

**KENSINGTON BOARD OF ADJUSTMENT
KENSINGTON, NEW HAMPSHIRE
PUBLIC HEARING
TUESDAY
SEPTEMBER 4, 2018
KENSINGTON TOWN HALL
95 AMESBURY ROAD
AT 7:30PM
Meeting Minutes - Approved - 10/02/2018**

In Attendance: John Andreasse, Chairman; Joan Skewes, Bill Ford
Mark Craig arrived at 7:49pm.

Others in Attendance: Ms. Wendy Smith, Mr. David Smith, Ms. Ellen Costa

John opened the meeting at 7:30pm.

He explained that they would be starting off with the first item on the agenda and read the following to the public:

1. David M Smith, 5 Olivia Lane, Kensington, NH, M3, L54-5, for a Home Occupation, in accordance with Article III, Section 3.3C of the Kensington Zoning Ordinance. The applicant proposes to operate child enrichment programs from their residence.

Wendy Smith addressed the board and expressed that she is looking to do a Mommy and Me group program that would focus on child development, by challenging senses, and to inspire imagination for ages 18 months through 4 years old and that she is currently an occupational therapist that deals with this age group. She believes this to be an extension of what she is currently doing.

John asked what child enrichment was and if there was any type of certification that is needed for this. Ms. Smith has contacted the state and they have already come out to the property and based on the qualifications for this year there are no certifications needed. She is looking to have programs one day a week for 3 hours over a six-week period, and is looking to start with a 6-week block for three to four times a year. The youth registration camp representative for the state was out to the property, and stated that this particular program does not fall under the definition of a youth camp.

John asked what the number of children at one time would be and it was explained that there would be no more than 15, with possibly 15 cars involved. Ms. Smith brought the board pictures of the driveway area that is approximately 200 feet. Her intention would be for the cars to pull in at an angle and park on the grass and the pad by the garage. The board reviewed the pictures. John asked what the full square footage of the home is to see if the area would qualify for 25% of the home. Bill asked if the area in the basement that is hashed off will be the area that the children and parents will be in estimated to be about 518 square feet. Ms. Smith explained that at these ages there will be indoor and outdoor activities, which will be predetermined and she believes that this area would be feasible for what she is proposing. The board discussed the area to be used, and stated that more of the space should be considered in this application. The applicant is under the 25% of the total square footage, even with the added area.

John asked if she will have a sign and what the size of the sign would be? Ms. Smith stated that she has a sign and it is 2x2, and that the sign would only be out when the programs were running. There was discussion about the ADA compliance and if that area would need to comply. The board does not believe that they have to comply with that and stated that they can ask the fire chief about the egress and fire code, where there are children accessing the area. Bill questioned the area to be used and that there could be 15 adults and 15 children within that space if raining. Ms. Smith was asked what the specific hours would be, and she stated 9am-12noon. This can be run all year around due to the fact that this is for children under school age. There could be two programs run in the spring and two in the fall. Each program would run one day a week for six weeks, with one program each week.

John referred to the covenant of the subdivision, and it states in the covenant within section 2-Use states that "visiting clients and customers" would be prohibited. He further questioned if this was incidental to the home, which is the intent of the home occupation. Bill believes that this is against the covenant. Joan read that the covenant can be rescinded with the vote of a number of members. It was expressed that all the abutters were notified. There was one abutter in attendance, who is not part of the development, Ellen Costa of 214 South Road.

Ms. Costa asked if there was going to be a lot of outdoor activities or more indoor. Ms. Smith explained that the majority of the activities would be outside, but the weather would dictate what could be done outside, and the activities would all be on their property. Ms. Costa asked if she was not able to do this in the home, would she consider renting space. Ms. Smith is not interested in renting space for these activities.

Mark Craig arrived at 7:49pm, but is an abutter so he did not participate as a board member for this application.

John asked Mr. Craig as an abutter, is he concerned with the covenant, and explained that there is a section that specifically prohibits, "visiting clients or customers". He also asked his opinion on the 15 cars in the driveway. Mr. Craig does not personally have any issues with this and expressed that the applicants have the property for it. He doesn't think that any of the close abutters have any issues with it either. John explained that if they allow this with the covenant, that will set precedence in that development. He asked them what their minimum number of cars would be, and Ms. Smith expressed that 10 would be the least number of children that she would prefer to have for her classes. Joan asked for an opinion from town counsel on the covenant for the boards responsibility, and if they have to uphold them. The other members agreed. John stated that this is not the town's covenant, and it would be a civil not a town issue. Bill explained that the developer would put together the covenant and they would have a board of trustees that would oversee these agreements. They all agree with the legal opinion.

John would suggest that they continue the application pending a legal opinion. Joan also has questions on the parking that is mentioned in the covenant, which stated no street parking. Ms. Smith explained that the parking would be in their driveway and not on the street. Kathy showed the aboard another case for an Accessory Dwelling Unit, with the planning board, which had a covenant issue as well. The planning boards motion was read: The property owner will provide a legal instrument releasing the Town of Kensington and Kensington Planning Board from any liability associated with enforcement of the Kensington Place Declaration of Protective Covenants.

Joan asked if the planning board had deferred to town counsel for this motion? It is not believed that they did seek counsel.

Joan made a motion to continue the hearing to the October 2, 2018 Zoning Board meeting, pending an opinion a legal opinion from town counsel, regarding the ramifications of the

Kensington Woods subdivision Protective Covenants, specifically #2-Use. Bill seconded, all in favor.

In the planning board case it was explained that the applicant had to get a certain number of homeowners together to have them sign off and change the covenant to allow the Accessory Dwelling Unit. That was a thought of the board as well to have the applicant get signatures from 5 of the current owners in the subdivision stating that they are in favor of this use. Bill had a suggestion to have them think if they are going to have the 10 or 15 cars for the October meeting. There should be some sort of plan for the winter parking as well.

NEW BUSINESS:

Sherwood Forest Realty, Inc.- Original application 16-16-4-4
Joan recused at 8:06pm
Mark joined the board at 8:06pm.

John explained that the board had received a Notice of Decision from the Rockingham County Superior Court in the matter of: Sherwood Forest Realty, Inc. v Town of Kensington, Docket No: 218-2018-CV-123, Clerk's Notice dated July 27, 2018. The Court has ordered that the requested variance of Sherwood Forest Realty, Inc. be approved.

Bill made the motion to implement the court order and approve the variance based on the letter dated August 26, 2018, Mark seconded, all in favor.

Mark was concerned with the precedence and wanted it stated that the town was required by the courts to make this motion and they do not believe that this will set a precedence for future lots.

OLD BUSINESS:

Minutes to be approved: Bill made a motion 5-1-18 and 6-5-18, as printed and received, Joan seconded, all in favor.

Joan made a motion to adjourn at 8:08pm, Mark seconded, all in favor.

Respectfully submitted,

Kathleen T Felch