

APPROVED
2/10/14

NUTLEY ZONING BOARD OF ADJUSTMENT
Public Session Meeting Minutes
April 15, 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, Serge Demerjian, Frank Graziano, Gary Marino, Thomas O'Brien, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

ABSENT: None

EXCUSED: Thomas DaCosta Lobo, Ralph Pastore, Mary Ryder

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Chairman Scrudato announced that there are several applications here tonight that require approval for a use variance. A use variance requires five (5) affirmative votes from the members. There are only six (6) voting members here tonight. The applicants are entitled to have seven sitting members present. If anyone would like to have their application adjourned to the May 20, 2013 meeting, they should advise the Chairman.

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**No. 1 (Bowling Alley/Restaurant/Bar) Continued from March 2013
WITHDRAWN**

Applicant: 184 Franklin Avenue, Block/Lot/Zone:

Application: Bowling alley/Restaurant/Bar

Appearances: None

Letter of Denial was read into the record at a previous hearing by Mr. DaCosta Lobo.

Ms. McGovern advised the members that this application was being withdrawn.

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**No. 2 ISIP USE VARIANCE REQUESTED AN ADJOURNMENT to
May 20, 2013 meeting**

Applicant: Peter Isip, 386 Franklin Avenue

Application: Use Variance/Personal Training Studio - 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: Steven Martino, Esq.

Letter of Denial was not read into the record.

Mr. Martino requested an adjournment until the next regular meeting. Upon request from Chairman Scrudato a motion was moved and seconded to adjourn this matter to the May 20, 2013 meeting. All approved.

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No. 3 RACEWAY PETROLEUM INC. ADJOURNED TO MAY 20, 2013

Applicant: Raceway Petroleum Inc., Passaic and Kingsland

Application: VIOLATION - LAE-Convenience Store, 150 Washington Avenue Block-Lot-Zone: 6902-11- B-4. Request for a zoning permit, on behalf of your client, Raceway Petroleum Inc. 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 into the minutes.

Mr. Gaccione requested that this matter be continued to the May 20, 2013, meeting. He waived time constraints and assumed the adjournment would not require further notice. Ms. McGovern said that is correct.

At the request of Chairman Scrudato, a motion was moved and seconded to adjourn the matter to the May 20, 2013 meeting. All approved.

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No. 5 STELLATO (MARINELLI) ADJOURNED TO MAY 20, 2013

Applicant: Mr. & Mrs. M. Marinelli, 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 your impervious coverage to 78%.

Appearances: Serverio Marinelli (sworn)

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

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 (2') foot setback from the main dwelling, a three (3') foot side yard setback, a four (4') rear yard setback.

Chapter 700, Article V, Section 700-9 D (6) of the Codes of Nutley requires all pumps, heaters, and filtration systems shall be kept at a maximum distance from all property lines and shall be at least eight feet from any property line. Pool equipment will have a three (3') foot setback from the side yard.

Chapter 700, Article XI, Section 700-67 C of the Codes of Nutley states 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 (2') from the main building.

Chapter 700, Article VIII, Section 700-46 B (4) (d) of the Codes of Nutley 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'. The deck has a rear yard setback of 16'.

Chapter 700, Article XI, Section 700-67 A of the Codes of Nutley states 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. The shed as an accessory structure is prohibited in a side yard.

Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley, "Schedule of Regulations," regulates the maximum lot coverage to 35%; proposed 40% and impervious coverage not to exceed 70%.

Mr. Marinelli noted that the name on the letter of denial is incorrect. Stellato is his wife's maiden name. He said he would like to answer the Board's questions.

Mr. Demerjian asked the applicant when he purchased the house (four years ago). He asked if the deck on the west side towards Washington Ave. was already there at the time of purchase (it was). The survey does not show the deck. If it was there, the survey should show it. This is why Mr. Demerjian is confused. Mr. Marinelli sounded surprised that the survey was incorrect. Mr. Demerjian said it was marked up showing the deck. Mr. Marinelli said there was a deck that was taken down and replaced. He thought that maybe that's why it's not on the survey. There is a deck on the two sides of the sunroom.

Chairman Scrudato said the Board has to find a hardship to the property. He asked the applicant if he had permits for all of the changes made to the property. Mr. Marinelli said he did. He said he did not have a permit for the shed, stating that the shed snaps together; it is not attached to the house. It is more towards the front of the house. He said he would have rocks for drainage by the pool.

Mr. Demerjian asked what was in the shed. There are a couple of bikes. He asked the applicant if they could be put in the garage. Mr. Marinelli said yes, he just cleared out the garage. Mr. Demerjian asked if he would be willing to take out the shed. Mr. Marinelli would rather have a pool.

Mr. Graziano asked what was, according to the survey, eight feet from the side. Mr. Demerjian said that is the pool. The outline of the pool is 8'x12' and there is a 4'x8' deck area by the pool. Mr. Graziano asked how far is it from the back of the pool to the back of the property line. Mr. Demerjian said five feet. He asked if the deck was attached to the pool. Mr. Marinelli said it is not.

Mr. Marino asked how high the pool deck is. Mr. Marinelli said it is as high as the pool, 4½-5 feet. The fence in the back is six feet high. Mr. Marino said having a deck there might not be the best thought-out plan. The neighbor being five feet away from the pool deck might not be able to enjoy his yard. He would like to see a ladder used to gain access to the pool. Mr. Marinelli said he would not be jumping off the deck into the pool and he did deliver notices to all the neighbors.

Mr. Graziano asked how high the deck is by the sunroom. Mr. Marinelli said about five feet. The existing wood deck would be as high as the pool, but there is a railing all the way around the deck. Mr. Graziano said kids could jump off that deck railing into the pool and there is three feet of space between the two. Mr. Graziano noted there are inconsistencies between the survey and the letter of denial.

Mr. O'Brien asked what shape pool was the applicant looking to install, is it square? No, it will be oval. Mr. O'Brien said he would hate to have the applicant come back, but he thinks this information should be more accurate. Mr. Marinelli said he had the pool people help him out. Ms. McGovern asked if he drew the pool on the survey. He did not; it was done by the pool people. The survey shows a rectangular pool that has eight feet to the side.

Mr. Marino asked where the applicant planned to put the equipment for the pool. He said he has a lot of space under the deck.

Mr. O'Brien asked if the diagram was done by the applicant. Mr. Marinelli said it was done by someone at Tucci Pools. Mr. O'Brien said he and the other board members are facing a difficulty here; the survey shows a square pool. He asked if Tucci Pools was also going to build the deck. Tucci will build it, since it is a part of the pool. He does not know what the deck is made of.

Mr. Demerjian said it seems like he is buying a product right off the shelf and it would be helpful if the members had a picture to look at.

Mr. Graziano said the needed to show the exact dimensions of the pool and deck.

The Chairman suggested that the applicant might like to come back with more accurate information as to where he wants to put the filter, etc. Ms. McGovern suggested that the applicant gather more information from Tucci Pools, ask them for help about the size and shape of the pool. Then he should go back to the code office and speak with Antonette. Mr. Graziano said there is a big difference in the footage that is shown and what is noted in the letter of denial.

At the request of the applicant, this matter was adjourned to May 20, 2013. The applicant agreed to waive all time constraints. He will return with a picture of the pool and an accurate diagram as close to scale as possible.

Chairman Scrudato requested a motion to continue that matter to the May 20, 2013 meeting. The adjournment was approved unanimously.

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No. 6 LI APPROVED 5-1

Applicant: Mr. & Mrs. Li, 98 Point View Parkway, Wayne, NJ 07470

Application: request not to rebuild the garage that was demolished at 107 Brookdale Avenue, Block/Lot/Zone: 2303-21-R1

Appearances: Gen Li

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

Chapter 700, Article XIII, Section 700-91 A of the Codes of Nutley states a single-family dwelling shall be required to have two (2) parking spaces and one space must be in a garage.

The application advised on the application that the old garage was removed without notification and there is a large tree with roots that damaged the old garage. They are in the way of new construction.

The applicant had a contractor come in to repair the garage because it was in a dangerous situation. He said the contractor, after taking down the garage saw that there was no foundation so he could not continue the job. The roots from tree in the back of the yard cause the car to lean on an angle when parked and also did damage beyond the garage. Mr. Li cited some financial difficulties (his wife lost her job, his son is starting college this year). He said instead of rebuilding the garage, he would like to put in a shed.

Mr. Demerjian asked if the applicants lived at the subject address. Mr. Li said they moved out last year. He rents out the property, but because of the dangerous situation with the garage, he wants to have that issue resolved. It is currently a rental property.

Mr. Graziano asked if he had a permit to demolish the garage and erect a new one. Mr. Li said he only wanted to repair it, but the contractor did the wrong thing and tried to take it out. He had given him a deposit to start the repair work. The contract was for repair of the garage and instead it was taken down. Mr. Graziano asked what happened to all the debris. Mr. Li said everything was taken away by the contractor. He later received a call from the contractor stating that he could not continue the job because there was no foundation.

The Chairman said before a shed can be put up on the property, the applicant must get a building permit.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant the variance was made by Mr. Graziano stating that the garage is gone already, there is enough parking there. Seconded by Mr. Marino. The variance was approved by a vote of 5-1. Mr. Demerjian voted against the variance.

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No.7 REO APPROVED 6-o

Applicant: Jason M. and Wendy Reo, 243 Walnut Street,

Application: CrossFit Personal Training, 11 Roberts Street, Block-Lot-Zone: 603-6-M. Request for a zoning permit at the above referenced premises, to operate a Personal Training/Strength and Conditioning business, having approximately 3,000 square feet of space

Appearances: John Carrino, Esq.; Jason Reo and Wendy Reo (sworn)

Exhibits: A-1 (diagram of 11 parking spaces)

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

Chapter 700, Article V, Section 700-7 A of the Codes of Nutley requires all uses to be listed.

Chapter 700, Article V, Section 700-20 of the Codes of Nutley list the permitted uses in an M zoning district. A Personal Training Conditioning business (commercial school) is not a listed permitted use.

Chapter 700, Article XIII, Section 700-91 of the Codes of Nutley, the "Schedule of Minimum Required Parking Spaces," uses not listed above, according to that category which most nearly approximates the use. Service establishments one (1) for each 200 sq. ft. of total floor area. Proposed sq. ft. is $3,000 \div 200 = 15$ required parking spaces. There are no on-site parking spaces for this building.

Mr. Carrino described the area where the applicant would like to set up his business as being a tired area. The space is in an unoccupied warehouse with a large space ideal for the personal training in which his client specializes. The class of training is predominately one-on-one training and not during regular working hours. Classes are usually early morning or evening hours. There is plenty of space for parking. The space is 3,000 sq. ft., much more than they need.

He further explained that this is a new business. His clients live in town and plan to name their business Nutley CrossFit. The business promotes health and wellness.

Ms. Brown asked how many people would be trained there. Mr. Demerjian asked if there is a program that clients are in or do they just show up for an hour; are there structured classes. Mrs. Reo said over the last few years the popularity of CrossFit has grown. It teaches fitness through functional movement, so it is high intensity. It is universal to anyone of any age level, so if someone has never worked out before anyone can do this. There is always a program schedule for an

individual. It trains you for the unexpected. It is a controlled environment and there is minimal equipment.

Mr. Carrino further described the business in that area (Nutley Pool Supply; automotive parts dealership' construction building and beyond that Kohl's parking lot). Mrs. Reo presented a diagram showing 11 parking spaces around the building. It shown to Dave Berry after the application had been submitted.

Mrs. Reo said the hours of operation are early in the morning and later in the evening, outside the normal retail business hours. Street parking would not be a deterrent in that neighborhood, but should the Board have an issue with the street parking, parking could be made available around the building. Mrs. Reo said they are tenants of the building. The building owner also uses space there.

Mr. Demerjian asked how many square feet of the building the applicants are taking over. Mrs. Reo said approximately 3,000 square feet; about 500 sq. ft. is not usable by the members. They will be using the two larger rooms. The outside lighting is provided by floodlights; there is also a lot of light from CVS and the Kohls' parking lot.

Mr. Carrino said the area is commercial warehouse-zoned. It is not a proposed warehouse use, but it is not changing the actual space. It could very easily be used as a warehouse again. It is well suited for the proposed use.

They are not certified or licensed by the State. They are certified by CrossFit, which is a trade name; they have to be trained in that type of training in order to administrate. Both applicants are certified. It does not require a professional license.

Mr. O'Brien's only concern would be having children in the training. He does not think they are the right people in a commercial school in this district. If they were going to have young children, he may have different concerns. Mr. Reo said his son is eight and he goes to CrossFit training in Fairfield in an open warehouse setting; it is very safe. If the board wants to put a condition on age, he thinks that would do the opposite of promoting health and wellness with children. They would have to be certified to teach children. They themselves are not certified to teach children. Mr. O'Brien doesn't feel this needs to be put in the resolution as a condition.

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. Mr. O'Brien stated that he believes it is keeping with the intent of Nutley to bring business in supporting public health, there is not detriment to the neighbors, it seems to be well suited for this use, and there are no negative impacts. Seconded by Mr. Marino. The variance was approved by a vote of 7-0.

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RESOLUTIONS: Approved.

649 Passaic Avenue

27 Oak Crest Place

200 Passaic Avenue

41 Coeyman

MINUTES: Approved

January 13, 2013

BUSINESS: None

INVOICES: Reimbursements were approved

LITIGATED MATTERS: None

ADJOURNED: 8:40 p.m.

Respectfully submitted,

Marie L. Goworek