

**TOWN OF RYE – BOARD OF ADJUSMENT  
SITE WALK**

**Tuesday, August 23, 2022 – 5:00 p.m.  
2 Merry Meeting Lane**

***Members Present:*** Chair Shawn Crapo, Chris Piela, and John Tuttle

***Present on behalf of the Town:*** Planning/Zoning Administrator Kim Reed and Steve Harding, Sebago Technics: ***Rye Conservation Commission Members:*** Suzanne McFarland, Susan Shepcaro and Karen Oliver

***Present on behalf of the Applicant:*** Robert Baskerville, Bedford Design Consultants; Jim Gove, Gove Environmental; Robert Roseen, Waterstone Engineering; and Robbi Woodburn, Woodburn & Company Landscape Architecture

***Present from the Public:*** Roger and Catherine Amos, 37 Old Parish Road and Ellen Arnold, 4 Merry Meeting Lane

**I. CALL TO ORDER**

Chair Crapo called the site walk to order at 5:06 p.m. at the property located at 2 Merry Meeting Lane.

- 1. Craig & Denise Benson, Trustees, K&L Realty Trust for property 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.**

**Robert Baskerville, Bedford Design Consultants,** led the group on the site walk by walking the parameters of the property. He led the group onto the property by following the stakes marking the edge of clearing. He pointed out the location of the proposed driveway.

Chair Crapo asked if the edge of clearing is also the edge of work.

Mr. Baskerville replied that the intention is for the stake, with the yellow ribbon, to be edge of cut. However, Robbi Woodburn feels it may be too tight, so they will talk to her about that later in the site walk. Mr. Baskerville pointed out the stake marking the edge of the side of the garage. He noted there is very little space between the edge of clearing and the side of the garage.

Chair Crapo asked if the flags and markings from previous site walks have been removed.

Mr. Baskerville confirmed. He noted that the trees marked with green ribbons are trees that are to be removed that are over 4.5" in diameter. He continued walking to a stake marking the edge of clearing. He pointed out the location of the edge of the garage. He noted that it will be flat in this area and no grade to the wetlands, so there will be no filling or cutting. He also showed the stake marked by Jim Gove representing the line between upland and wetland. He noted that it will be kept flat up to the line, then it goes down and back up again. There is another area of upland beyond.

**Suzanne McFarland, RCC Member**, asked how many feet the project is from the edge of cut to the actual wetlands.

Mr. Baskerville noted that the plan shows 18.8' to the foundation. It's about 7' to the edge of clearing from wetlands.

**Robbi Woodburn, landscape architect**, explained that the last plan had a fairly significant proposed buffer of plantings added to the edge of the area of cut. As Mr. Baskerville has brought the tree line as tight as possible, it becomes a question of whether stuff is going to be taken out to put stuff in. She noted that if the edge of construction is going to be kept the way it is in relation to the house, she will lighten up the plan so they can dot things in between the trees. She pointed out that the landscaping plan is not done yet because she wanted to hear the comments from this site walk. She reiterated that she is going to adjust the plan to get some screening while lightening it up to come in and out of the existing vegetation.

Mr. Baskerville led the group through the area that would be the backyard. He stopped at the location of the building that takes a jog where the garage comes into the main house. The grade at the back of the house is only 9" above the wetland flag, so it will be very, very level so there will be no erosion.

Chair Crapo asked if the house is square to the street or at an angle.

Mr. Baskerville replied that the house has jogs; however, it's pretty much level with the street and front setback, straight across.

**Susan Shepcaro, RCC Member**, asked if fill will be needed to get the property to the proposed grade.

Mr. Baskerville explained they are going to have to dig out for a foundation. By the time they are done moving equipment around for the project, everything between here and the edge of cut will probably be all “chewed up”. He continued that fill isn’t needed, as it will be really level. It will be important for the landscaper to put in just a tad of a slope so it will go downhill just a bit.

Ms. Shepcaro clarified that it’s not going to take fill to get it to elevation.

Mr. Baskerville replied no. He continued that the lot slopes gently down from the road. The first floor is going to be up a bit because it has to drain down to a septic in the front. Since that’s the case, there will be a walkout in back down 9’ from the first-floor elevation. The basement is unfinished just for mechanicals. The bottom of the basement will be right at grade. There will be no need for fill.

Chair Crapo stated that he is standing right in the middle of where the house would be. There are not a lot of huge trees right next to him. Just beyond the stakes, there are large trees. He asked how the tall mature trees are going to be affected. He doesn’t want to see an application two years from now, that because the house is in the middle, the trees on the backside need to be taken down for safety.

Ms. Baskerville stated that when he’s worried about a blowdown is when people build a house and leave one tree in the middle, because it will have no protection at all. Beyond the stake, nothing is being cut, so there is a wall of trees. There will not be a single tree standing. Trees are not being isolated.

**Robert Roseen, Waterstone Engineering**, explained the concern is usually the edge effect, which is used in forestry. This means an area is cleared and a line of trees is exposed to winds that don’t have side branches as buffer. If the whole area was cleared to the edge, it would create edge effect for the trees. However, a lot of the front trees are being retained in a lot of places, so it’s eliminating most of that edge effect. He continued there’s a larger mature forest on the other side, so there’s not an open area for the wind to travel across. The edge effect is really limited to larger areas.

Member Piela clarified the edge effect is not applicable for a future homeowner to say that they want to take out an extra clump of trees in the back.

Mr. Roseen confirmed.

Ms. Woodburn pointed out that the prevailing winds are from the northwest and there is protection from that area.

**Cathleen Rogers, 37 Old Parish Road**, expressed her concerns about the future owner cutting down trees to make a bigger backyard. She also expressed concerns about the proposal changing the look of the neighborhood, as none of the houses have garages facing the street, nor are they tucked onto the lots with no yards.

Mr. Baskerville noted that a year ago, there was a proposal for a larger house. The driveway didn't face the street, it faced the side. At the time, the comments were to save the trees. With this proposal, there has been a maximum effort to keep it small and save the trees.

Ms. McFarland stated that the Conservation Commission has been against this project from the beginning because it's just too close to the wetlands. If the development happened 15 years ago, it might have been a different story. This project is in the wetlands buffer. The Town has the wetland buffer for a reason and its citizens voted on it to be 100' in the Berry's Brook Watershed. Taking trees out will affect the other trees. It might not be a blowdown, but it does affect the land.

Chair Crapo noted that warrant articles are voted on by the Town. There are also the laws statewide that say someone can satisfy certain criteria and get a variance. They are at the site walk today so board members, and people who want to comment at the subsequent hearing, have the first-hand observation to give them some enlightenment. The merits of the case are not going to be solved at this site walk.

The group continued on the site walk to review the edge of the wetlands and edge of cut through the property. They also reviewed the staked corners of the house.

Referring to the stake marking the corner of the house, Chair Crapo asked if the deck is within the staked area.

Ms. Woodburn noted that the deck is up on the first-floor level. It's not on the ground.

Chair Crapo noted that this area is the closest to the abutters (Rogers). One of their concerns was the enjoyment of the deck may result in lack of enjoyment of their property. He asked the proximity and what the buffer might be.

Mr. Baskerville noted that the deck goes out a few feet; however, not towards the abutters. The deck will have an a/c unit underneath. The deck will be up at the first-floor level of the house.

**Amos Rogers, 37 Old Parish Road,** expressed his concerns about the area becoming open space and the noise level.

Mr. Baskerville explained that every lot has a front, rear and side setbacks. Homes can be built within the setbacks. The distance from the wetlands is what they are looking for. There is no variance being requested for the side setback.

Mr. Rogers commented that because of the wetlands and building in the buffer, the house is being pushed to the limit in the corner. It puts it much closer to his house.

Mr. Baskerville replied that a person could build there if there were no wetlands.

Mr. Rogers stated they probably would not because they would site the house in the middle of the lot. It's a direct result of the reason for the variance. The house is being pushed into the farthest corner to alleviate the wetlands; however, it has repercussions for the abutters.

**Karen Oliver, RCC Member**, asked how far the corner of the house is to the edge of clearing stake.

Member Piela noted that they are standing in the location of the deepest part of the backyard.

Mr. Baskerville replied that it's 42.5' from the foundation to the wetland flag. To the edge of clearing stake is probably 15'. He pointed out that the ground is level in this area.

The site walk continued to the stakes marking the front of the house. Mr. Baskerville pointed out the stake showing the edge of clearing and the stake marking edge of lot.

Mr. Rogers asked the first-floor elevation at the front of the house from where they are standing.

Mr. Baskerville replied the street is at 498 and the house is at 504. The top of the septic field is below that.

Ms. Shepcaro asked how much fill is going to be brought in to raise the front.

Mr. Baskerville replied it will basically be at grade. The leaf litter will be taken off with the sand put down. There will be loam and fill on top of the leach field. It's only 1'.

Ms. Shepcaro asked how they will get up to the first level of the house without putting in fill.

Mr. Baskerville explained the house will have a basement, so there will be some digging down into the ground. If anything, there will be extra material.

Mr. Rogers asked how the lot goes from the front yard level to the back.

Mr. Baskerville explained there's a concrete wall that comes out from the foundation for the deck. The lot will level down against the side of the foundation. He further explained the top of the mound of the leach field is at 502. The bottom of the mound is at 498. The first-floor elevation is about 505. The top of mound is 3' lower. He also explained that the top of the leach field will be all grass. There will be no runoff from the house because there will be drip edge filtration all around the edge of the house. All of the calculations show that the water post-construction will be less than it is now.

Chair Crapo asked if a leach field can be done with more natural covering. He pointed out that with the trees, it's not going to grow.

Mr. Baskerville explained that the State wants to see loan and seed to mitigate erosion. He's been to lots where it's turned to leaf litter and it still functions.

Mr. Rogers pointed out the area on the lot where it gets very wet for 9 months of the year. He pointed out that the buffer goes right up to where his lawn starts. He asked what his remedy would be if there is a detrimental impact to his property.

Mr. Baskerville noted that this condition is the same as anyone in town. A neighbor could do something that could cause damage to the abutting property. He pointed out that he cannot see how any water would flow uphill to affect Mr. Rogers' property.

Mr. Roseen stated that he's an expert in green infrastructure, low impact development and water quality protection. He does a lot of this work for the state, federal and other municipalities. He continued that stormwater management has a very big impact to communities, waterways and abutters. One of the things that has been seen, for a good period of time, is the use of low-impact development. The idea with low-impact development is to try to balance the water budget on a site, so the site functions before and after development in much the same way. He stated this is a really good project for water quality and stormwater management. With this project, there will be drip edge infiltration. The runoff will drop down into a stone infiltration trench around the foundation. This puts the water back into the ground in the same manner it would if the house was not there. The driveway itself is a permeable pavement, as are the walkways. He noted that there's generally a condition of approval for the permeable pavement and walkways to be maintained, with an inspection schedule, to be sure the systems function long-term. That goes to water quantity and the amount of runoff. There will be a really big difference in the water quality too. They are going to have permeable pavement which will reduce the amount of salt usage. There are a lot of benefits to this project.

Mrs. Rogers asked who is responsible for doing the inspections to make sure the systems are working.

Mr. Roseen explained that typically, an annual inspection is required. It's a self-reporting system with records being kept up to five years. If there are any concerns, the records would be called upon. Sometimes, there's a similar piece that on a five-year basis, the information would be submitted to the town. In a lot of cases, inspections are submitted yearly.

Member Piela asked if a project like this trumps a buffer.

Mr. Roseen replied not necessarily, it depends on the measure. From a hydrological standpoint, sometimes it can be better than a buffer; however, not for habitat. He pointed out that he heard Mr. Baskerville say that the flows off this property are less than they would be pre-development. This is not uncommon with good designed infiltration systems.

It was noted that Rye is an MS-4 community. Mr. Roseen pointed out that there's annual reporting required for MS-4. This is the new era of stormwater management with stricter

regulations. He explained that MS-4 is the new federal stormwater permits. Every five years the level of protections are increased. The stormwater requirements for the federal permits require inspections and reporting. These added layers of protection are being seen more and more for new developments. It's one thing to design and build them, it's another thing to make sure it functions long term. The only way to get the long-term functionality is through the inspection.

Chair Crapo commented that the storm drain in the front of this property is likely on the MS-4 list.

Mr. Roseen agreed.

There was some discussion about how the reporting is enforced through the town.

Mrs. Rogers asked if the removal of large trees from a site gets taken into account when they are looking at stormwater. She would assume that a lot of water gets absorbed in the trees.

Mr. Roseen replied that it is considered. When converting a site, there are different runoff characteristics based on what the cover is. A lawn is not going to manage runoff anywhere near a healthy forested system. That consideration is taken into account. The total water budget for the site is looked at. It's not uncommon to see that more water is being captured in a post-development condition than a pre-development condition.

Chair Crapo explained that post-development, the runoff leaving the property cannot be increased. At last month's meeting, there was a vote to take a step to engage a peer review by the town's engineers. Not every lot gets that, but there was enough concern here that warranted it.

The group walked towards the front of the lot. Mr. Baskerville pointed out the location of the front door. The group reviewed the stakes marking the front of the house. They also reviewed the porch location and the area for useable lawn space. The group walked back out to the street to finish the site walk.

**Motion by Chris Piela to adjourn the site walk at 6:28 p.m. Seconded by John Tuttle. All in favor.**

Respectfully Submitted, Dyana F Ledger