Chairman Nargiso brought the regular meeting of the Butler Planning Board for July 17, 2014 to order followed by a Pledge to the Flag. This meeting is being held in conformance with the Sunshine Law Requirements having been duly advertised and posted at Borough Hall.

**ROLL CALL:**

Present: Donnelly, Roche, Drexler, Hauck, Alviene, Brown, Grygus, Fox, Nargiso

Absent: Finelli, Calvi

Board Discussion regarding the procedures for Certificates of Non-Conformity

Councilman Fox reported that it does not need to be an ordinance according to the Borough Attorney; the Board just had to be in agreement that the procedure would be based on the Property Assessment Cards from 1969.

Mr. Barbarula stated if the board wants to adopt this as a procedure, get a motion and a second then there can be a discussion and then a motion.

Motion to accept the 1969 property assessment card

Motion: Brown

Second: Donnelly

Voted Aye: Donnelly, Roche, Drexler, Hauck, Alviene, Brown, Grygus, Fox, Nargiso

Voted Nay: None

Mr. Barbarula will do a formal resolution that will be attached to the certificate of non-conformity application

**CASES TO BE HEARD:**

**NC14-52 William and Louise Boldt**

 **11 Spring Street**

 **Block 47 Lot 11**

The Mayor and Councilman Fox will not be participating in this application

Mr. D’Angelo, Esq. representing the applicant

Mr. D’Angelo stated Mr. Boldt has a pre-existing two family home as far back as 1958.

William Boldt testified to the following:

* Owner and resident of 11 Spring Street
* Has lived there for 29 years
* Purchased in 1985 as a two family residence was rented out and still continues to be rented out
* There are two utility meters
* Home was purchased from Joan and Ernie DeGraw

Public portion opened by motion

Public portion closed by motion

A1 – Tax Assessment Card

Mr. Barbarula stated the property assessment card from 69 there was a note made that the second floor is no longer rented, the stove has been taken out and the sink unhooked.

Oath Given

Joan DeGraw

* Currently resides at 46 Roosevelt Avenue
* Purchased the house in 1958 until the Boldts purchased it
* It was a two family house when it was purchased in 58 and continued to be a two family house when it was sold
* The stove was never disconnect and the sink was never removed

Public portioned opened by motion

Public portion closed by motion

Mr. D’Angelo’s summation

Motion to approve as submitted and testified to

Motion: Brown

Second: Donnelly

Voted Aye: Donnelly, Drexler, Hauck, Brown, Grygus, Nargiso

Voted Nay: None

Abstain: Roche

**14-183V Jeffrey & Cynthia Cuellar**

 **35 High Street**

 **Block 22 Lot 6**

Oath Given

Mark Thomas, Licensed Architect

Accepted as an expert witness by motion

Jeffrey Cuellar testified to the following

* Currently a two family house
* Request is for an addition on the side for an extra bedroom and living space on the bottom
* The other part of the house is rented by the sister and brother-in-law
* Living room dining room, kitchen, three bedrooms 2 ½ baths

Listed of requested variances

* Lot size - existing
* Lot frontage - existing
* Lot width - existing
* Side yard - existing
* Front yard to the new front porch is 25.8 foot where 35 ft. is required – new variance
* Building coverage – new variance

Board questioned the witness on various aspects of his testimony

Public portion opened by motion

Public portion closed by motion

Motion to approve

* Driveway may be widened to 20 feet if so desired
* Well must be filled in and inspected by the Board of Health

Motion: Brown

Second: Donnelly

Voted Aye: Donnelly, Roche, Drexler, Hauck, Alviene, Brown, Grygus, Fox, Nargiso

Voted Nay: None

**NC14-54 48 Bartholdi Avenue, LLC**

Richard Clemack, Esq. representing the applicant

Mr. Barbarula stated this was discussed with the board with respect to adopting a new procedure and this to have a remote testimony. There have been a number of recent cases that allowed members of boards to participate via electronic devices. The board, at a workshop, voted to allow this to go forward under that methodology and for the applicant’s benefit the board is trying something new. This is slightly different that the other non-conforming uses in that, there has never been a four family zone, so the applicant still as the same burden of going back prior to when the ordinances were written and that is 1955.

This has been discussed a number of times with Mr. Clemack and in order to identify the identity of the person testifying remotely and affividavid of David Ransom be submitted, and it has been obtained by Mr. Clemack which has been made part of the record.

Mr. Clemack stated since the late 40’s for early 50’s this property has been used as a four family. There was a single apartment downstairs, and three efficiency apartments upstairs. The efficiency apartments consisted of a living room sitting area and a kitchen. The three efficiencies upstairs shared a common bathroom. Downstairs is where Mr. and Mrs. Rhinesmith lived.

Testimony will be given by the Rhinesmith’s grandson who lived in Butler from the 50’s to the early 60’s. This started in the early 50’s and continued with stop. In 1982, Ms. Portman and her late husband purchased this property and she will testify when she purchased it, there were the Rhinesmith’s apartment downstairs and the three apartments upstairs.

In 1992 Mr. and Mrs. Portman came before the town and got permits to put in bathrooms upstairs so each of the efficiency units would have their own bathroom. At the time that they came before the board, Mr. Wickfors had questions and wondered if they could do this work and it is allowed. There were never any issues with the board or the town regarding this premises, they received permits and CO’s. It wasn’t until 2010 that the Zoning Officer raised an objection. The property card of 1969 also listed this premises as a 4 family unit.

Oath Given

Daniel Ransom – Grandson of Mr. and Mrs. Rhinesmith

19 Sanborn Hill Road

Epsom, New Hampshire

Mr. Ransom testified to the following:

* Lived in the Borough of Butler from 1951 to 1962 then moved back in 1963 until 1965 and then moved to Cliffwood Lake in Vernon.
* In 1951 lived on Ward Avenue to 57 and then moved to 23 Kiel Avenue
* Familiar with 48 Bartholdi Avenue
* Amy and Alvin Rhinesmith were the owners – Amy was grandmother and Alvin was a step grandfather
* Visited the house on many occasions
* Description of the interior
* The larger rooms were used for sleeping sitting, the small kitchenette had a little table, refrigerator, stove and pantry
* The all shared a bathroom
* It was rented most of the time to school teachers and then they were empty somewhat in the summer

Board questioned the witness on various aspects of his testimony

Public portion opened by motion

Public portion closed by motion

Oath Given

Kathleen Portman

Mrs. Portman testified to the following:

* Purchased the property in 1982 from Alvin Rhinesmith
* In 1992 private bathrooms were installed – building permits and certificate of occupancy was given
* Three efficiency units upstairs and a larger unit downstairs

Board questioned the witness on various aspects of her testimony

Mr. Clemack stated that the board has copies of the Planning Board’s discussion of March 9, 1992 where Mr. Wickfors appeared before the board stating it was a four family house and explained what was being done and what the expansion was about and the board indicated there were no issues with what they wanted to do.

Public portion opened by motion

Public portion closed by motion

Mr. Brown stated he would like to see a set of floor plans

Mr. Hauck agreed

Mr. Barbarula stated is it a pre-existing non-conforming four family before 1955. You have to take the testimony and the documents that have been received and make that determination. You are taking about uses and not design, there is enough before the board to determine credibility and that is the testimony of Mrs. Portman, the testimony of Mr. Ransom, the property card, the 90 addition, to determine whether or not prior to 1955 was this four units.

Any applications can have conditions, and if you vote to approve you can make a condition that has to show what exists so if someone wants to make changes in the future there is a bench mark.

Has the board been provided sufficient information to make a reasonable decision that is more likely than not that this building had three units upstairs and one down.

Motion to deny

Motion: Brown

Second: Hauck

Mr. Brown stated whether it’s a dwelling unit or a room, the kitchenettes at the time, which was the 50’s and they are off a common hallway just as the common bathroom is. The kitchenettes were not part of the rooms based upon the testimony. Dwelling units should have a sleeping space and private cooking facilities in the unit not as part of a common space. It may be that way today, but that does not go back to 1948.

Mr. Roche stated to him it was a four family house back in the 50’s and then in the 90’s it was still considered a four family house, it is splitting hairs as to what is a house and a dwelling unit.

Mr. Barbarula stated if you vote yes you are voting to deny the application that there were 4 units prior to 1955. If you vote no you are saying you believe there were 4 units prior to 1955.

Voted Aye: Donnelly, Hauck, Brown, Grygus, Nargiso

Voted Nay: Roche, Drexler

Application denied

Mr. Barbarula stated in order to get approval for a 4 family unit they would have to reapply to the board for a use variance.

**RESOLUTIONS:**

14-179V Shri Sai Shakti, LLC

 1369 Route 23

 Block 67 Lot 1

Motion to approve as submitted and read

Motion: Brown

Second: Donnelly

Voted Aye: Donnelly, Roche, Drexler, Brown, Grygus, Nargiso

Voted Nay: None

Abstain: Hauck

NC14-53 Valesco/Meqdadi

 34 Third Street

 Block 19 Lot 4

Motion to approve as submitted and read

Motion: Brown

Second: Donnelly

Voted Aye: Donnelly, Roche, Drexler, Brown, Grygus, Nargiso

Voted Nay: None

Abstain: Hauck

14-182V George and Aileen Tweer

 68 Carey Avenue

 Block 12 Lot 13

Motion to approve as submitted and read

Motion: Brown

Second: Donnelly

Voted Aye: Donnelly, Roche, Drexler, Brown, Grygus, Nargiso

Voted Nay: None

Abstain: Hauck

**APPROVAL OF VOUCHERS:**

Motion to approve as submitted

Motion: Brown

Second: Hauck

Voted Aye: Donnelly, Roche, Drexler, Hauck, Brown, Grygus, Nargiso

Voted Nay: None

**BOARD DISCUSSION:**

 Quick Chek

MOTION TO ADJOURN:

Motion: Brown

Second: Donnelly

ALL AYES

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Chairman – Planning Board

ATTEST:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Secretary – Planning Board

ADOPTED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_