

**BOARD OF ADJUSTMENT
Rye, New Hampshire
Meeting of October 13, 2010
Rye Town Hall
6:30 p.m.**

Members: Chairman Frank Drake, Vice-Chair Ben King, Clerk Jay Nadeau, Patricia Weathersby and Shawn Crapo.

Others Present: Susan Labrie Building Inspector

I. Call to Order and Pledge of Allegiance

Chairman Drake called the meeting to order at 6:30 p.m. and led the Pledge of Allegiance.

II. Continued Applications:

- 1) Carl and Mary Kammerer, for property owned and located at 35 Alehson Street, Map 16, Lot 59, requests a Special Exception under Article V, Section 506 for an accessory apartment. (*Application is revised*). Property is located in the Single Residence District. **Case # 21-2010.****

Mary “Molly” Kammerer, Applicant spoke to the Board. She presented the revised plan. The plan was revised to accommodate the changes requested by the Board.

The total square footage of the apartment is 868-sf, which is below the 1,200-sf allowance for an accessory apartment. The unit will have a maximum of three persons, two being greater than eighteen years of age, and there will be two additional off street parking spaces. The accessory apartment will be constructed to maintain the appearance and manner of a single family dwelling. The accessory apartment cannot be seen from the front. The principle dwelling units on the premise shall comply with the floor area. The dwelling cannot exceed 15% coverage and the proposed structure and existing dwelling is not more than 4%. The property owner resides on the premises and there is an approved septic system design for the apartment. The submittal included the parking plan, floor plan of all existing rooms, acknowledgment of Fire Inspector’s Approval and front elevation.

Member Crapo asked if the proposed septic was shown.

Mrs. Kammerer explained that once the plan is approved the septic will be replaced if needed.

Chairman Drake asked for comments or questions from the public. Hearing none he closed the Public Hearing.

The Members agreed that they were in favor of the plan and appreciated all of Ms. Kemmerer’s efforts to revise the plans to something they all are comfortable with.

Chairman Drake summarized the criteria for a Special Exception, under *Article V, Section 506*, for an accessory apartment. He asked the Board if they were in favor of granting a Special Exception:

- **Ben King – Yes, Jay Nadeau – Yes, Shawn Crapo – Yes, Patricia Weathersby – Yes, Frank Drake – Yes.**

Motion by Ben King to grant the application of Carl and Mary Kammerer for a Special Exception, under Article V, Section 506, of the Rye Zoning Ordinance, for an accessory apartment pursuant to the plans submitted with the application. Seconded by Shawn Crapo. All in favor.

- 2) **William Hanson, for property owned and located at 895 Ocean Boulevard, Tax Map 20.2, Lot 77** requests variances to the terms of Articles II, III, and VI, Sections 204.3(B), 202.5, 304.4, 603.1, 603.2 of the ***Rye Zoning Ordinance*** to permit the demo and rebuild of a house, and a new septic system, and Articles 7.9.2.5, 7.9.4.2, and 7.9.6.1 of the ***Rye Building Code*** to construct a new septic system and house based on a septic design that does not meet town new construction standards. Property is located in the General Residence, Coastal Overlay District. ***Case # 30-2010***
- Dwelling:** Article II, Section 204.3(B) to allow the house to be 16-ft from the right side setback where 20-ft is required; 16.4-ft into the left side setback where 20-ft is required; Article III, Section 304.4 to allow the house to be 30-ft high where 28-ft is the limit.
 - Deck:** Article II, Section 204.3 (B) to allow the deck to be 16.3-ft to the left setback where 20-ft is required, Article II, Section 204.3(C) to allow 20-ft in the front yard setback where 30-ft is required.
 - Patio:** Article II, Section 204.3(B) to allow the patio to be constructed 6-ft from the front property line where 30-ft is required; 10-ft from the right side property line where 20-ft is required; 19.5-ft from the left property line where 20-ft is required. The patio will be flush with the grade.
 - Septic:** Article II, Section 202.5 to permit the septic system to be 10-ft from the side property line where 20-ft is required, and relief from the following Articles from the ***Rye Building Code***: Article 7.9.2.5 to permit the system to be 10-ft to the side property line where 20-ft is required, Article 7.9.4.2 to permit the septic system to be designed on two test pits that have the estimated seasonal high water table at less than the minimum required 25", and Article 7.9.6.1 to allow the reconstruction of a house based on a septic design that does not meet new construction standards.

Tim Phoenix, Hoefle, Phoenix, Gormley & Roberts, P.A., addressed the Board. He introduced **Eric Weinrieb, Altus Engineering, Portsmouth, NH** and **Ralf Amsden, Living Spaces, Rye, NH**. He submitted a colored plan to the Board and a photo shop of the street scape which included the proposed house. He presented the proposal.

Eric Weinrieb, Altus Engineering, explained the septic and grading. He considered that all paving blocks and materials typically calculated as "permeable" were calculated as "impermeable" to present the worst case. His design accommodates all increases of potential runoff.

Ralf Amsden, Living Spaces, read the architect narrative from the Board's package.

Attorney Phoenix summarized that this is a simple and straight forward project. There is a typographical error in the Notice; "*16-ft from the right setback, where 20-ft is required*" is actually **14-ft** because of the

roof overhang. The 'bump out' on the plan is a zero clearance gas fireplace. There are two letters from abutters in support of the project. He continued to review the requirements of the ordinance in regards to the proposal and the conditions for a variance.

Member Nadeau stated that the Shoreland Impact Permit that was issued stated that "*no more than 24.44% of the lot shall be impervious*". He stated Mr. Weinrieb calculations show it would be a 35% impervious when it is redeveloped.

Attorney Phoenix explained that Mr. Weinrieb calculated what the state considers impervious as pervious; therefore their numbers would not match. Mr. Wienrieb was conservative.

There was more discussion on the coverage and how the State and Mr. Weinreib differed in their definitions of "pervious". The impacts and design challenges of the septic system was discussed and how it dictated the overall height of the structure. The overall height is lower than the adjacent house. The drainage plan shows how the lot will still receive runoff from other properties and direct it around the house and into the right of way and towards a catch basin in Ocean Boulevard.

Chairman Drake opened to the public for questions and comments.

Dave Hilliam, 18 Shoal View Drive, spoke on concerns of drainage. His property gets flooded out routinely and does not want this project to impact his drainage anymore.

Linda and Nick Toumpas, 10 Bass Drive, spoke in support of the proposal.

Jim Banjas, 16 Shoals View Drive, spoke in support of the proposal.

Hearing no further comments or questions, Chairman Drake closed the Public Hearing and asked for comments from the Board.

Vice-Chair King stated that this is a very thoughtful solution. The Applicant confronts a variety of problems with respect to the septic system and the fact that this lot receives a lot of runoff from adjacent properties because it is lower than the adjoining lots. He thinks that the solution proposed is a very tasteful and creative design. They have worked very well with the constraints and tried to minimize the relief that is being sought. He does not see how the relief that they are seeking would negatively impact any abutter. The solution of the proposal would be an improvement and enhance surrounding property values. He supports the proposal.

Member Weathersby agreed. She continued that she would like to compliment the Applicant in the thoughtfulness of the design and not try to make it too big. They really made attempts not to 'bulk up' the property.

Member Crapo stated that his main thought was on the height. He feels a reasonable effort has been done to keep the height as low as possible. The home will stick out a little more.

Member Weathersby stated that she was concerned with the three levels. In this case the alternative is giving them a one story house and this would not give them enough space for a modern home.

Member Nadeau stated that his problem is the height. He is always concerned about the height if it is over 28-ft. The plans show a lot of massing going on. He does not know how he feels about it. He feels there is a lot going on and does not want to make a mistake. He is also concerned about the condos in the back. However, he does agree that it is thoughtfully put together and recognizes the challenges.

Chairman Drake stated that they will vote on everything as a 'bundle'. He called for a vote to Articles II, III, and VI, Sections 204.3(B), 202.5, 304.4, 603.1, 603.2 of the **Rye Zoning Ordinance** to permit the demo and rebuild of a house, and a new septic system:

1. Could the variances be granted without diminishing the value of surrounding properties?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

2. Would granting the appeal not be contrary to the public interest?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

3. Would granting the permit do substantial justice?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

4. Could the variances be granted without violating the spirit of the ordinance?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

5. There is no fair and substantial relationship between the general public purposes of the ordinance provisions and the specific application of those provisions to the property?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes

Frank Drake – Yes

6. The proposed use is a reasonable one?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

7. Are there special conditions of the property that distinguish it from other properties in the area?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

8. Therefore, literal enforcement of the ordinance would result in unnecessary hardship?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

Motion by Ben King to grant the application of William Hanson for variance relief with affect to the property located 895 Ocean Boulevard, as advertised; with the exception that the relief requested from Article II, Section 204.3 (B), of the Rye Zoning Ordinance, is granted to allow the right side setback to be 14 feet where 20 feet is required. Seconded Shawn Crapo. All in favor.

Chairman Drake called for a vote for relief from *Articles 7.9.2.5, 7.9.4.2, and 7.9.6.1* of the ***Rye Building Code*** to construct a new septic system and house based on a septic design that does not meet town new construction standards:

- **Does this Board find that manifest justice would be done, the intent of the liability of the septic would not be compromised and the public health would not be endangered?**

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

Motion by Ben King to grant relief from Articles 7.9.2.5, 7.9.4.2 and 7.9.6.1 of the Rye Building Code, to permit the Applicant, William Hanson, to construct a new septic system and house at property located at 895 Ocean Boulevard; based on a septic design that does not meet Town new construction standards. Seconded by Shawn Crapo. All in favor.

III. New Applications:

1. **Steven and Suzanne Vitali, for property owned and located at 371 Wallis Road, Map 18, Lot 31** requests variances to the terms of Article II, Section 203.3(C) to add a three-car garage on a corner lot that will be 25.1-ft from Rock Orchard Lane where 40-ft is required; and Article V, Section 500.3 to permit the required parking spaces to be located in the garage within the front yard setback because the expansion of the dwelling is over 25% of the dwelling size; and Section VI, Section 603.1 to expand a non-conforming structure. Property is located in the Single Residence District. ***Case # 33-2010***

Suzanne Vitali and Steven Vitali, Applicants, spoke to the Board. They presented their proposal for a 8x20 mudroom off the kitchen and an additional 26x36 three bay garage. They received a driveway permit to relocate their driveway from Wallis Road to off of Rock Orchard Road to address safety issues.

Chairman Drake asked for public comments or questions.

Vice-Chair King asked if an analysis had been done to see if less relief could be required for the garage.

Mr. Vitali explained that they could gain 2 to 4 feet if that was a real concern.

Member Weathersby stated that they are at a disadvantage because there is frontage on two streets.

Chairman Drake stated that he likes the idea of the driveway off Rock Orchard Road. This would be much safer. He thinks it is a tasteful proposition. He does not see any reason to deny the request.

Hearing no further questions or comments, Chairman Drake closed the Public Hearing.

Chairman Drake called for a vote variance relief from *Article II, Section 203.3 (C), Article V, Section 500.3 and Article VI, Section 603.1:*

1. Could the variances be granted without diminishing the value of surrounding properties?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

2. Would granting the appeal not be contrary to the public interest?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

3. Would granting the permit do substantial justice?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

4. Could the variances be granted without violating the spirit of the ordinance?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

5. Are there special conditions of the property that distinguish it from other properties in the area?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

6. There is no fair and substantial relationship between the general public purposes of the ordinance provisions and the specific application of those provisions to the property?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

7. The proposed use is a reasonable one?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

8. Therefore, literal enforcement of the ordinance would result in unnecessary hardship?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

Motion by Ben King to grant the application of Steve and Suzanne Vitali for variance relief with respect to property located at 371 Wallis Road as advertised. Seconded by Jay Nadeau. All in favor.

2. **Wilfred and Joanne Zeolie, for property owned and located at 10 Shoals View Drive, Map 20.2, Lot 82,** requests variances to the terms of Article II, sections 204.3(B) and (C), section 202.5; Article III, Sections 301.7(A)(1) and (3), 301.7(B) (1) and (2); Article V, Section 500.3; Article VI, Section 603.1 of the **Rye Zoning Ordinance** and Article VII, Section 7.9.2.5, Article 7.9.4.1, Article 7.9.6.4 and Article 7.10.2 of the **Rye Building Code** to add a second story to an existing one-story home, install a foundation drain within the wetland buffer and install a State approved septic system where the septic system does not meet new construction standards. The expansion will not extend beyond the existing footprint. Property is located in the General Residence, Coastal Overlay District. **Case # 34-2010**
 - a. **Dwelling (second story):** Article II, section 204.3(B) and (C) to allow the expansion in the side yard setback of 9.4-ft where 20-ft is required and expansion in the front yard setback of 8.4-ft where 30-ft is required; Article III, Sections 301.7(A)(1) and (3) to allow vertical expansion within 100-ft of the pond and within 50-ft of poorly drained soils, Article V, Section 500.3 to allow the two parking spaces to be located within the front and side yard setback, and Article VI, Section 603.1 to allow an expansion of an existing non-conforming structure.
 - b. **Septic System:** Article II, Section 202.5 to place the septic system within 20-ft of the side property line, Article III, Section 301.7(B) (2) to place the system within 100-ft of the pond; Relief from **Rye Building Code** Article VII, Section 7.9.2.5, to permit the septic system to be within the 20-ft side setback; Article 7.9.4.1 to permit the septic system to be within 100-ft of protected wetlands, Article 7.9.6.4 to expand a structure on a septic system that does not meet new construction standards, and Article 7.10.2 to permit the septic system to be designed on one test pit where two are required.
 - c. **Foundation drain: Zoning ordinance** Article III, Section 301.7(B)(1) to allow surface alteration to install a foundation drain below ground within the buffer zone of the poorly drained soils and pond.

Attorney Bernie Pelech, representing the Applicant, addressed the Board. He introduced **Andy Hatcher, Architect** and **Bob Baskervale, Engineer**. He stated that they were before the Board previously and agreed to a continuance to address two issues. They agreed to provide a drainage analysis to address the neighbors' concerns on stormwater runoff. Also, there were questions regarding the height of the structure and whether it would impair views. They requested that the Board complete a site walk to address these questions, which has been done. He continued by reviewing the plan for the Board and summarizing the criteria for variance relief.

Andy Hatcher, Architect, reviewed the details of the design.

Bob Baskervale, PE, Bedford Design Consultants, presented the drainage study for the Board. The Building Inspector had contacted him with some concerns on the location and grade of the septic system and whether or not it made sense to park on the system at such an angle. Mr. Baskervale reviewed the concerns and came up with a couple of design scenarios that could accommodate the changes in grading. The existing septic system is working fine and there is no intent to construct the system at this time. Member Crapo stated that the septic system plan was not designed for parking. The system would need to be redesigned.

Chairman Drake opened to the public for comments or questions.

Jim Banjas, 16 Shoal View Drive, does not support the proposal. He expressed his concerns on drainage issues. He also spoke on concerns of massing and the views being impaired. He presented photos and concerns of Susan and Michael Kwiatkowski, 12 Breakers Road, who had to leave early.

There was further discussion and questions on the plan.

Hearing no further comments or questions, Chairman Drake closed the Public Hearing.

Vice-Chair King stated that he is troubled by the impact that this will have on the abutters' views. He is also troubled by the drainage situation. He recognizes the need for a new septic system. However, he questions whether this structure/foundation is going to support a full second story. In this area, variance relief is going to be required to raise a structure and to increase the height of a structure. He looks at whether or not increasing the height will have a detrimental impact on the abutters' views. If it does, he is hard pressed to find that the variance relief granted would not adversely affect property values of surrounding properties. In this case, that factor renders him unable to support the application.

Member Crapo stated he was inside the neighbor's house and was able to look out the windows. This project will impact ocean views and affect property value, and have a sheer domineering affect. He thinks that it will be big and overbearing. He does not begrudge it any expansion. However, there are no vested rights to double the structure in size without some efforts to make it more conforming. He feels the proposed structure should be more conforming.

Member Nadeau stated that Mr. Baskervale did a great job addressing any concerns that he had in regards to the drainage and the parking. He understands and is sensitive to the abutters view that may be affected. They are here for relief to make a non-conforming structure more non-conforming by going up a story. He is sensitive to the neighbors' concerns and is conflicted with this application. He does feel that Member King and Member Crapo have done a good job of conveying some serious problems with this application. He reiterated that he is comfortable with the drainage, however.

Member Weathersby stated that she shares the sentiments with everyone, especially Member Nadeau. She is very conflicted. It is at least twice the size as to what was represented before. They really did block the views and this will be a negative effect on the neighbors property. She feels parking is a real problem. There is no real place for parking on this property that is not up against property lines. She thinks there has to be a better answer to this proposal and does not want to redesign it, but wonders why moving it back was not considered. There are wetlands and wetland buffers to maintain and be sensitive to, but there must be a balance here.

Chairman Drake stated that he was able to walk the area to get a feel for the site. He does not feel the view is an issue here. He does not think the addition is as massive and imposing as the Board thinks.

Chairman Drake called for a vote for variance relief to *Article II, Sections 204.3(B) and (C), Section 202.5; Article III, Sections 301.7(A)(1) and (3), 301.7(B) (1) and (2); Article V, Section 500.3; Article VI, Section 603.1* of the **Rye Zoning Ordinance**:

1. Could the variances be granted without diminishing the value of surrounding properties?

Patricia Weathersby – No
Jay Nadeau - Yes
Ben King - No

Shawn Crapo – No
Frank Drake – Yes

2. Would granting the appeal not be contrary to the public interest?

Patricia Weathersby – No
Jay Nadeau - Yes
Ben King - No
Shawn Crapo – No
Frank Drake – Yes

3. Would granting the permit do substantial justice?

Patricia Weathersby – No
Jay Nadeau - Yes
Ben King - No
Shawn Crapo – No
Frank Drake – Yes

4. Could the variances be granted without violating the spirit of the ordinance?

Patricia Weathersby – No
Jay Nadeau - Yes
Ben King - No
Shawn Crapo – No
Frank Drake – Yes

5. Are there special conditions of the property that distinguish it from other properties in the area?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

6. There is no fair and substantial relationship between the general public purposes of the ordinance provisions and the specific application of those provisions to the property?

Patricia Weathersby – No
Jay Nadeau - Yes
Ben King - No
Shawn Crapo – No
Frank Drake – Yes

7. The proposed use is a reasonable one?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - No
Shawn Crapo – No
Frank Drake – Yes

8. Therefore, literal enforcement of the ordinance would result in unnecessary hardship?

Patricia Weathersby – No
Jay Nadeau - Yes
Ben King - No
Shawn Crapo – No
Frank Drake – Yes

Motion by Ben King to deny the application of Wilfred and Joanne Zeolie for variance relief as advertised. Seconded by Shawn Crapo. Vote 3-2. Opposed: Jay Nadeau, Frank Drake.

3. **Peter and Mary Lou LeSaffre, for property owned and located at 56 Cable Road, Map 8.1, Lot 71,** requests variances to the terms of Article II, V, and VI Sections 204.3(B), 500.3, 603.2 to demo an existing house and construct a new house that meets the setbacks except for rebuilding part of the new house in the existing footprint located in the setback, 5-ft from the property line where 20-ft is required and 5-ft exists.

Administrative appeal that the Building Inspector has made an error in the interpretation and enforcement in the determination that the existing detached garage has been abandoned and cannot be used as a garage. The applicant contends that no abandonment has occurred and that the non-conforming structure can be used as a garage. **Article V, VI Sections 500.3 and 603.2.** Property is located in the General Residence District.
Case #35 -2010

Attorney Bernie Pelech, representing the Applicants, spoke to the Board. He reviewed the plan and explained the proposal to the Board. He also stated that the Building Inspector was ready to issue a building permit and the issue of whether this house had been abandoned came up. The reason the Applicant does not have a building permit is that Town Counsel has determined that because the LeSaffres have not lived there in 8 years the house has been abandoned. The non-conforming structure has lost its non-conforming status. He continued that they are not challenging that. They are challenging the use of the garage. They have used the garage in the past 8 years for storage and it has not lost its non-conforming structure.

Attorney Pelech explained that the LeSaffres have not lived in the house for over three years and the utilities have not been turned on, therefore the structure has lost its grandfathered rights under the zoning ordinances.

Member Nadeau asked if the Applicants have taken any formal steps towards abandonment.

Attorney Pelech answered that there has been no intent to abandon the house. The garage has been used for storage. He confirmed that the property taxes and Town water fees have been paid over the 8 years. The LeSaffres have been in court over a property line dispute, contributing to the amount of time the house has been abandoned. Instead of challenging the loss of grandfathered rights, they are asking for the 5-ft variance for the structure. The rest of the proposed house conforms and it is proposed to be a one story where two exists. According to the zoning and building inspector, if it becomes less non-conforming it is allowed. He reiterated that they are challenging the abandonment of the garage because they would like to use that for parking.

Member Weathersby clarified that they intend to keep the existing garage.

Attorney Pelech confirmed. He stated that the Building Inspector and Town Counsel ruled that the garage had been abandoned. It is in the rear of the property and too close to the lot line so it lost its non-conforming status. They are requesting to be able to use the garage as a garage again.

Member Nadeau asked if there is a written opinion on the interpretation of abandonment.

Susan Labrie, Building Inspector, stated that the Board has a copy of the letter by her to the LeSaffres. She pointed out that this was pretty much written by Attorney Donovan.

Attorney Pelech continued to review the variance relief being sought by the proposal and the required criteria.

Chairman Drake opened to the public for comments and questions.

Attorney Bob Cassassa, representing **Sam and Dominique Winebaum**, the abutters, spoke to the Board. He submitted a package of information and photos to the Board. He spoke on concerns of the parking and the driveway. He stated that the prior owner of this property made adjustments to the property, such that, the property did not have a dedicated driveway. The driveway area was carved off and in the deed that the LeSaffres acquired in 2003 it notes that this area does not service the property at 56 Cable Road. It states that there is no driveway access to this property.

Chairman Drake asked for clarification on the argument. He also stated that all properties have a right to a driveway.

Attorney Cassassa explained that the structure that Attorney Pelech calls a garage is actually a shed. It does not have doors. The garage doors were taken out when it was disengaged from its traditional entrance to the property. The last 8 years it has been used as a shed. He pointed out that the LeSaffres own other property in Rye. It has become clear that the intended use for this property is to service the Ocean Boulevard property that has very little parking. His clients speak in opposition to the request to overturn the administrative decision relative to that structure. The Winebaums' position is that it is a shed. They also suggest that the proposal could alleviate the need for any variances by addressing that shed and incorporate the parking in a different manor that does not require variances. He continued that the Board is being presented with a tear down and there is an opportunity to make it entirely conforming. He pointed out the information that was submitted in the packets. He went on to state that they have not seen anything relative to drainage. This is a concern of the Winebaums also. They are requesting that the Board ask the Applicant to provide a drainage study.

Chairman Drake asked Susan Labrie how drainage is handled.

Ms. Labrie stated that there is a section in the zoning that drainage plans can be required before a building permit is issued. It is a "judgment" call. It can be requested by the Board or the Building Inspector.

Member Nadeau asked Attorney Pelech where the proposed driveway will go.

Attorney Pelech pointed this out on the plan for the Board.

There was discussion on the "garage" being a shed. Member Weathersby read the definition of a garage and determined it was NOT a garage but a shed.

Chairman Drake stated agreed and stated it is a shed or an accessory structure.

Member Nadeau asked Attorney Cassassa why the Winebaums are against the owner using the structure as a garage. He asked why they would prefer to have parking on the street or the front yard. Attorney Cassassa pointed out the location of potential parking. He stated that they have heard it will serve as a complimentary property to the LeSaffres Ocean Boulevard property. A guest will be able to park at Cable Road and go down to Ocean Boulevard. Their concern is that this is a lot of area for parking.

Chairman Drake stated that he is not going to “buy” into the overflow parking scenario. He is struggling with the objection to having a garage.

Dominique Winebaum, 52 Cable Road, stated that it is a back yard. They have an easement on part of that land. They have concerns with safety issues.

Member Weathersby pointed out that regardless of what happens to the garage the driveway can still be there.

Sam Winebaum, 52 Cable Road, spoke to the Board. He stated that there is no property that has such an intense configuration of driveway. There is so much driveway and parking that a reasonable person could conclude that this is a big part of the purpose of this house. Parking could easily be achieved in the front setback.

The board looked at the aerial and felt the Winebaums also had an intensive driveway layout.

Chairman Drake commented that it is the owner’s prerogative.

Mr. Winebaum stated that it is also the Board’s prerogative to reign in things that will reduce property values, reduce safety and also will reduce situations that will create significant overcrowding of a lot.

Chairman Drake explained that if the garage was taken off the table, the Applicant is not requesting much relief.

Attorney Cassassa stated that the Winebaums have seen how that structure in the back yard has been used. They contest that the structure has not been used as a garage. They concur with Town Counsel that the use has been abandoned. It is the way that structure is attached to the parking layout that is a concern. They object to overturning the administrative decision. This is merely a shed and not a garage. They would like that administrative decision upheld.

There was more discussion on the structure being a shed or a garage. It was determined that the shed could be used as a shed and was not a garage according to the definition in the zoning.

Chairman Drake stated that it is not a garage right now. It has not been a garage for over 3 years. It is a shed. He does not know if a shed can really be abandoned. He pointed out that it has lost that grandfathered use as a garage.

Mrs. Winebaum expressed concerns to the Board on survey issues.

Chairman Drake closed the Public Hearing. He called for a vote for relief to *Article II, Sections 204.3(B), VI Sections, 603.2* of the **Rye Zoning Ordinance**:

1. Could the variances be granted without diminishing the value of surrounding properties?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

2. Would granting the appeal not be contrary to the public interest?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

3. Would granting the permit do substantial justice?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

4. Could the variances be granted without violating the spirit of the ordinance?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

5. Are there special conditions of the property that distinguish it from other properties in the area?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

6. There is no fair and substantial relationship between the general public purposes of the ordinance provisions and the specific application of those provisions to the property?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

7. The proposed use is a reasonable one?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

8. Therefore, literal enforcement of the ordinance would result in unnecessary hardship?

Patricia Weathersby – Yes
Jay Nadeau - Yes
Ben King - Yes
Shawn Crapo – Yes
Frank Drake – Yes

Motion by Ben King to grant the application of Peter and Mary Lou LeSaffre for relief from Articles II, Section 204.3 (B) and Articles VI, Section 603.2, of the Rye Zoning Ordinance, for variance relief as advertised with respect to property located at 56 Cable Road. Seconded by Patricia Weathersby. All in favor.

Chairman Drake called for a vote on the Administrative Appeal that the Building Inspector has made an error in the interpretation and enforcement in the determination that the existing detached garage has been abandoned and cannot be used as a garage.

- Vice-Chair King stated that the Building Inspector's decision is correct. It has been admitted by the Applicant that the structure was last used as a garage in 2002. The door that would allow a car access to the structure has been fenced off and used as a shed for the past eight years. Ms. Labrie has correctly found that the use has been abandoned.
- Member Crapo agreed.
- Member Weathersby agreed.
- Member Nadeau disagreed. He stated that this was by advice of Town Counsel. He was not distinct enough in giving the Board a complete definition as to how or why it was abandoned or what steps the LeSaffres took to have it deemed abandoned. They have been paying taxes on it. He also finds the Board's definition of a garage faulty. Therefore, he disagrees.
- Member Crapo commented that he thinks it was abandoned as a garage. He agrees with the argument that it was not abandoned as an accessory structure. The Applicant has demonstrated continuing use as a storage shed.
- Member Weathersby agreed.

Chairman Drake stated that it is the consensus of the Board that the Administrative Ruling that the garage has been abandoned as a garage was correct.

Chairman Drake called for a vote in favor of supporting the Administrative Appeal:

Patricia Weathersby – No

Jay Nadeau - Yes
Ben King - No
Shawn Crapo – No
Frank Drake – No

The Administrative Appeal failed 4-1.

After discussion the Board determined that the Applicant would need to apply for relief to 602.4, change of use, to use the “shed” as a garage.

Adjournment:

Motion by Shawn Crapo to adjourn at 10:40 p.m. Seconded by Patricia Weathersby. All in favor.

Respectfully Submitted,
Dyana F. Ledger