

**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 AND PROCEDURES**

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

#### **A Authority:**

These Rules are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the ordinance establishing the Planning Board of the Town of Kensington.

#### **B. Officers**

1. A Chairman shall be elected annually in the month of April by a majority vote of the Board. Said Chairman shall serve for one year and shall be eligible for re-election. The Chairman may serve no more than two terms consecutively; however, he may be eligible for future election. He shall preside over meetings and hearings, appoint such committees as directed by the Board, and shall affix his signature in the name of the Board.

2. A Vice Chairman shall be elected annually in the month of April by a majority vote of the Board. Said Vice Chairman shall preside in the absence of the Chairman and shall have the full powers of the Chairman on matters which come before the Board during the absence of the Chairman. He shall be eligible for re-election.
3. A Clerk shall be elected annually in the month of April by a majority vote of the Board. Said Clerk shall serve for one year and shall be eligible for re-election. He shall perform such duties as the Board may direct by resolution.

### **C. Meetings-amended 2019**

1. Regular meetings shall be held at the Kensington Town Office Building at 7:00 p.m. on the third Tuesday of each month. Other meetings may be held on call of the Chairman, provided notice is given to each member at least 48 hours prior to the time of such meeting; 48 hours notice will be waived if in fact all members attend a special meeting called without such notice. A meeting may also be called by petition of five members of the Board. A meeting may be canceled by the Chairman if no business is before the Board or other circumstances warrant.
2. The Planning Board consists of seven regular members appointed by the Board of Selectmen. A quorum for regular business shall consist of a majority of the regular members currently in office.
3. **Conflict of Interest.** Any Board member with a pecuniary or personal interest in a case, or bearing any blood relationship to the applicant, shall disqualify himself from the proceedings by yielding his seat and taking the position of a private citizen during the hearing. An alternate shall be called upon by the Chairman to sit on the case. Each Board member shall conduct himself in a professional ethical manner and not prejudice an application.

**Disqualification.** A challenge may be made by an applicant or his representative, by any person who may be aggrieved by the decision of the Board, or by a fellow board member.

The challenge shall be received by the Chairman in writing, specifying the allegations made against the board members, and shall be received only at the commencement of the hearing. At that time, the Chairman shall recess the hearing and the Chair will discuss the accusations with the board member and ask said member to consider the claims. If the board member does not disqualify himself, the Planning Board shall reconvene and sit "de jure" and consider testimony from any interested party.

The party making the challenge shall be given the first opportunity to speak, stating his reasons why he feels a board member should be disqualified. The board member shall be given the opportunity to reply to the allegations. The complainant shall then make his closing arguments and the board member may speak in rebuttal. The Chairman may request testimony from witnesses and seek to verify any of the allegations.

Following the presentations, the board shall immediately consider and vote on the merits of the matter at hand. The standard to be applied shall be whether or not the board member, upon the same facts, would be disqualified to act as a juror upon the same matter in any action at law -- except if the challenge is solely that the board member gained knowledge of the facts involved in the performance of his official duties. A majority vote with at least five voting members present will be necessary to remove the board member.

4. **Chairman.** The Chairman shall preside over all meetings. In the absence of the Chairman, the Vice Chairman shall preside.
5. **Order of Business.** The order of business for regular meetings shall be as follows:
  - a. Roll call and confirmation of quorum by the Clerk;
  - b. Scheduled hearings;
  - c. Decision on scheduled hearings;
  - d. Scheduled information sessions on preliminary subdivision plats;
  - e. Disposition of old business;
  - f. Non-scheduled information sessions on potential subdivisions; and
  - g. Other business.
  - h. Minutes of the 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 Chair, provided no two members present object.

6. **Public Hearing.** The conduct of public hearings shall be governed by the following rules:
  - a. The applicant shall be called to present his case, following which the Board shall have an opportunity to ask questions;
  - b. Those appearing in favor of the case shall be allowed to speak;
  - c. Those appearing in opposition to the case shall be allowed to speak;
  - d. The applicant and those in favor shall be allowed to speak in rebuttal;
  - e. Those in opposition to the case shall be allowed to speak in rebuttal;

- f. The Chairman shall present a summary, setting forth the facts of the case and the claims made for each side. Opportunity shall be given for correction from the floor;
- g. The hearing on the case shall be declared closed and the next case called up; and
- h. Any subdivision of three or more building lots shall be reviewed by an on-site inspection by Planning Board members.

**7. General Rules**

- a. Members of the Board may ask questions at any point during testimony.
- b. Any member of the Board, through the Chairman, may request any party to the case to reappear.
- c. Each person who appears shall be required to state his name and address and indicate whether he is a party to the case or an agent or counsel of a party to the case.
- d. Any party to the case who desires to ask a question of another party to the case must do so through the Chairman.

- 8. Attendance Requirements.** Any Board member failing to attend three 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 Planning Board to consider requesting his removal and replacement as an active member.

- 9. Alternates.** Three alternate members to the Planning Board shall be appointed by the Board of Selectmen and selected by the Chairman of the Planning Board to sit on cases in the absence of a regular board member or the event of his disqualification from a particular case. It is expected that alternates will attend meetings on a regular basis, as well as serve on various appointed committees.

Alternates in attendance will be entitled to sit with the Board and ask questions during public hearings; however, the chairman shall, at the onset of the meeting, introduce all members and identify the voting status of each alternate in attendance.

**D. Correspondence**

- 1. All correspondence shall be directed to the Chairman of the Planning Board, Town Office Building, Kensington, New Hampshire.



2. All approved subdivision plats shall be signed by a Quorum of the Board.
3. All press releases are to be made as recorded within the minutes of Board meetings and shall be given only by the Chairman or at the direction of the Chairman.

**E. Definition**

The term "member" as used herein shall include regular members and duly appointed alternates.

**F. Appeals**

A variance from the terms of the Land Use Ordinance may be requested of the Board of Adjustment for special conditions which impose a hardship.

Any person aggrieved by any decision of the Planning Board concerning a plat or subdivision may present to superior court a petition in accordance with the provisions of RSA 36:34.

**G. Amendments**

These rules may be amended by majority vote of the members provided that such amendment is read at two successive meetings.