

**NUTLEY ZONING BOARD OF ADJUSTMENT**

**Public Session Meeting Minutes**

**September 19, 2016**

**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:** Daniel Tolve, Joseph Frusteri, Lori Castro, Peter Sirica, Lou Fusaro, Gary Marino, Tom DaCosta Lobo, Suzanne Brown, Chairman Graziano and Board attorney, Diana McGovern, Esq.

**ABSENT:** None

**EXCUSED:** Mary Ryder

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**No. 1 17 Msgr. Owens Place APPROVED 7-0**

**Applicant:** St. Mary's Church, 17 Msgr. Owens Place, Block-Lot: 7004-11

**Application:** To install a one story addition onto the existing Saint Mary's Church, having an 11' front yard setback and an 11'10" side yard setback, which will increase the lot coverage to 40.7%, as shown on the plans prepared by Architect, Dassa-Haines dated June 28, 2016;

**Appearances:** Thomas DiBiasi, Esq., Father Thomas S. Nicastro, Joseph Haines, Paul Bauman, Richard Grabowski, Richard Rogers

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

AND the Code Official having denied said permit by letter dated August 15, 2016, citing Chapter 700, Article VII, Section 700-45 F of the *Codes of Nutley* which states that permitted conditional uses for a house of worship require a front yard to have a 25' setback, a side yard to be 20', and lot coverage not to exceed 35%. *The proposed front yard setback will be 11', the proposed side yard setback will be 11'10" and the proposed lot coverage will be 40.7%;*

Mr. Tom DaCosta Lobo recused himself from this matter.

Mr. Thomas DiBiasi, Esq., made his opening remarks to the board, stating that he would be representing Saint Mary's Church in this matter. He stated that they were looking to bring the church into compliance with the ADA. Father Thomas Nicastro testified to the board that this projecting was essential because they gained the capital recently to do so and the elevator is much needed for the church community. He stated that the basement of the church needed to be made to code for issues on the bathroom and exiting situation. He explained that he believed this application would have no negative effect on the neighbors. Architect Joseph Haines testified to the board stating that this application was the only acceptable option for the placement of the elevator of the church. He stated that the elevator would be large enough to accommodate a stretcher and was also secure for after-hours safety. Paul Bauman, expert planner, testified to the board that they needed three variances on this project: front yard setback, which he said was justifiable due to the importance of the elevator, side yard setback, which he said was justifiable because they would plant shrubbery, and lot coverage, which he said was justifiable because it would not significantly impact the zoning ordinance. Richard Grabowski, 107 Saint Mary's Place, testified to the board that he felt this application would lower the value of his property, as well as cause a safety issue when backing out of his driveway due to the reduced visibility the structure would cause. Mr. Grabowski also stated that he felt the structure would cause traffic and states that the applicant could find another way to do this without affecting the neighbors. Ms. Diana McGovern stated that Mr. Bauman said they would plant shrubbery. Mr. Grabowski responded that this would reduce visibility even more. Architect Joseph Haines explained that there would be visibility when pulling out of Mr. Grabowski's driveway. Mr. Haines stated taking down the large tree and replacing it with shrubbery will help with the neighbors view. Mr. Richard Rogers, 4 Charles Street, suggested using a class entryway. Mr. DiBiasi stated that the church would like to stick to their original plan.

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

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**No. 2 70 Overlook Terrace APPROVED 6-1**

**Applicant:** Mr. and Mrs. Anthony Torelli, 70 Overlook Terrace, Block-Lot: 2804-5

**Application:** To install a generator in the south side yard of the property having a three (3') foot side yard setback, as shown on the survey prepared by George J. Anderson., dated July 31, 2003;

**Appearances:** Mrs. Torelli

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

AND the Code Official having denied said permit by letters dated March 18, 2016, citing Chapter 700, Article III, Section 700-3 B of the *Codes of Nutley* entitled "*Definitions; Side Yard*" is an open unobstructed space between the building and the side line of the lot extending through

from the front to the rear yard or to another street, into which space there is no extension of the building above the grade level,

and also citing Chapter 700, Article VII, Section 700-42 A (2) of the *Codes of Nutley* which prohibits any vibration beyond the boundaries of the lot on which such use is conducted;

Applicant Mrs. Torelli Testified to the board that she was unaware her generator was out of code until her neighbor had recently let her know. She introduced Exhibit A1, which was a drawing of her property. Mr. Gary Marino asked the applicant if she had ever had any problems with the generator. Mrs. Torelli responded that she never had any problems with the generator. Chairman Graziano asked the applicant when her generator was working. She responded that it had turned on once a week. Chairman Graziano also asked the applicant if you could see the generator when looking at the house. She responded that you could not.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant the variance was made by Mr. Gary Marino, seconded by Mr. Lou Fusaro. The variance was granted by a vote of 6-1 (Chairman Graziano voted no).

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**No. 3 78 Yantacaw Place CONTINUED TO NEXT MEETING**

**Applicant:** ADD Properties Coporation, 777 Passaic Avenue-Clifton, New Jersey

**Application:** to demolish the existing one (1) car garage due to storm damage and not rebuild it, at the above referenced premises, as shown on the survey dated June 28, 1988,

**Appearances:** Mr. D'Alessandro, Esq., Michael Ponce

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

Mr. D'Alessandro made his opening remarks to the board that he would be representing ADD Properties Corporation. After discussions regarding the character of the neighborhood (including that the bulk of the homes were only one and a half stories and that the parking proposed for a house with as many bedrooms as the plans suggest would be insufficient) and backyard access issues, Mr. D'Alessandro and his client Michael Mr. Ponce decided they would like to rework their plans and wished to be rescheduled for the October 17, 2016 Zoning Board meeting.

With no further questions from the members and no one in the audience with questions or comments, a motion to move this application to the next scheduled Zoning Board of Adjustment meeting.

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**No. 4 20 Albany Avenue APPROVED 7-0**

**Applicant:** Mr. and Mrs. Michael Venditti, 20 Albany Avenue, Block-Lot: 9000-61

**Application:** To construct a 213 square foot two story addition, to the existing single family dwelling unit which will increase the lot coverage to 50%, as shown on the survey prepared by Architect, Ana Sousa, dated May 20, 2016;

**Appearances:** Anna Venditti

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

AND the Code Official having denied said permit by letters dated June 27, 2016, citing Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley entitled "Schedule of Regulations as to Bulk, Height and Other Requirements" requires the lot coverage not to exceed 35% in an R-1 district. *The proposed addition will increase the lot coverage to 50%;*

Mr. Daniel Tolve recused himself from this matter.

Applicant Anna Venditti testified to the board that she lived at this property with her mother. She stated there was three bedrooms upstairs and she wished to build an addition in order to give her elderly mother a bedroom on the first floor. Mr. Gary Marino stated that the lot is shallow, making it a hardship. Chairman Graziano asked the applicant she would be keeping the addition in style with the current home. Mrs. Venditti responded that she would. Mr. Tom DaCosta Lobo asked the applicant if she had previously had issues with flooding. She responded that she never had an issue with flooding in the past and was not worried about flooding issues going forward.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant the 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. 5 71 Jeorg Avenue APPROVED 7-0**

**Applicant:** Ms. Maria Camacho, 71 Jeorg Avenue, Block-Lot: 2502-6

**Application:** To leave as erected a six (6') foot solid type fence which is located on the south side in the side and front yard, and a portion of the rear yard lot line of lot #7 which will not sign the neighbor consent form, as shown on the survey dated August 28, 2014 prepared by Borrie, McDonald and Watson;

**Appearances:** Maria Camacho, Richard Rogers

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

AND the Code Official having denied said permit by letter dated June 2, 2016, citing Chapter 700, Article XI, Section 700-71 B of the *Codes Nutley* which prohibits front yard fences,

and also citing Chapter 700, Article XI, Section 700-71 B of the *Codes 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,

and also citing Chapter 700, Article XI, Section 700-71-H of the *Codes of Nutley* which states a stockade fence with no open construction may be erected in accordance with the location and height limitations contained in Subsection C hereof if the written consent of the adjoining property owner or owners is filed with the Construction Official;

Applicant Maria Camacho testified before the board that her neighbor had been using her fence to store his garbage, which is why she had erected the fence. Ms. Diana McGovern asked the applicant if she had made complaints about this to the town. Ms. Camacho stated that she did not report it because she did not want to cause issues in the neighborhood. Chairman Graziano asked if there was a problem pulling in and out of her driveway. She stated that there was no issue pulling in and out because there was about three to four feet between where the fence ended and sidewalk began. Mr. Tom DaCosta Lobo asked the applicant if she could make the fence gradually shorter. Ms. Camacho stated that it wouldn't matter because her neighbor had shrubbery, but she would have no problem with that. Mr. Gary Marino suggested the applicant make the last two panels of fencing three feet tall. The applicant agreed. Chairman Graziano asked the applicant if she had been maintain the space between her fence and her neighbor's fence. She stated that she had been. Richard Rogers, 4 Charles Street, testified that he had lived at his home for many years and his neighbor had not gotten permit. Chairman Graziano states that Ms. Camacho must survey her property and make sure her fence is on her property line.

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

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**No. 6 49 Cross Street APPROVED 7-0**

**Applicant:** Ms. Kathleen Way, 49 Cross Street, Block-Lot: 7400-2

**Application:** To increase the existing 16' driveway and curb cut to approximately 18', which will reduce the required front yard coverage to 50%, as shown on the survey submitted to the Code Enforcement department July 25, 2016;

**Appearances:** Kathleen Way

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

AND the Code Official having denied said permit by letter dated August 15, 2016, 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 XIII, Section 700-94 A (3) (c) of the *Codes of Nutley* which states curb cuts shall not exceed 16 feet in length, and also citing

Chapter 700, Article VIII, Section 700-48 of the *Codes of Nutley* which states any lot containing a residence for one or two families shall have at least 60% of the required front yard in landscaping. This area shall not be covered with paving, walkways or any other impervious surface. Landscaping may consist of grass, ground cover, shrubs and other plant material. *The proposed coverage will be 50%;*

Applicant Kathleen Way testified to the board that she was replacing her front steps. She stated that the previous winter weather had caused her driveway to sink, and she would like to replace the existing driveway. Ms. Way explained to the board that she was mid-construction when the job was suddenly shut down for four weeks. Chairman Graziano asked the applicant if she was changing the curb cut. She responded that she was not. The applicant introduced Exhibits A1 and A2, which were the 2006 Google Map photographs of her home and the 2012 Google Map photographs of her home. Ms. Way testified that the driveway was its present width before she purchased the property and she only wanted to replace it in the same place and not widen it any further than what had been there (As shown on the 2006 Google Map photo.)

With no further questions from the members and no one in the audience with questions or comments, a motion to grant the 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. 7 165 Pake Street APPROVED 6-1**

**Applicant:** Mr. John Iannuzzi and Mrs. Renata Pira, 165 Pake Street, Block-Lot: 8604-5

**Application:** To construct a new 22' by 31' 2<sup>nd</sup> story addition onto the existing dwelling having a three (3') foot side yard setback on the southeast side, as shown on the plans submitted and drawn by the homeowner;

**Appearances:** John Iannuzzi and Laura Tummings

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

AND the Code Official having denied said permit by letters dated August 15, 2016, citing Chapter 700, Article VIII, Section 700-46 B (1) of the *Codes of Nutley* which states the required schedule regulations for the construction, alteration or addition of a one-family dwelling shall not apply to any lot having less than the required area or width at the time of the adoption of this chapter and held at that time in separate ownership from that of adjoining land, provided that the area and width of such existing lot shall be no less than 80% of the required minimum set forth in the Schedule of Regulations. 80% of the required lot area of 5,000 SF is 4,000 SF. Lot area is only 3,230 SF. 80% of the required lot width of 50' is 40'. The existing is 34'; and also citing

Chapter 700, Article VIII, Section 700-46 A of the *Codes of Nutley* entitled "Schedule of Regulations as to Bulk, Height and Other Requirements" which requires in an R-1 district a six (6') side yard setback. *The proposed side yard setback will be three (3') feet;*

Mr. Lou Fusaro recused himself from this matter.

Applicant John Iannuzzi testified to the board that this application was out of necessity for his children. He stated that they were currently sharing tiny bedrooms and the family wished to live more comfortable. He explained that his plans looked similar to other homes in the area. Ms. Diana McGovern stated that the lot was narrow and shallow. Mr. Iannuzzi stated that nothing would change on the foot print of the home. Chairman Graziano asked the applicant if he would keep the same siding, to which the applicant responded that he would. Laura Tummings, 160 Pake Street, stated that Mr. Iannuzzi was a great neighborhood and she highly approved of this application.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant the variance was made by Mr. Tom DaCosta Lobo, seconded by Ms. Suzanne Brown. The variance was granted by a vote of 6-1.

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**RESOLUTIONS MEMORIALIZED:** 285 Hillside Avenue, 74 Dodd Street, 49 Edgar Place, 6 McKinley Street, 27 Friedland Road, 600 Bloomfield Avenue

**MINUTES:** August 15, 2016 minutes approved

**INVOICES:** None

**LITIGATED MATTERS:** None

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Respectfully submitted,

Anjelica L. Mitchell

Minutes Approved

Anjelica L Mitchell

approved  
10/17/16