

Amended  
5/19/14

**NUTLEY ZONING BOARD OF ADJUSTMENT**  
**Public Session Meeting Minutes**  
**SPECIAL MEETING**  
**March 3, 2014**

**CALL TO ORDER:** A special 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, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

**ABSENT:** Lou Fusaro

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Mr. Graziano, absent from the February meeting, certified that he has listened to the CD recording of the proceedings and is current with the matter at hand.

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**No. 1 SSEF**

**Applicant:** 184 Franklin Avenue Block-Lot: 7501-5, 188 Franklin Avenue, Block-Lot: 7501-6, 79 Ravine Avenue, Block-Lot: 7501-16; B-3A and R-1 districts

**Application:** request to subdivide the rear ten (10') feet off block-lot: 7501-16, located in an R-1 district, to remove the lot line between lots 5 and 6, block 7501 located in a B-3A district and to consolidate all three (3) lots into one lot, to demolish the existing non-conforming structure and build a new three (3) story building having 1,910 square feet of retail stores on grade with a lot coverage of 13.4 percent, the remainder of the ground floor area for parking for 35 vehicles, which complies with the ordinance (4 for compact cars), a second and third floor having 23 one bedroom dwelling units with a 78.7% lot coverage, a building height of 34 feet, and a rear yard setback of 20 feet.

**Appearances tonight:** Thomas DiBiasi, Esq.; Thomas Sposato, Nutley Board of Education; Steven Corso (Architect); Joseph Staigar (Traffic expert); Darren Phil (Engineer); Todd Hay (Township Engineer); Paul Ricci (Planner). Mr. DiBiasi had a court reporter present (see attached transcript made a part of the record).

**Exhibits (total from all presentations):**

- Exhibit A-1 (2-3-14): Plans dated 12/3/13 prepared by Steven Corso, Architect, LLC consisting of three pages, A-1 (Ground and Second Floor Plan), A-2 (Third Floor Plan and Front Elevation and A-3 (Left and Right Side Elevation);
- Exhibit A-2 (2-3-14): Color rendering;

- Exhibit A-3 (2-3-14): Photograph of property to the north of PIQ (Property in Question);
- Exhibit A-4 (2-3-14): "No Further Action" letter from State of New Jersey, Department of Environmental Protection dated October 23, 2012;
- Exhibit A-5 (2-3-14): Six photos on one sheet of properties on Franklin Avenue near PIQ;
- Exhibit A-6 (2-3-14): Six photos on one sheet of the same properties on Franklin Avenue;
- Exhibit A-7 (2-3-14): Three pages of photographs prepared by Peter G. Steck also labeled P-1, P-2 and P-3 consisting of Aerial photograph of the PIQ and north east and other views of PIQ;
- Exhibit A-8 (3-3-14): Plans dated 2/11/14 prepared by Steven Corso, Architect, LLC consisting of four (4) pages, A-1 (Ground floor and second floor plan), A-2 (Third floor plan and Front and Rear Elevation), A-3 (Left and Right side elevation) and A-4 (Roof and Basement plan);
- Exhibit A-9 (3-3-14): Plans prepared by Suburban Consulting Engineers, Inc. dated 2-14-14 consisting of 11 pages;
- Board Exhibit B-1: Tax map demonstrating lot depths of the surrounding properties;
- Report dated January 13, 2014 by Township Forester, John Lison;
- Report dated January 13, 2014 by Deputy Fire Chief, Paul Cafone;
- Report dated January 21, 2014 by Todd M. Hay, P.E. (Pennoni Associates, Inc.);
- Report dated January 29, 2014 by Paul Ricci, AICP, PP (Ricci Planning);
- Report dated February 20, 2014 by Todd M. Hay, P.E. (Pennoni Associates, Inc.);
- Letter dated February 19, 2014 by Charles Kucinski, President of the Nutley Board of Education and Russell M. Lazovick, Superintendent;
- Letter dated February 10, 2014 from Pat Intindola, Construction Official; and
- Letter dated February 24, 2014 from Pat Intindola, Construction Official.

Mr. DiBiasi introduced himself and updated the Board members on the issues of this application.

He noted that Thomas Sposato, trustee and representative of the Nutley Board of Education, was in the audience and would like to speak on behalf of the BOE regarding a letter from the BOE sent to the Board of Adjustment. Mr. Sposato testified that the February 19, 2014, letter was incorrect and regarding a different project. He advised the BOE does not have an issue with this project. Mr. Sposato said that the Board of Education considers one-bedroom apartments and retail stores as responsible development projects. The BOE does not see this project as having an impact on the school system.

Mr. Pastore recalled another project that the BOE gave their blessing; three weeks later the Nutley Sun published an article saying that Washington School

was overcrowded because of it. Mr. Sposato said that he would have to get the facts from the reporter. On that earlier project, the BOE did their numbers. He is not sure what the reporter wrote. The superintendent of schools is responsible for the numbers. He said if there were an issue with this new project and the impact on the schools, this board would have been notified. The letter the board received in this matter was sent in error; it was drafted off of information from the planning board.

Mr. Pastore asked then summarized what he thought the Board of Ed representative was saying that the bottom line is that this project will not overcrowd the schools. Mr. Pastore noted; however, that there are more single-parent homes with families; so a parent can move into a one-bedroom with two or three children. He asked again if this would have an impact. Mr. Sposato said the BOE has no objection to this project.

Mr. Demerjian asked how the Board of Education was able to make this decision? What are the qualifications of those that make the determinations? Mr. Sposato said the members are elected officials with different professional backgrounds. There are no planners or architects.

Mr. DaCosta Lobo said in the one-bedroom apartments, you do not know that there would not be three school-aged children. Mr. Sposato agreed. Mr. DaCosta Lobo thinks that before coming before this Board "on behalf of the [BOE]" the BOE would consult with someone to tell them, x number of kids per x number of apartments, so the BOE could make an informed decision.

Mr. Marino said that the schools are, currently, overcrowded.

In response to the Chairman's question, Mr. Sposato said there is a committee that discusses and handles the issue of overcrowding and then it is brought before the whole board. He is not on that committee.

Mr. Demerjian said all this data is hearsay; he does not know what this board can do with that information. The chairman said it can be denied factually by the group. Mr. Sposato did not understand. Ms. McGovern explained to Mr. Sposato that his testimony would be hearsay if he was just reciting something someone else said. Mr. Sposato testified that while the Board of Education did hire a demographer, the BOE did not make a specific decision or recommendation with respect to this project on Franklin Avenue. Mr. Sposato said the BOE did not hire anyone for this specific project; but for the school system itself, in general. He stated that the letter sent to the Board was a generic letter and not about this project, specifically.

Mr. DiBiasi asked the board if they received two letters from the construction code official regarding the Board's concerns. Ms. McGovern said the board did. He asked if this satisfied the request of the Board members for the contained info. Ms. Brown said it does; they are addressing the issues by granting a variation. There were no further comments from the board, so Ms. McGovern said the letters satisfied the Board's request for construction code information.

Mr. DiBiasi introduced Mr. Corso who gave the following testimony. Most of the third floor area has a slope to give the effect of a two-story building. Applicant agreed to change the design to continue the two-story design effect across the entire front of the building. The living areas will be built with quality materials, and will include decorative moldings, granite tops, and high-quality appliances. He described the apartments as having an open living room/dining room. The kitchen plans show a U-shaped room. The master suite will be outfitted with walk-in closets.

Retail space will be on the Franklin Avenue side of the building with parking provided in the rear. Mr. Corso advised the members that the signage would conform to the township ordinance. The design of the building has been changed slightly with a cut-out in the brick wall, so that patrons at the restaurant next door can look out onto the street at an angle, as opposed to looking at a solid wall. The second story window above the restaurant will also be uninhibited. The original plan called for an eight-foot wall; this will be replaced with a fence, as recommended in the Ricci Planning Report.

Mr. Corso addressed the water issue. Water spillage will be designed to go from the gutters to the drain. All roof drains will travel underground as shown on the engineering plans. At the rear yard of the neighbor at 79 Ravine Ave., a six-foot high, solid brick wall shall be installed.

The HVAC equipment will be installed down the center of the building. The sound decibel of the equipment is 63.9. The closest it will be to any of the neighboring properties is 40 feet. Factoring in this and the time the sound gets to the property line, the noise will be at 45.9 decibels.

The right side of the basement is reserved for storage for the retail use and the left side for utilities. An elevator will go to the basement.

Mrs. Ryder asked if the breakfast rooms could possibly be converted into an extra bedroom. It is large. Could the master bedroom and the kitchen be made larger, taking some space away from the breakfast area? Mr. Corso said he could move the breakfast area to the other side of the kitchen. This would be in at least three of the units. The areas are 7' x 11'.

Mr. Demerjian asked about the overhang. He was told that it is at the property line and just slightly back. The first floor is set back about 1½ feet. The material over the windows is granite.

In answer to the Chairman's question, Mr. Corso said that the garage opening would be a steel grate instead of a solid garage door, but will still roll up. It would

be open during the day and locked at night. Tenant will open it with a remote. Police and fire will be provided the code to access in an emergency.

The canopy over the front door does not project over the line; the glass entry is recessed.

Mr. Da Costa Lobo does not see that flipping the layout of the apartments as a way to deter using the breakfast area as a bedroom would work. Mr. Corso said there would be no circulation through the apartment and the doorway cuts out about four feet of the space. Explaining further, he said there is a circulation corridor coming through the apartment on the current side. Mr. DaCosta Lobo said that there is too much space; there could be a bedroom at the end of the hall. Mr. Corso said then that there would be no living room. Mr. Demerjian said there is too much room for a one-bedroom. Tenants could use that space as an office area. Mr. DaCosta Lobe said it may be used in a legitimate manner, but is it not easy for someone to use it as a bedroom. Mr. Corso said it would be totally impractical. All light to the apartment would be cut off; it would be undesirable. It would be un-rentable because the living room would be in total darkness and unusable.

Mr. Demerjian said that at the last meeting, he requested that the building have five feet shaved off each side and there has been no effort to address that. Mr. DiBiasi said it is not a question of any effort. This is the project the applicant is presenting to the board. He said no one is questioning Mr. Meka's intentions. He is one of the largest landlords in town. Mr. Meka's market segment is different from the others that have two- and three-bedroom apartments. His aim is to have professionals from New York, already paying thousands of dollars for 1,000 square feet, to come here and have more space; they would travel by bus, pay less in travel. That is why Mr. Meka continues to invest in Nutley. He does a thorough background check on his tenants. If the tenants violate the lease agreement, they are replaced with someone else on the wait list.

The Chairman said the applicant does not totally control the people living in the rentals. Mr. DiBiasi said that is true, but he has a very, very high scale tenants. The apartments can be tweaked a little bit because the applicant does not want two-bedroom apartments; but in terms of size, they want the kind of tenant who wants this large space and have the money to pay for it.

Mr. Demerjian asked about the glazing materials stating that they do not wear well, would the applicant consider an aluminum trellis. Mr. Corso said they would consider that suggestion. Mr. Demerjian wanted it noted that he thinks the apartments are too big. He thinks three feet should be taken off the sides and

millions of dollars would be saved. The applicant would not feel it in the monthly rates. Mr. DiBiasi said they had this conversation last month and his client understands the market segment and feels comfortable in investing in this project, if it approved by the board. The applicant understands Mr. Demerjian's position and respects it; he has made a business decision and believes he understands the market.

Mr. DiBiasi recalled Joseph Staigar, traffic expert. His testimony is to be on the compact car parking spaces and the size of the spaces and to provide additional information on the schoolchildren expected in the development.

He testified that the amount of traffic generated by the proposed project is probably less than what had previously existed at the site. Based upon ITE calculations, during both morning peak and afternoon rush hours, it is expected that 14 trips will be made and the same for the afternoon rush hour. When you compare the residential use to a typical commercial use, traffic is caused by customers, employees, and truck deliveries. The proposed retail space is small, so there is no expectation of truck deliveries. The type of traffic generated by the project will not have an impact on the surrounding area. When northbound traffic on Franklin Avenue backs up across the front of the site and someone is waiting to make a left turn into the site, there is still room to maneuver around that turning vehicle, because there is no parking on the southbound side of Franklin Avenue immediately opposite the building garage. He noted that the garage door location is safe because vehicles exiting from the site are 38 feet from the actual travel lanes. The parking area will primarily be used by the apartment tenants. Retail employees will be able to park in tenant spaces during the day. Thirty-eight feet is ample to safely make a turn.

The small retail space would most likely receive deliveries from vans. There is a 10'x6" overhead clearance to the parking area, sufficient to accommodate smaller trucks, if necessary. Moving vans, however, will need to utilize two street parking spaces temporarily; coordination with police may be required. Garbage collection is private and a smaller garbage truck will be able to get to the rear dumpster.

There are 32 assigned, standard parking spaces that are 9'x18' (9' x 19' are required by Code) and three 8 1/2' x 15' parking spaces for compact cars (this is less than 10% of the parking spaces provided). The 24-foot aisle width is as required. The request for the 18' length variance is standard in the industry and the compact parking spaces are recognized by ITE standards and other Codes around the State. Mr. Staigar noted that in other municipalities a much greater

percentage of compact parking spaces are permitted. Mr. Staigar also noted that compact cars make up 40% of cars on the road today.

As to the school children expected in this development and the impact on the school system, a study was conducted by Rutgers and published as "Who Lives in New Jersey." This is a table of empirical data of ownership and rentals, breaking down the number of bedrooms in single-family dwellings and apartments. After explaining the math, there could be 1.17 public school attendees in the 23 units – making that one child. This study was calculated at other projects (57 East Centre Street has 124 units with nine students. 174 Bloomfield Avenue has 26 units with one school-age child. He noted that three of the nine children were already in the Nutley School system. Mr. DiBiasi added that about seven years ago another project of Mr. Meka, approved by this board, consisted of eight two-bedroom apartments. The makeup of the tenants consists of older people and professionals – with zero children.

The chairman asked for any comments from Mr. Hay and Mr. Ricci. Mr. Ricci commented that Mr. Staigar's testimony is generally accurate and has no issue with it. Mr. Hay was also satisfied with the testimony of Mr. Staigar.

Mr. DiBiasi asked that Darren Phil, the project engineer, approach and give testimony. Mr. Phil prepared a revised plans (marked as Exhibit A-9) based on he comments from the Board members at the last meeting. He referred to the plans showing what recommendations were incorporated. Those issues addressed were:

- Improvements along the frontage of the property;
- "No Left Turn" sign preventing a left off the property;
- A doorway will be in the wall on the side adjacent to the municipal parking lot. It will be locked for security reasons;
- There will be a walkway through the landscaped area to the parking aisle for access in and out of the property on the rear southeast corner;
- Modifications to the drainage were made, a reduction from the existing conditions;
- As to the landscaping plan, there will be stepping stones to provide ingress and egress to the hard surface of the drive aisle.

Mr. DiBiasi asked that Mr. Hay comment on the above testimony. Mr. Hay said that some of the testimony was satisfactory. He said the site grading and utility plans are still outstanding, but will be provided; roof leader connections will be indicated and the size, and type of material.

Mr. Hay said there is a discrepancy between the landscaping and lighting plan that needs to be worked out administratively. He has not seen the forester's report, so has no comment. He is confident that Mr. Phil will comply with that. He noted that Mr. Corso addressed the architectural drawing issues and the storm water report, the code office will deal with that and the water extension permit. There are also soil erosion conditions that would have to be agreed upon. There will be a lot of excavation on Franklin Avenue and the DPW will be involved. Mr. Phil has no objections to any of the comments made by Mr. Hay.

At this time, Mr. DiBiasi concluded his presentation and asked the Board to take a vote, reminding the members that he is asking for a minor subdivision, and a preliminary and final site plan approval and the use variance or bulk variance.

The Chairman asked Mr. DiBiasi if the applicant didn't file for and receive a major sub-division dividing a percentage of the property on Ravine Street, would the project still proceed? Mr. DiBiasi said they would need a bigger variance and they would have to ask the Testas. The chairman said he had an objection to this because of the impact on the neighbors. Can the project go ahead without the sub-division? Mr. DiBiasi said it would require a large rear yard variance, but it could be built. The lot lines on Ravine are so abnormal, so deep that neither neighbor objected to the 10 feet because their homes are so far away. The chairman feels there may be bump down the road on the neighbor's property. Mr. DiBiasi said the lot that is giving up some of this land is already further back than the two neighbors are. It is a strange configuration. He thinks that over 100 years ago, someone made a mistake plotting those properties. The lots are not normal size and there are jigs and jags.

Mr. Graziano asked if there are potential tenants for the retail space. Mr. DiBiasi said yes, and, based upon Mr. Meka's reputation, the retail stores on Centre Street have been filled.

Mr. Ricci had a lot configuration for the area (Exhibit B-1) showing the irregular depth of the lot on Ravine. The lots are not equal. The subject property is 200 feet, 27 feet deeper than the others.

With no further question from the board and no one in the audience with questions or comments, Mr. DiBiasi concluded his presentation.

Mr. Graziano made the motion to grant the variance at the subject location saying that it is probably the most appropriate use for the property. It will create an improved visual environment and the mixed use will be a more-efficient use of the property. It is particularly suited. The residential lots in the rear are very deep; it will be less of an issue. The Master Plan is supportive of this type of



development. It recognizes misalignment of this building in its existing use. The remainder of the downtown area has little residential and the best use would be mixing in with the downtown area. The applicant has agreed to all recommendations made by the dire department, the township, the building department, the engineers, and the forester.

Ms. McGovern read the following conditions into the record that were agreed to by the Applicant:

1. All signs will comply with the township ordinance;
2. The wall will be brick, not stucco;
3. The eight-foot wall will instead be a six-foot fence;
4. Water spillage will be shown on plans to be in conformance of the engineer's plans, showing water will go from gutter to drain;
5. All roof drains will travel underground;
6. Applicant agrees to all directions for the forester regarding shade trees; and the Linson Report;
7. Applicant agrees to all directives set forth by Deputy Chief Cafone;
8. Sound test will be conducted after the building is constructed making sure sound decibels are in compliance.
9. Garage door design will be an open or see-through design;
10. Applicant will continue with the two-story appearance along the whole front of the structure;
11. A "No Left Hand Turn" sign directing traffic coming from the structure will be installed directing traffic leaving the parking area to continue in a northbound direction on Franklin Avenue;
12. the door shown in the rear (SE) corner that leads to the municipal lot shall have an emergency release;
13. Applicant must obtain and file of record an easement from the Township (including indemnity and hold harmless agreement) for emergency egress via the door that exits into the adjacent municipal parking lot;
14. Applicant agrees to install a storm water retention system;
15. Applicant agrees to abide by the Nutley street scape standards as directed by the Façade Committee;
16. Applicant must obtain County utilities, sewer and water;
17. Applicant agrees to a pre-construction meeting;
18. Applicant agrees to payment of development fees per Township Code and payment for off-tract Improvement Fees;
19. The project will adhere to the appearance as set forth in the color rendering marked A-8 (3-3-14) using the same colors and materials as represented therein;
20. The apartments containing the breakfast areas sized currently as 7' x 11' will have the breakfast areas moved to the other side of the apartment to prevent the potential conversion of the area to a second bedroom;
21. The Nutley Police and Fire Department will be provided with the code for the entrance gates;
22. The glazed aluminum and glass shown on plans A-3 will be changed to a decorative aluminum trellis as a substitute;
23. Applicant agrees to adhere to all of the conditions set forth in the Pennoni

- report dated February 20, 2014, particularly those set forth under “New Comments;
24. All materials utilized on the project will be made in the U.S.A.; and
  25. Final site plan to be determined by the Code Official.

Seconded by Mr. Pastore.

The variance was granted by a vote of 5-2 with the following denials:

Ms. Brown stated that she finds it unfortunate that the applicant would not consider the Board’s recommendation to reduce the size of the building, which would help mitigate or eliminate the variances; she believes the density of the building is much too intense. She voted against the application.

Mr. Demerjian stated that his opinion is akin to Ms. Brown’s. He said he has no problem with the notion of the building and the size of the units. There is a variance being requested. There is no buffer in the rear yard. The 30-foot rear yard variance is not being met. He looks at the quality of the density of the property and he said it is a little too much or something has to give. He voted no against the application.

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**RESOLUTIONS:** from February 10, 2014 – All approved  
 Sciarra, 46 Humbert Street  
 Filian, 540 Kingsland Street  
 AmbuTrust, 32-40 Rev. Roberts Place and 14 Harrison Street

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**INVOICES:** All approved.  
 Refund from 11 Centre Street (\$1,000)  
 Pennoni Associates 180-184 Center Street, Invoice #578641 (\$275)  
 Pennoni Associates, Franklin and Ravine, Invoice #578672 (\$1,360)  
 Ricci Planning, (\$1,265)  
 Ricci Planning, (\$2,062.25)

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**BUSINESS:** The Chairman asked about the Board of Education. Ms. McGovern thinks perhaps there should be more of an open dialog with the BOE. She suggested that perhaps when there is a BOE meeting, one or more of the members of this board could sit in and ask questions. However, the NZBA member cannot testify during an application before this board with what he has learned. The Board may have to hire an expert. Some time after the Centre Street matter, Ms. McGovern was contacted by a gentleman from Rutgers who was doing a demographic study. He had asked her how many bedrooms and the like were approved for that project. He said the system that everyone uses, the quantification, is being questioned in terms of the viability of it. It cannot be

used across the board because different areas of a state are more densely populated, with different types of population trends. You just have to know the right questions to ask. The BOE has all this information, but they need to show many people are at a particular address.

If the Zoning Board needs more specific or in-depth information, the Board may be better served to hire someone, retain an independent expert that could qualify the impact on the system. The applicant may hire someone who is going to present entirely in his or her favor. The applicant's expert may rebut the data provided by the independent expert. The board could even request it's own planning expert to look into the issue of a project on the school population. The board can ask for any expert in any field to do a study if it thinks the information is necessary to their decision.

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**LITIGATED MATTERS:** None

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**ADJOURNED:** 9:14 P.M.

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Transcribed but not approved by the NZBA.

Respectfully submitted,

*Marie L. Goworek*