

**KENSINGTON BOARD OF ADJUSTMENT  
KENSINGTON, NEW HAMPSHIRE  
PUBLIC HEARING  
December 6, 2016  
KENSINGTON TOWN HALL  
95 AMESBURY ROAD  
AT 7:30PM  
Meeting Minutes-draft**

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

**Others in Attendance: 16 attendees**

Mike called the meeting to order at 7:30pm and read the following to all present.

1. SHERWOOD FOREST REALTY, INC., 75 Powell Street, Brookline, MA, 02446, owner of Map 16 Lot 4-4 in Kensington and located off of Powder Mill Road in Exeter, NH, requests a variance from the frontage requirement of 200 feet of frontage on a public street or road in Article III, Section 3.2.2; B2 of the Kensington Zoning Ordinance for the purpose of constructing a single-family dwelling as defined in Article II: Definitions.

Mike then asked the applicant to approach the board and present the application.

Attn. Frank Quinn approached the board and explained that proposed variance is for an 18 acre lot and they are looking to put one home on the parcel, but believes that they could subdivide and put in more homes. They are willing to put just a single family home on the lot instead of developing. He believes that this application falls within the criteria and is allowable within the regulations.

If they were to subdivide there would be frontage, but if they don't it creates the unique character of the lot, and they would need the variance to the frontage requirement to build without subdividing. He believes that the land owner should not be deprived from the use of his property.

Attn Quinn went through the criteria and explained how this application meets all the criteria according to him. He has spoken with abutters and are willing to work with them to keep the water run off on their property. He does not believe that RSA 674 would apply to this case as they are not building a roadway they are only creating a driveway.

Mike asked about plan D-22263, and on the plan a private way is proposed with a bulb at the end. Is that bulb actually a property line? Attn. Quinn explained that they have clarified that they have ownership of that private way after the questions raised back in February 2016, under another application for this parcel. This application was withdrawn. There was a question on who owned the private way so they have filled a deed with the Rockingham County Registry of Deeds stating they have ownership of that area. Mike questioned if the lines should have been deleted with a lot line merger. He also pointed out the note on the plan that states that the lot is not to be used for building purposes unless it complies with the zoning regulations. He explained that Lot 4 was part of the larger lot, and the applicant has created this lot without frontage.

Mike referred to plan D-20537 which does not show the right of way or the bulb area. Attn. Quinn stated that they believe that this is a building lot. Mike stated that the owner created the issue and now they are coming back to the board for relief. Attn. Quinn explained that there is frontage off of Powder Mill Road, but it is not sufficient frontage according to Kensington regulations.

Mike opened the hearing up to the public at 7:46pm.

Mr. Henderson spoke about the previous lots and applications that had been filed before this application and denied. He stated that the right of way was for access to a hayfield.

Ms. Hanson spoke and stated that there are problems with this application and the frontage is on an Exeter Road, not a Kensington road. How would services be provided to the home, such as fire, police, garbage, and school buses? She stated that there would be plowing issues as well. Mike stated that the comments should be addressed to the application. Ms. Hanson explained that there is no site distance in that area.

Mr. Henderson asked what the frontage is because there was an issue with the egress in the past. Mike explained that the plan has 100 feet of frontage. Jim Groetz asked how many houses you could put on that lot. Mike

explained that the application is for one residential dwelling. Mr. Henderson asked why this board is hearing this application where the frontage is in Exeter.

Mike posed the question to the board, and asked Attn. Quinn why they had applied to Kensington. Attn. Quinn explained that the home was going to be in Kensington, and services from Kensington. If they were doing a subdivision then they would have to go to both boards, but for this variance he believes he is in the proper forum. Jeff Toomey stated that he does not believe that this would be within the character of the area due to the fact that you don't see houses tucked in behind each other. There have been accidents in the area of the proposed driveway, and if this driveway is allowed can they access other lots from it? Could he also create a right of way on his property and build on the back of his property as well?

He believes that this will set a precedence. A few abutters stated that the board should at least get Exeter's input on the application. Mike stated that the whole lot in question is in Kensington, and showed the public present. Mr. Toomey asked about future buildings on the lot and in laws in the future. Mike explained to the public that Kensington is now looking at updating the current In Law regulations to comply with the Accessory Dwelling Units. Mike believes that Kensington should take ownership of the application since the house will be located in Kensington. He has an issue with the note on the plan stating that it is not to be built on. Rich asked if anyone has talked to the fire department about services for that lot. He also asked if the board should seek legal advice to see if the town is in violation or causing any undue burden. Bob asked about providing services to the lot. Rich asked about the police department's jurisdiction and if they can go through Exeter to access the lot if needed.

Attn. Quinn explained that there would be mutual aid agreements that would allow the emergency services to access that lot. Even though there is a note on the plan, it complies with the regulations it just needs a variance to the frontage. He believes that the one house lot back there is a reasonable use, but if you were to put multiple lots that would cause traffic issues as well as other issues.

Janet does not think that the board needs to seek legal counsel on this application. Mike asked if she was willing to make a motion. Mike read through the application supplied by the applicant that states the criteria. His question was on the subdivision plan D-22263 that stated that the lot was not be built on, so he has a question on the spirit of the ordinance. Mike asked Attn. Quinn to explain that answer on the hardship. Attn. Quinn read the following from the RSA:

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The proposed use is a reasonable one.

He explained that they are talking about the 200 foot frontage, and they are only talking about one building lot, the purpose of the frontage in Kensington was to prevent cookie cutter lots with insufficient frontage, is not manifested by allowing the applicant to get relief from the ordinance, and this proposed use is a reasonable one.

He quoted a supreme court from Brant Developers which stated that there could be other uses, so long as the purpose is satisfied and it is a reasonable use then the hardship can be met. This is 18 acre lot they are proposing to build one home on and he still believes that this is allowable.

Janet asked if the case that he quoted was the same instance as this application. Attn. Quinn stated it is similar due to the fact that it softened the rules for the hardship test.

The board questioned the notation on the plan and if is strong enough to state that the spirit is not observed. All agreed. The board maintains that they are not creating the hardship, but that it was created by the owner.

**Janet made a motion to deny the application based on the fact that the spirit of the ordinance is not being preserved due to the property line created by the owner and specifically agreed upon not to be built on unless it complies with the existing regulations. The 100 foot frontage does not meet the requirements currently. Rich seconded, all in favor. Unanimously denied by the board.**

There was a brief break.

Mike then read the next application for all those still remaining at 8:28pm.

2. Estate of Arabella Tuttle, 1 Old Amesbury Road, Kensington, NH, Map 3, Lot 9, for a commercial business as stated in Article III, Section 3.3B of the Town of Kensington Zoning Ordinances. Intent is for the owner to operate a contractor's office out of the home on the property.

Mr. Tuttle was recognized as the executor of the estate, and then Thomas Higgins explained the purpose for them being before the board. He is looking to get approval from the board tonight for a commercial business to be

operated within the residential district in Kensington. The proposed location is a direct abutter to the existing Commercial Zone. He will not be putting up any structures on the lot. He is a specialty contractor who erects bridges. There would be truck cranes, commercial vehicles, and storage boxes which would house the tools of his trade. Bob asked if all supplies will be stored behind the house and Mr. Higgins explained that they would be. Mike asked if he would need to construct a new driveway, and Mr. Higgins answered that they would have to so that they could access the back area.

Mike opened the public hearing to the public at 8:36pm.

Lisa Caracostas asked how far back on the property the storage containers would be and if they were planning on taking down the existing structure. They will not be removing the home, and the storage containers will be 200 feet back in the field area. The abutters approached the table to view the pictures presented. Lea Parkhurst stated that she is a direct abutter and that she has some serious concerns. She commented on the wildlife in the area, and the natural spring, and her concerns about the vehicles being stored there. Mike asked if they had any intentions on going under the powerlines, and he does not due to deeded easement restrictions under the powerlines. Jay Bauer voiced concerns about Old Amesbury Road being residential, and the character of the neighborhood is residential. The road is in need of repair as well.

Steve Nickologanis stated that he is in direct sight of the storage units, trucks and the road would need more upkeep. He was concerned with the heavy trucks traveling over the road. Mr. Higgins explained that his trucks are all under 33k pounds. Jay Bauer stated that once the commercial approval is given there are other endeavors that could go in there. The board explained that the next owner would have to adhere to the conditions, and if they are different they would have to come back before the board. For any enforcement issues the Board of Selectmen would be the enforcing body for those approved uses. The site plan review would have to be done with the planning board next that would go into more detail. There were concerns voiced about the area being the first thing people see when they enter Kensington, and that the containers would be in the line of sight. Mike read the zoning regulations for the commercial venture in the residential zone.

B. Special Exception for Business, Commercial or Industrial Ventures

1. Business, commercial or industrial ventures are permitted in this district through a "special exception" as granted by the Board of Adjustment.
2. After permission through "special exception" is granted by the Board of Adjustment, the application will be referred to the Planning Board for site plan review. A permit for intended use must be issued by the Planning Board.
3. Site Plan Review – In addition to the site plan review regulations as adopted by the Planning Board, the following requirements apply:
  - a. the minimum lot size shall be 2 acres with a minimum two hundred fifty (250) feet of frontage on a town approved street;
  - b. there shall be not less than fifty (50) feet setback from a structure or a parking lot to a lot line and not less than one hundred (100) feet setback from the established right-of-way. Grass or beautification shall be present in the buffer area between the right-of-way and a structure or parking lot; and
  - c. any change in the nature of the grounds upon which the original approval was granted requires a re-application and a new public hearing as provided.

The board went through the criteria worksheet for the Commercial Business in a residential zone. Janet stated that diesel equipment would have adverse effects on the neighborhood, due to noise, vibrations, possible odor and possible excessive traffic. Donna explained that they could put the proposed driveway as close to Amesbury Road (Route 150) as possible to alleviate the abutters concerns. Mr. Nickologenis stated that he believes that there would be a diminution in property values. Bob stated that he has to recuse himself. Mike explained that all 3 members have to vote positively for the application to pass.

Mike closed the public hearing at 8:59pm.

Mike went through the checklist with the board members.

They believe that the application complies with criteria #1 and 2. There was discussion on the third criteria on the diminishment of the property values. It does directly but the commercial district.

Mr. Higgins stated that all the trucks are required to comply with the clean air act. There is a possibility for noise, vibration, excessive traffic and change in view for the abutters.

They believe that it does comply with criteria #4. Mike asked the boards feelings, Rich can see concerns for the abutters, but also sees a need for the use of the land. Mike asked if they granted this would the values of the surrounding properties be affected? Rich agreed.

**Janet made a motion to deny the application based upon it causing a diminishment in surrounding property values due to an increase in noise, vibration, excessive traffic, and changes to the residential landscape. Mike seconded.** Discussion followed.

Donna asked if the applicant could request a site walk. Mr. Higgins stated that he thinks that if the board gave the process a chance these things would be worked out in the site plan review process. Mike explained that if

they granted this application there would be a value demise for the abutter's properties. He does not believe that they can approve this application.

Mike called the questions, all in agreement, Bob abstained due to recuse.

Meeting minutes to be approved.

Mike made a motion to approve the September 6, 2016 meeting minutes, Bob seconded. 2 abstentions.

Mike made a motion to approve the November 1, 2016 meeting minutes, Janet seconded, 1 abstention.

Mike made a motion to adjourn at 9:17pm, Janet seconded, all in favor.

Respectfully Submitted,

Kathleen T Felch  
Zoning Board Clerk