

NUTLEY ZONING BOARD OF ADJUSTMENT
Public Session Meeting Minutes
November 18, 2013

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, Thomas O'Brien, Ralph Pastore, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

ABSENT: Mary Ryder

EXCUSED: None

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AMBU -TRUST, LLC VIOLATION. REQUESTED A CONTINUANCE TO DECEMBER 16 MEETING. APPROVED

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MOSCARA USE VARIANCE REQUESTED A CONTINUANCE TO DECEMBER 16 MEETING. APPROVED

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No. 1 NORTON APPROVED 7-0

Applicant: Mr. William Norton, 157 Pake Street, Block-Lot-Zone: 8604-7-R1

Application: request for a construction permit, at the above referenced premises, to demolish the entire dwelling including the foundation and to construct a new 2 1/2 story dwelling on a pre-existing 50' wide by 93'82" length lot, having 36% building coverage, and construct a 12' X 19' unroofed deck having a 19' rear yard setback

Appearances: Robert Gaccione, Esq.; Bill Norton, 84 Limburgh Road, Bloomfield, owner; George Johns, Architect; Laura Cummings, 161 Pake Street; Sharon Eulo, 153 Pake Street; John Innuzzi, 165 Pake Street; Arthur Ligo, 158 Pake Street (sworn)

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" requires a lot of 100' in length in an R-1 zoning district; the lot depth is 93.82, and not to exceed 35% lot coverage; the proposed coverage is 36%.

Chapter 700, Article VIII Section 700-46 B (4) (d) of the Codes of Nutley permits a six (6') foot encroachment for an unroofed deck in a required rear yard, The required rear yard is 30' minus the six (6') foot encroachment equals 24'; the proposed is 19'.

Mr. Gaccione introduced himself to the board members. Mr. Gaccione briefed the board on the application and the site. There is currently a one family home on the property. His client is seeking approval to demolish this structure and erect a new one-family home. In addition to the poor condition of the house, it is poorly located on the property – there is less than a two-foot setback from the street right-of-way and a 2.87' side yard on the northerly side. The property is slightly undersized (the depth is approximately 94 feet with a 50- foot frontage there is approximately 4700 square feet of area so there is a six-foot short fall in the rear and a 300 square foot shortfall with regard to area. The proposed building is 36% lot coverage, where 35% coverage is permitted. The rear yard falls short five feet because of the unroofed deck.

Mr. Gaccione had his client sworn in. Mr. Norton answered Mr. Gaccione's questions. He said that he has owned the subject property for about three months. There is a single family home in very poor condition on the lot. The house was vacant when he purchased it and it is still vacant. The structure does not fit in with the other homes in the neighborhood. He would like to knock the house down and build another single family home. He agreed with Mr. Gaccione that the new structure would be a better than the existing home.

The Chairman asked Mr. Norton if he planned on living in the home once it was constructed. Mr. Norton replied that he would not live there; the house will be put up for sale.

The Chairman asked if there were any questions of the board. He asked if there was anyone in the audience to speak. Laura Cummings approached the podium. She had a hand out (photos from her property of the subject property). Ms. Cummings described the photos to Mr. Gaccione. He had no objection to the pictures, but he had an objection to the conclusion (unclear) before the testimony goes in.

Mr. Gaccione asked if the board is going to take questions of residents or will he be able to continue with his witnesses. The Chairman said they were a little out of order. They will finish with this witness and then continue with Mr. Gaccione's expert, the architect.

Ms. Cummings commented on the overage of lot coverage and the too-short setbacks. She said there is a balcony on the second floor, so the new construction will block the view of the canopies of the trees, and the two-story house itself will block her view. There is already a deck practically right on the property line from a Bloomfield home. This causes a lot of congestion. She recommended to the board to grant the applicant a variance on the front yard setback instead of allowing the house to go towards the back 25 feet. This is more in line with the other houses in the neighborhood. She feels since the owner of the property will not be living there, this is fact is significant for her to contest the variance as requested. The chairman said he is sure the architect will address Ms. Cummings concerns.

Mr. Gaccione asked Ms. Cummings if she did not have an objection to the house being built if it is moved forward on the property. Ms. Cummings said that is correct, she would not have an issue with the house if it were more towards the front of the property.

Mr. Gaccione said there would be an additional variance sought if the board were to be looking to move this house up a little bit.

Mr. Johns, aged 90, has practiced architecture for nearly 60 years. The members accepted his credentials, as listed. Mr. Johns described the existing site. He explained that the wood deck is what brought them over the allowed area. He pointed out the rooms of the house on his chart. The house will fit in in the neighborhood and would be an aesthetic improvement over the current house.

Mr. O'Brien reminded the architect of the comments the neighbor had made. He asked Mr. Johns if the location on the plans is one that he would like to protect and keep or is it reasonable to move the house forward. Mr. Johns feels it would be very reasonable. He added that all that was needed is 20 feet to park a vehicle; it would also add five feet to the back yard. He agreed that it would be practical to move the structure five feet closer and have a 20-foot setback.

Mr. Gaccione consulted with his client and advised the Board that Mr. Norton has no objection to moving the house five feet forward. If the Board were to see fit to condition the variance, if granted, on that happening, that is fine with his client. As Ms. McGovern pointed out, the variance letter does say "and any other variances." He does not think there would be an issue if there were a board condition based on the notice he served. Ms. McGovern agreed that the notice would be sufficient. He will provide Ms. McGovern with a copy of the publication. He advised that he is finished with his witnesses and after any interested party testifies, he would like the opportunity to sum up. The chairman asked him what the average setback is on the properties in the neighborhood. Mr. Gaccione said that, based on his observations only, it is not a 25-foot setback average. However, the existing house is clearly the one that is closest to the street. He thinks the average could be 17-20 feet.

Ms. Eulo's objection with the existing plan is that it will block her view of her neighbors and will cause a security issue for her. She objects to the plan because the house is not keeping with the look of the neighborhood. This is an older neighborhood and a contemporary structure would not fit in. Does the house have to be that big? She feels the owner is building to sell and make a profit. The chairman asked Ms. Eulo how long the house has been vacant. She said since 2010.

Mr. O'Brien reminded Ms. Eulo that the application being presented to this board has to do with the location of the structure on the property. The applicant is looking for some relief as to some edge conditions and presenting reasons why they think that is appropriate; the board will then weigh that. Whether the applicant is looking to erect a house that is modern or not, for profit or not, and whether Mr. O'Brien would agree with Ms. Eulo or not, that is not something

that is being presented that the board has any control over. He said he is very smart and has a very beautiful aesthetic, but the applicant is not asking him for that. The applicant is just asking if it is ok to build here versus there. He further stated that, by code, the applicant may change the location of the current house; they can choose to build a structure that is not as forward and probably wouldn't even be allowed to be as forward. He said they can pretty much build without this board, but they are trying to place it in a reasonable location. Ms. Eulio feels the house could have been designed without having the need of a variance and interfering with other people. It could have been scaled down. The Chairman said there is no home that might be built on this lot without a variance because it is a substandard lot. The applicants have that right to file for a variance because of the hardship to the property.

Mr. Iannuzzi feels that it would be in everyone's best interest if the neighborhood would be taken into consideration. He said the site line is very important. He would like to see the house moved closer to the front. Mr. O'Brien had an aerial photograph that showed homes to the left that had a different set back than the homes to the right of the subject property. This house is right in the middle of the shift. The shift to one side the houses are forward; to the other side of the house goes back. Either way this house goes, it will be similar to one side. He is saying that what the applicant is asking for does not seem unreasonable.

Mr. Graziano said this is an undersized lot. If they were to take four inches off the size of the house and remove the deck, all setbacks would be met. This house could be built on the lot as long as there was a variance – for lot size only. Mr. Gaccione agreed with Mr. Graziano.

Mr. Gaccione summarized by stating he thinks this application can be approved on a C1 (hardship to the property) or a C2 (benefits outweigh the detriment). The hardship to the property is that there is no land on either side to purchase and this property is 300 square feet short. The violation has to do with the rear yard, pointed out by Mr. Graziano, which approximately four inches. The variances that are created have to do with the open deck in the back. The percentage of lot coverage would probably be eliminated if the house were to be shortened by four inches. The applicant is not asking for a lot. There is a good zoning alternative here. There have been arguments about the front yard setback being too much; his client is willing to move it from 25 feet to 20 feet, making it consistent with the other setbacks in the area. His client is not putting up a house with many violations. It is one percent of coverage for the building and the rear yard for four inches if you do not count the open area. The insufficient square footage of the property and the insufficient depth is what it is. There is nothing much that can be done about it. Taking away the house that is currently in the position will be an aesthetic improvement and a zoning improvement. The proposal presents a better-located house than the existing location the proposal is a much better house. He reminded the members that his client is willing to move the house forward, five feet closer to the street, if the Board sees fit.

The Chairman asked if there was anyone else in the audience who wanted to speak. Mr. Nigro approached. Mr. Gaccione asked to reserve his right to speak

after the public spoke. Mr. Nigro said he received notification of a two-story dwelling across the street from him. He leaves it up to the Board to determine and maintain the town's master plan regarding the size of homes on property approximately 4700 square feet. He is here to generalize. He is leaving it up to the board to determine that the proposed home fits in the neighborhood. Mr. O'Brien spoke to Mr. Nigro saying that a good part of him agrees with what he is saying. There is a lot to be said for keeping new construction in alignment and in the same character as existing neighborhoods. He sees this all through Nutley and through other neighborhoods he's been in. Speaking from experience, he said he has a small house down the shore and the house next door was ripped down and was replaced with a bigger house. This is just a part of what is happening in this world today. People just need more square footage. It would be strange to see a small house taken down and a small house replacing it. He is sensitive to his comments and does not disagree with them, it is just very difficult with new construction to try to hold it to the size of the homes that were built so many years ago.

Mr. Gaccione respects what the neighbors are asking, but there are many different homes in the neighborhood.

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 that the evidence shows that the lot is unusually shallow. By moving the house to a 20-foot setback will improve the look of the neighborhood and allow more open space in the rear of the house. Mr. Marino seconded the motion. The variance was granted by a vote of 7-0.

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Ms. Brown recused herself from the following matter.

No. 2 TURI RELIEF OF CONDITION APPROVED 7-0

Applicant: Mr. Gerard Turi, 272 Forest Street

Application: request for a relief of a condition, at 17 Edgewood Avenue, Block-Lot-Zone: 3402-4.02 - R1AA which requires an 8'6" side yard setback from the edge of the A/C condenser units to the side lot line, as indicated in the Zoning Board of Adjustment approved Resolution dated August 19, 2013, will require an application before the Board of Adjustment.

Appearances: Gerard Turri (sworn)

Letter of Denial was read by Thomas DaCosta Lobo.

Ms. McGovern said the Board put a condition in the resolution where the applicant could put his air conditioner unit. The code office said that the applicant should not have put it where he did, because he needs more space between the house and the unit. The applicant said he needs five inches.

Mr. Turri told the board that he needs a variance for five inches for his air conditioner. He has already purchased and installed the air conditioning unit, based on the resolution prepared by this board.

Mr. O'Brien said the code if forcing he location to be non-compliant with what the Board has already accepted. That is correct.

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. O'Brien stating that this is a forced location and he thinks it is appropriate and good that the board accepts this. Seconded by Mr. Marino. The variance was granted by a vote of 7-0.

Ms. Brown returned to her seat after the vote.

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Mr. Graziano recused himself from the following matter.

No. 3 KANE APPROVED 7-0

Applicant: Mr. & Mrs. Kane, 286 Vreeland Avenue, Block-Lot-Zone: 4900-10-R1A

Application: request for a permit, at the above referenced premises, to construct a one- (1) story 300 square foot addition, having a 5'.75" side yard setback,

Appearances: Vincent Graziano, Architect; Dan Kane (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley requires an eight (8') foot and 10' side yard setback. The proposed is 5'.75" and 24'.35".

Mr. Graziano introduced himself to the Board and explained what it is the applicant would like to do. The applicant is proposing a one-story rear addition and to remove an existing one-story enclosed porch and a large wood deck.

Mr. O'Brien asked if was Mr. Graziano's opinion the proposed addition has an improved location to what is existing. Mr. Graziano said yes, definitely.

The chairman asked Mr. Graziano if a variance had been granted to this property in the past. Mr. Graziano again responded, "Yes." The chairman said it was probably for the side yard porches that are being removed. Not all of the prior existing variances will be removed. The proposed addition is not compliant with the required side yard setback.

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 who stated that the lot is undersized and the proposed addition will actually decrease the extent of the existing side yard encroachment. The rest of the house that encroaches will remain, but the bits that are being removed are being replaced with something that is closer, although still not in compliance and that represents an improvement of the situation. Seconded by Mr. Marino. The variance was granted by a vote of 7-0.

Mr. Graziano returned to his seat after the vote.

No. 4 SOLARI APPROVED 6-1

Applicant: Mr. & Mrs. Daniel Solari, 15 White Terrace, Block-Lot-Zone: 3602-8-R1

Application: request for a permit at the above referenced premises, to widen the existing 10' curb cut to 16'.

Appearances: Daniel Solari (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

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 16'. The existing dwelling has a one- (1) car garage.

Mr. Solari said it is an inconvenience having to drive in and out of a 10-foot curb cut and having to maneuver the car back and forth. He has done damage to his vehicle driving over the curb. It does not look right. He said, since the town allows a 16 foot curb cut, he has, in essence, a six-foot curb blocking his half driveway.

In response to the chairman's question, Mr. Solari said his garage is used for storage. He does not use the driveway for the car. The vehicles are parked side by side and the truck is a commercial vehicle. The chairman said commercial vehicle should be covered. Mr. Solaris said he does not know if his truck would even fit in the garage. It is only a pick up, but . . . The chairman said he saw it parked partially in front of the garage and partially on the walkway to the rear/side of the house.

Mr. Demerjian wanted to be clear about the driveway. He asked if the existing paved area is about 16 feet. Mr. Solari said it was widened to that, but it is not yet paved. He already has a permit to widen the driveway and pave it. He is now looking for a permit to widen the curb cut.

Mr. DaCosta Lobo said that a permit to widen the driveway should not have been granted. Ms. McGovern asked if the permission was to add a walkway in the same material as the driveway. He said no. Mr. DaCosta Lobo said the stamp on the plan says widen to 16-foot driveway and approved by Dave Berry. Ms. McGovern said she would have to find out about this. She thought the town allowed having walkways of a different material. Mr., DaCosta Lobo said they would still park on it. The chairman wanted to know how Mr. Solari can walk on it when his vehicle is parked on it.

Mr. O'Brien asked what the width of the driveway is now. It is 16 feet, unpaved. It was 10 feet with a 10- foot curb cut. He is putting in a 16-foot driveway and the applicant is asking the board to allow a 16-foot curb cut. It was a 10-foot driveway with a 10-foot curb cut. Mr. Solari said that is correct; about 50% of the houses on that street have the same thing.

Ms. McGovern has not gotten the ordinance yet, but she believes the town approved widening of driveways to 16 feet, but not the curb cuts. Mr. Solari said he was told he could widen it, but not more than 16 feet.

With no further questions from the members and no one in the audience with questions or comments, a motion to approve the variance was made by Mr. O'Brien, stating that the discussion here tonight is that there is an ordinance allowing for a 26-foot driveway (Ms. McGovern said what the code official's letter says is what the board has to go by) the proposed plans shows that the building department is approving a 16-foot driveway and for that reason he thinks it is appropriate to allow a 16-foot curb cut. He thinks to not do that is somewhat strange. Seconded by Mr. Graziano. The variance was granted by a vote of 6-1. Chairman Scrudato voted against the variance.

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No. 5 NEBESNI APPROVED 6-1

Applicant: Ms. Cindy Nebesni, 53 San Antonio Avenue, Block-Lot-Zone: 8300-3-R-1

Application request for a permit, at the above referenced address, to convert the existing garage into living space

Appearances: Anita Nesbesni (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

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 700-94 A (1) of the Codes of Nutley prohibits parking in a front yard except upon a driveway in front of a garage. If there is no garage a driveway not to exceed 16' in width from the side lot line may be constructed.

Ms. Nebesni said that her driveway is very narrow. She has a retaining wall on both sides. Water pours in because the driveway goes downward. Very often, the pump cannot handle the water, which causes flooding. If there is a power outage, there is no way that water will ever be pumped out and the entire basement will be flooded. If she could close up the garage and waterproof it, she will not have that problem anymore. The chairman asked if there is an existing pump now? Yes.

Mr. O'Brien asked if the proposal is to take out the garage, block it up and backfill in so that the driveway does not slope down. Ms. Nebesni said that is correct. The chairman asked what the applicant will do with her cars. She replied that, if the driveway were filled in, it would be flat, and the driveway would be level; cars would be parked in the same place. The chairman said the cars would be parked in front of the home. Ms. Nebesni said a little to the side.

Mr. Graziano asked if there was a planting area, a buffer on the plans in front of the garage. Ms. Nebesni said it would look nicer.

Mr. DaCosta Lobo asked how wide the driveway is now, but the applicant did not know. There are no dimensions on the survey. Ms. Nebesni said it is narrow. She never parked in the garage and it is not wide enough for two cars. One barely makes it in. She does not know how deep it is, front to back.

Ms. McGovern asked how many cars fit now? Two in tandem. If the variance is approved, she will be able to fit four cars, 2 side by side.

The chairman said the ordinance calls for parking in a garage, if there is one. What does she use the garage for? She uses it for storage. He asked if it would not be simpler to put in a larger pump to pump out water. She replied that is the power went out she would have a flood. The water goes into the garage, goes into the living area. The water causes mold. It is not healthy; her bedroom is right over the garage. She has owned the home for one year.

Mr. Graziano asked when the applicant pulls into the driveway now, do her car doors hit the walls. Yes, they do. The walls are high.

With no further questions from the members and no one in the audience with questions or comments, a motion to approve the variance was made by Mr. O'Brien stating that the existing condition is not so much a hardship to the lot, but a hardship to the existing placement of the house and the construction, the terrain of the driveway. He believes it is an unfortunate construction detail that causes excessive water to be drawn into the house and other problems with the water encroaching in the house. He sees this as a reasonable solution to solve an unfortunate existing condition. Seconded by Mr. Graziano. The variance was granted by a vote of 6-1. Chairman Scrudato voted against the application.

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Mr. Demerjian recused himself from this matter.

No. 6 GIANFRANCESCO APPROVED 5-2.

Applicant: Mr. Gianfrancesco, 21 Moore Place, Block-Lot-Zone: 9202-2-R2

Application: request for a permit, at the above referenced premises, to widen the existing driveway to 25' and curb cut to 16'.

Appearances: Fernando Gianfrancesco (son)

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article XIII, Section 700-94 A (1) of the Codes of Nutley limits a driveway width not to exceed 16 feet.

Chapter 700, Article XIII, Section 700-94 A (3) (a) of the Codes of Nutley limits a curb cut for a one-car garage not to exceed 12 feet in length.

Mr. Gianfrancesco said his father has lived in the house since 1977. He is nearly 91 years old. He does not want to live in a home; he wants to stay in his own home. He does not live with family, but when family does come, there is no place to park. This is the family's concern for him. They are asking for a little more

room to park two cars. The yard slopes downward and they would like to make it level.

Ms. Brown asked if the yellow area on the plan the applicant submitted is the area the applicant wants to pave. Mr. Gianfrancesco said that has already been paved. She asked what the yellow highlight represents. Mr. Gianfrancesco said that is the new driveway. Ms. Brown asked if it was correct that the applicant wants to pave 60 feet across and 25 feet back. He said no; he just wants to make it wider. She asked how wide because the plan shows the whole width of the property. He wants to make a 25-foot wide driveway. Ms. Brown asked that he mark the plans.

Ms. McGovern asked if they have already started to dig out. Mr. Gianfrancesco said that it is neighbor's property, not his father's.

Chairman Scudato noted that Moore Place is a small street, with parking only on one side, which makes parking a premium. He mentioned that the Board has gotten many requests for parking on this street. He asked if this house is to remain a single family home – it is; there are no changes to be made to the residence.

Mr. DaCosta Lobo asked the applicant if he was correct in saying that he wants to be able to park two cars side by side. That is correct. The house is right up front; there is no place to go back. That is correct. Mr. DaCosta Lobo noted that the average size of a parking space is nine feet. Why does the applicant need 25? The lot is only 45 feet wide. The applicant said then to make it 20 feet. There is a wall on the left side. The car door opens into the wall, not over it. The wall on the right is level with the grass.

There was some discussion not picked up on the recorder. Ms. Brown said she does not know the depth of the house because you cannot read the dimension on the survey. She wants a drawing that she can understand; she said she cannot read the survey. Ms. McGovern asked if the applicant had a clearer copy of the survey – he does not. He said there is not access to the back yard. Ms. McGovern wondered how much lot coverage there was – how much is paved. He said there is a sidewalk that goes around and there is a patio in the back and there is a vegetable garden.

Mr. Graziano said there is a driveway now and the applicant is looking to widen it. Which way is he looking to go? The driveway is 16 feet and he wants to widen it four more feet to one side. The applicant said the other side there is a fence.

With no further questions from the members and no one in the audience with questions or comments, a motion to approve the variance was made by Mr. Graziano for the reasons that this is a narrow lot and not a lot of room to park. The driveway will be 20 feet on the northeast side with a curb cut to 16 feet. Seconded by Mr. DaCosta Lobo. The variance was granted by a vote of 5-2. Ms. Brown and Chairman Scudato voted against the variance.

Mr. Demerjian returned to his seat after the vote.

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BUSINESS, INVOICES, LITIGATED MATTERS: None.

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RESOLUTIONS: All Approved.

244 Franklin Ave. – Use variance/ Taekwondo Center

25 Prospect St. – Widen driveway and curb cut

17 Msgr. Owens Place - signage

36 Forest Ave. – Addition

51 Shephard Pl. – Widen driveway

715 Centre St. – LAE shed

33 Highfield Lane – Side yard fence

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Respectfully submitted,

Marie L. Goworek