

**KENSINGTON BOARD OF ADJUSTMENT  
KENSINGTON, NEW HAMPSHIRE  
MEETING MINUTES  
SEPTEMBER 17, 2014  
7:30 PM**

**At Kensington Elementary School Library**  
*Meeting Minutes-Draft subject to board approval*

**In Attendance:** Janet Bunnell; Michael Schwotzer; John Andreasse

**Public in attendance:** Lynne Bonitatibus, Peter Merrill, Selectmen; Mark Sikorski, Building Inspector; Scott David; Attorney Justin Pasay; Attorney Derek Durbin

John Andreasse acting chairman opened the meeting at 7:34pm.

**NEW Business:**

**Motion for Rehearing public meeting: Scott David Appeal of Administrative Decision**

John informed all present that this is a public meeting to decide on a Motion for Rehearing received from the Town of Kensington's Attorney Justin Pasay. The board introduced themselves to all those present. John talked to the board about how he would like to run the meeting. He would like to use the people in attendance as references as needed. This is for the board to converse about their prior decision to grant the appeal of Scott David concerning the Cease and Desist from the Selectmen on Scott David's alleged violations of the town ordinances.

The board looked through the submission from legal counsel for both sides. John explained that there was a suggestion that the board made a technical error. Outside of section 2 (b) is a rehash of the last meeting and that has nothing new. In the rebuttal from the town's attorney under section 2(b) it states that the Zoning Board determined that the garage was not a "dwelling unit" under the zoning ordinances because the stove was removed. John asked if the board had any other discussion points. This process is to see if there was a mistake of law and to see if the board will deny or grant the request, and if it is granted the board will rehear the entire case again. Mike explained that they need to discuss if there is any new material supplied for this hearing that was not available at the time of the August 5<sup>th</sup> hearing. Legality of whether the submission of exhibit 10 was timely submitted. The discussion points would include:

- 1) dwelling unit vs residence
- 2) any new material
- 3) was exhibit 10 timely submitted for the motion for rehearing.

Under section 2 argument (b) from the Town's Attorney it states that the board made "*a technical error which is worthy grounds for a rehearing under the law in New Hampshire.*"

John read the definition for dwelling unit:

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

The current zoning book does not currently have a definition for residence.

Mike referenced the zoning book.

**ARTICLE 8.3 SPECIFIC REQUIREMENTS OF THE RESIDENTIAL - AGRICULTURAL DISTRICT**

**A. Restrictions**

1. There shall be no more than one single-family dwelling or residence on a lot of record. (03/11/1980)

Their questions are is the garage a residence or dwelling unit.

Mike is unsure if the septic was determined correctly, and the town's determination that the septic has been altered without proper permitting could be the point of law. They did not have the building inspectors report at the time of the public hearing on August 5, 2014. John does not feel that the board made a mistake, because they used the definitions and information that was available.

Mike referred to the Motion for Rehearing Section 2-argument (c) which states that *“the ZBA failed to determine that the property is in violation of Chapter V Article 3.8 which prohibits the expansion of existing septic system without requisite approvals.”*

Mike is unsure that the board adequately reviewed the second piece of the cease and desist which was the septic. Janet commented that they acted upon what was in front of them and what the applicant said. The board asked if there are septic plans available, they were told just the original plans. The board questioned whether the information in front of them was available at the last meeting. Mike does not believe so because the knowledge that they have now was derived from the Building Inspectors inspection of the structure (exhibit 10). When the board made the decision the board strongly suggested that the applicant and the Selectmen get together and do an inspection of the property. John agreed that the decision that was made was because there was not an interior inspection done on the structure by the current building inspector. So because there was not an inspection done there was no information for the board to go off of. The other's agreed. Is the new information viable? Mike recalled from Attorney Durbin's rebuttal that the information (ie inspection; exhibit 10) was submitted after the 30 days and is too late for consideration. The board referred to page 4 of Attorney Durbin's rebuttal letter, which stated that the Building Inspectors letter contained inaccuracies, and that it was not submitted prior to the 30<sup>th</sup> day, which is violation of RSA 677:2. Attorney Durbin continues to argue that there was information in the report that has nothing to do with the Cease and Desist that was ordered. RSA 677:2 states that number of days required as 30 days.

Mike believes that there were scheduling conflicts that played into the delay in presenting exhibit 10; as the board was told by Attorney Pasay and Attorney Durbin. He is questioning the fact that the 30 days should be enforced because the inspection was agreed upon by both parties. Mr. David explained that pre cease and desist the inspection was offered.

Justin Pasay, attorney for the Selectmen of the Town of Kensington directed the board to the cover letter for the Motion for Rehearing that had asked the board to hold off the public meeting until the inspection could be completed. Mr. David had the inspection completed, but would not like the findings to be included in the board's decision. John finds that because the inspection was done, exhibit 10 should be included with the board's discussion tonight. Attorney Justin Pasay contacted Attorney Durbin on August 19<sup>th</sup> or around then and they were unavailable until the 9<sup>th</sup> of September 2014 for an interior inspection. The town's position was to do the inspection and find out if they were willing to even go forward with the Motion for Rehearing. Town Counsel made a request to have the inspection done before the 3<sup>rd</sup> of September. John asked who was present during the inspection. Attorney Justin Pasay, Mark Sikorski, Attorney Derek Durbin and Mr. David. All were present and all were willing to have it inspected. Attorney Durbin explained that it was allowed to happen because the Town still had the recourse to issue another Cease and Desist on the property, if they still felt the property was in violation. Mike would like to allow exhibit 10 (the inspection report) to be reviewed by the board to potentially make a decision on whether or not the board made an error. Janet felt uncomfortable about the timing. Janet felt that the town was not making themselves available. Attorney Durbin was asked if that was so and he replied that both Attorney's had been unavailable. Janet indicated that clarified it and was okay with that explanation.

**Mike made a motion that the inspection report dated September 9, 2014 known as exhibit 10 be allowed to be considered due to scheduling conflicts putting the report outside the 30 day limit. Janet seconded all in favor.**

The board read over the inspection report (exhibit 10). John asked if this was a standard report, Mike explained that this is not a typical report, because you would do the inspection and certificate of occupancy before they are occupied. John asked Mark Sikorski, building inspector, what a building inspector would typically look for during an inspection. Mr. Silorski indicated it would depend on the type of inspection. Mike asked what he would look for assuming that he did the rough inspections, and the building is enclosed, what he would be looking for in a final inspection.

How it would be occupied; egress; building code; electrical; smokes in place; doorways operate correct way; hallways correct width; stairways to code; water on and operating at correct temperature; And the septic is working correctly.

Mike realizes that the inspection was done after the fact. Typically when you go through the inspection, you would not say anything about dishes in the sink. That would be observations. The electrical panel and what it includes is more what Mike would have expected to see in the report.

In the report the Building Inspector refers to the septic seeming to be pumping uphill, and the high water alarm is not attached, but Mike is not seeing that there was an opinion that there is additional flow.

John went back to the discussion that an agent of the town may or may not have given permission. Mark Sikorski looked back at the records and there were no approvals for additions to the septic. John asked if there was a discussion of a change to the septic. Mr. David replied that he had asked if he was okay to put in an extra bathroom. He was told yes, because he was reducing the bedroom count in the house. Mr. David then sent a letter to Mr. Grant stating that he changed it.

The board is focused on the paragraph that there was a change and there is not a permit for the change. So therefore if that was a violation and it was listed in the Cease and Desist it could be cause to rehear the Appeal. John does not feel that the board made an error, because the information was not available at the time. This new information does have an effect on the board's original decision. The section of the RSA 677:2 does state that if there is new information that was not available at the time is a reason for a rehearing. Since they accepted exhibit 10 to be admitted as additional evidence then the board has reason for a motion in regards to the septic.

Mike reiterated that the dwelling has not been answered yet. He does not see or feel that there is any new evidence for that issue. The board agreed.

The board referenced the regulation in Chapter V Article 8.3 of the Septic Regulations:

**5. Expansion of use** - is defined as an increased flow of wastewater into a septic system created by:

an increased number of bedrooms in a dwelling unit  
an increase in the number of employees in a commercial use  
an increase in floor area or increased number of seats in public assembly buildings **any other physical changes in any building resulting in increased wastewater flows.**

Mike believes that through the inspection the expansion of use became more evident, and so far there is no evidence that the procedures were followed with an expansion.

**Motion to grant the Rehearing of the Administrative Decision of Mr. Scott David's Administrative Appeal. Due to new information available regarding the septic system; which is reference in Chapter V Article 3.8. Janet seconded, Mike asked if there was any further discussion. The board does not have any. All in favor. Motion passed for the rehearing.**

**Mike made a motion to adjourn at 8:34pm; Janet seconded with all in favor.**

Respectfully Submitted,

Kathleen T Felch, Zoning Board of Adjustment Clerk

Motion to adjourn by mike and seconded by Janet, all in favor. 8:34