

NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

September 21, 2015

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: Suzanne Brown, Lou Fusaro, Gary Marino, Chairman Graziano, Tom DaCosta Lobo, Mary Ryder, Serje Demerjian, Lori Castro, Barry Kozrya, Esq.

ABSENT: Peter Sirica

EXCUSED: Diana McGovern

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No. 1 361 Harrison Street APPROVED 7-0

Applicant: Saqib J. Malik, 363 Liberty Avenue, Block-Lot: 8301-11

Application: To renovate an existing commercial office building located in an R-1 zoning district into an Adult Day Care Facility, as shown on the plans prepared by Architect, Dassa-Haines dated April 24, 2015

Appearances: Thomas DiBiasi, Esq., Saqib J. Malik, Paul Bauman, Joseph Haines, Maureen Mcmillan

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article V, Section 700-7A which requires all uses to be listed as permitted in the district; and also citing

Section 700-9A which lists the permitted uses in an R-1 zoning district; an Adult Day Care Facility is not listed as a permitted use; and also citing Article XIII, Section 700-91 entitled, "The Schedule of Minimum Parking Spaces" requires one (1) parking space for every 300 square feet of total floor area for an office use, which is most nearly approximate to the use. The proposed square footage of the existing building is 4,308 SF ÷ 300= 14 required spaces. (The proposed is eight (8) spaces.), and also citing

Article III, Section 700-3 entitled "Definitions" lists a parking space as an off-street space available for the parking of one motor vehicle and having minimum dimensions of nine feet in

width and 18 feet in length, exclusive of passageways and driveways appurtenant thereto and giving access thereto and having direct usable access to a street; and also citing

Article XIII, Section 700-96 which states parking and loading areas located in any front yard or side yard abutting a street shall not be permitted within 10 feet of the right-of-way line of a street. The minimum setback of off-street parking and loading area from any other lot line shall be five feet. The five-foot parking and loading area setback need not be provided between properties which have common access and/or common parking areas.

Mr. Thomas DiBiasi Esq., represented the applicant. Mr. DiBiasi gave an opening statement in which he represented to the board that proposed use is supervised adult day care like a children's daycare is similarly regulated and is inherently beneficial to the community. Mr. DiBiasi stated to the board that his client proposed picking up seniors and bringing them to the location for daily stimulation. He stated that they will pick up the clients from surrounding areas and they will hire an aid who is also from the area. He testified to the board that his client will not accept people on intravenous medications. Mr. DiBiasi stated they will have two vans with eight passengers to each van. He told the board they were hoping to open with 20 patients. Mr. DiBiasi testified that the parking spots in the lot will be specifically for the owner, director, and vans to move about. He stated that the property had been vacant for 5 years and was owned by Apex Mortgage, who was under contract with the applicant. He also stated that if this application was approved, they would go into immediate closing.

Saqib J. Malik, network analyst, testifies to the board that he will be the co-owner of the business. He explained the hours of the proposed business as 10 am through 4pm on Monday through Friday. He stated that he wished to start with 20 patients but get up to 50 patients. Mr. Malik explained to the board that the ratio is 7-8 per one nurses' aid, but he will have 3 aids on site. He explained the activities as games, light exercise, and meals. Mr. Malik stated that all food will be catered and not cooked on site. Chairman Graziano asked what the area labeled "kitchen" is. The applicant responded it is simply a refrigerator and dry food. He explained the activity room will also be the cafeteria. Ms. Suzanne Brown asked how many times a day the vans will be in and out of the parking lot. Mr. Malik said 2 times in the morning and 2 times at night. Ms. Suzanne Brown also asked where the vans will be parked at night. The applicant responded that they will be parked on site. Mr. Tom DaCosta Lobo asked about state licensing. He responded that he had reached out to the department of health and they were processing the application. Neighbor, Maureen Mcmillan questioned the applicant about where the van drivers will be parked. Ms. Brown questioned whether the facility would create traffic problems if there were 50 people at the site and applicant agreed to a condition that would limit the enrollment of attendees to no more than 25 patients.

Architect Joseph Haines testified before the board. He introduced Exhibit A1 which was the plans for the property. He stated that he had worked on 6 adult daycares in his career. He explained that the outside will have new vegetation, lowered entrance, a ramp, front windows, etc., He stated that there would be an activity room, a nurses' station, a social workers office, a quiet room, etc. He said that the second floor would have all the administrative offices. Mr. Haines explained that a sign in front of the property would be added as well as a sign on the canopy. He stated that this adult daycare will have minor impact on this residential neighborhood. Chairman Graziano asked Mr. Haines if there will always be 2 people in each van, since there are always children present in that area. Mr. Graziano recommended that one of the employees assigned to the van should assist the van when backing out of the parking lot onto the

street. Mr. Haines responded that there would always be 2 people in each van and will accept this as a condition. He also stated that they were off with school hours. Ms. Lori Castro asked Mr Haines where all the others he had stated as employees would be parking. The applicant responded that those employees would be on call and not on site.

Planner Paul Bauman testified before the board, stating that the key issue with this application is the use variance. He says this location is suited for an adult daycare due to location, traffic movement, etc. He stated that this project promoted public health safety morals and general welfare. Mr. Bauman also stated that this application is similar to a childcare facility, which is considered an inherently beneficial use. The planner testified to the board that this application would not ruin the character of the neighborhood due to the fact that it was previously used in a commercial business and this new application would be less intense. Mr. Bauman stated that there will be no nuisance factors for the neighbors and that he felt there was sufficient testimony regarding the necessary amount of parking spaces.

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 Mr. Gary Marino. The variance was granted by a vote of 7-0.

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No. 2 601 Prospect Street APPROVED 7-0

Applicant: Francesca Sanzone, 601 Prospect Street, Block-Lot: 2901-16

Application: Request to leave as erected a four (4') foot solid type fence in the side yard (street side) which is located in a front yard of the adjoining property on Hawthorne Avenue, having a five (5') foot setback to the side yard street side, and to install a 16' X 24' above ground pool located in the side yard (street side) which is the front yard of the adjoining property along Hawthorne Avenue, as shown on the survey prepared by AEBT Surveying dated May 13, 2015;

Appearances: Francesca Sanzone, Carmen and Gail Delizio of 77 North Lawn Avenue

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article XI, Section 700-67 B (4) of the Codes of Nutley which states that no detached accessory building or accessory use shall be located nearer to the side street line of a corner lot than the main building on the lot or, if an abutting lot to the rear faces said street line, then a distance equal to the depth of the front yard required on said lot to the rear, except in no case shall a garage on the corner lot and facing the side street be required to be set back more than 25 feet, and also citing

Chapter 700, Article XI, Section 700-71 A of the Codes of Nutley which prohibits all fences of any type in any front yard, and also citing

Chapter 700, Article XI, Section 700-71 D of the Codes of Nutley which states a fence erected on any corner lot shall conform to the fence requirements for the adjoining properties. The proposed fence is in the front yard of the adjoining properties along Hawthorne Avenue, and finally citing

Chapter 700, Article XI, Section 700-67 A of the Codes of Nutley which states detached accessory buildings and accessory uses may occupy in the aggregate an area not to exceed 30% of the area of any rear yard;

Applicant Francesca Sanzone testified before the board, stating that her home had been purchased under short sale. She stated that she had gotten all the permits taken care of and this would've been the last matter to tend to. Ms. Sanzone stated that her backyard was basically a big hole and that the previous owners had removed the pool when the house was for sale. She stated that she wished to put a new pool exactly where the old pool was. Neighbor Gail Delizio, of 77 North Lawn Avenue asked the applicant where the pump would be. Ms. Sanzone stated that the pump would be on the driveway side towards the home. Ms. Delizio was also curious as to how close the pool would be to her property. Ms. Sanzone responded that the pool will be exactly where the old pool was. Carmen Delizio testified to the board that he simply wanted to prevent any water from coming onto his property. Applicants agreed that any new pool would not be any larger than the previous pool and the excavation would not be increased.

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. 3 37 Highland Street APPROVED 7-0

Applicant: Mr. and Mrs. Robert Missel, 37 Highland Avenue, Block-Lot: 5200-5

Application: To construct a rear 1 story addition to the existing house, having a 25' rear yard setback, and to construct a new portico roof over the front door having a 21' front yard setback, as shown on the survey prepared by Architect, Cesar F. Padilla RA, dated April 13, 2015

Appearances: Robert Missel

Letter of Denial: was read by Mr. DaCosta Lobo

Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley; the "Schedule of Regulations", requires a new addition to have 30' rear yard setback in an R-1 zoning district. The proposed is 25', and also citing

Chapter 700, Article VIII, Section 700-46 B (4) (d) of the Codes of Nutley which states by any terrace or porch having its floor level no higher than the floor level of the first story of the building and having no railing or other member higher than three feet above floor level: six feet. A 25' front yard shall be required to allow the encroachment of six (6') feet;

Applicant Robert Missel testified to the board that he wished to do an addition on his home and incorporate his breezeway into his home. He stated that he would match the existing siding and existing roofing. Mr. Missel stated that he would maintain the existing setbacks and would not be changing the footprints.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant the continuance 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. 4 8 Stanley Avenue APPROVED 7-0

Applicant: Mr. John Russomanno, 8 Stanley Avenue, Block-Lot: 2702-18

Application: To install a 12'6" X 29' in-ground pool located in the rear yard of a corner property which is located in the front yard of the adjoining property along High Street, having a five (5') foot rear yard setback and a five (5') foot setback to the side line of the property, and to install a six (6') foot solid type fence in the side and rear yards of a corner property, which is in the front yard of the adjacent property along High Street, as shown on the survey prepared by Rigg Associated, PA, dated August 20, 2014

Appearances: John Russomanno, John Tomburo of 339 High Street

Letter of Denial was read by Mr. Tom DaCosta Lobo

Chapter 700, Article V, Section 700-9 D (2) of the Codes of Nutley which states the pool shall be no closer than eight feet to any side or rear lot line; or nearer to the side street line of a corner lot than the main building on the lot; or if the abutting lot to the rear faces said street line, then the distance equal to the depth of the front yard required on said lot to the rear. However, in no case shall a swimming pool on a corner lot be required to be set back more than 25 feet from a side street. The proposed in-ground pool is located in the front yard of the adjoining property and will have a five (5') rear and side yard setback, and also citing

Chapter 700, Article XI, Section 700-71 A of the Codes of Nutley which prohibits all fences of any type in any front yard, and finally citing

Chapter 700, Article XI, Section 700-71 D of the Codes of Nutley which states a fence erected on any corner lot shall conform to the fence requirements for the adjoining properties;

Applicant John Russomanno testified before the board that he wished to out in an in ground pool for his pleasure. He was seeking a 6 foot privacy fence for security. Ms. Suzanne Brown suggested he move the pool in three fence and then he would not need a variance. The applicant was not opposed to doing so. Mr. Serje Demerjian asked the applicant why it was shown on the plans so close to High Street. Mr. Russomanno said it was because of the gas line and the patio area. Ms. Suzanne Brown was curious as to where the fence was going to be because it was not illustrated on the plans. Chairman Graziano suggested the applicant move the fence 8 feet from high street and 8 feet from the neighbor's property. The applicant expressed that he wished to have a 5 foot fence with 1 foot scalloped. Mr. Tom DaCosta Lobo was concerned the fence would be problematic for the neighbor when pulling out of their driveway. He also suggested the applicant flip the pool and the patio to help the neighbor. Mr. Russomanno agreed to move the pool 8 feet from the back and 7 feet from the property line. He also agreed that the fence will follow the contour of the sidewalk. John Tomburo 339 high street testified that he was concerned about seeing when pulling out of driveway, but because of the new location of fence neighbor was satisfied.

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

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BUSINESS:

Barry A. Kozyra Esq., filled in as Board Attorney for Diana McGovern Esq. who could not be present due to a family emergency.

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RESOLUTIONS MEMORIALIZED:

211 Franklin Avenue

3 Union Avenue

MINUTES:

August 17, 2015 minutes approved

INVOICES: Pennoni \$450.00

LITIGATED MATTERS: None

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Respectfully submitted,

Anjelica L. Mitchell

Minutes Approved

