

1 KENSINGTON BOARD OF ADJUSTMENT
2 KENSINGTON, NEW HAMPSHIRE
3 **MEETING MINUTES - APPROVED**
4 February 7, 2023
5 7:30PM
6

7 **In attendance: Michael Schwotzer, Chairman, Mark Craig, Janet Bunnell, Joan Skewes,**

8 **Applicants in attendance: Attorney Bernard Campbell, Dan Stacey**

9 M. Schwotzer called the meeting to order at 7:30pm.

10 M. Schwotzer thanked the public in attendance. He further explained how the public hearing
11 would run. The board members introduced themselves. There were seven people in
12 attendance for the public hearing.

13 **Application of:**
14

15 **Beaumont & Campbell Prof Assn on behalf of Stacy's Tree Service, LLC with property**
16 **located at 149 South Road, Map 4, Lot 13-1, to modify a prior non-conforming use and new**
17 **use proposed for a lawn and garden/ agricultural supply store under Article IV, Section**
18 **4.4.1 (c) of the Kensington Land Use Regulations.**
19

20 **J. Bunnell made a motion to open the public hearing seconded by M. Craig, all in favor.**
21

22 Attorney Bernard Campbell addressed the board and explained that he was here on behalf of
23 the owner, who was also in attendance. B. Campbell asked if there was another board
24 member coming tonight or just the four members, he would ask for a brief recess if a member
25 was on the way. M. Schwotzer informed him that the other member was not able to make the
26 meeting, and he does have the right to ask for a full five member board. B. Campbell explained
27 that he has advised his client of the issues with a four-member board, but they are in
28 agreement to proceed with a four-member board.
29

30 B. Campbell explained what was included in the application packet provided to the board and
31 began explaining that there has been a long history of non-conforming uses on this lot. This lot
32 would not comply with the towns special exception, that is why they have filed for a variance.
33 He explained that there is an existing building on the lot and the owner has repaired the roofing
34 and did some minor interior improvements. D. Stacey would like to take the lot back to a sales
35 type of use for an agricultural store such as an Agway store. The applicant believes that this
36 type of business would be good for the rural area that surrounds the site. D. Stacey
37 understands that he will still need to apply to the planning board for site plan approval if this is
38 approved. At the planning board they would do the parking and lighting during their site
39 review process.
40

41 M. Schwotzer wanted to bring the attention of the application to 4.4.1 which is non-conforming
42 expansion and he read this into the record:

43 **Expansion:** Expansion of a non-conforming use or structure for a purpose or in a manner
44 which is substantially different from the use to which it was put before the alteration is
45 prohibited except by variance granted by the Zoning Board of Adjustment. The non-
46 conforming use or structure, if granted a variance by the Zoning Board of Adjustment, may
47 be physically extended, reconstructed, enlarged or structurally altered but only in conformity
48 with the requirements of the zoning ordinance.

49
50 **Discontinuance:** In the event a non-conforming use is discontinued for a period of more than
51 two years, it shall not be permitted to recommence; thereafter the property shall only be in
52 conformity with this ordinance unless permission is granted by the Zoning Board of
53 Adjustment. The marketing and physical maintenance of a building or premises for the
54 continuation of an existing non-conforming use shall be deemed as evidence of intent to
55 continue the use.

56
57 J. Skewes explained that they are here for another use and that the stated section is not
58 applicable to this application. Other board members agreed. M. Schwotzer wanted to bring
59 that section to the attention of the board to see if they believed that section would apply to
60 this application or not.

61 B. Campbell explained that D. Stacey purchased the property in 2020 then turned the property
62 over into the business name in 2022, as a matter of record, and does not believe that the above
63 applies to this application either. They are asking for a variance for a change in use not to
64 continue a restaurant.

65 B. Campbell went through the criteria and explained that this would not pose any threat to the
66 health safety or welfare of the public.

- 67
- 68 • The second criteria is for the change in the character of the neighborhood, he explained
69 that to resume a use of the building for an agricultural use store they don't believe that
70 it would be against the character with the garden tractor business right down the street.
71 They don't believe that this would affect the character of the neighborhood but
72 complementary instead.
 - 73 • The presence of the potential business would be complementary, and the request will
74 not violate the spirit of the intent and one factor is that there is an existing building on
75 the lot. The proposed use is more in line with what is in the area. They believe that
76 there is a good alignment with what the property owner wants to do, and it will not
77 change the character of the area.
 - 78 • Substantial Justice would be that any loss to the applicant which is not off set with a
79 gain to the community. There would be no gain to the community if this use was denied.

80 He continued that the community would expand opportunities for local employment,
81 and alternative choices for the community to purchase the types of items that would be
82 sold in the store.

- 83 • The last criteria is to prove a hardship. There is an existing building and the prior non-
84 conforming use. He believes that they meet the criteria.

85 The use of this type would be a reasonable for a rural agricultural community like
86 Kensington.

87
88 M. Craig asked how the business would vary from a traditional Agway.

89 B. Campbell explained that there would be bird seed and grains, baled hay, food for small
90 animals and listed some of the types of products that would be sold at this business.

91 D. Stacey explained that the only difference would be that he would also like to sell plants,
92 shrubs and flowers, a place for homeowners as well as people in the farming agricultural
93 aspects. He explained that he is not using the lot for tree work or logging maybe only bundled
94 wood for homeowners. M. Schwotzer asked if there would be large piles of bark mulch or
95 stone. D. Stacey said that he would like to have bark mulch available, and he has other
96 properties that he can store the access bark mulch on. M. Schwotzer asked how much further
97 beyond the parking lot area would he be putting merchandise. He would keep it stocked but
98 not huge piles. M. Schwotzer asked about the structure. D. Stacey explained that he is looking
99 to keep the existing structure and make it more usable, and not looking to expand beyond what
100 is there. He will be cleaning up the building and adding handicap accessibility to the building,
101 he will not be changing the physical structure to the building. J. Bunnell asked if he will be
102 storing and selling chemicals. D. Stacey stated that he would have round up but not the
103 commercial aspect of it, rock salt would be stored inside seasonally.

104 It will not be dumped on the ground for snow plowing, he is looking to sell to homeowners. He
105 is looking to focus on residential owners not commercial landscapers. He will still sell small
106 amounts to landscapers but not on a regular basis. He is not going to store rock salt for
107 commercial use.

108 J. Bunnell asked about traffic and trucks for loading and unloading, D. Stacey stated that he
109 would go to the planning board for hours of operation, he is looking to have deliveries after
110 hours or before hours, unless that is outside of the towns noise ordinance. Right now he is not
111 planning on selling small animals, so he doesn't have to take care of them.

112 B. Campbell stated that there is a wetland at the back of this property, so this site cannot
113 expand due to the constraints of the wetlands. All the work on the lot would be outside of the
114 barrier shown on the plan submitted.

115 M. Schwotzer opened the hearing to the public at 7:20pm.

116 Katherine Barrow- 1 Hickory Lane- Is concerned with 107 being a state road and visibility for the
117 trucks pulling in and out of the business onto the state road. She questioned if there has been
118 a study done on the effect of the traffic in that location.

119 D. Stacey stated that he would go back to the use of the property was for years. He stated that
120 there was a commercial restaurant there with customers pulling in and out all the time. The
121 difficult thing is if the speed is not enforced that has nothing to do with the building. There
122 have been people coming in and out of the area for 50 years, and he taken the time to clean
123 out the whole front of the property for better sight distance going in and out of the property.
124 He is not expecting to have tractor trailers delivering stock to the business.

125 B. Campbell stated that there has not been a traffic study done as of yet and that would be
126 something that the planning board could require. If that was something that the board wanted,
127 then the board could make it a condition.

128 Richard Barrow- 1 Hickory Lane- He questioned the open hours of the business, and can they
129 expect the time of deliveries to fall within the current noise ordinance in town, he would like
130 this ordinance adhered to.

131 M. Schwotzer explained that they are dealing with the overall use at this time and that the
132 planning board would be dealing with those types of issues.

133 D. Stacey explained that he would like to be able to have employees be able to come in at
134 6:30am to get stuff ready, he stated that the deliveries could be worked around, he is hoping to
135 be able to schedule the deliveries. He would like to be able to be open for those that get out at
136 5pm so that they are able to stop in after work.

137 K. Barrow stated that the current quiet hours are not adhered to currently and she feels that he
138 is an inconsiderate neighbor.

139 Kirk Boswell- 1 West School Road- Wanted to rebut that statement and continued that he lives
140 right next door to the applicant and has no such problems with Mr. Stacey.

141 Sarah Hamilton- 151 South Road- She is concerned with the parking area to the right of the
142 building as that is right next to her house.

143 D. Stacey stated that he is looking to do handicap accessibility on the right side of the building.
144 He is not planning on having parking right in the front of the building. He stated that he might
145 do Christmas trees or Christmas lights on that side. M. Schwotzer asked about lighting to deter
146 people taking products at night. He has issues with people stealing tools off of the property
147 already, but he does not have plans, he might set up a fence to protect his product left outside.

148 Richard Fyler- 146 South Road- through the year there has been a multitude of restaurants in
149 the area but the lighting of the past businesses have gone overboard with lights. He does not
150 want to see bright lighting. He is fine with the proposed use, and he likes the idea of the gate
151 used to close off an area to secure things.

152 D. Stacey stated that he would like to have Christmas trees lit up or blow-up Christmas
153 decorations seasonally. He believes that there is a way to do this so that people are safe but
154 not over barring for residents.

155 R. Barrow prepared some remarks for the board.

- 156 • They fully support local small businesses, and is not against this variance, but this is a
157 residential area. They are concerned with traffic and safety. The visibility could be bad
158 coming over the hill going east, he does support the traffic study and is also concerned
159 about light pollution. In regard to the business, they are afraid that the business over
160 time will grow into something else, what is anticipated in the future and how big can
161 this business get. He doesn't want to see something there that is not what was
162 originally intended. He is afraid that this will be light industrial use instead of the
163 proposed use today. They are not asking for the variance to be denied, they would like
164 the board to consider some restrictions without overburdening the applicant.

165 M. Schwotzer stated that if this board does approve the variance, then the planning board will
166 address some of the concerns just stated.

167 S. Hamilton wanted to note that the people coming from Seabrook area down the hill west
168 bound are hard to see. At their house they cannot see coming out of their driveway and that
169 would be something to consider for his business.

170 B. Campbell suggested to put signs up that state approaching commercial traffic, but it would
171 need to be addressed with the New Hampshire Department of Transportation. Something to
172 indicate that traffic would be entering and turning could also be discussed with NHDOT.

173 M. Schwotzer closed the session to the public.

174 J. Skewes stated that there are 3 points that have been raised:

- 175 • Commercial truck delivery times
- 176 • Operating hours
- 177 • Lighting plan to minimize the lighting.

178
179 M. Schwotzer explained that they can do conditions after they go through the checklist items.
180 One of the conditions would be that they must do a site plan review.

181
182 M. Craig stated that it would be a daytime retail operation, and believe this use, in lieu of a restaurant,
183 may actually improve traffic in the area, and night activity, given the hours and number of customer
184 visits

185 M. Schwotzer went through the checklist:

186 1. Contrary to Public interest:

- 187 a. M. Schwotzer stated that the use doesn't change the nature of the
188 neighborhood due to the residential agricultural use proposed and the building
189 already exist. This would not be contrary. J. Bunnell stated that she disagrees,
190 she is unsure if they have enough information, there could be more trucks and
191 traffic as well as the lighting. She thinks that the concerns need to be answered
192 before there is a definitive answer to question. J. Skewes would like to define
193 the hours of truck deliveries. J. Bunnell is very concerned that they don't know

194 how many trucks will access the property and there is no definitive answers from
195 the applicant. As well as the lighting issues and what lights will be put up. M.
196 Schwotzer stated that all these concerns will be put onto the planning board,
197 where they set hours, traffic, and lighting. What they need to address, is does he
198 meet the criteria of the section for the board to grant the variance. J. Bunnell as
199 a matter of procedure how do we answer those questions. M. Schwotzer if that
200 business is allowed does it change the criteria of the area that radically. M. Craig
201 stated that if you compared it to the other Agway's in the area there isn't a ton
202 of trucks in the area.
203

204 The board reopened the record to the public.

205 B. Campbell stated that this will need to go before the planning board, they have to put
206 their trust in the planning board. The applicant would accept a stipulation that the lighting
207 would be downward facing with shield. They would not violate the noise ordinance
208 because they are not asking for any noise relief. D. Stacey does not see the property
209 consisting of loading trucks for materials. If there are larger orders those would be
210 delivered right to the person who order it. M. Schwotzer stated that B. Campbell said
211 something about a propane filling station. D. Stacey indicated to the board that he is not
212 going to full propane onsite but would like to have a product like Blue Rhino with already
213 filled tanks within a secured site. J. Bunnell asked about the site plan, would the planning
214 board require a drawing or rendering of the property.

215 M. Schwotzer will start back at the beginning of the worksheet.

- 216 1. J. Skewes stated it would not be contrary to the public interest, and that there is
217 limitations to the site and there is limited expansion due to the wetlands. Rural
218 character, there should not be any health issues.
219 2. Spirit of the ordinance would be observed.
220 3. Allowing to use the prior non-conforming structure, would do substantial justice.
221 4. The value of the surrounding properties would no be diminished, not evidence
222 provided, and an active business will be better for the tax payers.
223 5. Unnecessary hardship- the property is unique, and the lot is non-conforming. There is a
224 fair and substantial relationship.
225

226 Conditions discussed:

- 227 1. The applicant is required to apply for and receive approval of a Site Plan Review (SPR) from the
228 Kensington Planning Board.
229 2. During the SPR, the Planning Board is directed to address the site lighting so to utilize downward
230 focused fixtures which will minimize nighttime light pollution.
231 3. During the SPR, the Planning Board and the applicant should agree to hours of operation that
232 are in keeping with the Town's Noise Ordinance parameters.

- 233 4. The Planning Board should require a traffic study due to the property's location on Rte. 107.
234 Special emphasis should be placed on larger vehicle pickup and delivery schedules.
235 5. Propane sales are limited to bottle exchange only. No on-site filling equipment or services is
236 allowed.
237 6. The applicant is to supply to the Planning Board a list of proposed chemicals to be on site with
238 location and quantity.
239

240 M. Schwotzer stated that they have gone through the criteria, and it does comply with the
241 required criteria.

242 **M. Schwotzer asked for a motion to approve the variance requested by Stacey Tree Service at**
243 **149 South Road Map 4 Lot 13-1 with the conditions and stipulations read. M. Craig made the**
244 **motion to approve Stacey Tree Service with the said stated conditions, J. Skewes seconded all**
245 **in favor. 4-0 approved.**
246

247 **J. Skewes made a motion to close the public hearing, M. Craig seconded, all in favor.**
248

249 Minutes from 1-3-23. **J. Bunnell made a motion to approve the minutes as presented,**
250 **seconded by J. Skewes. All in favor.**
251

252 Next meeting on February 15, 2023 at 6:30pm, joint meeting with the planning board.
253 The combined meeting will contain both public hearings. The zoning board will act on the
254 variance first. Then the planning board will deliberate their section of the public hearing.
255

256 **J. Bunnell made a motion to adjourn at 9:20pm, seconded by M. Craig, all in favor.**
257

258
259 Respectfully submitted,
260

261 Kathleen T Felch