

Town of Kensington
Zoning Board of Adjustment
At Kensington Town Hall 95 Amesbury Road, Kensington, NH
Tuesday, July 6, 2021
7:30pm
Meeting Minutes - DRAFT

In Attendance: Mike Schwotzer, Chairman, Joan Skewes, Member; Janet Bunnell, Alternate Member; Bill Ford, Member;

Monica Kieser of Hoefle, Phoenix, Gormley & Roberts, PLLC and Anthony Jones from Jones and Beach represented the applicant.

At 7:37pm Mike called the meeting to order.

Mike noted that there were 4 Members in attendance of the 5 total members and asked the applicant if that was agreeable. The applicant asked to proceed.

Mike stated there was an Application for Variance Three Hobbs Road Realty Trust c/o William and Linda Zammer, Trustees for property located at 2 Hobbs Road, Kensington.

He also noted an application for a Special Exception from the same applicant at the same physical location.

Mike proposed having both hearings at the same time. The applicant was in support.

At 7:39pm Bill made a motion to open the applicant's request for Variance and Special Exception. Jan seconded. All in favor. The motion passes.

A discussion took place about the Kensington Conservation Commission wanting to discuss the application at their next meeting.

Attorney Kieser gave a brief overview of the history of the Zammer's intent for the properties. A description of the orientation and setup of the property was discussed. She noted that the special exception was to construct within a certain distance from Hydric A and Hydric B Soils. She stated that the Variance was for the septic system which would be closer than the required minimum distance of 75' from Hydric A and Hydric B soils.

Joan asked about the distance from the proposed dwelling and the very poorly drained soil. Mr. Jones noted that the poorly drained soil was part of a stream. There was discussion about the distances from Hydric A and Hydric B soils from this stream, which were 48' and 42' respectively. Distances from a retaining wall were noted by Attorney Kieser as 25' from both Hydric A and Hydric B soils. Joan asked about the purpose of the retaining wall, which was described by the applicant as to reduce impact to the wetland area and would be a permanent structure. The location and length of the retaining wall was discussed. A proposed silt fence would be added during the construction. The stream on the northerly portion of the property was discussed. It was noted by Mr. Jones that the wetlands delineated on the

plans were the greatest extent of any flooding for the wetland portion of the area. Joan asked if the edge of disturbance would be marked permanently. Mr. Jones noted that the grading for the house would be permanent. Joan was concerned about the mowing of the wetlands and piling of leaf material on it if the wetlands were not marked on the property. Proposed trees to be planted were noted by Attorney Kieser. There was discussion about the whether there was a size, position or configuration of the house that would not require a variance or exception.

Mr. Jones described the septic system and leach field and their locations. It is an above ground fabric-based system and the leach field was denoted in green on the plans. The soils tested had a water level less than 18", however the passing test pit was 26", therefore the leach field was moved into its current position on the plans. Joan asked how high the top level of the leach field would be and it was explained by Mr. Jones that it would be 3.5' above natural grade. Bill noted that the reserves did not meet the requirements because it would be closer to wetlands, and Mr. Jones explained that any proposed replacement would be closer to the wetlands than the current design. He explained that the life expectancy of this particular septic system was 40 years instead of the typical 100 and there would be certified installers for the system. Joan asked about the foundation of the building and what the water table was in regard to where the building was to be located to which Mr. Jones stated it would be 26", and noted would likely require sump pump, which was discussed. Mr. Jones noted that there would be a fill across the whole site, with 3' at its highest point above grade.

At 8:13pm Mike opened the hearing for public comment.

Frank Whittemore, an abutter, asked about tree cutting. Mr. Jones noted that it was not densely vegetated with trees but there would be some tree clearing, however there would be planting of trees in other areas. Lynne Monroe asked about the limited disturbance circle described on the map. It was explained that anything outside this area would not be disturbed, however there would be tree planting in those areas. She noted there may be an archeological site that she felt might need to be added to the plans, which was described as an old farmhouse.

The Board asked for the criteria of the variance and special exception. The applicant started with the variance criteria.

Attorney Kieser read through the variance requirements as noted in her memorandum given to the Board dated June 10th, 2021. She stated that the variance will not be contrary to the public interest and the spirit of the ordinance will be preserved. She stated that merely having conflict was not enough to deny the variance. Attorney Kieser noted that it was an existing vacant lot in a residential zone intended for residential use, was 15 acres in size and she noted that as a small disturbance she felt it does not undermine the purposes of the ordinance. She felt it burdened by the wetlands as well as being bisected by a powerline easement. She noted the topography restricted the area of land to work with, and that every effort was made to set the septic system in the most appropriate place, which placed the leach field 69' from Hyrdic A and 57' from Hydric B soils. It was noted that the NH Department of Environmental Services and Kensington Board of Health would review the septic as well as the Rockingham Conservation District. Attorney Kieser noted that with these reviews in place it was in the spirit of the ordinance.

Attorney Kieser stated she felt variance would not affect surrounding property values. She felt that denial of the variance would result in unnecessary hardship to the applicant. She felt substantial justice will be done by granting the variance as there was no benefit to the public that outweighed the hardship to the applicant. She noted that this was for the construction of a residential building in a residential zone where the septic was subject to review by the State and Town and Board of Health and felt there was no benefit to the public for denial of the variance by the Board.

The special exception requirements were read by the Attorney Kieser from the same memorandum as the variance requirements given to the Board. These were relating to houses on vacant lots where she felt the use would not conflict with the purpose and intent of the wetland conservation district. She explained that the development was not in the wetland and was centered in the lot.

Mike suggested the buffer zone should be delineated permanently and that enforcement would be difficult. What would be used as a delineation was discussed. There was a discussion about the disallowance of construction of outbuildings as a condition. It was suggested that the footprint and dimensions of the house would possibly be as presented, and the maximum footprint including any possible future Accessory Dwelling Unit. It was noted the septic system should be constructed per the town engineer Christian Smith of Beals and Associates memo given to the Board dated June 17th, 2021 as a possible condition of approval. It was determined that input was necessary from the Conservation Commission, whose next meeting would be July 13th, 2021.

At 8:57pm Bill made a motion to continue the hearing on August 3rd at 7:30pm for both applications. Jan seconded. All in favor. The motion passes.

At 8:58pm Bill made a motion to close the two public hearings. Jan seconded. All in favor. The motion passes.

At 9:00pm Bill made a motion to approve the August 4, 2020 minutes. Jan seconded. All in favor. The motion passes.

At 9:00pm Bill made a motion to adjourn. Jan seconded. All in favor.

Respectfully submitted,

Andrew Clarke
Zoning Board Clerk, Kensington NH