

**KENSINGTON BOARD OF ADJUSTMENT
KENSINGTON, NEW HAMPSHIRE
MEETING MINUTES**

APRIL 5, 2016

7:30 PM

At Kensington Elementary School Library

DRAFT- subject to board approval

**CONTINUATION FROM MARCH 1, 2016
FOR LEGAL INTERPERTATION**

In Attendance: Bob Noll, Michael Schwotzer, Richard Powers, John Andreasse, Janet Bunnell

Applicants in attendance: Scott David

Michael Schwotzer read the application to all those present and described that this is a continuation from the March 1, 2016 Public Hearing on a Home Occupation.

Mike explained that the board had received advice from legal counsel and until the board openly discusses it, it will remain as attorney client privileged. The board did not discuss the opinion expressed by legal openly in this meeting, so it will remain as attorney client privileged.

Mike asked the applicant, Mr. David to update the new members as to the application.

Mr. David explained that the application is self-explanatory, but he is under the impression that the second building on the lot should be considered a “detached addition”, even though Kensington does not have a definition for this type of building in their regulations. He explained that he has been being taxed as a bedroom living space. It was decided that it was not an independent dwelling unit in a past meeting of the board. He explained that in the last meeting some of the board members indicated that he could not have the approval of the home business within a structure that was not the primary dwelling unit.

Mike asked the applicant again if the home occupation is to be located in the second building on the property, and then explained that the legal did not make a decision on the application, that is the job of the zoning board.

Mike commented that the board’s first job is to determine if the second structure is a dwelling unit. He read the following to all those present.

Discussion Points on application of Scott and Tony David, 21 Amesbury Rd for Special Exception for a Home Occupation, Article III, Section 3.3C of Kensington Zoning Ordinance.

Applicable Definitions (Article II)

Dwelling Unit: means a single unit providing complete independent living facilities, eating, cooking and sanitation.

Structure: Anything constructed or erected on or in the ground ... such as buildings

Zoning Ordinance 3.2.2 SPECIFIC REQUIREMENTS OF THE REIDENTIAL – AGRICULTURAL DISTRICT

- A. Restrictions 1. There shall be no more than one single-family dwelling or residence on a lot of record.*

Zoning Ordinance 3.3 C Special Exceptions for Home Occupation

- 2. 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.*

From the Kensington Board of Adjustment Meeting Minutes of August 5, 2014:

On the first page – quoting Attorney Durbin - First issue in Article 8.3 it states that a dwelling unit is a single unit. The garage fails to meet two of the criteria for a dwelling, as there is no bedroom in the garage, just a bathroom, storage and office space. John asked about the statement that the structure would be available for guests to stay in. Attorney Durbin agreed Mr. David made that statement. The second was about there being a kitchen in the structure and Mr. David was upfront about that and said yes, there was a stove and has since removed it. This structure is a mixed use for Mr. David because he does some of his work from home and has an office in Massachusetts.

From the last page: *The board went through the information again with highlights to what they were thinking. Mike explained that they have an application before them for an appeal to an administrative decision. The relief sought is to overturn the determination of the selectmen regarding Article 8.3 and 3.8 of the zoning ordinance for the town. John explained that if the board granted the appeal, the discussion point would go back to before the Cease and Desist was issued. Mike explained it as resetting the clock for the applicant. If they decide that Mr. David does not have a dwelling unit, because of the removal of the stove, the structure by definition would not be a dwelling unit in regards to the zoning ordinance. If it doesn't meet the definition of dwelling then it would not be a violation of the zoning ordinance. (in regards to the two dwellings on one lot) Mr. Grant approved the structure verbally, and he finds it odd that there is no record of the amended plan or the sign off card. He believes that if they grant the appeal they can't put in any conditions but could make a strong suggestion to the town and Mr. David to get together and get the inspection*

and the permit filled out. He doesn't believe that it is a violation of the zoning ordinance. Janet agrees with Mike's statements. The board gets the feeling that they are willing parties and will work together to find a solution and there is no question of fines if the decision is overturned. John feels the same way but wishes that they could put conditions. 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 explained that according to the above they made a decision that the second structure on the lot was not a dwelling unit and the cease and desist was removed. As well as the fact that the town does not have a definition within the zoning that defines "detached additions".

John believes that this is a separate issue, but asked why it is taxed as a bedroom, if it was decided at the ZBA meeting that it was not considered to be a dwelling. Kathy indicated that the assessing company was out to the property on 3/11/2014. Mike explained that the tax card and what is allowed by the town are two separate things. Just because it states something on the tax card does not make it a legal use of the property. There are two separate structures, so there are two separate cards.

John made a motion that the second building is not a dwelling unit as determined by the board at the August 5, 2014 meeting of the board. Bob seconded, all in favor.

Mike explained that the board just deemed that this separate structure on the lot is not a dwelling unit, and his thoughts are that the main structure, where the David's reside is the dwelling unit. Therefore that would be the building that the home occupation would have to be in. He suggested that Mr. David modify the application to state that the home occupation is wished to be located in the dwelling unit, not the separate structure on the lot as originally asked for.

Mr. Scott David verbally requested that the home business be located in the main dwelling, due to the definition of the dwelling unit.

John expressed concerns with the application going forward without notification to the abutters. It was explained that the notification did not specify which building the home occupation was to be held in, just that there was an application for one on the property.

Janet reiterated that the change of the request by Mr. David now has the home occupation being within the dwelling unit, where Mr. David resides, and not in the other structure on the property. That was confirmed.

At 7:52pm the power went off in the Library and the meeting was recessed for five minutes to see if there is an alternate location for the meeting.

The Main Office is on a generator, so the meeting was moved to the office conference room.

The meeting was reconvened at 7:57pm, in the Main Office Conference Room.

John explained that there are choices for the applicant; he can either do the Home Occupation or the Business in a residential zone. Mike explained that here really isn't that option for this applicant due to the fact that he does not meet the frontage or acreage requirements for the Business in a residential zone; he would only be able to do the home occupation within the dwelling, because that is what he applied for. John then agreed.

Mike asked the applicant if he is still requesting the two 10x10 sections. Mr. David explained that he would like it to be 600 square feet within the dwelling. Mike had done the math previously and it was determined that the total square footage that could be used for this dwelling would be 738 square feet. Mike went through page 16 in the current zoning ordinances. The following was decided.

- No sign
- Can't use more than 25% of the dwelling, only requesting 600 sq. feet.
- Will apply to the planning board for site plan review
- 2 client cars

John asked about employees and why the applicant is asking for so many hours. It was explained that he was looking for the wider window of approval for the open hours of the business. He is looking for 8am to 8pm, Monday through Saturday. Janet was looking through the notes and asked what services would be provided.

Mr. David explained that the State of NH will decide what the approved uses would be, but it is cosmetology. Mike asked for any further questions or comments.

Mike made a motion to approve the application for Scott and Tony David of 21 Amesbury Road, Map 14 Lot 22, for a home occupation, consisting of a cosmetology shop, located in the main house (dwelling) that will

1. Utilize a maximum of 600 square feet
2. No sign
3. Hours of operation will be 8am-8pm; Monday through Saturday
4. Maximum of two client cars on premises at any one time
5. No employees
6. Site plan review required of the Planning Board
7. If any change in the nature of the grounds the applicant will return

John seconded. All in favor.

Mike explained that the site plan review would need to be done with Kathy.

Mr. David asked if the board would discuss releasing the legal. Mike explained that there would not be any use for what he is looking for as to the assessing. Janet asked if there could be a question answered about the document from legal; Mike reiterated that could not be discussed, unless the board disagreed with him. Everyone agreed with Mike to leave it as a attorney client privileged document.

November 4, 2015 Minutes

John motion to approve as presented, Mike seconded, all in favor, two abstaining

January 12, 2016- nothing to vote on the meeting was postponed.

February 2, 2016 Minutes

Bob motion to accept minutes as presented, Janet seconded all in favor.

March 1, 2016 Minutes

Mike motion to accept 3/1/2016 minutes, Bob seconded all in favor.

John made a motion to adjourn at 8:13pm, seconded by Bob, all in favor.

Respectfully Submitted,

Kathleen T Felch
Zoning Board Clerk