

**LAND USE REGULATIONS
KENSINGTON, NH**

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LAND USE REGULATIONS

KENSINGTON, NH

ARTICLE I: POWERS AND DUTIES OF THE TOWN OF KENSINGTON

SECTION 1.1 GENERAL

In order to promote the health, safety, prosperity, appearance, convenience, economy and general welfare of the community, the following Ordinance is hereby enacted by the voters of Kensington, New Hampshire. This Ordinance is in accordance with Chapters 672 and 677, New Hampshire Revised Statutes Annotated. (05/12/1959)

SECTION 1.2 DEFINITIONS

- A. Abutter:** For the Town of Kensington an abutter shall be any property owner whose property is located in New Hampshire and within two hundred (200) feet of any property line, including across a street or stream, of a land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that their land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII.
- B. Alteration:** Any construction or renovation to an existing structure which requires a permit other than repair or replacement. Also, a change in the mechanical system that involves an extension or change to the arrangement, type or purpose of the existing installation.
- C. Application** - shall mean the completed application form, accompanied by all substantiating data and exhibits required by these regulations. Such data and exhibits must be in their final forms, and be acceptable to the Board and any experts whose analysis or review is deemed necessary by the Board. Applications will only be accepted from the owner of property or an agent designated in writing by an owner.
- C. Board** - means the Planning Board of the Town of Kensington.
- D. Charges** - means administrative expenses, and costs of special investigative studies, reports, inspection charges and other matters which may be required because of a specific application.
- E. Commercial** - shall mean any use of any earth material for sale or resale on or

off site of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported to other land. Excavations which use earth materials in the processing of other material such as, but not limited to, concrete, asphalt and other building materials shall be considered commercial.

- F. Community Wastewater System** - A non-municipal wastewater collection, treatment, and disposal system that serves an average of at least twenty-five individuals daily year-round, or that has at least fifteen (15) service connections.
- G. Community Water Supply** - A non-municipal water supply system that serves an average of at least twenty-five (25) individuals daily year-round, or that has at least fifteen (15) service connections.
- H. Completed application** - shall mean the complete standard application form and all accompanying maps, exhibits, drawings, data and calculations required by Articles 4-6 of these regulations.
- I. Conventionally paved** - a road that is conventionally paved is in compliance with the street layout and construction standard as written in Article 4.10 of the subdivision regulations of the Town of Kensington.
- J. Cul-de-sacs** – A Cul-de-sac is a street, whether public or private, with a single common ingress and egress and with a turnaround at the end. The beginning of the cul-de-sac shall be defined and measured from the point of access to the first street with continuous travel in opposite directions to an existing road network. The length of the cul-de-sac shall be measured from this beginning point to the end of the cul-de-sac, including the full radial path of travel around the cul-de-sac's turnaround. **(Amended 03/21/2006)**
- K. Drainage Facilities** - are taken to mean storm drainage and layout design and construction according to Article 4.11 of the subdivision regulations of the Town of Kensington.
- L. Earth** - shall mean sand, gravel, rock, soil or such other naturally-occurring unconsolidated materials that overlay bedrock or construction aggregate produced by quarrying, crushing or any other mining activity.
- M. Engineer** - a person who by reason of advanced knowledge of mathematics and the physical sciences, acquired by professional education and/or practical experience, is technically and legally qualified to practice engineering, and who is licensed by the NH Joint Board or otherwise authorized by the State of NH to engage in the practice of engineering.
- N. Excavation** - shall mean the land area which is used, or has been used, for commercial taking of earth, including all slope areas.
- O. Excavation site** - shall mean any area of contiguous land in common ownership

upon which excavation takes place.

- P. Fees** - means a sum of \$25.00 for each application, payable to the Town of Kensington, plus the costs to notify all parties of interest, including the general public.
- Q. Frost ban postings** - shall mean temporary restrictions on use of town roads imposed by Selectmen, limiting or banning trucking. Such postings shall supersede all permit conditions imposed by the Planning Board.
- R. Hydric soils** - Lands containing soils classified by the National Cooperative Soil Survey as poorly drained, very poorly drained, including fresh water marshes or alluvial soils.
- S. Loop Road** – A street which is intended to serve as direct or indirect access to residential lots, which begins and terminates in the same street or road, but not at the same location. Loop roads may not be proposed to accomplish what would not be permissible as a cul-de-sac. **(Amended 03/21//2006)**
- T. Multi-Family development** - means a two family dwelling, or multi-family apartment house containing more than one dwelling unit on a single parcel of land.
- U. Non-residential development** - means any use of land, building or premise other than as one family dwelling. This use includes commercial and industrial uses, business uses, or mining and excavation operations.
- V. Planning Board Counsel** - means legal counsel retained by the Planning Board for investigations and recommendations on questions arising from subdivision application.
- W. Plat** - means the final map prepared by a registered land surveyor or registered professional engineer on which the subdivider's plan of subdivision is presented to the Kensington Planning Board for its approval, and which, if approved, will be submitted to the Register of Deeds of Rockingham County for recording.
- X. Qualified Soil Scientist** - means a person qualified in soil classification and who is recommended or approved by the Rockingham County Conservation District Supervisors.
- Y. Soil Type** - As defined by the National Cooperative Soil Survey. When a lot contains more than one soil type a weighted average of those soil types occurring on the lot will be used in determining the lot size.
- Z. Street** - means and includes the following:
1. Any highway, road or right-of-way which the State or County has an obligation to maintain;

2. Any highway, road or right-of-way dedicated to and accepted by the Town of Kensington; and
3. Any highway, road, or right-of-way, whether or not formally accepted by the Town, which by traveled use or other appropriate circumstances has become a Town Road by reason of the recognition by the Town of a duty to regularly maintain such highway, road or right-of-way; however, the word "street" shall not include:
 - a. Driveways
 - b. Private ways serving condominium development, or serving not more than two adjacent lots; and
 - c. Any existing public highway, road or right-of-way which shall have been discontinued as an open highway or made subject to gates and bars, or which shall not have been maintained and repaired by the town in suitable condition for travel thereon for five or more successive years.

AA. Subdivision - means the division of a lot, tract or parcel of land into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale, rent, lease, condominium conveyance or building development. It includes resubdivision and when appropriate to the context, relates to the process of subdivision or to the land or territory subdivided. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision under these regulations.

ARTICLE II: PLANNING BOARD RULES OF PROCEDURE

SECTION 2.1 RULES FOR THE CONDUCT OF BUSINESS **KENSINGTON PLANNING BOARD (Adopted 6/26/1980)**

A. AUTHORITY

These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated (RSA) 676.1 and the ordinance establishing the Planning Board of the Town of Kensington.

B. MEMBERS AND ALTERNATES

1. Selection, qualification, term, removal of members and filling of vacancies shall conform to RSA 673.

2. The Planning Board shall consist of seven (7) members: the Selectmen shall designate one of its members as ex-officio and an alternate ex-officio member with power to vote and shall appoint six (6) Town residents as members. The term of a Board member shall be three (3) years and terms shall be staggered so that no more than two (2) appointments occur annually. Board members and alternates shall comply with the multiple membership requirements of RSA 673:7, I and II.

3. Up to three (3) alternate members may be appointed and serve on the Planning Board as authorized by RSA 673:6 and participate as non-voting members. Their terms shall be staggered in the same manner as regular members. Alternates should attend all meetings to familiarize themselves with the workings of the Board to stand ready to serve whenever called upon.

4. At Planning Board meetings, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the Chairperson to temporarily fill the unexpired term of a vacancy, may participate with the Board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, and actively participate and interact with other Board members, the applicant, abutters and the public. However, they shall not be allowed to make or second motions and shall not participate in any way during deliberations by the Board. During work sessions or portions of meetings that do not include a public hearing, alternates may fully participate, exclusive of any motions or votes that may be made. At all times, the Chairperson shall fully inform the public of the status of any alternate present and identify the members who shall be voting on the application.

5. Members must reside in the Town of Kensington and are expected to attend each meeting of the Board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the Chairperson as soon as possible. Members, including the Chairperson and Vice- Chairperson, shall participate in the decision-making process and vote to approve or disapprove all motions under consideration. Any Board member failing to attend three (3) consecutive meetings, or any Board member failing to attend 65% of all meetings in a calendar year without just cause, will be cause for the Board to consider requesting their removal and replacement as an active member. Each newly appointed (including re-appointed) member shall be sworn in and take an oath of office as required by RSA 42:1.

C. OFFICERS

1. The officers of the Board shall be as follows:

Chairperson: The Chairperson shall preside over all meetings and hearings; shall prepare an annual report; appoint such committees as directed by the Board; shall affix their signature in the name of the Board; and shall perform other duties customary to the office. The Chairperson shall serve for one year and shall be eligible for re-election. The Chairperson may serve no more than two (2) terms consecutively; however, they may be eligible for future re-election.

Vice-Chairperson: The Vice-Chairperson shall preside in the absence of the Chairperson and shall have the full powers of the Chairperson on matters that come before the Board in the absence of the Chairperson. The Vice-Chairperson shall be eligible for re-election.

The officers of the Board shall be elected annually during the month of April by a majority vote of the Board. If requested by a majority of those present, voting shall be by written ballot.

D. MEETINGS

1. Regular monthly meetings shall be held at Kensington Town Hall at 6:30p.m. on the third Wednesday of each month.
2. Special meetings may be called by the Chairperson or, in their absence, by the Vice-Chairperson, or at the request of three (3) members of the Board, provided public notice and notice to each member is given at least 48 hours in advance of the time of such meeting. The notice shall specify the purpose of the meeting.
3. Non-public sessions shall be held only in accordance with RSA 91-A:3.
4. A majority of the membership of the Board shall constitute a quorum, including alternates sitting in place of regular members. If any regular Board member is absent from a meeting or hearing, or disqualifies themselves from sitting on a particular application, the Chairperson shall designate one of the alternate members to sit in place of the absent or disqualified member. Such alternate shall have all the powers and duties of a regular member in regards to any matter under consideration on which the regular member is unable to act. The alternate should continue until the matter is completed; the regular member does not vote on that matter.
5. Disqualification: Any Board member with a pecuniary or personal interest in a case, or bearing any blood relationship to the applicant, shall disqualify themselves from the proceedings. If any member finds it necessary to be disqualified from sitting on a particular case, as provided in RSA 673:14, they

shall notify the Chairperson as soon as possible so that an alternate may be requested to fill the place. The disqualification shall be announced by either the Chairperson or the member before the discussion or the public hearing on the application begins. The member disqualified shall leave the Board table during all deliberations and the public hearing on the matter.

If uncertainty arises as to whether a Board member should disqualify themselves, on the request of that member or the request of another member of the Board, the Board shall vote on the question of whether that member should be disqualified. Such request and vote shall be made prior to or at the commencement of any required public hearing. A vote on a question of disqualification shall be advisory and non-binding, and may not be requested by persons other than board members.

6. Members may attend meetings electronically in accordance with the standards established in RSA 91-A:2, III. Members of the Planning Board who cannot reasonably attend a meeting in person may be able to attend electronically and as long as the provisions of RSA 91-A: 2, III are met, this member has all the rights, including the right to vote, as other Board members. All votes taken when a member is attending electronically must be done by roll call.

7. Order of Business shall be as follows:

- a. Call to order by Chairperson.
- b. Introduction of members
- c. Confirmation of quorum
- d. Public Hearings
- e. Other business
- f. Reports of committees
- g. Updates on old business
- h. Minutes of previous meeting.

The Board may, by vote at a regular meeting, change the above order to better accommodate the public or the Board. Non-scheduled matters may be heard only at the pleasure of the Chairperson, provided no two members present object.

8. A motion, duly seconded, shall be carried by an affirmative vote of a majority of the members present. Voting shall be by roll call if a vocal vote is inconclusive, which shall be recorded in the minutes.

9. If there is a tie vote or a failed motion, the board may attempt an additional motion(s) in an effort to achieve a majority vote.

PUBLIC HEARINGS

The conduct of public hearings shall be governed by the following rules:

1. The Chairperson shall announce the application and read the public notice.
2. The board shall consider, in consultation with staff, application completeness. If the application is complete the board shall, by majority vote, take jurisdiction over the application and the Chairperson shall open the public hearing for the applicant to make their presentation.
3. Members of the Board may ask questions at any point during the presentation.
4. Following completion of the applicant's presentation and the board's questions, the Chairperson shall open public comment.
 - a. Any party to the matter who desires to ask a question of another party must direct their question or comment to the Chairperson.
 - b. Any applicant, any abutter, or any person with a direct interest in the matter may testify in person or in writing. Other persons may testify as permitted by the Board at each hearing.
 - c. Those appearing in favor of the case shall be allowed to speak first. Followed by those in opposition. Each person who speaks shall be required to state their name and address.
 - d. Each person who speaks shall be required to state their name and address.
 - e. The applicant shall have the opportunity to speak in rebuttal.
 - f. The Chairperson shall close public comment.
5. Other parties such as representatives of town departments and other town boards and commissions who have an interest in the proposal shall be allowed to present their comments in person or in writing.
6. The board will have the opportunity to ask any follow-up questions.

7. Once the hearing is closed, the board will deliberate and make a decision or continue the application. In the case of a continuance, additional notice is not required if the date, time, and place of the continuation is made known to the public.
8. The board shall, by majority vote, close the public hearing.

FORMS

1. All forms, including but not necessarily limited to application, checklist, and waiver requests, prescribed herein and revisions thereof shall be adopted by resolution of the Board and shall become part of these rules of procedure.

NOTICE

1. Public notice of the submission of public hearings on each application shall be given on the Town's website and by posting in two public places, not less than ten (10) days prior to the date fixed for submission and consideration of the application. Posting requirements cannot count the day of the posting and the day of the meeting in the 10 days prior to the meeting.
2. Personal notice shall be made by certified mail to the applicant, all abutters, and any professional whose seal appears on any plat not less than ten (10) days prior to the date fixed for submission of the application to the Board.

DECISIONS

1. The Board shall render a written decision within 65 days of the date of acceptance of a completed application, subject to extension or waiver as provided in RSA 676:4.
2. The Board shall act to approve, conditionally approve, or disapprove.
3. Notice of decision will be made available for public inspection at the Land Use office within 5 business days after the decision is made, as required in RSA 676:3. If the application is disapproved, the Board shall provide the applicant with written reason for this disapproval.

RECORDS

1. The records of the Board shall be kept by the Land Use Administrative Assistant and shall be made available for public inspection at the Kensington Town Hall Land Use office as required by RSA 91-A:4.
2. Minutes of the meetings, including the names of Board members, persons appearing before the Board and a brief description of the subject matter, shall be open to public inspection within 5 business days after the meeting as required in RSA 91-A:2, II.
3. If a website is maintained, RSA 91-A:2, II-b requires that approved minutes must also be posted on the website in a consistent and reasonably accessible location.

JOINT MEETINGS AND HEARINGS

1. The Planning Board may hold joint meetings and hearings with other “land use boards” including the Zoning Board of Adjustment, the Historic District Commission, the Building Code Board of Appeals, and the Building Inspector. Each board shall have discretion whether or not to hold such joint meeting or hearing (RSA 676:2).
2. Joint business meetings with another local land use board may be held at any time when called jointly by the Chairperson of the two boards.
3. A joint public hearing must be a formal public hearing when the subject matter of the hearing is within the responsibilities of the boards convened.
4. The Planning Board Chairperson shall chair all joint meetings and public hearings when the subject matter involves the Planning Board.
5. The rules of procedure for joint meetings and hearings, the subject matter of which involves the Planning Board, shall be the same as these rules of procedure except that the order of business shall be as follows:
 - a. Call to order by Chairperson;
 - b. Introduction of members of both boards by Chairperson;
 - c. Explanation of reason for joint meeting/hearing by Chairperson;
 - d. Public hearing protocol as listed previously;
 - e. Adjournment.

6. Each board involved in a joint public hearing makes its own decision, based on its criteria for the particular matter.

ADOPTION AND AMENDMENT

The Board shall review proposed rules of procedure at a regular meeting of the Planning Board prior to adoption of new rules or amendment of existing rules by a majority vote of its members. The newly adopted rules of procedure or amended procedures shall be filed with the Town Clerk.