

NUTLEY ZONING BOARD OF ADJUSTMENT
Public Session Meeting Minutes
July 21, 2014

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

PRESENT: Suzanne Brown, Thomas DaCosta Lobo, Serge Demerjian, Lou Fusaro, Frank Graziano, Gary Marino, Mary Ryder, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

ABSENT:

EXCUSED: Ralph Pastore

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No. 1 NORTH AMERICAN EAGLE special meeting scheduled for 9/22/14

Applicant: North American Eagle, 649 Passaic Avenue, 98 Kingsland Street & 108 Kingsland Street, Block-Lot-Zone: Block 502, Lots 15, 16, 17; R-1 and B-2 District

Application: Mixed-Use Building Major Sub-Division & Major Site Plan request on behalf of North American Eagle Construction, for a preliminary and final site plan and major sub-division application with variance requests to build, at the above captioned premises, a four- (4) story mixed use structure, having 14 one- (1) bedroom units on the second floor, 13 one- (1) bedroom units on the third floor, and nine (9) one-bedroom units on the fourth floor for a total of 36 units, and 1,540 square feet of service establishment space on the plaza level.

Appearances: Thomas DiBiasi, Esq.

Letter of Denial was read by Mr. DaCosta Lobo.

- Chapter 700, Article V, Section 700-9 of the Codes of Nutley does not permit a mixed use building in an R-1 district.
- Chapter 700, Article VII, Section 700-40D of the Codes of Nutley requires a side yard of four (4') feet and a side yard of ten (10') feet; for a minimum total of 14'. Plan shows six (6') feet on the west side and five (5.2') feet on the north side for a total of 11.2'
- Chapter 700, Article VII, Section 700-40E of the Codes of Nutley limits the maximum height of a mixed use building to two (2) stories. Plan shows four (4) stories.
- Chapter 700, Article VII, Section 700-40F of the Codes of Nutley limits maximum lot coverage to 45%. Lot coverage of upper floors is 68.68% and a ground floor coverage of 13.88%.
- Chapter 700, Article V, Section 700-9 of the Codes of Nutley does not permit a mixed use building in an R-1 district.
- Chapter 700, Article VII, Section 700-40D of the Codes of Nutley requires a side yard of four (4') feet and a side yard of ten (10') feet; for a minimum total of 14'. Plan shows six (6') feet on the west side and five (5.2') feet on the north side for a total of 11.2'
- Chapter 700, Article VII, Section 700-40E of the Codes of Nutley limits the maximum height of a mixed use building to two (2) stories. Plan shows four (4) stories.

- Chapter 700, Article XIII, Section 700-91A of the Codes of Nutley requires 1½ parking spaces per unit; 36 units = 54 spaces (complies). No parking required for service establishment.
- Chapter 700, Article XIII, Section 700-94A(3)(c) of the Codes of Nutley limits a maximum curb cut to 20' in length. The plan shows a 24' curb cut.
- Chapter 700, Article XIII, Section 700-96 of the Codes of Nutley prohibits parking within five (5') from the side lot line. Parking shown within five (5') feet on the west side.
- Chapter 700, Article XIII, Section 700-98 of the Codes of Nutley requires a landscape buffer at least six (6') feet in width where any parking adjoins a lot in any R district. None shown.
- Chapter 700, Article III, Section 700-3B, titled "Definitions" requires a parking space having minimum dimensions of nine (9') feet by 19'. Compact spaces are not permitted and other spaces are 9' by 18'.
- Chapter 600, Section 600-5B of the Codes of Nutley lists the requirements to be on the site plan drawings. Using the checklist the following will require waiver requests: Items: #7, #8, #11 and #30.

Mr. DiBiasi introduced himself to the members. He understands that there is a heavy agenda tonight and requested that a special meeting be scheduled to hear this application. He has four experts lined up to testify. He said that there was a technical meeting prior to tonight that included representatives from the Township. He said he certainly could put his case on in one meeting. Ms. McGovern took an informal poll of the members prior to the start of the meeting. August, because of vacation schedules, cannot accommodate a meeting. The town planner, Mr. Ricci is not available September 8; the following week is the regularly scheduled meeting, which leaves only September 22 or September 29 open. Mr. DiBiasi asked that the special meeting be held on September 22, 2014. No further notice by the applicant will be required because a firm date is set. The town will put notification of the meeting in the paper.

A motion to hold a special meeting on September 22, 2014 was made by Mr. Graziano and seconded by Mr. Marino. The application to be carried to a special meeting on September 22, 2014 was approved by a vote of 7-0.

Ms. McGovern advised that the township's expert witnesses, Mr. Ricci and Mr. Hay would both be available to testify on the matter of engineering and traffic. She asked if there were any other experts that the Board would like to have present at the special meeting. The Chairman would like to have someone from the school board present. Ms. McGovern said she would invite the BOE or its representative to attend.

Mr. DiBiasi will have a court reporter present to record the meeting.

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No. 2 ANZALDI Request to Carry to August 18, 2014 Meeting.

Applicant: Ms. Jennifer Anzaldi, 209 Raymond Avenue, Block/Lot/Zone: 5602/2/R1

Application: request for a fence permit, at the above referenced premises, to install a five (5') foot privacy fence in the side yard along Summit Way of a corner property, which is the front yard of the adjoining property on Summit Way.

Appearances:

Letter of Denial was read by Mr. DaCosta Lobo at the May 19, 2014 NZBA meeting.

Ms. McGovern reminded the members that this application was heard in May, 2014. At that time it was determined that Ms. Anzaldi's fence was not on her property, but on

property belonging to the township. It was adjourned for a month to give Ms. Anzaldi time to provide proof of an easement. Unfortunately, that was not to be. She is in negotiations now with the township engineer and town attorney to see if a lease could be worked out. If an agreement is reached, she will come back to the board and ask for a variance for the fence.

The applicant requested an adjournment for one more month in order to continue the negotiations with the town. Ms. McGovern asked the applicant to advise her if she decides to withdraw the application so it may be pulled from the agenda.

With no further questions from the members and no one in the audience with questions or comments, a motion to carry to the next meeting in August was made. The application will be heard August 18, 2014.

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Mr. Graziano recused himself from the following application.

No. 3 AURIEMMA DENIED 4-3

Applicant: Mr. Nicholas Auriemma, 40 Milton Avenue

Application: Change of Use, one-family converted to two-family, Block/ Lot/Zone: 8401/33/R1. Request for a permit, at the above referenced premises, to convert the existing one (1) family dwelling into a two (2) family dwelling.

Appearances: Nicholas Auriemma and Paul Bauman, planner

Exhibits: A1 - photos of dual meters. A2 documentation of two-family dwellings

Letter of Denial was read by Mr. DaCosta Lobo.

- Chapter 700, Article V, Section 700-9 of the codes of Nutley lists the permitted uses in an R-1 Zoning District. A two (2) family dwelling is not permitted.
- Chapter 700, Article VIII, Section 700-46 B (4) (d) of the Codes of Nutley states extension of a structure into a required rear yard 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. The proposed application has a 2nd floor deck at the rear of dwelling.
- Chapter 700, Article III, Section 700-3 of the Codes of Nutley titled “Definitions” defines Attic as a space directly below a pitched roof and located between the roof rafters and the ceiling beams of the story below, which space is not used for human occupancy. The applicant proposes to use a portion of the attic as habitable space.
- Chapter 700, Article XIII, Section 700-91 A of the Codes of Nutley requires four (4) parking spaces at least one space must be in a garage. The plan shows only three (3) 9’ by 18’ spaces on site.
- A previous variance dated March 19, 2012 was granted to install a 15’ by 24’ semi-in-ground pool and to leave the driveway width to 22’.
- Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley; the “Schedule of Regulations” requires the following:

Section 700-46 A of the Codes of Nutley “Schedule of Regulations”	REQUIRED IN AN R-2	PROPOSED	VARIANCE REQUIRED
Minimum Lot Area	6,000 SF	5,963 SF	Yes
Minimum Lot Width	60’	59’7”	Yes
Minimum Lot Depth	100’	100.26	No

Lot Size Per Dwelling	6,000 SF	2,981SF per dwelling unit	Yes
Minimum Front Yard	25'	7'10"	Yes
Minimum Rear Yard	30'	26'2"	Yes
Minimum Side Yards	6'	2'6'	Yes
Minimum Side Yard Other	6'	4'9 3/4	Yes
Maximum Building Height	2 1/2 Stories	2 1/2 Stories	No
Height/Feet	30'	25'6"	No
Maximum Lot Coverage	35%	49%	Yes
Maximum Impervious Coverage	70%	64%	No
Use Proposed 2 Family in an R-1 Zone			Yes
2 nd Floor Deck			Yes
Habitable Attic			Yes

The chairman advised the applicant that this application requires a D Variance – five affirmative votes.

Mr. Auriemma introduced himself to the board. He told them that he has lived in Nutley for about 12 years; he loves Nutley and wants to stay here. He lives with his son in a one-family dwelling; he has his daughter several nights a week. He and his brothers run Santa's workshop in Belleville; he is a fireman. He served in the Marine Corp. and the National Guard. His son is also a fireman and a veteran.

The application is not for an investment dwelling; he wants to continue to live there with his son. He originally bought 39 Wilson, but unless he bought this property, the deal would fall through. He convinced his son to go in on the purchase with him. He was able to turn around and sell the Wilson Street house. It is a new construction and the taxes are over \$17,000.

The subject house is about 100 years old. The houses across from his are beautiful homes probably built in the last 25 years. In the immediate area there are multiple two-family homes. He did purchase this house as a one-family, but the house is equipped with two water meters, two gas meters. It is his assumption that the house was, at one time, used as a two-family. It is his intention to live in this home with his family. He understands he is at the mercy of this Board. He is willing to change anything to meet with the town's approval. He is very happy in this location and very much wants to stay here.

The chairman said that everything the applicant cited is nothing but a plus for him. However, the Board has to find a hardship to the property; not to the applicant. The applicant has to show why this property is better suited as a two-family as designated by the planning board and the commissioners. Positive and negative criteria are required. He said the meters look fairly new. Did the applicant put them in? He did not. The chairman asked where the other two-family dwelling are? The applicant said there is one next door and two across the street. There are several multi-family homes down the street. If this was a strictly R1 zone, he would not even attempt this application. He feels the make-up of the house fits this area. It is one of the oldest in the neighborhood.

Ms. McGovern asked the applicant has his son's permission to be here without him? He does. Did he sign the application? Mr. Auriemma does not recall.

Mr. Marino asked why the applicant is here for an approval for a two-family residence; why not just ask for an addition? Mr. Auriemma said there are two reasons: 1) hopefully, one day, his son will have a family there; 2) financially, he cannot afford it himself. Ms. McGovern advised the applicant that the Board can entertain his issues about finances.

Mr. DaCosta Lobo asked if the layout of the house lends itself to being converted without a lot of interior work? Mr. Auriemma said it is perfect.

Mr. Scrudato asked the applicant if he's looked at other two-family homes in Nutley. He has and he really likes this neighborhood.

Mr. Marino asked of the applicant can provide proof of a hardship to the home, leaving emotion out of the equation. The applicant said the property is old and outdated.

Mr. DaCosta Lobo addressed Ms. McGovern. He said he could understand consideration of hardship with regard to certain of the variances; the bulk variances requested is not an element of a use variance. A hardship to the property is not a primary indicator of a use variance.

Ms. McGovern said the criteria here are if there is a special reason. Right now, what the applicant is looking to do is not inherently beneficial – he is not looking to put a church in or a hospital or day care center. He is just looking to change the use to a two-family. So, in this case, that puts it into different criteria which requires that the applicant move forward under the statute with something that would fit in. Ms. McGovern asked Mr. Bauman if he was testifying here tonight. He is. Ms. McGovern said she believes he will make some suggestions as to what the special reason is. Another criteria that the board has to listen for is whether this use is suited for this spot and if the benefits outweigh the negatives. In this case, there would be no hardship to the property, such as if the applicant was expanding and he had to build on one side of the property and there was an outcropping or many trees or rocks so that he could not dig deep. The use variance has to do with special reasons.

The chairman asked the applicant how old the house is. Mr. Auriemma said it is over 70 years. The chairman asked if there was a variance on the property in 1922. Mr. Auriemma does not know. If a variance was applied to this property, what are the special conditions?

Mr. Bauman was sworn in and his credentials as a planner were accepted by the members. He stated that there are several other variances, but they are minor and will not mean anything if the D variance is not granted. He said he could discuss those if the Board gets passed the hurdles of the use. The chairman asked about the other variances. Ms. McGovern said a lot width for a two-family is 60 feet; the current lot width is 59 feet. Mr. Bauman said most of them become pre-existing conditions when compared to an R2 requirement.

He cited the positive criteria:

- Proposed alterations will comply with all current fire safety codes and construction code standards;
- Converting from one-family to a two-family supports the purpose of providing sufficient space and appropriate locations for a variety of uses including residential uses. He can produce copies of records from town hall that can

demonstrate that there are within a short distance to this dwelling, existing legal two-family dwellings that precede this application. It does not cause a conflict with the zone plan, or cause a precedence to be set in this neighborhood.

- Promotes a desirable visual environment to the neighborhood – the current dwelling is quite old and is in need of an overall facelift. The alterations that are proposed to create the two-family include a one-car garage with a second apartment unit above it. The new addition will be finished in a cement stucco material. Will add greatly to the aesthetics of the property and will be an enhancement to the image of the neighborhood.

Mr. Bauman testified that the dual meters are not indicative of a prior two-family in this location, but it does raise the question as to why they are there and if there was a use of a second unit was there – although there are no tax records, no building construction records, indicating this. It is a peculiar situation that the applicant did not create himself.

The negative criteria:

- the improvements to the sight will not result in any substantial increase in noise or traffic or any other nuisance factor;
- it will not impair the zone plan and the ordinance because the immediate neighborhood has in its existence and its fabric and existing zone plan, at least three documents showing two-family homes.

Mr. Bauman also opined that if the Board would approve this, it would be improving not only the site, but the appearance of the overall character of the neighborhood instead of leaving a house that is rundown and looking its age. It would certainly be an improvement to the neighborhood. If the Board grants the use variance, Mr. Bauman said he would be happy to go into the secondary variances. These variances are auxiliary issues would need to be approved under criteria other than the D1.

Mr. Demerjian heard Mr. Bauman site the negative and positive criteria, but he did not hear any special reasons why the board should consider this application. Mr. Bauman said the special reasons are from the statute, Paragraph 2 of NJSA 40:55(d)(2) establishes the criteria for special reasons. He testified citing (b)(g) and (i).

With no further questions from the members and no one in the audience with questions or comments, a motion to grant the Use variance was made by Mr. DaCosta Lobo stating that the property is well-suited for the change in that it appears to have split utilities, and a physical layout that is conducive to this use. Change to a two-family use will allow upgrades to the structure on the site and can be accomplished without detriment to the neighborhood, being that the neighborhood already has several two-family homes similar to what is being proposed. Seconded by Mr. Fusaro. Ms. McGovern reminded the members and the applicant that this is a use variance and five affirmative votes are needed. The variance was denied by a vote of 4-3. Ms. Brown stated that she wished she could base her decision on personal hardship, but she does have to base it on the criteria that has been given to the board. She cannot say that this use is well suited to the site, there are existing two-families, but it is not zoned for two-family homes. If new structures were to be built, they would be one-family dwellings. She cannot say that this is well-suited to the site. Ms. Brown voted no.

Mr. Demerjian stated that he did not see a special reason specifically associated with this particular property on the conversion of use. Mr. Demerjian voted no. Mr. Marino and Chairman Scrudato also voted against the application. The application was denied by a vote of 4-3.

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No. 4 HAINES APPROVED 7-0

Applicant: Mr. and Ms. Haines, 204 Prospect Street, Block/Lot/Zone: 7602/2/ R-1

Application: request for a permit, at the above referenced premises, to install a 15’ above ground pool, located 50% in the side yard and 50% in the rear yard, having a 6’2” and 8’1” setback to the main dwelling, and a 4’8” setback to the rear entry sliding door platform.

Appearances: Anthony Haines (sworn)

Hardship: Irregular yard, undersized lot.

Letter of Denial was read by Mr. DaCosta Lobo.

- Chapter 700, Article XI, Section 700-67 D of the Codes of states an attached accessory structure or accessory use shall be considered to be a part of the main building.
- Chapter 700, Article XI, Section 700-67 C of the Codes of Nutley states no detached accessory building shall be located nearer than 10 feet to a main building.
- Chapter 700, Article XI, Section 700-67A of the Codes of Nutley requires a detached accessory structure (pool) to be located in the rear yard.

Mr. Haines said that his yard is irregular; one side is deeper than the other. His garage is setback and attached to the house, but there is no entrance from the house to the garage. He wants to install a pool to keeps his kids home and safe.

Ms. Brown said the applicant has a severely undersized lot. If he had a regular 50’x100’ size lot, he would not need to be here; there would be no issue. But his hardship is that the lot is undersized.

Mr. DaCosta Lobo asked counsel what the citation is for the pool being located in the rear yard. He said it does not seem to him like it is in the side yard. He asked the applicant if he is on a corner (he is not). It is within the line of the house on the side.

Mr. Haines said there is an existing fence.

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

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No. 5 GAJEWSKI APPROVED 7-0

Applicant: Mr. & Mrs. Gajewski, 109 Mapes Avenue, Block-Lot-Zone:5102/5/R1

Application: request for a permit, at the above referenced premises, to install a 15’ X 26’ semi- in-ground pool in the rear yard and a small portion in the side yard, having a six (6’) foot side yard setback,

Appearances: Michael Gajewski; Marian Ouatu (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

- Chapter 700, Article V, Section 700-9 D (2) of the Codes of Nutley states a 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. The proposed pool will have a five (5’) foot side and eight (8’) foot rear yard setback. The pool was moved off the township

right of way as per the Nutley Engineering Department; therefore the proposed pool will have a six (6') foot side yard setback.

- Chapter 700, Article XI, Section 700-67 A of the Codes of Nutley states a detached accessory buildings and accessory uses may occupy in the aggregate an area not to exceed 30% of the area of any rear yard. The proposed pool is located primarily in the rear yard with a small portion in the side yard.

Mr. Gajewski said he purchased the house in December, 2013, with a pool already installed. It was damaged during a storm. He was told that it could not be repaired and that it wasn't really worth it. They purchased a pool for the same area because it matched the requirements set forth earlier (8'x10'). He spoke with Mr. Berry who said that the pool would have to be moved two feet to the right so that it was not on the outlet service, hence, the variance. His neighbor on that side has no objection to the placement of the pool.

The Chairman asked if this area is or has been in the flood zone. The applicant is not aware of that; he was not told that during the buying/closing process. He said that he does get water in the yard just as seven or eight other neighbors do. Mr. Scrudato inquired if they are in a flood zone. He asked Mr. Haines if he considered a smaller pool. Mr. Haines said that is the smallest he could get. It is a semi in-ground oval.

Mr. Graziano, looking at the survey, asked if the house is on the easement. Mr. Gajewski said the house is to the left, the pool would be to the far right. The house ends where the pavers start. He believes when the house was built, a small part of it touched on the easement.

Mr. DaCosta Lobo agrees with Mr. Graziano; the northeast line of the house impinges on the northwest to southeast portion. There is a very big southwest to northeast portion of the house completely covers. He does not doubt that Mr. Berry told him what he did; but he fails to see why, because the house already covers the easement.

Mr. Demerjian asked if the township engineer asked that he move the deck. Mr. Gajewski said the township engineer asked that they move it two feet to the right off the easement. He does not know who owns the right-of-way.

Mr. Graziano said if it is moved left or right, it goes right through the house. A portion of the pool will touch it.

Mr. Marino asked where the old pool was. Mr. Gajewski said it was directly behind the house (where the pavers are on the survey). Mr. DaCosta Lobo agreed with Mr. Graziano. He said to the extent the engineer has a valid reason to do this, if the board were to approve this tonight, he would suggest the applicant follow up with the engineer and point out to him that the house covers the easement – why is this necessary before he goes ahead, and if it can be built in compliance, so much the better.

Mr. Gajewski's neighbor, Mrs. Ouatu, addressed the board saying that she has no issue with this pool. She is not aware that they are in a flood area; they do get water in their yards, but does not believe that the pool will make a difference to the water issue.

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

No. 6 TORRES APPROVED 7-0

Applicant: Mr. & Mrs. Joslee Torres, 21 Freeman Place, Block/Lot/Zone: 7200/48/R1
Application: request for a permit, at the above referenced premises, which is a corner property, to install a 15’ above ground pool located in the rear yard, which is located in the front yard of the adjacent property.

Exhibits: photos

Appearances: Joslee Torres (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

- Chapter 700, Article V, Section 700-9 D (2) of the Codes of Nutley states a 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. The proposed pool installed in the rear yard of the corner property is located in the front yard of the adjoining property to the rear.

Mr. Torres wanted to replace the pool that was on his property. It was his understanding that the previous owners had a permit for it. He said Mr. Berry lives down the street and was surprised that there was no permit for the original pool. He does not feel there would be a negative impact on the neighborhood to have the pool and he feels there would be no safety issues. He was here two years ago for a fence variance and was granted it. For 22 years prior that, there was no fence to enclose the pool. He has a corner property, but the pool will not be visible from the front of the house.

In response to Mr. Marino’s questions, Mr. Torres said he bought the house in November 2008; the pool was in place and he did get the COO at that time. Mr. Marino said the yard is sunken down from the street; you cannot see into the yard.

Mr. Demerjian asked when the applicant lost the existing pool. Mr. Torres said after they closed on the property and before they moved in, it was removed. He was told by the code office that the previous owners submitted an application for a variance, but did not follow through.

Mrs. Ryder asked what size was the former pool. It is the same size as the one in the application. He noted that the deck was made to fit around the pool, so he wants to install the same size to fit that.

Mr. Demerjian said in order to close on the property, the former owners had to remove the pool so they didn’t have to deal with a variance situation. Mr. Torres said that was right, but he found out about it after the fact.

The chairman said there are quite a bit of changes on the survey; have there been other changes that are not on it? Nothing else has changed; his three-foot fence is on the Freeman side of the property where the survey says “stone wall.”

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. Brown and seconded by Mr. Marino. The variance was granted by a vote of 7-0.

Mr. Torres asked if he could proceed with the installation of the pool this week. Ms. McGovern said typically resolutions are prepared and then approved at the following meeting. She will prepare this one early and be sure the code office gets it soon.

However, it is not up to her whether the permits are granted; it is up to the code official – if he has what he needs for the paperwork. She suggested he call the code office on Friday, though the office may call him before that.

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No. 7 REED APPROVED 7-0

Applicant: Mr. & Mrs. Gregory Reed, 239 Ridge Road, Block/Lot/Zone: 5004/5/R1

Application: request for a permit to leave as erected a driveway constructed in front of the main dwelling approximately 20' wide

Exhibits: Photos of the parked vehicles; survey marked in green

Appearances: Gregory Reed (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

- Chapter 700, Article XIII, Section 700-94 A (1) of the Codes of Nutley states a driveway shall consist of the area directly opposite an attached garage. The constructed driveway is in front of the main dwelling and is approximately 20' in width.

Mr. Reed testified that he bought the property in 1992. In 1995, he was given a variance to extend his garage forward six feet. The driveway was done at the same time; pavers were installed. He did not know that the contractor who was working for the town, did not secure a permit, and exceeded the allowed 16 feet. When he wanted to repave the driveway, he found that the driveway was in violation. He feels the hardship is that he wants to repave the driveway to enhance the curb appeal, the look of the house. He has two SUVs, the grade of the driveway is very steep. The width of the driveway allows him to park side by side rather than parking on the grade facing down to Ridge Road. If he has to conform to the ordinance, he would have to rip out mature landscaping, rip out hardscape, etc. He would also need to seek a variance to increase the curb cut.

The chairman said there is an ordinance stating that a vehicle may not be parked in front of a home, it must be in front of a garage. What does the applicant use his garage for? Basically storage. His vehicles do not fit in the garage because it is very narrow.

Mr. Marino sympathizes with the applicant. He wouldn't want to change something that he's lived with for so many years. He does disagree with him though, that the proposed new driveway would enhance the curb appeal. He does not think it would look nice. He asked if maybe pavers could be done in the section in front of the house so it does not look so much like a parking lot. Mr. Reed said he does have pavers in front of the porch area now. Mr. Marino asked if that could be continued a little bit. The look of the parking lot going towards the front door looks too severe for the neighborhood. Mr. Reed said having it scalloped out and landscaped the way it is, breaks it up. If he went with the permitted 16 feet, he thinks that would be more of an eyesore than what is existing. Mr. Marino said in a discussion with some of the members, they came to the idea that they like the driveway straight and some sort of pavers where the cars can be parked. The driveway in front of the house looks like they are trying to stuff too much into one spot.

Mr. Reed said there is a concrete walkway on the right hand side of the property. That is almost three feet of the 20-foot strip. That could be changed into a walkway down the right hand side of the property. Mr. Marino took the survey to the applicant and made some markings on it (Exhibit A2).

The chairman asked about the contractor. Mr. Reed believed the contractor was working for the township. The chairman asked if the applicant had a permit for the work he had done. Mr. Reed had one for the garage; the contractor told him he would take care of getting one for the driveway. The chairman said it is the homeowner's responsibility to secure permits. The building inspector approved a COO; he has had other work done and other inspections. The driveway was never an issue until he wanted to repave it. The chairman said that, like him, the officials aren't always correct.

Ms. McGovern asked if the driveway was in when the garage was inspected. Mr. Reed said it was.

Mr. Scrudato asked if the pickup truck in the photo is a commercial vehicle – it is not.

Mr. Demerjian asked Mr. Marino what the outcome of the discussion was with the applicant and the markings on the survey. Mr. Reed said he has to discuss that with his contractor. If the costs were too prohibitive, he would just rip it out and go with a 16-foot black top driveway. He would like to keep it the way it is to avoid incurring extra costs and ripping out mature landscape and hardscape.

Mr. DaCosta Lobo addressed Mr. Reed. He said he thinks Mr. Reed is under the wrong impression that he could put in a 16-foot driveway, not without a variance. He will need one for that, as well. Everything that is not in front of the garage will need a variance. Mr. Reed said Mr. Berry told him that 16 feet would be acceptable. Mr. DaCosta Lobo said he would need a variance, whether that would be acceptable or not, he cannot say.

Mr. Demerjian said the ordinance basically says parking is not allowed in front of the house unless it is a garage. Anything wider than 12 feet will get the applicant in front of the house. Mr. Reed said anything wider than 10 feet will get him in front of his house. Mr. Demerjian said the applicant has a condition that he's lived with for nearly 20 years, the board understand that, they are trying to work with him on that. They are asking the improvement not be a field of blacktop. They are asking that the area that is in front of the house proper be pavers. The applicant understood. He marked the survey in green. Would he be amenable to this idea. The applicant said he would.

Ms. McGovern said Exhibit A2 shows the survey marked in green where the applicant agreed to put in pavers as a condition should the variance be granted. Mr. Reed said he would also like to have put on the record that he would have the option to do the driveway completely with pavers. He asked if the Board would be agreeable to that. Mr. Demerjian said absolutely. Ms. McGovern said the green area has to be pavers or the entire driveway could be.

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. Demerjian and seconded by Mr. Marino. The variance was granted by a vote of 7-0.

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No. 8 WEBER APPROVED 6-1

Applicant: Mr. Gregory Weber, 482 Kingsland Street, Block/Lot/Zone: 102/7/R1

Application: request for a fence permit, at the above referenced premises, to erect a four (4') foot wrought iron type fence in the side yard along Windsor Place, which is the front yard of the adjoining property,

Appearances: Gregory Weber

Letter of Denial was read by Mr. DaCosta Lobo.

- Chapter 700, Article XI, Section 700-71 A of the Codes of Nutley states no fences of any type shall be permitted in any front yard.
- Chapter 700, Article XI, Section 700-71 D of the Codes of Nutley states a fence erected on any corner lot shall conform to the fence requirements for the adjoining properties.

Mr. Weber addressed the Board stating that there is a chain link fence on the property that predates his purchase of the property and anything that the code office is aware of. There was no issue getting a Certificate of Occupancy in December 2013. The fence runs between the applicant's property and Kingsland Street, as well as the house and the adjacent property on Windsor Place. His side yard is considered a front yard of the adjacent lot.

The chairman advised the applicant that a hardship has to be found to the property. He asked if the applicant has dogs. He does – two dogs and two children. In response to Ms. McGovern's comment, the applicant said, yes, this is a corner lot. The chairman said the corner lot is a hardship. The applicant said the front of the house is on Kingsland Street. He pointed out that the property on Windsor Place across from his property has a similar set up and has a fence in a similar area, for which a variance was approved. The chairman said each application is considered on its own merit. The applicant thinks this will increase the curb appeal of the property and the safety of whomever owns the property. It is on a thruway that connects to the daycare center. When the center is open, cars come flying down street. He said this would provide safety for his children and dogs and for whomever purchases the property years from now. The chairman said new owners may not have dogs or children. Mr. Weber agreed.

Ms. Brown reaffirm that this is a corner property, which makes it a hardship. She suggested that the applicant might want to replace the chain link fence with a nice aluminum picket-type fence. The applicant had a black wrought-iron type fence in mind.

Mr. DaCosta Lobo asked if there is already a chain link fence along Windsor or is the applicant connecting into an existing chain link fence that runs between his house and the Windsor neighbor. Mr. Weber said the chain link runs between his house and the neighbor on Windsor, as well as his house and the adjacent property on Kingsland Street. Ms. Brown asked to whom the fence belongs. Mr. Weber said, according to the survey, it is on his property which makes it his. Ms. Brown asked if the chain link will remain on the two sides and the new fence will be on the other. Mr. Weber said the fence is pretty well meshed in the shrubbery.

Mr. Demerjian asked if there will be a gate installed by the driveway. Yes, across the driveway.

Mrs. Ryder asked if the applicant is planning to go to the edge of the property on Windsor where the grass and sidewalk meet. Mr. Weber said he believes that would go beyond the right-of-way area. The 8.88 feet designated from the side yard does not go to the sidewalk, so he did not think he was allowed to go further.

Mr. Demerjian said there will be some distance between the fence and the start of the sidewalk, at least two feet.

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. Brown and seconded by

Mr. Marino. The variance was approved by a vote of 6-1. Chairman Scrudato voted against the application.

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No. 9 FRUM APPROVED 7-0

Applicant: Mr. Randy Frum, 50 Hope Street, Block/Lot/Zone: 5702/11/R1

Application: request for a permit, at the above referenced premises, to convert the one (1) story garage into a home office space (living space).

Appearances:

Letter of Denial was read by Mr. DaCosta Lobo.

- Chapter 700, Article XIII, Section 700-94 A of the Codes of Nutley states no front yard of a lot upon which is located 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. Similarly, in the case of corner lots, no side yard facing a street on a lot upon which is located 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 side yard. The use of a driveway for the parking of motor vehicles shall be subject to the following limitations.
- Chapter 700, Article V, Section 700-9 A of the Codes of Nutley states a single-family dwelling, not to exceed one dwelling unit on each lot. No other principal use is permitted on the same lot with a single-family dwelling. Each single-family dwelling shall have two parking spaces, at least one of which is in a garage.
- Chapter 700, Article XIII, Section 700-95 of the Codes of Nutley states off-street parking area accessory to a professional office or home occupation located in a one- or two-family dwelling and off-street parking areas accessory to a multifamily dwelling shall not be located in the front yard or side yard abutting a street. The minimum setback of off-street parking area from any other lot line shall be five feet.

In the five years since he moved to Nutley, Mr. Frum lost his job and was able to get another full-time position working from home. He is working out of a small make-shift office space. His issue is that his home is small. He has three children and during the week, his mother-in-law comes to help out with the kids. With all that, there is not enough adequate space to make a home office within the home, bringing him to request this variance.

The chairman asked what kind of work he does. Mr. Frum is a computer consultant.

Mrs. Ryder stated that she is not quite sure why the applicant needs an entrance in both the front and back and why the garage doors would be changed. She feels they won't look right for the property. Mr. Frum said they are French doors. There is no access from the house to the garage. Mrs. Ryder asked if the garage is heated. It is not, but it would be.

Mr. Demerjian asked what the garage is used for since the applicant does not park in there. The garage is used for storage. His two SUVs will not fit in there. He intended to make an attic space in the garage in which to store the Christmas decorations and such.

The chairman asked if Mr. Frum would have deliveries to the house; would clients or customers come to his office. No, that is not the kind of computer work he does. He is a computer programmer. He sets up applications to be delivered to desktops for other companies. His employer has assigned him six or seven different clients (companies) doing application packaging.

Mr. Marino said there would be no clients coming to the office, so there is no need for a front door into the office space. He doesn't think the French doors would look right; it would look like a garage with French doors. He would like to see the garage door remain and put a back door on it.

Mr. Demerjian said a wall can be built behind the garage door to make it air-tight.

Mr. DaCosta Lobo said a question that they always ask on an application like this is what is to prevent a car from going through the front of that garage. There needs to be something that prevents that on an accidental basis. Mr. Frum asked if he could put some kind of barrier in front of the garage. Mr. DaCosta Lobo said that is what he is saying there needs to be some sort of barrier that precludes the doors.

Mr. Marino said if you change a garage to an office, you are parking in front of your house, which creates a danger.

Mr. Graziano asked if he uses the garage for storage. He does. Why doesn't he install a wall in there, use the front of the garage for storage. Does he need an office that is 19 feet long? He does not. Mr. Graziano suggested he cut the garage in half using the one-half for storage, which becomes a buffer for the other half – the office. He could install a door in the back to access it. If he sells the house, he could take the wall down and still have a garage.

Mr. Demerjian asked how much of the 19 feet would the applicant need for office space. Mr. Frum thought 10'x12' would be a good size.

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. Graziano stating a wall will be placed about 12 feet from the back of the garage and leave approximately seven feet in the front; garage doors will remain; a door will be installed at the rear of the garage; and the front of the house shall remain unchanged. Seconded by Mr. DaCosta Lobo. The variance was granted by a vote of 7-0.

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Mr. Fusaro wasn't feeling well, so he left the meeting.'

No. 10 ANDERSON APPROVED 5-2

Applicant: Mr. & Mrs. Leo Anderson, 160 Church Street, Block-Lot-Zone: 5702-11-R1
Application: request for a permit to leave as erected a six (6') foot solid PVC type fence installed in between dwellings at the above premises,
Appearances: Leo Anderson (sworn)
Letter of Denial was read by Mr. DaCosta Lobo.

- 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 (4') feet in height and shall be of 50% open construction

Mr. Anderson advised the board that he has children and a dog that play in the yard. The ball they play with has gotten out of the yard area; the street is very busy with auto and foot traffic. He would like a fence to protect his children and the dog. The residence is at the end of the street and is three blocks from Bloomfield. The dog barks when the kids from Radcliff pass by and this disturbs his neighbors. Anyone walking up Church

Street can see directly into his yard. He has a pool and he would like privacy for his wife and children when they spend time in the yard. These are his concerns and he believes having the fence will prevent all that from happening.

Mr. DaCosta Lobo asked if all the applicant was looking for is a one fence panel and a gate across the driveway. Mr. Anderson said there was a chain link, but he replaced that with a six-foot vinyl. The gates going across the driveway can be opened. Mr. Graziano asked how long this has been up. Mr. Anderson believes it has been three years.

Mr. Scrudato asked how the rest of the yard is enclosed. He has a chain link in the back and on the other side because you cannot see onto the property from there. There is a chain link across the back, neighbors cannot see into the yard because of the bushes.

Chairman Scrudato noted that the survey was done in 1976. He asked Mr. Anderson if he has made any changes to the property since that time. Mr. Anderson said that is the seller's survey that he was given when he bought the property in 2000. He has only added pavers in his yard and put the little fence in. Ms. McGovern said the survey is very hard to read. She asked if the highlighted area is the four-foot picket style. Mr. Anderson said what they want is an open picket across the driveway and a little bit going down the driveway; he has a solid six foot.

The chairman said the applicant's desire for a fence to prevent the dog from barking at passersby is not a reason for a variance.

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. Graziano and seconded by Mr. DaCosta Lobo. The variance was approved by a vote of 5-2 with Ms. Brown and Mr. Demerjian voting negative.

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No. 11 MELLIE APPROVED 7-0

Applicant: Mr. Nick Mellie, 45 Beech Street

Application: LAE – Shed, 83 Prospect Street, Block-Lot: 8902-17-R1.

Request for a permit, at the above referenced premises, to leave as erected, a 12' by 16' foot shed with a mean roof height of 10', having an eight (8') foot setback to the main dwelling and a four (4') foot side yard setback, as shown on the survey submitted, is denied for the following reason:

Appearances: Nicholas Mellie

Letter of Denial was read by Thomas DaCosta Lobo.

- Chapter 700, Article XI, Section 700-67 B (1) of the Codes of Nutley states no detached accessory building or accessory use shall be located nearer than three feet or 1/2 the height of such building up to a distance of six feet, whichever is greater, to a side or rear lot line. The shed has a 10' mean roof height; the required setback is five (5') feet for the side yard.
- Chapter 700, Article XI, Section 700-67 C of the Codes of Nutley states no detached accessory building shall be located nearer than 10 feet to a main building. The shed has an eight (8') foot setback to the main dwelling.

Mr. Mellie said when he purchased the house, there was a shed on the premises which is shown on two surveys, starting in 1986. When he bought the property, the shed was covered in rust, the roof was caving in, as well as both doors on the back. He went out and bought a new one, the same size, and installed it in the exact same location. It is the most practical spot. The survey shows a deck with railings and behind the shed is a hill.

He feels that he put it in the right spot and that he upgraded the curb appeal and the functionality of the shed.

Mr. Marino asked when the shed was replaced – 2007. Was it the same height? It is, it is the same size as the original shed. Mr. Marino said if it was one foot higher, it would be called a garage, and the members would be patting him on the back.

Ms. McGovern asked if the applicant knows if the previous owners had a variance to install the shed. When he submitted his application and a search was done on the property, was he told if a variance was given? He was not told that there was one; he does not know. Ms. McGovern asked if it was true that the applicant did get a Certificate of Occupancy and the shed was there.

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. Graziano stated that the layout of the land is up hill which makes it hard to place the shed anywhere else. The shed has been there since he bought the house; there is no reason not to leave it there. Seconded by Mr. DaCosta Lobo. The variance was granted by a vote of 7-0.

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BUSINESS: Ms. McGovern said 733 Bloomfield Avenue never got their notice in the paper. That was scheduled to be heard in June.

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PUBLIC COMMENTS: Pennie Landry, 135 Lakeside Drive, wanted to address the public. She had questions about an application. She had a letter addressed to Darren DiBiasi, representing North American Eagle Company. She asked if that was Mr. Darren DiBiasi who was here tonight. She asked if another attorney other than the actual attorney speak to the Board on behalf of an applicant. Ms. McGovern said the firm of DiBiasi is the counsel of record for the client and Mr. Darren DiBiasi is a member of that law firm, so yes. Ms. Landry said then, that a letter of denial was addressed to Thomas DiBiasi, that's ok. It doesn't have to be Mr. Darren, who is the applicant's attorney get the letters or communications. She said ok. Ms. McGovern said they are with the same law firm. Ms. Landry said ok, she will double check that.

She questioned the site plan application that she picked up today. Several of the columns were checked and she wanted to know what it all meant.

The chairman said the questions Ms. Landry have are legitimately to be asked while the applicant is in the audience who can field the questions and verify the answers this board gives. She wanted then to ask Zoning Board questions.

She had a letter of denial and this board would be addressing the denials. The chairman said that is correct. She wanted to ask a question about a sub-division. Mr. Scudato said again that she may not ask questions about an application when the applicant is not here. She said then any questions relating to this particular development, had to be directed to whom. The chairman said they can be directed to him and he will get the answers for her. She said Ok and wanted to ask him some questions.

Ms. McGovern said there will be a special meeting on September 22, 2014. Ms. Landry asked if the public would be noticed. Ms. McGovern said it will be published. Will there be an agenda available 48 hours prior to the meeting? The chairman said the agenda is generated by the building department.

She asked about the check list for major sub-divisions. There were two lines that were marked “n/a.” Why the Zoning Board of Adjustment did not require those two items on the checklist for the Kingsland and Passaic application. Does the Chairman have an answer? The chairman said this board may waive any minor infraction of the ordinance. Ms. Landry asked Ms. McGovern if that is true ... any minor infraction of an ordinance. The chairman corrected his statement to a minor infraction of an application. Ms. McGovern asked Ms. Landry if she was still asking about the application that is going to be heard on September 22 or is she talking in general. Ms. Landry said she was speaking in general. Ms. McGovern asked if the site list she is referring to is about the Passaic and Kingsland matter. Ms. McGovern said that is the same issue. Ms. Landry said she knows, but she was told she could ask zoning board questions. Ms. McGovern said not about a pending application- questions about the application must be asked when the application is being heard. Ms. Landry said the chairman just gave her his answer –the board can waive any minor infractions at their discretion, right? Ms. McGovern said after a hearing on the matter. The merits of that application will not be discussed until the applicant is here. Ms. Landry said then, that the zoning board, at the hearing, can waive any minor infractions. The chairman said yes.

She asked if at the hearing, and this checklist if part of the application, if the checklist has things on it that the zoning board would like to have added, could the zoning board now request the documents that were previously marked “n/a”?

Ms. McGovern told Ms. Landry, again, that questions regarding a specific application cannot be discussed unless it is on for hearing. Ms. Landry said this is not a specific application, it is a process question. Ms. McGovern said it sounds like it is. Ms. McGovern advised the members that questions about a specific application cannot be discussed or even be touched on unless there is a full hearing.

Ms. Landry used herself as an example. She has a check list for new construction. The process of the zoning board is they look at the application and they either put “yes, that is needed,” or “n/a,” correct? Is that the process? Because she is looking at an example.

Ms. McGovern said that is not the process. She asked Ms. McGovern to explain the process. Ms. McGovern said the code office determines whether or not a variance is needed. This board does not make a determination until the code office issues a letter of denial and someone files an application. Ms. Landry said she is confused because the check list form says Zoning Board of Adjustment, so she was thinking this was actually the board’s form and she stands corrected. She will go to the township and find out what the process is and then she will come back and let the board know what it is.

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INVOICES, LITIGATED MATTERS: None

RESOLUTIONS: Approved.

- Polio, 564 Bloomfield Ave
- Kane, 144 Highfield Lane
- Abreu, 31 Linden Place
- Morrison, 13 Cottage Place
- Toma, 169 Frank Street
- Casale, 472 Prospect Street
- Alessio, 157 Ridge Road

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MINUTES: Approved.

January 13, 2014

February 3, 2014 (special)

February 10, 2014

April 21, 2014

May 19, 2014

June 16, 2014

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ADJOURNED: 10:06 P.M.

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Respectfully submitted,

Marie L. Goworek
Recording Secretary