

**NUTLEY ZONING BOARD OF ADJUSTMENT**  
**Public Session Meeting Minutes**  
**April 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, Ralph Pastore, Mary Ryder, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

**ABSENT:** None

**EXCUSED:** None

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**No. 1 RHEE Carryover**

**Applicant:** John H. Rhee, 254 Kingsland Street, Block-Lot-Zone: 406-1-R1  
**Application:** to renovate the existing 1st floor, which is 1,525 square feet, as a dental office, to use the 2<sup>nd</sup> floor, which is 1,300 square feet, for an office and storage area, to use the basement as storage only, and to make improvements to the existing parking area, with lighting, landscaping drainage, signage, etc.  
**Appearances:** Thomas DiBiasi, Esq.; Joseph Staigar, testifying as Engineer, Traffic, and Planning expert.  
**Letter of Denial** was read at the March 10, 2014 hearing.

Ms. McGovern reminded the members that this is a carryover from last month's meeting at which time the Board considered the use variance and granted same. They were not prepared to complete the site plan then.

Mr. DiBiasi said they are here tonight to discuss the Todd Hay/Pennoni letter. He said he discussed the letter with Mr. Hay and the applicant's design team is prepared to work toward achieving every recommendation. The sign (1 1/2 sq. ft. by the front door) for the office will be placed on the right side of the building in accordance with the Nutley ordinance.

Previous owners bought it in 1945; in 1947 a variance was granted to live there and use it as a real estate office. The building will be brought up to code for the dental office with storage on the second floor. Ms. McGovern asked if the applicant is going to abide by the code official's suggestions as to ingress and egress; Mr. DiBiasi said the applicant will. Mr. DiBiasi noted that his client was unable to attend tonight because of an emergent matter and that Mr. DiBiasi has full authority to make decisions on his behalf.

Mr. DiBiasi said there was a question about the lighting and stated that the lighting would meet code requirements. In response to Mr. Demerjian's question

if the drawings were revised as to the lighting, Mr. DiBiasi said there are the same drawings. Without being presumptuous, Mr. DiBiasi said if they are approved tonight, tomorrow the applicant will seek county permits. He also noted that they will abide by the forester's recommendations.

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

Site plan was scheduled to be heard at the April 21, 2014 meeting.

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Ms. Brown recused herself from hearing the following application.

**No. 2 EVANS APPROVED 7-0**

**Applicant:** Thomas Evans, 18 Edgewood Avenue Block-Lot-Zone: 3500-17-R1AA

**Application:** request for a permit, at the above referenced premises, to install a 25" X 28" Generac generator in the eleven (11') foot Southside yard. Note: There was an approval for subdivision from May 23, 2007

**Appearances:** Thomas Evans

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

The generator is 25" in width. Pursuant to the international mechanical/gas and fire code the generator must be setback from the building at least 18" leaving a side yard setback of approximately 7'4".

Chapter 700, Article III Section 700-3 of the Codes of Nutley titled "Definitions"; 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.

Chapter 700, Article VII Section 700-42 A (1) of the Codes of Nutley states no use shall be established, maintained or conducted in any district so that the same will cause any dissemination of smoke, fumes, gas, dust, fly ash or any other atmospheric pollutants.

Chapter 700, Article VII Section 700-42 A (2) of the Codes of Nutley states no use shall be established, maintained or conducted in any district so that the same will cause any vibration beyond the boundaries of the lot on which such use is conducted.

Mr. Evans said he understands that noise is a concern, but the generator he selected is at a 66 decibels which is normal conversation level (at the same level as an air conditioner or dishwasher). It will be hooked up on the side of the house and to the gas line. Mr. Evans also testified that the generator is similar to the one that his next door neighbor has and he noted that over the past few years there have been several periods where a generator has become a necessity.

The generator size is a 1AKW. He said it is a standby generator; if the power goes out in town, this comes on within 10 seconds and restores power and light to the home. It automatically shuts off when outside power source is restored. It also automatically tests itself once a week for 15 minutes. The test will be scheduled between noon and three p.m. It will not test in the middle of the night.

Ms. McGovern said the survey shows that there was a subdivision on 2007, where Mr. Evans acquired property from his neighbor, in order to avoid a variance. It is a small piece.

Ms. Ryder asked Mr. Evans if he would be camouflaging the generator with shrubbery. He said it would be behind the AC unit, but he would be happy to plantings there, but that side of the house doesn't get much sun and the plantings die.

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. Seconded by Mrs. Ryder. The variance was granted by a vote of 7-0. (Ms. Brown recused herself and removed herself from the meeting room.)

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**No. 3 SCHOLER APPROVED 6-1**

**Applicant:** Richard Scholer, 19 Stanley Avenue, Block-Lot-Zone: 2701-16-R1

**Application:** request for a permit to construct a 12'x25' deck attached to the dwelling and to the existing pool with a rear yard setback of eight feet which increases the lot coverage to 39.4%.

**Appearances:** Richard and Ginger Scholer (sworn)

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

Chapter 700, Article VIII, Section 700-46A of the Codes of Nutley, the Schedule of Regulations, requires a 30' rear yard setback and regulates the maximum lot coverage to a maximum of 35%.

Chapter 700, Article XI, Section 700-67D of the Codes of Nutley states an attached accessory structure or accessory use shall be considered to be a part of the main building.

Mr. Scholer said he installed a pool last year and wants to add a deck so they could sit and enjoy it. Mr. Scudato asked if there is direct access from the deck to the pool. He said they would be able to, if the deck was installed. There are two self-locking gates at the top of each stairway so no one would be able to get from the property onto the deck.

The Chairman asked the applicant to identify a hardship to the property for the Board to approve this application. Mr. Scholer said that the street is very busy thru street. The property is 50'x100'. Ms. McGovern said a variance was not

required for the pool, but the deck is a structure that takes up a major part of the backyard.

Mr. Graziano asked if a fence would be around the deck. Mr. Scholer said there is no fence around the property now. When the pool was installed, he had a ladder that was stored inside the pool with a locked gate. The Chairman asked if the two locking gates on the deck would be alarmed. Mr. Scholer said he didn't know as final plans have not been made. He did tell the contractor that the gates had to be self-locking. He will discuss with the contractor. The chairman asked if access to the pool would be direct from the deck without the ladder. Mr. Scholer said there would be a ladder on the deck leading down into the pool. Ms. McGovern asked if the applicant would come out of his house on onto the deck through sliding doors. He has a side door. He is relying the locks on the stairs.

Mr. Demerjian asked if there is lean to in the yard, an overhang with posts. Mr. Scholer said that was a back porch. In order to install the pool, he had to knock down the porch. He said the building department showed up last year and approved it. Mr. Demerjian said the structure is not shown on the survey. He said this is the survey that was on record when he applied for the pool. The structure will remain in place as is.

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. Seconded by Mr. Pastore. Mr. Demerjian voted in the negative. The variance was granted by a vote of 6-1.

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**No. 4 RAMBALDI APPROVED 7-0**

**Applicant:** Mr. & Mrs. Marc Rambaldi, 31 Enclosure, Block-Lot-Zone: 4301-39-R1A

**Application:** request for a permit to construct a covered front porch in the front yard having a 5'9" side yard setback.

**Appearances:** Marie Rambaldi (sworn)

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

Chapter 700, Article VIII, Section 700-46A of the Codes of Nutley, the "Schedule of Regulations as to Bulk, Height and Other Requirements in an R1A zoning district requires a side yard setback to be eight feet and 10 feet; the proposed covered porch in the front yard will have a 5'9" side yard setback.

The applicant said the porch is within code; it is the design of the roof which extends beyond the setback requirements that is the issue.

Ms. Brown noted that the applicant is lining up the new porch with the existing line of the house. Mr. Rambaldi said his neighbor has a carport on that side and the two structures would look nice together.

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

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**No. 5 CONKLIN APPROVED 7-0**

**Applicant:** Mr. & Mrs. Jeffrey Conklin, 60 South Spring Gardens, Block-Lot-Zone: 2802-16-R1

**Application:** request for a permit to widen the existing 16 foot driveway an 18 feet and increase the curb cut from 12 feet to 18 feet, having a one-car garage.

**Appearances:** Jeffrey Conklin (sworn)

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

Chapter 700, Article XIII, Section 700-94 A (2) of the Codes of Nutley states in a side yard of corner lots the driveway shall consist of the area directly opposite and adjacent to an attached garage, detached garage or depressed garage or the extension of the rear yard into the side yard which abuts a street. However, if there is no garage and no available rear yard, a driveway not to exceed 16 feet in width from the rear lot line may be constructed. The proposed driveway will be 18’.

Chapter 700, Article XIII, Section 700-94 A (3) (a) of the Codes of Nutley states a curb cut for a one-car garage shall not exceed 12 feet in length. The proposed curb cut will be 18’.

Mr. Conklin responded to Mr. Demerjian’s question saying that the driveway is already there, he just wants to extend it two feet toward his house. Mrs. Ryder asked how much parking would be affected on the street. Mr. Conklin said it won’t affect any because there is no parking on that street. There is parking in front of his house for two cars.

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. DaCosta Lobo stating that the widening of the driveway is on School Lane. There is no parking allowed on the street, so extending the driveway will have no adverse effect on the parking and it will not affect the neighbor. Seconded by Mr. Marino. The variance was granted by a vote of 7-0.

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A member of the audience, Ms. Susie Beedle, 571 Passaic Avenue, had a question about making revisions to the driveway requests (it was to be discussed at the joint meeting). Did anything come of that? Ms. McGovern said it was discussed and the Planning Board brought their recommendations to the Board of Commissioners. The Board of Commissioners have not made a decision yet. Nothing official has come of it yet.

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**BUSINESS:** None.

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**RESOLUTIONS:**

Rhea – 254 Kingsland Street  
Neary – 56 Glendale Street

**MINUTES:**

April 16, 2012  
April 15, 2013  
May 20, 2013

**INVOICES:** Penonni invoices were approved.

**LITIGATED MATTERS:** None

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Respectfully submitted,



Marie L. Goworek