

# BOARD OF ADJUSTMENT

## -Rye, New Hampshire-

### NOTICE OF DECISION

- Applicant/Owner:** Craig & Denise Benson, Trustees, K&L Realty Trust
- Property:** 0 Merrymeeting Lane, Tax Map 15, Lot 18  
Property is in the Single Residence and Wetlands Conservation Districts
- Application case:** Case #45-2020
- Date of decision:** February 3, 2021
- Decision:** The Board voted 2-3 to approve, and therefore denied, the special exception pursuant to the following sections of the Rye Zoning Ordinance:
- §190.3.1H.2(f) and §190.3.1.G(2) for a driveway in the wetlands buffer.
- The Board voted 2-3 to approve, and therefore denied, variances from the following sections of the Rye Zoning Ordinance:
- §190-3.1 H.2(a),(b),and (g) for a new house with an eave 14.1', a wall 17', a septic system 66' and a pervious driveway 15' from the wetlands; and
  - §190-3.1 H.2 (e) for cutting trees greater than 4.5" in diameter within the wetland buffer.
- The Board voted 2-3 to approve, and therefore denied, relief from the following section of the Rye Building Code:
- §35-14 B(2): D (1) for a septic system 66' from the wetlands.

The reasons the special exception, building code relief and variances were denied include:

1. The proposed project is located entirely within the wetland buffer. The home was to be 14' from the wetland, the generator 2' from the wetland, the septic system 66' from the wetland and the driveway 15' from the wetland where a 100' buffer is required. Even with the proposed mitigation, the project will have an adverse impact on the wetland/wetland buffer.
2. The project requires cutting of 93 trees greater than 4.5" in diameter at 4' high located in the wetlands buffer. The loss of

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transpiration activity from these trees will have a negative effect on the wetland/wetland buffer. It was not clearly demonstrated that the plantings as shown on the proposed landscaping plan would offset this loss.

3. While this lot may have been buildable at the time it was purchased, regulatory and environmental changes now place the entire lot within the protected wetland buffer.
4. The subject parcel is located in the Berry Brook Watershed, a watershed deemed important for its ecosystems, hydrology, wildlife, beauty and flood control properties. The watershed has been given additional protections due to its value and the threats it faces due to development and pollutants. Allowing the project to be built in the Berry Brook Watershed would be contrary to and impair such objectives.
5. The subject parcel is located in an area identified for priority flood storage and pollution attenuation. Allowing the land to be developed as proposed is contrary to and impair such uses, particularly in light of anticipated water management issues related to climate change.
6. While the two types of wetlands on the property may have different functions and values, the Zoning Ordinance does not distinguish between the two nor cause one to be less deserving of protection.
7. The two wetlands on the property are hydrologically connected. Impacts to the wetland 14' from the proposed house could result in impacts to the higher quality and higher functioning wetland further from the project.
8. The proposed home is of a size (footprint of 3538 sf and living space of 4910 sf) that its construction and use will have too great an impact upon the wetlands buffer.
9. The Zoning Ordinance now requires buildable lots to have a minimum of 44,000 sf of upland soils, 30,000 sf of which shall be contiguous. While the subject lot is grandfathered from this restriction, the fact that the lot does not meet this criteria is further support that the lot is not suitable for building.

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10. The harm to the public- the negative impact to the wetlands buffer -outweighs the injury to the landowner in not being able to build the project on this lot.
11. Granting the requested variances and other relief for the proposed home, septic system and driveway is contrary to the public interest and is inconsistent with the spirit and the intent of the Zoning Ordinance. Granting the variances would unduly and to a marked degree conflict with the Ordinance such that it would violate the Ordinance's basis zoning objectives with regard to wetland protections.
12. The proposed project and its impacts do not promote the health and general welfare of the community.
13. The proposed project and its impacts do not assure proper use of natural resources.
14. The proposed project constitutes an unreasonable use of the property.
15. Enforcement of the Zoning Ordinance does not result in unnecessary hardship to the property owner.
16. While denial of the requested relief precludes construction of the proposed project, it does not preclude other productive and passive uses of the land.
17. Enforcement of the building code and not allowing a septic system 66' from the wetland does not constitute manifest injustice nor is contrary to the spirit and purpose of the building code or the public interest.
18. A driveway 15' from the wetland is injurious and detrimental to the neighborhood and is in disharmony with the general purpose and intent of the Zoning Ordinance and the rules contained therein.



**Patricia Weathersby, Chairman**

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