

NUTLEY ZONING BOARD OF ADJUSTMENT
Public Session Meeting Minutes
March 10, 2014

*Approved
5/19/14*

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, Frank Graziano, Gary Marino, Ralph Pastore, Mary Ryder, Lou Fusaro, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

ABSENT: None

EXCUSED: None

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No. 1 RHEE

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 2nd 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; Yvette Wallace, ReMax Realtor; Bill Algieri, 11 Cathedral Ave. (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article V, Section 700-7 A of the Codes of Nutley requires all permitted uses to be listed for each zoning district.

Chapter 700, Article V, Section 700-9 of the Codes of Nutley does not list a dental office; therefore, is not permitted.

Chapter 700, Article III, Section 700-3, of the Codes of Nutley, "Definition of Parking Space" is an off-street space available for the parking of one motor vehicle and having minimum dimensions of nine feet by 19 feet, exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct usable access to a street. The parking spaces proposed are 9' X 18' and spaces 1 and 5 do not have direct access.

Chapter 700, Article XIII, Section 700-96 of the Codes of Nutley 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. Parking spaces 1, 2, 5, 6, 7, are within the 10' right of way. Chapter 600, Section 600-1 A of the Codes of Nutley, requires site plan review. A preliminary review of the site plan, prepared by RIGG Engineering Associated PA, dated November 24, 2013 shows the following items in the checklist to be missing on the site plan: F(7), F(13), F(14), F(27), F(29), and F(30). Waivers may be requested for some (see attached checklist).

Mr. DiBiasi gave a brief history of the property. Previous owners bought it in 1945; in 1947 a variance was granted to live there and use it as a real estate office. Over the years the property has fallen into disrepair and have been vacant for the last three years. Dr. Rhee has shown an interest in this property. He is a solo practitioner practicing in Bloomfield. If the Board approves this application, he will move from there and set up his office here. He has two staff members. His concentration is in implants. Office visits are by appointment only. Seven patients are scheduled one hour apart, five days a week (the office will be open on Saturdays; closed Wednesday) not including emergent cases. Office hours are 9:30 to 5 and one evening until 6. Regarding the seven parking spaces, the doctor and one staff member will park tandem leaving another tandem space and three single spaces for the clerk and patients. There may be some overlap if there is an emergency visit.

A design for drainage has been prepared. They will be seeking a minor access permit that will be worked on with the Department of Transportation. He noted that the applicant will accept any site plan conditions that may be put forth.

The Chairman reminded the applicant that this is a use variance and that five affirmative votes are required to pass. Ms. McGovern does not have a copy of the site check list of the waivers that might be necessary. Mr. DiBiasi said that they will come back for site plan approvals.

Mr. DiBiasi asked Ms. Wallace what her role is in this application. She is the selling agent for the property and has been involved in the business of this property for about four years (the property has been empty for about five years).. In that time, she was unable to find anyone who wanted to purchase the property for residential use. There was some interest in the retail aspect of it, but they all fell through. Dr. Rhee is the only person who has shown an interest in using it as a professional space.

Mr. Fusaro asked about the condition of the house; since it's been vacant for about five years, will it need to go under complete renovation? Ms. Wallace said the house is well maintained; it does not need complete renovation. The owner has taken care of it, looked in on it. It is in very good shape structurally.

Mr. DiBiasi asked Mr. Staigar to testify. The board accepted Mr. Staigar as an engineer, planner and traffic expert. Mr. DiBiasi noted that the applicant will not complete the site plan application until Mr. Hay is able to review the plans

and get back to them. Mr. Staigar said that was correct. He then testified that he did do a site inspection of the property. He studied the plans and spoke with the applicant and the realtor. He will testify now as to traffic, engineering, and planning. Site plan will not be completed tonight until recommendations by Mr. Hay are provided.

Mr. Staigar said this building will remain essentially the same. It has historically been a professional office. A D1 use variance is required for the continued use of this property as this is in an R1 zone. He noted the special reasons that need to be satisfied. He referred to the municipal land use laws. He called the property an island with state, county and municipals roads around it with minimal distances from the building – not conducive for a growing family, for a quiet, serene type of living as a single family home. The proposed business would have less impact than a bagel shop or deli; it will be a minimally intense traffic generator – little more than a single-family residence. It is his opinion that the proposed use is the highest and best use of the property.

Because the applicant requires a use variance and site plan approval, there are improvements to the property that will enhance traffic safety, the aesthetics of the property. If it were to be used as only a single family home, a Certificate of Occupancy and nothing else would be required. The application has a site plan package showing the improvements that will need to be implemented and also showing that there is a continuation of the operation of the property as it has been for years. He also stated that they are waiting for Mr. Hay's comments and will surely comply with his suggestions and recommendation.

He noted that there are front yard variances (the property fronts one three sides; they are existing, non-conforming). The three frontages require 25 feet – two sides are 14.9 feet and 18.1 feet. The parking space ordinance calls for 9'x19'; this property has 9'x18', which is standard in most towns. Parking area setback is 20 feet; the applicant is requesting a one foot setback. They will increase the landscape area to enhance the site.

He further testified that he does not believe, that using the site as a professional office will have a negative impact or be a detriment to the zoning plan. DOT approval is required. The applicant will need only a minor access permit because the building borders on a state highway. There will be another level of review regarding ingress and egress at the site.

There are two driveways accessing the parking area with no restrictions. The entrance on Cathedral Avenue will be made "enter only" and the state highway side (Rte. 7) will be designated "exit only." Mr. Staigar noted there is adequate site distance in both directions.

Mr. DiBiasi asked if the tandem parking would work for this use. He believes it will. The ordinance calls for seven parking spaces based on the use of the building and the plan has seven spaces. No variance should be required. There will be more than sufficient parking spaces.

Mr. Pastore asked Mr. Staigar if he is comfortable with the driveways. Mr. Staigar agreed with Mr. Pastore that this is a very busy area, but the property could be used as a residence and no variance would be required for the use of the driveways. The plan will make the ingress and egress safer. The office is not going to be the type where patients are in and out frequently. Patients will be staggered nearly an hour apart. This is a very low intensity use – very much like a single-family home.

The Chairman asked if the DOT reviewed the application. Mr. DiBiasi said the DOT has not. If / when this Board approves the variances and then grants the site plan, the applicant will submit the application. The chairman asked if the Board approved it and the DOT did not, what then? Mr. DiBiasi said the applicant would then make a condition and if the condition was not met, then they would not be able to get a building permit. Mr. Staigar testified that a minor access permit is required, almost administrative. The Chairman noted that that the traffic in that area was very heavy when Hoffman LaRoche was in business and wonders if another business opens there, what will the traffic be like.

Mrs. Ryder asked if the building façade will change to a commercial look or will it retain the residential look it has now. Mr. Staigar said they haven't gotten to the architectural phase of the plans yet. He said that it will need to be aesthetically pleasing so that the patients are attracted to the site. There definitely will be improvements made. If the Board has a preference as to the type of look, the applicant is open to suggestions. Mrs. Ryder prefers that it maintain a residential look and not have a stark change greeting people as they come into Nutley. Mr. Staigar agrees and feels it should fit in with the character of the R1 zone. Mr. DiBiasi said his client will accept that as a condition.

Mr. Demerjian asked if there were plans to change the internal layout of the building. Mr. DiBiasi said the inside will be designed for a dental office. The second floor will be used for storage. Files are kept for eternity. The upstairs will have a small office where the doctor will do his paperwork. Mr. Demerjian asked if access to the building is direct from the parking area – are there steps or a ramp? The entrance and the grade are equal. He asked about the lighting fixtures on the outside; they appear to be very industrial. The applicant will defer to the Board as to the type of lighting on the property.

A neighbor residing across the street from the proposed site, Mr. Algieri, testified that he believes this project to be a perfect fit. He is sure the property will be upgraded and landscape, giving a boost to the area that has fallen into disrepair. Mr. Graziano asked what Mr. Algieri's experience is pulling in and out of the driveway. He responded that it is fine, there are no issues, especially since Hoffman LaRoche closed.

The Chairman asked how many dental offices there are in Nutley. Mr. DiBiasi does not know, but said this is the fifth dentist he has represented.

The Chairman reminded the applicant and the members that five affirmative votes are required for approval.

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

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

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No. 2 NEARY

Applicant: Clare Neary, 56 Glendale Street, Block-Lot-Zone: 500-10-R1

Application: request for a permit to construct a new 22-foot wide driveway and a 20-foot wide curb cut.

Appearances: Ms. Neary (sworn)

Exhibit: A-1 photo of neighbor's drive.

Hardship: plot is narrow

Letter of Denial was read by Mr. DaCosta Lobo. Codes of Nutley state:

- In a front yard, a driveway shall consist of the area directly opposite to an attached garage, detached garage, or a depressed garage, or the extension of the side yard into the front yard. The driveway width shall not exceed 16 feet. However, if there is no garage and no available side yard, a driveway not to exceed 16 feet in width from the side lot line may be constructed.
- A curb cut shall not exceed 12 feet in length. The proposed property does to have a parking area or garage.

Ms. Neary said she was aware when she bought this property that she would need to widen the driveway and replace the retaining wall. The contractor she spoke with said she would need to hire an engineer because her driveway is a hill. She spoke with an engineer and provided the members with those plans. The driveway is just not big enough. Her neighbor has a conforming driveway. She sees the neighbor shimmying out of the vehicle because there is not enough room to open the door. It just doesn't work. She is working with professionals to improve the aesthetics of the structure and to make it safer.

Mr. Demerjian asked if the 22 feet requested includes the stairs. He thinks the stairs will be out three feet onto the driveway. A guard will be required on the stairs.

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. Mr. Demerjian stated that the steep terrain of the property causes a hardship. The construction of the driveway cut will satisfy the requirement of off-street parking and make improvements to the property. Seconded by Mr. Marino. The variance was granted by a vote of 7-0.

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BUSINESS: Ms. McGovern advised the Board that she was approached by Tom Sposato of the Board of Education to perhaps have a meeting with the Planning Board and the Zoning Board to discuss a demographic study that the BOE would like to do.

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RESOLUTIONS: None
INVOICES: None
LITIGATED MATTERS: None

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Respectfully submitted,

Marie L. Goworek