

## **TOWN OF RYE – BOARD OF ADJUSMENT**

**Thursday, July 21, 2022**

**5:00 p.m. – Rye Public Library**

***Members Present:*** Chair Shawn Crapo, Clerk Chris Piela, Jenn Madden, John Tuttle and Sandra Chororos

***Also Present on behalf of the Town:*** Planning/Zoning Administrator Kim Reed

### **I. CALL TO ORDER**

Chair Crapo called the meeting to order at 5:10 p.m. and led the pledge of allegiance.

### **II. APPLICATIONS**

Continued from the July 6, 2022 BOA meeting:

- 1. Craig & Denise Benson, Trustees, K&L Realty Trust for property owned and located at 2 Merrymeeting Lane, Tax Map 15, Lot 18,** request variances from §2.3.C(2) for a propane tank 8' from the side boundary where 20' is required; from §190-3.1.H.2(a), (b), and (g) for soffits for a house 38.7'/22.4'/16.4' and a house foundation 42.5/25.2'/16.4', a porous drive 44.5', a walkway 67', a septic tank 67', septic system 79' and landscaping from wetland where 100' is required. **Property is in the Single Residence District. Case #33a-2022.**
- 2. Craig & Denise Benson, Trustees, K&L Realty Trust for property owned and located at 2 Merrymeeting Lane, Tax Map 15, Lot 18,** request a special exception from §190-3.1.G/§190-3.1.H.2(f) for a driveway 44.5' from the wetland where 100' is required. **Property is in the Single Residence District. Case #33b-2022.**

Chair Crapo noted that at the previous meeting, the case had been continued just at the end of public comment. It was getting late in the evening, so the Board decided to wait to deliberate tonight. He pointed out that it's still a public meeting. He believes the meeting was left open for Attorney Cronin to address any last issues.

**Attorney John Cronin, representing the applicants,** explained there was some discussion in regards to the covenants and the square footage between 3200 and 3400. There was some uncertainty in that regard. He noted that it's 3200.

Chair Crapo clarified it's 3200 s.f., not including the garage.

Attorney Cronin replied the garage and basement, if there's a finished family room in the basement to the extent that's allowed. It's 3200 s.f. above the foundation for living space. He continued that they would be receptive to a condition that the house would be built to the minimum square footage allowed by the covenants.

Member Piela stated that he thought he heard at the last meeting that the applicants were not intent on building the structure. They were intent on selling the lot with the associated plans.

Attorney Cronin replied that was their thought; however, it could change. When the project first came before the Board, it was being built for the Benson's daughter. She has since found another home. Unless she changes her mind, the Benson's will probably market the property.

Member Piela stated that in the covenants it says; "Any lot purchase not built upon, shall be offered for resale to the declarant or their heirs or assignees prior to listing or sale on the open market."

Attorney Cronin replied that this wouldn't be done until there was something to sell. If the property is put on the market with the approvals to build a minimum size house, it would have a very different value. They would be premature to do it. However, the applicants will have to follow the requirements in the covenants.

Member Piela noted that the other section is regarding an architectural control committee. He asked if the plans have been reviewed or approved by the neighborhood architectural control committee.

Attorney Cronin stated that this is a facsimile of what is initially planned. Whoever comes in and buys the lot will build in accordance with the covenants. There are provisions in the covenants to protect the architecture.

Chair Crapo commented that some of those things are really not before the Board. What does come before the Board is the dimensional part of the covenants for dimensional relief consideration.

Member Piela stated that his concern, from a ZBA perspective, is that they are being asked to approve a buildable lot. They are carving out a buildable section and the lot will be sold. Some structure that could fit on that lot would go in that section. It would have to go in front of an architectural committee and could potentially be denied. They could potentially want a shed, patio and playset. This lot is so restricted. Anything beyond what is before the Board currently, would have to come back before the Board. Procedurally, he would like someone to come before the Board who was intending to buy the lot with what they wanted to build. They would then know that they couldn't put a shed or playset in without having to come back to the Board.

Chair Crapo explained that conceivably the “box” that is on the plan right now, and the dimensions to the wetlands, is the concept before the Board. What they build within that box, whether it has three tiny dormers or two larger, is not necessarily something before the Board.

Member Piela commented the architectural committee could deny it and punt it back to the Board.

Chair Crapo noted that he is not looking at the framing of the structure being tied to this. The interior of the structure is going to be determined in the future. It’s more the dimensional, setback relief and driveway. He pointed out that the minutes will reflect that they are willing to adhere to the covenants. Some of the land covenant restrictions are between the land owner and the person building. The Board has to stick to the zoning. If this case ends up going towards an approval tonight, the Board can look at conditions.

Member Piela pointed out those are his concerns and they respectfully remain concerns. The last time a case like this came before the Board, there was a potential land buyer with a defined plan. In that particular case, the variances were denied and the sale didn’t conclude. He would be much more inclined to have a conversation with a potential purchaser with a very specific build in front of them that had the approval of the architectural control committee, so everyone in the neighborhood knows what the plan is. He feels they are being asked to approve a building envelope, not a building. His concerns are more procedural than anything else at this point.

Chair Crapo stated that by the current applicant following the procedure that they did, they pigeonholed themselves to certain buyers who are willing to go with this set of rules. If the buyers want to make modifications, they are back before this Board that had already turned down one set of plans. It would be prudent for the buyer to know the history.

Member Piela pointed out that this is all wetlands, so the Conservation Commission is going to be involved. Patios, swing sets and sheds, which are all part of normal living, are things that are going to be in front of this Board. It’s a tough thing for him to get behind, knowing this particular property could be in front of the Board quite a few times. He would rather have the potential buyer before the Board to have it all done in one shot. There would be a clearly defined plan before the Board. The neighbors would know exactly what would be built next to them and how it would affect the neighborhood. The covenants are being used as the lever for the size of the structure. The architectural control committee is going to hold whoever buys this lot to do this. His concern is there will be a never-ending nebulous cycle of plans changing and it coming back to the Board. He wants to be sure they are not saying to only look at certain aspects of the covenants, such as the size of the house, and ignore other aspects like the architectural control committee.

Speaking to the applicants’ representatives, Chair Crapo asked the square footage of the footprint being requested without the garage.

**Robert Baskerville, architect**, noted that taking out the garage, the two floors, without the basement, is 3328 s.f.

Chair Crapo commented that in essence, what has been presented would satisfy the size requirement and would not put someone right back before the Board needing relief. He pointed out that the Board is only potentially approving what has been asked for.

Member Piela commented that he brought up at the last meeting “compliance with town restrictions.” In the last conversation, the idea was that if they are given a variance, it would be in compliance. He feels that the language of the covenants would suggest that it was put there to eliminate the potential of what they are seeing right now. He thinks that language was intentionally put in the covenants so that the houses that are built would not require variances. Probably back in 1988, they didn’t. If this house was built in 1988, it wouldn’t necessarily need the variances. The previous chair of the ZBA brought up the point of the risk of having an unimproved lot.

Member Chororos stated that she is not comfortable that the issues have been fully addressed with regard to the abutter who had some valid concerns. His concerns were about the sloping of the property and what the runoff could potentially do to his property. The abutter also had a concern about the propane tank being 8’ against the boundary where 20’ is required. The a/c condenser is also going to be up against the abutter’s property. The one that she really needs an answer to is what will happen to the drainage? How can the abutters be assured that their lot is not going to be wet as a result of what happens here?

Mr. Baskerville presented a plan to the Board showing the property from Google Earth. He pointed out the abutter’s home (Amos Roger) on the plan. He also pointed out the wetland boundary from 1987 and the current wetland boundary. Mr. Baskerville stated that from a grading standpoint, the road and where the two houses will be, are about the same elevation. There is not much of a slope. The Bensons’ property slopes back towards the wetland. Mr. Roger’s house is built up a bit and the property slopes towards the wetland. There’s also a wetland in between the two properties. With regard to doing any work to make any significant changes to the drainage between the two properties, it’s next to impossible. The proposal last year, included a generator on that side of the property. Mr. Rogers wanted the generator on the other side of the house. This plan just gets rid of the generator. The a/c is under the porch. He doesn’t see any material impacts that building a house in that area would have.

Attorney Cronin pointed out there’s civil law that says additional runoff to the neighboring property cannot be created by artificial improvements. He also pointed out that the corner between the house and the lot is pretty wooded and thick. That’s a real good absorber of water and runoff. The improvements being made can’t change that.

Referring to the covenants, Member Madden noted that it says “compliance with zoning restrictions in effect at the time of any construction shall be required.” She asked if this would be kicked back to the BOA if it’s approved.

Member Piela stated that if they give a variance for the building envelope, they would technically be in compliance. However, he thinks the language is in the covenants for a reason.

Member Madden asked if notification to property owners is triggered if anything changes which would impact their property; such as, a change in the wetland delineation.

Attorney Cronin explained that when a town amends its zoning ordinance, it's typically done at town meeting.

Planning/Zoning Administrator Reed explained that the Planning Board works four to six months on zoning amendments and changes. Those are posted and public meetings are held before there are actual public hearings with legal notices in three places, including the Portsmouth Herald. Plus, the amendments are on the ballot. It's up to the property owner to know what's on the ballot.

Attorney Cronin stated that he's sure the posting is done properly, but it makes no difference to the property owner. It's not like they will say that they have to get their house built before there are changes. He pointed out that even if it's not passed yet, once it is posted, it has to be complied with. There's really no fail safe for a property owner.

Administrator Reed pointed out unless it's a subdivision that has been recorded, which has five years of vesting against any zoning amendment change.

**Jaci Grote, Conservation Commission Member**, noted that this property is in the Berry's Brook aquifer protection region. There were a number of things that were done for zoning changes to protect this area.

Administrator Reed pointed out there was a two-year study of Berry's Brook before there were any zoning amendment changes, which are all on the Town of Rye's website.

Attorney Cronin stated that he has a different view of the vesting, which is part of the Bartlett analysis. He agrees that if a subdivision is recorded, prior to the rule change or posting, it's vested. However, it is not limited, in his view, to five years. He reads that once the subdivision is approved, there's two years to start active and substantial construction; building the road. If that is not done within two years, there is no vesting. If there is substantial completion of the subdivision, which means the public improvements of the road, hydrants and drainage, it's permanently vested from any zoning changes.

Chair Crapo stated if that's true, there would be twenty-five different zoning books for every different subdivision in town. He continued that the associated lots for each subdivision wouldn't forever be tied to the existing zoning at the time the subdivision was created. If the setbacks change from 25' to 30', there isn't vesting on an unbuilt lot for 25'.

Member Piela stated it would be very difficult for a ZBA member to have to say that for every development, if someone wanted to put in a house, they have to go back to whatever zoning rules were in effect at the time the subdivision was created. If he's looking at the covenants it says "compliance with any zoning restriction of the Town of Rye, N.H., in effect at the time of construction, shall be required." It doesn't say at the time the subdivision was created. It says at the time of construction for this particular lot; unless, the covenants are dissolved, which would change the perspective to talk about a different size house.

Attorney Cronin commented that's a red herring because it was heard that people didn't want a small house there. It would be more of a distraction to the neighborhood to build a 1,500 s.f. house with a one car garage. It would be a much greater impact to the neighborhood. He pointed out that zoning includes the special exception power the Board has. If a variance is granted, it's compliant with zoning. In terms of the covenants, it really doesn't matter.

Referring to the covenants, Chair Crapo stated that they use caution in trying to condition it to the adherence of that because conceivably it could change.

**Roger Amos, 37 Old Parish Road**, stated that this is obviously an investment on the part of the owner, which was made twenty-seven years ago. They had twenty-seven years to develop this property. The zoning has changed and they are subject to current zoning, which is why they are requesting variances. If the owners were aware of the neighborhood association that they purchased into, they would've known that they would be subject to whatever the current zoning was at any given time that they build. He reiterated that they had twenty-seven years to build.

Referring to the Google Map, Mr. Rogers asked if it's all to scale.

Mr. Baskerville replied that they did not scale the abutting lot; however, it's placed to scale to the best of their ability.

Mr. Rogers commented that in his opinion it's not, just given the distances. When this was first proposed, and during the winter, he could stand on his patio and see every one of the survey marks around the trees. On the original plan, the entry level of the house was somewhere between 8' and 10' off the grade of the road. He still has concerns that whatever is done will impact his property. If it is too scale, from a neighborhood perspective, the proposed home is going to be about a third of the size of his house to fit on a very tight lot. He would argue that's very inconsistent with the character of the neighborhood. He doesn't see how it would add value to the properties in that area. Lastly, he is concerned about the impact to the very small open space, as there will be no yard. The primary area of their outdoor activity will be in that space and sound travels. Also, if the air conditioner is in that area, he will hear it. He would also be very concerned about having an air conditioner underneath a porch. He's not sure how that would add to the enjoyment of using the porch.

Speaking to Chair Crapo, Attorney Cronin asked if he would ask the abutter if he feels his home creates a negative impact to the wetlands being so close to it for twenty years.

Chair Crapo commented that he elects to not relay that question. In the prior application, they talked about the proximity. He stated that in the event that this proposal goes through and new owners decide to build, they would then have to go back to the building department to apply for a building permit. Where it is in the wetlands, the building department will want a drainage/stormwater management plan. That plan will be prepared by someone with credentials that are acceptable to the building department. The rate of water leaving the property in all directions post construction, cannot be increased over what it is preconstruction. If it does end up being increased, it's a civil matter and a town enforcement matter.

Mr. Rogers commented that as he recalls the conversation from the last meeting, the obligation would fall to him to make that claim, justify it and defend it, at his expense.

Chair Crapo replied that he doesn't know and cannot speak to that. If it was too egregious, he thinks the town would assist or take the action. Where this is within the buffers, he thinks DES would get involved.

Mr. Rogers commented that he doesn't believe anyone from the town or state is going to come by and observe the property. It's going to be incumbent upon him to bring action.

Hearing no further comments, Chair Crapo closed the public session at 5:58 p.m.

Chair Crapo noted that when the Board goes to vote on the variances, each will be voted on individually. The special exception criteria for the driveway will be considered separately. He suggested to the Board that whether they are approving or denying something they should give some reasoning, particularly, if it's a denial to be sure there is sound reasoning based on zoning.

Chair Crapo summarized the variances being considered: 190-2.3.C(2), for a propane tank 8' from the side boundary where 20' is required; 190-3.1.H.2(a), (b) and (g) for soffits for a house 38.7'/22.4'/16.4'; a house foundation 42.5'/25.2'/16.4'; a porous drive 44.5', a walkway 67', a septic tank 67', septic system 79' and landscaping from wetland where 100' is required. He noted that he is going to separate the propane tank from the rest of the requested variances. He pointed out that Rye's zoning goes to the drip edge. Having the soffit versus the foundation in some ways doesn't matter because it's the outside drip edge. Separately is the 44.5' from the wetland for the driveway under the special exception.

Member Piela stated that his concerns remain that the Board is being asked to approve a pocket plan or basically a building envelope. It makes it difficult to look at the condition that values of surrounding properties are not diminished. He doesn't know what is being approved or disapproved, other than a building envelope. He commented that a building envelope is typically like a subdivision approved by the Planning Board. It's not usually a ZBA type thing. The ZBA is usually approving a clearly articulated plan, whether it's a shed or construction plans for a particular house. This is a very nebulous application.

Chair Crapo explained that if this was to get approved, it is based on what is before the Board, which is a proposed building placement. It's a little more finetuned than a building envelope. To that point, the Board can condition it to not getting any closer than the relief given. Someone building can go less but they can't go for more than what is granted. They cannot take the house and shift it around in the box. This is the concept and what would be approved. Any deviation that would make the dimensions more encroaching is not allowed without coming back to the Board for a new variance.

Referring to the proposed home, Member Madden stated that they are basing the approval on this concept.

Member Piela commented that's not necessarily correct. They are going to sell the lot with a building envelope established.

Chair Crapo explained that if the application were to be approved, the Board is not granting it to this exact set of architectural plans. However, they cannot be any closer to the wetlands, for example, than what has been represented.

Member Madden pointed out that the Board still has to decide if it's going to diminish the values.

Member Piela stated that procedurally, he would rather have seen what it is going to be and what it's going to look like.

Member Madden commented there's a likelihood that the look is going to change and it's going to come back to the Board.

Chair Crapo explained this is dimensional relief.

Member Madden pointed out its dimensional relief based on a drawing. She noted that she is basing her decision on the drawing.

Chair Crapo noted that it has not been presented that this is what's going to be done.

Member Madden replied that the dimensional approval depends on that design.

Member Piela pointed out that they could do something different that might fit in the box.

Member Madden commented that if they can, then that's great. However, what is the likelihood that they are going to make changes and stay exactly in that box?

Chair Crapo pointed out that someone may take these plans and build it.

Member Madden pointed out there is criteria that the Board can't answer.

Member Piela stated that how he's going to have to answer is "I don't know"; therefore, the answer is "no" from his point. He commented that he's not saying the lot is not a buildable lot. He's not saying he wouldn't grant variances for a home to be placed on this lot. He's saying that procedurally, he would have preferred to have seen final plans with approval by the architectural control committee. He wants all the abutters to say they are satisfied with everyone agreeing it's a good plan. That would give him the confidence to answer certain variance questions. With the current proposal, those questions remain unanswered and he can't answer them. Those questions become a "no". He can't in good conscience vote for a pocket plan, a theoretical plan.

Chair Crapo explained that what is being asked for is the dimensional relief and encroachment in the wetlands, whether it's a colonial, gambrel or cape. The Board is not the architectural police. People come to the Board to get dimensional relief. He continued that he doesn't want the Board to ever be fearful of lawsuits, as sometimes they happen. He tends to put himself in the scenario of being the judge and looks at what is reasonable. Is the project reasonable? He reiterated that the relief in this case is the encroachment.

Member Piela stated that he tries to put himself in the shoes of the abutters. If he was an abutter, he would want to know what was specifically being done, especially if a whole host of variances was needed to get something accomplished. That would allow for the ability to accurately give an opinion on the project. He continued that he is not against any element of this, except for procedurally, it seems immature at this time to approve some of these things. At this point, he feels like he is inadequately prepared to make a decision based on the application as it was presented.

Member Chororos stated she is not comfortable with understanding what their intentions are as it relates to stormwater management and wetlands. Nothing has been told to the Board about what they are going to do to mitigate. She doesn't feel comfortable making a decision, and potentially setting precedent, based on limited information about what is happening to that wetland. She has heard nothing about what is being done as it relates to the wetlands and how it's going to impact.

Chair Crapo noted those are awesome questions for when the public session was open.

Member Piela pointed out it's incumbent upon the applicant to make a presentation, not upon the Board to ask the right questions.

Member Chororos pointed out it's not in the plans.

Chair Crapo noted that they have attested that they will not be increasing waterflow off the property. They know that they have to adhere and any plan cannot increase the flow off the property.

Member Piela stated this is such a sensitive wetland area. If he was the applicant, he would be extremely obvious to the Board that every possible precaution was being taken. After witnessing the first applicant and sitting through the second, there was a noticeable difference in volume of

information presented. The first application had a significant volume of information with numerous experts offering their opinions. This presentation was much more abbreviated.

Member Chororos noted this is in the Berry's Brook Watershed, which is a protection priority for Rye. It's really hard to get behind this without understanding what exactly it's going to be.

Chair Crapo asked the Board if they want to continue the application for more information in the presentation; otherwise, the Board has to come to a vote.

Member Piela commented that he would be okay with continuing; otherwise, just take a vote.

Attorney Cronin stated that he hears the concerns of the Board relative to information. It's not realistic for someone to spend \$50,000 for architectural plans, not knowing who is going to buy the house. He continued they might be able to say that they'll go with that plan. They might be able to get an outside elevation to show what it's going to look like. He thinks people have concerns about what it's going to look like. He continued that it was thirty days ago that they incorporated the prior information by reference. The meeting went to 11:00 p.m. and a thorough presentation was made making reference to some of the old material. He believes the Board walked the property and the Conservation Commission walked the property. There's also a drainage plan that was submitted. He can see that some people are straining over what it's going to look like. Personally, he doesn't think that's the Board's job. Specific relief is being requested. Regardless of what the house looks like, the drip edge and the proximity to the wetlands is what is being asked for relief. If there wasn't a wetland issue, the owners could build whatever they wanted in compliance with the building code. He's willing to continue or suspend the application to get an architect to draw something for the outside to get it approved. He doesn't think they can do interior floor plans because whoever is going to live there will likely want to make some modifications.

Chair Crapo reopened the public session. He explained that if they are going to have a continued hearing with further presentation, the public will be able to comment then. For tonight, it looks like the application is going to be continued so it can come back with another presentation. He suggested that the Board send the applicant away with a list of what they are going to want to see. He commented that he thinks it would be a disservice to the applicants already on the agenda to continue this to August 3<sup>rd</sup>. Also, he will not be present at that meeting. He suggested they do something after August 10<sup>th</sup>. He noted there are three board members who did not formally attend a site walk. He asked if it would make sense to plan another site walk more specific to this proposal.

Member Piela stated that he would like to see the neighbors form an architectural control committee, if they choose to, and have some type of signoff on what is to be built. The covenant says that if the committee doesn't approve anything within sixty days, it shall be deemed as complied with. Given this is new construction on this lot, and this wording is in the covenants, he would suggest that the neighborhood have the opportunity to have a say.

Chair Crapo pointed out that the Board doesn't make the neighborhood come in on every other property.

Member Piela noted that not all have protective covenants. There are certain things that were written in the covenants to add additional protections to the neighborhood. If they choose to ignore it, that's fine.

Referring to the variance criteria, Member Piela stated that numbers 5 and 7 are clear. There are special conditions of the property that distinguish it from other properties in the area? He thinks that is very clear and well documented. He thinks the proposed use is a reasonable one. A residential house is a reasonable use for that property. The ones that he still has trouble with are: The variances are not contrary to the public interest. He would love to see a presentation that would satisfy the protection of the wetlands, especially given its sensitivity. Any evidence the applicant can provide to the Board that would give him a "warm and fuzzy" feeling around that particular point would be appreciated.

Member Madden suggested addressing the location of the HVAC because of the noise.

Chair Crapo noted that if it's on the other side it's more in the wetland buffer.

Member Madden commented that she would also like the abutter's concerns addressed in a conditional way about the burden of the aftereffects falling on them.

Chair Crapo pointed out that happens for everyone.

Member Piela stated that maybe there needs to be additional information presented regarding water drainage runoff because the abutter's concerns have been noted and are legitimate concerns. Member Madden's point is that the abutter's only recourse is litigation and it's a big ask.

Chair Crapo stated that the Board has the ability to have a peer review. Zoning Administrator Reed can put the proposal out to the town's engineers for them to review and write a report.

Member Piela commented that he wouldn't be opposed to that idea.

Chair Crapo asked Administrator Reed to explain the procedure.

Administrator Reed explained that at the applicant's expense, the Zoning Board has the right to have the town engineer review the plans. They would review the plans from an engineering standpoint. They would look at the wetlands and the proximity. They would look at the driveway. They would look at the town's zoning ordinance and give feedback and concerns that they see.

**Ellen Arnold, 4 Merrymeeting Lane**, asked if there would be sufficient expertise using the town engineer to really evaluate the impact on the wetlands. Impact on the wetlands is more broadly one of the issues that is considered for a variance in the buffer. She would want to be sure that the evaluation would also include an evaluation to the impact to the wetlands.

Administrator Reed explained this would be different from the town engineer. The Planning Board has two wetland soil scientists that they use. At the applicant's expense, the Board can ask for a peer review on the wetlands from a soil scientist and an engineer review by the town's engineer.

Chair Crapo clarified for the public that it's not someone who works for the town that just happens to be an engineer. It's a fully licensed engineer and soil scientist.

Administrator Reed further explained that the public cannot just reach out to the experts, as they work for the town. She would work with this applicant to get all the information, if the Board wants to hire both the town engineer and a soil scientist. She would be the conduit between the peer reviewers and the applicant. The data would then be presented to the ZBA and the applicant.

Member Piela stated that given the sensitivity of this wetland, he would suggest doing both peer reviews.

Attorney Cronin requested permission for the experts to go onto abutter's properties to flag the wetlands.

Chair Crapo agreed this would be a valid request. Speaking to the Board, he asked if they would like to have a review by a peer engineer and/or peer soil scientist.

**The Board was in full agreement to have a review by both an engineer and soil scientist.**

Administrator Reed agreed to reach out to the town's engineer and soil scientist to start the process. She recommended a continuance to at least October, in order to have the work completed.

Speaking to the abutters, Chair Crapo asked about access to their properties. The abutters did not have any issues with allowing access to the experts.

Attorney Cronin commented that it goes without saying that these would be experts who would be nonbiased, not someone who has an affiliation with the Conservation Commission. In some towns, they get three quotes to be sure that the price is tested.

Administrator Reed explained these are firms that have contracts with the town. This is not something that is sent out to bid.

Member Madden stated that she wants to go back to the criteria to be sure there is nothing else they need to do. If the Board needs to answer diminished values, is there anything else they need to bring to the Board?

Member Piela noted that the covenant has a term called an architectural control committee that is supposed to approve the plans prior to anything being built. He is sure that the committee is long dissolved. He would say if the neighborhood chose to reinstitute a committee, or the applicant at least says that he has given the renderings to the neighborhood and they are all in agreement, that this would be fine.

Member Madden clarified there are two things; the covenants and the criteria. She asked if there is anything else that is needed to answer the questions.

Member Chororos asked if they would want elevations.

Chair Crapo explained that this is still a conceptual house. The relief being requested is for the encroachment.

Member Piela clarified that he is not demanding that the neighborhood form an architectural control committee. It's up to them to choose to do it or not. Having abutter approval, even in lieu of a formal architectural control committee, would be fine.

Mr. Rogers clarified that the Board is not approving the architectural design. If the abutters have an architectural control committee, what would they review?

Member Piela replied that it would be up to the applicant to provide something to be reviewed.

Mr. Rogers asked if the approval would require that house to be built.

Member Piela replied it could.

Mr. Rogers asked if the approval could encompass a certain architectural design that can only be built, unless they come back to the Board.

Member Piela confirmed. He noted that on occasion the approval may say "as presented".

Chair Crapo noted that the Careys have moved away. He's not sure if they appointed any successors or not. In reading the covenants, it says that everything that has changed on the property is supposed to have gone before that committee. He's sure there have been a lot of changes that haven't gone before that committee. To the extent that this committee exists, the sentiment is that it would be nice to have some input from the committee saying that they reviewed the proposal and their thoughts. He doesn't think the Board can say legally that if they don't get that they can't get a variance. He reiterated that it would be nice to have and the applicant has heard that thought.

Chair Crapo continued that at the last meeting he made notes in case the application moved to a vote that night on possible conditions: driveway and walkways to be maintained to retain pervious nature; covenants (?); and driveway permit. He pointed out the location of the driveway had not yet been before public works to be approved.

Member Piela asked if the driveway permit is something the applicants can do in parallel with these other tasks.

Administrator Reed explained that if the driveway permit is denied by public works, the applicants have to go to the Planning Board.

Member Piela commented that maybe this is something that can be done in parallel, so everything is done in October.

**Suzanne McFarland, Conservation Commission Chair**, pointed out that if the plan changes, technically it would have to go back before the Conservation Commission. The last time they changed the layout of the driveway, which was a substantial change.

Referring to the idea of another site walk, Chair Crapo stated that he thinks it would make sense. Given everyone's level of understanding, it would make sense for one of the applicants' representatives to walk the Board through the site. It was very helpful last time and the new members would benefit.

Mr. Baskerville confirmed that the lot is staked and no changes are anticipated to the plans.

There was discussion about when a site walk could be scheduled. It was agreed to schedule a site walk for Tuesday, August 23<sup>rd</sup>, 5:00 p.m.

It was agreed by the full board to hire both a soil scientist and engineer. If the engineers need a drainage study for their analysis, a stormwater management plan will be required.

**Motion by Shawn Crapo to hold a site walk for 2 Merrymeeting Lane on August 23<sup>rd</sup> and to continue the application to the Board of Adjustment meeting on October 5, 2022. Seconded by Chris Piela. All in favor.**

### **Adjournment**

**Motion by Chris Piela to adjourn at 7:02 p.m. Seconded by John Tuttle. All in favor.**

Respectfully Submitted,  
Dyana F. Ledger