

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

***Members: Chairman Frank Drake, Clerk Jay Nadeau, Shawn Crapo, Ray Jarvis,
Alternates – Paul Goldman, Patricia Weathersby and Brian Murphy.***

Others Present: Susan Labrie Building Inspector, Kimberly Reed Planning Administrator.

I. Call to Order and Pledge of Allegiance

Chairman Drake called the meeting to order at 7:03 p.m. and led the Pledge of Allegiance.

Member Jarvis recused himself from the following application.

Seated for the following application: Chairman Frank Drake, Clerk Jay Nadeau, Shawn Crapo, Paul Goldman and Patricia Weathersby.

Continued 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. Property is located in the Commercial District. *Case # 26-2010*

Attorney Patrick Mulvey, representing the Applicant, presented the Board with the revised floor plans, as required. He also pointed out the requested revisions made to the site plan, which now includes a note stating; “*additional meters and/or utilities not required*”. Also, the water shut-off location is now labeled on the site plan.

Chairman Drake opened discussion to the Board.

The Members agreed that the application was now complete.

Chairman Drake asked for public comments or questions. Hearing none, he closed the Public Hearing at 7:09 p.m.

Chairman Drake called for a vote on granting the Special Exception as provided by in ***Article V, Section 503*** to convert the dwelling at 48/50 Dow Lane into condos.

**Patricia Weathersby – Yes, Paul Goldman – Yes, Shawn Crapo – Yes, Jay Nadeau – Yes,
Frank Drake – Yes**

Opposed – None

Motion by Jay Nadeau to approve the application of Belinda H. Mulvey Living Trust for property owned and located at 48/50 Dow Lane; wherein, they requested a Special Exception as provided by Article V, Section 503 to convert the existing family home, at that location, to two condominium units. Seconded by Patricia Weathersby. All in favor.

New Applications:

1. **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 and State new construction standards. Property is located in the General Residence, Coastal Overlay District. *Case # 30-2010.*
 - a. **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.
 - b. **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.
 - c. **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.
 - d. **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 town and state new construction standards without waivers.

(Continued until the next scheduled BOA Meeting)

Seated for the following applications: Chairman Frank Drake, Clerk Jay Nadeau, Ray Jarvis, Paul Goldman and Patricia Weathersby.

2. **Rannie Webster Foundation, for property owned and located at 795 Washington Road, Tax Map 11, Lot 52,** requests a variance to the terms of *Article II, Section 203.3 (F)* of the *Rye Zoning Ordinance* to permit the creation of a 66,000-sf lot with 151-ft of frontage where 200-ft of frontage is required. Property is located in the Single Residence District. *Case # 31-2010.*

Attorney Peter Loughlin addressed the Board. He introduced **Tom Argue, Webster at Rye** and **Eric Weinrieb, Altus Engineering**. He explained that the lot was created in the 70's when lot frontage was a 150-ft. requirement. All requirements for a lot have been met except the frontage, which is now 200-ft. He continued by reviewing the conditions for a variance.

Member Weathersby asked if this was ever a separate lot.

Attorney Loughlin explained that it was created with the intent of being a separate lot, however, the zoning changed.

Chairman Drake asked for comments or questions from the public. Hearing none he closed the Public Hearing at 7:20 p.m.

The Board had no further comments or questions.

Regarding property located at 795 Washington Road, Chairman Drake called for a vote for variance to the terms of **Article II, Section 203.3 (F)** to permit the creation of a 66,000-sf lot with 151-ft of frontage where 200-ft of frontage is required:

1. The variance will not be contrary to the public interest?

Ray Jarvis - Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake - Yes

2. The Spirit of the Ordinance is observed by granting the variance?

Ray Jarvis - Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake - Yes

3. Substantial justice will be done by granting the variance?

Ray Jarvis – Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake – Yes

4. The value of surrounding properties will not be diminished by granting the variance?

Ray Jarvis – Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake – Yes

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

Ray Jarvis – Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake – Yes

6. 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?

Ray Jarvis – Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake – Yes

7. The proposed use is a reasonable one?

Ray Jarvis – Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake – Yes

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

Ray Jarvis – Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake – Yes

Motion by Jay Nadeau to approve the Rannie Webster Foundation, for property owned and located at 795 Washington Road; wherein, they have requested a variance to the terms of *Article II, Section 203.3 (F)*, of the *Rye Zoning Ordinance*, to permit the creation of a 66,000-sf lot with frontage of approximately 151-sq.ft., where 200-ft. is required. Seconded by Ray Jarvis. All in favor.

3. **Jim and Colette Irvin, for property owned and located at 25 Gray Court, Tax Map 5.3, Lot 23**, requests variances to the terms of *Article III, Section 304.5, Article V, Section 603.2* of the *Rye Zoning Ordinance* to allow the demo and reconstruction of a house. Property is located in the General Residence District/Coastal Overlay. *Case # 32-2010*.

- a. **Dwelling:** Article III, Section 304.5 and Article VI, Section 603.2 to allow the demo and rebuild of a house on a non-conforming lot and the proposed house to cover 15.9% of the lot, where 15% is the maximum permitted and 16.4% exists.
- b. **Parking:** Article V, Section 500.3 to permit the two required parking spaces to be located in approximately the same location but within the 10-ft. setback to the side property line and within the front yard setback.

Attorney Peter Loughlin, representing the Applicant spoke to the Board. He introduced **John Chagnon, Ambit Engineering** and **Robert Gray, Robert Gray Builders**. He stated that an application was submitted to the Board a few months ago. At that time, it was the consensus of the Board that the dwelling was too large and more relief was being requested than what some Members deemed to be appropriate. The building has now been redesigned and has been substantially reduced in size. The building footprint and amount of impervious material on the site has also been reduced. The coverage being requested is less than what currently exists. He continued that all of the setbacks are satisfied. The relief that is needed is for the parking within the front setback. The other request for relief is on the coverage, which is 15.9% where 15% is the maximum permitted. He pointed out that the total lot coverage is 21.3%, which is a decrease from what exists now of 16.4%. The first floor will be 960-sq.ft. and the second floor will be 1064-sq.ft., which includes a portion of the porch with a roof over it. He commented that this is in keeping with the surrounding homes in the neighborhood.

Attorney Loughlin submitted photos to the Board showing the existing neighborhood.

John Chagnon, Ambit Engineering, reviewed the Drainage Report, which was prepared March 4, 2010 and revised August 11, 2010.

Chairman Drake asked **Susan Labrie, Building Inspector**, if she has reviewed the Drainage Plan.

Susan Labrie replied that she has reviewed the design. She continued that there are similar designs in that area and it is very efficient.

Member Nadeau stated that if this is approved the Board could place a condition that the chambers, as proposed by the Applicant, will be the ones that are implemented, which are shown on Sheet C-2.

Chairman Drake opened comments and questions to the audience.

Jane Langley, abutter, spoke in favor of the proposal.

Letters of support were sent to the Board from:

John Nutter, 10 Gray Court
Peter McCue, 14 Gray Court
Carol McNeil, 44 Gray Court

David Winn, 21 Gray Court, spoke in favor of the proposal.

Residents of **18 Gray Court** and **47 Gray Court** spoke in favor of the proposal.

Hearing no further comments or questions, Chairman Drake closed the Public Hearing at 7:47 p.m.

Chairman Drake stated that the parking will be located where it is now and is not an issue.

The Board agreed.

Chairman Drake called for a vote to variance relief from *Article III, Section 304.5, Article V, Section 603.2* and *Article V, Section 500.3*, for property located at 25 Gray Court:

1. The variances are not contrary to the public interest?

Ray Jarvis - Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake - Yes

2. The Spirit of the Ordinance is observed by granting the variances?

Ray Jarvis - Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake - Yes

3. Substantial justice will be done by granting the variances?

Ray Jarvis – Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake – Yes

4. The value of surrounding properties will not be diminished by granting the variances?

Ray Jarvis – Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake – Yes

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

Ray Jarvis – Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – 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?

Ray Jarvis – Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake – Yes

7. The proposed use is a reasonable one?

Ray Jarvis – Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake – Yes

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

Ray Jarvis – Yes
Paul Goldman – Yes
Jay Nadeau – Yes
Patricia Weathersby – Yes
Frank Drake – Yes

Motion by Jay Nadeau to approve the application of Jim and Colette Irvin, for property owned and located at 25 Gray Court, as advertised, with the condition that upon development of the property the Chamber Relocation Plan submitted by designation C-2, by John R. Chagnon, dated February 2010, be implemented. Seconded by Ray Jarvis. All in favor.

Note: Shawn Crapo recused himself from the following Motion for Rehearing.

Business:

To discuss the **Motion for Rehearing** or **Reconsideration of Decision and Memorandum in Support of Reconsideration** for variances granted July 7, 2010 for the Kay Ruma 1992 Trust, for property owned and located at **6 Big Rock Road, Tax Map 8.1, Lot 43**, submitted by Samuel and Dominique Winebaum, 52 Cable Road, Rye, NH. (entire Request for Rehearing is attached to the end of these minutes).

Chairman Drake stated that this will be a conversation that the Board will have in public. There will be no comments from the public. The Board will discuss and vote. All evidence, from the public, has been submitted, in writing, and reviewed by the Board.

Chairman Drake opened discussion to the Board at 7:50 p.m.

Member Nadeau stated that he has read the Motion for Rehearing, submitted by Mr. and Mrs. Winebaum and the objection submitted by Ms. Ruma, through Attorney Loughlin. He has also reviewed the Minutes. His opinion is that the Board did not make an error to any extent in their decision. He feels the Members made a thoughtful intelligent decision. That is the way he voted. He does not see any reason why the Board should rehear this application.

Member Goldman agreed. He stated that he has read every piece of the documentation and has been involved with this. He feels exactly the same way.

Member Weathersby stated that the standard to grant the Motion for Rehearing is whether the Board's decision was unlawful or unreasonable. The Winebaums list a number of reasons where they suggest the decision was unlawful; notice issues, no clarification on things and the 603.1 variance needed. She continued that a variance was not needed for 603.1 because of the 603.2. The Board did clarify most of the inconsistencies also. She stated that the Board is very familiar with the property and looked at the project as a whole. She does not think that the measurements of the proposed or existing, were off or misunderstood, such that the decision was unlawful. The reasonableness issue really goes down to the facts of the proposal itself. She commented that she disagreed with the decision. She did think that it was too big for that lot. However, she struggles with whether or not the Board's decision was unreasonable. She has been thinking a lot about this. She has read things very carefully, reviewed the Minutes and remembers the Board's conversation about this. Although she disagrees with the decision, she does not think it was an unreasonable decision. Reasonable people could have found it that way; particularly, in light of the unfortunate circumstance of the two very large properties on either side. It is unfortunate that those houses are so large. She reiterated that although she disagrees with the decision, she does not feel that it rises to a level that is unreasonable.

Chairman Drake agreed. He stated that he does think it is too large, particularly the second floor. With that being said, the Board did not make a mistake. There is no legal error. He continued that it was far from unreasonable. The end result might seem, to some, to be unreasonable; however, everyone has to end up agreeing to disagree. He does not see any merited way to support a rehearing. He commented that he would not mind a change of outcome. With that being said, the application "*went through the mill*". There have been other cases that have come back for rehearing, which he totally agreed with. That is not the fair process here.

Member Jarvis stated that he feels that each Member has their own integrity. Each Board Member at all times tries to be fair and vote the way they see things. In this case, two Members came down on one side, and rejected it, and the other three came down on the other, and supported it. He gets upset when anyone suggests that everyone did not try to be fair. Regardless of who the people are, the Board does their best.

Chairman Drake called for a vote in favor of granting a Rehearing:

None Heard

Chairman Drake called for a vote in opposition to granting a Rehearing:

**Jay Nadeau – aye, Ray Jarvis – aye, Paul Goldman – aye, Patricia Weathersby – aye,
Frank Drake – aye**

Motion denied for a request for Rehearing.

Announcements:

- The regularly scheduled BOA Meeting for October will be held the 13th, the second Wednesday.
- A special meeting for the Cell Tower will be scheduled for October 19th at the Rye Jr. High.

Adjournment:

Motion by Jay Nadeau to adjourn at 8:10 p.m. Seconded by Paul Goldman. All in favor.

Respectfully Submitted,
Dyana F. Ledger

**RYE BOARD OF ADJUSTMENT MOTION FOR REHEARING OR
RECONSIDERATION OF DECISION and MEMORANDUM IN SUPPORT OF
RECONSIDERATION**

Filed by: Samuel and Dominique Winebaum 52 Cable Road Rye, NH
Date: August 2nd, 2010

**Concerning: Variances granted July 7th, 2010 for the Kay Ruma 1992 Trust, for property
owned and located at 6 Big Rock Road, Tax Map 8.1, Lot 43. Variance**

This matter came before the Rye Board of Adjustment [hereinafter ZBA] for hearing on July 7th, 2010. The application, which contained a request for the relief of (six) 6 variances, was granted by a 3 to 2 vote.

The majority of the ZBA erred in granting the variances, as information provided by the applicant was misleading and inaccurate while there was a lack of due process in regard to the application.

The ZBA unreasonably disregarded the intent of the Rye Zoning Ordinance.

The ZBA erred in its decision to grant the variances by disregarding the arguments of the undersigned and by bolstering the arguments of the applicant with unreliable and arbitrary statements.

The ZBA erred in their assessment that not granting the variances would result in unnecessary hardship.

The undersigned request a rehearing and reconsideration of the six (6) variances granted and in support of that request, presents the following Memorandum.

FACTS AND ARGUMENTS

Including the July 7th, 2010 ZBA hearing, the application was on the agenda (eight) 8 times beginning on June 3rd, 2009. The applicant withdrew a number of times for various reasons and was heard by the ZBA five (5) times: in June, August, January, March and July. Each time, the applicant provided a new application, which was not significantly different in terms of footprint, bulk, and setbacks. As a direct abutter, we felt the process to be excessive and exhausting, and made it known to the board at the January hearing, as we respectfully requested the board to deny the request for relief of the six (6) variances. Instead the applicant opted to withdraw, came back in March with a new application and withdrew again. We were unable to attend the July hearing, but provided a statement that was read during the hearing. We have listened to the audio-recording of the hearing, whose content we will be referring to as well as to the meeting