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2/16/14

NUTLEY ZONING BOARD OF ADJUSTMENT
Public Session Meeting Minutes
May 20, 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, Mary Ryder, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

ABSENT: Frank Graziano

EXCUSED:

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No. 1 RACEWAY PETROLEUM INC. (Carried over from April)
(Carried over to June)

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

Application: VIOLATION LAE-Convenience Store. request for a zoning permit at the above referenced premises to amend the existing zoning certificate from a gasoline filling station limited to sale of items related to a gasoline filling station, to a gasoline filling station with a convenience store/food mart.

Appearances: Robert Gaccione, Esq.

Letter of Denial was not read.

Mr. Gaccione asked for an adjournment until the next meeting as his expert witness has a conflict. He is appearing in south Jersey and cannot appear here.

The chairman asked for a motion to continue this matter until June 17, 2013. All in favor. This matter was adjourned without further notice and the attorney waived the time constraint.

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No. 2 ISIP (Carried over from April) APPROVED 7-0

Applicant: Peter Isip, 386 Franklin Avenue

Application: Use Variance/Personal Training Studio (CRANK) - 55 Washington Avenue. Block/Lot/Zone: 9503-22-B-4. Request for a zoning permit at the above referenced premises, to operate a Personal Training Studio

Appearances: Steve Martino, Esq.; Peter Isip, 55 Washington Ave. (sworn), Roger DiNiscia, Planner; Suzanne Beadle, 571 Passaic Ave.; Marissa Faiella, 220 Alexander Ave. (sworn)

Exhibits: A1 (photos)

Letter of Denial was read by Mr. DaCosta Lobo.

- Chapter 700, Article V, Section 700-7 A of the Codes of Nutley prohibits a Personal Training Studio in a B-4 zone.
- Chapter 700, Article V, Section 700-19 of the Codes of Nutley list the permitted uses in a B-4 zoning district, a Personal Training Studio is not a listed permitted use.

The applicant stated on the application the property's current use as a warehouse is no longer appropriate for the area and that the proposed use will enhance the neighborhood.

Mr. Martino asked Mr. Isip questions regarding the application. He explained that he would like to start up a personal training studio at the above address. For the past three years, he has had a studio operating at 386 Franklin Avenue. the business does group and personal training. There are no machines (treadmills, cardios, etc.). Mr. Martino asked Mr. Isip if renovations to the inside space were planned. He replied that he would paint and do some simple restructuring; there will be no changes to the outside and no other changes on the inside. Currently, there are two businesses in the location. Mr. Isip will be leasing the entire space. The hours of operation will not change; they are 5-8 a.m. and 4-8 p.m. five days a week and Saturday a.m. only. Ten to 15 clients work with a coach for 45 minutes. He has four coaches at all times. He noted that he has two other locations, one in Jersey City, the other in Brooklyn.

The chairman asked Mr. Isip to describe the parking in the area. He said there is street parking as well as on-site parking. The chairman ask if the applicant plans to keep the Jersey City and Brooklyn locations open; he does.

Mr. O'Brien asked Mr. Isip if he would require any new signage on the building. He will not. In response to Mr. O'Brien's question, he said there would be 15 people, maximum, there at one time.

Mr. DaCosta Lobo asked how many parking spaces there are on-site. Mr. Isip said there are 11-13 spaces.

Mr. Martino called Mr. DiNiscia. Mr. DiNiscia stated that he is familiar with the application. It is a proposal to occupy an existing industrial building to be used as a training studio. A use variance is required because the proposed use is not permitted in this district. He presented a photo exhibit with seven photos of the site as well as a Google aerial photo. He described the location, make-up, and dimensions of the building. The building and the lot are of irregular shape. There is a rear yard parking are measuring 69'x57' that is accessed from Washington Ave by 25-foot wide driveway on the right side of the building. There is a small business in the front and a very large garage area with three overhead doors with Washington Avenue access. Presently, the garage is used for storage of construction equipment and vehicles. The rear and side are also used for this type of storage.

Mr. DiNiscia scaled out parking spaces on the property and it is his opinion that the driveway and rear yard can accommodate 10-14 cars. It is also his opinion

that the building is most suited for a use that requires open and unencumbered open space. The presented use of the site is underutilized. This site is not a contributing economic resource; it is not performing up to its potential.

He did a parking survey on three or four occasions at various times of the day and found that at almost every time on this part of Washington Avenue there were no cars parked on the street (this can be seen). This proposed business coincides with the Master Plan in that it promotes general business growth to the area. This B4 zoning area permits building supply yards, labs, printing businesses, greenhouses, auto sales, auto service, take-out food, laundry, discount stores, etc. The existing contracting storage yard is not permitted, which constitutes a non-conforming use. The apparel store is also a non-conforming use. The proposed use is also not permitted. In the ordinance, a personal training facility is considered a personal-service use. This is permitted in a B3 zone, where the applicant's other studio is located. The zoning ordinance has not recognized this specific type of use.

Mr. DiNiscia read from the Master Plan: "... that the township should rezone this area in accordance with the design overlay recommendations within this Plan, to discourage inappropriate land use development, while the township considers drafting a detailed development plan for this area." He says the Master Plan finds that this area is improperly zoned. It is his opinion that the application meets the criteria for the board to grant the application because the site and area are particularly suited to the use and the application advances the purposes of the Master Plan.

Ms. Brown asked if this variance is approved, would there be a site-plan application. She believes there should be some site work done because the parking lot is not in any shape to be parked on. Mr. Martino said the applicant just indicated that he plans on completely redoing the parking lot and lining it according to the requirements for the code official.

Mr. DaCosta Lobo said a condition could be added to the variance to repave and line the parking lot for 10 cars.

Ms. Brown asked if the current cliental from the Franklin Avenue facility would be moving to the Washington Avenue facility. He said they would be.

Ms. Beadle said she approves and recommends this application. Mr. Isip said he has made a lot of contributions to the community. He contributes time and effort to the chamber of Commerce 5k, the Wellness Challenge and to other events where his expertise is needed. He is willing and able to lend a hand. He is a very positive aspect to the community.

Ms. Faiella and her husband are clients at Crank and said it is a fantastic gym. Mr. Isip contributes tremendously to the community and to the people that belong to the gym. He brings in more people. He runs fundraisers for various groups in the community and for the Sandy Relief. He is a great addition to this community.

With no further questions for the members and no one else in the audience with questions or comments, motion to grant the variance was made by Mr. O'Brien. He stated that it seems, as it is his understanding, that this area wants to bring in activities, and this is a friendly type activity for the area; there is no detriment to the area, there is no issue with parking, and as the testimony has brought forth, it is a positive influence for the town and keeps the area active. He sees no downside to this application. Seconded by Mr. Marino. The application was approved by a vote of 7-0.

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No. 3 LISS APPROVED 7-0

Applicant: Mr. and Mrs. Jeffery Liss, 17 Howard Place, Block/Lot/Zone: 2200 /19/R1

Application: request for a permit to widen the existing driveway to 20' and the existing curb cut to 16'.

Appearances: Kara Liss and Jeffrey Liss (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 width shall not exceed 16 feet. The proposed driveway will be 20'.
- 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'.

Mrs. Liss said she has a one-car driveway and a one-car garage. She would like to expand the driveway to fit two cars side by side and one in the garage.

The chairman said the board must find a hardship to the property. The chairman said the applicant is looking for three parking spaces outside the home. What is inside the garage? Mrs. Liss said they have a car by the garage. They only have two cars now, but are looking to get a third one. They have no place to park it.

Mrs. Liss said there is a retaining wall that has to come down. When it is replaced, they will move it over to the right to make more space.

Mr. Demerjian asked if the driveway will expand to the left of the house towards the side yard. She said it is going more towards the right where the wall is coming down. She wants to expand it to both sides. He asked what total width the Lisses are trying to achieve. She said 20 feet. Mr. Liss said they have to jump the curb. Mr. O'Brien said the driveway is not deep enough to use the same curb cut, come in, get around another car, and park. Mr. Liss said there is only one car that can fit in the existing driveway. Mr. O'Brien said if the driveway was widened, the curb cut would also have to be. Mr. Liss said yes, it would help. Mr. O'Brien would not want the applicants jumping the curb. Mrs. Liss said widening the curb cut will not affect the parking on the street because there is not enough curb space for a car to fit there anyway.

Mr. O'Brien asked if the driveway was widened and the curb cut remained the same, would that make it impossible to get in and out the driveway. It would be slightly difficult.

Mr. DaCosta Lobo said, on the left side where they want to expand, that backs up to the neighbors' driveway, so there was never parking in between to begin with. Mrs. Liss said that is correct.

With no further questions for the members and no one in the audience with questions or comments, motion to grant the variance was made by Mr. DaCosta Lobo. He stated that the property is both narrow and shallow and the widening of the curb cut will not negatively impact the existing on-street parking. Seconded by Mr. Pastore. The variance was granted by a vote of 7-0.

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No. 4 ORLANDI APPROVED 7-0

Applicant: Mr. and Mrs. Franco Orlandi, 25 Funston Place, Block/Lot/Zone: 2303-21-R1

Application: request for a permit, at the above referenced premises, to build a one (1) story shed roof 11' by 33' attached to the rear of the house, having an eight (8') foot setback to a preexisting in-ground pool,

Appearances: Franco Orlandi (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 700-67 D 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 applicant stated on the application that this is to replace an aluminum roof over the patio that was damaged during the hurricane. The roof will be constructed to match the house in colors and design.

Mr. Orlandi stated to the members that he has no shade in his yard. He does have a pool and would like to extend the awning the whole length of the house.

Mr. DaCosta Lobo asked if the applicant installed the roof. Mr. Orlandi said it was there when he bought the house nearly 12 years ago.

Mr. O'Brien asked if the roof is the same size or wider than the original one. Mr. Orlandi said this one is longer.

Mr. Scrudato asked if he had a permit for the patio and deck. The patio was there when he bought the property and Mr. Orlandi did get a permit to install the deck.

With no further questions for the members and no one in the audience with questions or comments, motion to grant the variance was made by Mr. O'Brien. He stated that there was a structure there that was unfortunately taken down by the storm. There is no detriment to the neighbors and it will improve the property. Seconded by Mr. Pastore. The application was approved by a vote of 7-0.

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No. 5 FERACO APPROVED 7-0

Applicant: Mr. & Mrs. J. Feraco, 60 Howard Place, Block/Lot/Zone: 5602/6-R1

Application: request for a permit to widen the existing driveway to 18 feet.

Appearances: Adrian Feraco (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 width shall not exceed 16 feet. The proposed driveway will be 18'.

Ms. Feraco addressed the board saying that she in in the process of having her driveway resurfaced. To make it look neater, she is here to ask permission to widen it two feet in order open the doors comfortably. She has two cars. She does use the garage, but in the winter, it is used to store sports equipment her husband needs when he coaches in the warmer months.

Mr. Pastore asked how wide the driveway is now. Ms. Feraco said it is code – 16 feet. He asked if she wanted to enlarge it to 18. She said yes. The two feet would make it easier to get out on the driveway and passengers would not have to step out onto the grass area.

Mr. DaCosta Lobo asked her if she would like to enlarge it away from the house and not towards the front of the house. Ms. Feraco said that was correct.

With no further questions for the members and no one in the audience with questions or comments, motion to grant the variance was made by Mr. Pastore; Mr. Marino seconded the motion. There were no conditions. The variance was approved by a vote of 7-0.

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No. 6 SCHERRER APPROVED 6-1

Applicant: Mr. & Mrs. Peter Scherrer, 46 Carrie Court, Block/Lot/Zone: 2303-21-R1

Application: request for a permit, at the above referenced premises, to construct a 14' by 28 ½ '(includes stairs) in-ground pool in the rear yard having a six (6') foot setback to the rear line of the main building and to leave as erected a

six (6') foot by eight (8') foot shed in and a solid six (6') foot fence in the side yard.

Appearances: John Carrino, Esq.; Peter Scherrer (sworn)

The chairman noted that there are two letters of denial in this case; one being for a shed. Mr. Carrino said he client initially wanted to install a pool in his yard and was looking to have the rear setback go from eight to six because of a cantilever the pool would not fit. He was looking for an adjustment to the rear setback.

Mr. DaCosta Lobo said if there are two letters of denial, he did not have the second one. Mr. Carrino said there is one letter of denial with two notations.

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 700-67 A of the Codes of Nutley states any detached accessory buildings and accessory uses may occupy in the aggregate an area not to exceed 30% of the area of any rear yard. The height of a detached accessory building shall be one story not to exceed 14 feet. Shed is installed in the side yard.
- 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. Solid type fence (6') in the side yard.

Applicant stated on the application to accommodate a pool, substantial alterations would be required to the house and the lot and would also require the removal of the shed and moving the location for the pool closer to the house.

Mr. Carrino wanted to separate the two issues of the application. He stated that the placement of the pool would impose an issue and difficulty. There is a two-foot cantilever that the setback is being measured. This causes the pool to be set two feet further back into the yard. He said his client would like to keep the pool closer to the back of the yard and request that, to keep the 14-foot width of the pool, go into the rear yard setback going from eight feet to six feet.

Mr. Demerjian asked if the pool was already installed. It is not. He asked what is installed – the fence and the shed? Mr. Carrino said the shed has nothing to do with this part for the application. The shed is nowhere near the pool; it is the cantilever.

Ms. McGovern understands that Mr. Carrino separates them for setback issues, but the shed and the pool have to be discussed together regarding the impervious coverage. Mr. Carrino said he understood Ms. McGovern. He said applicant's

first request is to discuss the setback of the pool. He noted that the shed is a pre-existing structure, there prior to the applicant buying the house.

Mr. Demerjian said that the applicant could make the pool 12 feet wide instead of 14 feet. With three boys, Mr. Carrino said that is something he is not sure the applicant would like to do. Mr. Carrino said if they did not count the cantilever, they would bring the pool closer, not requiring a setback variance. Mr. Carrino said the applicant would like it further into the rear so that it is further from the house. Mr. Demerjian said he is shoehorning it in and trying to get the biggest pool he can; he gets it. Mr. Carrino said it is standard, that it is as small as you would want to go.

Mr. Demerjian asked of the retaining walls in the back are going to stay or are they going to be reconstructed. Mr. Scherrer said they will stay. The retaining walls are two feet; the property line is four feet.

The chairman asked what is to the rear of the property line. Mr. Scherrer said it is a yard like his – open space.

Mr. DaCosta Lobo questioned why the letter of denial cited a six-foot setback to the rear of the building, but the drawing showed 11. Mr. DaCosta lobo asked if the cantilever was five feet deep or if there is something missing. The cantilever is 2 feet. Mr. DaCosta Lobo asked what is the differential between the six feet cited and the 11 feet that is written in. Mr. Carrino said that was the other option. The pool could be moved closer and be within code; but, then, one could not count from the cantilever. One would have to count from the existing structure of the house. You would have to get the two feet back from the rear.

Mr. O'Brien said the wording says "six-foot setback to the rear line of the main building." He asked if that is a misstatement. Mr. Carrino said it is a misstatement. It is six feet from the rear of the yard, the property line. That is what Mr. DaCosta Lobo was trying to clear up. As proposed, it would be 11 feet from the rear of the building and 10 feet six inches from the cantilever. If he came 10 feet from the building, he would be seven feet from the rear line. Mr. Carrino said it is his clients thought to put the pull closer to the rear so there is more space between the pool and the house.

Mr. DaCosta Lobo said the pool filter system is shown as being up against the eastern property line. Is there any reason that cannot be compliant to be eight feet from the property lines? Mr. Carrino said they do not want it sitting in the middle of the yard. Code requires say it should be eight feet off the lines. He said it can be easily moved, but they would have to figure out a place to put it. Mr. DaCosta Lobo said if the board permits the pool to be located with six or seven feet of the rear line, he assumes the applicant would be capable of keeping the filter in-line with the pool somehow. Mr. Carrino agreed.

Ms. McGovern said if this were being done as a condition, then the pool filter would be at the rear portion of the property behind the pool. It would meet code because they are not giving that a variance. Mr. DaCosta Lobo was saying if there

was to be a variance for the rear of the pool being within eight feet, or if it is permitted to be within six feet, then to put the same condition on the filter system – that it be the same distance.

Mr. O'Brien asked about the second reference to the shed. The letter says the height of a detached accessory building shall be one story, not to exceed 14 feet. Does this shed exceed 14 feet? No, it does not. The attorney does not understand why that is in the letter.

Mr. DaCosta Lobo said, just to be clear, it is not cited in the letter, but according to the survey, the shed encroaches over the line. Even if this Board gives whatever variance is required for the shed, there is no variance it can give to permit that encroachment. This is between the applicant and the neighbor.

Mr. Demerjian said the shed prevents access to the rear yard. He asked the applicant if he installed it. It was there when Mr. Scherrer purchased the house. Mr. Demerjian asked if he could get rid of the shed. Mr. Scherrer said if he had to, he could; but he does store many things in there. Mr. Demerjian asked if he had a garage. He does. Mr. Demerjian said he finds the shed blocking the yard problematic, besides the fact that it is over the property line. It should not be there. It is contrary to the zoning practices.

Mr. O'Brien said the reference to the shed does not indicate that it is on or over the property line. He sees no reference to the location of the shed other than it should not exceed 30% of the rear yard coverage. Mr. DaCosta Lobo agreed with Mr. O'Brien. He said he does not see that the pool and the shed together are a 30% coverage issue either. Mr. Demerjian said he calculated it; it is about 23%. Mr. DaCosta Lobo does not understand why there is mention of the shed at all. Mr. Demerjian said it mentions that the shed is installed in the side yard.

Mr. Carrino said he would like to separate the application and hold off on the shed and request a variance at another time. The applicant does not want it to be a part of the pool application, unless there is an objection. Mr. Demerjian said he has an objection to the shed being in the side yard. Mr. Carrino said he would like to do a separate application. Mr. O'Brien asked about the fence. Mr. Carrino said the fence was put there to hide the shed. Mr. O'Brien asked if that was still going forward. Mr. Carrino would like to make that part of the application for the shed.

Mr. Demerjian said it is hard to understand the extent of the fence for the pool because it is not clearly designated on the survey. He asked the applicant to mark it on the survey. Mr. Carrino said the whole yard is enclosed with a fence that meets code. Mr. Scherrer said when he purchased the house none years ago, he got a permit for an open six-foot PVC fence around the entire perimeter of his yard. He had the written consent of his neighbors and therefore did not need a variance.

Ms. McGovern said the way the letter is written, it looks like the applicant wants to put the fence next to his house. Mr. DaCosta Lobo said that is the issue. What

they are seeing is a six-foot fence that starts at the rear of the property line, runs back around, but goes passed the rear of the property line for just a little bit. The applicant said that was correct that is six feet there; it does not drop to four. It is just a section of the fence. Ms. McGovern said he needs the variance for the portion of the fence that runs along the side of the house. Ms. Brown said if the shed is removed and the fence is moved behind the house, then no variance would be necessary. Mr. Demerjian agreed that the variance goes away. Mr. Scherrer asked about the setback in the back for the pool. Mr. Demerjian said the pool is the crux of the issue; they will deal with it. If the deal first with the fence and the shed, the problem goes away.

Mr. Carrino said it would be an undue hardship for his client if he loses storage space in the yard; as part of the condition relocate the shed to the back rear of the yard. The chairman said if he moves the shed in accordance with code, why not? If it does not meet code, let's not open Pandora's Box.

With no further questions for the members and no one in the audience with questions or comments, motion to grant the variance was made by Mr. O'Brien. He stated that the location of the pool is as good as it can be and serves no detriment to the neighbors to be within six feet of the back plot line. The location for the filter will follow the same conditions of the pool setbacks. Ms. McGovern said the condition as to the fence is that the applicant consents to remove the existing shed and moving the fence back so that it is not along the side of the house, thus eliminating the need for a fence variance. Mr. O'Brien continued with his motion: The fence will be moved back to being in line with the back of the house and there are no considerations for the location of the shed. Seconded by Mrs. Ryder. The application was approved by a vote of 6-1. Chairman Scrudato voted against granting the variance.

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No. 7 ROJAS

Applicant: Alfredo Rojas, 60 Kingsland Street, Block/Lot/Zone: 602/8/R1

Application: request for a permit, at the above referenced premises, to erect a six (6') foot solid type fence in the West side yard, as shown on the survey submitted, dated June 6, 2002.

Appearances: Alfredo Rojas, Diane Stewart 64 Kingsland Street. (sworn)

Exhibits: O1, O2 (photos)

Letter of Denial was read by Mr. DaCosta Lobo.

- Chapter 700, Article XI, Section 700-71 C of the Codes of Nutley states a fence erected along the sidelines from the rear line of a main structure to the rear property line and along said rear property line and within such lines shall not exceed six feet in height and not be of solid construction.

Mr. Rojas addressed the board stating that he has encountered several problems in getting a permit for the fence. He said he has a hardship – his neighbor complied with her signature and then changed her mind. He was then forced to seek a variance because the fence that would please the neighbor was several hundred dollars more than the one he wanted. He wants a fence for the safety for

the children that visit his home and his dogs that can easily jump a four-foot fence. He lives on a busy street.

Mr. O'Brien directed his comment to the Chairman that he thinks the six-foot fence is ok here. The issue is the fact that it is solid and not open. Mr. Rojas said his neighbor does a lot of gardening and sprays a lot of chemicals to keep the bugs away. He said young children tend to put things in the mouths and he doesn't want his nieces and nephews or his dogs to accidentally ingest these chemicals.

The chairman asked if the applicant was given a permit for the fence. He said he was given one for a solid fence in the left and the rear. The problem is the right side. The Chairman said the neighbor has a right to object.

Mr. O'Brien needed clarification. The applicant was given a permit to install a solid fence on the left and in the rear, but he did not receive specific permission for the right side and the neighbor on the right side is not granting that permission. Mr. Rojas said the neighbor initially agreed to an open fence. He showed her the brochure and she was ok with it. The code office later informed him that she denied her permission. He and the neighbor negotiated and agreed on another fence. She again withdrew her permission. The cost of the fence that she would approve is more than he can afford.

Mr. O'Brien asked if this fence is already in place. Mr. Rojas said the six-foot solid is not; there is a temporary fence in place. He has already paid for the solid fence, but it has not yet been installed. Mr. O'Brien repeated that the fence along the side and back are solid fence, but the neighbor prefers an open fence. He asked Mr. Rojas what the reason is that he would not want it to be open. Mr. Rojas said his dogs could easily get through the side. Mr. O'Brien asked the applicant if his dogs could get through a 50% open fence. He said not 50%, but the chemicals that the neighbor sprays ... he is afraid his dogs and the children will ingest it. Mr. O'Brien asked Mr. Rojas if he had any hope that the neighbor would approve a solid fence given that the chemicals from her garden might have an effect on his animals? Mr. Rojas said he thinks that the neighbor is very adamant about not getting a solid fence. He doesn't think she will, which brings him here tonight. He state that he has tried negotiating with her on several occasions, but has been unsuccessful.

Mr. O'Brien said, speaking for himself, it is difficult to allow a condition that he knows is not in favor of the neighbor. That is a tough thing. He said it is hard to justify it. Mr. Rojas said he understood.

Mr. Marino said another consideration giving to the neighbor is, the situation of their homes, she is a gardener. The sun comes from the east and if you put a solid fence there will be nothing for her to garden because there will be no light. Mr. Rojas said the sun goes diagonally over the house; it doesn't shine directly on it. There are also several trees around that property that already shade the yard. Mr. Marino said if this were about a couple of hundred dollars, he would implore that applicant to make nice with the neighbor. It makes for a much more

comfortable living situation as opposed to having seven people solving your problem. He suggested he look at other alternatives. Mr. Rojas had alternatives that were agreed on ... a 25% open and then she denied that as well. The cost is a lot more expensive. He already bought the fences, the solid and the 25% open. Mr. O'Brien asked Ms. McGovern if the applicant would have a solid four-foot fence without a variance. Even if it were four feet, it would still have to be 50% open.

Mr. Rojas said based on the agreements between his neighbor and himself, he bought the two different 45-foot sections of fencing at a significant cost (about \$1,000). The Chairman said as far as the cost, this Board cannot consider the cost to the applicant.

Mr. O'Brien asked if there was approval for the fence on the left side from the other neighbor. Ms. McGovern said it was attached to the application. There is another approval where the person signed it and "void" is written across the top. The applicant testified that the neighbor approved it and then when to the code office to withdraw her consent. He has consent for the rear fence.

Diane Stewart testified that she has lived in her home for 30 years and for 28 years there has been a cyclone fence between the two properties. She has a very small piece of property – 40 feet wide. She has a garden on the side next to the applicant. She further testified that she advised the applicant when he moved in that it was important for the fence to be open because of the plants. She told Mr. Rojas right from the beginning that she would not approve a closed fence because it would kill her plants. The fence is right up on her property line. She agreed to the form he brought back to her saying he would install an open fence. She later when to the office to check on the application. She was told he advised the code office that she had given her permission for 18 feet of solid fencing. She said she did not. The code office called Mr. Rojas and told him that Ms. Stewart objected to the solid fence. Mr. Rojas said a 50% open is allowed.

The fencing company delivered a 25% open fence. Ms. Stewart called the code office and an inspector came to inspect the fence. Mr. Rojas was told this fence is not what was approved; he could not install it. Ms. Stewart explained that her property is on a slope and has deteriorated. The plants hold the soil in place. The temporary fence is blocking the sun and that is affecting the plants' growth. She disputed the fact that there are children visiting the applicant; she has never seen any. As far as his dogs are concerned, she has a dog and the former owner had a dog with a four-foot fence and there was never any issue. Ms. Stewart strongly opposes a variance for this fence saying that it will destroy her property. Ms. Stewart provided a photo of the property to the members and marked it as Exhibit O1.

In response to the Chairman's question, Ms. Stewart said she would have no objection to the temporary six-foot cyclone fence that is in place right now. He would still be able to keep any visiting children in as well as the three dogs.

Mr. Rojas asked to speak again. He said that his survey shows that over a foot of his property is used by his neighbor for her flowerbed. Ms. Stewart objected and had an inspector come in to survey the property line. This became an issue between the neighbors. He further stated that the temporary fencing and the soft soil allowed his pets to escape and one was hit by a car. He stated again that his goddaughter visits every weekend and there are pictures on Facebook proving this. He didn't bring these pictures because he didn't feel it was necessary to defend what he does in his own home, or what he chooses to do on his property. His goddaughter has siblings that also visit; he is concerned about them ingesting gardening chemicals.

Ms. Stewart denied that her garden is on over one foot of his property. She said the fence did go back another foot because it went behind a huge, 40-foot tall tree. When she and the former neighbor took the tree down, the stump was left. Planting cannot be done in that area. The picture showing this was marked as Exhibit O2. Mr. Stewart further stated that she does not use dangerous chemicals because her grandson lives there and she has a dog of her own. She uses organic chemicals.

The Chairman surmised that the neighbors will be living next door for many years to come and it would be better if they made some sort of compromise. He unfortunately does not see that happening with the testimony he just heard. Ms. Stewart said Mr. Rojas has damaged her property over and over again. The plank that was put up against the fence has no other purpose than to block the sun and kill her plants. She said she tried speaking to him from the time he moved in about the plants and how necessary they are to her soil. She has other pictures, but the chairman said the board has enough photos; not necessary to see anymore. She had to plant along the back to keep the soil from running down the eight feet to her backyard neighbor's property.

With no further questions for the members and no one in the audience with questions or comments, motion to deny the variance was made by Mr. O'Brien stating that he thinks it should be accepted where the applicant received permission and denied where he has not received permission. He moved that the variance be denied for the reasons that it would be detrimental. The neighbor has provided testimony that this would be harmful to her property; that she does not want it. He sees no reason, no hardship to the applicant's property that would lead him to prove this. Seconded by Ms. Brown. The variance was denied by a vote of 6-1. Mrs. Ryder voted against the motion.

* * * * *

Mr. DaCosta Lobo recused himself from hearing the following application.

No. 8 ORLINKSI

Applicant: Mr. & Mrs. T. Orlinski, 32 Montclair Avenue, Block/Lot/Zone: 300/1/ R-1

Application: request for a construction permit, at the above referenced premises, to demolish the entire dwelling including the foundation and to

construct a new 2 1/2 story dwelling on a pre-existing 40' wide by 118'17" length lot, and to construct a 2'4" X 6' brick chimney having a 3'8" side yard setback.

Appearances: Robert Gaccione, Esq.; Lori Orlinski (sworn); Mr. Melitto, Architect (he was not sworn in, but his credentials were accepted).

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

- Chapter 700, Article VIII Section 700-46 A of the Codes of Nutley the "Schedule of Regulations" requires a lot width of 50' in width in an R-1 zoning district, and a six (6') foot side yard setback. The proposed chimney will have a 3'8" side yard setback.

Mr. Gaccione introduced himself to the Board members. He explained that the above property, owned by his clients, is not in good condition and that his clients determined that it would be better to demolish the residence and erect a new structure. The length of the property is 40 feet and the area is somewhat less than the 5,000 sq. ft. requirement. This property along with the majority of properties on this street is undersized. The clients are seeking to rebuild on the property, but there are three bulk variances required. He has two witnesses that the board will hear testimony.

In response to questioning by Mr. Gaccione, Mrs. Orlinski stated that she and her husband have been the owners and residents of the above address for 17 years. She said the house is significantly deteriorating – the electrical, plumbing, etc. The applicants would like to demolish the existing building and erect a new 2 1/2 - story structure. They want to stay in Nutley because Mrs. Orlinski has worked here for 28 years, her husband is disabled, shopping is convenient, public transportation is available. They had thought about moving but this location is ideal for them.

Mrs. Orlinski said that they would like a fireplace, but that side of the house is adjacent to the neighboring driveway. The neighboring house has been empty for over two years. Mr. Gaccione asked Mrs. Orlinski if the application was approved and the house was built, would she reside in it. Mrs. Orlinski responded in the affirmative.

Mr. Pastore said as far as the town is concerned, if a small portion of the existing house remains, they could build this house as a renovation to the existing; there would not be this problem. Mr. Gaccione said he agrees with this, but his clients are demolishing the entire home.

The architect, Mr. Melitto, described the property and the area surrounding the subject site. He described the property as having a 22.9-foot front yard setback, which is deficient as to the zoning ordinance. The right yard setback is 3.3 feet, also in violation for the ordinance. He presented a board with a series of photographs (marked Exhibit A1) showing the character of the neighborhood. The proposed house blends in with the architecture of the surrounding area. The proposed dimensions of the new home are 23 feet wide, 40 feet on one side and 50 on the right side. These dimensions allow the application to comply with the front yard setback of 25 feet. A proposed brick fireplace and chimney protrude out two feet from the north side of the house, which would produce a four-foot

setback. This is the only violation in the side yards. The existing home is in violation for the whole length of the side yard and more than the proposed four feet.

The existing non-conforming width of the lot of 40 feet is a major issue, but it is in compliance with the rest of the neighborhood. The lot size cannot be increased; there is no land available on either side. This is a hardship that the applicant cannot comply with the 50-foot lot requirement. The proposed chimney is six-feet wide by two feet deep into the required side yard setback. The brick chimney will be a fireproof unit and will not create any safety issues. The neighboring property on this side has a 10-foot driveway between them. He reviewed the plans justifying the C1 and C2 variances. He stated that the C1 variance is a hardship. He listed the benefits of demolishing the structure as opposed to restructuring it.

The chairman asked what material would be used to complete the structure. He was told it would be brick. He asked if there were two-family homes on the area. Mr. Melitto said he did not know; he did not do a study. This house will absolutely remain a one-family.

Mr. Demerjian asked if the fireplace is to be a traditional, wood burning fireplace (it will). He asked if it will have a single flue and is there a reason why it is so wide (six feet) while it goes all the way up. Typically, with a single flue, they can be narrower. Can it be stepped in after the first floor? Mr. Melitto said that can be done.

Mr. O'Brien wanted to understand that there was no good reason to keep the existing house; the direction to tear a house down is borne from good judgment.

With no further questions for the members and no one in the audience with questions or comments, Mr. Gaccione summed up this matter. He said there are existing violations which are greater than the one violation they are dealing with the chimney. They cannot control the 40 feet, they cannot control the area, and they are short less than 300 sq. ft. as to the area. Basically, all the properties on the street are 40 feet wide. The condition of the property is such that his clients feel, and the architect has recommended, that it be demolished and a new home replace it. The chimney is the only violation and a recommendation was made to narrow it as it goes up is adjacent to a driveway next door; it is not immediately adjacent to anyone's house. The side yard violation was 3.8 feet prior to the proposed demolition. Once the demolition occurs, it will be a six-foot side yard, but for where the chimney will be. The front yard violation will be eliminated with the proposed structure. The fact that this property is smaller than the required 50'x100', there is certainly a basis for a hardship of the property, or C1 variance. Based on the lessening of the violations, the front yard, the side yard and the beautification of the property, there is certainly a C2 basis for granting the variance.

The Chairman asked for a motion. Mr. O'Brien made a motion to grant the variance for the reasons that counsel has set forth. There is a hardship to the lot. The existing house does need to come down. It is good judgment to raze the

house and erect a new one. The design is consistent with the neighborhood; it will be relocated to address the existing non-conformities and it will be an improvement to the neighborhood. Seconded by Mr. Pastore. The application was approved by a vote of 7-0.

Board Member, Mr. Tom DaCosta Lobo returned to his seat.

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No. 9 STELLATO (Carried over from April)

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

Application: A/G Pool/LAE Unroofed Deck/Lot & Impervious, Coverage/Shed Request for a permit, to install a 10' by 16' above ground pool having a two (2') foot setback from the main dwelling, a three (3') foot side yard setback, a four (4') rear yard setback, with pool equipment having a three (3') foot side yard setback; also, to leave as erected, a 13' by 16' unroofed deck, having a 16' rear yard setback, and to leave as erected, a six (6') foot by six (6') foot shed installed in the side yard; which increases the lot coverage to approximately 40% and applicants' impervious coverage to 78%.

Appearances: None

The applicants in this matter did not show. It was carried to the next meeting.

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RESOLUTIONS

- GEN LI and LU CHEN
Resolution GRANTING bulk variance
For property known as 107 Brookdale Avenue, block 2303 lot 21
- JASON REO t/a CROSSFIT NUTLEY
Resolution GRANTING use variance on property known as 11 Robert Street, block 603, lot 6

MINUTES: October 15, 2012; January 9, 2012; January 23, 2012; February 13; and March 7, 2012 were approved.

BUSINESS: Ms. McGovern spoke about the upcoming joint meeting, on Wednesday, between the Planning Board and the Board of Adjustment. It is a regular meeting Planning Board meeting that the Board of Adjustment and the Board of Commissioners are invited to. The Planning Board will be given a list of last year's grants and denials that this Board has done. The Planning Board typically looks to this Board for any current themes that this Board would like to have addressed such as garages, driveways, etc. Roofs over platforms and steps was one that was brought before the Planning Board. Roofs were considered an encroachment. It was brought to the Planning Board's attention and it was changed. If there are any comments, suggestions or recommendations a member would like to make, please feel free to take the microphone when asked.

Mr. O'Brien said that he has some involvement with some of the planning that is going on in town and one of the issues has to do with parking – the amount of parking that is needed for certain businesses. He knows the Planning Board is looking at that and trying to make it more friendly to get certain business in town.

Ms. McGovern said the Planning Board is open for suggestions.

INVOICES: None

LITIGATED MATTERS: None

ADJOURNED: 9:57 p.m.

Respectfully submitted,

Marie L. Goworek