

BOARD OF ADJUSTMENT
Rye, New Hampshire
Meeting of April 6, 2011
Rye Town Hall
7:00 p.m.

Members Present: Chairman Frank Drake, Jay Nadeau, Ray Jarvis and Shawn Crapo.

Also Present: Zoning Board Administrator Susan Labrie

I. Call to Order and Pledge of Allegiance

Chairman Drake called the meeting to order at 7:05 p.m. and led the Pledge of Allegiance.

II. Review and approval of February and March minutes:

Motion by Jay Nadeau to approve the minutes of February 2011 and March 2011, as presented.
Seconded by Shawn Crapo. All in favor.

III. Other Business

- None

IV. New Business

- 1. Thomas and Devin Farrelly, for property owned at 18 Gray Court, Map 5.3,** Lot 022-001, requests variances to Article III, Section 304.5 and Article VI, Section 603.1 to add a one story addition (roughly 650-sf). Existing house is a non-conforming. Propose to finish portion of existing garage first floor and add second story dormer, deck and finish off existing second story of garage into living space, which will increase the percent coverage for residence from 9.8% to 23.8% where 15% is permitted. The garage is existing and not used as living space. Property is located in the General Residence District, Coastal Overlay. Case #9-2011.

Attorney Tim Phoenix, from Hoefle, Phoenix, Gormley & Roberts, from Portsmouth, NH, attorney for the Applicants, addressed the Board. They submitted an application with the plans, diagrams and elevations, with site plan prepared by Surveyor Jim Verra, from James Verra and Associates, Portsmouth, NH showing existing conditions and what is being proposed. The proposal is to add small additions to the main house. This addition will not increase the percent coverage over 15 percent. Instead of building up over the footprint, the Applicants have decided to utilize the existing garage to create living space. The proposal is to create a couple of dormers in the garage and living space. This area will be used as an office, workout room on the second floor, and a children's playroom and half bathroom downstairs. There will be no bedrooms or kitchen facilities in this space. The relief that is being requested is primarily a result of recreating the garage (barn) into a space that the Applicant can use. It is and will remain a 3 bedroom house. He continued that in reviewing the plan, there has been some question as to

whether the conversion of the garage takes the total lot coverage over the 15 percent that is permitted. The former owners were before the Board to expand the house. Because they were not going to convert the garage into living space, the Board said that a variance was not needed. Attorney Phoenix stated that he questioned whether or not a variance is needed for converting the garage into living space. The Town's definition of a dwelling is *a building designed for use primarily by one or more families for living quarters*. The definition of living quarters is *any structure or portion of a structure designed or used primarily for living and sleeping accommodations by a person or family and generally including cooking and sanitary facilities*. He stated there will be no sleeping accommodations in the barn or cooking facilities. He does not know if a game room constitutes living facilities. That is for the Board's consideration.

Attorney Phoenix stated that the plans, prepared by Michelle Shields, shows exactly what currently exists and exactly what is going to be there. He discussed the existing conditions, proposal of additions to the house and the floor plan and changes for the garage. He stated that the Applicant could add a second story to the one story house, as long as the height variance was maintained, without needing a variance. They believe that it is a better idea to keep the low home in with the character of the neighborhood and utilize the existing garage and not create any additional footprint. They feel that the proposal looks esthetically better and is more in keeping with the characteristics of the neighborhood. He pointed out that there are a number of neighbors in support of the proposal. He submitted a letter from **David and Ellen Winn, Gray Court**,⁽¹⁾ in support of the project. Attorney Phoenix went on to review the five requirements for granting a variance. He summarized that the proposal is moderate and reasonable and the request for the variance should be granted.

Member Crapo asked for clarification on why the second story could be built, without a variance, on a 12,000-sf lot when the minimum requirement is 44,000-sf.

Attorney Phoenix explained that the existing building meets all the setbacks and requirements. The building would not take the percentage over the minimum percentages.

Member Crapo pointed out that it is a non-conforming lot. Discussion on whether or not the property is non-conforming.

Chairman Drake explained that the previous BOA case before them in 2005 was based on whether the garage would be considered part of the 15% coverage for dwelling or 30% coverage permitted for dwelling plus accessory structures. The case was dismissed by the board because there was no building permit to change the use or any structural part of the garage.

Attorney Phoenix agreed with Chairman Drakes summary. He thought that the second floor could be added on because it did meet dimensional setbacks. Even if it doesn't, it does not change the reasonableness of this proposal.

Chairman Drake stated that it may be non-conforming because he does not think it meets the side setback on the east side of 20-ft and it is only 15-ft.

Attorney Phoenix stated that he refers to the Board and if that is the position then consider it on the merits without weighing it against the second story.

Referring to the submitted package, Member Nadeau asked for clarification on the addition of a half bath to the garage area.

Thomas Farrelly, Applicant, pointed out the area for the half bath.

Member Nadeau stated that the half bath concerned him because Attorney Phoenix stated the changes did not fall under the dwelling unit and living quarter's exception, by definition of the Ordinance. If a half bath is being planned, he feels that it is a sanitary facility, and fall under living space. He agrees this proposal increases the percent coverage of the dwelling.

Attorney Phoenix explained that in reading the definition of living quarters this has some of these things and not others. There is just some question because there are no bedrooms or kitchen facilities.

Member Jarvis asked the distance between the garage and the house.

Mr. Farrelly commented that it is 12 to 15-ft.

Attorney Phoenix stated that this would be looked at differently if the garage (barn) was not there and the Farrelly's wanted to put an addition on the house. That would be a pretty big addition. In this case, it is covering the ground already, the floor is there already. That is not changing.

Member Jarvis asked if there was anything in the record that put any restrictions on the garage when it was built.

Susan Labrie, Building Inspector, stated that she went through the file and could not find anything regarding the permit.

Chairman Drake commented that it did not need zoning relief to be built.

Chairman Drake opened to the public for comments or questions.

Speaking in favor of the proposal:

- **Peter McCue, 14 Gray Court**
- **Leroy Snodgrass, 33 Gray Court**
- **William Sloan, 47 Gray Court**
- **Betty Thomas, 17 Gray Court**

John Murphy, 28 Gray Court, requested a drainage study. He also requested a site inspection by the Building Inspector, concerning the drainage. He further expressed concerns on the lot coverage and the bulk. He expressed concerns over a "slippery slope" of this structure being used as a dwelling in the future.

Attorney Phoenix stated that there are impervious surfaces being taken out. The new additions do not make up the difference of what is coming out. There is nothing new on the garage. He continued that they do not feel there will be any drainage problems. Requiring a drainage study is 'overkill' in this case. He stated that a 23.8-sf increase in lot coverage is a significant increase; however, everything is already there. The existing percent coverage is not changing substantially. The garage (barn) is already there. He pointed out that any expansion, or further use of the building beyond what is approved, would have to come back before the Board. They would be fine with the Board making that a condition. He pointed out that there is no intention to put in bedrooms or expand. This is the plan that they want and welcome the Board to be as strict as need be to make it happen.

Regarding whether this needs a variance or not, Chairman Drake stated that arguably this is not just a garage in this new proposal. It doesn't meet the definition of a garage. It becomes something a little bit more significant. He thinks the Building Inspector made a good call on that. The Board can condition the approval.

Member Crapo commented that he remembered the 2005 application and that they wanted to change the house but leave the garage alone. The Board did not get assurance that it was not going to be both.

Chairman Drake pointed out that the Board had no legal reason to say it was not a garage. Now he thinks they have the standing that it isn't a garage and therefore, it needs to be incorporated into the lot coverage. He continued that the lot coverage of 23.8 seems high. However, he understands the distinction that the garage (barn) is already there.

Member Nadeau commented that if he was to be in favor, of this request, he would have to have some conditions attached to it. As a whole, he does not think their request is totally unreasonable.

Member Jarvis stated that when he looks at this, the first thing he thinks of is a very large home. It is almost 4,000-sf. He sees a big house that happens to be split. The only thing missing is a sheltered walkway between the structures. He is "wrestling" with that. He asked if there are going to be the usages, for living quarters, in what used to be the garage, why the need for the other additions. He finds it to be backing into a big, big house on a small lot. It can be said, "You have that space; so, it is not a house". Technically not, but in day to day living it is a big house on a little lot.

Member Nadeau asked for clarification on the square footage.

Attorney Phoenix explained that the existing house is 1,259-sf. They are adding 123-sf to the kitchen, staying within the confines of the existing perimeters, and they are adding a hallway, 105-sf, staying within the existing confines. The only thing being added is a 400-sf family room taking the total size to 1,900-sf, which is still modest. Then with the garage it is not fair to say that is living space because it is not now. It is empty space. If they were starting with nothing there and wanted to add this, as part of the home, he could see the concern. To convert this big building to get a reasonable use out of it is fair. He pointed out that there will be an office and a playroom. He reiterated that bedrooms and a kitchen are not being added.

Member Nadeau commented that 1,900-sf is not a big home for a family of five. However, the Applicant wants to convert the unusable space in the barn into living space; recreation and the office. That falls under the definition of living space.

Attorney Phoenix explained that the way the Town's Ordinance defines this is an open question. He continued that the thrust of their argument is that all of this exists, it is pretty modest on the main house, and they want to use the garage and all the other space. They have found a way to do it that is modest.

Mr. Farrelly explained to the Board that the office will not be a business office. There will not be people coming and going. It is strictly a personal office for his use. He is in real estate.

Member Jarvis stated that conceptually it is one large home. Given that, it is a very good point that this is what is there now. This will make it look better and more functional. This is making the best of a not very good situation. He does not have any severe heartache about the proposal. He reiterated that it is a large home that happens to be there now. On one level it will be much better. On another level it is a "slippery slope" and there really needs to be restrictions.

There was discussion on possible conditions.

John Murphy stated that when he was landscaping, the Building Inspector, required him to do a drainage study. He pointed out that Mr. Irving, across the street, built his house a year ago and was asked to do a drainage study. He does not understand how they are picking and choosing who does a drainage study.

Chairman Drake stated that the landscaping project effects drainage more than a bedroom addition, especially when the landscaping changes the grade and runoff. The project across the street was a tear down and rebuild. Their application and proposal did not warrant a drainage study (however, the drainage was reviewed and drainage methods were employed during construction and designed by an engineer).

Mr. Murphy pointed out that this is an increase of 23.8 percent.

Chairman Drake stated that they are adding on much less that is going to change the drainage. The only thing they are adding on is the bedroom, the bump-out in the kitchen and the bump-out for the hallway. They are taking out more impervious surface. That is not an illogical set of facts for the Board to deal with.

Mr. Murphy asked about checking for non-compliance to Section 507.

The Board reviewed Section 507 of the Ordinance.

Member Crapo stated that the Ordinance exists with the 15% and the 30% lot coverage to address overall run-off. He does not see anything that they are doing that is going to cause a difference in run-off. The overall spirit of the 30 percent maximum is still being adhered to.

Chairman Drake read from Section 507.4:

The Building Inspector may require submission of a detailed drainage and a grading plan at his/her sole discretion and at the expense of the property owner whenever there is a question regarding compliance with this section.

Member Nadeau stated that Chairman Drake is correct that every application is taken as its own separate application. It has its own merits. This is not a tear down and rebuild. He does not feel that a drainage study is needed.

Chairman Drake stated that it is overkill in this instance. Fundamentally, they are not changing any of the grades. They are covering surface but they are taking out coverage. In the end he does not see it as an issue.

Member Crapo asked if the Applicant would be willing to have a condition to where the gutters go.

Attorney Phoenix stated that the Farrellys are willing to do whatever the Board feels is necessary to catch and properly place rainwater. The concern is what happens when it hits the ground. They do not want to commit to something that may negatively impact the structure. Common sense tells you that they are adding some square footage and taking away other impervious square footage, no grades are being changed and he does not see where this will have any significant effect on drainage.

Chairman Drake suggested as part of the condition that the site be evaluated by the Building Inspector. Information could be put in the file about the evaluation.

In regards to gutters and drainage flow, **Susan Labrie, Building Inspector**, stated that it would be looked at before it was built, discussed and well thought out. There are proven best management practices that could be incorporated. She will discuss the situation with **Dennis McCarthy, Director of Public Works**, and incorporate drainage measures as they are needed.

Chairman Drake closed the Public Hearing and called for a vote for requested variances to *Article III, Section 304.5 and Article VI, Section 603.1*:

1. The variance is not contrary to the public interest?

Jay Nadeau – Yes
Shawn Crapo – Yes
Ray Jarvis – Yes
Frank Drake – Yes

2. The Spirit of the Ordinance is observed?

Jay Nadeau – Yes
Shawn Crapo – Yes
Ray Jarvis – Yes
Frank Drake – Yes

3. Substantial justice is done?

Jay Nadeau – Yes
Shawn Crapo – Yes
Ray Jarvis – Yes
Frank Drake – Yes

4. The values of surrounding properties are not diminished?

Jay Nadeau – Yes
Shawn Crapo – Yes
Ray Jarvis – Yes
Frank Drake – Yes

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

Jay Nadeau – Yes
Shawn Crapo – Yes
Ray Jarvis – 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?

Jay Nadeau – Yes
Shawn Crapo – Yes
Ray Jarvis – Yes
Frank Drake – Yes

7. The proposed use is a reasonable one?

Jay Nadeau – Yes
Shawn Crapo – Yes
Ray Jarvis – Yes
Frank Drake – Yes

Motion by Jay Nadeau to grant the variances requested by Thomas and Devin Farrelly, for property owned at 18 Gray Court, as advertised; however, with regards to the granting of the variances as pertaining to the existing garage in the Applicant's request for conversion of use thereof; that use shall be conditioned as presented by the Applicant on P6 of the garage floor plans, designed by Michelle Shields Design; in that the playroom, a gym, office space and finished storage shall be permitted, along with a one half bath. Expressly also conditioned, there shall be no kitchenette, no bedrooms, no shower or tub allowed. This area shall not be used as living quarters, as defined in the definition of the Town's 2011 Zoning Ordinances. Furthermore, the Building Inspector shall inspect the property as to potential drainage impact of the surrounding neighborhood upon installation of the foundation of the new portions to the home. Seconded by Shawn Crapo. All in favor.

Adjournment

Motion by Jay Nadeau to adjourn at 8:27 p.m. Seconded by Ray Jarvis. All in favor.

Respectfully Submitted,
Dyana F. Ledger