

METUCHEN ZONING BOARD OF ADJUSTMENT

MINUTES

October 11, 2012

The meeting was called to order at 7:48 p.m. by Pat Lagay, Chairperson, who read the statement in accordance with the Open Public Meetings Act.

ROLL CALL

Present: Robert Fair, Vice Chairperson
Pat Lagay, Chairperson
Catherine McCartin
Byron Sondergard
Daniel Spiegel
Brian Tobin, Alt. I
Robert Renaud, Attorney
Kathy Elliott, Engineer
Chris S. Cosenza, Zoning Officer

Late: Suzanne Andrews (7:52)

Absent: Judith Sisko
Jonathan Rabinowitz, Alt. II
James Constantine, Planner

OLD BUSINESS

12-951 Karen Army – Applicant is seeking bulk variance and use variance approval to construct an apartment above an existing garage for disabled parents.

10 Sidney Place

Block 195, Lot 33

R-4 Zone

John Wiley, Jr. Esq. appeared on behalf of the Applicants.

Karen and John Army were sworn in by Mr. Renaud.

Ms. Lagay indicated that the Applicants had elected to defer the application from the last meeting to this meeting. Ms. Lagay described the procedures of the Board to the public. She requested Mr. Renaud to describe the application.

Mr. Renaud stated that the Board is presented with an existing single family residence in the R-4 zone. The Applicant proposes to construct an apartment over the existing garage with elevator. The separate apartment is planned to be used for family members. Mr. Constantine had sent a memo, which he has discussed with him and noted that they have a difference of focus on what the variances are, although they both agree it is a D variance. The D variance, in Mr. Renaud's opinion, that needs to be granted is the one that Mr. Constantine says is not necessary, which is 110-104 which relates to the number of principal structures on a lot. This is a proposal to have a second dwelling. Mr. Constantine mentioned that an accessory apartment is not permitted under section 110-71. It was noted that D variances only apply to principal structures, not accessory structures. He has discussed application with Mr. Wiley.

Ms. Lagay noted that 110-71 permits the same uses as in the R-3 zones, which permit detached two-family dwellings.

Mr. Renaud confirmed and stated that the concept of the use is permitted in the R-4 zone, that is, if it was a two-family residence or an apartment attached to the dwelling, it would not need a D variance, it would be a permitted use.

Ms. Lagay requested the record to show Ms. Andrews arrived, prior to the beginning of the application.

Mr. Wiley introduced exhibits to be distributed. Exhibit A-1: four (4) pictures taken by Ms. Arny which depict existing conditions of the property. Exhibit A-2: sheets which consist of the specifications and appearance of the proposed lift. The lift would be placed at the exterior of the garage, more specifically located at the north side. Exhibit A-3: floor plan for apartment over garage to scale, drawn by an engineer, a friend of the Applicant. Mr. Wiley requested Ms. Arny to describe the surrounding neighbors.

Ms. Arny described the southern neighbor as a strip mall named ZE Plaza, consisting of a deli, Gymboree and All-State, located in the B-2 zone. The neighbor to the east, or the rear, is an apartment complex named Redfield Village. The neighbor to the north is a single-family home. Going up the street, there are more single-family homes. There are a couple two-family homes on the street. Across the street are two (2) single-family homes, located in the R-2 zone.

Mr. Wiley requested Ms. Arny to describe the proposed improvements.

Ms. Arny described the proposal as an apartment over the existing garage. It will entail heightening the garage, making it eight (8) feet higher. The total height will be approximately 24 feet. The actual footprint of the garage, other than the fire escape and the lift, will not change. She proposes to house her parents, ages 80 and 76. They are disabled. She is willing to put a restrictive covenant on the property: rent will not be collected from the apartment from her or any successive interest.

Ms. Lagay asked how the covenant would be enforced.

Mr. Wiley stated that it could (be enforced, otherwise) the apartment could be abandoned. There might be an issue regarding collection. If the tenant ever discovered that there is a covenant that says they cannot pay rent, it would create problems. The Applicants see this apartment for their present family needs. Going forward, in the event that Ms. Arny's parents pass away, her adult son may want to occupy the apartment.

Ms. Lagay raised her concerns when the property is sold.

Mr. Wiley stated that the restriction would be revealed in any title search. The new owners may discover the covenant and choose to not purchase the property or be forced to abandon the apartment. The bank may have a problem with it as well.

Mr. Spiegel stated that there would be difficulty obtaining comparable appraisals.

Mr. Wiley stated it would be difficult evaluating what that would be. There are practical problems. His client has a limited objection. Based on that, they are willing to live with such restriction(s).

Mr. Renaud discussed the legal issues regarding covenant. It would be more binding than a condition of the resolution. He opined that it creates more issues, as Mr. Wiley referred to.

Mr. Wiley noted that the property is in a zone that permits two-family dwellings and asked Ms. Arny why she elected or preferred to build an apartment over the detached garage.

Ms. Arny stated that she wants to protect footprint of house. There is no fence between her and neighbor's yard and she appreciates the sense of open space. The detached garage already exists. The apartment would offer her parents some sense of independence. She wanted to do something that was least invasive as possible. She wants to preserve the view of her neighbors and their space. She opined that this was the best fit for everyone involved.

Mr. Wiley asked Ms. Arny what materials and colors she was considering.

Ms. Arny stated it would be white vinyl siding to match existing house and garage. No trees or vegetation would be removed.

Mr. Wiley reviewed Mr. Constantine's memo in which it discussed that there is only one (1) shade tree in front of the property. He asked Ms. Arny if she would consider another.

Ms. Arny stated that the front yard is not large as it is only approximately 10 feet deep. She opined that the existing shade tree is sufficient, any additional tree would be burdensome but she would consider rear yard landscaping. In fact, she had just landscaped along the entire side of the house, specifically along the commercial side of the property, about a month ago.

Mr. Wiley asked Ms. Arny about the fence along the commercial property.

Ms. Arny stated that the fence is in very poor condition but it is not her fence.

Mr. Wiley reviewed the floor plan.

Ms. Andrews asked for the square footage of the apartment.

Mr. Arny stated it would be approximately 700 square feet, the same footprint as the garage.

Mr. Wiley asked if the apartment consisted of one (1) bedroom and one (1) bathroom.

Ms. Arny confirmed. The bathroom would be handicap-accessible.

Ms. Lagay asked about the attic.

Mr. Arny stated that it would consist of some storage, just like a typical home. One would only be able to stand in the middle. The roof will be pitched, just like the current roof. In fact, the current roof would effectively be raised eight (8) feet. He opined that it would not be very noticeable to those looking at it from the street.

Ms. Andrews asked about the balcony as depicted on the drawings.

Mr. Arny stated that there will be a set of French doors, which lead to a four (4) foot by four (4) foot balcony over the existing garage doors. The balcony will be floating. There will be no columns below or a roof above. There will only be railings.

Ms. Lagay asked if the cars are parked in the garage.

Mr. Army stated that it is a 3-car garage; all vehicles are generally stored in the garage.

Ms. Lagay asked Mr. Wiley if he had any further questions.

Mr. Wiley stated that he did regarding the legal arguments of the application. He asked the Applicants if they were aware of that the Borough's Master Plan recommends senior housing and housing for the elderly so long as it protects the character of existing neighborhoods and preserves and improves the existing housing stock. He asked if the Applicants believe they would achieve those goals by keeping the house as a single-family house with an accessory garage which is set back to the furthest portion of the property. He noted that the garage is set back 145 feet from the street. The nearest neighbors are ZE Plaza to south in the B-2 zone and garden apartments to the east. The balance of the property is either a concrete driveway or rear yard area. The intent is to try to make it continue look like a single-family residence and have the least amount of impact on the neighbors.

The Applicants confirmed.

Mr. Wiley stated that he had no further questions.

Ms. Lagay requested discussion regarding the bulk variances requested. The required side yard setback is eight (8) feet whereas 6.3 feet is existing and 3.8 feet is proposed. The addition of the stairs impacts this existing non-conformity.

Ms. McCartin requested how close the garden apartments are to the lot line.

Mr. Army stated that the nearest building to the easterly lot line (behind the garage) is approximately 30 feet from the rear lot line. There is a building fronting Amboy Avenue and another fronting an internal courtyard.

Ms. Lagay asked if there would be an issue with the windows on the right side of the building.

Mr. Wiley stated that he believed there would not be an issue; generally the code requires three (3) feet.

Mr. Spiegel asked Mr. Wiley and Mr. Renaud if that apartment could qualify for COAH.

Mr. Renaud stated it would have to be deed restricted and he did not believe one could separately deed restrict the garage apartment.

Mr. Wiley agreed. The Applicant was not proposing an affordable unit but under special reasons, they were proposing elderly housing, one of the goals of the Borough's Master Plan.

Mr. Spiegel raised his concerns regarding the reasons for senior housing.

Mr. Wiley discussed benefits of the application, specifically its special reasons. The property is in a transitional zone. It does not impair the zone plan and should not set a precedent. This proposal does not really change the density of the neighborhood. In fact, it may mitigate against future development, such as a three- (3) or four- (4) family building. This proposal protects the neighborhood.

Mr. Spiegel discussed the arguments to support the application. This was not the first time the Board had been presented with a mother-daughter or some family/lifestyle configuration issue.

Mr. Wiley stated that it could be age-restricted.

Ms. Lagay raised her concerns regarding having restrictions at all. This property will not always stay with the family.

Mr. Wiley stated that approvals can be recorded but the Applicants wanted to go a step further and place restrictions as necessary. The apartment could be age-restricted.

Mr. Renaud discussed the legality to form the basis of granting the variances. This is a good example, he believed, of the kinds of cases that the statutes are designed for the Board to handle. The application is somewhat unique. It is a multi-family zone. Multi-family uses are permitted. The house and the garage particularly are in the corner, bordered by a strip mall and an apartment complex. One can draw a distinction based on the uniqueness of the situation and the particular suitability of the proposal. The Board should not be concerned that an approval would open up the Borough to similar requests.

Ms. Andrews asked if the Applicants looked into adding onto the existing house.

Ms. Arny stated it was not something that she had wanted to do. She actually discussed the application with her neighbor. She felt that building onto the house would infringe on the neighboring property. Such a proposal would take up much of the backyard and block the views. She enjoys the backyard as it is open and usable.

Ms. Andrews noted that the footprint of the garage is almost as big as the house.

Ms. Arny stated that (adding onto the house) was something that she had wanted to avoid. Putting an apartment on top of the existing garage would be a lot less invasive. Her parents want some sense of independence, to be in their own place as opposed to being attached to the house. She did not want to change the structure of the house; it is over 100 years old.

Ms. McCartin asked about the elevator. She was concerned about potential power outages.

Mr. Arny stated it would automatically return to the first floor; persons would not be stuck in there. There are fire stairs in case of emergencies.

Mr. Renaud interjected that building codes are not the jurisdiction of the Board. The Applicants will have to obtain permits from the Construction Official.

Ms. Elliott noted that she had done some research and there are a number of codes that the Applicant would have to comply with.

There being no further questions from the Board, Ms. Lagay opened the hearing to the public for questions regarding the Application.

Bernie Hetzel, 21 Sidney Place, asked, if application is approved and particularly if the property was sold, what could be done to prevent a separate family from moving into the apartment.

Mr. Wiley stated that it would not be permitted. Several options for restrictions had been discussed during the meeting such as the property owner could not collect rent from the apartment, restricting it only to family members, or making it an age-restricted apartment.

Mr. Hetzel raised his concern about parking as he opined that there were severe parking issues in the neighborhood.

There was a long discussion regarding parking. Mr. Wiley reiterated that the property itself is located in a multi-family zone whereas Mr. Hetzel's property is in a single-family zone.

Mr. Renaud opined that an age restriction could be placed on the apartment. He believed that it would violate Fair Housing Act. An age-restricted apartment would be discrimination on the basis of age and would not be permitted. There have been amendments that permit specific age-restricted housing types only under very specific circumstances. He believed that this circumstance applies.

Mr. Hetzel noted that there seemed to be different scenarios: an apartment over the garage and a three (3) or four (4) unit apartment building.

Ms. Lagay stated that this application was specifically for an apartment over the garage.

Mr. Spiegel stated that Mr. Wiley raised conjecture that it was possible.

Mr. Renaud noted that it should be made clear that this property is in a zone where apartment buildings are a permitted use.

Joe Saggese, 24 Sidney Place, asked about restrictions and the enforceability of such.

Mr. Renaud stated that he could not form a dissertation on restrictive covenants and their enforceability and challenges. It is fairly complicated. Mr. Wiley had described it as a notice to the owner. It is something that would be a hurdle to challenge. It may be possible to remove a restriction.

Mr. Spiegel discussed restrictions/enforcement and that, realistically, that it can still happen, even with active enforcement.

Mr. Saggese asked if the approval would carry on.

Mr. Renaud stated that the restrictive covenant runs with the land. It does not matter who owns it or how many times it turns over. Although, once it gets out of a 60 year search, it may be harder to find.

There being no further questions from the public, Ms. Lagay closed the public portion.

Mr. Renaud requested clarification regarding the proposed height of the garage apartment. He recalled Mr. Arny stating that the height was 24 feet whereas the plans show 28 feet.

Mr. Arny confirmed that 28 feet is correct.

Mr. Renaud noted that the plans indicate a fire escape. However, they appear more like exterior stairs.

There was a brief discussion regarding the fact that the garage will now be considered a (second) principal structure, as opposed to an accessory structure. This impacts the number and types of (bulk) variances that are required.

Ms. Andrews noted the rock façade on the first floor of the garage and asked if it would continue to the second floor.

Ms. Arny stated that it would not; it would be vinyl siding instead.

Ms. Lagay asked if Ms. Elliott had any questions.

Ms. Elliott stated that she believed Mr. Wiley answered most of her concerns. She asked Mr. Wiley to address comment number five (5) (from her review memorandum) regarding the extension of any utilities.

Mr. Arny stated there is no water, gas or electric service to the garage. The service would extend in the ground on the left hand side of the driveway.

Ms. Andrews asked if the apartment would be separately metered.

Mr. Arny stated that it would be separately metered.

Ms. Andrews raised her concerns about having a separate meter if it was not ever going to be a rental apartment.

Ms. Lagay asked about A/C condenser unit(s).

Mr. Arny stated that there would be a unit on ground behind the elevator.

There being no further questions from the Board, Ms. Lagay opened the hearing to the public for comments regarding the application.

Mr. Saggese was sworn in by Mr. Renaud.

Mr. Saggese stated that he was concerned for the potential increase in traffic. It has been terribly problematic. Neighbors have tried to work with the Parking Authority to no success. He supports the idea of housing elderly parents. He noted minor discrepancies in the presentation of the application. There are duplexes on the east side of street. There are none, they are actually on the other side of the street. There are two (2) duplexes. As he said, the street is becoming more and more crowded and that is his concern. However, he understood the issue would still be present if the addition was placed on the house itself.

There being no further comments from the public, Ms. Lagay closed the public portion.

Mr. Wiley offered his summation of the application. He indicated that the Applicant could build the unit onto the existing dwelling (as of right) which they indicated was not their preference. He opined that there are benefits to not adding to the dwelling: it preserves lot coverage and landscaping. In these two (2) planning alternatives, one has to decide which the better planning alternative of two is. Adding to the garage was that.

(continued) Mr. Wiley stated that he recognized the concerns regarding the parking issues which he did not dismiss. He opined that the parking issues may be attributed to the character of Redfield Village as it has become more family-oriented than it was many years ago. This application really does not address that problem because the issue is where to put the unit. The Applicants would like to construct an addition, somewhere. The Applicants feel it would be more appropriate on top of the garage at the end of the very long driveway which can accommodate a lot of vehicles. The Applicants propose a restrictive covenant which may cause financial problems down the road. He opined that, overall, the Applicant's proposal is creative and is better planning alternative to the conventional two-family dwelling. The proposal creates less impact on the neighborhood, perhaps even a beneficial impact particularly to the visual environment. He did not believe it would set a precedent in the community.

Ms. Lagay thanked Mr. Wiley for his summation and requested Board members to discuss the application. She recognized the particular suitability of the proposal as it is truly unique. She appreciated the concern of preserving the open space and noted that the addition would not add too much height to the existing garage. Originally, she was concerned about the entire application but now feels that it can be accommodated on this site. She raised her concerns regarding the restrictive covenant and other types of restrictions.

Ms. Andrews raised her concern about future development. A developer could knock down the house and garage and legally construct a three- or four-family apartment building.

Board members discussed potential development that could occur.

Mr. Wiley and Mr. Renaud discussed certain conditions that could be imposed.

Ms. Andrews stated that she recalled testimony that it was a 100-year old house.

Ms. Arny confirmed.

Ms. Andrews requested the Applicants to talk about the historical nature of the house.

Ms. Arny stated that the house used to belong to her great-uncle and it was located elsewhere and it was actually moved twice. It was an old barn and, at one time, was located on the hill where Redfield Village currently sits; it was moved to Main Street and finally to Sidney Place.

Mr. Spiegel appreciated the historical explanation given by the Applicant. He indicated that the proposal was relatively low-density in scope compared to other applications that the Board has seen. He opined that this was a particularly suitable site for this particular proposal. This is the right place to do it. He stated that he has no issues and would want the resolution to say that variances were granted in large part because one (1) of the counterbalances was the quantity of open space so that if future Boards were to see a request to build onto the main house, that they should be prejudiced against that because the open space was critical for the finding of the Board. Furthermore, the fact that there is no first floor development in the garage is also persuasive.

Mr. Sondergard agreed completely with Mr. Spiegel. He indicated that he could not have said it better.

Ms. McCartin agreed but raised concerns regarding the covenant.

Mr. Fair stated that he agrees with what has been said thus far and noted the uniqueness of this particular application and the location of the property. He opined that a restrictive covenant was not necessary.

There was a brief discussion regarding the historical nature of the house during which Mr. Tobin opined that by allowing an apartment (to be constructed above the garage) protects the house.

Board members recognized the possibility that they would not be able to stop a developer from demolishing the house and construct a conforming apartment building.

Ms. Lagay noted that there has been some changes to the dwelling already. She did not believe the stone façade was historical in nature. She also wanted to note that the property is in a transitional area and the dwelling looks like the single-family house even though it is going to have a taller structure in the rear yard.

Mr. Spiegel stated that he would support the application if the Applicant withdrew their request for the deed restriction and agree to first-floor development in the accessory structure for housing purposes.

Mr. Wiley indicated that the Applicants would be happy to agree.

Mr. Renaud noted that the resolution would also reflect conditions such that it would be limited to no more than two (2) bedrooms, note that the preservation of open space and development above the garage rather than interfere with the integrity of the existing dwelling were critical for the Board's consideration.

Mr. Spiegel requested the record show that he believed the Applicant met the standards under the burden of proofs.

Mr. Cosenza noted the requested condition of no first-floor development. He requested clarification that should there be a requirement for an additional (or revised) means of egress such that a stair would be required in the garage, such should be permitted.

Mr. Spiegel agreed and offered to clarify that there should be no living space on the first floor of the accessory structure, but access is OK.

A motion to approve the application with conditions and findings noted was made by Mr. Spiegel and seconded by Mr. Fair. Roll call vote taken. Motion carried unanimously.

NEW BUSINESS

12-952 **Todd & Nora Pagel** – Applicants are seeking bulk variance approval to construct an addition.

313 Midland Avenue Block 51.07, Lots 36 & 37 R-2 Zone

Todd and Nora Pagel were sworn in by Mr. Renaud.

Ms. Lagay requested the Applicant to describe their application to the Board.

Mr. Pagel stated they moved into Metuchen about three (3) years ago into a 2.5 to three (3) bedroom house with one (1) bathroom. Now that they are planning to have a family, they would like to add on another bathroom, a master bedroom and another upstairs bathroom along with a new (attached) garage. He indicated that he was requesting a bulk variance for side yard setback and combined side yard setback.

Ms. Lagay asked what the setbacks were.

Mr. Pagel stated that, currently, the right side setback is 2.9 feet, which will remain the same and the left side of the house is currently 17.7 feet and they are asking for 5.7 feet.

Ms. Lagay noted that the application included a photograph of the existing dwelling with the proposed addition superimposed.

Ms. Pagel stated that she had copies for the Board to review.

Mr. Renaud asked if the exhibits were part of the application that was given to the Board.

Ms. Pagel stated that the exhibits were additional. At the request of Mr. Renaud, she labeled them A-1, which were a series of photographs. The upper-left photograph depicted the existing dwelling. The bottom-left photograph was taken from the rear yard area looking out towards the street. The bottom-center photograph was taken from the street looking towards the proposed garage. The bottom-right and upper-right photographs showed different views of the front of the proposed changes. The upper-center image was a rendering.

Mr. Spiegel raised his concern regarding access to the rear yard area; he recalled the Board used to get memorandums from the Fire Department. He wondered if they cared if they had no access to the rear of the dwelling.

Mr. Pagel stated that there was access through the garage where there is a set of doors leading into the rear yard area. There would also be a two (2) foot walkway along the side of the garage.

Ms. Elliott raised her concern regarding the (existing) 2.9 feet on one side and the (proposed) 2.8 feet on the other side. It really restricts any type of access to backyard such as bringing in patio furniture or anything of the sort. The proximity of the addition to the neighboring house might be a fire hazard. Looking at the character of the proposed dwelling and the rest of the neighborhood, she stated there have been a lot of additions over time, but generally go to the rear of the property. 317 Midland Avenue, right next door, and the house across the street (316 Midland Avenue), both of which recently came before the Board did additions at the rear as well.

Ms. Lagay agreed and noted that she understood what it was that the Applicant was trying to accomplish. Other applications have tried to do the same thing, but not with this much bulk at the front. She asked if the garage could be moved back to allow for further access. The plan needs to be tweaked slightly.

Mr. Pagel began to talk about another home, which was located a quarter-of-a-mile away and the proposed plan matches the house to a "T" but is actually lower.

Mr. Renaud interjected and requested the additional exhibit that Mr. Pagel was referring to be labeled A-2 and then describe each of the photographs on the board.

Mr. Pagel described the photographs which depicted a similarly-sized addition to a dwelling on Maple Avenue. The bottom-left and bottom-right photographs showed different views of the same house, showing how close it is to the property line.

Ms. Lagay asked if Mr. Pagel knew where the property line was.

Mr. Pagel stated that he assumed that the property line was along the shrubbery, referring to the neighbor's driveway. The upper-right photograph appeared to have a three (3) to four (4) foot setback.

Ms. Lagay asked if the house received a variance.

Mr. Pagel stated that he did not know. Continuing, he described the upper-left photograph which also had a similar condition. He suggested that a similar style as the one shown in the upper-center photograph would be utilized for the proposed addition.

Mr. Spiegel stated the architecture was wonderful but noted the fire safety issue being created for the neighbor on the left side. He agreed with Ms. Elliott's comments: most applicants that come before the Board put the bulk at the rear of the property. The Board does not have to be convinced of the architectural character.

Mr. Pagel stated that the neighbor on the left has a chain-link fence. To the left of the fence is a two (2) foot sidewalk. He has a means of egress through the side door. The proposed addition would have the same thing. The total distance between the houses would be about six (6) feet. He believed that there is plenty of egress to get back there.

Ms. Pagel acknowledged the Board's reference about the rest of the neighborhood. She opined that she was not very fond of the houses that have become so large and taking up the entire lot. She believes other homes have not maintained the integrity of the street. She does not want to take up the whole rear yard.

Mr. Pagel reiterated that there will be a five (5) foot French door at the rear of the garage to permit access into the rear yard area. The dilapidated detached garage all the way at the back of the lot will come down to give them a bigger back yard along with better landscaping.

Mr. Spiegel recalled a previous application at the corner of East Chestnut Avenue and Maple Avenue. That application had similar ideas and he recalled the Board had similar hesitation.

Mr. Pagel stated that he was not a fire official, but he is a volunteer firefighter in Edison. It is not the greatest situation, but it is a pretty good situation.

Ms. Pagel stated that the attached garage will be set back from the porch. It will not be flush with the house.

Ms. McCartin stated that she likes the design as well. However, she has seen a lot of changes in the neighborhood, some of them have been overbuilt. She opined that she tends to feel more oppressed by the additions that are overbuilt to the sides of the homes. It feels more oppressive to have a line of homes right up against the sidewalk. There is nothing in between them.

Mr. and Ms. Pagel stated that they had photographs that illustrated an application that had similar variance issues. They began to discuss 316 Midland Avenue.

Ms. Lagay stated that this property was one that the Board did see, but it had different issues.

Mr. Pagel noted that the side of the home was very close to the neighbor's property. It is almost right on the property line. On the proceeding pages were houses generally in the Radio Section.

Mr. Spiegel noted that certain properties the Applicants were referring to had come before the Board. Referring back to 316 Midland Avenue, he stressed to the Applicants that the application requested a continuation of the existing setback. The setback was pre-existing. They did not create it. The bulk was kept in the back. The idea was, in the front, to drop the roof lines.

Mr. Pagel referred to properties that had garages to the side of the front of the house. In particular, he referred to the house currently being constructed. He was not aware what street it was located on.

Ms. Elliott's asked if it was the Fox & Foxx house on Maple Avenue. She stated that Fox & Foxx generally do their homes like that throughout the town.

Mr. Pagel compared the setbacks to the proposed addition.

Ms. Lagay opined that the new house did not have the same issues as the application has.

Mr. Spiegel raised his concern with the combined side yard. He recalled the requirements as being eight (8) feet and 18 feet in the R-2 zone. If the Applicants had come in and stated that they had four (4) feet on one side and 10 feet on the other side, you are at 14 feet, or four (4) feet short. Here, what the Applicants are doing is saying "we are going to completely disregard the guidance of the Ordinance and just have nothing on either side." That is part of the Board's issue tonight. Neither side yard requirement will be met. He asked if there was something else that could be done to meet one (1) of the standards.

Mr. Pagel stated some of his examples could not have complied with the total setbacks.

Mr. Spiegel agreed; most do not comply with the combined side yard setback. But at least they comply with one (1) of the side yards. The proposed application is out of compliance by 80%.

Ms. Lagay stated that, unfortunately, the lots in this area are 40 feet. They all have this problem. She believes there is something else that can be done to get the master bedroom. She suggested that the Applicants work with the Planner. Perhaps the garage could be pushed back further. The Board does not want to discourage expansion, but this looks a little tight between the homes. She stated that the addition would be so close to the property line, the Applicants would probably not be able to put windows on that side.

Mr. Pagel stated that he was not planning to have windows on the side of the dwellings. He had referred to the right side of house which had a bump-out of dining room. That bump-out is what makes the side yard setback only 2.9 feet. The majority of the side yard is wider. The measurement is taking the bump-out in consideration. The bump-out is about a foot-and-a-half by four (4) feet. If you take it out, the combined side yard setback is wider.

Ms. Lagay noted the existing combined side yard setback of 17.7 feet, which is being proposed to become 5.7 feet. She stated that it needed work.

Mr. Pagel stated that he had spoken to a contractor and that the addition could be made narrower. It was possible to make the garage 12 feet down to 10 feet and still have a garage door. If that was an issue, he could gain another two (2) feet for egress.

Mr. Fair stated that the Applicants should consider alternatives so that the Board can compromise. The Board does not want to deny the application.

Mr. Pagel asked if one of the alternatives should be what his neighbor at 317 Midland Avenue did, who had just received approval about six (6) months ago. He had built an enormous master bedroom on the back of his house. He asked the Board if that was what the Board wanted.

Ms. Lagay asked if that the house on the corner just went to the back. She recalled Mr. Pagel at that meeting.

Mr. Pagel stated that, when looking at the side view (from University Avenue), the addition totally destroys the aesthetics of the house. There is less sunlight in the back yard. The proposed addition to the side of the house provides for a much more usable rear yard area, especially when the detached garage is removed.

Mr. Spiegel stated that the Ordinance has regulations for a reason. Normally when an applicant comes before the Board, it is because the lot is irregular and there are a lot of legitimate issues that have been presented to the Board. In this case, he opines the Applicants are disregarding the Ordinance and asking for a variance. The Board is simply trying to ask what can be done to combat the problem and asked if there are other solutions that are less infringing on the streetscape. As a couple Board members have said, it is more appealing to have an addition at the back of the house than it is on the side of the house.

Ms. Pagel stated that there was no need to bump out the dining room and the water source is on that side of the house. It does not make sense to go to the back of the house. She is planning to remove the deck one day and put in a walk-down patio. She hopes that others follow better design in the neighborhood over time. There are issues with placing various rooms in certain locations because of existing plumbing.

Mr. Spiegel noted that not every house can accommodate changes. He understands the issues being presented to the Board. For the benefit of the Applicant, he recalled an application on Christol Street where the Board did grant a narrow side yard setback. However, in that case, there was 25 feet to the next house. Any time those accommodations are made, there are certain conditions that make it possible. Getting down to only five (5) feet from 18 feet is just something the Board could not reconcile.

Mr. Pagel asked what would be a good number to shoot for.

There was a long discussion regarding the existing setbacks, floor plans presented to the Board, size and functionality of the garage and powder room. During this discussion, Ms. Elliott noted that there would only be 12 feet (in depth) to fit a car. The width of the garage to the left of the powder room would only be seven (7) feet for the front of a vehicle to work with. As a result, it may not be possible to accommodate a vehicle. She suggested that the Applicants consider alternative floor plans and work with the Planner.

Ms. Lagay questioned the width of the powder room as it was only three (3) feet in width.

Mr. Pagel stated it was designed as a galley with toilet on the back wall and a sink in the corner. With his experience in the Coast Guard, he became used to small showers and bathrooms.

There was a long discussion regarding the detached garage and general design. Board members expressed their concerns about the bulk at the front of the lot.

Mr. Tobin stated that, no matter if setting the garage forward or backward more, the Board would want to see a new set of plans.

Mr. Pagel stated that he has presented evidence of other homes with narrow setbacks.

Mr. Renaud stated that the Board was not required to permit, particularly when there is a variance, something that was equal to the worst thing that the Applicant could find. That does not mean it is the new zoning standard.

Ms. Pagel asked how much distance between buildings would be acceptable.

Mr. Spiegel stated that (minor changes to) the side yard would not overcome the Board's concern. The existing side yard should be preserved.

There was a discussion regarding the general direction of homes in the Radio Section and desires of the Applicant to expand their house.

Mr. Renaud stated that the Board had to do something with the application. He suggested that Applicant withdraw the application. If the application is not withdrawn, the Board would have to vote on it. The application could be carried as well.

Ms. Lagay stated that she would prefer carrying the application. The next meeting is November 8th. She was not certain if the Applicants would be ready by then. It takes time to prepare new plans.

Mr. Renaud stated that he and Mr. Cosenza had discussed that it would be possible that the Applicants would go from requesting one set of variances to needing another set of variances. Therefore, the Applicants would probably have to re-notice.

Ms. Lagay asked if the Applicants stated "any and all variances" in their notice.

Mr. Cosenza stated yes, and that he always suggests that is done.

Mr. Renaud stated if the Board was satisfied with the notice, the Board could make an announcement that they would be coming back. He asked the Applicants when they could be back.

Mr. Pagel stated that, with no offense to be taken by the Board, he did not believe that they were going to be building anything anymore. He raised his concerns about noticing again.

Ms. Andrews stated that what the Board was trying to tell the Applicants that they did not have to notice. The Board was giving the Applicants an opportunity to have the application carried.

Ms. Lagay agreed. The application could be carried for a while so long as the Applicants give the Board permission, if after 45 days. The application will be carried to November 8th. If the Applicants were not ready, the Board could carry it to December.

Mr. Cosenza noted that, if the Applicant sought to come back to the November 8th meeting, plans would have to be submitted at least 10 days in advance of the meeting. The Planner was not available to make the meeting but Mr. Cosenza opined that, given that the Board is more than capable of providing suggestions to the Applicant, what has transpired is what the Planner would have expected. Mr. Cosenza alerted the Applicants that there is a cost (an hourly rate) for sitting down with the Planner, so it is best to take the Board's comments, put their thoughts together and prepare something for the Planner to review.

Board members agreed.

Mr. Renaud announced that the application would be carried to the meeting on November 8, 2012 in this room at 7:45 p.m. There will be no further notice.

CORRESPONDENCE

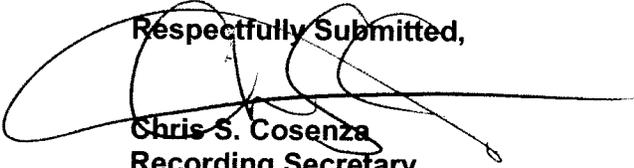
There was a brief discussion regarding 316 Midland Avenue as it appeared to lack the proper landscaping. Mr. Cosenza stated that a number of conditions remain outstanding.

ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Sondergard and seconded by Ms. Andrews. Voice vote taken. Motion carried unanimously.

The meeting adjourned at 10:08 p.m.

Respectfully Submitted,


Chris S. Cosenza
Recording Secretary