KENSINGTON BOARD OF ADJUSTMENT
KENSINGTON, NEW HAMPSHIRE
MEETING MINUTES
MARCH 1, 2016
7:30 PM
At Kensington Elementary School Library
DRAFT

In Attendance: Michael Schwotzer, Robert Noll, Richard Powers

Others in Attendance: Applicant, Scott David

Michael Schwotzer brought the meeting to order at 7:39pm.
He indicated that there are three members present and that constitutes a quorum.

NEW BUSINESS:

The Kensington Zoning Board of Adjustment will hold a Public Hearing, MARCH 1, 2016, at 7:30pm in the Kensington Elementary School Library to act upon the application for a variance for:

1. Scott and Tony David, 21 Amesbury Road, Kensington, NH, Map 14, Lot 26, for a Special Exception for a Home Occupation concerning Article III, Section 3.3C of the Kensington Zoning Ordinance. The applicant proposes to be able to provide cosmetology services from their residential home in Kensington, NH.

Michael read the application submitted by the applicant.
"Home Occupation: Cosmetology Shop. Co-owner Tony David is licensed in the State of NH as a Cosmetologist Lic. #29861 and is a permanent resident of Kensington; no sign requested; does not utilize more than 25% of the gross floor area including basement; clearly incidental and secondary; there is adequate off street parking with no more than two client cars parked in the driveway for the business at any time; hours and days of operation will be Monday through Saturday 8AM to 8PM; property surrounded by commercial enterprises and will have no negative effect to other properties; all chemicals will be authorized by the State of NH though the State Shop License requirements."

Michael recognized Mr. Scott David and asked him to present his case to the board.
He indicated that that case is self-explanatory and is allowable. He reiterated what was read by Michael above. Also that there would not be any negative effects to the surrounding properties due to the fact that his is surrounded by commercial properties, such as a boat shop, upholstery shop; agricultural; massage therapy that was recently approved and the Kensington Equestrian that is down the street. He indicated that Mr. Tony David would not be working more than maybe an hour a day, as he has a full time job and this would be part time for him.

Michael asked Mr. Scott David where the business would be physically located. Mr. David explained that it would be in the detached addition on the property.
Michael read from the special exceptions:

C: Special Exceptions for Home Occupation

1. Home products and produce may be bought and sold in this district subject to the following rules and regulations, by "special exception" as granted by the Board of Adjustment.
    a. Where permitted within a single dwelling unit and only by the person or persons maintaining a dwelling therein who are permanent residents of the Town of Kensington.
    b. Evidence of use: does not display or create outside the dwelling any evidence of home occupation except a permitted sign not to exceed four (4) square feet in area. (Requires a sign permit)
    c. Extent of use: does not utilize more than twenty five (25) percent of the gross floor (including basement) area of the dwelling unit.

Michael explained that during another meeting that Mr. Scott David had with this board that he had convinced the board that the detached building is not a dwelling unit. Therefore, the Home Occupation Application is very specific in regards to that fact that it is inside the dwelling unit.
Mr. David explained that it was not a separate independent dwelling unit and his argument and how they won was that the sanitation was part of the main house, as well as the water. It is considered a detached addition, not a separate dwelling unit. He believes that it should be considered and that the town does not have a definition for a detached addition.
Michael asked if Mr. Tony David lives in the home, and he does. He also stated that he is being taxed as a finished space, with a bedroom and a bathroom; it is clearly part of the dwelling unit. Michael explained that the board has seen in the past that there are properties that are taxed for uses that are not necessarily permitted. Taxation and zoning are two separate issues. Bob asked if it can be contained in the detached addition, and asked for clarification of which building was the main dwelling. Bob explained that if the rest of the board was okay with it he was as well. Richard asked if all abutters were notified, and they were, the certified receipts are in the file.
Michael asked if the area has been determined for the shop area. Mr. David responded that it would be 200 square feet, or two 10x10 areas.
The board started the checklist questions:

Is the Exception allowed by the ordinance: Michael pointed out that he has questions on whether or not this is allowed by the ordinance; his interpretation is that the dwelling unit is the house and the other structure is a detached building. They do share sewer, and this went through the Board of Adjustment in regards to its occupation. It was allowed in its physical state at that time. Any time the board has dealt with the special exceptions they have been in the main home, or attached garages. Square footage would not be an issue if it was located in the main home which has 738 square feet for the maximum use available, and they are only asking for 200 square feet. He asked the boards thoughts. Bob did not see where this application would be an issue. Michael reiterated that Bob does not agree with his interpretation of the ordinance. Bob stated that there is nothing in front of the board to verify that it is or isn't. Rich stated that would be his concern

as well. He also stated that he was on the board when the other application came before them and he understands Mr. David's thinking on it being one unit, but he would like to have legal counsel tell the board if it is one unit or not, because there has already been a ruling made on this property. Rich does not remember that the ruling from the Appeal stated that it was all one unit. He would like legal to interpret. Michael explained that Rich would like to get advice from town counsel in regards to the criteria that Mr. David is claiming. Bob asked if he was being taxed for the two separate units, and he is. Michael asked Mr. David if he was willing to grant the board a 30 day continuance. Mr. David wanted to add that the previous board did not state that it was a separate dwelling unit period. That was what he was being charged with. Mr. David was going to read a definition and Mike explained that the board cannot go by that definition. Mr. David expressed that since there is not a current definition he is being punished. Rich asked if the ruling was available to the board to read. Kathy produced it electronically for the board to read.
Rich and Kathy read the following to all present:

The board filled out the finding facts sheet.

1. ***Building Permit issued for a garage***
2. ***Changes to premises discussed and verbally approved by the then building inspector, with no records by either side.***
3. ***Permit on record does not meet current conditions***
4. ***Requirement of "dwelling" unit is a cooking apparatus which does not exist since removed.***
5. ***Property as is has never been inspected by the current building inspector***

Mike made a motion that the appeal of the Cease and desist of June 2, 2014 be granted and urge the town and the property owner to work together to resolve the issues that exist. Janet seconded all in favor.

Michael explained that the case was that there were two separate dwelling units and there were changes to the plans and the building inspector had passed away. It was in regards to it not having a stove. He does not remember that it was determined that it was ever part of the original dwelling unit. Michael explained that should have read repealed the Cease and Desist order. Mr. David clarified that if it was in the main building it would be fine, but since it is in the other building that is the issue. Mr. David explained that to the boards question on allowing for the 30 day continuance, his answer is now "yes".
Richard made a motion that the board go to town counsel to get a legal opinion on the issue.
Kathy asked what the legal opinion would be on. Michael explained that it would be to see if the buildings were considered two buildings or one. Specifically C1a, what is the definition of single dwelling unit in this case? Bob explained that if you were putting the shop in the main dwelling it would not be an issue. Mr. David explained that he would now be hiring legal counsel. He stated that they have to ask legal the right question. Michael read the dwelling unit definition in the zoning book aloud to all present which stated the following:
Dwelling Unit/Residence – A room or group of rooms in a structure designed or used as a place for independent occupancy by person or family without need to use other areas of structure or another structure for meal preparation, sleeping, living or use of sanitary facilities. (**Amended 3/10/2015)**

Michael explained that Mr. David's point is that he has a single dwelling unit that has two pieces. Mr. David answered in the affirmative. He further explained that it is an addition, in other town's additions can be detached and attached, and that is the question that should be asked**, is this considered a detached addition**. Michael asked Kathy to add that to the questions to ask counsel, along with the meeting minutes. Mr. David stated it is not a separate dwelling and he is being taxed for it. It is finished and he is being told that it has a bedroom and a finished space and a bathroom and technically it is an addition of the dwelling unit which would make it part of the dwelling unit.

Rich made motion to send the minutes of tonight's meeting to Town Counsel for his interpretation of whether or not the second building is an addition, which then could hold the business as requested. Bob seconded, and all in favor.

The meeting will be continued until April 5th, 2016 at 7:30pm in the Kensington Elementary School Library.
Where this is time certain the abutters will not need to be notified again.

All the minutes that need to be approved will be brought to the next meeting of the Board in April.

Richard made a motion to adjourn at 8:10pm, seconded by Bob, all in favor.

Respectfully Submitted,

Kathleen T Felch
Zoning Board Clerk