



State of New Hampshire
Town of Kensington

95 Amesbury Road
Kensington, NH 03833

**KENSINGTON BOARD OF ADJUSTMENT
KENSINGTON, NEW HAMPSHIRE
MEETING MINUTES**

**August 8, 2013
7:30 PM**

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

In Attendance: John Andreasse; Michael Schwotzer, alt; Elliot Fixler, alt.

18 People in attendance as well as the applicant Peter Kuegel and Peter Landry of Landry Surveying.

Chairman John Andreasse called the meeting to order at 7:30pm. He introduced himself to the people in attendance and explained the process and read the Public Hearing Announcement as follows.

The Kensington Zoning Board of Adjustment will hold a Public Hearing, August 8, 2013, at 7:30pm in the Kensington Elementary School Library to act upon the application for a Special Exception for Peter Kuegel, 250 North Haverhill Road, Kensington, NH, for property located at Map 11 Lot 7 (off North Road) in accordance with Chapter II, Article 7.6. Mr. Kuegel has applied for a special exception for construction of a driveway over wetlands. This will be in accordance with the approved State of New Hampshire Dredge and Fill Application, and state driveway permit, to provide access for an otherwise land locked parcel.

Public Hearing

Peter Kuegel the applicant and Peter Landry from Landry Surveying approached the board to present the application. John expressed his appreciation to the applicant for the flexibility of moving the meeting. Mr. Landry handed the board a narrative and went through his points on each section of the article and it will be included in the applicants file. Mr. Landry went through the wetlands permit process and that the Conservation Commission had a lot of concerns with this application. He expressed that the state considers the town's Conservation Commission's submission when they grant or deny the applications. In the ordinance it states that he needed to get the state approvals before coming before the Zoning Board of Adjustment for the Special Exception, which they have done. Mike explained that Article 7.1 A-D should be considered in the application. Mr. Landry went through each section in detail with the board. Mr. Landry explained that the process is avoidance and minimization and indicated that the applicant has to consider the alternative routes and the impact to the area. Mr. Landry explained that Mr. Kuegel purchased the land for the Lot Line Adjustment from Mrs. Armstrong and there was an old woods road that they used for logging, so that prior damage was already done to the driveway area. The State likes the proposed driveways to go through an area that has already been disturbed. Mr. Kuegel had gone to the Planning Board for the Driveway permit and started the project and realized that he shouldn't be in the wetlands and Mr. Landry was called in to help with the wetlands application. Mr. Kuegel obtained an After the Fact Approval from the State. John, the chairman, asked if the driveway was started. Mr. Landry indicated that yes, Mr. Kuegel had started the driveway after the initial Planning Board driveway approval.

Mr. Landry had to work with Fish and Game to add an element for a Spotted Turtle. They were able to satisfy the Fish and Game and the spotted turtles now have a legally protected area on the Kuegel

property. Mr. Landry has a copy of the approvals. There are two parts one is the After the Fact and the other is the Fish and Game approval.

John clarified that the driveway was started after the Planning Board approval of the driveway permit. John asked if the board has a copy of the permits. Mr. Landry explained that the approvals will not list out the turtles specifically; it is the area that is set aside, but is not labeled specifically for turtles. This is the granted approval, the after the fact approval and cover the percentage of material that will be permitted and retained on site. John brought up about the septic approval needed and Mr. Landry explained that would be done if the permit for a home was done. It was not needed for the driveway. The driveway was discussed and it was told to the board that soft swales were to be used to divert the water flow to the culverts. Mr. Landry explained that Mr. Kuegel has rights to be able to access his land. Mr. Kuegel has a limited time left to be able to use the Osgood Road entrance to his property, so the driveway is going to be the only access to the parcel. John clarified that the access that is used now is going to be terminated; Mr. Landry replied that was true. Mr. Kuegel explained that there was about a year left for him to use the Osgood Road access. Mr. Landry explained that there has been no evidence that there would be an added expense to the town. Mr. Landry concluded his presentation to the board and indicated that he would like to answer the questions and comments after the public hearing and discussion time. The applicant met with James Driver from the New Hampshire Department of Transportation (NHDOT) about the driveway cut. They were to acquire an additional easement from Mrs. Armstrong for the site distance and that has been done. This was a requirement made by the NHDOT to be able to keep the brush trimmed for sight distance.

Mr. Landry explained that he would go through the wetlands permit for the board if they wanted him to. John indicated that if the State was satisfied with the permit and approved it then he was okay with that. Mike asked about the alternate positioning of the driveway that was mentioned in the permit, in regards to the setbacks. Mr. Landry indicated that he was looking for avoidance and minimization. The area where Mr. Kuegel stopped the construction of the driveway is 20 feet from the line. They had already built the driveway and they needed to get abutters permissions. The driveway was built and the 20 foot buffer is only needed in the jurisdictional wetlands, once the driveway is beyond the wetlands the 20 foot buffer is not needed. They have a strip of land from the lot line adjustment in which to put the driveway to parcel Map 11 Lot 7. Mr. Landry showed the board on the drawing where the impact areas were and what they are restoring back to the original conditions. Because the highlands don't have the setback for the driveway they are forced to go 5-10 feet from the lot line in the uplands. Mrs. Armstrong signed the consent for the 20 foot wetlands impact and Mr. Welsh signed that he does not agree with the proposal to impact the wetlands within 20 feet of the common property line.

Next step would be for a waiver or move the driveway, but to move the driveway would cause more impact and goes against the purposes in the town ordinances. They put a waiver together and sent it to the Wetlands Bureau, and the waiver was granted by the state saying that they could have the driveway less than 20 feet from Mr. Welsh's property line. The State would have preferred for the abutter to sign the original waiver, but it is the land owners right to disagree.

John is comfortable with the presentation and he asked the board if they had any other questions. He thanked Mr. Landry for the detailed explanation.

John explained that the public portion is to address the board and not the applicant. He asked the people present to keep the speaking on point. Elliot asked if there was a certain spokesperson for a particular group.

Joan Skewes, from the Conservation Commission and would like to make a comment as a resident. The application is for a single family residence, it in no way permits the operation of the gravel pit to access North Road through this driveway. Mike went back to the Planning Board approval and conditions that were put on the Lot Line Adjustment. The two conditions are specific to the use of a driveway not to be used for industrial purposes, and for a residential driveway. The board has been informed that the excavation has been closed and considered to be reclaimed at this time.

There is one large piece of land and only has access to a road through this driveway. John indicated that the current access to the Kuegel gravel pit is terminating and no way that it could be used for an entrance to that property. Janet Bunnell asked that her attorney Mary Gantz be recognized to speak on the current access. Attorney Gantz indicated that there was some confusion on the usage of court ordered. It was an agreement entered into by the Bunnell's and Mr. Kuegel, not a court order, and in 2015 he will no longer be able to use the current access to Map 11 Lot 7. Richard Welsh commented that the lot in questions

Map 11 Lot 7 has been land locked for years, and Mr. Kuegel has been using that driveway forever. Mr. Landry mentioned a woods road and he does not recall there ever being a woods road, he indicated that he remodeled it. He explained that if it is only for one house he believes that Mr. Kuegel should be able to use Osgood Road for a driveway. John explained that that would not be a possibility as far as he knows that access will be terminated in 2015. Sue Garneau wanted to explain that the access that was granted Mr. Kuegel was originally with a handshake. She believes that he has broken rules and she is sorry for North Road having to deal with this. Elliot asked if she was explaining that she does not believe that Mr. Kuegel will follow through with the requirements. She would like an exception that there be no shooting. Sydnee Goddard viewed the gravel pit area and does not believe that it is reclaimed. The Conservation Commission is concerned because there was already a violation on the driveway. Elliot asked if she was not confident in the State enforcement and she is not at all confident that things will be followed up with. Elliot asked Mr. Landry what he thought about the state enforcement. He replied that they are there for the special exception for a driveway. Mr. Landry explained that the reclamation plan is a separate issue, Mrs. Goddard is talking about the gravel pit and that is not what they are here for. Joan Skewes commented that if it is for a single family, shouldn't the reclamation be for a site for a single family home. Joni Praded understood that the gravel pit was grandfathered. While it is not classified as an excavation site there are still trucks going out from 7am-5pm, and if it is not an active gravel pit what is all that activity. The Zoning Board of Adjustments has the ability to look at other issues, and if there are past violation and issues of water flow, she can't imagine that there will not be gravel pit operations there. Some of the special circumstances are in fact those issues and the permit was granted on the presumption that the access termination was court ordered and it was not. John indicated that the board cannot comment on the approved permit they are discussing the current driveway and the impact to the wetlands.

Donna Carter explained that the owner has a right to access their property.

Sydnee Goddard approached the board and showed them the Great Meadows where the driveway will be impacting and the species that are present there. Mr. Landry asked if the maps are official town maps, and she replied that they are official state maps. Mrs. Goddard replied that they are going to be included in the National Resources Inventory that the Conservation Commission was just part of. John understands Mr. Landry's point but he is satisfied with the maps and the information presented. She indicated that they used these maps to send their comments to the Wet Lands Bureau. Mr. Landry asked what the date is on the map, is it April 9, 2013 in the top left hand corner. John explained that the information that was presented and was used for the wetlands permit and he is satisfied with that since the wetlands permit was granted. Mr. Landry just wanted the date in the minutes for record. Mrs. Goddard explained that the map says 4-9-2013, and it is the most recent map of the area.

Attorney Gantz asked the board to consider the testimony of the abutters and people in attendance when they discuss the application. She would like the Conservation Commission's input considered and pointed out that Mr. Kuegel still has access to the property through Osgood Road until 2015. Attorney Gantz would like to know if the Bunnell's would be affected by the run off as well. She would like the board to consider denying the special exception application.

The question was asked what the setback from the driveway to the state road, and Mr. Landry responded zero. Mike explained that the question seemed to be is there a set rule that the driveway has to be 20 feet off of anyone's property line at any point and time and from the information that the board was presented the answer is no. Unless someone else has an opinion that that is incorrect, he is going to accept the surveyor's explanation. Mr. Welsh explained that he used the backhoe to fill in the area so that he could make hay. Kathy MacQuarrie brought up that there has been talk about there being more than one house being built on the property. She expressed that the abutters are all concerned, because of the testimony of the Osgood Road residents. John explained that this is known as a single residential lot, anything outside of that is against the law. Michael MacQuarrie explained that he finds it hard to believe that Mr. Kuegel didn't know it was wetlands since he has been in the business for years. There is a culvert that dumps onto his property and the water flows down and it is just going to accelerate. He is worried that the land owners will have to deal with the run off.

Donna Carter went to the Conservation Commission and asked them to if they were interested in the property. Mr. Latimer questioned the board as to what the enforcement would be if the conditions are not followed. John explained that the Selectmen are the enforcing agents for the town. John appreciates the

frustration and the board works off the conditions and as long as the applicant fulfills the sections the application should be accepted.

Joni Praded would like the board to consider the impact to the houses across the street and expressed there has already been an impact around the back side of their property. The amount of water is more and it is hard to judge what the impact will be. How much water is predicted to be coming off of the hill?

There are already issues of water flow. Sue Garneau explained that the enforcement is an issue in town.

There are a lot of details and it becomes the neighbors problems, the Selectmen were not able to help.

If this is passes there will be no way for this to be enforced. Janet MacQuarrie asked about the piece of land that is not going to meet the 20 foot barrier, if the town has that in writing. John looked through the paperwork for the exact wording.

Mr. Landry explained that the fact that the wetlands board approved the permit is the proof and it is listed on the After the Fact approval sheet. It is listed on the approval specifically and the waiver was listed that they can be less than 20 feet from the abutter's property line.

John explained that the applicant did obtain permission from Mrs. Armstrong, but it is only half the equation. Mike read the After-the-Fact Approval under number 12 to those present.

12. DES does hereby grant the waiver of Env-Wt 304.04 (a) in accordance with Env-Wt 204.04(a) as granting the request will not result in an adverse effect to the environment or natural resources of the state, public health, or public safety; or an impact on abutting property that is more significant than that which would result from complying with the rule. Furthermore, granting the request is consistent with the intent and purpose of the rule being waived. Strict compliance with the rule will provide no benefit to the public and will cause an economic hardship to the applicant.

John explained that covered both sides of the 20 foot barrier. Mr. Landry explained that they read the approval and if there was anything further. Mr. Kuegel asked the board to go back to number 10 and see that the applicant was not able to obtain written concurrence, and number 11 states that the applicant then requested the waiver and in number 12 the waiver was granted.

Sara Goodman is directly across from the access area on North Road. She expressed that there have been changes to the road and there is more water on her property now than when the house was built. She would like the board to consider that in their decision.

Kathy MacQuarrie asked the chairman what the price was for the Conservation Commission to buy Map 11 Lot 7, Joan Skewes indicated that the proposal was for a municipal complex and would the Commission be interested in putting in money for land.

The Conservation Commission felt that property was not Conservation land. That is why they were not interested. Attorney Gantz said she wanted to go over what the board said about being bound by the State approvals, John agreed within reason.

She indicated that the permitting process at the state had some misrepresentation about the lot being land locked. She would like the board to listen to the concerns voiced and that in the ordinance it states that they are to get comments from the Conservation Commission, and she believes that the application should be denied for a wide range of reasons.

Sydnee Goddard explained that when they read the letter they thought it was court ordered, but sent another letter to the state when they realized it was not. She doesn't think denying the driveway will deny access to the property; it can be accessed through wetlands in the winter and in the dry months in summer.

Ms. Praded understands that the town has stricter rules and regulations than the state. The board looked in the Zoning Ordinances where the driveway access is.

Mike explained that the Planning Board was presented with a Lot Line Adjustment and the driveway was not part of the application at that time. Mike explained the driveway cuts are for the access area at the road.

John asked if there is a rule so that you can't put impervious material at the edge of the road. Mike explained no there is not.

John asked if they can go right up to the property line with a driveway why there was permission needed to be within the 20 feet of the boundary. It was explained that is because of the wetlands only, in a regular driveway that permission is not needed.

Mr. Landry explained why they granted the waiver, was that it is environmental, part of the driveway was already intact and instead of creating more impact they approved the waiver. John explained that as far as the board can see there are no 20 foot setbacks in the town's driveway ordinance.

It was asked if there was a limitation to how long a driveway can be. John expressed that a driveway is access to the property however long.

Mr. MacQuarrie explained that the plan that he has for the Lot Line Adjustment is 66 feet and the plan he sees in the application is 70 feet plus, whose property is the driveway encroaching on. John asked what piece of property he is dealing with.

Mr. Landry asked to clear up the question. He expressed that in the deed it does not state 66 feet. As it was presented it was a Lot Line Adjustment between two people.

They did the deed off of the plan, and what the plan states is the deed. John expressed that this would be

the last comment. Mr. Welsh put work into his land to build it up to make hay, and would like it stated that he would like a condition that no water get backed up on his land and make ruts and interfere with the haying process. If you get an excessive amount of rain the culvert won't take care of it. Kathy Lenane wanted to know if there could be an exception added for there to be no shooting in the gravel pit area.

John Andreasse closed the public hearing for the board to deliberate at 9:31pm.

John has written down the conditions that were requested for the board to review.

Elliot was looking for specific issues in relation to the towns zoning that would affect this application.

Mike expressed that if the special exception is approved, when does the driveway have to be constructed by. Mr. Landry expressed that there are two separate approvals, one is the After the Fact and that has 5 years before it runs out, with the restoration approval, where they will be reclaiming he has already asked for one extension, and he can probably ask for another extension, but they are in 3 month intervals. He explained that the state indicated that the project should be done during low flow which is August, September. The Restoration Plan Approval is going to run out as of October 1, 2013. The After the Fact, by statute is good for five years, so it will expire on May 2, 2018. Mr. Landry explained that July 20, 2013 the driveway permit expired and he explained that Mr. Driver signed off on the driveway cut. When the driveway is finished Mr. Driver will come back out and inspect the site distance and the pitch. Kathy emailed the board Mr. Driver's comments that the driveway was done according to the plan and stated that Mr. Kuegel did not need to file an extension on the driveway permit. Mike explained that he wanted dates so that the other issues dealing with the pit could get finished and taken care of going out the Osgood Road access, versus having any potential of having commercial traffic going over this new driveway.

Mike wanted to discuss the conditions before a motion was entertained.

We have an existing commercial operation, which has access until April of 2015. What can the board do to limit or stop any commercial use of the driveway off of North Road? It is already in the deed and is a restriction of the Planning Board for the commercial use not to be through the Lot Line Adjustment area. Mike expressed that the Planning Board already restricted use and he believes that the Zoning Board should restrict it as well. Mike asked Mr. Kuegel what he would be using the driveway for until the commercial operation is done. He expressed that he would be using that strip of land for access to show the property that he has up for sale, he also commented that there is no excavation permit for that land so it is no longer commercial. He expressed that the bond is closed. Elliot questioned if the pit was still active and Mr. Kuegel responded that it is just a piece of land.

The board reiterated condition one from the planning board approval as well as condition two.

Sue Garneau explained that there are trucks going in and out daily still. The members in the audience explained that they want to make sure that the information that they have been told is accurate.

Elliot explained that unless the shooting is against the law then they can't put that condition on the application.

Mr. Latimer said that he would like a condition put on the exception that it only be used for a single family dwelling. They expressed that building a home there will be some commercial traffic.

Mr. Latimer asked if the waiver could be withdrawn if the conditions are violated. John expressed that they have conditions; Mike commented that it would then become an enforcement issue.

Mike made a motion to approve the Special Exception as permitted under Article 7.6a 1 for the property know as Map 11 Lot 7 off of North Road for a Single Family Driveway as permitted by the Department of Environmental Services and to contain the four conditions listed.

- 1. The additional land being added to Map 11 Lot 7, shown as Parcel A, is not to be used as access to the existing excavation/commercial enterprise until after said excavation is closed and reclaimed.**
- 2. This special exception in no way grants any new rights or extends any existing permissions of the excavation/commercial enterprise located on Map 11 Lot 7.**
- 3. For use only for a single family residential drive; per the NH State Driveway Permit.**
- 4. No ongoing commercial traffic to use this driveway.**

Elliot seconded, all in favor. Motion granted.

OLD BUSINESS:

ZBA 8-8-2013

Meeting Minutes from August 6, 2013

Elliot made a motion to accept the meeting minutes from August 6, 2013, Mike seconded, all in favor. Minutes accepted.

Meeting Minutes July 3, 2012

The board reviewed the meeting minutes of the meeting and discussed the cases that were presented.

Elliot made a motion to approve and Mike seconded, all in favor, minutes approved.

May 7th 2013 will need to be done at a later meeting.

Mike motion to adjourn at 10:00 pm, Elliot seconded, all in favor.

Respectfully Submitted,

Kathleen T Felch, Zoning Board of Adjustment Clerk