

KENSINGTON PLANNING BOARD
TUESDAY, SEPTEMBER 19, 2017
MEETING MINUTES-Approved 10/17/17

In Attendance: Bob Solomon, Chairman, Bob Wadleigh, Selectmen's Representative, Jim Thompson, Kate Mignone, Chris Chetsas, Alternate Bob Fee and Julie LaBranche, Rockingham Planning Commission.

At 7:02 Chairman Solomon opened the meeting. He welcomed two new members: Chris Chetsas and Alternate Bob Fee. A motion was made by Mr. Thompson and seconded by Mr. Wadleigh to open the public hearing for an Accessory Dwelling Unit application submitted by R&D Courtemanche Revocable Trust and Michael and Amy Baut for their home located at 4 Hoosac Rd, Map 11 Lot 40-1. The motion passed and Chairman Solomon read the Public Notice. It was noted that this is the first application received under the Town's new ADU ordinance.

Applicant Amy Baut presented their case on behalf of her husband and parents. The home was purchased in 2004. At that time the parents provided child care for the Bauts children. As the parents have aged, their rooms on the second floor present a safety risk. They would like to add this unit on the first floor so the parents can continue to stay in their home and live independently for years to come.

Builder David Clark presented a plot plan showing the proposed design and its location on the lot within the appropriate set-backs. He stated that one challenge they face is that the new addition will be located over the current leach field. However, he was in contact with the original septic designer who is confident that an appropriate new design for the current 4 bedroom home with the additional square footage can be done without any foreseeable issues.

Questions were asked clarifying the location of the garage and the size of the new unit. The garage will be separate from the existing garage. The unit measures 1100 square feet, but that includes 288 square feet of garage space. Therefore, the size of the living space will conform to the regulation requiring a maximum of 900 square feet.

While reviewing documents presented with the application packet, Mr. Chetsas noticed that the protective covenants state: "There shall be no buildings placed or erected on any Property other than one single-family house together with one garage and outbuilding".

Ms. Baut responded that the covenants have never been enforced. The builder is nowhere to be found. Two neighbors (Norman Giroux and Grace Beason) spoke in favor of the applicants and confirmed her statements about the covenants.

Lengthy discussions ensued concerning the Planning Board's responsibility to protect the Town from any liability if the covenants are enforced. The covenants were recorded 7/31/2002, but when the original sub-division approval documents recorded 10/12/2001 were reviewed no covenants were noted.

Mr. Thompson made a motion to approve the application with the following conditions:

1. Before issuance of a building permit for construction of the accessory dwelling unit and additions, the property owner will provide a replacement septic system plan with new reserve area delineated and approved by NHDES.
2. The property owner will provide a legal instrument releasing the Town of Kensington and Kensington Planning Board from any liability associated with enforcement of the Kensington Place Declaration of Protective Covenants.

These conditions must be met before a building permit will be issued.

Mr. Wadleigh seconded the motion and it passed unanimously.

Chairman Solomon thanked the applicants for a well-prepared presentation. This proposal is the exact use for which the regulation was intended.

Ms. Mignone made a motion to close the public hearing, seconded by Mr. Thompson and passed unanimously.

7:53 Mr. Thompson recused himself from the Tannery Way discussion. Alternate Mr. Fee was announced as full voting member to take his place.

Road Manager Dave Buxton questioned whether as an abutter he should also be recused. Since he was acting as a representative of the Board when he did his review, it was not necessary.

(Owners John and Heidi Ricci, Engineer Jack McTigue and Attorney John Bosen were in attendance)

Following legal review of the subdivision plans and supporting documents for Tannery Way Subdivision, a number of outstanding issues were identified. See Attachment A. The applicants responded as follows:

1. LOT MERGER: Tonight we received Quitclaim deed conveying title from Ricci to 825 Development and a signed Volunteer Merger form.
2. DRAINAGE AND CISTERN EASEMENTS: Received confirmation that metes and bounds are on the plan.
The arc length has been corrected.
Plan number will be added when plan is recorded.
Lot ownership has been resolved.
Confirmed with Road Agent, David Buxton, that easements are sufficient.
3. CONSTRUCTION SECURITY: A construction cost estimate in the amount of \$261,352. was presented. Estimate has been reviewed by the Town Engineer, Chris Smith, and found to be sufficient. The owner as agreed to posting bond in this amount.
4. CONSTRUCTION INSPECTION FEE: An Escrow account in the amount of 2% of the Combined construction cost estimate to cover construction inspection fees will be set up.

Ms. Mignon made a motion to amend the conditions of approval for the Tannery Way subdivision from the July 18 Planning Board meeting by adding the following conditions which the property owner, John Ricci of 825 Development LLC, agreed to:

1. The property owner shall post a security in accordance with the Town's subdivision regulations section 3.2.O prior to: a) conveyance to third parties of lots 1-4; (b) issuance of building permits for lots 1-4; and (c) the start of any construction. The property owner will notify and meet with the Planning Board to approve the security.
2. The drainage and cistern easements will be executed and recorded prior to construction.
3. Property owner will notify the Town and Planning Board upon completion of the (gravel pit) reclamation plan on file with DES.
4. The property owner will notify and meet with the Planning Board prior to any construction to establish an escrow account equal to 2% of total construction cost estimate dated 9/19/17 to cover construction inspection fees.

Mr. Chetsas seconded the motion and it passed unanimously.

Mr. Thompson made a motion to approve meeting minutes from July 18. Seconded by Mr. Wadleigh and passed unanimously. Mr. Thompson made a motion to approve meeting minutes from August 15. Seconded by Mr. Wadleigh and passed with Ms. Mignon abstaining. Minutes from August 24 meeting will be held until Mr. Ritter is also in attendance.

Chairman Solomon apprised the Board that the Town of Kensington has been chosen by "Plan NH Charrette" to help with planning, architecture, landscaping, engineering, transit and other issues regarding our Town Center. There will be meetings on Friday October 20 and Saturday October 21 to help residents think through these issues. There will be fundraising to cover the \$5,000.00 "orchestration" fee that goes to Plan NH to cover miscellaneous costs but all the expertise is provided by volunteers who will spend the weekend with us at no cost. He hopes that Planning Board members will support and show up. More to follow.

Per discussion with our attorney, Ms. LaBranche stated that we need to consider making changes regarding our bonding policy for sub-divisions and site plans. Also, that we should require escrow at the time of application. She also suggested that we put in place some mechanism to do an annual review of outstanding bonds.

At 8:40pm Mr. Thompson made a motion to adjourn, seconded by Mr. Wadleigh and passed unanimously.

Respectfully submitted,

Mary F. Smith

ATTACHMENT A

TANNERY WAY SUBDIVISION, KENSINGTON NH: OUTSTANDING ISSUES

The following outstanding issues were identified following legal review of subdivision plans and supporting documents submitted to the Town of Kensington Planning Board and Board of Selectmen by John Ricci, 825 Development LLC.

A. Lot Merger

It is our understanding that Tax Map 12 Lot 45-B4 is owned 825 Development, LLC and Tax Map 12 Lot 47 is owned by Ricci Construction Company, Inc. Under the Town's lot merger form and state law RSA 674-39-a Voluntary Lot Merger, the name of record ownership for all lots consolidated must be identical. If 825 Development, LLC is supposed to be the record owner of the new lot, there must be a conveyance from Ricci Construction Company to 825 Development LLC of its parcel such that both parcels, prior to the voluntary merger, have identical ownership. Common ownership of both lots must be documented prior to recordation of the lot merger.

B. Drainage and Cistern Easements

The following revisions to the drainage easement are requested:

- a. The first four courses of the metes and bounds description are not depicted on the Subdivision Plan.
- b. The last course described beginning with "S28 42'50"W a distance of 13.90 feet" on page 2 of the easement appears to depict the wrong arc length of 139.26' as the plan appears to depict an arc length of 200.31'.
- c. The Plan # reference in the second paragraph needs to be filled in once the subdivision plan is recorded.
- d. The last paragraph on page 2 indicates that the easement is "intending to describe and convey an easement over a portion of those premises of the Grantor contained in the Deeds recorded in the Rockingham County Registry of Deeds Book 5785, Page 1287 and Book 1442, Page 267." Book 5785, Page 1287 is William Buxton's deed into 825 Development LLC of the 2.79 acre parcel (Map 12, Lot 45-B4) in December of 2016. Book 1442, Page 267 is a deed from 1957 from Merriam to Ricci Construction Company of Map 12, Lot 47, the 10.4 acre parcel. We note two observations with regard to this language:
 - i. First, the drainage easement does not appear to be over a portion of Map 12, Lot 45-B4 (825 Development LLC's property), it appears to be exclusively on the land of Ricci Construction Company (Map 12, Lot 47).
 - ii. Depending on what Mr. Ricci's perspective is on the lot merger issue, the deed references may need to change. In other words, if Mr. Ricci has, or intends to, convey the Ricci Construction Company parcel to 825 Development LLC to create two lots with identical ownership so that they can be voluntarily merged, that deed should be referenced in this area of the easement.
- e. There is question whether adequate authority is granted in the easement to maintain etc. the cistern, well and infrastructure. The Road Manager will determine whether there is ample authority in the easement to do the work necessary to improve, maintain and repair these facilities

C. Cistern Easement

The following revisions to the drainage easement are requested:

- a. The Plan # reference in the second paragraph should be filled in once the subdivision plan is recorded.
- b. We offer the same comment as for the drainage easement with regard to the last substantive paragraph before the "In Witness Whereof" paragraph on the second page. The correct language for the deed references will depend on what Mr. Ricci intends to do with the lot merger/lot ownership issue.
- c. There is question whether adequate authority is granted in the easement to maintain etc. the cistern, well and infrastructure. The Road Manager will determine whether there is ample authority in the easement to do the work necessary to improve, maintain and repair these facilities.

D. Construction Security

Section 3.2(O) of the Town's Subdivision Regulations state the following security for construction:

1. In lieu of an applicant completing street construction and storm water and utility construction and other required improvements in conformance with the preceding provision and Article 4 and 5 of this regulation, the Planning Board may accept one of the following forms of security:

- a. Certified Check or bank check properly endorsed to the Town of Kensington.
- b. Irrevocable letter of credit submitted on the standard form approved by the Town (if other than the Town's approved form, the performance agreement shall be reviewed and approved by the Planning Board and Planning Board Counsel as to proper legal form and enforceability. The cost of this review shall be borne by the applicant.

2. The amount of the security shall:

- a. Be based on an estimate, prepared by appropriate experts of probable construction costs and cost of materials to conform with the town's general standards for any construction improvements.
- b. Be based on an amount estimated by the Planning Board sufficient to secure to the Town of Kensington the satisfactory construction, installation and dedication of required improvements to meet the construction standards of this regulation.

The applicant's design engineer will provide a construction cost estimate with the following: subtotaled estimates for construction costs for the 1) road, 2) drainage infrastructure, and 3) cistern and well; and a total security amount to cover all construction costs. The Town Engineer will review the construction cost estimates to determine sufficiency to cover all such construction as shown on the approved site plan. In the past, the Board of Selectmen have formally negotiated the terms of the construction security and/or bond and made final approval.

E. Construction Inspection Fee

Section 3.2(K) of the Subdivision Regulations requires whenever a subdivision involves street construction for an applicant to deposit with the Town Treasurer (prior to submitting final application for approval of a subdivision) a sum of 2% of the estimate cost of street construction, and installation of structures for storm water drainage, or other construction improvements, as a way of offsetting the cost of having said improvements professionally inspected by the Town Engineer. Refunds of unused money will be made to the applicant. In this case, the town requests 2% of the combined construction cost estimates for the road and its supporting drainage infrastructure as described in section D above.

PB9-19-17MMA

Submitted to John Ricci, 825 Development LLC, on behalf of the Kensington Planning Board by Julie LaBranche, Circuit Rider Planner

September 12, 2017.

APPROVED