

NUTLEY ZONING BOARD OF ADJUSTMENT
Public Session Meeting Minutes
October 21, 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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No. 1 TAEKWONDO CENTER APPROVED 7-0

Applicant: 244 Franklin Avenue, Block/Lot/Zone: 6201/1/B3-A

Application: request for a zoning permit to operate a Taekwondo Center, approximately 3,400 SF

Appearances: Thomas DiBiasi, Esq.

Letter of Denial was read by Mr. DaCosta Lobo

Chapter 700, Article V, Section 700-7 A of the Codes of Nutley requires all uses to be listed as permitted in a B-3A district.

Chapter 700, Article V, Section 700-18 A of the Codes of Nutley lists the permitted uses in a B-3A zoning district; a Taekwondo Center is not a listed permitted use. Mr. DiBiasi said his client was not available tonight because his child is ill.

This building that is in question is the former Janette Shop. The store has been carved out into a few spaces. The diagram sets forth what the place would like like. The applicant would like to open a taekwondo center, training, giving instruction to people of all ages. Hours of operation will be retail hours. There will be limited ingress and egress as a result of the class sizes. Mr. Gizzo negotiated the lease with the applicant. This is similar to the approvals granted by the Board for uses across the street (Scotttrade and Rehabilitative Services). If the Board approves this space, there will be one space left which was used by Jersey Joint.

Mr. DiBiasi said his client will comply with any conditions that the Board may have. The instructor will have an assistant. The applicant has two other schools, one in Hudson County and one in Bergen County.

There are no chemicals, no noise, parking will be in the back; a parking variance will not be required. It will be a controlled use. The Sylvan Learning Center is a neighbor; the Taekwondo Center will not have as much traffic. The students will number 7-10 at a time.

Mr. Pastor asked about the classes. Mr. DiBiasi said the classes will run for 45 minutes each, with 15 minutes between each. The applicant would like the operation to run from

9 a.m. to 7 p.m. but right now, Mr. DiBiasi said they do not know what the client flow will be. In response to Mr. Demerjian question, Mr. DiBiasi said the business would be open six days a week, Monday through Saturday. Mr. DiBiasi said he advised his client that he would have to do a lot of classes and noted that the rent is high.

The Chairman noted that the municipal parking lot has given a certain area of monthly parking to permit holders. He inquired if the applicant has requested dedicated parking for his business. Mr. DiBiasi said he acquired some parking for Jersey Joint when it opened; however, the township does not like to do that, so in this matter, municipal lot parking was not requested. Parking will be in the shared retail space.

Mr. Pastore asked about signage. Mr. DiBiasi said they will comply with the ordinance. Funds are limited and they will be relying on reputation and referral.

Mr. O'Brien asked Mr., DiBiasi to refresh his memory of other uses in the area that are similar. Mr. DiBiasi said they are not very similar, but he was here before this board for two uses that sort of fall in the category of a glitch in the ordinance. He spoke of the two across the street. Mr. O'Brien asked Mr. DiBiasi if he thought the usage of this location is appropriate for Franklin Avenue business district. Mr. DiBiasi said his client believes it is. The zoning ordinance requires the applicant to come before the board for its approval. Mr. O'Brien asked if this is because the zoning ordinance does not name this type of business. Mr. DiBiasi said Mr. O'Brien was absolutely correct.

Ms. McGovern said this is considered a commercial school and commercial schools are allowed in one zone (she is researching the codes). Mr. DaCosta Lobo pointed out that this discussion had come up about two years earlier with the karate school. Ms. McGovern said that about 10 years ago, commercial schools were nowhere in the code. During a joint meeting of the Planning Board and the Board of Adjustment this issue was brought up. The Planning Board added it to a zone (which she is looking for). Mr. O'Brien asked if this is a use that should be discussed with the planning board. Ms. McGovern asked the members to think about what district they would like to speak with the Planning Board at the next joint meeting.

Mr. DiBiasi concluded his presentation at this time.

With no one in the audience either in favor of nor in opposition to the application, motion to grant the variance was made by Mr. O'Brien and seconded by Mr. Graziano. The application was approved by a vote of 7-0.

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Mr. DaCosta Lobo recused himself from this application.

No. 2 CROCCO APPROVED 6-0

Applicant: Mr. & Mrs. John Crocco, 25 Prospect Street, Block/Lot/Zone: 8801-13/R1

Application: request for a permit, at the above referenced premises, to construct a 24.7' driveway and a 21' curb cut for a two-car garage.

Appearances: Thomas DiBiasi, Esq. , John Crocco (sworn)

Letter of Denial was read by Mr. O'Brien.

Chapter 700, Article XIII, Section 700-94 A (2) of the Codes of Nutley states a driveway width shall not exceed 16'. The proposed driveway will be 24.7'.

Chapter 700, Article XIII, Section 700-94 A (3) (b) of the Codes of Nutley states a curb cut for a two-car garage shall not exceed 16' in length. The proposed curb cut will be 21'.

The applicant was expecting his architect to appear, but he did not. Mr. DiBiasi is familiar with the applicant and will be stepping in to represent Mr. Crocco.

Mr. DiBiasi stated that he had suggested to Mr. Crocco that he reduce the width of the driveway from the size on the plans to 21'7". Sixteen is permitted; the application is for 5'7". The curb cut variance was eliminated when Mr. Crocco decided that he could work with the ordinance curb cut. Mr. DiBiasi did the closing about 6-7 years ago; then there was a minor sub-division squaring off the property. There is an existing two-car garage. The application is to extend the driveway 5'7" so that he could have a direct access to each of the garage doors.

Mr. Crocco testified to all that Mr. DiBiasi briefed the board. He further stated that the architect had designed the driveway with a 24-foot driveway and 24-foot curb cut, which was denied by the zoning official. The architect complied, but Mr. Crocco was unaware that the size requested had been reduced so drastically. His garage bays are each 9 feet wide with a 2 and a half foot retaining wall. He is willing to comply with the board and any suggestion they may have.

Mr. Obrien asked if the width of the garages are average size or oversized. The applicant thinks the average is 8 feet. Mr. O'Brien thinks that what was approved by the code office does not work. Mr. Crocco said the building dept. approved the plans; the architect made the driveway comply, but it wouldn't work. Unbeknownst to Mr. Crocco, he would need a variance. Mr. O'Brien asked if it was Mr. Crocco's testimony that architects make mistakes. He replied that someone dropped the ball. Mr. DiBiasi laughed and told Mr. Crocco he may have just lost a vote.

Mr. Graziano asked the two masonry piers at the front of the driveway are going to remain in place. They are no longer there.

The chairman asked if the applicant was granted a variance to construct this home. The applicant said he did not have a variance to build the home; but, he was granted one for the sub-division of the 800 sq. ft. The chairman asked if there were any conditions on that lot. He replied that there were none. Mr. DiBiasi corrected Mr. Crocco's terminology. He did not have a variance, but a minor sub-division in front of the planning board.

Mr. Demerjian asked if there will be a stairway from the lower driveway up the walk to the front stairs. He responded that it is not on the plans, but there are three steps there, which were approved, leading down to the driveway. Mr. DiBiasi asked if the stairs will remain there. The applicant said they would, but Mr. Demerjian said they cannot because they are in the way. Mr. Crocco said that the stairs are built into the retaining wall and were approved by the building department.

Chairman Scrudato asked if any commercial vehicles will be park on the premises. Mr. Crocco said no.

With no one in the audience neither in favor of nor in opposition to the application, motion to grant the variance was made by Mr. O'Brien and seconded by Mr. Pastore. The application was approved by a vote of 7-0.

Mr. O'Brien returned to his seat.

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The Chairman and Mr. DaCosta Lobo recused themselves. Vice Chairman Graziano presided over this application and Mr. Demerjian will vote in place of Mr. DaCosto Lobo.

No. 3 ST. MARY'S CHURCH

Applicant: St. Mary's Church, 17 Msgr. Owens Pl., Block/Lot/Zone: 7004-11-R2

Application: request for a permit to install five (5) ground signs

Appearances: Thomas DiBiasi, Esq.; John Gizzo, Esq. (sworn), 100 Howard Place, Nutley; James Paulson, President of the Parish Council and Mrs. Paulson, Trustee (sworn) 340 Hillside Avenue; Richard Grabowski, 117 St. Mary's Place.

Letter of Denial was read by Mr. O'Brien.

Chapter 700, Article XII, Section 700-76 of the Codes of Nutley list the permitted signs in an R-2 district. A ground sign is not a permitted sign.

Mr. DiBiasi is standing in for John Gizzo, Esq. because he has a conflict. He asked to call Mr. Gizzo to testify. Mr. Gizzo is a member of St. Mary's Parish and a member of the St. Mary's Finance Committee. He explained that the signs proposed for the church property are a collaboration between the sign maker and the pastor, Fr. Richard. He described the signs as being constructed of wood with a gold inlay leafing and painted in the parish blue.

Mr. DiBiasi said the church has been there for 125 years and since that time the sign ordinance has popped up. Mr. Gizzo said there would be no objection if it was stipulated that the signs could not be lit. Mr. Grizzo said the vast majority of the churches in town now bear signs. He said that there are several buildings on the parish campus – the parish center, Msgr. Walsh Hall; the Church building and the rectory. The signs are not only to announce the presence of the parish, but, to also direct people and vehicles to the various locations. He has noticed, not only in Nutley, that churches have signs designating the denomination of the church. The only designation St. Mary's has is its name in the concrete above the main entrance of the church.

Mr. Graziano asked if Mr. Grizzo thought these signs on the ground would be better suited than signs on the buildings. He said yes. Aesthetically, it would not look nice. His opinion is that it is more tasteful to have them installed on the laws. Many businesses in town have signs like this.

Mr. Paulson has been a member of the parish for 72 years and involved in parish operations for most of his adult life. He responded to Vice Chairman Graziano's question about the make-up of the signs – they will be made of wood with a blue vinyl paint and gold leaf lettering in the carved lettering. Maintenance of the signs is minimal. Ms. Brown asked if the signs would be lit in anyway. They will not.

Mr. O'Brien asked if there was an event that happened recently to cause the focus on signage or stated another way "why now?" Mr. Paulson said that the convent was converted into the parish center with offices. Unfortunately, people walk around looking for it because there are no signs pointing it out. There are also three entrances to the building. One sign they would like to put in is very low to the ground saying "parish offices this way;" and on the St. Mary's side, have a sign that reads "St. Mary's Office, Parish Center." There has been some confusion as to where the rectory is.

Mr. O'Brien looking at the survey, commented on the dots representing the placement of the signs. The church has one sign on the corner and one sign by the bell tower. Mr. Gizzo explained that the sign on the corner says St. Mary's Roman Catholic Church. The

bingo sign will be near the bell tower because bingo is in Msgr. Walsh Hall at the back of the church. Mr. O'Brien said that is an important sign. Mr. O'Brien asked Mr. Gizzo, if he was to struggle with the number of signs, would the parish have a fallback, easily compromised situation or are each and every sign as important as the other? He understands that the signs will be an asset, but he is not so sure that all of the signs are as important as the next. He asked if there was ever consideration towards landscaping at the signs. Mr. Gizzo said all the lawns and bushes are pristine. As to the wayfaring signs, would the rectory be served as well if there was a small sign on the building. Mr. Gizzo believes each sign is important.

Mr. Paulson said the committee had discussed the type of signs they would like to see and what would look best. It was decided that they did not want signs on the buildings. There is shrubbery in front of the buildings and the signs would look great in the front. He said if he were forced to remove a sign, he feels it would be the bingo sign.

Mr. Graziano asked how long bingo has been a parish function and then was stopped. When Msgr. Walsh returned to the parish, he resumed the games for income. Before the parish sold the property on the corner of Centre and St. Mary's Place, the bingo sign was on that corner. The sign was no longer allowed to be there.

Ms. Brown said that two of the signs are double-sided. Would the applicant consider making it one-sided. The sign, St. Mary's Roman Catholic Church will be placed on a 45 degree angle from the corner of St. Mary's Place and Msgr. Owens so they can be seen from either street. Ms. Brown said it only needs to be one-side. She doesn't know how anyone would read the back of it. Mr. Paulson said there will be people driving on both St. Mary's Place and Msgr. Owens. Ms. Brown said anyone can see the name of the church etched over the main entry of the church. Mr. Paulson said it is a difficult sign to see; one has to really look hard because it is in the cement. Ms. Brown has an issue with the sign and would rather not see it.

Mr. DiBiasi took a moment to speak with the witnesses. He advised the members that the church would remove the bingo sign from the application. He concluded his presentation.

Mr. Demerjian asked if anyone has seen the actual signs. Mr. Gizzo said they have only seen the drawings. Mr. Demerjian thought they looked a little big to him. Mr. DiBiasi said the signs conform to the ordinance. Mr. Demerjian thinks having a sign as large as indicated would look out of place in the residential neighborhood. Mr. Gizzo asked if he had a suggested size. Mr. DiBiasi asked how about if they reduced the size by percentage points. Mr. Demerjian's point is that the sign is the size of a door (3 feet). Mr. Gizzo asked what size he thinks is appropriate. Mr. DiBiasi suggested 2 feet. Mr. Demerjian said 2 - 2½ feet. Mr. DiBiasi asked Mr. Paulson if the church would go to 2½ feet. He said they would.

The three signs on the top would be 2½ feet, the bingo sign is gone. One of the signs will be on an embankment. Shrubby will be placed along the posts.

Conditions of the variance will be that the rectory and two parish center signs will 2½ feet wide and _____ above the ground; the signs will not be illuminated; shrubbery will be added in around and/or underneath; the bingo sign is gone; the double-sided side is the same as shown, but will need planting under it. Mr. DiBiasi said that although Ms. Brown's comment about changing the double sided sign to one-sided; this is one issue that the parish would like to keep as requested (double-sided).

Richard Grabowski said he is in favor of the application. He has had people knocking at his door for directions to the various parish buildings.

With no further questions from the members and no one else in the audience with questions, a motion to grant the variance was made by Mr. Pastore and seconded by Mr. O'Brien. The application was approved by a vote of 7-0.

Chairman Scrudato and Mr. DaCosta Lobo returned to their seats.

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No. 4 KATSIOS APPROVED 7-0

Applicant: Mr. & Mrs. Katsios, 36 Forest Avenue, Block-Lot-Zone: 5002-3-R1A

Application: request for a permit to construct a two-story addition approximately 386 square feet, having a 6'1" side yard setback,

Appearances: Angelique Katsios

Hardship: Irregular lot.

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 an eight- (8') foot and a 10' side yard setback in an R-1A zoning district. The require side-yard setback is 10' and the proposed side yard setback is 6.08'.

Ms. Katsios told the members that she would like to make the house more suitable for her family's needs. She said the house is not parallel on the property making it a hardship.

In response to the chairman's question, Ms. Katsios said the house to the west is pretty far away. The neighbor has a fence and a very large backyard. She can't even see it. The chairman noted that the property is irregularly shaped; Ms. Katsios agreed.

Mr. O'Brien said it seems to him that the addition would fit on the property is the property was square. Ms. Matsios agreed. Mr. O'Brien asked if she could turn the house. She wished she could. That is not an option (laughter).

Mr. DaCosta Lobo question was strictly on how far out the applicant goes with this addition -- he asked how far into the process of designing this addition when she realized that she would need variances for the setback and what consideration went into coming for variances as opposed to changing the design. Ms. Matsios the initial drawings showed two feet beyond what was allowed. She said the architect tried to talk her out of it, but the kitchen in the house is very, very small and two feet seemed like a lot to give up for what she wanted done.

With no further questions from the members and no one in the audience with questions, a motion to grant the variance was made by Mr. O'Brien, stating that the shape of the property is a hardship and the proposed addition is appropriate to the size of the home and the lot. He does not believe the plans are over-reaching. Seconded by Mr. Marino. The application was approved by a vote of 7-0.

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No. 5 ZISA APPROVED 6-1

Applicant: Mr. Gian Zisa, 51 Shepard Place, Block-Lot-Zone: 6401-5-R-1

Application: request for a permit to amend the previous variance granted July 16, 2012, to widen the existing 14' driveway, two (2') feet in front of the house, for a total

width of 16' and reducing the required 60% landscaping to 48%, and now to widen the driveway additional two (2') feet for a total of 18' and to widen the curb cut to 18', which will reduce the required landscaping to 37.5 percent.

Appearances: Gian Zisa (sworn)

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 additional increased driveway will continue to be in front of the house.

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 existing garage is a one car garage. The proposed curb cut is 18'.

Chapter 700, Article VIII, Section 700-48 of the Codes of Nutley states any lot containing a residence for one or two families shall have at least 60% of the required front yard in landscaping. This area shall not be covered with paving, walkways or any other impervious surface. Landscaping may consist of grass, ground cover, shrubs and other plant material. The increase in driveway width will decrease the landscaping in the front yard to 37.5 percent. NOTE: front yard landscaping existing is less than the required.

Mr. Zisa was here last year seeking a variance for a 16-foot driveway because that was the maximum the township would allow. He is here tonight because he realized after the variance was approved and the driveway altered, it was not big enough to accommodate two cars, side by side. He is here to request an additional two feet and to erect a retaining wall on the left side. The retaining wall will allow him to keep more of the permeable land.

The chairman asked why the applicant had to park side by side and not tandem like other people have to park. Mr. Zisa said he cannot because the back car would be across the sidewalk.

Ms. McGovern asked if the house was built without a garage. Mr. Zisa is not the original owner. He only moved in last year; and the house did have a garage. The car can only fit one car; there is a lot of space to the side, but not enough to accommodate a second car. He has one car in the garage.

Mr. O'Brien asked about the previous variance to widen the driveway to 16 feet. The applicant said he did not widen it after he received a permit because he realized that 16 feet would not be wide enough to open the car doors without a problem. Mr. O'Brien asked if the driveway would be made of pavers or asphalt. The applicant said asphalt. It would be as it is now only extended further. Mr. O'Brien said he has seen driveways in asphalt with a two-foot wide walkway of pavers. This may be a way to be able to open the car doors and not have too much asphalt in the front. The walkway would allow more use of the driveway and keeps the driveway width, the asphalt, limited. The intent is to try to keep the neighborhood looking good.

Mr. O'Brien asked how wide the curb cut is (12') and if the applicant got a permit to widen it (no), but the applicant is requesting a variance to widen it now to the same size as the driveway.

Mr. O'Brien said that this board often tries to find a way that suits the applicant and is friendly to the neighborhood. He wonders if 16 feet is adequate. He doesn't want to suggest a design that is not adequate. He thought if the pavers were continued down the

side to the sidewalk, on the left side, and reduced the width of the asphalt, there would still be an area where the cars doors could be opened comfortably. The 18 feet of asphalt, in his mind, is a little strong. Mr. Marino said the driveway would look better with two paver walkways instead of an all-asphalt drive.

Mr. O'Brien and Mr. Zisa discussed the plans at the podium. Mr. O'Brien returned to his seat and summarized that discussion as follows. A direction that he believes is agreeable to all is the overall construction will not exceed and 18 foot width. There will be a paved walkway on the left of the property, extending to the sidewalk and matching the pavers that are already there. The remaining area will be paved with asphalt 15 feet with three feet of pavers (the owner can decide how wide the walkway is). The right side will be consistent with what the applicant intended to do as per his application which is to extend the build the wall out. The curb cut will be extended to 16 feet.

The chairman asked Mr. Zisa if he agrees with the conditions -- he does.

With no further questions from the members and no one in the audience with questions, a motion to grant the variance was made by Mr. O'Brien and seconded by Mr. Graziano. The application was approved by a vote of 6-1. Chairman Scudato voted against the variance.

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No. 6 THALAB APPROVE 4-3

Applicant: Mr. Geuris Thalab, 715 Centre Street, Block-Lot-Zone: 8002-6-R1

Application: request for a permit to leave as erected, an eight (8') foot by 21' by nine (9') foot height shed installed in the rear yard having a two- (2') foot side yard setback and a three- (3') foot rear yard setback

Appearances: Christine Thalab (sworn), Paul Juarez, 705 Center St.; Tammy Gincel, 44 Clement Street. (sworn)

Exhibits: O-1

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article XI, Section 700-67 B (1) of the Codes of Nutley states no detached accessory building or accessory use shall be located three (3') feet or 1/2 the height of such building up to a distance of six (6') feet, whichever is greater, to a side or rear lot line. Shed is located two (2') feet from the side yard and a three (3') foot from the rear yard setback

This shed was installed to replace a shed that was destroyed in Super Storm Sandy. Mrs. Thalab said that the new shed was installed directly on the property and thought that was the right thing to do. Her understanding is that it is a foot or so off her property. It is now on her property.

Mr. DaCosta Lobo asked if the old shed was nine feet tall (it was). Does the shed have a foundation making it impossible to move and comply? Mrs. Thalab said it would not be easy, but it could be moved. He asked if there is any reason not to move it. Mrs. Thalab said there are a few reasons: the neighbors put up something and closed the fence off; a few years ago, the neighbors put a guardrail up on the applicant's property line. This makes it difficult to move.

Mr. Demerjian asked if the shed couldn't be moved to the gravel area. Mrs. Thalab said the shed is adjacent to the fence and with the guardrail, the current position is the best place to put it in order to park their cars.

The Chairman said there has to be a hardship to the property and he does not see one. The applicant countered by saying the guardrail is a hardship. The Chairman said the property size is within code of minimal of 50'x100'. He asked the applicant to name a hardship to the property that would allow her to deviate from the building codes. Mrs. Thalab said she believes the hardship would be the parking situation – she would have nowhere to park her cars. Currently, she has to come in on an angle.

Mr. O'Brien said that there is a rectangular area on the survey designated as a paved driveway to the back of the lot. Mrs. Thalad said that used to be a street. The township still plows it in the winter. They use it to get into their property, but it is not part of their property. She parks on the gravel area. Mr. O'Brien said then, if the shed was relocated it would interfere with her parking area. He noted that it seems to be an unusual access to come onto the property through the back like that. All the neighbors have sheds that are close to the street. The previous shed had always been over the property line and there was never an issue with it.

The Chairman asked about the side street. Mrs. Thalab said that the township plows it in the winter and the snow is piled by the guardrail.

Mr. Juarez is the applicant's neighbor. He noted that the shed is 5½" from the property line. The shingles, leaders, and the gutters project about 6 inches over the line. The runoffs fall onto his sloping property. His survey, dated May 2013, was recorded as Exhibit O-1. Mr. Graziano asked who owns the wood fence and the chain link fence. It belongs to Mr. Juarez. He said it is about 7 inches off the property line. The survey indicates that the fence is right on the line. Mr. DaCosta Lobo asked if there were any other structures at the back of the yard near the shed. There is a gazebo near the shed, about five feet inside his own property.

Mr. Graziano said the survey does not show the fence. Mr. O'Brien asked if there was a shed over the property line previously. Yes, it was over the line. He bought 25 feet of land to the side of his house several years after he bought his home. The shed was on the acquired land. He requested that the shed be moved two feet over to alleviate the runoff onto his property. Mr. O'Brien thinks the code wants the shed to be four feet from the line. Mr. Juarez said he would be comfortable with two feet. Mrs. McGovern discussed this with Mr. Juarez and he agreed that moving the shed *another* 1½ would be acceptable to him.

Mrs. Thalab had a survey done indicates that the shed is two feet off the property line. Mr. Juarez's survey show differently. The chairman said they could go around and around with this all night. Mrs. Thalab asked if the legitimate complaint to moving it would be based on the draining water. Mr. Graziano said there is supposed to be a four-foot space between the line and the shed. He said the neighbor will allow the applicant to have two feet. The applicant will move the shed over two feet. Mr. Graziano said the neighbor has a survey, but it's really immaterial. If he wants it two feet more, the applicant is still two feet less than she's supposed to be. This makes for good neighbors and everyone is happy. Mr. O'Brien asked Mrs. Thalab is she heard in Mr. Juarez's testimony that his survey shows that the shed is only 5 inches off the property line. He asked Mr. Thalab if that made any sense to her at all. She said it made no sense. Mrs. Thalab said Dave Berry suggested the applicants call Mr. Sweeney to have a survey done with markers which showed the shed two feet off of her property line. That is correct. The neighbor's survey shows the shed is 5 inches off the property line. Mr. O'Brien asked the chairman if it would make sense that they have a survey that agrees.

Mrs. McGovern and Mr. Demerjian asked who drew the shed outline on the drawing. Also written "shed with dimensions of 21 feet ..." The Chairman asked the size of the shed. Mrs. Thalab said that is a copy of the signed package from Mr. Berry. Mrs. McGovern asked who wrote the word "shed."

The Chairman asked if there was a reason why the shed could not be moved. Mr. Thalab (sworn at this time) said it is very hard to move it. The chairman repeated the question why it could not be moved. Mr. Thalab said it can be moved, but if it is already two feet off now, there is no need to move it. Mr. Dimerjian said there is a fundamental inconsistency here. The neighbor has a survey and markers indicating that the shed is 5½ inches from the line. The members do not have anything from the applicants or their surveyor that says formally that says the shed is two feet off. The Board has to look at the information the neighbor is providing as correct and valid. Until the applicants can have their surveyor to confirm or disprove that, this is where the board is having trouble with the two feet the applicant is coming up with.

Mr. O'Brien said the neighbor is agreeing having the shed two feet off the property line. There is a dispute as to where the property line is. If the applicants could agree with the neighbor as to where the line is, he thinks the Board would be willing to allow the applicants to keep the shed two feet off of the property line. If the shed is five inches off the property line, it must be moved. Mr. Graziano disagreed. The neighbor is saying where the shed is now, there is runoff onto his property. He would be happy with the shed moved another two feet into the applicant's property, regardless of where the property outline is now. If the applicant has two feet as they suggest and they move it another two feet as requested by the neighbor, they still do not meet code (5 feet) but the neighbor is still willing to allow that. If the applicant's survey is correct, then the applicant will be two feet off the line. It doesn't matter. Move it two feet and everybody is happy.

The Chairman said they will continue this matter to the next scheduled meeting. At that time, the applicants will have to show that their shed is in exposition. Photographs are not necessary, but a survey is.

Mr. DaCosta Lobo said he can't imagine that there is a disagreement as to where the property line is, but if they are trying to resolve this matter tonight, without referencing where the property line is, as suggested by Mr. Graziano, forget about where the property line is, take the shed, move it a foot and a half into the applicant's property and call it a day. According to one survey, there will be 3½ feet; the other, two. Whether it is two or three is irrelevant. The fact is, it's been moved off, there should be no more runoff onto his property.

The chairman asked if this was acceptable to the parties. They said yes.

Ms. Gincel had an issue with the shed. She wanted to be sure it is moving to the left and not back towards her property. She also has a water problem. If there is going to be major runoff from this structure, she wants to see if the gutters can be directed where the runoff will go down the road, not in her direction. She thinks it would be easily resolved by turning the gutters to go down in the direction of the road. She would like for the applicants to fix this problem.

To be clear, Mr. Marino said that the applicants are being asked to move the shed 18½ inches from where it is now; not from the property line. Ms. McGovern said a second condition would be that the gutters would be redirected out toward the gravel area.

With no further questions from the members and no one in the audience with questions, a motion to grant the variance was made by Mr. Graziano. He stated that the shed will remain erect but to be moved 1'6" from where it is now into the applicant's property away from the neighbors and to redirect the gutters and leaders so that the water will runoff into the gravel section of the applicants property and not to flow onto the neighbors' properties. Seconded by Mr. Marino. The application was approved by a vote of 4-3. Mr. DaCosta Lobo, Mr. Pastore and Chairman Scrudato voted to deny the variance.

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Chairman Scrudato recused himself from this matter.

No. 7 KLECAK

Applicant: Mr. & Mrs. William Klecak, 33 Highfield Lane, Block-Lot-Zone: 3802-9-R1

Application request for a permit at the above referenced premises to install a five (5') foot solid type fence in the side yard along the right side line.

Appearances: Mr. Klecak (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article XI, Section 700-71 B of the Codes of Nutley states a fence erected along the side lines from the front line of a main structure to the rear line of such structure and within such lines shall not exceed four (4') feet in height and shall be of 50% open construction.

Mr. Klecak said he has been living in his house for 17 years. The fence is literally falling apart. He has replaced boards numerous times, it is warping it is rotting, the gate is misaligned and he cannot not close it anymore. He was advised by the town that he could install a five to six foot fence with spacing of no more than an inch. He was advised if he got permission from his neighbor, he could put a five foot solid up. He has a letter of approval from his neighbors, the McDonalds. He requested a permit and was rejected. He wants a solid fence because he likes the look of it. The fence he has in place is a board on board. It is beyond repair.

Mr. O'Brien asked if there was another fence on the other side of the property. Yes, it is a chain link and it belongs to his neighbor. Is there a reason why, with an open chain link on the one side, that a 50% open is not desirable on the subject side. He said the family room is on the chain link side. Where he wants the new fence, he has a deck and does entertaining.

Mr. O'Brien asked about the family room – did the applicant add it to the house. Mr. Klecak said that he believes it is an addition, but he bought the house with it. Mr. O'Brien said there is a chance that the wooden fence was there prior to the addition because the family room designates the house proper and according the code, if he is going to rebuild the fence it requires that the fence construction has a different requirement from the back of the family room, not from the back of the two-story framed dwelling. The family room now constitutes the back of the property. So, the fence that the applicant is proposing is a side yard fence. Before the family room was added, it would have been considered a rear yard fence. Is the making fence sense? Code calls for this to be an open fence, unless there is a hardship to the property and he is not sure that there is a hardship. Mr. Kelcak said that he would like more privacy. Mr. O'Brien asked if he could add planting to provide more privacy. In other words, could he plant some shrubs along the 50% open fence. The applicant said he is sure he could.

Mr. Marino asked if the fence he now has up was in good condition, would it provide the privacy he needs. Mr. Klecak said if it wasn't in such bad shape, it would. He dealt with two fence companies and neither has the board on board like his. He does want to replace the fence with a PVC.

Mr. DaCosta Lobo asked if the applicant wanted to bring the fence all the way to the rear line. Mr. O'Brien said the neighbor gave written approval for the fence. Mr. DaCosta Lobo said he could put the solid fence in the rear portion and then have a different type of fence matching up with it for the portion that is technically side yard and that is not really desirable. Mr. O'Brien said from a design standpoint, he agrees with Mr. DaCosta Lobo's comment. It would be desirable to have a consistent fence. He feels the fact that there is already an existing fence, that this is favorable to the applicant; also, the house proper is to the left side of the family room, so that piece of side yard is a very large piece of property. It is almost as if the yard is "L" shaped. So, what is technically a side yard fence, it is a very large piece of property; he doesn't necessarily see the five foot fence as a detriment in that location.

With no further questions from the members and no one in the audience with questions, a motion to grant the variance was made by Mr. O'Brien and seconded by Mr. Marino. The application was approved by a vote of 7-0.

The Chairman returned to his seat after the vote.

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BUSINESS, INVOICES, LITIGATED MATTERS: none

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RESOLUTIONS: All Approved

500 Prospect (Patel)
170 Oak Ridge Ave (Nagel)
187 Ridge Road (Elizondo)
17 White Terrace (Palangio)

* * * * *

ADJOURNED: 9:59

Respectfully submitted,

Marie L. Goworek