

NUTLEY ZONING BOARD OF ADJUSTMENT
Public Session Meeting Minutes
May 19, 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, Gary Marino, Ralph Pastore, Mary Ryder, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

ABSENT: Lou Fusaro

EXCUSED: Frank Graziano

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No. 1 HERNANDEZ APPROVED 7-0

Applicant: Mr. & Mrs. Hernandez, 274 East Passaic Avenue, Block-Lot-Zone: 8005-1-R1

Application: request for a permit to install a six-foot (6') solid type fence in the side yard adjacent to Columbia Avenue of a corner property

Appearances: Mrs. Hernandez

Exhibit: B1

Letter of Denial was read by Mr. DaCosta Lobo

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

Chapter 700, Article XI, Section 700-71 A of the Codes of Nutley states no fence of any type in any front yard shall be permitted.

Mrs. Hernandez said this is a very busy street. She has two children ages five and two. Her dog was killed in a hit and run because there was no fence on the property and she wants to protect her children.

Ms. Brown asked the applicant for more information as to why she wants a six-foot solid fence. Ms. Hernandez said she would like more privacy because she is on a main road. She fears for her children's safety. She described the fence as being a white PVC.

Mr. Demerjian asked if the retaining wall is new. Ms. Hernandez said it is. He said the fence would then be on the wall. Ms. Hernandez said it would be right behind it. The wall is a little less than four feet and it steps down. Mr. Demerjian said adding a six-foot fence to the wall will make the fence very high. Ms.

Hernandez said it was suggested to her that she request a six-foot fence and negotiate with this board. Mr. Demerjian suggested that the fence be started at four feet at the corner of the house, along Columbia Avenue, and then six feet from the rear back.

The Chairman asked if that suggestion is acceptable to the applicant; she responded that it is. The Chairman asked if the fence would have a gate, there would be two.

Mr. DaCosta Lobo asked Mr. Demerjian to clarify what 8.4' means. He replied that it is the transition (distance) from a four-foot fence to a six-foot fence; the four-foot portion will continue around the bend.

Mr. DaCosta Lobo asked if the applicant would consider moving away from a solid panel to a board-on-board or a shadow box or a less severe panel fence. She did not seem to favor that, however, she then agreed. For clarification, Ms. McGovern said a four-foot shadow box type fence would boarder Columbia and in toward the front of the house; the applicant is ok with a six-foot solid in the rear of the property. Ms. Hernandez said that is correct.

She asked about the cost of a different fence (the one suggested); Mr. Demerjian said there should not be much of a difference.

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 who stated that the property is a corner lot noting that the applicant is seeking privacy and safety for her children. It was established that a four-foot shadowbox type fence along Columbia Avenue and a six-foot solid towards the rear of the property. Seconded by Mr. DaCosta Lobo. The variance was approved by a vote of 7-0.

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No. 2 CAPALBO APPROVED 4-3

Applicant: Mr. & Mrs. Angelo Capalbo, 54 Margaret Avenue, Block-Lot-Zone: 8300-27-R1

Application: request for a permit to leave as erected an eight (8') foot by 10' shed installed in the westerly side yard (left side) having a three (3') foot side yard setback,

Appearances:

Letter of Denial was read by Mr. DaCosta Lobo

- 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 height of a detached accessory building shall be one story not to exceed 14 feet.

- 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.

Mr. DaCosta Lobo said the applicant noted in his application that he was replacing an old shed with a new one the same size and in the same location.

The chairman asked Mr. Capalbo if he had commercial vehicles parked in the driveway; he does. The chairman noticed that the applicant had tools stored near his chimney. Mr. Capalbo said there are just a couple of rakes, a shovel, etc. When asked again about the vehicles in the driveway, Mr. Capalbo said he does park one commercial vehicle there for his part-time painting business.

Mr. Demerjian asked how long the applicant lived in the house (seven years) and the shed was replaced last year. He asked about the size; Mr. Capalbo said it is a little bit bigger in height.

Ms. Brown does not see a hardship in this case. The applicant claims that he has an undersized lot, but she doesn't see how the lot is undersized. She doesn't see that the only place for this shed is jammed up against the house. Mr. Capalbo said there really is no other place for it. The back of the house has a deck and there is a pool off to the side. Ms. Brown said it was the applicant's decision to have all this stuff and now he wants this Board to grant a variance because he made some choices that were not the best choices or in the best interests of the property. She said there is more than enough space to put it elsewhere, but the applicant chose to put it in the same spot and bigger than it was. Mr. Capalbo said it is the same size, just a tad bit higher. Ms. Brown again asked Mr. Capalbo to prove a hardship to the property, that this is the only place to put this shed. He asked that she look at the property. Ms. Brown told the applicant there is plenty of space to put the shed, he just chooses not to use it. He asked Ms. Brown to point it out to him. She said it could go right in the back yard between the deck and the pool towards the back line. He has a swing set there; she said it could be moved. She claims that the applicant is arguing something that has no basis. He has a nice size yard that the filled with stuff. There is no hardship. Mr. Capalbo said all he did is replace an existing shed.

The Chairman asked if the location of the shed infringes upon the neighbor. Mr. Capalbo said his neighbor has no issue with it. Unfortunately, he is not here tonight to testify to that. The chairman asked the applicant if he filed for variances for the deck. He did not.

With no further questions from the members and no one in the audience with questions or comments, a motion to deny the variance was made by Ms. Brown. She stated there is more than enough space on this property for the shed without requiring a variance. Seconded by Mr. Demerjian. The variance to deny failed by a vote of 3-4. Mr. DaCosta Lobo made a motion to approve the variance stating that the shed is replacing one that had been there and was damaged with one of a similar size. If this had been a new shed, he would have opposed it. Seconded by

Mr. Marino. The variance was granted by a vote of 4-3, with the Chairman, Ms. Brown, and Mr. Demerjian voting against the motion.

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No. 3 ORMEROD APPROVED 7-0

Applicant: Mrs. Patricia Ormerod, 25 Nairn Place, Block-Lot-Zone: 4001-4-R1A

Application: request for a permit, at the above referenced premises, to construct a new two- (2) story addition at the rear of the property having a 7.60'-foot side yard setback, and to install an AC condenser in the 7.60' side yard setback.

Appearances: Gregory Ormerod, owner, Joseph Primiano, architect.

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 as to Bulk, Height and Other Requirements," in an R-1A zoning district requires a side yard setback to be eight (8') feet and 10 feet. The proposed is 7.60' and the existing is 3.46'.
- Chapter 700, Article III, Section 700-3 of the Codes of Nutley, the definition of a side yard is an open 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.

Mr. Primiano addressed the members giving them a summary of the plans for the new second story addition. The addition would include a master suite with its own bathroom and walk in closet. Currently there are three smaller rooms and one bathroom. The number of bedrooms will not change, just the size of the rooms.

There is an existing, non-conforming, 7'6.0" side yard that will be maintained as non-conforming; 8 feet is required. On the other side, the addition will be over 13 feet from the side where 10 feet is required. The issue that is non-conforming is the existing garage. Another variance is required for the condenser in the side yard. There is an existing condenser behind the house and one on the side of the house. One condenser will need to be relocated next to the other. The side yard is heavily landscaped with a very good buffer between the properties. All other requirements of the zone have been met regarding height and coverage, etc.

Ms. Brown asked if the addition would be in line with the house. Mr. Primiano said it would be. Mr. Demerjian asked if the materials for the exterior of the house would be matched. The architect said everything will match. The intent is to make the addition look like it belongs.

The Chairman asked about the noise level having the two condensers side by side. Mr. Primiano said he assumes it would increase the noise level. He said if the

board would like, the applicant could add some kind of screening. They would like shrubbery.

The chairman asked if the new addition would have any runoff from the rain onto the neighbors' properties. Mr. Primiano said there is no increase in the coverage because currently there is a paver patio and the house has a first floor cantilever, which goes over the existing basement entrance. There is no increase in the amount of impervious coverage. All the gutters will be tied into the existing drainage.

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 stating that the applicant is requesting a variance for a minimal amount (a few inches) and the additional will be aligned with the existing house; coverage is not exceeding any other limitations. The condenser will be screened with shrubbery. Seconded by Mr. Marino. The variance was approved by a vote of 7-0.

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No. 4 PELLEGRINO APPROVED 6-1

Applicant: Ms. Lauren Pellegrino, 82 Hopper Avenue, Block-Lot-Zone: 8204-33-R1

Application: request for a permit to widen your existing driveway from 9.25' to 12', two (2') feet to the left in front of the home

Appearances: Anthony Pellegrino

Exhibits: B1 (revisions/provision recommended by Mr. Demerjian
A1 (photos)

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 to an attached garage. The proposed driveway will increase approximately two (2') feet to the left in front of the house.
- Chapter 700, Article XIII, Section 700-94 A of the Codes of Nutley states no front yard shall be used for the parking of motor vehicles.

Mrs. McGovern had a technical question before this application could proceed. She asked Mr. Pellegrino, for the record, if he was the owner of the property. He is; the applicants are married. Mrs. Pellegrino is the owner; his name is on the deed.

He is here seeking a variance to extend the driveway to the left (that is the only direction they can go). There is not enough room to allow an exit from the car. The passenger (his wife) would have to be let out at the street. This is fine at the moment, but his wife is seven months pregnant. When the baby comes, they will not be able to get the car seat out of the vehicle. Extending the driveway to the left, will allow them to open the car door.

The Chairman noted that moving the driveway to the left, the applicant will be parking in front of the home. The applicant said that is correct; he will not be encroaching on the neighbor at all. The chairman asked what would prevent the applicant from driving further up the driveway to the yard to discharge passengers. The applicant said if he pulled all the way up the driveway, they still would not be able to open the door because of the wall, and there is an existing patio in the yard. The chairman suggested that they could use the patio as a parking area, extend the driveway to the back. The applicant asked if the chairman was suggesting they could turn a four car parking area into a five car area.

Mr. Demerjian said he is not in favor of creating more impervious coverage. He said there is 24 feet from the front of the house to the property line. Would he have an objection to making the driveway 20 feet deep and putting a landscape buffer in front of the house. The applicant's contractor said the house is above grade and they would not be excavating up to the foundation. The plan is to go up to the steps. A landscape buffer will be added.

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. Pastore and seconded by Mr. DaCosta Lobo. The variance was granted by a vote of 6-1. Chairman Scrudato voted against the application.

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No. 5 ANZALDI

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.

- 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.
- Chapter 700, Article XI, Section 700-71 B of the Codes of Nutley states a fence erected along the sidelines 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.

Ms. Anzaldi has a picket fence in the front and she has hedges on the side. The back has the same fence as the front. The fourth fence is a flimsy wire fence and is not safe for her large dogs. She lives right by the PSE&G substation, which is on a big open field. She has no privacy from the kids that hang out there regularly; her dogs get riled from other dogs that walk by. The fence was there when she purchased the house. Ms. McGovern said that according to the applicant's survey, the fence is not on her property. She asked if the applicant has proof of an easement. She does not have the easement with her. She is guessing that the land belongs to the town.

The chairman said the Board cannot grant permission for her to put in a fence there on the town property; she said even though that is her backyard. The chairman said it isn't her backyard. She disagreed. Ms. McGovern said the applicant has been using it as her yard and has been getting extra property. This is how she bought the house. Ms. McGovern said they needed to see documentation that she has permission to use that piece of land. Ms. Anzaldi said the markings on the survey are her bushes and fence.

Ms. McGovern said the members are not in a position to vote on this because they do not have all the required documentation. If Ms. Anzaldi could provide the members with proof of the easement, this matter can be heard next month after they members have been able to review the documents. Ms. McGovern said the applicant should make copies of her paperwork, bring it to the code office at least 10 days before the next meeting for distribution to the members.

Mr. Demerjian asked when the applicant purchased the property – 2009.

With no further questions from the members and no one in the audience with questions or comments, a motion to move to carry to the next meeting was made by Tom DaCosta Lobo and seconded by Mr. Marino.

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RESOLUTIONS:

Evans, 18 Edgewood Avenue
Scholer, 19 Stanley Avenue
Rambaldi, 31 Enclosure
Conklin, 60 South Spring Garden

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INVOICES: Approved.

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BUSINESS: Ms. McGovern advised the members of upcoming projects. Mr. Pellegrino returned and asked the members how long it will take to get the permit to begin the work on his driveway. Ms. McGovern said it may be possible, if the code office has no objection to move it along quickly, especially in the case of emergencies – an applicant may lose the contractor, a wife may have a baby . . .

She has no problem with preparing the resolution for early approval. He would have to call the code office and request it.

There have been issues where a resident would want to talk about a matter that has already been heard at an earlier date. Ms. McGovern said the person could say what they want, and the Board should listen, but leave it that way it was voted on; but it should be on the record. If a Board member is approached outside the arena, he/she should advise that person to come before the board so that their concerns could be put on the record. It is recommended that there be a time limit as to how long a person may express his concerns.

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MINUTES: Approved.

March 3, 2014 (special meeting)

March 10, 2014

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LITIGATED MATTERS: None

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ADJOURNED: 8:44 P.M.

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Respectfully submitted,



Marie L. Goworek