. Jim summarized that Christian doesn't think that there are any issues with the lot. The Police Chief went out to the site and reviewed that the ability to the respond to the property would not be affected by the proposed use. The Fire Chief stated that the proposed area is okay for emergency vehicles. David the road manager did not give a report because of his relationship to the applicant so Beal's and associates was used. The board had voted to deny one of the waivers last month, and will look at the other waiver tonight.

There was discussion about the square footage on the plan in reference to Christian's letter.

Julie summarized that based on the minutes, the driveway reserve area should be shown, but instead there will be an easement over the existing woods road, but that does not satisfy the requirement so the board would need a waiver for that. The septic reserve area for the larger lot has not been delineated. Peter had made motion to deny the second waiver for the soil based lot determination, so changes were needed to the plan, and none were made and presented to the board.

Pete Landry spoke on behalf of the applicant William Buxton and stated that Mr. Buxton has no intention of making the other lot a building lot, and has no plans to further subdivide at this time. He continued that last month the board did not have Christian Smith's report, so there was no professional opinion given on the plan until this meeting. Pete asked the board to reconsider the denial of the waiver from last month. He stated that there could be a note added to the plan that the larger lot is not intended to be built on, until the test pits are done. He believes that is reasonable since the lot is 40 acres in size. He stated with Christian's opinion it backs up that request.

The driveway reserve area is still in question to Mr. Landry. He does not believe that is an issue. Mr. Smith stated in his letter that the driveway configuration meets all the current regulations. He agreed that the lot is unconventional but agrees with Christian's remarks that the driveway meets the rules and regulations. Jim stated that Christian's letter is clear and addresses all the issues from the meeting last month. Bob stated that Christian refereed to the driveway not having to come from the same road as the frontage is on. The board discussed the regulation and that is correct. This is a unique situation and the driveway will be going over someone else's property. Mr. Buxton explained that it is an active fire road and has been used for years as an access road and can be used for the access driveway to the proposed lot.

The board discussed having the applicant draw up easement wording before the subdivision is approved. Mike explained that there are shared driveways covered within the regulations, and the subdivision regulations state that there should be a driveway reserve area. The board agreed that this lot is unique and the zoning is not specific. Julie asked who would be maintaining and plowing the driveway. Mr. Buxton explained that it will all be spelled out within the easement language with an attorney. Joan brought up that it is hard to track the easements when they are not tied to both deeds. Mr. Landry explained that the plan will be recorded at the registry and the plan can be referenced in the deed. Joan would like it spelled out so that it can all be tied together for future reference. The board discussed various ways to tie the easement to the plan and deed.

Mr. Buxton does not agree that the easement needs to be created and recorded now.

Mike explained that the easement is on the plan, but they should have some conditions as to how the driveway will be maintained. If you lived on a class IV road you would have to record a document stating who the maintaining party will be. Mr. Landry does not agree that there needs to be a separate agreement, this is a driveway not a town road. Julie explained that until there is a legal use over the land to access the lot it can't be accessed. Mr. Buxton stated that it will be spelled out on the easement deed what use the new owner will have and he does not want to spend the money now and have to do another easement when the property sells. Mr. Landry asked if the board would be okay with the maintenance agreement with a copy of deed that is not recorded. Peter believes that the easement agreement is between the two lots and not the landowners. Mr. Buxton explained that the owner of the lot will be responsible for the maintenance of the driveway for the new lot. Mike explained that the statement that the new owner was to maintain the driveway was key. Bob asked about adding more information to the notes. Mike stated that it could read that the owner of lot B6 would maintain the driveway easement area and Mr. Landry is agreeable to that wording. Julie and Mr. Landry will update the wording on the plan to make the maintenance agreement clear. The board was in agreement. Julie stated that some of the wording on the plan should be changed to reflect that it is a driveway easement not a right of way easement. The board will handle the driveway issues in the motion.

Julie has a question on how the utilities will be brought out to the lot. Mr. Landry showed the board where it was located on the plan. They are leaving up the access up to the power company, they will not be running the poles down the proposed driveway.

The waiver that was denied asked to not to show the septic reserve area, Julie would recommend that the board reverse, and add note to the plan that it is not a buildable lot until it complies with the septic reserve area regulations. Mike does not like the wording added to the plan that the lot is not a buildable lot. Kate asked if the wording could be changed to suggest the test pits would need to be done first.

Bob made a motion to rescind the denial of the waiver for the septic reserve area from the November 15, 2016 meeting, Mike seconded, all in favor.

Joan made a motion for the board to waive the Septic Reserve Area (Subdivision Regulations Article III, Section 3.3I) on lot 45B, but that lot 45B will not be an approved building lot until all state, local and town septic system requirements are met. Kate seconded.

The board furthered the motion by stating the reason why they waived this requirement as directed by RSA 674:36II(n) 2:

(n) Include provision for waiver of any portion of the regulations. The basis for any waiver granted by the planning board shall be recorded in the minutes of the board. The planning board may only grant a waiver if the board finds, by majority vote, that:

(1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or

(2) Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

The board agreed that the second one would apply.

Mike read from the December 12, 2016 letter from Christian Smith for the conditions referenced.

Call of vote was called, all voted in favor of the motion.

The board reviewed the new waiver request by the applicant. They requested waiver was from the Soils-Based lot size Determination in the Town's Subdivision Regulations Article III, Section 3.3H. They are stating that the lot is oversized consisting of 131,555 square feet or contiguous upland on parcel 12, 45B.

Mike made a motion that the board waive the requirement for the soil determination HISS mapping do to strickly conforming would pose an unnecessary hardship on the applicant under the regulations, because the lot is over 11 acres and has 131,555 square feet or contiguous upland as stated in the letter dated December 12, 2016, from Christian Smith at Beal's and Associates. Kate seconded, all in favor.

Julie reminded Mr. Landry that the plan would need to contain the **tbs** (to be set) initials on each corner of the new lot. The Certificate of Monumentation will be provided after they are set and before the plan is recorded.

Mike made a motion to approve the subdivision for William Buxton, in regards to Map 12 lot 45B6 with the following conditions:

- 1. Monuments set and certificate of monumentation will be provided to the board before signing the Mylar.**
- 2. Language regarding the driveway easement be expanded through consultation with Rockingham Planning Commission.**
- 3. Non-approved building lot until such time as complies with town and state septic requirements and be noted on the plan.**

Bob seconded, all in favor.

Mike motioned that the chairman have authority to sign the Mylar once completed and approved for the planning board. Kate seconded, all in favor.

Mr. Buxton thanked the board and he and Mr. Landry exited the meeting.

Peter made a motion to close the public hearing, Kate seconded, all in favor.

Jim read the following to everyone present.

Pursuant to NH RSA 674:16, 675:2-5 and 675:7, notice is hereby given of a public hearing to be held by the Kensington Planning Board on Tuesday, December 20, 2016, beginning at 7:00 p.m. at the Kensington Town Hall, 95 Amesbury Road, Kensington, NH. The purpose of these public hearings is the following:

- 1. Proposed amendments to Zoning Ordinance Article II: delete Zoning Ordinance Article II, Section F. Special Exception for "In-Law Apartment" and insert the following new section as Zoning Ordinance Article III, Section 3.2.3 Accessory Dwelling Units**

Mike motioned to open the public hearing for the Accessory Dwelling Units section as presented at 8:27pm, Peter seconded, all in favor. Mike asked if there were any substantive changes to the proposed article. Joan stated that she and Julie had talked about changing the definition of attached. Esthetics were discussed and whether or not they want the connected area to be enclosed. The interior door implies that it would be under cover. It was stated that there could be a common wall or heated space.

Mike explained that it would be more like having a duplex without having the common wall.

Mike called the vote.

Kate proposed the following: An Accessory Dwelling Unit shall be attached to the principal dwelling unit by a common building wall with a shared interior door or an attached enclosed structure with interior doors between the Accessory Dwelling Unit and principal dwelling unit. The Accessory Dwelling Unit shall appear subordinate to the principal dwelling unit in design and placement. Peter seconded, passed with one opposed.

Kate proposed the following to accept letter j which would now read:

The Accessory Dwelling Unit and the attached enclosed structure shall not be used for an In-Home Occupation or to fulfill any requirement of an In-Home Occupation permitted in the principal dwelling unit. Mike seconded, all in favor.

Kate made a motion to continue the public hearing on this article until the January 17, 2017 meeting of the planning board at 7:00pm with a snow date January 19, 2017 at 7:00pm. Mike seconded, all in favor.

Mike made a motion to close the public hearing, Peter seconded, all in favor.

The following changes were decided upon.

- a. An Accessory Dwelling Unit shall be attached to the principal dwelling unit by a common building wall with a shared interior door or an attached enclosed structure with interior doors between the Accessory Dwelling Unit and principal dwelling unit. The Accessory Dwelling Unit shall appear subordinate to the principal dwelling unit in design and placement.
- i. Two off-street parking spaces must be provided for each dwelling unit.
- j. The Accessory Dwelling Unit and the attached enclosed structure shall not be used for an In-Home Occupation or to fulfill any requirement of an In-Home Occupation permitted in the principal dwelling unit.

Jim read the following to all in attendance.

- 2. Proposed amendments to Zoning Ordinance Article IV Section 4.1 Signs.

Mike made a motion to open the public hearing on the zoning ordinance changes to the existing Signs article, Peter seconded, all in favor.

Julie highlighted all the changes that the board has made to the article.

Mike made a motion to move the Signs ordinance as proposed to the March Town Voting, Peter seconded, all in favor.

Mike motioned to close the public hearing, Glenn seconded, all in favor.

The board was presented with two zoning ordinance amendments by petition. They reiterated that this article cannot be changed as it was a citizen's petitioned warrant article for a zoning change and amendment. Jim asked for a summarization of the difference in the first article that was for the Accessory Dwelling Units and was almost identical to the one that the Planning Board had written only it was asking for detached accessory units. The board will hold a public hearing on this article to say whether they will put their recommendation on the bottom for the ballot.

The second article was to extend the Commercial District into an adjacent lot to the existing Commercial District. This board will hold a public hearing on this article as well in January.

Joan motioned to approve the meeting minutes from the November 15, 2016 meeting as presented, Kate seconded, all in favor.

Bob motioned to adjourn at 9:35pm, seconded by Mike Schwotzer, all in favor.

Respectfully Submitted,

Kathleen T Felch
Planning Board Clerk