

NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

January 22, 2018

CALL TO ORDER: A meeting of the Nutley Zoning Board of Adjustment was called to order at approximately 7:30 p.m. by Chairman Frank Graziano. The Pledge of Allegiance was recited. Roll was called and the Sunshine Notice was read.

PRESENT: Joseph Frusteri, Lori Castro, Peter Sirica, Theresa Duva, Joseph Battaglia, Gary Marino, Tom DaCosta Lobo, Suzanne Brown, Chairman Graziano and Board attorney, Diana McGovern, Esq.

ABSENT: None

EXCUSED: Daniel Tolve

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No. 1 111 Crestwood Avenue WITHDRAWN WITHOUT PREJUDICE

Applicant: Mr. Thomas DiBiasi, Esq., 111 Crestwood Avenue, Block-Lot: 8901-16

Application: to convert the existing one (1) family dwelling into a two (2) family dwelling located in an R-1 zoning district, as shown on the plans prepared by Architect, Steven Corso, dated April 27, 2017,

Appearances: Mr. Thomas DiBiasi, Esq.

Letter of Denial: was not read

Mr. Thomas DiBiasi, Esq., stated that this application was withdrawn without prejudice.

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No. 2 4 McKinley Street APPROVED 7-0

Applicant: Mr. Kenny Nguyen, 4 McKinley Street, Block-Lot: 1601-23

Application: to *leave as erected* a portion of the driveway that was enlarged to the left side six (6') feet for a total width of 22' (see picture attached). A previous zoning approval was issued June 23, 2017 for a 16' driveway (see survey of 2/11/15). Also, to *leave as erected* a four (4') foot and six (6') foot solid fence located in the side yard having no prior approval or permit as shown on the survey prepared by Donald P. Sweeney & Associates, P.L.S., dated February 11, 2015,

Appearances: Kenny Nguyen, Quynh Nguyen, Barbara Hirsch

Letter of Denial: was previously ready.

AND the Code Official having denied said permit by letter dated October 20, 2017, citing, Chapter 700, Article XIII, Section 700-94 A (1) of the *Codes of Nutley* which states no front yard of a lot upon which is located in a one- or two-family dwelling shall be used for the parking of motor vehicles, except that motor vehicles may be parked upon a driveway in the front yard. The driveway shall consist of the area directly opposite to an attached garage, detached garage or depressed garage or the extension of the side yard into the front yard. The driveway width shall not exceed 16 feet. However, if there is no garage and no available side yard, a driveway not to exceed 16 feet in width from the side lot line may be constructed, and also citing,

Chapter 700, Article XI, Section 700-71 B of the *Codes of Nutley* which states a fence erected along the side lines from the front line of a main structure to the rear line of such structure and within such lines shall not exceed four feet in height and shall be not less than two feet in height and shall be of 50% open construction (i.e., the open spaces in the fence shall be at least the same width of each picket, slat or other construction element of such fence). The setback for any such fence shall be in line with the furthest setback of the adjacent property or the property upon which the fence is being erected, whichever setback is greater;

Interpreter Quynh Nguyen was sworn in. Exhibit A1 was a picture of the driveway. Barbara Hirsch, 477 Washington Avenue, testified to the board as to the background of the Nguyen Family. She stated that the language barrier was a hardship. Chairman Graziano pointed out that it was a corner property. Mr. Nguyen stated that before he extended the driveway, his kids would hit the car doors on the house when opening them. Ms. Suzanne Brown asked the applicant if they were parking in back of the house. He responded that they did not because that was where the kids played. Ms. Suzanne Brown stated that Mr. Nguyen was driving on the town's sidewalk and grass when entering and exiting his driveway. Mr. Tom DaCosta Lobo suggested widening the curb cut as a condition. Exhibit A2 was a picture of the front yard and Exhibit A3 was a picture of the fence. Chairman Graziano suggested that the applicant could take the gate down and add a walkway or a wall. The board members agreed that they wanted to see the maximum curb cut allowed by code. The board agreed on the applicant removing the 6 foot fence and replaced with a 4 foot fence. The applicant agreed he would continue the block wall across the driveway until the gate opening. Ms. Suzanne Brown highlighted the survey to show the applicant what the board agreed on, which was Exhibit A4.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this variance was made by Ms. Suzanne Brown, seconded by Mr. Gary Marino. The variance was granted by a vote of 7-0.

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No. 3 40 Franklin Avenue APPROVED 7-0

Applicant: Mr. Brisk, 40 Franklin Avenue, Block-Lot: 9101-6

Application: To not to rebuild the existing detached garage, at the above referenced address, which was deemed “*Unsafe*” by the Code Enforcement department in 2009, and demolished with a conditional permit to apply to the Board of Adjustment for a variance by the previous owner;

Appearances: Christopher Stead, Esq., and Mr. Brisk

Letter of Denial: was read by Mr. Tom DaCosta Lobo

AND the Code Official having denied said permit by letter dated December 27, 2017 citing Chapter 700, Article XIII, Section 700-91 A of the Codes of Nutley, the schedule parking requires a two (2) family to have 4 (four) parking spaces, at least one space must be in a garage;

Attorney, Christopher Stead, Esq., made his opening remarks to the board. He stated that the garage was demolished and that his client bought this property from a Sheriff’s Auction. He stated that the garage did not serve a purpose, it was not aesthetically pleasing, and would be used as a rental property. He stated that only one tenant would have driveway access because there was ample parking. Chairman Graziano stated that he wished the applicant to install a shed for future owners. Mr. Stead responded that it would be unnecessary. Mr. Joseph Battaglia stated he would rather see more parking for the residents than a shed. Mr. Tom DaCosta Lobo agreed that he would like to see more parking, and the shed was an amenity the applicant should not be forced to offer. Ms. Suzanne Brown drew an example of the extended driveway the board recommended, Exhibit A1, which would fit two cars. . The board agreed a gravel driveway would suffice.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this variance was made by Ms. Suzanne Brown, seconded by Mr. Tom DaCosta Lobo. The variance was granted by a vote of 7-0.

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No. 4 16 Lake Street APPROVED 6-1

Applicant: Mr. Arturo Mora, 16 Lake Street, Block-Lot: 2203-3

Application: To *leave as erected* a four (4’) foot solid type fence and a six (6’) foot solid type fence located in the southerly side yard, as shown on the survey prepared by Manno Surveying, Inc., dated August 8, 2017;

Appearances: Arturo Mora, Ms. Mora, Angie Cela

Letter of Denial: was read by Mr. Tom DaCosta Lobo.

AND the Code Official having denied said permit by letter dated December 5, 2017 citing Chapter 700, Article XI, Section 700-71 B of the Codes of Nutley states a fence erected along the side lines from the front line of a main structure to the rear line of such structure and within

such lines shall not exceed four feet in height and shall be not less than two feet in height and shall be of 50% open construction (i.e., the open spaces in the fence shall be at least the same width of each picket, slat or other construction element of such fence). The setback for any such fence shall be in line with the furthest setback of the adjacent property or the property upon which the fence is being erected, whichever setback is greater;

Applicant Arturo Mora, and his Daughter, Ms. Mora, testified to the board that they installed a pool and had small children that needed to be contained and kept safe in the yard. Mr. Mora stated that the fence did not obstruct any views and he had been fined in Nutley Municipal Court for the violation. Ms. Mora stated that there had previously been an “ugly” wire fence and she wanted to fix it up. Board Attorney, Diana McGovern, Esq., stated that the applicants had all the neighbor’s signatures. Ms. Suzanne Brown expressed she felt the AC condenser fence was unappealing. Ms. Mora stated she did not feel the fence was unappealing and it had been there for 7 years. Diana McGovern, Esq., explained to the applicants that the town code does not allow for front yard fences and they must prove their hardship. Ms. Suzanne Brown suggested a 4 foot high, vinyl, open fence. Ms. Mora expressed she wanted a 4 foot solid fence. Mr. Gary Marino suggested a four foot shadow box fence, to which the applicant agreed. The applicants asked the board if the AC condenser fence could be covered by bushes. The board agreed. Neighbor Angie Cela testified to the board that the Mora’s had greatly improved their property and that she did not find the AC fence offensive.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this variance was made by Mr. Gary Marino, seconded by Mr. Tom DaCosta Lobo. The variance was granted by a vote of 6-1, with Chairman Graziano voting against the granting on this application.

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RESOLUTIONS MEMORIALIZED: 103 Park Avenue

MINUTES: November 13, 2017 minutes

INVOICES: \$2,137.50 bill from Pennoni and Associates on the 10 Kingsland Street Application

NEW BUSINESS: Board Officers were elected (Chairman, Frank Graziano, Vice Chairman, Suzanne Brown, Board Attorney, Diana McGovern, Esq., Secretary, Tom DaCosta Lobo, Recording Secretary, Anjelica Mithcell.

LITIGATED MATTERS: None

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NOTE: THE PROCEEDINGS IN THIS MATTER WERE VOICE RECORDED. THE RECITAL OF FACTS IN THE MINUTES IS NOT INTENDED TO BE ALL-INCLUSIVE, BUT IS A SUMMARY AND HIGHLIGHT OF THE COMPLETE RECORD MADE BEFORE THE ZONING BOARD.

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Respectfully submitted,

Anjelica L. Mitchell

Minutes Approved

Anjelica Mitchell

3/19/18