



State of New Hampshire
Town of Kensington

95 Amesbury Road
Kensington, NH 03833

**KENSINGTON BOARD OF ADJUSTMENT
KENSINGTON, NEW HAMPSHIRE
MEETING MINUTES
AUGUST 5, 2014
7:30 PM
At Kensington Elementary School Library
*APPROVED SEPTEMBER 2, 2014***

In Attendance:

John Andreasse; Michael Schwotzer; Janet Bunnell

Present: Scott David; Attorney Derek Durbin; Norman DeBoisbriand, Selectmen's Representative; Lynne Bonitatibus; Mark Sikorski, Building Inspector; Cindy Cole and Mr. Cole.

Before the meeting started the board reviewed the information provided by Attorney Durbin representing Scott David.

Acting chairman John Andreasse called the public hearing to order at 7:45pm. Mr. Andreasse explained that the board wanted to review the packets and thanked the attendees for their understanding.

First on the agenda is the public hearing for Scott David's Administrative Appeal.

Pursuant to RSA 674:33, The Kensington Zoning Board of Adjustment will hold a Public Hearing, AUGUST 5, 2014, at 7:30pm in the Kensington Elementary School Library to hear the application for an Administrative Appeal for Scott David of 21 Amesbury Road; Map 14 Lot 26, in accordance with Chapter II, Article 8.3 and Chapter V, Article 3.8. Mr. David has appealed the decision of the Board of Selectmen to issue a cease and desist order.

Attorney Durbin asked the board if he would need a positive outcome of all three members present and the board explained that this was a quorum for the board and he would need a majority vote only and not unanimous. He then explained how he appreciated the board's efforts by reading the information provided to them and will be available in the permanent file.

They are here to appeal the decisions of the board of Selectmen to issue a Cease and Desist order of Chapter II, Article 8.3 and Chapter V, Article 3.8. Mr. David was made aware of a verbal complaint made to the town that he was using his garage as living space. He was then called to a Selectmen's meeting to discuss the allegation with them. John asked if there is a kitchen and a bathroom and it was indicated that they exist in the structure. Attorney Durbin indicated that after the Selectmen's meeting there was never an inspection done and the next notification that Mr. David received was the Cease and Desist order from June 2, 2014. Which was a surprise, and Mr. David answered that and filed the appeal. They requested the town files to establish the basis for the complaint and asked who filed the complaint and the person was not identified, and according to them there was no substantiation behind the order. The primary issue is that the property was never inspected after that complaint was made. He is not here to avoid permit fees for the completed garage, and he submitted a letter to Mr. Grant (Building Inspector at the time of the original permit) stating that fact (attached May 2013). 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 is 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. John asked about the sink and the bathroom, was the septic discussed? Mr. David discussed the septic approval with Mr. Grant and it was approved for a three bedroom, he was told that the septic goes by the bedrooms and not the bathrooms. At the time of the garage permit Mr. David had an open permit for the house renovation, so he reduced the home from a two bedroom to a one bedroom home. Mr. David obtained copies of the septic from Kathy at the town hall. John asked if everything was verbal or is any in writing and Mr. David indicated that most dealings were verbal except for the letter written by Mr. David explaining the finishing of the garage. Attorney Durbin explained that the septic has not been changed. He believes that the Cease and Desist was probably issued due to the definition for the septic located in that section. The sentence is very vague. John asked about the statement of increased waste water, even though there is no increase in bedrooms; you are adding waste water increase through the added bathroom. The issue is Mr. David has an approval for a three bedroom system, and he relied on Mr. Grant's explanations. Attorney Durbin explained that case law indicates that you have to raise all issues, and he raised the Municipal Estoppel as he relied on Mr. Grant and his representation of the town. They are also raising the trespassing issue by the current building inspector when he took the pictures of the home so that they can go forward with it if needed.

Mr. David explained that he offered to have an inspection by the current building inspector and the next thing he knew he was issued the cease and desist order. John asked about the May 5th letter and new floor plan that was submitted. He was told it was passed in to Bill Grant, the building inspector at the time. Attorney Durbin explained that the packet that they received from the town did not have a copy of the amended plan. Mr. David commented that the plumbing was inspected. John asked for a positive result of the inspection. Mike read from submitted testimony that "Mr. Grant finished the inspections on May 31, 2013". The board does not have a record in front of them stating anything different. Mike asked if the stove was installed after the inspection of Mr. Grant and Mr. David agreed that it was and that it has since been removed. He also explained that he is in the construction business and knew that he would have to pay more fees for finished space. He then learned that Mr. Grant passed away and didn't hear anything further from the town until he was called in to the selectmen's meeting in May. He offered to have the current building inspector visit the property and inspect the garage at the May meeting; he showed the board pictures of the structure and indicated that he is not sure if they were taken before or after the May meeting with the selectmen.

The Town Officials approached the board at 8:08pm.

Kathy passed out a letter to the board stating that Norman DeBoisbriand has permission to speak on behalf of the board for the public hearing.

Mr. DeBoisbriand stated that there is a letter to the Zoning board that states why the board took the actions that they did, and supporting documents. There is a building permit for a garage with a detailed plan attached to it. The selectmen received a complaint; Mr. DeBoisbriand was unsure who it came from. Lynne took the complaint and the Town's attorney instructed her that who made the allegation is not important at this point. Mr. David came to the selectmen's meeting on the 18th of May and stated that the structure is not being used as a residence and that it is currently being used as storage and office space. At that meeting he extend the idea of putting something attached to the deed stating that this garage could not be used as a residence. The board then went to the Town's legal counsel and they were told that would not be enforceable and they came back to the selectmen with several suggestions. One of them was to ensure that it would not be used as a residence they should ask to have the kitchen eliminated and to remove the stove. John asked what that meant and Mr. DeBoisbriand explained that the sink and stove were the items to be removed. John asked if the sink was removed yet, and Mr. DeBoisbriand explained that the board was unsure of that because there has not been an inspection done to confirm that. John expressed concern that there were decisions being made without an inspection being done to the interior of the structure. The landowner had told the Selectmen that there was a sink and stove in the structure and the board did not see a reason to inspect, based on information received from the Town Attorney, until both the sink and the stove had been removed. The town wanted to give the applicant the opportunity to come into compliance before inspecting the property. The Selectmen's letter stipulates why they feel the applicant is in violation, based on statements from the applicant and the attorney after

the meeting, stating that the applicant had a relative staying in the structure to be able to help care for them. John asked how the Cease and Desist was given when there has been no inspection of the structure. Mr. DeBoisbriand explained that the applicant admitted to the board that there was an illegal activity going on in the structure. Janet asked what caused the cease and desist order to be issued. The board is looking to establish a time frame for the activities that occurred up until the cease and desist order was issued. First on May 19th the applicant said that the structure was not being used as living space.

- May 19th – Mr. David expressed to the board at the Selectmen's meeting that no residence and no in-law apartment on the property and that he is in compliance, also to seek legal counsel to see about a letter to state restrictions on the structure attached to the deed.
- May 20th or after- from the applicant's suggestion the town's attorney was contacted. Town Attorney came back with suggestions resulting in the issuing of the Cease and Desist Order written on June 2, 2014.
- June 2, 2014- Cease and Desist Order was issued.

Lynne responded that the applicant had originally applied for a garage permit and then it was changed to finished space and that is why he was called in to the meeting. He stated that the space was being used as storage and an office and it had a bathroom and kitchen. Lynne contacted the town attorney and they commented the suggestion would not be enforceable and suggested the Town issue the Cease and Desist order.

Janet asked if Mr. David indicated that he would remove the sink. Lynne informed the board that whatever was said at the meeting would be in the minutes to the meeting on the 19th. Mr. David indicated that he removed the stove before the meeting because he knew he was coming before the board for this issue, and he assumed the stove was the issue. John was uncertain why the town would go from contacting town counsel about a letter to issuing the Cease and Desist Order, what is that based on. Lynne explained that was because the permit issued was for a garage, and there should not have been a bathroom in the garage. The Town building inspector verbally okayed the additional finished area in the structure according to Mr. David. Lynne indicated when the past inspector's wife turned in all the paperwork there was not anything turned in that would indicate a change to the original permit for this property. Mr. Grant never notified her of the changes and his pay for the inspections was a 40/60 split, and he didn't collect any additional money for the extra inspections the finished area would have needed. There was only one other permit filed by the applicant that being for a fence. Janet asked what the applicant thought he was supposed to do. Mr. David responded that he was under the impression that the stove would need to be removed and the structure could not be used as a residence. Mr. David was not aware of the letter being signed at the June 2, 2014 meeting. John asked if there was discussion or thought to call Mr. David and discuss the issues with him before issuing the Cease and Desist. Janet asked if the board could see the letter that the attorney gave the Selectmen and Lynne said that they could not. Mike quoted that Mr. David did admit that he installed a stove when he had a relative come and stay with him. That points towards usage as a dwelling. In- Law apartments are allowed, but they would have to comply with the regulations. John explained that there were discussions had, with no records of the conversations. Mr. David explained that he has lived in the town since 2012. Mr. Sikorski asked what kind of stove was in the building. If the stove had been permitted then there would have been a certain kind of inspection required. The board was presented with the original garage plans that were extremely detailed. Mike explained that there is a pull down staircase to access the storage space. Mr. David explained to the board that the structure is a one story structure and there are no stairs.

Mike does not see a representation of the interior walls. Mr. Sikorski explained that the plans are very well drawn and there is not any indication on the plans that the structure was going to have a bathroom. Mr. David had presented the Selectmen with plans depicting the interior partitions, that was not included with any of the Town records. Mr. Durbin explained that the last building inspector gave verbal representation of the permits. Mr. David explained that the permit was signed off by the building inspector, but he cannot find the signature card, and that the electrical inspector did sign off on the permit as well. The town did follow up with the electrical inspector and they did not notice anything other than it being a garage. This is another indication that the structure is not being used as a dwelling. Mr. Durbin explained to the board that the appeal is for the June 2, 2014 Cease and desist order and before and not for anything after that point. Mike explained that the town files did not contain the letter from Mr. David. Attorney Durbin asked to see the sketch submitted from Mr. David to the Board of Selectmen

on the 19th of May, 2014. Mr. David indicated that the blue paper submitted is what was accepted by Mr. Grant and he did not have to have an architect to submit the adjusted plans. Janet asked about the email correspondence, 7/26/13 there was a rough inspection done on the electrical and a final on 8/16/13, where is a copy of the final inspection? Mike explained that it is normal not have information back from the electrical inspector for the final inspections done. . Mike clarified that changes were approved by the Town (building inspector) verbally, and that after the final inspection there was a stove installed. Lynne indicated that the structure was used as an In-Law apartment in a letter from Mr. David's attorney, this information is post the cease and desist. Why was the decision made and based on what. Lynne explained that was based on the building permit that the town has on file for a garage. Mike asked if the board asked Mr. David to file an amended building permit to comply with the current building as it sits. Mr. DeBoisbriand explained that when Mr. David came to the board he said that it was not a residence. It was just used for storage and an office, so the suggestion was made that the selectmen proceed with the cease and desist to render this structure unable to be used as a residence. The board was going to make the suggestions and then after this transpired the attorney then indicated that it is now being used as an apartment. Everything changed with responses from the applicant's attorney. It became confusing to the board as to what the building was being used for. The Cease and Desist was a direct result of trying to make sure that the structure was not used for a residence. John explained to all those present that there is a lack of communication between the applicant and the board of selectmen, where the applicant thought one thing and then the board sent out the Cease and Desist. In the applicants mind this use was approved. Mr. DeBoisbriand explained that the board thought that since they were unable to ensure that the structure was not used as a residence through a letter attached to the deed they were guided by legal counsel to send out the Cease and Desist. He has a problem with the fact that this is a casual plan, with no plans showing where the bathroom is going to be attached to the septic system. It is more than just putting up sheetrock walls. The problem is when the applicant came to the board and said he will not use the structure as a residence and then after the fact comes back and says that he now wants to use it as a residence. He is now weary of the motive of the applicant. John agrees with all that was explained. Mike reiterated that the facts that after the May 19th meeting the board found out that they couldn't attach a letter to the deed that was enforceable. He asked the board where the letter was to Mr. David telling him that the letter is not an option and can you work with us to resolve this. Lynne explained to the board that she had drafted a letter that stated that and sent it off to legal for them to review, and it came back with changes from the attorney to be a Cease and Desist. John explained to Mr. DeBoisbriand that he agrees with him, and based on the information he has heard and what is in front of him

- all of the changes were cleared by the town.
- changes made with no records of any of it on either side.
- Still has not been inspected as is

Mr. Sikorski explained that in May he was invited to inspect the property and that changed and he is unsure of why that did. Attorney Durbin explained that it did not change from Mr. David's perspective. Mr. Sikorski did not attend the May 19th, 2014 meeting and was communicated with after the meeting. John asked who told him not to go, he was never told not to go, but he was never told to go. His communication is by email mostly and he as contacted by the Administrative Assistant. Mr. David will ask his attorney if the town will still be able to inspect. Attorney Durbin asked the board not to delay the decision tonight due to non-inspection. Mr. DeBoisbriand commented the board is unsure if Bill verbally allowed him to renovate the structure to allow for a bath. The selectmen deemed the Cease the Desist the same as what the applicant was proposing. If everything was taken care of in a timely manner there would be no fines assessed. Whether the town approved it or not the selectmen want to know what the use is of the property now. John asked what the solution is for the town? Mr. DeBoisbriand would like for Mr. David to remove the sink and go through the proper permits to get a special exception for the in-law apartment/ secondary residence. John asked how would you handle this, how would the fees be assessed. Mr. DeBoisbriand explained that if he had filed an amended building permit the fees would have been on the additional portion. Mr. Sikorski explained that there should be a permit calculated as habitable space for him to inspect. He believes that this discussion is proving that the structure is habitable space and should be recalculated to that and inspected.

John is saying that the applicant asked the town (building inspector) about the fees and he was told he did not have to submit anything further. Lynne explained that Mr. David came to her for all three of the permits and never asked her about amending any of the permits. She is worried that she will now have people coming in saying they were approved by the former building inspector if this is allowed. Mr. David explained to the board that the structure has its own meter for electricity. Mr. Sikorski explained that an application should have been made to Rockingham County Conservation District because of the modifications to the septic system to be attached to the structure. Mr. David did admit to changing the designs for the main house to a one bedroom home to be able to accommodate a bathroom in the structure. Attorney Durbin is flabbergasted about the town looking into the information on this case now when the determination for the Cease and Desist was made on these records. Whether it was a miscommunication between the town and the town's attorney doesn't matter now. The town has not indicated one thing under article 8.2 in the town's zoning regulations that this is a dwelling unit. There are four criteria to that and two of them could not be met at the time that they issued the Cease and Desist order. There has been no change to the septic system since the original approval. John asked the attorney what his solution would be tonight.

Attorney Durbin explained that he would like to see:

- reversal of the two determinations that were made which he feels is justified.
- the town and Mr. David would have to come to an agreement and have the structure inspected to make an adequate determination of whether this is a dwelling.

Which then triggers Article 3.8 on the septic, and they can get to that when they come to it. Regardless of which way this goes Mr. David will agree to do the inspection and pay any additional fees to the town. John closed the public hearing section of the meeting and the board will discuss the facts presented at 9:23pm.

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. 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 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.

Mike made a motion to close the public hearing at 9:40pm. Janet seconded all in favor.

Cindy Cole -244 North Haverhill Road

Looking for information on constructing an in-law apartment. Mike instructed them that they should go down and see the town to fill out the applications. He explained that they board can't advise and they are

a judicial board, she would apply to this board for a reversal of a decision. Mark Sikorski stayed to see if they needed any instruction from him on building permits.

OLD BUSINESS:

Approval of JULY 1, 2014 MEETING MINUTES

Janet made a motion to approve the meeting minutes of July 1, 2014 seconded by Mike; all in favor.

Next Meeting: September 2nd, 2014

John asked about the signs at the Berry property and the Valante; the confusion is that Valante is not allowed to have a lit sign at all. Kathy will let the Selectmen know.

Motion made to adjourn by Mike at 9:56pm; Janet seconded all in favor.

Respectfully Submitted,

Kathleen T Felch, Zoning Board of Adjustment Clerk

APPROVED