

**Town of Milford  
Zoning Board of Adjustment Minutes  
February 17, 2011  
Christopher Saunders  
Case #2-11  
Variance**

Present: Steven Bonczar - Chairman  
Kevin Johnson  
Fletcher Seagroves  
Laura Horning  
Steve Winder

Zach Tripp - Alternate

Absent: Katherine Bauer – Board of Selectmen’s representative  
Michael Unsworth - Alternate

Secretary: Kathryn Parenti

The applicant, Christopher Saunders, owner of 221 Nashua Street, Map 26, Lot 124, Commercial “C” district, is requesting a variance from Article V, Section 5.05.4:A to permit a two-family residence on a lot with less than the minimum size of 20,000 square feet.

Motion to Approve: \_\_\_\_\_

Seconded: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Steven Bonczar, chairman, read the notice of hearing into the record, making a correction that the notice should be for a variance and not a special exception. He stated he would read the notice and request a change to a variance and make sure the board agrees this is the case; the applicant filled out the paperwork for a variance. He wanted to get the board's opinion.

K. Johnson stated he was torn for a couple of reasons. The proper notification was not done and he felt the application would be better as an equitable waiver. In addition, he felt the applicant does not have enough information to provide the board for a variance.

S. Bonczar replied he had checked with the office this morning for the error in the notice. The application is for a variance and the paperwork matches that.

S. Winder stated he was fine going forward with the variance.

L. Horning agreed.

S. Bonczar agreed as did the majority of the board, to proceed as with a variance. The applicant's request makes it clear that is a variance and not a special exception, which was an error. He then read the list of abutters; Christopher Saunders, applicant and owner of 221 Nashua Street, were present. He then invited the applicant forward to present his case.

C. Saunders stated his request is for a two-family residence at 221 Nashua Street on a lot with less than the minimum size of 20,000 square feet.

S. Bonczar asked him to explain why he was before the board.

C. Saunders referred to attachment C of the application and stated he has owned 211 Nashua Street since 1985 and he had lived there for four (4) or five (5) years. He was familiar with 221 Nashua Street and knew it had been a real estate office since 1974. The town records are incomplete in terms of when the house was made into the real estate office. He knew the former owner, Dick Trow, had changed the residential use to a combination residential-commercial use and it was not clear when it changed from a single family home to a two-family home. He knew it had been a two-family residence for a considerable amount of time. When it was changed to the real estate office, the structure of the building did not change. The first and second floors are identical: the bedrooms, living rooms, kitchens and bathrooms are stacked. An office was added to the first floor apartment, with no structural changes and it was there until the late 1990's. He is not sure how many people have owned the building since Dick Trow but when D. Trow originally sold the building, an accountant used it as an office for about a year. After that it changed to a two-family and no structural changes were made. He purchased the property in 2006 because it abutted 211 Nashua Street and he was interested in the parking; there is a fence with a gate separating the two (2) lots and the residents of the two-family at 211 Nashua Street could park in the ample parking available at 221 Nashua Street. When he was shown the property, he made the assumption it was a legal two-family in the commercial district. He didn't find out it was listed in the tax records as a two-family until this issue came up. This all came about because of an issue with a tenant with a clogged toilet who couldn't get in touch with him. She called the health office about the issue and the health officer remembered the first floor unit was a real estate office at one time. The health officer thought the bathroom was a recent addition and thus not a legal two-family. He went in to the Office of Community Development and talked with Dana MacAllister, Residential Building Inspector, and Bill Parker, Director of the Office of Community Development. He told them he wanted to keep the second apartment, which is clearly an apartment. He hasn't done anything to the building; nothing has been done to it since D. Trow owned it. He found a closet door in the basement that was used to block off the shower when there was an office there. The health inspector said he had been in the building when the real estate office was there and didn't recognize the shower. Dana MacAllister acknowledged there is no new plumbing and everything looks like it has been there for a long time. If it is changed to a two-family residence, it would be easier to rent than a commercial use. It has been occupied as two (2) rental apartments and it rents

quickly. He recognized there is value as commercial space and he asked B. Parker if it was changed to a residential use and he wanted to sell it and someone else wants to make it a commercial use, once it is a commercial use, can it He said there was no problem; once it's been commercial, it can go back to that. He then asked why this was an issue. It is clear it was previously a residential use and if that is true, why would he have to jump through hoops to change it back to a residential use but not a commercial use. He noted it took B. Parker three (3) weeks to research this property and it couldn't be determined when this changed from a single family residence to the commercial use with an apartment to the two-family residential use. He was then told he needed to come before the board. He contests that and told them he wanted to take the path of least resistance but the building clearly has two (2) apartments. According to town records, at some point it was a single family, built in 1850 but the two (2) apartments have been in place for at least sixty (60) or seventy (70) years. The structure has never been altered. The roof was recently redone and the contractor told him tree limbs were used as roof rafters and have not been altered; D. MacAllister readily admitted that. In 1974, D. Trow took the two-family home and turned it to a commercial property and the town didn't keep accurate records of what it was changed from. He is asking for a variance to take the building that was originally a two-family and turn it back into a two-family. In 2005 it was assessed at a two-family residential use as occupied by two (2) apartments. He purchased it in 2006 with both units rented and in 2010 it was found not to be in compliance.

S. Bonczar noted K. Johnson had stated he thought the application should be an equitable waiver and in listening to the applicant, wondered why an equitable waiver was not suggested. He asked if B. Parker and D. MacAllister had considered this to be an equitable waiver.

K. Parenti stated she was not involved in any discussions regarding this application.

K. Johnson read from The Town of Milford Zoning Ordinance, Article II, Section 2.06.0, Equitable Waiver: *"All equitable waivers of dimensional requirements shall be governed by RSA 674:33-a (as amended) as stated below...B. In lieu of the findings required by the board under subparagraphs 2.06.0:A.1 and 2.06.0:A.2, the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected."* He noted Section A is not applicable and the violation has existed for ten (10) years or more. It exactly fits this case. He continued by reading from Section 2.06.0:D: *"Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions..."* The two-family dwelling is an allowed use in the Commercial "C" zone. He is only not meeting the dimensional requirement; it specifically states that is the purpose of the equitable waiver. He was uncomfortable, based on a number of things the applicant said, of granting the variance. He was concerned with the parking comment made by the applicant.

C. Saunders replied it was his property.

K. Johnson stated it might not be his in the future. The variance goes with the property forever; with a variance they would have to consider if there is ample parking for the property; with an equitable waiver that is not the case.

S. Bonczar clarified the parking is not the issue; there is plenty of parking on this lot and not enough on 211 Nashua Street. In reading this he had to question whether or not they can proceed with the variance or to table it. He thought it would be best to table this case and ask the Office of Community Development if this meets the criteria for an equitable waiver. In the board's view, it does, unless they are missing some information. Without having B. Parker here, he can't determine that but it is leaning toward an equitable waiver.

F. Seagroves asked how long the kitchen has been in the first floor apartment. Had it been longer than ten (10) years?

C. Saunders replied it was more than ten (10) years, at least sixty (60) years.

L. Horning stated assessing had determined it was a two-family and in 1974, the prior owner had changed it to a commercial and residential use.

C. Saunders replied it changed from a residential use to a commercial use and according to B. Parker, he can't determine when the two-family changed to commercial space with a single family or if a single family home changed to a commercial space with an apartment. He noted if you look at the exterior of the building, all the windows line up and it has not been altered.

K. Johnson replied it was clear from the applicant's testimony the building has been occupied as a residential use for a number of years.

C. Saunders stated he didn't remember how long but he has been the owner of 211 Nashua Street since 1985. He didn't know when D. Trow ended the real estate business but he did know it was over ten (10) years ago. Someone had tried to have a business in this location but it was not successful. He tried to get in touch with D. Trow but he has passed away.

K. Johnson stated his family has been in town for over fifteen (15) years and he doesn't remember seeing a commercial use in that building in that time.

S. Bonczar stated he remembered the real estate office there but whether it is used that way, the fact is it is still a two-family. The closet door closed off the shower but it was still a shower in a two-family dwelling and it is assessed as a two-family dwelling. He was uneasy about moving forward treating this as a variance, based on the applicant's testimony. He thought it would be better to change the request to an equitable waiver as variances are difficult to get and hardship must be proved.

C. Saunders stated B. Parker thought it would go through without much trouble.

S. Bonczar replied equitable waivers are less stringent than variances; they could proceed but he recommended the applicant ask to table this case and request B. Parker look at this as an equitable waiver and validate those facts. He could come back, if that is not the case, as a variance. This request is not a special exception but a variance based on the definition of the square footage of the property. In this unique case, the equitable waiver might apply.

K. Johnson stated the applicant either meets all the criteria for a variance or they don't or they meet the requirements for an equitable waiver.

S. Bonczar replied it was not guaranteed but the board agrees the variance puts doubts in their minds and this might be more appropriate as an equitable waiver. It is worth exploring but they don't make that decision. The applicant has a choice to either move forward or to table the application.

K. Johnson replied they could hear the request for the variance and if they deny it, the applicant could then apply for an equitable waiver and it would be treated separately.

S. Bonczar replied they have had similar issues before, and it's all based on interpretation of the ordinance.

K. Johnson was concerned the applicant would have to repay filing fees.

K. Parenti replied he would not.

S. Bonczar stated if B. Parker says he can't validate the equitable waiver then they can just hear it as a variance.

L. Horning replied sometimes it takes many people to see things differently and provide more feedback. B. Parker will weigh in and let them know which direction they should go; this application is kind of falling in between the two spectrums. K. Johnson did make a good point, that it is more of a request for an equitable waiver than it is a request for a variance.

S. Bonczar stated the only negative in this situation is time; if he did get approval tonight, he would be on his way. If he did not then he would be back to square one and might have to come back anyway. He noted the board does not always approve things but does make sure things are fair and just.

C. Saunders replied B. Parker helped with the application and had noted the property has historically been used as a two-family.

S. Bonczar didn't know if he thought of the equitable waiver or not. He asked what the applicant would like them to do.

C. Saunders replied he would like to table his application; he was here because of what B. Parker had recommended. He asked K. Johnson about a comment about the application being incomplete. K. Johnson replied his concern was with the adequate facilities criteria with regard to the parking of 211 and 221 Nashua Street. He thought he would be allowing tenants from 221 to park on 211, which does not have adequate facilities for that. It is the other way around; he just confused the properties.

S. Bonczar asked if there was a motion to table case #2-11.

K. Johnson made the move to table case #2-11.

F. Seagroves seconded the motion; all were in favor.

S. Bonczar stated he didn't want the board to approve or deny something that wasn't needed.

K. Johnson noted as soon as he read the history he thought an equitable waiver would be more appropriate. Normally the board hears maybe one (1) equitable waiver a year. In the office, the variance may have been the first thing to come to mind. The equitable waiver is generally to take care of things that happened long ago.

S. Bonczar replied if the change was a recent one, it would be clearly a variance. There is a question on the timing of things in this case.