

**KENSINGTON BOARD OF ADJUSTMENT
KENSINGTON, NEW HAMPSHIRE
TUESDAY
SEPTEMBER 6, 2016
7:30 PM**

**At Kensington Elementary School Library
MEETING MINUTES-Draft subject to board approval**

In Attendance: Michael Schwotzer, Bob Noll, Richard Powers, Joan Skewes, Elliot Fixler, John Andreasse

Others in attendance: Hal Bodwell, Betty Bodwell, Derek Durbin, Susan Cassell, Shane Cassell, Bill Catania and others.

Joan Skewes chaired this application and brought the meeting to order at 7:30pm.

NEW BUSINESS:

The Kensington Board of Adjustment will hold a Public Hearing on Tuesday, September 6th, 2016 at 7:30 p.m. at the Kensington Elementary School Library to hear the application of:

1. Shane and Susan Cassell, 33 Muddy Pond Road, Kensington, NH, Map 5 Lot 33 for a variance from setback requirements as stated in Article III Section 3.2.2 C2 for relief of the current zone setbacks. Intent is for the Cassell's to be able to erect a canopy within the zones setbacks.

Susan and Shane Cassell approached the board and showed them pictures of where they would like the canopy to be placed and explained the topography of the lot. It is uphill with trees on the far left corner of the lot towards Trimble Trail. They are unsure of the size of the canopy until they get the decision from the board. The Cassells are concerned with taking down more trees and having to excavate in order to have the canopy outside of the setbacks. The board asked various questions on where the lot lines were and how close to the lot line the Cassell's want the canopy to be. They would like to have the canopy three to five feet from the boundary line. John questioned whether this is considered a structure. The board determined though reading the definition of a structure that this application should be heard and acted on as a variance, because the canopy is considered a structure. Joan asked if any board members have any concerns or questions. Bob stated that there is another area for the canopy to be placed, so he was unsure it would qualify for the hardship. Mike asked how wide the property is. Matt Cassell approached the board and stated that the land will go down to 150 feet in the back of the lot, and in the area of the canopy it is approximately 300 feet across. John asked him to make a mark on the tax map where the canopy would be placed. The Cassell's commented that anything passed where they want to put the canopy is uphill and rocky. Mike explained that the direct abutter is the Town of Kensington's land, which is all wooded. The Cassell's explained that they would rather put the canopy there where there would be no excavation needed.

Joan opened the meeting to the public at 7:49pm.

Bill Catania, 1 Trimble Trail, would like to see on the plot plan where the canopy will be placed. The board showed him the pictures and the tax map where the applicant wishes to place the canopy. Mr. Catania asked how tall the structure would be. It will be 15 feet high. His concern is that it would be within 5 feet of the conservation land for Trimble Trail, and there would be vehicles and tractors located in this structure.

Joan closed the public session at 7:51pm.

The board then went through the checklist for the variance criteria to see if the project would be allowable.

Rich asked where this is a temporary structure could they move the structure. John explained that they could lessen the impact but could not make more of an impact. Will the building inspector make sure that the structure is in the correct place? The board could put it as a condition.

The board went through the variance worksheet.

Due to the application not meeting all of the requirements within the worksheet the board voted to deny the application.

John made a motion to deny the application based on the request being contrary to the public interest, because it is adjacent to conservation land and locating the structure on the property is feasible while maintaining the setbacks. Bob seconded it, all in favor.

The application is denied.

Mr. Cassell asked if the building was to be located further than the 25 foot setback do they need to return to the board and they do not. They thanked the board for their time.

2. Bodwell Family Farms Trust; Harold Bodwell III, trustee, 78 Stumpfield Road, Kensington, NH, Map 7 Lots 13 & 15 for a variance from setback requirements as stated in Article III Section 3.2.2 C for relief of the current zone setbacks. The applicant, the Bodwell Family Farms Trust requests a variance to permit an existing structure in the side yard setback, which would be created by execution of a lot line adjustment. The variances requested are: A) to permit a 0' (foot) side yard setback, and B) to permit an 8' (foot) side yard setback.

Joan Skewes recused herself for the next application due to being an active member of the Conservation Commission. Elliot joined the board for the above application and discussion.

John chaired this section of the meeting and read the above to all present. Attn. Derek Durbin was present to represent the Bodwell's on this application.

He explained that Jeremy was present to help with any of the Conservation Easement questions that the board might have. He explained that the Bodwell's have owned the property for 90 years and they are putting the land into a conservation easement with South East Land Trust and LChip. He expressed that lot 15 would increase and they are looking to have both lots have a source of water for agricultural purposes. His belief is that the family wants to keep this farm within the family as long as they can. This will allow them the flexibility on how to manage the land in the future.

Plan A would have the lot line going through one of the pole barns, and this scenario would propose a 0' setback; and Plan B would propose an 8' setback and have a jagged line that would go out around the pole barn.

Mike asked about Plan A and Plan B, and stated that the real difference is that one lot line is through the pole barn and one is around. The family prefers the straight lot line of Plan A, and if the barn were to fall in they would not reconstruct it. Mike asked why the proposed lot line is not west of the pole barn. Jeremy came forward and explained that there is an exclusion area, where they would leave the structures out of the conservation area for the maintenance of the structures. The lot line was put there because there are wet areas and then some of the soils to the west are considered valuable soils that they want to conserve. Meadow beds are located on the property that is for productive grazing, and this property has some of the more important farm soils in the area. There are a number of different entities involved in the conservation of this property.

Mike explained that the lot lines constructed the way it is presented will allow for there to be a pole barn on each lot as well as an irrigation source.

Mike asked if there could be a homestead constructed on Lot 13. Jeremy explained that there are exclusion areas that they can build, but it would need to be preapproved by whoever holds the conservation easement. There is room to put a residential home on Lot 13 by current zoning regulations, and there is enough frontage. There was discussion on what exclusion areas would be and the actually size of the barns.

The pole barn would have to be removed if the property were to change hands out of the family unit.

Mike explained that this could be president setting, but is a very unique situation that they may never see again. Attn. Durbin does not believe that this is precedence setting.

Elliot asked what the negative would be. It was explained that there could be a negative over the lot lines, or the structure that is located on both lots. If the ownership changes the barn would be taken down. Jeremy explained that ownership leaving the family unit is how he would like it referred to. Elliot asked if any water right issues are a factor in the application. Attn. Durbin stated that since there are two water sources and with the lot line adjustment, there would need to be an easement to get water from the adjacent water source. But they don't see that becoming an issue. West School Road goes up beside the homestead, and that is where the old lot line is located.

Attn. Durbin went through the variance criteria.

Sydnee Goddard expressed that the Conservation Commission was there in full support of this project.

John closed the public hearing at 8:58pm.

The board went through the criteria and filled out the variance worksheet, which is in the file.

Mike made the motion to grant the variance using Plan A with 0'setbacks and it is conditioned that the pole barn is to be removed if :

A. It ceases to be a working structure

B. Ownership of either parcel leaves the ownership of the family.

Bob seconded, all in favor.

Mr. Bodwell and Attn. Durbin thanked the board.

Mike made a motion to approve the August 2, 2016 minutes, as presented, Bob seconded, 3 abstentions. All others in favor.

Mike made a motion to adjourn at 9:11pm, seconded by Elliot, all in favor.

Respectfully submitted by,
Kathleen T Felch
Zoning Board Clerk