

NUTLEY ZONING BOARD OF ADJUSTMENT
Public Session Meeting Minutes
August 19, 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, Thomas O'Brien, Ralph Pastore, Mary Ryder, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

ABSENT: Frank Graziano, Gary Marino

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No. 1 BOAN APPROVED 7-0

Applicant: Scott Boan, 137 Pake Street, Block/Lot/Zone: 8604/12R-1

Application: Your request for a permit to build, at the above referenced premises, a second story add-a-level, having a front yard setback of 10', a side yard setback of three (3') feet, a rear yard setback of 23', a 7'11" X 15'5" first floor unroofed deck with a side yard setback of 3'1", a rear yard setback of 16'5", and a front covered porch extending into the front yard five (5') feet

Appearances: Mr. Boan (sworn)

Hardship: Undersized lot; narrow and shallow

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article VIII, Section 700-46 B (8) of the Codes of Nutley requires the minimum front, side and rear yard dimensions to be no less than 80% of the required minimums set forth in the Schedule of Regulations:

- a) Minimum front yard 25' 80% = 20' proposed 10'
- b) Minimum side yard 6' 80% = 4.8' proposed 3'
- c) Minimum rear yard 30' 80% = 24' proposed 16'5"

Chapter 700, Article VIII, Section 700-46 B (4) (d) of the Codes of Nutley permits extensions into a required front or rear yard to extend six (6') feet. The proposed deck would be setback 16'5" instead of 24' and the front porch would be setback from the front property line five (5') feet instead of 19'.

The chairman noted that the lot is an undersized piece of property. Mr. Boan stated that he is not sure at this time, if he will actually live in the house or sell it.

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 and seconded by Mr. Pastore. The variance was approved by a vote of 7-0.

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No. 2 MARINO APPROVED 7-0

Applicant: Mr. & Mrs. Richard Marino, 298 Grant Avenue, Block-Lot-Zone: 4200-20-R1aa

Application: request for a permit to widen the existing driveway to 21' and the existing curb cut to 16'.

Appearances: Richard Marino (sworn)

Revised 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 width shall not exceed 16 feet. The proposed driveway will be 21'. 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'. Mr. Demerjian asked Mr. Marino if it was his intent to bring the driveway all the way up to the property line. Mr. Marino said it was. Mr. Demerjian's opinion is that 21 feet is a little wide for a driveway. Eighteen feet would be wide enough and comfortable enough for two cars. He would rather see some landscaping instead of blacktop right up against the neighbor's property. He asked the applicant if he was amenable to 18 feet. Mr. Marino said he actually was ok with that.

Mr. O'Brien said the sketch shows an existing condition of a 15-foot curb cut. The applicant is requesting another foot.

With no further questions from the members and no one in the audience with questions, a motion to grant the variance was made by Ms. Brown to widen the driveway to 18 feet and leaving a three-foot landscape buffer and leaving the existing curb cut at 15 feet. Seconded by Mr. DaCosta Lobo. The variance was granted by a vote of 7-0.

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No. 3 NOVOTNY APPROVED 5-2

Applicant: Mr. & Mrs. James Novotny, 90 Raymond Avenue, Block-Lot-zone: 4800-43-R-1

Application: Your request for a permit to replace the existing detached garage, which has been damaged due to "Hurricane Sandy," with an eight by ten (8' x 10') foot shed.

Appearances: Christine and James Novotny (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article XIII, Section 700-91 A of the Codes of Nutley requires each single family dwelling to have two (2) parking spaces at least one of which is in a garage.

In the application, the Novotny's stated that during Hurricane Sandy, a tree crashed onto their garage and damaged it making it an unsafe structure. Existing driveway on the lot is sufficient to provide four spaces without the use of a garage.

Mr. O'Brien asked the applicants why a shed is a better idea than a garage. Mr. Novotny said the yard is relatively small. The shed would take up less space and the yard would still be functional for family activities. Mr. O'Brien stated that this type of application is not uncommon. The Planning Board sets the standards should be in town and what they would like to hold onto in order to preserve the quality of the neighborhoods and character of Nutley. This Board of Adjustment has discussed this type of condition with the Planning Board. It is Mr. O'Brien's understanding that the Planning Board has held onto this concept of a separate garage as something that is valuable to the town. This is why he asked what the positive reasons are for not replacing the garage; the direction of the Planners is to put the garage back.

The Chairman asked if the garage could be repaired. Mr. Marion said he doesn't think it can be repaired enough to make it safe. After the tree crashed into the roof, the side of the garage began to bow out. He doesn't believe a repair would be an option.

The chairman asked about the placement of the shed – it would be exactly where the garage is.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant the variance was made by Mr. Pastore. He stated that the existing garage has been destroyed by a storm and it will be replaced with a shed. Seconded by Mrs. Ryder. The variance was approved by a vote of 7-0.

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No. 4 VARELA APPROVED 4-3

Applicant: Mr. & Mrs. Cesar Varela, 19 Kenzel Avenue, Block-Lot-Zone: 2503-34-R1

Application: request for a permit, at the above referenced premises, to widen the driveway and curb cut to 21' and have approximately 51% of front yard landscaping s one for each apartment as described in the 1991 Board of Adjustment resolution.

Appearances: Ms. Almanzar, Cesar Varela (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article XI Section 700-67 C of the Codes of Nutley states no detached accessory building shall be located nearer than 10 feet to a main building.

Chapter 700, Article XI Section 700-67D of the Codes of Nutley states an attached accessory structure or accessory use shall be considered to be a part of the main building. The proposed above ground pool will have a seven (7') foot setback to the attached deck.

Chapter 700, Article V, Section 700-9-D (6) of the Codes of Nutley states all pumps, heaters and filtration systems shall be kept at a maximum distance from all property lines and shall be at least eight feet from any property line. Pool equipment is in the eight (8') foot setback.

The chairman asked what interest Mr. Varela has in the property. He responded that he owns it and lives there.

Mr. Varela said he would like to install an aboveground pool in the yard. Ms. Brown said the applicant has a three-foot shortage of space, three feet too close to the existing deck, and the filter is in the eight-foot setback. She addressed the three-foot issue first. She asked the applicant why he just did not get a smaller pool so he would not need a variance. He would be 10 feet from the deck instead of seven feet if he got a 20-foot pool instead of a 25-foot pool. She said if he relocated the filter, he would not need a variance for that either. Ms. Brown thinks there is a way to solve this without needing a variance.

Mr. DaCosta Lobo asked if the pool could be maybe 14'x22' instead of 15'x25'. The applicant said the pool is looking to install is 12'x23'. Mr. DaCosta Lobo said that gives them 9 feet of setback instead of 8. He asked if there was any reason why the pool equipment could not be flipped to the other side so it is not in the setback, eliminating the need for a variance. He said the board may be more comfortable allowing a one-foot variance instead of two. Mr. DaCosta Lobo stated ways to position and place the pool to allow more space and less variance.

Mr. O'Brien asked how many people might be using the pool. Mr. Varela said it would be he and his family, his mom and extended family and friends.

Mr. DaCosta Lobo asked what was near the fence where the pool equipment is slated to be. The neighbor has a pool on the other side.

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 it is a narrow lot. He said the pool equipment should be placed as far away from the side lines as can be and no less than three feet and five feet from the sideline setback; the pool size as shown because it is a narrow lot. Seconded by Mr. Pastore. The variance was approved by a vote of 4-3. Ms. Brown, Mr. Demerjian, and Chairman Scrudato voted against the application.

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No. 5 GABRIELE APPROVED 7-0

Applicant: Ms. Louise Gabriele, 36 Witherspoon Street, Block/Lot/Zone: 9502-8-R2
Application: request for a permit, at the above referenced premises, to construct a new 16' wide driveway and curb cut at the right side line of the property, as shown on the survey submitted

Appearances: Ms. Gabriele

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article XIII, Section 700-94 A (3) of the Codes of Nutley regulates properties to one (1) driveway and one (1) curb cut.

In her application, Ms. Gabriele stated that the driveway is extremely short. The garage is too small to accommodate her car. The concrete in the second driveway is uneven and creates a safety hazard. She took questions from the members.

The Chairman asked if she were to put one car in the garage and the second one could be . . . Ms. Gabriele said the garage is too short for the SUV and the other SUV, because the driveway is too short, the car is over the sidewalk. She said even small cars hang over the driveway.

Mr. O'Brien asked if there are two existing driveways. That is correct. She has been denied because regulations allow only one driveway. She said that is correct; and she wants to widen one driveway. She wants to double the size of the driveway to 16 feet. The curb cut is also only eight feet. If this is granted, she will be able to fit two cars in the driveway. The other driveway is problematic because it is sloped. She would like to add shrubbery to the sides of the driveway. Mr. O'Brien asked if the driveway is roughly 17 feet deep. Ms. Gabriele believes it is only about 14 feet deep. He asked if there is a reason why she wouldn't want the driveway any deeper. She said it is a steep hill and she is afraid because members of the household use wheelchairs and walkers. She had her knees replaced and fears walking in that driveway. She wants a nice, flat, square surface.

The Chairman asked if the driveway that is in use now could be elevated. She said it really steeps down; anything could be done, but she does not believe that is the best alternative. The Chairman said this board gave a variance for this property a while ago. It does not make sense. The SUV cannot fit in the garage, the second driveway was an afterthought; the drop off is steep and it puts the applicant in a bind – it also puts this board in a bind. Ms. Gabriele said she has 75-foot frontage and 150 feet back. Here neighbors have 37 feet and have driveways. She is not asking for anything out of the norm.

Mr. Demerjian said another option is to put space to the left of the garage. Would she consider this option? She said there is only about three feet there and it is still on a hill, it is not flat.

The Chairman asked if the garage could be expanded through the back. It cannot because it slopes back there, too. He said this is a Catch 22.

Mr. DaCosta Lobo said the applicant has a nice, big lot with a house nestled all the way up front, all the way to one side and the topography of the slope is as severe as the applicant claims. He thinks this is a pretty clear-cut case of a hardship to the property. Mr. O'Brien commented that she also has a very nice swimming pool!

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 and seconded by Mr. DaCosta Lobo. The variance was approved by a vote of 7-0.

No. 6 ROGERS APPROVED 7-0

Applicant Ms. Florence Rogers, 23 Lafayette Place, Block/Lot/Zone: 7002-14-R-1

Application: request for a permit, at the above referenced premises, to build a 150 square foot 2nd story addition having a 3'.06" side yard setback on the existing non-conforming two (2) family home in an R-1 district,

Appearances: Calvin Rogers; Gloria Reaves-Allen (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article XVI, Section 700-113 A of the Codes of Nutley states no nonconforming use nor structure nor any lawful use on a nonconforming lot shall be enlarged, extended, reconstructed or structurally altered, except that such structure or use may be structurally altered to correct an unsafe condition.

A nonconforming structure or a lawful structure on a nonconforming lot may be restored or repaired in the event of partial destruction thereof. The existing home is a two (2) family in an R-1 district.

Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley, the "Schedule of Regulations" requires a six (6') foot side yard setback in an R-1 zoning district.

The applicant noted on the application that the setback is an existing condition and that the addition is necessary to provide for a second means of egress from the second floor apartment.

Mr. Pastore said it appears that the applicant's house is extremely close, maybe a foot off of the property line, to the neighbor's house on the left. Mr. Rogers said his house is three feet from the property line. The neighbor is even closer.

Ms. McGovern advised the applicant that this property is a none-conforming two-family in a one-family zone; therefore, five affirmative votes will be required to grant this variance. Ms. McGovern asked if the work that is proposed will be an aesthetic improvement. It will improve the ingress and egress of the second floor and allow for a safer exit in case of an emergency.

Ms. Reaves-Allen is in favor of the improvement because she is a tenant in the house. This would be a great plus for her.

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 and seconded by Mr. Pastore. The variance was approved by a vote of 7-0.

No. 7 BARONE APPROVED 5-2

Applicant: Jessica Barone, 363 Walnut Street, Block-Lot-Zone: 1704-28-R1

Application: request for permission to demolish the existing garage and replace it with a 12'x8' shed, having a mean height of 7', located 3'5" off the side and rear property lines.

Appearances: Jessica and Matthew Barone (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article XIII, Section 700-91A of the Codes of Nutley states a single- family dwelling shall be required to have two parking spaces and one space must be in a garage.

Mr. Barone said the garage was in this current state when they purchased the property 18 months ago. He said the foundation is cracked. The garage has siding but there is nothing it is attached to. The proposed shed will be four feet off the property line, back and side.

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 Chairman Scrudato. He stated that the garage would be replaced by a 12'x8' shed constructed of wood. Seconded by Mrs. Ryder. The variance was granted by a vote of 5-2. Mr. O'Brien and Mr. Demerjian voted against the application.

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No. 8 AULETTA APPROVED 7-0

Applicant: Marcy Aluetta, 119 Raymond Avenue, Block-Lot-Zone: 5304-16-R1

Application: request for a demolition permit to demolish the existing garage and replace it with a 12' x 16' shed with a mean height of 8 feet with a four-foot rear and side yard setback.

Appearances: Marcy Aluetta (sworn)

Letter of Denial was read by Mr. DaCosta Lobo

Chapter 700, Article XIII, Section 700-91A of the Codes of Nutley states a single- family dwelling shall be required to have two parking spaces and one space must be in a garage.

The chairman noted that there was another structure near the garage. Ms. Auletta said there is a shed there and she hopes to tear it down. She would like to tear down both the garage and the shed.

Mr. O'Brien asked the size of the existing garage. The drawing looks as if the existing 12' x 16' shed is almost the size of the existing garage. Ms. Auletta said it is 10' x 17'. He asked her why a shed as opposed to a garage. She said that money is one consideration; and she can get a prefab shed at Home Depot. The chairman advised the applicant that finance cannot be considered.

Mr. Demerjian asked if the shed would have a garage door on one side. Ms. Aluetta said yes; the shed will look like a garage. It is a prefab/shed/garage door.

Mr. DaCosta Lobo asked if the doors would open sufficiently to drive a car through it from the driveway. Ms. Auletta is looking to get a roll door. The opening is wide enough and it will face the driveway. Essentially, she is building a garage. She has no plan to use it as a garage as it would be too difficult to maneuver.

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; he stated that the shed will remain in the footprint, it would be more aesthetically pleasing. Seconded by Mr. Demerjian. The variance was granted by a vote of 7-0.

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Ms. Brown recused herself from hearing the following application.

No. 9 TURI APPROVED 6-0

Applicant: Gerald Turi, 17 Edgewood Ave., Block-Lot-Zone: 3402-4.02-R1AA

Application: request to install two AC condensers and one generator in the northern side yard.

Appearances: Gerard Turi; James Quinn, 11 Erwin Pl. (sworn)

Letter of Denial was read by Mr. DaCosta Lobo

Chapter 700, Article III, Section 700-3B of the Codes of Nutley; Definitions: Side yard is an open space between the building and the side line of the lot extending through from the front to the rear yard or to another street, into which space there is no extension of

the building above the grade level. The required side yard in an R-1AA shall be eight feet and 10 feet shall be an open space.

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

Mr. Turi stated that the air conditioners are higher than his basement windows.

Mr. Demerjian asked what the size of the generator is that he would like to install. It is 20kw and natural gas.

Mr. O'Brien asked what the clearance would be between the unit and the side yard. Mr. Turi said it the AC would be 10 inches over the maximum allowed and the generator will be 11.3" over. He believes that will make nine feet for the generator. Mr. Demerjian said an R1AA is eight and 10 feet setbacks. O'Brien said the foundation plan shows an eight-foot clearance on the left side. Mr. Turi said he was looking to use the right side. Mr. O'Brien understands, but wondered how much clearance will be on the right side, will it be eight feet. Mr. Turi said it would be over eight feet. The chairman asked how that is possible when he only has 10 feet. He can set them close to the back of the house He would have 9'2". The generator will be 8'10" from the line.

Mr. O'Brien asked what the complication is to move the equipment to the back of the house. Mr. Turi said that he has a walk-out basement with low windows. When he looks outside, he is looking at the Ac units. He would also like to keep the space open because down the line he would like to install a pool/Jacuzzi. Mr. O'Brien asked if there was any equipment in the side yard previously. There was not. He asked if there was equipment at some other time anywhere on the property. Mr. Turi said this was a garage and driveway that he knocked down to build the house. On the filed plans for the house, the AC unit was placed exactly where he is requesting it now.

Ms. McGovern stated that the photographs of the windows the applicant showed the members from his phone were the ones that he spoke about that are on that side of the house.

Mr. O'Brien asked Mr. Demerjian why in an R1AA is there a requirement for eight feet and one side and 10 feet on the other. Mr. Demerjian's response was not picked up on the recorder.

The Chairman asked if the air conditioner is environmentally friendly. Mr. Turi said it is 70 decibels, one of the lowest on the market.

Mr. DaCosta Lobo asked the applicant if he discussed this location with his next door neighbor. The neighbor is present. Mr. Quinn approached the podium. He is in agreement with Mr. Turi as to where to place the equipment. He has no problem with it.

Mr. O'Brien asked if there is a possibility of putting something on the property line to act as a screen. Is the applicant planning to put any fencing up or adding any landscaping. The applicant has put up 54 arborvitaes trees.

Mr. Demerjian would like to see more arborvitaes or some screen towards the street. The applicant agreed to do this.

With no further questions from the members and no one else in the audience with questions or comments, a motion to grant the variance was made by Mr. O'Brien. He stated that the proposed location appropriate to the property and is the best location for the equipment, with the provision of a planting, buffering directed toward the street and the side yard; to leave a minimum of 8'6" clearance at the placement of the units. Seconded by Mr. DaCosta Lobo. The variance was granted by a vote of 6-0.

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BUSINESS, LITIGATED MATTERS: None.

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RESOLUTIONS: All approved.

- Rota, 74 Hastings Ave.
- Gallop, 25 Moore Place
- Towey, 81 Povershon Rd.
- Manieri, 21 Weston Street
- Levis, 37 Howard Place
- Romero, 550 Bloomfield Ave.
- Long, 113 Pershing Ave.
- Mercado, 49 Montclair Ave.

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INVOICES: Penonni billing statements approved for payment.

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Respectfully submitted,

Marie L. Goworek