

**BOARD OF ADJUSTMENT  
Rye, New Hampshire  
Meeting of December 1, 2010  
Rye Town Hall  
7:00 p.m.**

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

***Others Present: Susan Labrie Building Inspector.***

**Call to Order and Pledge of Allegiance**

Chairman Drake called the meeting to order at 7:04 p.m. and led the Pledge of Allegiance.

**Approval of November 2010 Minutes:**

**Motion by Shawn Crapo to approve the minutes of November 3, 2010 as presented. Seconded by Ben King. All in favor.**

**New Business:**

**Sitting for the following Applications: Chairman Frank Drake, Vice-Chair Ben King, Jay Nadeau, Shawn Crapo and Patricia Weathersby.**

- 1. Tracy and Thomas Degnan, for property owned and located at 41 Park Ridge Ave, Map 19.4, Lot 19,20 requests variances to Article III, Section 204.3(A) and (B) to permit the construction of an 8' x 10' shed 8-ft to the side property line where 20-ft is required, and 8-ft to the rear property line where 17.5-ft is required. Property is located in the General Residence District, Coastal Overlay District. *Case #36-2010***

**Tracy Degnan, Applicant,** spoke to the Board concerning an application to construct an 8' x 10' shed, which would be located 8-ft to the side property line where 20-ft is required and 8-ft to the rear property line where 17.5-ft is required. The Applicants had previously applied and were approved for this proposal in 2007. They did not go forward with the project at that time and now wish to move forward.

- Email received from Carolyn and Norman Pokorny, abutters, in objection to the proposal. Dated: November 30, 2010 <sup>(1)</sup>**

Member Nadeau pointed out that the Pokornys were neighbors of the Applicant in 2007, at the time this was previously approved. While they may have an objection in 2010, they did not have an objection in 2007 or the Board approved the application despite their objections.

Mrs. Degnan commented that from her recollection they had no objections in 2007.

Chairman Drake asked if she would be accepting of the conditions that were part of the 2007 approval, which were no electricity and no running water.

Mrs. Degnan agreed.

Regarding the letter from the Pokornys, Vice-Chair King stated that in the email they mentioned that they would like it moved, however, they did not articulate any reason. He does not see how it would diminish surrounding property value or have any negative impact, based on where it is place. He continued that in 2007, he agreed that this was an appropriate place for it, given the characteristics of the property. He is not persuaded by the email to change his position. They do not articulate any zoning reasons for opposing the location of the shed.

The Board agreed.

Chairman Drake asked for comments or questions from the public. Hearing none he closed the Public Hearing at 7:25 p.m.

Chairman Drake called for a vote for variances to *Article III, Section 204.3(A) and (B)*:

**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 approve the application of Tracy and Thomas Degnan for variance relief to Article III, of the Rye Zoning Ordinance, Section 204.3(A) and (B) as advertised, with the following conditions; no electricity and no running water will be permitted in the shed that is being proposed to be constructed. Seconded by Jay Nadeau. All in favor.**

- 2. Peter and Mary Lou LeSaffre, for property owned and located at 56 Cable Road, Map 8.1, Lot 71, requests variances to Article VI, Section 603.2, 602.4, and 500.3 to convert an existing shed to a garage for parking within 10-ft of a property line. Property is located in the Single Family Residence District. *Case 37-2010***

**Attorney Bernie Pelech**, representing the Applicant, spoke to the Board. The Applicant is seeking a variance to use a structure that has been on the property for over 25 years, as a garage. The Applicant was before the Board a few months ago, with regards to the replacement of the dwelling on the property. At that time, due to the size and configuration of the lot, the Board found that there were special conditions, which created a hardship and granted the variance for the replacement of the dwelling. The garage was also discussed, which was a subject of administrative appeal, it had been determined that it had been abandoned as a garage, by the Building Inspector acting upon recommendation of Town

Counsel. The Board did find that it was not a garage. It did not have garage doors and could not be a garage anymore. The existing access to the garage was discontinued, shrubs were planted around the structure and the garage doors were removed. The Applicants are now asking to put the garage doors on the other side of the structure to be able to park a vehicle in there. He pointed out that the structure exists and they are not building a new structure. They are simply seeking to use the structure as a garage because it is now connected to the new driveway. He reviewed the conditions for granting the variances. In conclusion, he does feel it meets the five criteria and they are requesting the Board grant the variances as advertised.

Member Crapo asked the size of the structure and if it was being relocated.

Attorney Pelech stated that he does not have the exact dimensions. It is approximately 12' x 18' and it will be staying in its current location.

Member Crapo asked if it was suitable for a vehicle.

Attorney Pelech explained that it was previously used as a garage and it is suitable for one vehicle. That is the intent, to use it for one vehicle.

Member Weathersby expressed concerns on accessing the structure. She pointed out that everything is so much more confined, coming in the other way. She asked how they would be able to back out.

Attorney Pelech explained that they would be able to enter the driveway and drive onto the pavers to access the garage. There is enough room to back out onto the pavers, make a right hand turn and exit the driveway.

Member Weathersby asked if that has been calculated.

Attorney Pelech stated that the permeable paver blocks appear to be 20 to 22 feet deep. If someone was to back out of the garage, there would certainly be enough turning radius to make a right turn.

Member Nadeau pointed out that they do not have to park a car there. It could be a motorcycle. It does not necessarily have to have engineered calculations.

Attorney Pelech stated that a standard size vehicle could fit.

Vice-Chair King asked when the structure stopped being used as a garage.

Attorney Pelech explained that it has not been used as a garage since the LeSaffres owned the property. The hedge was planted sometime around the time that the garage doors were removed.

**Susan Labrie, Building Inspector**, stated that this was a shared driveway for a family compound at one time. When the property owner went to sell the house, they did not want someone that was not part of the family using the driveway. That is when the arborvitaes were planted and the garage doors were removed, so the new owners would have access on the other side. She continued that driveways do not have setbacks to property lines in the ordinance.

It was determined that the structure stopped being used as a garage in 2002.

Chairman Drake opened to the public for comments or questions.

**Samuel Winebaum, 52 Cable Road**, spoke to the Board in opposition of the proposal. He read from a prepared statement that was submitted to the Board.

- **Submission received from Samuel and Dominique Winebaum, 52 Cable Road.**<sup>(1)</sup>

After hearing Mr. Winebaum's presentation, Chairman Drake requested that the Applicant bring in the correct driveway plan; with exact dimensions, an architectural rendition and a "clean" set of plans. There is value to having a clean accurate plan in which to make a decision. He requested a continuance to the following month.

Attorney Pelech agreed to bring in the plans.

Member Nadeau stated that the Applicant is proposing to convert an existing shed to a garage for parking. The abutter has brought in information outside of the scope, regarding driveways and easements. That is not what the Board is looking at. To have the Applicant incur the cost of architectural renderings of a building that is existing when they simply want to put a door there to park one vehicle in, he thinks is unnecessary. He continued that he does not see any merit in the abutters objection. He has not heard one thing that would sway him to not grant the application as presented by Attorney Pelech.

Vice-Chair King commented that he agrees with Member Nadeau.

Chairman Drake stated that he disagrees in setting up the use of the garage in isolation from the access and the way that it is supposed to flow. He does not feel that the Board has a good set of documents to make an informed decision.

The Board agreed to the continuance for further information.

**Motion by Shawn Crapo to continue the application of Peter and Mary Lou LeSaffre, for property owned and located at 56 Cable Road. Seconded by Patricia Weathersby. All in favor.**

*The Board agreed to take the following, Motion for Rehearing, out of Agenda order.*

**Other Business:**

**Motion for Rehearing or Reconsideration of Decision filed by Samuel and Dominique Winebaum, 52 Cable Road, Rye, for Decision made by the BOA on October 13, 2010 to applicant Peter and MaryLou LeSaffre, for property owned and located at 56 Cable Road, Map 8.1, Lot 71.**

Chairman Drake opened discussion to the Board.

Member Nadeau stated that he read the Winebaums' very comprehensive Motion for Rehearing or Reconsideration along with the attached exhibits, as well as, the Applicants objection to the Winebaums' Motion for Rehearing. He agrees with the position taken by the Applicants, through Attorney Pelech. He does not believe that the Winebaums have demonstrated that the Board has committed a technical error or that there is new evidence that was not available at the first hearing, causing the Board to make an erroneous decision. For the reasons set forth in Attorney Pelech's objection to the Motion for Rehearing, dated November 17, 2010, he is not inclined to grant a rehearing on that application.

Vice-Chair King agrees.

Member Weathersby also agrees.

Member Crapo stated that he agrees, except for the fact that there is mention in the driveway permit that there will be “no circle driveway”. However, he is certain that the set of plans before the Board last month, that was approved, had a circular driveway.

Chairman Drake stated that he would like the Board to stick to the variances that were granted to build the house.

Member Weathersby stated that her decision on the variance did not have anything to do with the driveway being circular or the parking being in the front or the rear. It was based on where the building sat on the lot and whether that variance was necessary and reasonable.

Member Nadeau stated that in regards to the variance for the house, the setback, it does not have any merit.

**Motion by Ben King to deny the Applicants’ Motion for Rehearing. Seconded by Jay Nadeau. Vote 4-1. Opposed – Shawn Crapo.**

Member Nadeau recused himself for the following application.

**Sitting for the following Application: Chairman Frank Drake, Vice-Chair Ben King, Shawn Crapo, Patricia Weathersby and Paul Goldman.**

- 3. Edmund J. Mulcahy and David Mulcahy for property owned and located on Wentworth Road, Map 24, Lot 68,** requests a special exception as provided in Article III, Section 301.6(B) and 301.7(B)(6) and Article VII, Section 701.3 to permit a driveway crossing in the wetlands and associated buffer. Property is located in the Single Residence District. ***Case #38-2010.***

**Attorney Michael Donohue**, representing the Applicants, spoke to the Board. They are requesting a special exception to permit a driveway crossing in the wetlands and associated buffers. The property is located on Wentworth Road and is approximately 13 acres. The intent is to develop a single family home on the site. He pointed out on the plan the area for the home and commented that it was determined that this is the appropriate location. He briefly reviewed the proposal.

**John Chagnon, Ambit Engineering**, reviewed the details of the plans and the impact to the site.

Chairman Drake opened to the public for comments or questions.

**Jay Graves, BG’s Boathouse, 191 Wentworth Road**, spoke in support of the proposal.

**Attorney Donohue** went through the criteria for the special exception.

- **Letter received from Scott Atherton, Wentworth Road, Portsmouth, in opposition to the proposal.**<sup>(1)</sup>
- **Letter received from Barbara Steppo, 150 Wentworth Road, in opposition to the proposal.**<sup>(1)</sup>

Hearing no further comments or questions from the public, Chairman Drake closed the Public Hearing at 9:02 p.m. and opened to the Board.

Vice-Chair King stated that the Conservation Commission and the State has looked at this. Both of the letters from abutters are speculative and they do not cite any expert evidence to state that there will be massive violations to the wildlife. If it were valid the State or the Conservation Commission would have addressed it. He continued that his impression is that the Board needs to grant the special exception in order to allow the reasonable use of the property. This is essential to the productive use of the property. It is consistent with the general and specific rules of the Rye Zoning Ordinance, which contemplate that land owners can use their property and it will not have any injurious or detrimental effect on the neighborhood; as the Conservation Commission and the State has found. He agrees with Attorney Donohue that the best use of this property is a residential use, in keeping with the characteristics of the neighbor, and someone who lives there will take care of the land. He commented that it is a fine proposal, has taken the environmental impact into account and he supports it.

Member Crapo agrees. He stated that with the original proposal it was questioned if a potential owner would want a house at the front of the lot and would want to leave the back as conservation land. In looking at plans it is now clear that the house would not be feasible to the front of the lot.

Chairman Drake called for a vote for a special exception to *Article III, Section 301.6(B) and 301.7(B)(6) and Article VII, Section 701.3:*

- **The exception can be granted because it is essential to the productive use of the land:**

Patricia Weathersby – Yes  
Paul Goldman - Yes  
Ben King – Yes  
Shawn Crapo – Yes  
Frank Drake – Yes

- **It will have a minimal detrimental impact upon the wetlands:**

Patricia Weathersby – Yes  
Paul Goldman - Yes  
Ben King – Yes  
Shawn Crapo – Yes  
Frank Drake – Yes

- **It is not for economic advantage alone:**

Patricia Weathersby – Yes  
Paul Goldman - Yes  
Ben King – Yes  
Shawn Crapo – Yes  
Frank Drake – Yes

- **The special exception can be granted because it is in harmony with the general purpose and intent of the Zoning Ordinance:**

Patricia Weathersby – Yes  
Paul Goldman - Yes  
Ben King – Yes  
Shawn Crapo – Yes  
Frank Drake – Yes

- **It is not injurious or detrimental to the neighborhood:**

Patricia Weathersby – Yes  
Paul Goldman - Yes  
Ben King – Yes  
Shawn Crapo – Yes  
Frank Drake – Yes

**Motion by Ben King to grant the application of Edmund J. Mulcahy and David Mulcahy for property owned and located on Wentworth Road, for a special exception pursuant to Article III, Section 301.6(B) and 301.7(B)(6) and Article VII, Section 701.3, of the Rye Zoning Ordinance, to permit a driveway crossing in the wetlands and associated buffer; on the condition that the driveway will be used as the access route to a single family home. Seconded by Paul Goldman. All in favor.**

#### **Adjournment**

**Motion by Shawn Crapo to adjourn at 9:14 p.m. Seconded by Ben King. All in favor.**

Respectfully Submitted,  
Dyana F. Ledger

<sup>(1)</sup>*All supporting documentation, applications, decision documents, etc. can be reviewed at the Building Inspector's Office, Rye Town Hall.*