METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

April 12, 2012

The meeting was called to order at 7:51 p.m. by Pat Lagay, Chairperson, who read the statement in accordance with the Open Public Meetings Act.

ROLL CALL

Present:
Suzanne Andrews
Pat Lagay, Chairperson
Judith Sisko
Byron Sondergard
Daniel Spiegel
Brian Tobin, Alt. I
Jonathan Rabinowitz, Alt. II
Jim Constantine, Planner
Robert Renaud, Attorney
Kathy Elliott, Engineer
Chris S. Cosenza, Zoning Officer

Late: (none)

Absent: Robert Fair, Vice Chairperson
Catherine McCartin

NEW BUSINESS

12-943 **Jennifer Savarese** – Applicant is seeking use variance approval for an addition already constructed on a two (2) family dwelling in the R-2 Zone.

53 E. Walnut Street Block 211, Lots 66.06, 71 R-2 Zoning District

Ms. Lagay noted that there is a history of the property that is pertinent to the application and requested that the Applicant bring the Board up to date and what it is that the Applicant is seeking.

Thomas Sharlow, Jr., Attorney at Law, Applicant's Attorney, introduced himself to the Board on behalf of his client. He stated that it is an interesting application. Historically, the dwelling has been a two-family use. Last year, there was an addition on the rear of the home. The sunroom was expanded and, technically, it is an expansion of a non-conforming use. The Applicant is seeking a D(2) variance. He stated that a building permit was obtained and the addition was constructed. After construction was complete, the owner was notified that the Applicant could not use the room; a Certificate of Occupancy (CO)could not be issued because it was an expansion of a non-conforming use and that a variance was required first.

Ms. Lagay stated that the timeline that she was aware of was that there was an application that came before Mr. Cosenza. It was presented as a single-family house. The Applicant was given permission to construct the addition. In August, the addition was inspected by the Tax Assessor, who noted that the tax rolls show that it had been a two-family dwelling and he had indicated that it was now going to be listed as a single-family dwelling.

Mr. Renaud stated that he has some concerns that needed to be addressed. He indicated that he had contacted Mr. Sharlow with a letter to let him know that he had questions as to whether the dwelling was ever a legal non-conforming use. That issue should be addressed first. As he understands it, it is in a single-family zone. There is no indication that it was anything other than a single-family zone. The fact that it was on the tax rolls as a two-family use is irrelevant.

Ms. Lagay requested clarification regarding the irrelevance of the tax information.

Mr. Renaud stated that when a revaluation is done, the revaluation company goes out and all they do is write down on the record card what they see when they go out. They do not go back and check with the building records. They are only there to tax what is there as of the date of the revaluation. Whatever the date of the revaluation, in that snapshot in time, the residence appeared to be a two-family residence. We do not know what happened before or what happened after and we do not know how it ever came to be a two-family residence.

(continued) The sealed architectural plans, obtained from the Building Department, dated September 8, 2010, are entitled "Existing One-Family Wood-Frame Home Extension." The only thing shown on the plans is the addition. However, it does say it is a single-family residence. This is the plan that was submitted to the Building Department together with the approved Zoning Permit Application. The application indicates that the Applicant checked off that it was a single-family dwelling with no garage. It was approved on that basis.

Ms. Andrews asked if that application had come before the Board.

Mr. Renaud stated no, it would not have. The application was for what would have been a conforming addition on a single-family residence. That was what was applied for. He is not offering any judgment, but the Applicant has to deal with this issue in some way. The Applicant also has to deal with the Tax Assessor's findings. In August, the Tax Assessor inspected the house after the issuance of a building permit. According to his report, he was let in by the owner, who told the Tax Assessor that it was a single-family house. When he was in the house, he did not observe a second kitchen on the second floor. As a result of his inspection, he changed the assessment to a single-family residence. The plans that came with this application (before the Board) show an as-built second floor plan showing the second kitchen.

Mr. Constantine noted that what should be checked is if the building permit plans show the second kitchen.

Mr. Renaud reiterated that only the addition was shown on the plan.

Mr. Sharlow expressed disappointment that he had received the Tax Assessor's memo only the day before and that he was not present at the hearing. He has several questions for the Tax Assessor as there are several inadequacies and misstatements in the memo. He had request documentation from his office in December or January and he did not get information until April 11th. He wishes that Bob Sweeney, the Tax Assessor, was present.

Ms. Lagay stated that the Applicant could provide testimony to clear up those issues.

Mr. Renaud stated that with respect to the other records, the other records are records. They are what they are and they are on file with the municipality. Mr. Sweeney's memo is of the nature of factual statements. If there are discrepancies between what was in his memo and what will be testified to, then the Board may have to carry the hearing and have Mr. Sweeney

come in to explain what he saw. However, the Board should hear the testimony first. The Board cannot accept the factual statements anyway, but the records can be.

Ms. Savarese was sworn in by Mr. Renaud.

Mr. Sharlow asked Ms. Savarese if she is the Applicant in this application for a D variance, a use variance, to allow the continued use of the home as a two-family home.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese for her address.

Ms. Savarese stated that she lives at 53 East Walnut Street.

Mr. Sharlow asked Ms. Savarese how long she has resided at the premises.

Ms. Savarese stated that she has lived there since 2008.

Mr. Sharlow asked Ms. Savarese how she became to be the owner of the premises.

Ms. Savarese stated that she had inherited it from her grandmother.

Mr. Sharlow asked Ms. Savarese when she had obtained title of the premises.

Ms. Savarese stated that it was at the end of 2008 or beginning of 2009.

Mr. Sharlow asked Ms. Saverese if she could recall her grandmother purchasing the property.

Ms. Savarese stated yes, it was some time in the 1960's.

Mr. Sharlow asked Ms. Savarese when her grandmother passed away.

Ms. Savarese stated that she passed away in December 2008.

Mr. Sharlow asked Ms. Savarese if she was aware of who else lived in the property.

Ms. Savarese stated that her father and her aunt also lived in the property.

Mr. Sharlow asked Ms. Savarese if there was anyone else who lived in the property.

Ms. Savarese stated that there was a woman who lived upstairs in the 1990s.

Mr. Sharlow asked Ms. Savarese how she knew of the woman who lived upstairs.

Ms. Savarese stated that, as a child, she could hear her upstairs and she passed away the same year her grandmother passed away.

Mr. Sharlow asked Ms. Savarese when she moved into the property.

Ms. Savarese stated that she had periodically visited the property to help her aunt, but she moved in March of 2009.

Mr. Sharlow requested Ms. Savarese to describe the residence to the Board.

Ms. Savarese stated that the dwelling has two (2) bedrooms on the first floor and one (1) bedroom on the second floor. There are two (2) bathrooms, a basement, a kitchen and a dining room. The addition is a family room den.

Mr. Renaud requested clarification on the number of bedrooms on each floor.

Ms. Savarese reiterated that there were two (2) bedrooms on the first floor and one (1) bedroom on the second floor.

Ms. Lagay asked if that was the case previously or currently.

Ms. Savarese stated that it was both; it always has been the same.

Mr. Sharlow requested Ms. Savarese to describe the second floor to the Board.

Ms. Savarese stated that there is a bedroom with a walk-in closet, a stand-in shower in the bathroom, a kitchen with a stove and a refrigerator and a small living room.

Mr. Sharlow requested Ms. Savarese to describe the first floor to the Board.

Ms. Savarese stated that there is a living room, two (2) bedrooms, a bathroom with a full tub, a kitchen and a dining room. There is also a basement.

Mr. Sharlow asked Ms. Savarese if the second floor has its own entrance into the home.

Ms. Savarese stated yes. There is an entrance on the side at the front.

Mr. Sharlow asked Ms. Savarese if the second unit has its own utility meters.

Ms. Saverese stated yes.

Mr. Sharlow asked Ms. Saverese if she had those meters installed.

Ms. Savarese stated no.

Mr. Sharlow asked Ms. Saverese if the meters were separate when she took possession of the property.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if she had her own separate meter downstairs.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if she receives her own utility bills in her name.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if the resident upstairs receives her own utility bills in her name.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if she was aware how the property had been taxed over the years.

Ms. Savarese stated that it was taxed as a two-family residence.

Mr. Sharlow asked Ms. Savarese how she knew that.

Ms. Savarese stated that she had received previous bills, tax records and her own taxes.

Mr. Sharlow asked Ms. Savarese, since she took possession of the property, if any improvements had been made.

Ms. Savarese stated that she had put on siding, painting, and carpeting and refurbished the kitchen.

Mr. Sharlow asked Ms. Savarese if these were the improvements that were made on the first floor area.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if a new roof was also put on the house.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if she could estimate how much money she has invested in improvements to the property since she took title.

Ms. Savarese stated over $100,000.

Mr. Sharlow asked Ms. Savarese if there came a time to submit an application for an addition to the rear of the house.

Ms. Savarese stated yes.

Mr. Sharlow requested Ms. Savarese to describe the process.

Ms. Savarese stated that she went to Joe Percario for everything.

Mr. Sharlow asked Ms. Savarese who Mr. Percario was.

Ms. Savarese stated that he was the contractor that she went through.

Mr. Sharlow asked Ms. Savarese if she came down to Borough Hall to fill out a permit.

Ms. Savarese stated no.

Mr. Sharlow asked Ms. Savarese who procured the permit to put the addition on the back of the house.

Ms. Savarese stated Mr. Percario.

Mr. Sharlow asked Ms. Savarese if she would sign applications that Mr. Percario had put in front of her.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if she had reviewed the application.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if she recalled an application indicating the property was a single-family residence.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if she recalled seeing any indication on the paperwork that it was single-family residence that she was signing.

Ms. Savarese stated no.

Mr. Sharlow asked Ms. Savarese why she put an addition on the back of her house.

Ms. Savarese stated that the sun porch had a tin roof. It was falling apart and it was unsafe to have a small child and neighbors come over. She decided it was best to remove it and make it more appealing.

Mr. Sharlow asked Ms. Savarese to describe the room in more detail.

Ms. Savarese stated that you had to walk down three (3) steps and it had a cement floor, wood-framed with a tin roof, probably built in the 1940's.

Mr. Sharlow asked Ms. Savarese, as part of the addition that was put on the back, if that room was demolished and removed.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if the addition that was put on the back of the house was the same size as the one that was taken away.

Ms. Savarese stated that the addition was three (3) feet over. It was extended three (3) feet in one direction (toward the rear).

Mr. Sharlow asked Ms. Savarese if she still walks down steps to get into the addition.

Ms. Savarese stated that no, she can walk from the dining room right into the addition.

Mr. Sharlow asked Ms. Savarese if all of the construction is completed for the addition.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if the town had sent inspectors out to inspect the addition.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if she received a notice from the township that she could not occupy the addition.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese when she received it.

Ms. Savarese stated that she did not know.

Mr. Sharlow asked Ms. Savarese if she had received a letter from a Borough Official.

Ms. Savarese stated yes and that was when she contacted a lawyer.

Mr. Sharlow showed Ms. Savarese a letter dated November 30, 2011 from the Zoning Official, Mr. Cosenza. He asked if she had received this letter.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese what she did after she received the letter.

Ms. Savarese stated that she contacted Mr. Sharlow's office to let them know that she needed help and to find out what had gone wrong.

Mr. Sharlow noted that Mr. Cosenza had provided two (2) options in order to secure a CO. The first option he provided to her was to "convert the structure from a two-family dwelling back to a single-family dwelling" or "apply for and receive approval for a use variance for an addition to a non-conforming use." Mr. Sharlow asked Ms. Savarese if it was the use variance that she decided to go for.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if she had filed an application for a use variance in order to occupy the premises as a two-family home.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if the application included photographs.

Ms. Savarese stated yes.

Mr. Sharlow noted that the photographs were reduced and placed onto a single sheet. 16 copies were provided so each Board member has a copy of the photographs. He requested Ms. Savarese to describe the photographs.

Mr. Renaud asked Ms. Savarese if she took the photographs.

Ms. Savarese stated yes.

Mr. Renaud asked Ms. Savarese when she took them.

Ms. Savarese stated that she took them in February. She corrected herself and stated that she took them in March and apologized to the Board.

Mr. Renaud noted that the photographs were part of the application package that Board members have.

Mr. Sharlow requested Ms. Savarese to describe the photographs.

Ms. Savarese stated that the first set of photographs show the interior and exterior of the home. The second photograph shows the new addition. The third photograph shows the rear yard area. The fourth photograph shows the other side of the dwelling. The last photograph shows the homes across the street.

Mr. Sharlow noted that together with the photographs, floor plans by Zimbler Architecture were submitted. He asked Ms. Savarese if that was the same architect who prepared the plans for the addition that was put on the back of the house.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if the floor plans accurately represented the interior of the first and second floors.

Ms. Savarese stated yes, they are exactly correct.

Mr. Sharlow asked Ms. Savarese if the architect prepared elevations of the home.

Ms. Savarese stated yes.

Mr. Sharlow requested Ms. Savarese to describe the elevations.

Ms. Savarese described each side of the home. The elevations show the addition has four (4) small windows along the side and two (2) windows in the rear.

Mr. Sharlow asked Ms. Savarese if she had an opportunity to review the memo that was submitted to his office from the township Engineer, dated April 9, 2012, signed by Ms. Elliott.

Ms. Savarese stated yes.

Mr. Sharlow stated that the description of the property, as noted in Ms. Elliott's memo, indicated that "the applicant recently completed the construction of a two story addition, along with a one-story den off the rear of the dwelling." He asked Ms. Savarese if she had constructed a two-story addition.

Ms. Savarese stated no.

Ms. Elliott offered to Mr. Sharlow that the faxed survey that was presented to her was illegible but in an attempt to reconcile the information, it had appeared to her that the addition was two stories. That is why she used the word "appeared."

Mr. Sharlow stated that he had wanted to clarify to the Board that it was not a two-story addition. On the second page of the letter, comment #2, there is a parking requirement that indicates that

four (4) parking spaces are required. He asked Ms. Savarese how many off-street parking spaces were provided on her property.

Ms. Savarese stated that there are two (2) parking spaces in front of the house as well as a two (2)-car driveway.

Ms. Lagay clarified that the two (2) parking spaces in the front of the house was on a Borough street.

Mr. Sharlow asked Ms. Savarese how many vehicles are actually utilized on the property.

Ms. Savarese stated two (2).

Mr. Sharlow asked Ms. Savarese if she had any problems parking vehicles on her property or in the street.

Ms. Savarese stated no.

Mr. Sharlow noted that comment #3 described an accessory structure. He asked Ms. Savarese if she had a shed on the property and where it was located.

Ms. Savarese stated that she had a shed on the left-hand corner of the property.

Mr. Sharlow asked Ms. Savarese how long the shed had been there.

Ms. Savarese stated that it had been years.

Mr. Sharlow noted that comment #4 stated that Ms. Elliott requested testimony regarding the discharge of stormwater and the location of roof leaders. He requested Ms. Savarese to describe the roof leaders.

Ms. Savarese stated that she had the leaders bring water out to the street. The addition has a leader that brings water into her rear yard area.

Ms. Lagay asked if the leaders in the front of the house were underground.

Ms. Savarese stated yes, there was already a hole in the curb to connect to.

Mr. Sharlow asked Ms. Savarese if any of the leaders were directed to any of her neighbors.

Ms. Savarese stated no.

Mr. Sharlow asked Ms. Savarese if the gutters and leaders was part of the building permit for the rear addition.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if she had an opportunity to review the memo that was submitted to his office from Mr. Constantine, dated April 9, 2012.

Ms. Savarese stated yes.

Mr. Sharlow noted that Mr. Constantine's memo stated that Mr. Constantine requested testimony for special reasons for extending the non-conforming use. He requested Ms. Savarese to describe again why the rear addition was put on the house.

Ms. Savarese stated that the sun porch was falling apart and unsafe. She plans to raise her family here and spend time in Metuchen and make it a better house.

Mr. Sharlow asked Ms. Savarese if she is able to use the sun room.

Ms. Savarese stated that she did as a child but over time, it would collect rain and snow. Mosquitoes would find a way to come in. She was not able to use it.

Mr. Sharlow asked Ms. Savarese if she had an opportunity to review the memo that was submitted to his office from the Tax Assessor, dated April 11, 2012.

Ms. Savarese stated yes.

Mr. Sharlow noted that the last sentence of the first paragraph, Mr. Sweeney stated that he "was let in the house by the owner, Jennifer Savarese." He asked Ms. Savarese if she let in Mr. Sweeney in August of 2011.

Ms. Savarese stated no, she did not.

Mr. Sharlow noted that in the second paragraph, Mr. Sweeney stated that "before entering the house" he "questioned the owner if the house was a two-family or single family. She stated that the house was a single family." He asked Ms. Savarese if she told Mr. Sweeney that her home was a single-family home.

Ms. Savarese stated no.

Mr. Sharlow noted that in the third paragraph, Mr. Sweeney stated that "when entering the house," he "noticed that the kitchen was recently remodeled (new cabinets)." He asked Ms. Savarese if she had installed new cabinets on the first floor.

Ms. Savarese stated no, she just refaced the front of the cabinet doors.

Mr. Sharlow noted that continuing with the third paragraph, Mr. Sweeney stated that "when questioned, the owner stated that the kitchen was redone in 2009." He asked Ms. Savarese if she told Mr. Sweeney that the kitchen was redone in 2009.

Ms. Savarese stated no.

Mr. Sharlow noted that in the fourth paragraph, Mr. Sweeney stated that "the second floor had three (3) bedrooms and a full bath." He "did not observe a kitchen." Referring to August, 2011, he asked Ms. Savarese if there were three (3) bedrooms on the second floor.

Ms. Savarese stated no.

Mr. Sharlow asked Ms. Savarese, referring to August, 2011, if there was a full bath on the second floor.

Ms. Savarese stated no.

Mr. Sharlow asked Ms. Savarese, referring to August, 2011, if there was a kitchen on the second floor.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if the statements made by Mr. Sweeney were inaccurate.

Ms. Savarese stated that was correct.

Mr. Sharlow asked Ms. Savarese if she had spoken to Mr. Sweeney.

Ms. Savarese stated no.

Mr. Sharlow asked Ms. Savarese if she had ever removed the kitchen on the second floor.

Ms. Savarese stated no.

Mr. Sharlow asked Ms. Savarese if she had secured any tax records from Mr. Sweeney's office in connection with this application.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese what she had secured.

Ms. Savarese stated she had received copies of previously paid taxes on the property.

Mr. Sharlow provided a tax record card and asked Ms. Savarese if it was card that was provided to her by Mr. Sweeney's office.

Ms. Savarese stated yes.

Mr. Sharlow requested that the tax record card be marked as exhibit A-1.

Mr. Renaud interjected and requested Mr. Sharlow to describe what it is because Board members were not looking at it.

Mr. Sharlow stated that it was a fax from Mr. Sweeney to Mr. Sharlow consisting of three (3) pages. There is a diagram of the property.

Mr. Renaud asked if he knew what a property record card was.

Mr. Sharlow provided the fax to Mr. Renaud to review.

Mr. Renaud stated that the exhibit is what is commonly known as a property record card. This is a record of what the Tax Assessor generally would keep on a property that is generally originally prepared by the revaluation company and describe what is there when they looked. The Tax Assessor would make notes of changes right on the property record card. This one appears to be a paper record.

Mr. Spiegel noted that the Applicant had testified that as of August, 2011, there was no full bath on the second floor. He asked when the construction was completed.

After a brief discussion, Ms. Savarese stated that it had consisted of a shower, toilet and sink. She apologized to the Board because she thought that a full bath contained a tub, not a shower.

Ms. Andrews asked if it had always been there.

Ms. Savarese stated yes.

Mr. Renaud requested clarification and asked if it was Ms. Savarese's testimony that, to the best of her knowledge, the Tax Assessor had ever been in her house or he talked to someone else in the house, other than her.

Ms. Savarese stated that she was not home. The Tax Assessor actually talked to her mother.

Ms. Lagay stated that the property record card shows that the property has been taxed as a two-family house for many years.

Mr. Sharlow stated yes. The documentation is dated January 20, 1993.

Mr. Renaud asked Ms. Savarese if she received an assessment notice on or about February 15, 2012. It would have been a small card from the County Board of Taxation.

Ms. Savarese stated yes.

Mr. Renaud asked Ms. Savarese if the assessment for 2012 was the same as 2011.

Ms. Savarese stated that she believed so.

Mr. Renaud asked Ms. Savarese if that was something she could check.

Ms. Savarese stated yes.

Ms. Andrews asked Ms. Savarese when she took possession of the property and took title into her name, if she had a title policy.

Ms. Savarese stated that was something that went through her lawyer.

Mr. Sharlow stated that with a transfer of title, there was not a need.

Ms. Andrews stated that she understood but she was curious if the Applicant had a title policy, it would show the chain of title and how everything was recorded. That was why she was asking. She understands she did not need it because she inherited the property.

Ms. Savarese stated that she did not.

Mr. Sharlow asked Ms. Savarese if there were smoke detectors upstairs in the dwelling unit.

Ms. Savarese stated yes, the township required that they be hard-wired throughout the house: on the first floor, the basement and the apartment upstairs.

Mr. Sharlow asked Ms. Savarese who lived in the upstairs dwelling unit.

Ms. Savarese stated her mother.

Mr. Sharlow asked Ms. Savarese who lived downstairs.

Ms. Savarese stated herself, her aunt, her child and her husband.

Mr. Sharlow asked Ms. Savarese if she was the guardian to her aunt.

Ms. Savarese stated yes.

Mr. Sharlow asked Ms. Savarese if she had been able to look around and see any other two-family homes.

Ms. Savarese stated that she had. She found one on West Walnut Street, #19, #25 and #27. She found others on Lincoln Avenue, #32, #30, #18 and #19. There is one on Myrtle Street, #7. There is one on Main Street, #211.

Ms. Lagay asked how she got that information. The Board does not have the history regarding these properties and if they were legal.

Ms. Savarese stated that she looked for second mailboxes and second entrances. She does not have property knowledge from the township; this is just what she noticed.

Mr. Sharlow asked Ms. Savarese if she was requesting the Board to grant her a variance to allow her home to be considered a two-family dwelling.

Ms. Savarese stated yes.

Mr. Sharlow stated that he had no further questions for Ms. Savarese.

Ms. Lagay asked if the Applicant would be testifying, since it is a use variance, to the pros and cons.

Mr. Renaud agreed that a D variance is supposed to have testimony to that affect.

Ms. Lagay requested Board members for questions for the Applicant.

Ms. Andrews asked if there was a separate entrance for the second floor.

Ms. Savarese stated yes; there is the door at the front of the house. You go through the front door and go upstairs. Next to the stairs is a door leading into the living room.

Ms. Andrews noted that her mother is living on the second floor. She requested clarification regarding access.

Ms. Savarese stated that once you go through the front door, you go up the stairs and at the top of the stairs is a door that leads into her mother's house. At the bottom of that staircase is a door that leads into her house.

Ms. Andrews asked if there was intent in the future, if the application was granted, to rent out the upstairs to a non-family member.

Ms. Savarese stated no.

Ms. Andrews questioned why it was important to have a two-family dwelling.

Mr. Sharlow stated that the Zoning Official told the Applicant that no CO can be issued until the premises was returned to a single-family dwelling, which meant the removal of the kitchen upstairs including the refrigerator and the stove, or request a use variance. He stated that his client had already indicated that she wanted to request the use variance.

Ms. Andrews stated that she did not know if Mr. Sharlow had asked his client why it was important for his client to have a two-family residence. She asked the question again, asking why it was important to Ms. Savarese to have a two-family dwelling.

Ms. Savarese stated that she wanted to keep her mother upstairs and allow her to have her own kitchen and cook for herself. That is her primary goal.

Mr. Renaud asked if there were any other means of separation between the two units; were there any locks?

Ms. Savarese stated that there are regular door locks. However, they are never locked because her son visits her mother often. It is locked at night as another means of security in addition to the front door.

Ms. Lagay stated that the application is similar to a mother-daughter situation. She questioned if the Board could grant approval and when the mother moves out, the variance is vacated.

Mr. Renaud stated that it cannot be done. The question that always comes up is what makes a residence a two-family as opposed to a one-family. The criteria that you look for are: a) are there separate cooking facilities, b) are there separate living facilities, c) is there a locked separation and so on. He asked Ms. Savarese if she could go into her mother's apartment without having to go through her own private residence.

Ms. Savarese stated that the hallway is a common area. A door was placed there at one time because her grandmother had a tenant living upstairs.

Ms. Andrews asked, legally, if by having a kitchen on the second floor that made it another residence. She did not believe it was considered a two-family residence.

Mr. Renaud stated that some people have a second kitchen in the basement. By having a second kitchen does not make it a separate residence. However, if there is a separate kitchen, a separate bedroom, a separate living room and a separate entrance, then it becomes a separate residence. This apartment sounds as though it has all of the features of being a second residence.

Ms. Andrews stated that the facts are that her mother is there and she is not renting it out to someone else.

Mr. Renaud asked questions for the Applicant to consider, in an effort to allow the Board to not consider it a two-family use. He asked if the Applicant could remove the locks from the doors, remove the separate meter and so on. If that was what the Applicant wanted to do, then the Board could deem it not to be a two-family and the Applicant does not have the problem.

There was a brief discussion regarding the need for a variance and possible repercussions for approving the variance.

Mr. Constantine stated that it was clear in Mr. Cosenza's memo that there were only two (2) choices: 1) convert back to a single-family or 2) apply for and receive use variance approval for an addition to a non-conforming use. The question he has, referring back to what Mr. Renaud discussed at the beginning of the hearing, is if the dwelling was a non-conforming use.

Mr. Renaud stated that he had not heard any testimony to that effect.

Mr. Constantine stated that before the Board considers the non-conformity for the first time, the Board should address if it is a legal non-conforming use to begin with.

Mr. Renaud opined that the Board had not gotten anywhere near that determination. He stated that it seems that some of the Board members are happy to let things stay the way they are but they do not want to see the place rented out. They do not really want to see a two-family use. They are not bothered by the addition.

Mr. Spiegel recalled Mr. Renaud's earlier statement which may have a legal foundation that he took as much as an editorial remark as a legal opinion, which was just because the history of the assessment of the property has been a two-family, that does not tell you much. He has difficulty accepting that because like it or not, if the Borough has calling it a two-family for a very long time. In his opinion, it is a two-family use.

Mr. Renaud stated that, legally, that is not correct. He offered a scenario where if one decided to illegally convert their house into a two-family, it did not become a lawful non-conforming use when the revaluation company notes it.

Mr. Spiegel opined that there should be a person of authority that checks for these differences between the old and new evaluations. The Borough has to do that at the time of evaluation. In his opinion, the Borough has endorsed the change of use.

Mr. Renaud stated that he could not convince Mr. Spiegel otherwise, but, legally, that is not correct. The property record card means nothing. He stated that Mr. Cosenza did some research and he believes that the zone has been a one-family zone since the 1950s. Therefore, the Board has to go back to at least some point in time when it was zoned for something else or prior to zoning, which, he admits, is a very difficult task.

Ms. Lagay stated that she knows there are a lot of illegal two-family uses.

Mr. Spiegel stated that he understood and turned his attention to the architectural plans submitted for the addition.

Mr. Sharlow stated that the plans did not reference the second floor.

Mr. Renaud stated that it states in big bold letters that it was described as a single-family dwelling. He opined that it was difficult to believe the Applicant did not see the plans.

There was a discussion regarding the application with respect to how it was bring presented to the Board as a single-family residence. During the discussion, Mr. Sharlow stated that it was Ms. Savarese's testimony that the grandmother had rented out the place out for years. However, as Board members noted, that it did not mean that she had done it legally.

Mr. Spiegel stated that someone must have known that one could not expand a non-conforming use. He questioned why the drawings all stated it was a single-family dwelling.

Ms. Andrews opined that while the property might have had an illegal tenant and the property might have been taxed as a two-family dwelling, it does not make the property a two-family dwelling. She sees the property as a single-family dwelling that looks like a two-family dwelling. The Applicant's mother lives in the house and the Applicant does not plan to rent it out to someone else. She asked Ms. Savarese if she was testifying that she did not want nor need a two-family use because that was what the Board needed to know.

Ms. Savarese stated that all she really wanted was for her mother to live upstairs, to have her own kitchen and living area. She does not plan to move.

Ms. Andrews opined that Ms. Savarese did not need a two-family approval.

Mr. Sharlow asked Ms. Savarese if she wanted the second kitchen to remain.

Ms. Savarese stated yes.

Ms. Andrews asked Ms. Savarese if the two (2) meters could be condensed into one (1) meter.

Ms. Savarese stated yes.

There was a discussion regarding the property; it was expressed by Board members that having a second kitchen for the Applicant's mother was not a big deal; however, other Board members felt that it would be difficult to enforce to ensure that the apartment would not be rented out to someone else in the future. There were questions raised if it really was a two-family dwelling as is, but it was found that the Zoning Official had made that determination. A deed restriction was discussed as well.

Mr. Renaud stated that the Applicant should have a deed restriction on the property.

Ms. Lagay questioned what it was that the Board was considering.

Mr. Renaud stated that the Board was not authorizing a two-family residence. What he has heard from what has transpired, the Applicant would agree to remove the separate entrance, they could use the kitchen and it would not be deemed a separate residence. There would be a resolution approving the application as a single-family residence.

Mr. Cosenza asked Board members if they were allowing a second kitchen. He stated that he and the Construction Code Official have not been allowing second kitchens to be constructed.

There was a discussion regarding various scenarios of how issues like this application could be resolved. Exceptions for second kitchens can be made by the Board.

Mr. Renaud stated that it was important to note that it while the two-family use has not been established as a valid non-conforming use; it is clear that the kitchen is pre-existing. It is different than an applicant coming in wishing to convert to a two-family use.

Mr. Constantine noted that the Applicant did not appear to have come in and make a strong case for a pre-existing non-conforming use in terms of evidence. The Applicant could have gone to Mr. Cosenza in the past few weeks and provide such information. When he was a Zoning Officer, an Applicant would try to go back and put together information and the Zoning Officer had to make a call on that. Mr. Cosenza is the only person who can make that call. He defined "dwelling unit" as per the Zoning Ordinance. He opined that it came down to the doors and the second kitchen. He believes removing the locks and applying the deed restriction, which would not impact the Applicant, is the best way to handle the application.

Board members discussed the issue of the two-family use. In the end, Ms. Sisko opined that she did not want to approve the two-family use; it would counter what the Board aims to do.

Mr. Sharlow opined that he disagreed with Mr. Renaud's statements regarding the two-family use. Tax records go back to the 1980s; testimony was given that it had been used as a two-family since 1977 or 1978. He stated that he did not understand how it was not a pre-existing non-conforming use.

Mr. Spiegel explained to Mr. Sharlow that he would have to provide evidence that it pre-existed zoning, which he believed was in the 1940's. Legally, the case has not been made.

Mr. Constantine stated that the very first Zoning Ordinance, in 1923, had a residence district. In the residence district, residences were permitted: single- and two-family, three-family, apartments, townhouses, etc. It was all permitted. He does not recall when the change was made but when he was a Zoning Officer, he had utilized what he believed was the 1964 Ordinance. He believed the Applicant has not gone far back enough in order for the Board or Mr. Cosenza to make any determination.

Mr. Cosenza noted, for the Board's benefit, that he utilizes the 1952 Zoning Ordinance as a baseline, at this time.

Ms. Lagay asked Ms. Savarese if she knew when the house had been converted to a two-family use.

Ms. Savarese stated that she did not know. Since she was little, there was a unit upstairs.

Ms. Andrews asked Ms. Savarese if she wanted to come back and make a case for a two-family use or would she agree to a deed restriction, put the utilizes on one (1) meter, remove the locks and so on.

Ms. Savarese requested an opportunity to consider it.

The Board recessed at 9:15 p.m. and reconvened at 9:20 p.m.

Mr. Sharlow stated that Ms. Savarese had no problem with the deed restriction but there was a concern about the meters, specifically the costs and logistics involving the gas and electric.

There was a discussion regarding the meters. In the end, Ms. Savarese agreed to having the work complete within six (6) months.

There was a discussion regarding insurance and a Certificate of Occupancy. Ms. Lagay asked if the Building Department could issue a Temporary Certificate of Occupancy.

Mr. Cosenza stated that it would be up to the Construction Code Official.

Mr. Renaud offered a summarize the application as being modified to an interpretation of the Zoning Ordinance such that, if the entrances are modified so that they are not considered to be separate housekeeping unit, if the utilities are combined and the dwelling is, in fact, to be used as single-family residence, if a (second) kitchen exists, it does not render the residence as a two-family residence. The Applicants agree to a deed restriction to the effect that residence will not be used as a two-family residence.

A motion to approve the application for an interpretation of the Zoning Ordinance to permit the existing second floor kitchen to remain was made by Mr. Tobin and seconded by Ms. Andrews. Roll call vote taken. Motion passed unanimously.

12-942 **Bikash Shrestha** – Applicant is seeking use variance and bulk variance approval to construct a rear addition to a non-conforming single-family dwelling (duplex) in the R-1 Zone.

23 Robins Place Block 123, Lots 14.01 R-1 Zoning District

Mr. Shrestha was sworn in by Mr. Renaud.

Ms. Lagay asked Mr. Shrestha to describe why he was before the Board and what it was that he was seeking.

Mr. Shrestha stated that his residence is an attached single-family residence. He wishes to construct an extension into the back yard to add a bathroom and a family room. The property is not conforming and he needs a use variance because an attached house is not a permitted use in the R-1 zone. He also is requesting bulk variances for side yard each on both sides and side yard combined. He described the variances in more detail.

Ms. Lagay stated that it appeared that the addition was mirroring what is on the other side.

Mr. Shrestha agreed and noted that the attached neighbor already has a similar addition and he would like the same addition, as shown on the plans. He purchased the property in 2008 and he had spoken to the previous owner regarding a possible addition in the future. It is difficult to utilize only one bathroom. The second bathroom is the main reason to have this addition done.

Ms. Lagay reviewed the floor plans with the Applicant and noted a stone patio at the rear of the addition.

Mr. Shrestha stated that the addition will be at the rear of the existing house and the patio will be on the same level as the existing house.

Mr. Spiegel asked if the materials would match the existing house.

Mr. Shrestha stated yes. He described the floor plans and elevations in more detail.

Ms. Lagay noted that the Board had a series of photographs.

Ms. Andrews asked Mr. Shrestha if he had taken the photographs.

Mr. Shrestha stated yes.

Ms. Andrews stated that he did a very good job.

Ms. Lagay agreed and stated that he had made a very nice presentation, particularly by also providing aerial photographs for the Board to consider. Since the proposal expands on a non-conforming use, the Board had to understand the Applicant's hardship.

Mr. Renaud added that the zone is currently written as permitting detached single-family residences. Since this an attached house, there is obviously no side yard on the side where it is attached. He believes the Board can grant that variance because of the existence of the structure that already lawfully exists on the property. With respect to the D variance itself, there are supposed to be special reasons which are rooted in the Municipal Land Use Law. Although, with respect to an expansion, the Board does not have to focus so much on the Medici criteria but if the Board wanted to grant the variance, the Board could base it on section 2 regarding establishment of appropriate population densities, appropriate for a variety of uses., etc. He stated that he would formulate it more fully in the resolution.

Ms. Lagay stated that if the Board had no more questions, she requested to review the professional's memos. She asked Mr. Constantine to begin.

Mr. Constantine requested the Applicant to provide testimony regarding any landscaping improvements that he may be making.

Mr. Shrestha stated that he would have a garden on the side but there is not much room on the property for landscaping.

Mr. Constantine asked if the fence at the end of the driveway will remain.

Mr. Shrestha stated yes. In fact, he had the driveway redone last year and the Board had requested that the fence be brought forward to hide the air conditioner unit.

Mr. Cosenza noted that the Applicant had gone before the Technical Review Committee for approval of an exception for driveway setback.

Ms. Elliott agreed that she recalled the application before the TRC.

Mr. Constantine asked if there would be a patio in the back yard.

Ms. Lagay noted that a patio was shown on the plans. She noted that it appeared that Open Space was okay.

Mr. Constantine requested clarification regarding the patio because there did not appear to be any dimensions provided for the patio.

Mr. Cosenza stated that the stone patio concerns were irrelevant in terms of the Open Space calculation because it was made clear that the current interpretation for rear yard patios is that they are considered Open Space. The patio will not affect coverage calculations.

Mr. Constantine requested clarification if there were going to be any trees or other vegetation removed.

Mr. Shrestha stated that he may remove the tree in the rear yard because it has become a nuisance. A couple branches present a hazard as well.

Mr. Constantine noted that the tree was not shown the photographs or plans. He asked Mr. Cosenza to clarify if removal of the tree would trigger any tree replacement.

Mr. Cosenza stated that it would trigger tree replacement only if it was the result of development. If it was any private tree in the rear yard area, not being removed because of the addition, but for another reason, it can be removed.

Mr. Constantine noted that there are no shade trees in front of the house and stated that the Board may want to consider the requirement.

Ms. Andrews noted that Mr. Shrestha's property has more landscaping than his neighbor. She was concerned that if any more landscaping was proposed, it would actually make the property look worse.

There was a discussion regarding the shade tree. The Board asked Mr. Shrestha if he would consider a shade tree.

Mr. Shrestha requested clarification as to where exactly it would be placed.

Mr. Constantine offered suggestions to Mr. Shrestha for possible locations. He noted other tree-lined streets in his neighborhood. There is a missing gap of shade trees at this location.

Ms. Elliott requested clarification regarding downspouts and leaders. She noticed that there was only one (1) downspout on the property and raised her concerns regarding possible negative impacts drainage may have on neighboring properties. She suggested that, for the addition, drainage be pointed toward the new driveway.

Mr. Shrestha agreed.

Ms. Lagay asked if there were any other questions.

Mr. Cosenza noted that he typically requires a shade tree to be planted for all additions. In cases where a tree cannot be accommodated, such as the sewer line or proximity to other trees, he allows a contribution or donation to the Shade Tree Commission. He requested the Board to consider that requirement.

There was another discussion regarding the shade tree.

Mr. Shrestha raised his concerns for planting a tree in his front yard because it may eat up the driveway and sidewalk, especially since the property is so tiny. He believes he does not have enough space for a tree.

A motion to approve the application as presented to the Board was made by Ms. Andrews and seconded by Ms. Sisko. Roll call vote taken. Motion passed unanimously.

RESOLUTIONS

11-941 **Steven Kovach and Karen Kovach** – (bulk variance to construct a single-story rear addition – approved 3/8/2011)

2 Goodwill Place Block 206, Lots 10, 12, 14, 16 R-2 Zoning District

A motion to approve the resolution as written was made by Mr. Sondergard and seconded by Ms. Sisko. Roll call vote taken. Motion passed unanimously.

11-939 **Vilmari Marotte and Albert Marotte** – (bulk variance to construct a second-story addition and attached carport – approved 3/8/2011)

55 McCoy Avenue Block 193, Lots 31-33 R-2 Zoning District

A motion to approve the resolution as written was made by Mr. Spiegel and seconded by Ms. Sisko. Roll call vote taken. Motion passed unanimously.

CORRESPONDENCE

Mr. Spiegel raised his concerns regarding lack of landscaping at the corner of Cape Court and Clive Street, particularly given that it was a previous Board and TRC application.

Ms. Lagay notified Board members that there would be a meeting between the Parking Authority and two (2) developers for the Pearl Street Parking Lot project which will consist of a parking deck and luxury apartments. The meeting will be April 17th at 7:00 p.m. at the Senior Center.

ADJOURNMENT

The meeting adjourned at 9:52 p.m.

Respectfully Submitted,

Chris S. Cosenza
Recording Secretary