

NUTLEY ZONING BOARD OF ADJUSTMENT
Public Session Meeting Minutes
June 17, 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, Gary Marino, Thomas O'Brien, Ralph Pastore, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

ABSENT: None

EXCUSED: Frank Graziano, Mary Ryder

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No. 1 RACEWAY PETROLEUM, INC. APPROVED 7-0

Applicant: Raceway Petroleum, 150 Washington Ave., Block/Lot/Zone: 6902/11/B-4

Application: request for a zoning permit to amend the existing zoning certificate from a gasoline filling station limited to sale of items related to a gasoline station, to a gasoline station with a convenience store/food mart.

Appearances: Robert Gaccione, Esq., of Gaccione Pomaco. Michael Loucopoulos, VP of Operations, Raceway Petroleum, 1411 Stelton Road, Piscataway, NJ; Jacob Solomon, architect, 1425 Plaza Road, Fairlawn; Peter Stack, planning consultant, Maplewood (sworn)

Exhibits: A1 - 5 photos; A2 – three-pages (aerial photo, excerpts from Master Plan and picture of the outside area; series of photographs taken of the store on April 14th)

Letter of Denial was read by Mr. DaCosta Lobo.

- Chapter 700, Article V, Section 700-7A of the Codes of Nutley requires all uses to be listed.
- Chapter 700, Article V, Section 700-19 lists the permitted uses in a B-4 zoning district; a convenience store/food mart is not a permitted use.
- Chapter 700, Article V, Section 700-113A states no non-conforming uses nor structure nor any lawful use on a non-conforming 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 non-conforming structure or a lawful structure on a non-conforming lot may be restored or repaired in the event of partial destruction thereof.

Mr. Gaccione explained that his clients lease the property at 150 Washington Avenue. His client is seeking to sell additional products from the site. When he started adding more items, he received a violation notice from the town's code enforcement officer. This is an appeal from the denial letter dated January 29, 2013, in order to seek the approval to sell a wider variety of products at the above address. The letter of denial indicates this is a pre-existing non-conforming use as a gas station; therefore, any expansion requires a D Variance.

In response to Mr. Gaccione's questions, Mr. Loucopoulos testified that Raceway began leasing 150 Washington Avenue in September 2009, and is using it as a gasoline service station with a snack shop. Prior to Raceway leasing the lot, Hess Petroleum was

operating a station with a snack shop, as well. When Raceway took possession of the property, they found cigarettes racks, drink coolers, evidence of lottery sales, chips and snacks racks, signs for prepaid card phones, etc. Raceway continued with the same type of mart. Pictures were taken by Mr. Loucopoulos at about the time the lease commenced depict the building condition at that time.

The chairman asked if the photos were dated and Mr. Gaccione said they were not. The chairman said they could have been taken a year prior to or even a year after the lease date. Mr. Gaccione said they were taken at the commencement of the lease.

The Chairman noted for the record that this is a use variance request.

At the request of Mr. Gaccione, Mr. Loucopoulos described what is in the photographs. He also stated that the operating hours are from 5 a.m. to 11:00 p.m. There are four employees at the site; the max during operating hours is three. On a daily basis, the mart serves about 100 customers. Approximately 80% are customers that come in for fuel and go into the store to buy items. Products include cigarettes, lottery tickets, drinks, chips, gum, candy, propane, ice, etc.

At the time of the lease, Mr. Loucopoulos had a conversation with David Berry, code officer, who said that as long as Raceway sold the same items that Hess had sold, that would be fine. If Raceway expanded into coffee and milk items, then a variance would be required. The current operator did indeed expand on the use.

He described a typical Raceway station having a mart that sells gas, cigarettes, snacks, and cold drinks. Depending on the size of the store, some go as far as having a convenience store, selling coffee and food items; but every Raceway Station has a mart. Mr. Gaccione asked if Hess sold lottery tickets and if Raceway sells them now. Mr. Loucopoulos answered yes to both questions.

The Chairman said that Hess did sell many of the mentioned items but did not sell propane; but Raceway does. Mr. Loucopoulos said Raceway applied through the town for a permit to sell propane and was approved. The Chairman asked if Raceway was aware that Hess came before this board for a variance to operate a retail store and it was denied. Mr. Gaccione said he disagreed with that. The chairman stated that he was on the Board at the time and he voted and the Board voted against it. Mr. Gaccione said the town records do not show this. The chairman said the records are wrong. [Mr. Gaccione's comments were in and out of range of the microphone and intelligible]. The chairman said Hess withdrew its application.

The chairman asked that Mr. Loucopoulos describe what is directly across from Raceway. He responded that there is a K-6 school on the other side of the street. There is a full convenience store and a bagel shop on the other corner.

Mr. Demerjian asked who the owner of the property is. Mr. Loucopoulos said the owner is David Mandlebaum, an LLC. Raceway leased it with a subtenant operating it.

Mr. O'Brien asked who might be the primary customers in the store. Mr. Loucopoulos said he thinks it would be the customers pulling in for gas and going into the store for additional items. Currently, they see approximately 80% of the customers come in while fueling up their vehicles for a drink, cigarettes, and lottery tickets. The bulk of the customers are already on the property. Mr. O'Brien said this type of convenience is seen all the time at service stations. It is very common. Mr. Loucopoulos said Raceway does

not operate any stations without a store. The industry is moving more towards convenience stores. Mr. O'Brien asked if this type of service creates any congestion or difficulty for the operation of the business. Mr. Loucopoulos said no; there is ample parking on the site for non-gas customers to come in. Mr. O'Brien asked if Mr. Loucopoulos feels that this service draws additional people into the business or is it what he expects to be a normal flow of people. Mr. Loucopoulos said it gives an additional service to customers that pull into the station for gas. He does not see this as adding additional traffic hazards or patterns to the in and out of the customers from the property or affect the school across the street.

Mr. Marino asked if there would be prepared foods. There will be no prepared foods; the store will stay within the 350 sq. ft. of current space. It is primarily prepackaged, grab-and-go items. The children from the school across the street do not come into the store.

Mr. Solomon was accepted as an expert. He described the site as approximately 8,875 square feet with a filling station and a snack shop. The existing building has a footprint of approximately 700 sq. ft. Approximately, 350 sq. ft. of that area is accessible to customers in the snack shop. The gas canopy covers about 1800 sq. ft. so the entire building coverage is 15.4% of the lot. There are 11 striped stalls on the property. There are no alterations or additions to be made as a result of this application. The structure is a one-story block building with a steel frame and a glass storefront.

Ms. Brown said there is no definition for a convenience store in the zoning code. Why does it, if the station is already selling cigarettes and they now want to sell coffee, make a difference when there is no definition. Ms. McGovern said the way she understands it is that the code official made a decision and this board made interpret the code differently, that this does not need a variance; that this is allowed in this zone. She doesn't know if the code official was looking at the fact that the gas station was there for so long and sold all these products, a pre-existing non-conforming use and now the new owners want to sell a couple of extra items and this becomes the straw that breaks the camel's back. Mr. Gaccione said, in his conversation with Mr. Berry, Mr. Berry drew the line at selling coffee.

Mr. Demerjian asked if the sales area has changed. It has not. Mr. Gaccione said it was the new products that lead the official to make his decision to send this to the board. Ms. McGovern said takeout restaurants are allowed in this zone. Mr. DaCosta Lobo said this is a gas station, so to say that it is a takeout restaurant, that is a second use. There is only one primary use on a site. Ms. McGovern understands that, but that is the issue. Potentially both are allowed, but convenience store is not defined. Mr. DaCosta Lobo said the issue is there is a non-conforming use for the gas station, to begin with and the non-conforming aspect is being expanded. Mr. Demerjian said he doesn't think it is. Mr. Marino said if they are selling iced coffee in a can, are we penalizing them for selling heated coffee. Mr. DaCosta Lobo said he thinks that is the judgment call that the code official made; there were certain things being sold here that is a pre-existing, non-conforming use, continue that use as permitted, you are looking to add to the number of items and the type of the items sold is an expansion of the use. He thinks that is the call the official made and that is why they are here tonight.

Ms. McGovern said the code official's letter says a convenience store/food mart is not listed as a permitted use in the zone. This is an application not necessarily under a full D variance, increasing a non-conformance use, so the proofs are less here.

Ms. Brown lead the definition for a retail store: A retail store says, “A building which any article excluding automotive vehicles, boats and building material offered for sale at retail. They don’t tell you you can sell this and you cannot sell that.” Mr. Gaccione said the point Ms. Brown made is one that concerns Raceway. There is no definition of convenience store.

Mr. Gaccione’s next expert witness, Mr. Stack, is familiar with the property and the surrounding area. He described how the previous tenants had the store and sold similar items. The applicant discontinued selling coffee when he received notice from the town. He said there are no physical changes to the site or the building. The structure has historically been used for retail use; convenience items will continue to be used. The only issue is the array of items to be sold there. The proprietor would like a wider array of convenience items. He described the building uses adjacent to and around the subject property – a carwash, a vocational school, a pizza parlor, etc.

Mr. Solomon referred to the Master Plan (2012). This particular area drew a lot of attention because there are many non-conforming uses. This area was specifically looked at for an area of economic development. This zone permits a range of uses by right that include take-out food establishments automotive sales agencies; laundries, dry cleaning, printing establishments, lighting assembly, amusement devices as accessory uses and discount stores. The zone lists conditional uses – gasoline filling stations and automobile service stations (there is no automotive repair at Raceway), both are permitted as a conditional use only in this zone and only in the M1 zone. The only listed condition Raceway does not meet is the fact that the canopy is not 20 feet back from the right-of-way.

He further compared this station to the others in town – this is not a corner station, activity is regulated at the entrance and exit. A key component of this application is that the retail space is only 350 sq. ft. That is typically very small. There is no new gas station that he is aware of in his practice that would propose a retail area of that small size. Gas stations are open extended hours, it is a very competitive business, and it helps the applicant in the competitive market. The reason the applicant wants to sell the coffee is simply it is traditional as an accessory component to a gas station business and it is a convenience to the customers. A customer will not have to go from the gas station to another place that sells coffee, eliminates some driving turns, and maneuvers to buy coffee elsewhere. Coffee may be purchased while a vehicle is being filled with gas.

Mr. Gaccione presented his summary to the members.

With no further questions from the members and no one in the audience with questions or comments, the Chairman asked for a motion, reminding the members that this is a D Variance and five affirmative votes are required.

A motion to grant the variance was made by Mr. O’Brien stating that the testimony is very convincing that this meets with the objectives of the Master Plan and promotes economic development. It is a good service to the neighborhood; there is no detriment to other businesses around it. It does make efficient use of the land and the case that it may save energy is reasonably valid. Seconded by Mr. Marino. The variance was granted by a vote of 7-0.

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Ms. Brown recused herself from the following matter.

No. 2 MARINELLI – STELLATO APPROVED 6-1

Applicant: Mr. & Mrs. M. Marinelli, 5 White Terrace, Block-Lot-Zone: 3602/13/R1

Application: request for a permit to install a 10'x16' above ground pool, having a two-foot setback from the main dwelling, a three-foot side yard setback, a four-foot rear yard setback with pool equipment having a three-foot side yard setback and to construct a 2nd story floor addition (12'7" x 24'5") with a two-foot cantilever in the side yard, which will increase the lot coverage; also to leave as erected, a 13' x 15' unroofed deck, having a 16-foot rear yard setback, which increases the lot coverage to 42.8%.

Appearances: Carmine Alampi, Esq., Anthony Dagosta, 19 Feldswood Drive, Verona, NJ, unlicensed architect design consultant; Robert Costa, 325 South River Street, Hackensack, Engineer/Planner (sworn)

Revised Letter of Denial was read by Mr. DaCosta Lobo.

- Chapter 700, Article V, Section 700-9 D(2) of the Codes of Nutley states a pool shall be no closer than eight feet to any side or rear lot line, or nearer to the side street line of a corner lot than the main building on the lot; or if the abutting lot to the rear faces said street line, then the distance equal to the depth of the front yard required on said lot to the rear. A/G pool will have a two-foot setback from the main dwelling, a three-foot side yard setback, a four-foot rear yard setback.
- Chapter 700, Article V, Section 700-9 D(6) requires all pumps, heaters and filtrations 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 will have a three-foot setback from the side yard.
- Chapter 700, Article IX, Section 700-67 C state extensions of a structure into a required front or rear yard shall be permitted as follows: no detached accessory building shall be located nearer than 10 feet to a main building. A/G pool will be two feet from the main building.
- Chapter 700, Article VIII, Section 700-46 B (4)(d) states by any terrace or porch having its floor level no higher than the floor level of the first story of the building and having no railing or other member higher than three feet above floor level: six feet, leaving a rear yard setback of 24 feet. The deck has a rear yard setback of 16 feet.
- Chapter 700, Article VIII, Section 700-46A, the schedule entitled "Schedule of Regulations as to Bulk, Height, and Other Requirements," requires maximum lot coverage of 35%. The leave-as-erected deck, the cantilever addition, and the above ground pool will increase the lot coverage to 42.8%.

The attorney addressed the board and gave a briefing of the application. Ms. McGovern said that this is a new application and that the previous one heard and then carried has been amended. This will be heard as a new application with prior testimony not being considered.

Mr. Dagosta is not a licensed architect; he cannot testify as such, but he can testify as someone who prepared the drawings. The design is for an existing two ½ story frame structure with three bedrooms and one and ½ baths. They are looking to increase the square footage of the existing home for a larger master bedroom and bathroom. The tight quarters have caused the applicants to re-evaluate the square footage for the second floor. The best alternative is a two-foot overhang on the side yard setback. This does not impede with the side yard setback zone requirements. The square footage of the proposed new addition is roughly 380 square feet. The plan is to convert the upper levels into three bedrooms and two baths. No work will be done on the first floor. The footprint will remain the same and the two-foot cantilever still conforms to the setback requirements. The structure is a 2½ story cape with aluminum siding. The applicant

wants to re-side the house with a more aesthetic fiber cement finish and PVC trim. The gable type roof will not change. The windows will also be upgraded.

There are two deck areas that will not be altered. A temporary utility shed was erected on the side of the home. It has since been dismantled and removed from the site. It was situated directly beneath the proposed addition in the side yard. The applicant plans to have a 16'x10' oval shaped pool constructed in the southwest/south-east corner of the property. A variance is required because the side yard setback is three feet and the rear yard setback is four feet. There are no other changes to the property; the grade and contour of the property will not be changed as a result of the application.

Mr. Marino asked if there would be a deck attached to the pool. Mr. Alampi said he does understand that there is decking around the pool. Chairman Scrudato said that does not show on the plan and it moves it closer to the main structure.

Mr. Demerjian said there was a variance missing from here. The impervious coverage appears to be over 70%. Mr. Dagosta asked what he was using for his impervious coverage calculation. He is using all hardscape – deck, pool, patio, walks, driveway, building. Mr. Dagosta had a calculation of 49.9%. Mr. Demerjian said that is not possible. Mr. Alampi said the survey that is attached to the plan shows a walkway, the front of the house, a sidewalk to the side of the house; these have been removed by Mr. Marinelli and redesigned with landscaping. This has reduced the impervious coverage area.

Mr. Demerjian asked what is the extent of the rear patio, after the deck. Mr. Dagosta said the southeast corner is grass; the southwest section is pave and brick. Mr. Demerjian asked if the entire half the back yard is patio, and the applicant is still less than 50% impervious coverage. Yes. Mr. Demerjian said it could not be. Mr. Dagosta was asked to mark the impervious coverage on the survey. Mr. Alampi gave the argument to offset the dispute that the pool holds water. It does not reject it.

Robert Costa gave a brief background of his credentials and was accepted as an expert by the Chairman. He investigated the area in person and with the google maps and found that within 500 feet there appear to be six or seven above-ground pools. Each are located in the corner of the rear yard setbacks of their own property. It is not unusual to see the pool structures as accessory uses. Because of the size of the lots, in this case, the lot is 95 feet in depth, in order to maintain the setback from the street and the dwelling and have the remainder of the property, it is very difficult to get a pool in here and not seek a variance. Unless the structure, itself, was reduced in some way, there is no way to avoid this variance. The distance between the pool and the house is conforming. The pool equipment, side yard, and rear yard are triggering variances – there is three feet off the side, four feet off the back. Currently a six-foot vinyl fence surrounds the property. The applicants would have no issue with adding shrubbery. He said he would recommend that his clients add self-locking gates for security reasons.

Mr. Costa said the setbacks on the easterly side are 8.29 feet to the existing garage. The addition will sit on top of the garage with a two-foot cantilever to make up the master suite. This is necessary for the configuration of the rooms to work properly. There is nothing unusual about the size and configuration of the proposed rooms; they are not over-sized. Mr. Costa feels the upgrades to the house i.e. the aesthetics, the upgrades to the house, the upgrades to the roof peaks and getting some styling up there is an asset to the neighborhood. The setback on the opposite side is 4.5-5 feet where six is required. There are no improvements on that side of the home that would change that dimension.

His opinion is that the variances can be granted for the pool without any impact on the property and neighbors. As far as the pool equipment, he believes it could be moved closer to their home without disturbing the neighbors. He feels a variance could be granted for the impervious coverage without any substantial negative impact on the neighborhood. It is an existing non-conforming.

Mr. DaCosta Lobo asked Mr. Costa if he thinks the equipment could be situated without a variance. Yes, to put it on the west side and to shield it, so noise does not become an issue. If it can be within the accessory of the home, he thinks it can be moved eight feet off the property line.

Mr. O'Brien said the applicant is cited for leave-as-erect a 13'x15' unroofed deck. Is the existing wood deck shown on the right proposed plot plan the deck that is in question? No, Mr. Costa believes it is the other one. Mr. O'Brien asked how long ago was the deck built. The applicants bought the house in 2009 with the deck already in place and it is being cited now. There used to be a pool on the property, but it was removed.

The chairman asked Mr. Alampi if he recommended a smaller pool to his clients. He said he is sure the chairman could advocate something a little smaller. The Chairman said he believes there will be testimony about a two-foot deck around the pool, to be one foot off the property line. Mr. Alampi said it would be just a platform to get in and out of the pool.

Mr. Demerjian asked what the dimensions are from the pool to the existing deck. Approximately three feet. Mr. DaCosta Lobo said the letter of denial says the pool is two feet from the main structure, which includes the deck. Mr. Costa said three feet is a little tight – should it be more? Yes. Could they get a smaller pool? Yes. The chairman asked Mr. Costa if he made that recommendation to the applicants. He did not, but he will turn around and ask them. Mr. Demerjian asked is the pool could be placed in the area of the brick paver patio. Mr. Costa said some of that could be removed. The applicant said the pool size can be reduced to 8'x10' or 8'x12'.

With no further questions from the members and no one in the audience with questions or comments, the Chairman asked for a motion.

Mr. Marino he would like to see the applicants keep to their original plan of a 16-foot pool. He would like to suggest moving the end of the 16-foot pool even with the existing wood deck, they would lose six feet of the pavers giving them a little more grass land. It would look a little nicer because the pool won't be hanging out where someone could look down the end of the house and see it. He would like to make the condition that arborvitaes be planted on the south and east sides.

Mr. DaCosta Lobo asked then if the only variances required then are for the rear setback and the setback of the house. [More discussion took place off recording.] Mr. Alampi said he understands if the pool is shifted to the middle of the rear yard, making it eight feet off the side yard line, the variance could be eliminated altogether. He said that could be done. He further said that if the Board is disposed to making these conditions acceptable, he will have a resolution compliance plan drawn up which means before the memorialization, the plans will be redrawn this element of the plans, so that the board can see that the eight-foot setback has been achieved. Just a point in fact, they will not have an eight-foot setback from the rear property line, but only from the side. Landscaping will also be put in place.

Mr. O'Brien asked Mr. Marino if the applicants were going to keep the size of the pool at 16'x10'. Mr. Marino said initially he suggested that, but Mr. Demerjian has concerns about the width of the pool. Mr. O'Brien said this side of the board wants a 15-foot wide pool. Mr. Alampi said they are keeping the dimension of 10'x16', moving the pool to the middle thereby achieving an eight-foot setback on the side yard, still only four feet from the rear property line and adding landscaping. Mr. Marino said he would like to see the platform for the pool on the west side (interior side of the pool away from the neighbors) on the pavers.

The Chairman asked if the plans are going to be revised again. Mr. Alampi said the applicants accept the recommendations of the board and if the board will take action tonight with these conditions, the applicants will submit the revisions to the board so that the zoning officer . . . The Chairman said either that or they can continue when they have the revised plans. Mr. Alampi said they would like to schedule the contractor to go forward with the work on the home. The applicants would like to have the baby's bedroom ready before the baby is born. Ms. McGovern told counsel he could submit the plans, but he does not have to do that. He said he would prefer to do so, so there are no misunderstandings, and he wants the board to have a level confidence. Ms. McGovern said the board would get the plans attached to the resolution before it is memorialized. He will also be sent a copy.

A motion to grant the variance was made by Mr. O'Brien and seconded by Mr. Marino. The variance was granted by a vote of 6-1. Chairman Scudato voted against the application.

With no further questions from the members, the Chairman again asked for a motion. Mr. O'Brien made a motion to grant the variance saying that the lot is slightly shorter than standards, that the application for an aboveground pool is a nice element that supports good quality of life; this is a well-kept property; the fact that the proposed addition adds to lot coverage, he believes it is a properly designed addition; it is reasonable scale and it makes good use of the interior space and architecture. Regarding the 13'x15' unroofed deck to leave as erected, it offers no further encroachment than existing previously approved structures. The issue of the equipment will be set in such a way as to be well shielded and as far away from sidelines as possible, The location of the pool will be moved according to the Resolution compliance plan that will show the pool moved so that the side yard is not affected and the board will offer variances for the rear yard setback and the setback from the existing structure as discussed. Seconded by Mr. Marino. Approved by a vote of 7-0.

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Ms. Brown returned to her seat following the vote in the above matter.

The Chairman announced that not much headway is being made on the agenda tonight. If anyone on the agenda would like to have their application postponed until the next regular scheduled meeting, they will be put first on that agenda. He said that new testimony will not go past 11 p.m. tonight.

No. 3 RJC 64 REALTY, LLC APPROVED 6-1

Applicant: Mr. Piro 66 Franklin Avenue, Block/Lot/Zone: 9102/1/ B-3
Application: request for a construction permit, at the above referenced premises, to subdivide the existing 2nd floor, 2,070 square foot dwelling unit, into two (2); two (2) bedroom 1,010 square feet and 1,060 square feet apartments, increasing the number of

dwelling units in the existing mixed use building from three (3) dwelling units to four (4) dwelling units

Appearances: Joseph C. Angelo, Esq. 127 Franklin Avenue; Roger Cirminiello, 59 North Spring Garden Ave., Architect (sworn); Rosario Catanzarite, RJC Realty (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 non-conforming use shall be enlarged, extended, re-constructed, or structurally altered.
- Chapter 700, Article VII, Section 700-40 of the Codes of Nutley states a "mixed use" is the use of a building, multi-stories in height, in B-1, B-2 or B-3 Zoning District for residential and business uses, the residential use of which shall be permitted only in the second story of the building. The proposed alteration is on the 2nd floor.
- Chapter 700, Article XIII, Section 700-98 of the Codes of Nutley requires a landscaped buffer strip at least six (6') feet in width containing plantings at least three (3') feet high when the parking area adjoins a lot in any R district. Zero is provided.
- Chapter 700, Article XIII, Section 700-91 A of the Codes of Nutley states no building or premises shall be used nor shall any building be erected nor shall any building be altered so as to expand its usable floor area unless there is provided parking spaces upon the same premises upon which the use or building is located, or as provided for in accordance with the following schedule: (18 spaces are required – 11 spaces exists).
 1. Multifamily dwelling - 1 1/2 for each dwelling unit, except 2 for each dwelling unit of 2 or more bedrooms.
 - a. 2nd floor proposed two (2) bedroom dwelling units requires 4 parking spaces
 - b. 3rd floor existing two (2) bedroom dwelling units requires 4 parking spaces
 2. Retail stores and service establishments, except as noted below - 1 for each 200 square feet of total floor area.
 - a. Ground floor retail establishment - 2,100 square feet divided by 200; requires 10.5 spaces.
- Chapter 700, Article III, Section 700-3 B of the Codes of Nutley, definition of Parking Space states an off-street space available for the parking of one motor vehicle and having minimum dimensions of nine feet by 19 feet, exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct usable access to a street. A parking space shall have direct usable access to a street.
- Chapter 700, Article VII, Section 700-40 of the Codes of Nutley is the requirements for a mix use building.

SCHEDULE

	REQUIRED	PROPOSED
Front	Minimum 3' or average	5'.6"
Rear (B-3)	twice the height of the building: 35'.8" X 2 = 71'.4"	38'.6"
Side	4'	3' approximately

Side Other	10'	35' Average
Stories	2	3
Height	25'	35'
Lot Coverage	45%	35%
Parking Section 700-91 A	See schedule on plan 18 spaces required	11 spaces

Mr. Angelo briefed the members on the project. They are adding spaces and taking away one bedroom. The existing structure requires 16 spaces – there are, currently, six. With what the applicant is proposing, 18 spaces are required; they have 14.

Mr. Cirminello's credentials were accepted by the Chairman. He said the project involves the more-efficient use of the second floor apartment. There is retail space on the first floor of the three-story brick building built in the 1930s or 1940s. The apartment is an oversized, five bedroom. The placement of strategic partitions inside the current space was divided into two separate apartments with two bedrooms each. The third floor and the ground floor remain the same. Four parking spaces are proposed on the side street. There is a pending agreement for four more parking spaces on another piece of property. The agreement, with Passaic Valley Sewage Commission (PVSC) will be a condition of the variance, if approved. Ms. McGovern said that the agreement needs to be kept current or should the lease expire or not be renewed, the applicant would have to come back before the board for a parking variance. Mr. Angelo said he understood.

Mr. Cirminello discussed the landscape buffer. He said that the buffer would actually be a detriment to the parking area. It would interfere with two of the parking spaces. In response to Mr. Angelo's questions, Mr. Cirminello said there are two units on the third floor, which would require four parking spaces. There is one unit on the second floor with five bedrooms, which requires two spots. The retail space on the ground floor requires 10.5 for a total of 16. The applicant is proposing 14 on this project and the requirement is 18. There will be no alterations to the footprint, exterior, height, bulk, dimensions of the building.

Ms. Brown read the definition of parking. She said tandem parking is not allowed and she then asked how to get to the two-car garage. Mr. Cirminello said access to the garage is made from the curb cut on Franklin Avenue. Ms. Brown said that is not the applicant's property. The witness and the attorney both said the curb cut is on their property. Mr. Cirminello further stated that all parking is accessible from existing curb cuts.

Ms. McGovern asked if the code office was aware of the plan. Said she believes the off-site parking would require a separate variance. Mr. Demerjian said the letter of denial refers to 11 parking spots. Mr. Angelo said he thinks that since they are getting approval the four spots from the PVSC, this may have caused a wrinkle with that.

Mr. O'Brien asked if what is there on the outside is there and nothing there will change. All the work to be done will be on the second floor. He asked if the proposed layout is better for the second floor. Mr. Cirminello said it is dramatically better. The second floor is a single 2,000 sq. foot apartment with 5 bedrooms. It makes no sense; it is not efficient. Mr. O'Brien compared the plans with the layout of the third floor and the second floor seems stronger, amore-solid plan. In total, they are losing a bedroom. It strikes him that this is a more-favorable condition that there are less bedrooms. There is a technicality with an additional unit and there is no change to the outside parking. Mr. Cirminello agreed that it makes no sense to have a five-bedroom apartment.

Mr. DaCosta Lobo assumed the garage accounts for two for the 14 spaces. He is correct. It was said noted that each of the units should have two allotted spaces. They would be a need to jockey about in the back. The garage spaces have yet been determined as to who would use them.

Chairman Scrudato asked if the parking spaces have been identified as to where they are. He requested that they be.

Mr. Demerjian said the bottom line is there is something wrong in the letter of denial. Mr. Cirminello said if you focus on the plan itself, they are proposing 14 spaces.

The Chairman said it was brought to his attention that off-site parking spaces are required to be granted by the Planning Board, not this Board. They would have to go before the Planning Board for approval. Ms. McGovern cited a paragraph from the code book.

Mr. Angelo said the applicant cannot do anything with what they already have; it is already pre-existing. What they are proposing is to remove a bedroom and potentially remove the people that will be in there – there could be five college students there with five cars – and add spaces. If the technically is that the applicant only went for the four spots getting permission from the adjoining property owner, to make it more conforming, If the board would like to consider the application without those four spots, he thinks it is still compliant with what the plan is now, which is to remove a bedroom, remove the potential amount of people who could park there, yet will add spaces to the existing property. Clearly, the benefits outweigh the detriments on its face because they are gaining parking while talking away a bedroom. He said even though they are trying to maximize the amount of parking, the applicant has no problem without the four spaces from the PVSC. The plan still gives more parking and takes away a bedroom. This is a dramatically more efficient use of the space in line with the neighborhood-zoning plan.

Mr. DaCosta Lobo is willing to countenance tandem spaces where each set is reserved one to an apartment. If you take that away, there are 14 spaces for use by employees, owners, and customers of the stores without those four in front. That is a thorny issue. He personally would not be eager for the applicant asking the board to consider this matter without those four spaces. Mr. Angelo said, just to be clear, right now, as it exists, if they were to do nothing, there are six spaces. Those six spaces were used by the salon, a skate shop for he does not know how long – just six spaces. This is why he proposed that the board might want to consider this without those four additional spaces, he would be happy to do that. If you are taking away a bedroom and adding spaces where there aren't any now, it's a no brainer.

Mr. Marino asked who uses the garage now. Mr. Angelo said his client does not live there, but he will have him come up to answer questions. Mr. Marino said they are operating with four spaces and things aren't tragic. In reality, if no one is using the garage, they are operating the apartments and the retail space with only four spaces. The chairman said there is parking on the street. Mr. Angelo said the businesses are 9-5 or 9-7; overnight is for the tenants. When businesses are closed, the streets are open. The chairman said when tenants are home and using the parking spaces, that does not leave it available to customers. Mr. Angelo said what exists now does not help if they do nothing.

Mr. Catanzarite, the owner of the building, said that he is familiar with other building owners in the neighborhood. He has never had an issue or complaints about the parking.

Mr. Marino asked if anyone parks in the garage. Mr. Catanzarite said the garage is being used for storage of construction materials. It will be available to tenants in the building. Mr. Marino asked if there were any signs saying parking for skate shop and salon? He has been in those stores before and never parked in a parking spot. Anything that says it is accessible to the public? There are no signs. Mr. Angelo said if they do nothing, they know that sixteen spots are required.

The chairman asked were deliveries to the retail stores made. Mr. Catanzarite said there is a side door on Coppola where deliveries are accepted. There is parking on the street as well as the parking spaces.

Mr. O'Brien asked if the survey that shows four spots is really a valid design for what is in place right now. Mr. Angelo said that is the existing layout; it is an "as-built" of what the property is and how it is being utilized. Mr. O'Brien cited Chapter 700, Article XIII, Section 700-91 A of the Codes of Nutley: "18 spaces are required – 11 spaces exist." This is actually incorrect since only four spaces exist. Mr. Catanzarite said that is correct, but six with the garages. Mr. Angelo said before he took on this matter, a plan that was submitted to Mr. Berry called for 11 spaces. In the denial letter, Mr. Berry was referring to the 11 spaces that were on the first plan that was submitted. There are really only four spaces and a garage. In an attempt to gain more parking, the applicant, to satisfy an issue that might have come up, he maximized parking with tandem and went even further by securing four spots from PVSC. He said they do not want to complicate things by having to go before the planning board, they will just take away those four spots. The chairman said he doesn't know if this board has the authority to approve off-site parking space. Mr. Angelo asked that the board take those spaces out of the equation and consider the application without it.

Mr. O'Brien said the diagram that the board had was the one that Mr. Berry was referencing. It shows eight and four plus two in the garage. This is what was proposed in a previous plan which shows tandem parking. Mr. O'Brien reminded the attorney that he asked earlier if there were changes to the outside and Mr. Angelo said there were not. He said the applicant is actually going to add spaces. Mr. Angelo said the building, itself, will have no changes; but yes, they are proposing changes to the ground and some of the parking. Mr. O'Brien said it was brought up that some of this is not on the property. Mr. Angelo said the shaded triangular area is the property in question. He said it is open space right now and people do use it. This is part of the reason why Mr. Catanzarite sought out an agreement.

Mr. O'Brien said it was brought up in testimony earlier that the entrance to the garage and the driveway crosses over the adjacent property. Mr. Angelo said that is correct and that existing curb cut, that small space is over the adjacent property; it is the way it exists now and the applicant does not plan to change that.

Mr. Marino feels if the applicant does not include the off-site parking, they are still making it better. When he sees tandem parking, he sees reserved space. If there are four spots and the tenant is gone, a customer can pull in. If one of the tenants leaves, a customer wouldn't tandem park in front of a tenant; this leaves no parking. The way he sees it, the eight tandem spots are off limits to retail because they cannot park where a tenant is and block them in. They have to figure out a way to redesign the parking.

Mr. Demerjian said he does not see it that way. The applicant is making an improvement to satisfy the needs of the building. The second floor has five bedrooms; you could have 10 cars there. Having the tandem parking for the apartments makes sense. You could, in theory, pave the entire yard and have more spaces.

Ms. Brown added that she thinks and does not care what any neighbors say, a landscape buffer should still be provided because it does not make sense not to separate the parking lot from residential. The homeowner could sell his house tomorrow and the new owner may not like it. She has a parking lot backing up to her house and it's horrible. She said there is property here, get a little more creative, get the buffer, get the spots, and make it work.

Mr. O'Brien asked if it wasn't a trade – trading the parking for buffering. Mr. Angelo said they have looked at a few parking scenarios and if they took away the spots, they would have to use that side as access towards the back corner of the property. In that scenario, they would be paving the majority of that back area. They thought not using the buffer and having tandem was a much better solution than paving the majority of the back corner.

Mr. O'Brien said he thinks there is a trade off with the buffer vs. the impervious surface vs. the parking. He respects the tug on either side and asked of the applicant was opposed to a buffer if it is something that satisfies the board and sacrifices parking. Mr. Catanzarite said no, they are here to work with the board and they thought this was the best design and least detrimental. Mr. O'Brien asked if there were four spots right now. Mr. Angelo said yes, there are. Mr. O'Brien said the design will reduce the total number of bedrooms by one; and if a buffer is put in . . . Mr. Angelo said if they were to put in a buffer, one space that has been there for 70 years, will be eliminated in the plan, they wanted to extend into eight parking spaces, all tandem, they can eliminate the one closest to the building and create a buffer there. There are four spaces with two storefronts and three apartments; one of the apartments being five bedrooms.

Mr. Demerjian said he agrees, the two sides are tugging at each other. Do you remove the two spots against the other property to provide the buffer, but then you're pretty much paving the entire year yard. Is that better or worse than leaving the spots against the buffer. The chairman asked why it would have to be paved. Mr. Demerjian said because if you are trying to get the other spots in there, you have to pave it. The chairman asked why not pavers or crushed stone. Mr. Demerjian said it is not green; it is difficult to maintain, stones get all over the place and it is not visually attractive.

Mr. O'Brien said if the board suggests a buffer and a certain arrangement for additional parking, they are still way below what the code would like them to have. Mr. Demerjian said they are still making an improvement. Mr. O'Brien agrees, but they would still have to face the issue that they are way below and he does not see how this can get to be code compliant. Mr. Demerjian said they could, they could pave the entire thing and park cars all over the place. Mr. O'Brien said that is not desirable.

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 Mr. O'Brien stating that the evidence demonstrates that this is peculiar property with exceptionally strange conditions existing. The design is an improvement to the overall structure; the existing layout on the second floor is extraordinary in that it is a five-bedroom unit and in this economy he thinks it is a little difficult ... it demonstrates hardship to the existing

design. He believes this is a favorable design being presented. He suggests that a condition be added to add a buffer and he would leave the remaining parking design to the judgment of the architect with the provision that they add as much as reasonable to what is there. He does not want to design this parking lot on the fly, but if a buffer is added and put in some tandem parking as he sees fit . . . Ms. McGovern said the code office needs to know specifically what the board voted on. The board is voting on six tandem parking spaces on the south east corner facing Coppola Street. The chairman asked how they are addressing the planning board. Ms. McGovern said they are not putting as a condition they are doing the parking. The members continued to discuss what they felt should be allowed, tweaking the motion Mr. O'Brien made.

DIANA, THERE WAS A LOT OF BACK AND FORTH HERE BETWEEN THE MEMBERS AND THERE ARE QUITE A FEW GAPS ON THE DISC. I DID NOT PICK UP WHAT CONDITIONS WERE VOTED ON. CAN YOU FILL IN THE BLANKS? HOW MANY TANDEM SPOTS; IS BUFFERING REQUIRED? WHERE? ETC. THANKS!

Mr. Demerjian seconded the motion. The variance was approved by a vote of 6-1. Chairman Scrudato voted against the variance.

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No. 4 BURBANK APPROVED 7-0

Applicant: Mr. & Mrs. Craig Burbank, 26 Franklin Avenue, Block/Lot/Zone: 9101/2/B3

Application: for a partial release of a condition requiring the applicant will apply for two (2) parking spaces in the nearest Municipal Parking lot for the use of its tenants, that is one for each apartment as described in the 1991 Board of Adjustment resolution.

Appearances: Craig and Melissa Burbank (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

The chairman asked if there were conditions put on the property? Mrs. Burbank said before they own the property. Mr. Burbank said it is his understanding that there was a music store on the first floor. He said there was one parking spot in that area which was shared by Domino's, a bakery, a gas station. The apartment upstairs was already there. Previous owners eliminated the commercial part of the store front (which was actually a side door) and allowed them two parking spots. When the applicants purchased the residence, the parking was \$15 per spot – it is now \$60 per. It takes them 10 minutes to walk to the car. The hours they are allowed to park at 8 p.m. to 8 a.m. They have been parking legally in Belleville every night without a problem. No one in his immediate area pays for parking.

Mr. O'Brien asked if the parking was \$50 a year. The Burbanks said it was \$60 a month per unit and there are two units. The chairman asked if there was any way to park on their property. They said no. there are two families living in the building -- the applicants and their tenant.

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 for the peculiar reason that there is no parking at this location and to insist on parking that is a hardship to get to and a hardship to pay for, is unreasonable. Seconded by Mr. Pastore. The variance was granted by a vote of 7-0.

No. 5 NAVIN APPROVED 6-1

Applicant: Mr. & Mrs. Thomas Navin, 22 Laura Avenue, Block-Lot-Zone: 2301-19/R1

Application: request for a permit, at the above referenced premises, to install an air conditioning condenser, in your side yard, having a setback of approximately four (4') feet

Appearances: Thomas Navin (sworn)

Exhibits: Photos A1-4

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article III, Section 700-3 B of the Codes of Nutley defines a side yard as a clear open space. An air conditioning condenser is prohibited in the required side yard setback.

The applicant stated on his application that there is no room in the rear for the unit because of an existing pool and shrubbery. The unit is already connected to the pipes that run out of the house at that location. He had pictures showing the backyard area, proving that there is no room back there for the unit. Because of an emergency (the unit broke during a cold wave), it was placed adjacent to where the family sits in a finished section of the basement. The lot is quite small and doesn't it lend itself to any other spot other than where it is and where it was prior to his purchase of the house. He had to replace the old condenser with a new one, but it was installed in the same place as the original. The zoning office looked at what the applicant is planning to do and said he had no objection because he didn't realize that it was already in place. He had no issues with it.

Mr. O'Brien said the survey shows a highlighted, free-hand sketch of what he presumes is an existing air conditioning unit. Mr. Navin said there are two units on there, one is the old one, the other is the one he is seeking a variance on. He also wanted to know if when the old one needed to be replaced, would he be able to put a new one there? Looking at the photos, Mr. O'Brien asked if there is a chimney or fireplace. Mr. Navin said he took the picture of it to show what the yard looks like. The actual fireplace is just for show. The one by the unit is an exhaust for the heating and AC units. Mr. O'Brien said it takes up a lot of ground space on the lot.

With no further questions from the members and no one in the audience with questions or comments, Mr. O'Brien made a motion to grant the variance stating that this is a 44 foot wide lot; evidence demonstrates that there is a hardship to place this equipment. Mr. Pastore seconded the motion. The variance was granted by a vote of 6-1. Mr. Demerjian voted against the variance.

Mr. Pastore recused himself from this following application.

No. 6 ISRAEL

Applicant: Ms. Sheri Lynn Israel, 4 Hudson Street Block/Lot/Zone: 7901/12/R1

Application: request for a permit, at the above referenced premises, to construct an 18' by 18' deck around the existing above ground pool in the side yard adjacent to Hudson Street; which is in a front yard of the adjoining property, and to extend a four (4') foot chain-link fence to the existing fence on the same street side yard

Appearances:

Letter of Denial was read by Mr. DaCosta Lobo.

- Chapter 700 Article XI, Section 700-67 B (4) of the Codes of Nutley states no detached accessory building or accessory use shall be located nearer to the side street line of a corner lot than the main building on the lot or, if an abutting lot to the rear faces said street line, then a distance equal to the depth of the front yard required on said lot to the rear, except in no case shall a garage on the corner lot and facing the side street be required to be set back more than 25 feet. The proposed deck will have an eight (8') foot setback to the street side yard, and in the front yard of the abutting lot.
- Chapter 700, Article XI, Section 700-71 A of the Codes of Nutley states no fences of any type shall be permitted in any front yard.
- Chapter 700, Article XI, Section 700-71 D of the Codes of Nutley states a fence erected on any corner lot shall conform to the fence requirements for the adjoining properties.

Mr. Demerjian asked if the pool is existing. It is. The applicant would like to extend the deck in the front yard to the walk. She said it is half the front yard so she would not block the entrance to the house. If they put the deck on the other side of the pool, it would be right up against the neighbor's fence. She is certain that the neighbor prefer it not be. The concrete area away from the house is used for grilling. Mr. Demerjian has a problem with the deck. He said, granted the pool is already in the front yard, but to have a deck changes the view corridor. There is space in the yard (he drew a sketch). Ms. Israel said there are 10-foot arborvitaes which block the view to the deck. Mr. Demerjian says he gets it but there is still a structure in the front yard that doesn't need to be. The applicant said the pool filter is also on that side. [There was some discussion not fully picked up]. Ms. McGovern asked if the applicant was taking the fence all the way down to the sidewalk area. She is not. What Ms. McGovern sees on the survey is the entrance from the street, up the stairs to the front door. It would stop at the walk. There is existing shrubbery and the fence could be put behind it from the side of the street.

The chairman asked what is the purpose of the fence. Ms. Israel said it was to extend the yard and to keep her dog on the property. To be clear, Mr. DaCosta Lobo said the fence will be installed inside the existing line of hedges. That is correct.

Mr. O'Brien said the placement of the deck, the north side – did the applicant consider how it would receive the sunlight in the summer months? She believes it would be ok. He asked if the size of the deck was chosen for any particular reason, other than it seemed to fit in that corner. Ms. Israel said it fills the space well and it allows her the opportunity to put stairs from the deck to a smaller section of the deck. He asked if the deck could be relocated without a hardship or does she think it would completely destroy how the yard works. He said it was suggested that the deck be installed on the east side of the pool might be more friendly to the street. He understands that it cannot be seen, but it is still in the front yard. Ms. Israel said the pump is also on that side. It would require moving existing equipment; the outlet for the pump is right off of the sunroom.

Mr. O'Brien also has a concern about fence, to pull it down along Hudson Street. It seems unfriendly to the architecture of the house.

Mr. DaCosta Lobo asked if the existing fence is five feet. Yes. The applicant also plans to have the deck gated with a five-foot gate so no one can get up and around it.

Mr. Marino said the applicant did a great job at providing privacy for her two front yards. There is a problem where she wants to put the deck. The other board members have a problem putting the deck on the front yard. He suggests that the applicant consider

moving the deck away from the front and shift it over a bit. Mr. Demerjian suggested that the applicant not go past the line of the pool towards the front yard. He asked if that makes sense. She said it does, but she has 10-foot arborvitaes on that side that are there for privacy from the neighbor's side yard. It comes in about three feet off the property line. He said he thinks there is five or six feet between the pool and the arborvitaes. She believes it is four. He asked if she could work from there to the back of her property. She said the deck would be smaller. Mr. Demerjian said the board has a fundamental problem with allowing a structure in the front yard. The board cannot start allowing everybody to do something like this, especially when there is an alternative.

Then chairman asked if this was acceptable to Ms. Israel. She said she would have to go back to the contractor to figure out how to reposition the filter. She is not sure how she would be able to hook that up to the house. Mr. Demerjian said the deck could be built around the filter.

Mr. DaCosta Lobo asked if this should be carried to give the applicant a chance to consider what the board is asking for and to work with her contractor to come up with an alternative, rather than simply impose something without her consulting with the deck builder about it.

Mr. O'Brien asked how far off the right side property line (the back of her house) is the house. She thinks it is about four feet. Mr. O'Brien thinks the placement of this house is unusual. It is a corner lot and the placement of the house is forced to one side of the lot. For the applicant to have a structure anywhere on the grounds it would have to be in the front only because the house is pushed so far to the side. It is almost a hardship to try to place this and put it as far to the right as the house is. Although he agrees that the neighbor on Hudson Street has to have a front yard, some respect for the front yard, it seems that the applicant really does have a hardship in the shape of the available yard.

Mr. O'Brien asked if the applicant had a permit for the pool. A permit was granted in 1985.

Ms. Israel said the deck was designed so that it sat in the shrubbery so she could pick up usable space with the deck that she would not otherwise have. Mr. O'Brien asked if she didn't have an issue with the deck being built no further forward than where the pool is. The line of the pool and back, he thinks the deck builder has freedom with the five-foot yard setback. He said the deck should not go any further towards Hudson Street. He said to take the five-foot setback, take the line of the pool ... however, the deck designer can creatively build it.

The Chairman said the board is at a point where they are going to have to make a motion and the applicant is going to have to accept it or not. Ms. McGovern confirmed with the applicant that with respect to the deck, she is leaving the application as is or the application could be bifurcated. The members could vote on the deck and then vote on the fence. The chairman said they are coming to an impasse here; they are going to have to go one way or the other. They cannot keep bouncing back and forth. The applicant said she understood. [Mr. O'Brien's comment was cut off] The chairman then said that a motion to deny should be made. Ms. Israel said she has worked with the contractor for the best solution for deck accessibility. Getting furniture from the house onto the deck works best coming through the front rather than the side because there is not a lot of space where the sunroom is to the pool. She went through a couple of options with the contractor.

With no further questions from the members and no one in the audience with questions or comments, the Chairman said he would accept a motion to bifurcate the application. The applicant can either accept or not accept the motion as put forth. He said there are too many balls in the air, that we're getting nowhere and time running out. Ms. Israel told the chairman that she appreciated the time. Mr. DaCosta Lobo made the motion to grant the variance for the front yard fence providing the fence is no more than two feet high. Mr. Marino seconded the motion. The variance was granted by a vote of 6-0.

Mr. Marion made a motion to grant the variance for the deck, based on the fact that the property is a corner property and the deck is blocked from view from the street. Seconded by Mr. DaCosta Lobo. The vote was 3-3. Ms. Brown, Mr. Demerjian, and Chairman Scrudato voted against the motion. Ms. McGovern said a majority of the members have to find in favor of the motion. So, with respect to this motion, the variance was denied. Ms. Israel thanked the Board.

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Mr. Pastore returned to his seat after the vote.

No. 7 MEISCH

Applicant: Mr. & Mrs. Donald Meisch, 165 Raymond Avenue, Block/Lot/Zone: 5304/2/R1

Application: request for a permit to erect a five-foot open-type fence in the side yard adjacent to Raymond Avenue, which is the front yard of the adjoining property on Ridge Road.

Appearances: Victoria and Donald Meisch (sworn)

Letter of Denial was read by Mr. DaCosta Lobo

- Chapter 700, Article XI, Section 700-71 A of the Codes of Nutley states no fences of any type shall be permitted in any front yard.
- Chapter 700, Article XI, Section 700-71 D of the Codes of Nutley states a fence erected on any corner lot shall conform to the fence requirements for the adjoining properties.

Mrs. Meisch had a picture of the type of fence they are looking to install. It would enclose the side yard. The back yard abuts against the detached garage and does not offer a lot of space. There is a concrete pad and they would like to get a grassy area. Safety is an important issue with the applicants. They have a dog and the concrete pad is not big enough. They would like to enclose the grassy area so the dog would have a place to run. Mrs. Meisch said she and her husband have spoken personally with most of the neighbors and they have been very supportive. The applicants did a lot of research on the type of fence that would work best in the neighborhood. The fence they pick out has the look of black wrought iron. Mr. Demerjian asked how big the dog is. Mrs. Meisch said it is a very energetic, 45 pound terrier mix. They did consider having a lower fence, but feel it would be more-beneficial to have a higher fence since the dog is so active. They said the dog is not aggressive.

[Mr. Marino comments were choppy]. Mrs. Meisch said they had actually planned on putting a hedge in front of the fence for some privacy and to soften the look.

Mr. Demerjian asked if the fence had to be five feet. Mrs. Meisch said they could do four. Mr. O'Brien asked if he understood that it was suggested the move it back a little bit and did that sound ok to them. Mr. Meisch said yes. They were going to put some shrubs in front of it anyway. Mr. O'Brien asked what the right distance is in order to get shrubs in

there. Mrs. Meisch said two feet at the most. Mr. Demerjian asked if the applicants had distance beyond the property line to the curb to plant. The property line is right up against the sidewalk. They would have to come off the sidewalk about two feet because they want as much yard as possible. Mr. O'Brien asked what the right distance is – 18 inches, a foot, 2½ inches of the sidewalk? The chairman said they have to consider grass cutting with a lawnmower. Mr. O'Brien said if there were shrubs, would that be a problem. He asked if 18 inches with a four-foot fence sounds ok. The applicants said yes.

With no further questions from the members and no one left in the audience with questions or comments, Ms. Brown made a motion to grant the variance for a four-foot high estate type fence to be located at least one foot, six inches with a buffer. This is a corner property which makes it a hardship. Mr. DaCosta Lobo seconded the motion. The variance was granted by a vote of 7-0.

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No. 7 ROTA carried until the July, 2013 meeting

Applicant: Mr. & Mrs. Carmen Rota, 74 Hastings Avenue, Block/Lot/Zone: 8103/3/R1

Application: request for a permit to widen the existing 12' curb cut to 16' and to leave as erected the 22' non-conforming driveway which was increased for a total width of 25'

Appearances:

Letter of Denial was not read.

Ms. McGovern said the above applicant had to leave for medical reasons. It will be carried until the next hearing date.

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Business, Invoices, Litigated Matters: None

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Resolutions: Approved.

Mr. & Mrs. T. Orlinski, 32 Montclair Avenue

Mr. & Mrs. Jeffery Liss, 17 Howard Place

Mr. & Mrs. Franco Orlandi, 25 Funston Place

Mr. & Mrs. J. Feraco, 60 Howard Place

Mr. & Mrs. Peter Scherrer, 46 Carrie Court

Mr. & Mrs. Peter Scherrer, 60 Kingsland Street

* * * * *

ADJOURNED: 11:07

Respectfully submitted,

Marie L. Goworek