

Approved
9/15/14

NUTLEY ZONING BOARD OF ADJUSTMENT
Public Session Meeting Minutes
March 18, 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, Frank Graziano, Gary Marino, Thomas O'Brien, Ralph Pastore, Mary Ryder, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

ABSENT: Serge Demerjian

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No. 1 GRUETER (Bowling Alley/Restaurant/Bar) Continued from February 11, 2013

Applicant: 184 Franklin Avenue, Block/Lot/Zone: 7501/5 and 6/B3A

Application: request to convert the existing two-story brick building into a restaurant/bar, having 135 seats; a bowling alley having 12 lanes; and to make improvements to the existing parking lot.

Appearances: Thomas DiBiasi, Esq.

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

Mr. DiBiasi requested that this application be carried until the next regularly scheduled meeting. He waived any time constraints.

The Chairman requested a motion to carry this matter to the next scheduled meeting – April 13, 2013. Approved.

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No. 1 SCHMITT APPROVED 7-0

Applicant: Mr. & Mrs. Frederick Schmitt, 41 Coeyman Avenue Block/Lot/Zone: 4800/13/R1A Carried over from February 11, 2013

Application: request for a permit, at the above referenced premises, to build a roof canopy over the side porch having a six (6') foot side yard setback

Appearances: Mr. and Mrs. Schmitt (sworn),

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley the Schedule of Regulations, requires an eight (8') foot and a ten (10') foot side yard setback. The proposed roof canopy will have a six (6') side yard setback on the ten (10') foot side.

Chapter 700, Article VIII, Section 700-46 B (5) (a) of the Codes of Nutley states an extension of a structure into a required side yard shall be permitted, except that no **uncovered** porch or terrace shall project more than three feet into any required side yard.

The applicant noted on the application that the lot is narrow for the requirements in an R1A district.

Mr. Schmitt said he and his wife would like to add a small canopy off the west side of their home for a variety of reasons (safety, keeping bad weather off the little porch just off the side of the house – keeping the family dry and the home dry); as well as for aesthetic reasons. It will improve the look of the home.

The chairman noted that the driveway is closer to the front of the house. Mr. Schmitt said the driveway actually runs up the front of the house and then extends to the side of the home where that entry would be.

Mr. Graziano asked is the canopy would be over an existing porch. Yes, the stairs are already there.

With no one in the audience with questions or comments about the application, the chairman requested a motion from the board members. A motion to grant the variance was made by Mr. Pastore and seconded by Mr. Graziano. The application was approved by a vote of 7-0.

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No. 2 LaFASCO APPROVED 7-0 Carried over from February 11, 2013

Applicant: Mr. & Mrs. LaFasco, 27 Oak Crest Place. Block/Lot/Zone: 4901/2/ R-1

Application: request for a permit to widen the existing 20' driveway an additional 10 feet for a total width of 30 feet, and to widen the existing 34- foot curb cut, an additional 10 feet for a total width of 44 feet.

Appearances: Mr. LaFasco (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article XIII, Section 700-94 A (2) of the Codes of Nutley states side yard of corner lots, the driveway shall consist of the area directly opposite and adjacent to an attached garage, detached garage or depressed garage or the extension of the rear yard into the side yard which abuts a street. However, if there is no garage and no available rear yard, a driveway not to exceed 16 feet in width from the rear lot line may be constructed. The existing driveway is 20'; the proposed driveway is 30'.

Chapter 700, Article XIII, Section 700-94 A (3) (a) of the Codes of Nutley states, a curb cut for a one-car garage shall not exceed 12 feet in length. The existing garage is a one car garage. The existing curb cut is 34' feet. The proposed curb cut is 44'.

The applicant submitted on the application that this entrance is on Poplar Place which is a narrow street without sidewalks or curbs. The expanded driveway will not cause difficulty on that street.

Mr. LaFasco said he is seeking a variance to expand the driveway to allow parking for a third vehicle in his household. It will not affect he neighborhood at all.

Ms. Brown asked Mr. LaFasco if he had a garage and if so, did he park in it. He does have one, but it is too narrow for the cars.

The Chairman asked the applicant if he was planning to expand the garage. He is not. The vehicles they have now are too big. Mr. O'Brien asked if the applicant would deepen the driveway as opposed to widening it. He thinks it would look more desirable than adding to the width. Mr. LaFasco said there is a fence at the top of the drive they parked

cars, then parking would be at the deck. Mr. O'Brien asked if it would be possible to keep the same curb cut. Mr. LaFasco said there is no curb cut there now.

Mr. Graziano asked the applicant if he could pull directly into his garage from the street. He responded that he could, but it is tight and hard to get in there.

With no one in the audience with questions or comments about the application, the chairman requested a motion from the board members. A motion to grant the variance was made by Mr. O'Brien stating that the location of the garage in relation to the property itself is awkward and does not allow for the deepening of the driveway. The land does have a hardship as to the layout of the driveway. Seconded by Mr. Pastore. The application was approved by a vote of 7-0.

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No. 3 7-ELEVEN CONVENIENCE STORE

Applicant: Forte Capital Management, LLC 649 Passaic, 98 Kingsland and 108 Kingsland, Block/Lot/Zone: 502/15, 16, and 17/B2 and R1

Application: request to build a 2,940 square foot 7-11 convenience store, with a parking lot, landscaping, fencing, etc.

Appearances: Thomas DiBiasi, Esq.; Francis J. Costenbader, Esq., 405 Centre Street, Nutley (representing property owner); Joseph Staigar, traffic expert; Margaret Biro, 107 Kingsland; Linda Frank, 105 Kingsland; Suzanne Beadle, 571 Passaic Avenue.

Exhibits: DOT letter

Mr. DiBiasi introduced himself and gave a briefing of what has transpired since the last meeting. He said one of the neighbors purchased the property next store knowing there was an effort for construct a 7-Eleven on this property. He stated that one of his experts will explain how for the last seven years while this application has gone forward, marketing of the property has continued looking for any backup offers in case this application did not go through for various reasons, i.e. financially, environmentally. There were no other offers. He has a letter from the DOT approving the major access the applicant was seeking and did allow the curb cut; there are conditions attached to the approval.

Mr. DiBiasi said the property consist of a burned out, three-family house, an abandoned gas station and a non-conforming, one-family, one-bedroom house. These are what his client would like to buy. Then there is a normal one-family house, directly to the west. Mr. DiBiasi was unable to introduce himself to the new owners of that property, but he did say that 7-Eleven would provide generous screening between the properties.

The Chairman inquired as to an outstanding escrow payment. Mr. DiBiasi said the amount in question was paid and he did inform the Board attorney about the payment.

Mr. Costanbader was told that the new neighbor was fully aware of the proposed project. He stated that there have been no backup offers for the property, mainly because of the cleanup of the gas tanks on the property. The house that they refer to as having been recently sold is on lot 18.

Mr. Staigar was re-called to give further testimony; but unfortunately it was not picked up on the recorder. He did mention receiving a letter dated February 15 with a list of conditions that the applicant is willing to abide by.

Mr. Graziano asked what the conditions are. Mr. DiBiasi said they are listed in the seven page document Mr. Staigar referred to in his testimony. Ms. McGovern asked Mr. DiBiasi to allow the members to review the letter and to ask Mr. Staigar any questions they may have.

Mr. O'Brien asked if the DOT had business left over or undone at that intersection from previous developments and that this application was an opportunity to engage DOT with revisiting or inspiring the dept. to get involved in this intersection. His thought was that this project was something that the DOT could help with the movement on that intersection. It was his understanding that there would be conversation with DOT relating to this and if there has been beneficial movement forward. Mr. DiBiasi said Mr. O'Brien's recollection is correct. The letter that is being passed around is about this very subject – curb cuts are being moved, stop lines are being moved, site lines are being adjusted. This is not a million dollar fix. He went on to say that this clients, as good neighbors, would go to the Commissioners, if this project was approved, and would try to push for a big fix which would require a big grant from the DOT. Mr. O'Brien said then this is not a case where the DOT owed something to the intersection; it's more of a situation where the town needs to activate more work there if they want more work there. The DOT does not owe the town anything on this intersection; the town is not waiting for the DOT to do more. Mr. DiBiasi said Mr. O'Brien is correct, but negotiations between his client and the DOT are going forward pushing the DOT to do more.

Mr. Staigar read and explained, in layman's terms, the above mentioned letter so the public understands. The Chairman said he thinks it is important that this be done so. Mr. Staigar said the DOT takes the application and disseminates within its own organization – the traffic signal people, the safety people, construction, the office that is going to be doing inspections -- each having comments, thus this letter.

After Mr. Staigar went point by point to the letter, Mr. DaCosta Lobo asked him, regarding the process of revising the signal plan, if it will include a re-evaluation of the light timing at the intersection. Mr. Staigar said they can do that, in fact they have done a little bit of that already. The level of service in all directions is almost equalized.

Mr. O'Brien asked if the timing of the lights have already been adjusted based on Mr. Staigar's involvement in this project. Mr. Staigar said they were not adjusted. They analyzed them during the peak periods weekday a.m. and p.m. hours. The lights are operating close to the same delay. If they were to take green time off of one area and put it on another area . . . it's a balancing act that is pretty much already balanced.

Mr. O'Brien asked if the traffic is not "balanced," the lights being balanced may not represent the traffic conditions. He is trying to clarify that the lights are doing the best they can for the traffic load on each given road coming in. Mr. Staigar said that is correct. When he said "balance" he didn't mean a 30-green this way and a 30-second green that way; if there are a thousand cars going one way and five hundred going another, they would have two-thirds green, one-third green. The calculated levels of service is the balance to the traffic.

Mr. O'Brien asked about the sideway replacement – if there is good existing sidewalk, would he work with the engineer and make recommendations to keep some things that are existing and replace what needs to be replaced. He would like to keep this from being too piece-meal, if it's existing its good. He doesn't want a checkerboard there.

Todd Hay said in his letter he made a recommendation that the Board condition this application, if approved, that the sidewalks and the curbing all be redone. He also said a pre-construction meeting should be scheduled. There is a lot of construction at that corner. The road way will be disturbed. It will be a tight road and very difficult to pass.

Mr. Pastore asked how often and what time garbage will be picked up from the store. Mr. DiBiasi said, depending on the volume that would be done off hours. This will be done internally. Depending on the volume of garbage, the collection will be made as often as needed.

Mr. DiBiasi said he knows that whatever the jurisdiction of this board is that whatever the ordinance is, it is all this board can give. He knows that the store cannot be open 24 hours a day because the ordinance does not allow that. To make that happen, he knows that the applicant would have to go to the Board of Commissioners and make that request for an ordinance. A discussion about the ordinances about times of operation and what is allowed ensued.

Ms. Biro said after all that has been said and down, she doesn't see how any of the suggestions made on this project will alleviate the traffic. The chairman doesn't know how they can alleviate the traffic, but they can evaluate the traffic. He asked what would satisfy Ms. Biro. She thought the whole idea of going to the DOT was to get them to keep the traffic flowing; that is the issue they have now. Having the 7-Eleven there is going to make it worse. Mr. Staigar said it is a monumental task to relieve this intersection of any congestion. The plans call for five driveways, two of which are right-in/right out on Passaic. Ms. Biro said this is a major issue because she is trying to sell her house. One prospective buyer pulled up to the house, saw the intersection and just left. Traffic is an issue because it is affecting the sale of her house.

Mr. O'Brien said what he understands from the testimony is that one of the reasons there is a traffic issue here has to do with earlier construction projects and that there was money set aside to look at this intersection and to do something with the intersection. Although he is not privy to what would be those pieces of improvement, he would guess based on the testimony that it might include making another lane for a left turn or a right turn, to get into this intersection and physically do something with it. There had been previous discussions and previous monies allotted to this and it wasn't spent. So, now, this applicant shows up at the intersection and there is an existing problem and this project isn't going to, cannot and doesn't have the funding to go and fix what should have been previously. If pressure is put on the proper places in town, this can be recognized as a project that should be undertaken. It doesn't have bearing on this applicant.

Mr. DiBiasi said when Cambridge Heights was constructed, Related rode its tail and put in commercial stores. The mayor at the time was negotiating with both entities. Cambridge Heights agreed to the following: \$750,000 to the Board of Education; \$100,000 to Dept. of Recreation; and dedicating the VanRiper home – carving out an acre and donating that to the Historical Society for the township. The township threatened a lawsuit against Related in the amount of \$650,000-\$700,000 and negotiations were undertaken. Mr. DiBiasi involvement was more towards the ball field, the Historical Society and to the Board of Education. The mayor and the commissioners were handling the traffic aspect. It was supposed to be for two intersections – Kingsland and Washington (which turned out not to be that bad) and Passaic and Kingsland (which is very bad).

Mr. O'Brien now understands that the money was not for specific upgrades to the intersections but as needed. He noted that the traffic at the intersections is not as a result of Cambridge Heights, but of the retail stores.

Ms. Frank asked if the driveways would be open with signs prohibiting certain turns. Mr. Staigar said it would not work well to have the driveway channeled. There would be signs directing traffic to the left or the right. Ms. Frank further voiced her displeasure about the driveways and how they will affect her and her property. Mr. O'Brien said the driveway across from Ms. Frank's property will have a left turn only. She questioned the peak hours and traffic and Mr. Staigar explained to her how that was going to work.

Ms. Beadle asked about the bridge. Mr. Hay explained what the issue was and that that is a county project. Nutley's only involvement with that was the traffic and detouring it.

Mr. DiBiasi thanked the board for allowing special hearings and for their attention during their presentations; their suggestions and recommendations that have helped improve this project. The project has come a long way, visually. He said:

1. traffic is an issue;
2. it will be an issue tomorrow
3. they have tried to be the best neighbor they could be with the neighbors and have made progress. The first night they came before the board, there were 62 neighbors; since that time the team has been working with them to educate them and to give them a comfort level as best they could, always saying that the traffic that is there today, will be there tomorrow. It is his opinion that the reason they do not have nearly as many residents in the audience tonight is because the redesign of the plans and the education as to traffic and this is a result of the work by of Todd Hay, Joseph Staigar, and as a result of his client wanting to work with the neighbors.

He said it is a blessing to have the kind of clients he has. The track record is to say yes to conditions set forth by the board members. The applicant has said yes to every condition that the board has suggested, suggestions which have improved the project. Mr. DiBiasi said this is not a one-shot effort on the part of the applicants. The company executives that are here are involved in other investment communities and have actually been scoping out Nutley to bring retail space on Franklin Avenue. This company likes Nutley and was willing to go through this. Other communities may have done this in one night, but by taking time, the board can see the quality of the proposal.

Mr. Staigar and Mr. Hay have agreed on many points; the planners on both sides have agreed on many points. He brought in a real estate expert, who said the project would stabilize and elevate what the property values should be. He pointed out the house that was for sale next to the subject property which sold and at or near the asking price. He remembers Mr. Costanbader saying his client was willing to sell any part of the property, but for years no one was interested until Mr. DiBiasi's client came along – a client that was willing to assume all the risks involved including environmental at this old gas station. Not many individuals or small companies can afford to take on all the challenges associated with the property. This has to be an improvement to the township, the property and the neighborhood.

With no one in the audience to speak either in favor of or in opposition to the application, the Chairman asked for a motion. Before Mr. DaCosta Lobo made the motion to approve the application, Ms. McGovern read the conditions into the record, some of which are:

1. applicant will raise the roof high enough to shield the air conditioning units;

2. hours of operation will be no more than permitted by the township of Nutley;
3. deliveries will be made from the Kingsland side of the property on off-peak hours (DOT recommendation);
4. closed fence on the west side of the property will be determined by the code office if the fence blocks the view of the neighbor's driveway on Kingsland;
5. applicant agrees to the environmental cleanup of the property;
6. no loitering is permitted; applicant must clean there area that is littered;
7. applicant will install bollards to prevent a car from going through the front window;
8. handicapped access is maintained;
9. the bollards installed by applicant shall be decorative and maintained in good condition;
10. DOT approval must be obtained before any permits are issued;
11. applicant will install screening between lots 17 and 18 in consultation with forester, the neighbor at 114 Kingsland and township engineer or code official;
12. all curbs and sidewalks will be replaced;
13. preconstruction meeting must be arranged before any permit may be issued;
14. garbage pickup will be done by private collectors on off-peak hours and reasonable times;
15. applicant will use its best efforts to encourage employees to park off-site;
16. applicant will comply with comments/requests as per the DOT letter dated February 15, 2013;
17. as per the plans marked A101, A102 of January 28, 2013, the exterior of the building.

Mr. DaCosta Lobo added that the proposed vinyl fence along the northeastern side of the property would be brought back to end in line with the front of the neighboring property and not go out to the sidewalk.

Mr. O'Brien said that landscaping was discussed earlier. He would like to see something decorative put in, such as ornamental trees, not to interfere with the line of sight on both Kingsland and Passaic, at the discretion of the engineer.

In making the motion, Mr. DaCosta Lobo stated the following:

- the testimony and the application establishes that the project and the property are particularly well-suited to each other. This allows for a property that has been in dis-use and disrepair for some time to be of practical use; it permits environmental remediation of a property that might not otherwise be undertaken;
- the variance is required with respect to only one of the three lots, the residential lot being a one-bedroom home that probably has limited viability as it currently exists;
- the other uses that might be reasonable, plausible and permitted in a B2 zone, such as drug store, discount store, cleaners, take-out food establishment would not be, in a material sense, better, than the proposed use in terms of the traffic or safety impact;
- the proposed project will permit for multiple driveways on the property to be controlled an integrated which will improve both pedestrian and vehicular safety in the area and such integration would not be possible without including the residential lot on this project;
- in addition, the building will be set back from the street and permit for some landscaping, both along the street side and between the project and the neighboring properties;

- the testimony and the applicant also established that these variance can be granted without substantial detriment;
- this is a residential type building; the property has been redesigned to fit in with a residential setting and as such does not materially change the character of this mixed-use area;
- it has been established that any use at this site would create some traffic.
- there is no accounting for leaving this property vacant so that there would be not traffic impact;
- the proposed use, however, per the testimony of the experts is the one most likely to create pass-by trips and not to be a special destination that will substantially increase the traffic in the area.
- testimony was given regarding the 7-Eleven at Hancox. The traffic there was shown to be actually less than was predicted by the traffic engineers. It would be reasonable to expect the same here.
- the proposed convenience store use is one that is not a use that is otherwise saturated in the area, which would be a mark against it; and
- in addition to permitting the remediation of the existing problems; the use does not introduce any new environmental concerns as there might be with, for example, a dry cleaners which would be a permitted use in this area.

The motion was seconded by Mr. Graziano.

The members stated their reason for their votes.

Ms. Brown feels that this is a detriment to the public good and cannot be made without impairment of the master plan. It will increase traffic at an already busy intersection, it does not preserve the character of the neighborhood and for other such reasons, she voted no.

Mr. Marino has major concerns regarding the traffic and the impact on the neighborhood. He believes the cleaning up of that corner, which is an entrance into the town, will be to the betterment of the neighborhood and the neighbors. He voted yes.

Mr. O'Brien stated that this is a difficult site to develop. It has been vacant for a very long time and the intersection has a problem. This is not a perfect solution and he encourages the town to look at this intersection to improve it; but with that, he believes the project will make a better intersection. He thinks it will be helpful to the neighborhood and it is appropriate. He voted yes.

Mr. Pastore has some concerns about the parking. He said this is a gateway into Nutley and right now it looks like a garbage dump. He voted yes.

The application was approved by a vote of 6-1. Ms. Brown voted in the negative.

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No. 4. VENTRELLA APPROVED 7-0

Applicant: Mr. & Mrs. Ventrella, 200 Passaic Avenue, Block/Lot/Zone: 7202 / 2 / R-1
Application: request for a permit to leave as erected, six- (6') foot stockade type fence in the rear yard (right sideline) with the finished side facing the direction of your property, and an above ground pool with pavers around the outside, increasing the impervious coverage to 79%,

Appearances: Anthony Ventrella (sworn)

Letter of Denial was read by Mr. DaCosta Lobo.

Chapter 700, Article XI, Section 700-71 G of the Codes of Nutley requires the finished side of the fence, shall face toward the direction of the adjoining properties. The fence installed is a six- (6') foot solid fence with the finished side facing 200 Passaic Avenue.

Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley the Schedule of Regulations of the Codes of Nutley requires impervious coverage not to exceed 70%. The impervious coverage is to 79%.

Mr. Ventrella said he just wants to beautify his property. There is fence on the neighbor's property that has not been taken care of. He would like to replace it. Mr. DaCosta Lobo asked if the former fence was a six-foot stockade fence. It was not; it was a smaller fence in need of repair.

He said his neighbors do not see the fence, so they have no issue with what is put up. He does have permission from his neighbors.

Mr. DaCosta Lobo said he doesn't see where the impervious coverage is. Ms. McGovern pointed out the green strip on the survey showing the grassy area, the rest of the yard is done in pavers. Mr. DaCosta Lobo asked why so much was done that way.

The chairman asked if there was a garage in the back. There is not. His neighbor has a garage towards the back of his own property. The two share the driveway.

With no one in the audience neither in favor of nor in opposition to the application, motion to grant the variance was made by Mr. Graziano. He stated that the property is irregularly shaped; and the pavers allow drainage. The applicant also has permission from the neighbors for the fence. Seconded by Mr. Pastore. The variance was granted by a vote of 7-0.

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BUSINESS: None

RESOLUTIONS: Approved.

PSE&G, 63 Ridge Road
347 Passaic Avenue
349 Passaic Avenue

INVOICES: Approved.

Pennoni – December and January

MINUTES: Approved.

January 14, 2013

LITIGATED MATTERS: None

Respectfully submitted,

Marie L. Goworek