

**KENSINGTON BOARD OF ADJUSTMENT  
KENSINGTON, NEW HAMPSHIRE  
PUBLIC HEARING  
January 3, 2017  
KENSINGTON TOWN HALL  
95 AMESBURY ROAD  
AT 7:30PM**

**Meeting Minutes – Approved 03/07/2017**

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

Others in Attendance: Attn. William G Scott

Chairman, Michael Schwotzer called the public meeting to order at 7:38pm.

The Zoning Board held a Public Meeting to grant or deny the following rehearing request:

**Motion for rehearing for the denial of the Sherwood Forest Realty variance request**

Mike welcomed the representative and asked if there was any new information to be presented.

Attn. William G Scott explained that NH provides the reasons for zoning which is to lessen congestion on the streets, light and air, panic and other dangers as described in RSA 674:17. He continued that there has to be some reason to prevent a person from a reasonable use for their property. This property could be subdivided into multiple lots and the applicant is proposing to use the same access for an individual lot. He believes that this application would be within the spirit of the zoning. Attn. Scott expressed his appreciation the board for hearing him tonight.

Mike asked him if there was a technical error made by the board. He believes that the board made an error in interpreting the New Hampshire law in denying the application. John asked the representative to explain why he believes that the board was in error, and to point to the law in question. Attn. Scott expressed the board error of law is not granting the variance to allow the access way as frontage, he believes the best use of the land is constructing 5 lots, the applicant is willing to put restrictions on the deeds and only asking for one. It complies with purpose of state zoning, and complies with the zoning in Kensington. He expressed that he is not sure how the town is negatively impacted with only one lot on the parcel. He is concerned that the prejudice to the backlots has overwhelmed the application.

Mike went back to the history of the lot, where it was created. There are records from Exeter and Kensington. 11-7-91 hearing for Circle Trust Hearing for the Town of Kensington stated that the 19.6-acre lot will have frontage of 89 feet on Powder Mill Road and will remain the same, farm land, with a notation will be on the plan stating that the lot may not be built upon unless it meets current zoning regulations. Mike believes that was a stipulation of the subdivision and a contract between the town and the owner at the time.

He then read Planning Board minutes from 1-23-92 from Exeter minutes, and they deemed the lot as a non-buildable lot, and it also stated that if the lot was to be built upon in the future it would have to comply with current regulations. He believes that this is a contract between the two boards and the applicant. Before the subdivision was approved the applicant had more than adequate land to build on the lot and he decided to sell off some of the frontage. He agreed that house lots could go back there. Mike believes that the spirit of the boards at that time was to have this lot labeled as unbuildable.

Attn. Scott explained that the piece that looks like an access way, was always part of the original parcel and when it was originally conveyed that section was left out of the deed. They have since taken ownership and have a deed for that section.

At the last meeting, the board denied the application due to the fact that the spirit of the ordinance is not being preserved due to the property lines being created by the owner. And specifically agreed upon not to be built unless it complies with the existing frontage and 100 foot frontage does not meet the regulations currently. Mike stated the understands his argument that they will put in a road and build houses. This issue was created by the owner and stipulated at that time that they would not build on it. He does not see what has changed for this board to overrule what two planning boards decided. Attn. thinks that it is pretty simple and that no one was thinking of this lot as a building lot at the time of creation. There are two ways to meet the regulations. One is

to clear lot and put a road in, and the other is to approach the zoning board for a variance to build one home, which he believes does not impact the nature of the town. He believes that the board was wrong in denying the variance, when the applicant is able to put in multiple homes and one home would be less of an impact.

John has gathered what the reasoning for what the board is and after reading the minutes and has not heard anything different then what was heard before. He asked if the board based the decision on the past planning board decisions, and what part of the criteria did the applicant not meet?

Mike explained that it was presented well by the applicant, he looked at the history and believes that the potential for a development is there. When the planning boards all agreed that it was unbuildable unless there was some access. John does not believe that there is a hardship because there is another use for the land.

Bob would like to rehear this, due to the fact that there is more information that he did not know. Janet stated that Attn. Scott stated that back in 1992 the applicant was not planning to build. He clarified that based on his knowledge, the applicant would have been to develop the land to its maximum. Janet corrected that it was stated at the time of the subdivision a non-conforming lot would be created. She continued that it was addressed by the Town of Kensington, she is not under the assumption that they should rehear this case.

Attn. Scott asked how this application would violate the spirit of the ordinance?

Janet concluded that based on the information tonight and what they had been presented before there was no new information provided to the board.

John asked Bob to share what the new information is that he was not aware of. Bob expressed that the town has left themselves open for a subdivision. John explained that if the variance is granted then you set a precedence for another property, and they have an alternative use for the property that they might have not had. Mike stated that the applicant at the time was aware and willing to agree to the stipulations that the lot would not be built on.

**Mike explained that the board was here to decide if they would rehear this application or not to rehear.**

**John motioned that the board does not rehear the case, due to the information provided. Janet seconded.**

**Three to not rehear, one to rehear.**

Mike explained that there might be another rehearing request and he does not feel that the board would be within the 30 days to make the decision and asked that a special meeting be held on Monday, January 3, 2017. All members present agreed.

Janet made a motion to accept the meeting minutes from December 6, 2016, Bob seconded, all in favor with one abstention

John made motion to adjourn 8:11pm, Bob seconded, all in favor.  
Respectfully Submitted,

Kathleen T Felch  
Zoning Board Clerk