

BOARD OF ADJUSTMENT
Rye, New Hampshire
Meeting of August 4, 2010
Rye Town Hall
7:00 p.m.

I. Call to Order and Pledge of Allegiance

Chairman Drake called the meeting to order at 7:15 p.m. and led the Pledge of Allegiance.

Members: Chairman Frank Drake, Clerk Shawn Crapo, Paul Goldman and Patricia Weathersby.

Others Present: Susan Labrie, Building Inspector.

Chairman Drake announced to the Applicants that not all Members of the Board could be present and there will be a short Board. He gave the Applicants the option of being heard or to continue until next month.

He asked for a each Applicant if they would like to be heard.

Mulvey to be heard by four Members – Yes

Swist to be heard by three Members – Yes

Dombrowski to be heard by four Members – Yes

Cellco Partnership d/b/a Verizon Wireless to be heard by three Members – No

Attorney John Weaver, McLane, Graf, Raulerson and Middleton Professional Associates, representing **Cellco Partnership** for the cell tower application, discussed scheduling a balloon test. This will be scheduled through **Building Inspector, Susan Labrie.**

More information on the Cell Tower Plans and the balloon testing scheduled may be found at the Town Hall or the Town website. www.town.rye.nh.us

- **Cellco Partnership Application, for the Rye Cell Tower, will be continued until the next BOA Meeting on September 1, 2010.**

II. New Applications:

1. **The Belinda H. Mulvey Living Trust, for property owned and located at 48/50 Dow Lane,** Tax Map 10, Lot 67 requests a special exception as provided by in Article V, Section 503 to convert an existing two-family style home into condos. *Case #26-2010.*

Attorney Patrick Mulvey, representing the Applicant, spoke to the Board. He explained that this is currently an existing duplex that will be converted into two condominiums. There will be two units, both with two bedrooms. There will be no structural changes or breaking of the ground of any kind. He reviewed the plans for the Board. He went over the floor plan and utility lines. He pointed out that on the

back of unit #1 is where the water shutoff valve is currently located. There is one shutoff valve and it will continue to be there. This is not noted on the plans.

Chairman Drake explained that the shutoff valve has to be on the plans.

Attorney Mulvey continued to review the plans for the Board. He pointed out that the subdivision approval, issued by the NHDES, is included in the Board's packet.

Member Weathersby stated that it also needs to be noted on the plan whether or not additional meters will be required.

Chairman Drake stated that what has been provided as a floor plan is actually elevation drawings. The Board would need to see the actual layout.

Member Weathersby commented that maybe the Board would want to wait until the floor plan is provided.

The Members reviewed the submitted packets.

After some Board discussion, Chairman Drake stated that it seems to be the consensus of the Board to continue until September until all of the documents are in order. This would include the shutoff valve noted on the plan, information on additional meters and an actual floor plan.

Attorney Mulvey asked for a conditional approval.

The Members agreed that they would prefer a continuance.

The Applicant agreed to continue until September.

Member Goldman recused himself for the following application.

- 2. Shauna Healy and Tom Swist, for property owned and located at 9 Dow Lane, Tax Map 10, Lot 76** requests a variance to Article II, Section 203.3(B) side setback, to remove an 8' x 10' shed with a new 12' x 12' shed in approximately the same location, no closer to the property line than what exists. Property is located in the Single Residence District. *Case #27-2010.*

Tom Swist, Applicant, spoke to the Board. He stated that they would like to remove the 8' x 10' shed and replace with a new 12' x 12' shed. The shed will be tucked into a tree line and is invisible to most of the neighbors. The expansion will not go any further towards the abutters than where the existing shed is located.

Paul Goldman, Washington Road, abutter, stated that he has spoken with Mr. Swist on the plans for the shed. This is an improvement over what is there and he approves of this project.

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

Chairman Drake called for a vote on variance to ***Article II, Section 203.3(B)***:

- **The variance will not be contrary to the public interest?**

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake - Yes

- **The Spirit of the Ordinance is observed by granting the variance?**

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake - Yes

- **Substantial justice will be done by granting the variance?**

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake – Yes

- **The value of surrounding properties will not be diminished by granting the variance?**

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake - Yes

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

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake - Yes

- **There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property?**

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake - Yes

- **The proposed use is a reasonable one?**

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake - Yes

- **Thus, literal enforcement of the provision of the Ordinance would result in an unnecessary hardship?**

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake - Yes

Motion by Patricia Weathersby to approve the application of Shauna Healy and Tom Swist, for property located at 9 Dow Lane, to Article II, Section 203.3(B) side setback, to remove the 8' x 10' shed and replace with a 12' x 12' shed, as advertised. Seconded by Shawn Crapo. All in favor.

Member Goldman reseated for the following application.

3. **Sandra Dombrowski, for property owned and located at 39 Pollock Drive, Tax Map 21.1, Lot 25, requests variances to Article II, Section 204.3(B), and Article III, Section 301.7(B) to place a generator within the side setback of the property line and within the 100-ft. buffer of the tidal marsh. Property is located in the General Residence, Coastal Overlay District. Case #28-2010.**

Sandra Dombrowski, Applicant, addressed the Board. She is requesting to install a standby generator and is seeking a variance because of the setbacks. Her house is almost 16-ft. from the side property line, where 20-ft. is required. She explained that the NFP rules regarding placement of generators are very specific. She has consulted with the Fire Department, a gas company and the generator company. Letters have been submitted to the Board, stating that the generator would need to go in the small wooded area between her yard and the abutters. She continued that she has discussed with her abutters regarding a survey to the property. She has agreed to survey her property before the installation of the generator to be sure of the property line.

Member Weathersby asked if it is possible that it would be closer to the property line.

Ms. Dombrowski replied that it will be approximately 2 to 3-ft. from the side property line in order to respect all the NFP regulations.

John Murtagh, Pollock Drive, abutter, spoke in regards to the property line.

Member Weathersby asked if the generator is on a slab or housed in a shed.

Ms. Dombrowski explained that Kohler has come out with a non-corrosive casing. The measurements are 4-ft. long, 26.2" wide and less than 2 ½ -ft. tall. It is installed with a polymer base, which eliminates the need for a concrete base. She continued that she was told by the Fire Department that there a variance is not needed for the gas tanks that are above ground. She commented that she is trying to make the home more suitable for her elderly years. To her the generator will be essential.

Chairman Drake read a letter from **Megan Guare**, abutter. She requested the placement of the generator to be on the opposite side of Ms. Dombrowski's lot, which appears to have more room. She also requested a survey to mark the property line between 39 and 41 Pollock Drive prior to the generator being placed in the location requested by the Applicant.

Member Weathersby asked Ms. Dombrowski why she feels this side is better.

Ms. Dombrowski explained that the flooding in that area is very low level.

Member Crapo stated that he is familiar with the property. On the other corner is a big drop off and rock ledge. There is more distance on that side, however, the terrain cannot situate it.

Member Weathersby asked why it cannot be closer.

Ms. Dombrowski replied because of the fire regulations. The generator has to be 10-ft. from the gas tanks and 5-ft. from any opening in the walls.

Chairman Drake explained that in theory the generator could be closer to the house. He is unsure why that spot was picked. It far exceeds the fire requirements. It could be 8-ft. from the property line instead of 2 to 3-ft. from the line. That would be a more respectable request.

Ms. Dombrowski explained that she thought that by putting the box in the wooded area it would not be seen. She felt it would look better in the wooded area instead of in the middle of the lawn.

Member Weathersby commented that she is concerned about the noise being 4 to 5-ft. from the neighbor.

Ms. Dombrowski replied that the new generators are very quiet.

Chairman Drake stated that he would take the edge of the gas tank and put a 10-ft. radius on it. Outside of that 10-ft. radius stay as far away from the property line as possible. He suggested planting shrubs around it.

The Members discussed moving the generator closer to the house.

Chairman Drake stated that reasonable relief is 5-ft. from the house. In other words, it meets minimum code requirements in distance to the house. This keeps it further from the neighbors. He is not against it. He feels beholden to minimize the intrusion on the setback.

Member Weathersby stated that it is almost on the property line. She would be more comfortable with it being closer to the house, so it is meeting the code, but not way over so it is almost on the neighbor's yard.

Ms. Dombrowski stated that she would agree to that. She pointed out that a variance would still be required.

Member Weathersby explained that it should be moved back from the property line, closer to the house and still meeting the code; so as little relief as possible is asked for.

Chairman Drake suggested that the generator be placed 5-ft. from the house or minimum fire code, which is represented as 5-ft. It should be no closer to the street than the rear line of the house.

The Members agreed with Chairman Drake.

Mr. Murtagh spoke in favor of the proposal.

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

There was more discussion on the location.

Chairman Drake suggested that between the minimum of 5-ft. from the house and 3-ft. from the property line, with the unit running parallel to the house, a spot be chosen between the Applicant and the Guares.

The Members and Applicant agreed.

Chairman Drake called for a vote on variances to Article II, Section 204.3(B), and Article III, Section 301.7(B):

- **The variances are not contrary to the public interest?**

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake - Yes

- **The Spirit of the Ordinance is observed by granting the variances?**

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake - Yes

- **Substantial justice will be done by granting the variances?**

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake – Yes

- **The value of surrounding properties will not be diminished by granting the variances?**

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake - Yes

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

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake - Yes

- **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
Shawn Crapo – Yes
Frank Drake - Yes

- **The proposed use is a reasonable one?**

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake - Yes

- **Thus, literal enforcement of the provision of the Ordinance would result in an unnecessary hardship?**

Patricia Weathersby - Yes
Shawn Crapo – Yes
Frank Drake - Yes

Motion by Shawn Crapo to allow a generator, with dimensions as presented, no closer to the street to the rear line of the house, no closer than 3-ft. to the side property line and no closer to the corner of the house than the Fire Code allows; also a discussion to be held with the Guares with their signatures approving the location. Seconded by Paul Goldman. All in favor.

4. **Cellco Partnership d/b/a Verizon Wireless, through its Attorney John Weaver of McLane, Graf, Raulerson and Middleton Professional Association, for property owned by the State of New Hampshire, located at Ocean Boulevard (Odiorne State Park), Tax Map 25, Lot 11, requests variances to Article II, Sections 208.2, 208.4 and 209, and Article V, Section 505.3 to permit the construction of a Wireless Telecommunications Facility in the Public Recreation and Conservation District, outside the Town Wireless Telecommunications Facility Overlay District. If approved, the project will need to obtain a Special Use Permit from the Planning Board as required under Article V, Section 505.7 and comply with all other requirements in Article V, Section 505. *Case #29-2010.***
- **Cellco Partnership Application, for the Rye Cell Tower, will be continued until the next BOA Meeting on September 1, 2010.**

III. Adjournment

Motion by Shawn Crapo to adjourn at 8:35 p.m. Seconded by Paul Goldman. All in favor.

Respectfully Submitted,

Dyana F. Ledger