

Approved  
2/15/14

NUTLEY ZONING BOARD OF ADJUSTMENT  
Public Session Meeting Minutes  
February 11, 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, Frank Graziano, Gary Marino, Thomas O'Brien, Ralph Pastore, Mary Ryder, Paul Scrudato, Chairman, Diana McGovern, Esq., Board Attorney

**ABSENT:** Frank Graziano

**EXCUSED:** None

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**No. 1 7-ELEVEN CONVENIENCE STORE Continued from January.**

**To be continued March 18, 2013**

**Applicant:** 7-Eleven Passaic and Kingsland Block/Lot/Zone:

**Application:**

**Appearances:** Thomas DiBiasi, Esq.; Joseph Staigar

**Letter of Denial** was read by DaCosta Lobo.

Mr. DiBiasi updated the members on the status of the project. Mr. Staigar is still negotiating with the DOT and the application is still under review. As soon as Mr. DiBiasi gets a determination from the DOT, he will advise the Board. He is asking for a 30-day cycle to give the DOT time to review the application.

He reminded the Board that he said at the last meeting he would research the status of the sale of the home directly to the west of the subject property. The house closed title on January 22, 2013. With that, Mr. DiBiasi concluded 7-Eleven's presentation for this evening. He asked for and received permission for a continuance to the next scheduled meeting to be held on March 18, 2013.

Mr. DiBiasi waived any applicable time requirements.

A motion was made to continue this matter until the next meeting.

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**No. 2 Bowling Alley Continued from January 14; to be continued to March 18, 2013**

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

**Application:** Bowling alley/restaurant/bar.

**Appearances:** Thomas DiBiasi, Esq.; Joseph Staigar, Traffic and Engineering expert (sworn); Melissa Segal, 38 Way Street, Kimberly Miller, 85 San Antonio Ave; Fernando Gianfrancesco, 196 Franklin Ave. Apt. 2 (sworn)

**Exhibits:** Perna 1,2,3

**Letter of Denial** was read by Mr. DaCosta Lobo at the previous meeting.

Mr. DiBiasi introduced Mr. Staigar, who has been a part of the design team since the start of this application. He said he understood that the neighboring businesses are very concerned with the parking situation and also the traffic on Franklin Avenue. He also understands that this board is concerned with the same issues. He prepared a traffic study with his observations and conclusions. He also understands that he will be subjected to questions by the neighbors at the next meeting. The team will be meeting with the neighbors at a time to be determined prior to the next meeting to see if they can come up with some compromise.

Mr. Staigar prepared a traffic and parking impact analysis. The Chairman asked of the witness had copies for the Board members to review. Mr. Staigar did not. He agreed to provide copies to the members before the next meeting. The parking study was done in a 500 foot radius of the subject application. He said this included on-street parking on Franklin and Centre where metered parking was available. He further stated that there are three municipal lots within 500 feet (500 feet being a reasonable walking distance from the site). Parking counts were done on a Friday night between 5 p.m. and 9 p.m. and three hours Saturday midday and four hours Saturday evening. On Friday evening there was a minimum of 151 vacant parking spaces and on Saturday, 145 (done in half hour segments). Per ordinance, a minimum of 100 parking spaces are required. He referred to the ITE for not only trip generation for uses such as this, but also for parking. Based on a 135-seat restaurant type of use, this site would require 90 parking spaces. He said the applicant gets a credit of 10 spaces. Seventeen are provided on site. There are 53 outside the confines of the site.

He next discussed the trip generation/traffic that this site would generate. Based on the ITE, site would generate about 40 trips in and 40 out during the Friday peak hours and on Saturday peak hour, about 50 trips in and out. The traffic will be disbursed – if parking cannot be found at the facility, then the cars will go to the off-site parking area or use on-street parking. Trip generation will not only be low, it will also be disbursed.

With no further questions from the members the Chairman asked if there was anyone in the audience who would like to speak up before a motion was made to continue this matter to next month.

Ms. Segal reminded the board that she was here previously to express her concerns about the parking. She understands that the issue was looked at further by the experts, but she claims that there is no parking in that area at the times testified to.

Mr. O'Brien asked about the drop off scenario, has any survey been done in the parking lot as to turning radius and how the dimensions of the parking area might accommodate a drop-off scenario . . . does this work, would it work, one car or two cars or more in queue. Mr. Staigar said the turnover would be rather quick. Are they pulling up to the curb, are they pulling in, and is there a loop is there four spots next to each other? How would this work? Mr. Staigar said the spaces are perpendicular; coming in off of Franklin you would turn 90 degrees into one of the 17 parking spaces, there is 24 feet of backup space. There will be some sort of signs indicating drop off/pick up, perhaps an attendant.

Mr. Pastore asked if these cars would have to back out onto Franklin. Mr. Staigar testified that they would not, as there is plenty of turn-around/back up space in the lot so cars would exit the lot front first.

Kimberly Miller, 85 San Antonio Ave. stated that her biggest concern is the request for municipal lot spaces to meet the code requirements. This project requires dozens of parking spaces, not just a few.

Mr. Staigar said the municipal lots are for the merchants, the customers, the shoppers, the businesses; it is a shared parking arrangement. They are there for a purpose and that purpose is to serve those businesses.

Ms. Brown questioned the number of metered and permit parking areas. When other businesses fill up, and more parking is required, then the parking authority will have to make adjustments. Ms. Brown asked about the traffic at Franklin and Centre at peak times. Mr. Staigar will come back to the next meeting with a report.

Marina Perna takes exception to the fact that Mr. Staigar made a statement that this board would reflect poor planning if they would not approve this project as an official business in town. The project represents aggressive and arrogant planning on behalf of the businesses and all the taxpayers in this town, including herself. She said Mr. Staigar said there are 17 parking spaces in the lot, the last time he said there were 12 because five would be used for valet parking. Ms. Perna asked what the width of the driveway is, they haven't seen the plans. The chairman said the plans have been available to the public in the building office. She said there is a metered parking spot in front of the parking lot that may not be removed. The presentation of the drop off and pick up was based upon the idea that there would be some type of driveway apron that might not necessarily been approved by the town. She had random photos of non-peak hours showing traffic flow continuously backed up at various times of day. Ms. McGovern said Ms. Perna would have to testify to each and every photo. Ms. Perna would be happy to at another time; she just wants to get them on the record tonight. The photos were taken on her I-Phone from the conference room in her office on Franklin.

Mr. Gianfrancesco was glad to hear of this application, but he has issues with the parking for his customers. His restaurant seats only 30. Most of his customers are in and out, pick up pizza and go. Parking for his customers will now be hindered.

Mr. DiBiasi asked for a continuance waiving all applicable time restraints.

The chairman asked for a motion to continue this matter until the next meeting to grant the variance was made by Ms. Brown. Seconded by Mr. Marino. The continuance was approved.

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Ms. McGovern and Mr. DaCosta Lobo recused themselves from hearing the following application citing conflict of interest. Barry Kozyra, Esq., filled in for Ms. McGovern.

**No. 3 PSE&G APPROVED 7-0**

**Applicant:** PSE&G, 33 Bloomfield Avenue and 107 Milton Avenue, Blocks 8602 and 8700; Lots 2 and 49, Zone: R-1

**Application:**

**Appearances:** Nevins McCann, Esq. Connell Foley; Tom McGuire, 4000 Handler Road, So. Plainfield, Project Director Northeast Grid; Rich Ardolino, Engineer, 30 Knightsbridge Road, Piscataway; Roy Dunn, 200 Woodland Avenue, Bedford, NJ Landscape Architect; Jennifer Beahm, Planner, 1460 Route 9S, Howell, NJ; Peter Scarpelli, 94 Milton Avenue; Jeff Petretta, resident; Irene Pionai, Thomas Aromando 65 Carrie Court; Todd Hay

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

A previous variance was granted on the property to build the Cook Road Sub-station, and recently for Relief of Condition. Codes of Nutley:

- lists the permitted uses in an R-1 zoning district; a Sub-station is not a permitted use;
- permits public utility facilities as a condition use subject listed conditions (chapter 700, article VII, Section 700-45 D (1), (2), (3), (4), (5), (6) and (7));
- states no non-conforming use nor structure nor any lawful use on a non-conforming lot shall be enlarged, extended, reconstructed or structurally altered except that such structure or use may be structurally altered to correct an unsafe condition. A non-conforming structure or a lawful structure on a non-conforming lot may be restored or repaired in the event of partial destruction thereof;
- The Schedule of Regulations lists the maximum height requirement in an R-1 district. The new proposed lighting mast will be 70 feet in height.
- requires a fence in an R-1 district not to exceed six feet in height. The proposed sound wall will be 25 feet in height;
- requires site plan review. Section 600-5A and B list the site plan requirements;
- a preliminary review of the site plan, shows items lists in the checklist to be missing on the site plan: F(6), F(7), F(8), F(10), F(20), F(26), F(28) and F(30).

Mr. McCann introduced himself to the Board as the attorney for PSE&G. He introduced Thomas McGuire, the project director for PSE&G. He stated that this project is called the Northeast Grid Reliability Improvement project; it is an upgrade for transmission systems throughout Essex, Bergen, Passaic, and Hudson counties. The replacement of the transformer and upgrades could take up to five months. This will not cause any disruption to the local distribution system as they will be bringing in temporary transformers. It is his hope that all the approvals and permits will be in place so that this project will be started by the fall and finished in the spring.

The township's engineer's recommendations were discussed and applicant agreed to comply with all conditions.

Mr. Demerjian asked about the switching out of transformers. He asked if they were coming down and replaced one at a time. They are. He asked if the temporary transformers are large or small. Mr. McGuire said they are the larger one. They will arrive on a mobile trailer. It will be parked just outside the fence of the substation.

Mr. O'Brien asked if the capacity of the substation be increase or is it just being upgraded. It will be upgraded to a higher voltage but the general capacity is the same. He asked if there will be any visual changes to the site, or will it remain relative they same. There will appear to be no difference. There will be no expansion of the site. They are going to build new sound walls and isolation barriers are a part of the overall project.

Mr. Petretta asked about the safety projects that were going on in the summer using helicopters. Does Public Service have records to show the safety of the towers. Helicopters are used to inspect the towers rather than have tower men climb ladders to inspect the hardware. Mr. McGuire is not aware of any know issues with that inspection.

Ms. Pionai asked if the transformers are enclosed in the beige metal boxes on the site; and when PSE&G makes the changes what will the size of the new ones be. The boxes are switchgear lineups; basically, they supply the 13kv to the lines throughout the town.

They are distribution equipment and not the transformer. The gray boxes are the transformers.

Mr. Aromando said two representatives came his home and said there would be no lightning tower going up in the area. He asked for clarification. This has not yet been testified to. He asked about the aesthetics, specifically painting the fence around the property. Can it be made to blend in with the neighborhood. How high will the sound barriers be; he heard conflicting comments that they would be 18 feet high and then 25 feet high. The engineer will clarify that when he testifies. He asked about the work hours and if work will be done on the weekends.

Mr. McGuire said work will be done in the parameters of town ordinance timeframes, if there is one. If the work hours are cut down it may extend the time of the project. There are aspects of what they do that has to be done around the clock.

Mr. O'Brien asked if there is a budget allotted regarding the aesthetics of this site; are there any design plans to enhance the look of the substation. He thinks Mr. Aromando is asking if it will be camouflaged. Mr. McGuire said it has been built into the plan and there is landscaping they can do. That will be discussed in more detail by another expert.

Rich Ardolino's engineering credentials were accepted by the members. He explained that modifications at the site are limited so the detail is on a large scale. They are adding no links to the site, the area of disturbance and the issue of impervious area does not require storm water plan. To meet the prevention/countermeasure plan, they are replacing the transformer and voltage regulator twice. Because of technology, this equipment gets combined into one box; one box is more energy efficient. They are required to have spill containment. This is designed to hold the volume of diametric fluid that is in the electrical equipment, plus the 25-year flood. If an operator sees water in the containment area, he activates a pump that empties the water on the pervious stone on the site.

There are two transformers and the regulators on the site produce noise that exceeds the new New Jersey standard for noise at the boundary. They did a projected sound profile; based on that profile and in order to meet the New Jersey standard, they need to add sound walls on both sides (two on the north side and two on the south side) of the site in front of the transformer. The walls are 18 feet high. More detail can be provided by the expert who did the sound study. Between the transformers will be isolation barriers so that an issue with one piece of equipment doesn't affect another piece of equipment; these will be 25 feet high. Mr. Demerjian asked what he meant by an "issue." An issue could be defined as an electrical issue, a fire in the control cabinet, a piece of equipment out of service – the other piece will remain energized.

Mr. Demerjian said that 25 feet is very tall. Mr. Dun said the size is dictated by the Institute of Electric Engineers Association. The wall has to be the height of the transformer. It improves the reliability; it is insurance regulated and it is a recommendation of the FPA. The makeup, design, and building material for the walls were discussed.

Mr. O'Brien asked if the existing transformers and the new transformers are the same size. They are newly the same size, but the new ones are the smaller ones. Mr. Ardolino said the isolation wall is similar to what is along the highways; the sound wall is more like PVC with holes in it. They are two different types of wall because they serve two different purposes. Mr. O'Brien is not really asking about sound issue, he is concerned

about the aesthetics of the walls. He asked if the separation walls will have the same type of ripple effect that the walls on the highways have. Mr. Ardolino said they will basically have concrete columns with galvanized steel. The sound wall would be of a different type. Mr. O'Brien said it is important that walls be residential friendly. They will put forth their best efforts to make it look good. They will try to shield the equipment as best as possible.

Mr. Dunn's credentials were accepted by the members. He took the board through the landscaping plans. In 2003 there was a blackout across the northeast United States. It was determined that this was the result of a tree that was planted too close to the transmission lines in Ohio and had caused an arcing to occur during a storm. This caused a substation to totally fail. When a substation fails, other substations are called in to help. The next substation was already at peak and then came the domino effect across Ohio, into Pennsylvania, New Jersey and New York State. Since that time, public utilities have had hearings out of which came regulations regarding the height and positioning of trees under transmission lines. Nothing can be planted that will grow over three feet. Twenty feet out from the transmission lines, trees that can grow only to 15 feet are allowed; 30 feet out from the transmission lines, taller trees may be planted. Looking at the plan, the fence line along the edge of the substation is almost directly in line with one of the overhead transmission lines, going north, by the time you get to the property line, you are within the 30 feet distance. Another issue right off the property line within the public service property is an underground gas transmission line and this has its own distances from which to plant. So, the two interfere with each other in a sense, making landscaping a challenge. He will replace some of the dead bushes along the entrance area and where there is a vacancy of trees; he will be adding evergreens there. That is about all he can plant to provide any kind of a buffer for the substation.

Mr. O'Brien asked if there are any other options available or is it just strictly live plantings. Mr. Dunn said he heard comments about painting the fence green. The biggest issue is at the northern property line. There is a four-five high retaining wall and then the slope continues upwards towards the homes. Painting the fence green may look a little better, but because of the height, it won't do any real screening of the substation, itself. The transformers may be able to be recolored and it might look a little better, but there aren't many things he can do to screen the substation. In response to Mr. O'Brien's question, sculptures and fountains are not an option.

The chairman said there used to be beautiful evergreen on the site; it is now dead. How are the plantings maintained. Whose responsibility are they? After the work is done, a bid goes out for landscapers. The company that wins the bid is required to maintain it for two years. Every now and then, a tree dies and PSE&G will come in to remove it if necessary.

Mr. Pastore said a few years back the only thing that was there were a couple of cabinets. Now different equipment is being put in. Is there any possibility that there would be an expansion to the substation. Mr. McGuire said nothing in the immediate future and nothing that he is aware of; however, it cannot be ruled out. It could happen 20 years from now. Mr. Pastore wants PSE&G to remember that this is a residential neighborhood. It is not very often you see a substation in a residential area. Mr. Pastore said he really doesn't want an expansion to this station; it kills the neighborhood. Mr. McGuire said he understands Mr. Pastore's concern; PSE&G is aware of that and sympathetic.

Ms. Beahm's credentials were accepted by the chairman. She stated that all the work is being conducted within the confines of the fence. The applicant is reducing the number of electrical equipment from six to four. The application is for a variance (public utility substations are not allowed in an R1 zone). The substation was granted use variance in approximately 1963 for two transformers. Subsequent to that, in 1974, a use variance was granted for the addition of two transformers, which are currently on the site. Because Nutley code does not allow modification, expansion, etc., of a non-conforming use, they are here for a use variance which has been identified by the township engineer and as well as the code office. In addition, the application is for the sound walls (18 feet) and the isolation walls (25 feet), the fence height.

Ms. Beahm discussed the positive criteria. She said this public utility has been identified as being inherently beneficial. This is important because the application needs that positive prong at the outset; with the exception of determining whether or not the site is particularly suited. Because the substation had been approved in the 60's and again in the 70's and has been maintained as a substation since then, the upgrades being proposed here within the existing confines of the substation, demonstrates particular suitability. The footprint will not change. They are not expanding the substation at this time; in fact, they are taking four pieces and making it two. Ms. Beahm continued to put forth her case of the positive and the negative criteria.

Mr. McCann said that PSE&G has been working with the neighbors. They have been in touch with a couple of the residents and saw that their concerns were met.

Mr. Pastore thinks it would be a good idea if PSE&G would schedule a meeting with the residents, let them look at the plans, what the final results will be. This will put their minds at ease, so they will know exactly what is going there; there will be no surprises. Mr. McGuire said absolutely, but asked that they get a chance to look at the options for various features of the project that were talked about, the treatment of the walls, etc.

Mr. Hay was asked by the Board attorney to look at the aspects of the site plan. He did that and he prepared a report. About the testimony tonight, he has no concern about the use. He has no issue with the tower, the fences and the walls. He also has no concern about the waivers and minor requests the applicant is looking for. He believes all of his comments on site plan review were addressed. As far as item five in his memo, there needs to be some architectural treatment that has to be supplied.

As far as landscaping, there is perma-hedge material that can be woven through the chain link fencing; another could be the actual placement of the fence. There are different aspects that the applicant can look into.

He is satisfied that other recommendations made by his office will be considered and implemented by the applicant as shown on the plans. He would like to have put on the record any information regarding spill prevention plans. It is pertinent for life safety and for the fire department as well. He has no issue with soil erosion.

Mr. Scarpelli stated that the property he resides on belonged to his great grandfather; in 1926 his grandfather sold a piece of the land to PSE&G. In that time, he equipment has gone from one little tower with wires to what it is today. He said the landscaping around it has not been cared for; the plants all died, the weeds overrun the grass. It looks ugly. PSE&G wants to install a 25-foot sound barrier. He wanted to install a five-foot fence and the variance was denied. He knows that PSE&G is protected by the government.

This board can stop this. He feels this is not the place for this station. He is concerned about the residential property value.

Mr. O'Brien asked if this variance does not go through, does the substation go away. Mr. Scarpelli said at least it won't get larger. Mr. O'Brien believes this is a *required* upgrade. The equipment that is there is end of life or it needs to be upgraded in order to continue. Mr. Scarpelli said that is what they are telling you. Mr. Scarpelli asked why the upgrade has to be in this neighborhood. Mr. Scarpelli doesn't like what he sees; he doesn't like what's coming.

Mr. Pastore said there is an existing substation. PSE&G representatives have come forward and sworn about what they are going to do and the reason they are going to do it. They say it is a necessity at this particular time and this station has to be upgraded. Where can they go? Mr. Scarpelli said he does not know, but a 25-foot sound barrier in a residential area is unacceptable.

The chairman said one of the problems that the town had when this was first approved years ago, and still does, is that there is no place to put a cell tower. There was no other place at that time. Mr. Scarpelli said that is not true; there was an area on East Passaic Avenue. The chairman disagreed. He said there has been changes and progress, sometimes not always good, in which the Board of Adjustment has been a part of. The Board can only look at the positive and the negative criteria and make a decision based on that. They listen to the expert witnesses, weigh the testimony of the public . . . Mr. Scarpelli said the residents pay taxes (Mr., Chairman said everyone does). Mr. Scarpelli said this is not in someone else's backyard. The chairman said many of those homes were built after this station was put in place.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant the variance was made by Mr. O'Brien. He said the testimony that was meaningful to him was that the positive outweighs the negative criteria. There is an existing condition. It is his understanding the upgrade is required. It will be beneficial to the area, the State, and to the town. It had been previously approved and the new design will reduce the overall improvements to the site. There is no additional expansion; no additional negative impact to the Zoning Plan. The sound levels will be lower than the existing. The applicant is going to vigorously improve the aesthetics. This might not be the right place for it in town, but it is there now. Reiterating the conditions, Mr. O'Brien said the following should be reviewed: the aesthetics to the sound wall, the separation wall and to review what can be done with the fence and other landscaping and perhaps even landscape maintenance that is more aggressive than what they currently have, so should a condition happen where something is damaged, it can be addressed in a straightforward way.

Seconded by Mr. Marino. The application was approved by a vote of 7-0.

Ms. McGovern and Mr. DaCosta Lobo returned to their seats.

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**No. 4 SALZARULO APPROVED 6-1**

Continued from January 14, 2013

**Applicant:** Joanne Salzarulo, 63 Ridge Road, Block/Lot/Zone: 5503/31/R1

**Application.** Request to construct a 32'10" x 24'6" unroofed deck, attached to the house, around the existing pool, having a 6'3" and a 10'11" side yard setback, and to increase the lot coverage to 48%.

**Appearances:** Joanne Salzarulo (sworn)

**Letter of Denial**, revised February 6, 2013, was read by Mr. DaCosta Lobo.

Codes of Nutley:

- states an attached accessory structure or accessory use shall be considered a part of the main building;
- Schedule of Regulations regulates the rear yard setback of 30 feet and the maximum lot coverage to a maximum of 35%. The proposed rear deck rear yard setback will be six feet one inch and will increase coverage to 48%.
- No detached accessory building shall be located nearer than 10 feet of the main building. The existing 69 square foot shed will have approximately a one-foot setback to the attached deck, which is part of the main dwelling.

Ms. Salzarulo came back tonight with additional calculations for her lot coverage revised plans from the architect as requested by the Board. The members were concerned that the project was too large given the lot coverage.

Mr. Pastore Asked is the shed was going to be removed. It will be removed.

Mr. DaCosto Lobo said there is a wood deck there and asked if that is being included as illegal, or impervious, coverage. He then realized that the applicant is not being cited for impervious coverage.

Mr. Pastore asked what happen when the applicant went to the building department to ask about runoff of water from her upper neighbor. Did she get any satisfaction? Ms. Salzarulo said she hasn't gotten any satisfaction as yet, because it is hard for her to prove where the piping is coming from the neighbor's back yard. They still have the problem on a bad, rainy day, absolutely.

With no questions or comments from the members of the audience as to this application, motion to grant the variance was made by Mr. Pastore and seconded by Mr. Marino. The application was approved by a vote of 6-1; Ms. Brown voted against the application.

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The chairman advised the audience that no new matter will be heard after 11 p.m. If anyone wanted to reschedule their hearing until the next meeting, they would be put first on the agenda.

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**No. 5 SCHMITT to be heard March 18, 2013**

**Applicant:** Mr. & Mrs. Frederick Schmitt, 41 Coeyman Avenue, Block/Lot/Zone: 4800/13/R1A

**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:**

**Letter of Denial** was not read.

Mr. Schmitt asked if he opted to be heard next month, would he have to re-notify the neighbors and put a notice in the newspapers. He was told he would not.

A motion was made and seconded to adjourn this application until the next meeting scheduled for March 18, 2014.

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**No. 6 ALESSIO APPROVED 6-1**

**Applicant:** Ms. MaryAnn Alessio, Olde Towne Realty LLC, 347 Passaic Avenue  
Block/Lot/Zone: 4301/48/ B-3

**Application:** request, for a permit at the above referenced premises, to build a two-story rear addition, to renovate the existing one (1) family dwelling on Lot 48 into a mixed use building, consisting of 986 square feet of office space on the ground floor, a two (2) bedroom apartment on the 2<sup>nd</sup> floor and a 1<sup>st</sup> and 2<sup>nd</sup> floor rear deck.

**Appearances:** Toni Belford Damiano, Esq.; MaryAnn Alessio (sworn); Sal Corvino, Architect/Planner, 111 Brookfield Avenue; Marian DeFeo, 15 Enclosure

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

- Chapter 700, Article VII, Section 700-40 D of the Codes of Nutley states each side yard required in conjunction with a mixed use building shall be at least four (4) feet and the total of both sides shall be at least 14 feet. The proposed side yard shall be 3.4' X 2'.
- Chapter 700, Article VIII, Section 700-46 B (4) (d) of the Codes of Nutley prohibits 2<sup>nd</sup> story decks.
- Chapter 700, Article VIII, Section 700-46 B (5) (d) of the Codes of Nutley states in the area between two intersecting streets or between an intersecting street and the Township limit or between an intersecting street and a zoning district boundary ("intersecting streets," for the purpose of this section, are those which intersect the same side of the street on which the lot which is to be developed fronts), the depth of the front yard of a lot to be developed in the area shall not be less than the average depth of the front yards of other buildings on the same side of the street, in the same zoning district and having frontage upon the same street, provided that 50% of the frontage of the lots in the same area is developed, but not less than the setback required for the district by the Schedule of Regulations. The proposed 2<sup>nd</sup> story deck will have a 3.6' side yard setback.

Ms. Damiano said this application and the second are joined by an easement; she asked that the members asked that they indulge her when she refers also to 349 Passaic Avenue. She stated that Ms. Alessio has put a great deal of money into one of the structures to make what was very unappealing into something quite attractive. She plans to do that and more to the other. Ms. Alessio is committed to retaining the old world charm of these buildings from the 1800's. Ms. Damiano listed a number of improvements, but stated that Mr. Corvino will go into more detail.

She continued by saying there are 12 spaces required and 12 spaces proposed. The five-foot setback in spaces 22, 23 and 24 are existing and non-conforming. The proposed deck, on the second floor, cited for a four/five foot setback, is over 95 feet from the nearest residential property. There are three reasons to put in this deck: 1) to allow the tenants for that apartment have some outdoor living space (the area is paved for parking); 2) the ability to move large pieces of furniture in and out of the structure; 3) emergency situations – if a stretcher was needed to be brought into the apartment. The property can be constructed without the deck; the deck is aimed to beautify the property. It does not encroach upon the nearest residence. It is in conformance with the intent of the Master Plan.

Mr. Corvino stated that this is an original structure built in the late 1800's. It is a two-story timber frame structure. The first floor was used for storage and the second floor had an apartment.

He described the easement between 347 and 349 Passaic Avenue, which includes driveway access; the entrance, storm sewer and the parking 12 spaces on each site property. Some of the parking on 347 will be used to accommodate the parking requirements on 349. 347 will have an apartment on the second floor and perhaps a

medical office on the first floor. He described variances required, the setbacks of the side yards, and the parking areas and the and how the properties were not in conformance.

Mr. Demerjian asked if the signage would be for one property or for both. Mr. Corso said it would be for both. Mr. Demerjian noted that there is a large existing sign on one of the building. Mr. Corso said wall signs are allowed but ground signs are limited to x amount of square feet. The existing sign on 347 will stay in place. Both properties will be addressed on one ground sign.

Ms. Damiano said Dr. Alessio received all the permits in 2009 that she needed to do all the work at 349. They are here to memorialize the building that exists that Dr. Alessio believes the work she did with permits was a pre-emptor of the municipality. All the work was done and, after the fact, she was advised she had to go before the board to get the appropriate application. She is not seeking to do anymore work at 349. The application is just to get a stamp on what was already approved by the township. Ms. McGovern asked if the code office figured out that a variance was needed and whoever gave the CO last time . . . Ms. Damiano said that is exactly correct. Had she not put in an application for 347 Passaic, she would have gone on the rest of her life operating her practice thinking she did everything she should because all the permits were granted to her.

Ms. Damiano said the application was denied on October 16, 2012 because she did not have 18 spaces; she does now. That is what motivated this application.

Mr. DaCosta Lobo said he took a quick look at the cross easement that was provided and it doesn't seem that what shows there is consistent with what is shown on the plan. Mr. Corso said maybe something was missing on his plan. Mr. DaCosta Lobo said the plan shows that parking spaces 15 through 18 are included in the easement but they are not referenced on the exhibit easement or in the actual written language. Mr. Corvino said the easement has to be updated. Mr. DaCosta Lobo said it seems the easement covers two spaces and the plans here require six.

Ms. Damiano said the easement is 2008. The applicant got all her permits in 2009 and did all the work. When she came in in 2012 with the new property that was when she was told she needed 12 spaces. The spaces were refigured, the property was refigured; but, the easement goes to 2008. Upon approval of the application, if it is approved, she will have the easement updated and provided as required. Mr. DaCosta Lobo said the easement he is looking at is from 2011. Ms. Damiano misspoke; he is correct.

Ms. McGovern said a condition would be that the easement would be revised to be consistent with the application.

Ms. DeFeo has concerns about the deck around the back. The property is higher than the yards on Enclosure. A two story deck will take away a lot of privacy. She said this issue has come up before with other owners – the property is small and there is not a lot of outdoor living space. There are no trees that can shield the properties. She said the property will look nice from the Passaic Avenue side, but when you look at it from Enclosure . . . she is not happy about the deck. Arborvitaes could never be big enough and trees would have to be huge.

Mr. O'Brien asked Mr. Corvino if he recognized the concern; is there any barrier or buffer that can be done to the deck to soften it. Mr. Corvino wanted to clarify with a

diagram that shows that the deck is lower and smaller than the original structure. The deck doesn't have a roof.

Mr. Demerjian said the size of the structure is not an issue; the issue is people congregating out on the deck are now taking away the neighbor's privacy. Mr. Corvino said they are 95 feet from the rear yard. Mr. Demerjian said they are 50 feet from the side yard and that is where the neighbor's property is. Mr. Demerjian said the second floor deck is a variance and Mr. Corvino concurred. The variance is for the side yard of Ms. Alessio's other property – not the side yard of the adjacent residential property.

Mr. O'Brien asked if it would be appropriate to have some kind of screening on that side of the deck. Mr. Corvino said the stairs are on that side of the deck. It wouldn't be used for standing, but for access. Mr. Corvino said screening could be installed. He said they are 50 feet from the residential portion of the property on the other side of Dr. Alessio's building.

Mr. O'Brien said he understands the proposal to be providing outdoor space to the tenant which is generally a desirable thing to do. Ms. DeFeo said the tenants would have their privacy but at the expense of the residents on Enclosure.

Ms. Damiano addressed the board. Her client told her that she doesn't not want hard feelings with her neighbors. She just wanted a space for her tenants to enjoy the outdoors. She thought one day her mom would live there and be able to go out on the deck and read a book. Dr. Alessio made a commitment to be at the property for the rest of her life. Ms. Damiano said Dr. Alessio asked if they could compromise – make the deck maybe six feet. She wants whoever lives there to have a little quality of life. Ms. Damiano also reminded the members that this is a one-bedroom apartment, so there won't be a hundred people coming out on the deck every day. It is intended for a single person or maybe a couple to have coffee.

Ms. DeFeo doesn't know if the applicant has seen the property from the other side and how dramatic it really is. If they were to see it from the yards and look up they might understand their concern. Mr. Demerjian asked if the offer to minimize the size of the deck, limited the number of people out there, would be acceptable to Ms. DeFeo. Ms. DeFeo said she didn't know that decks were legal. Her neighbor put one up, illegally, many years ago. Mr. Demerjian said that is what this process is for. Ms. McGovern said that is why the applicant is here for a variance. Decks are not permitted by code. The applicant is seeking permission to put deck up. Mr. DaCosta Lobo said the deck is only being cited for setback; it's only because this property is so narrow. Mr. Demerjian said second floor decks need variances in this zone. Ms. McGovern said they are allowed in some zones. Mr. Corso said the code reads that second story decks and balconies are not allowed in required yard. This deck is in the required side yard. If he had been able to put the stairs on the other side of the deck, a variance would not be required. Ms. DeFeo said here concern is not how close it is, her concern is how high it is.

Ms. Damiano said being considerate of this citizen, what is permitted would be more intrusive and would be less of what she wanted than what the applicant is offering. If the applicant were awarded what she is seeking, it would be less pervasive on her property than what the zoning requirements would permit if the architect were to move the deck over. This is why they sought the variance inconsideration for that 90-foot residential setback.

With no further questions from the members and no one else in the audience with questions or comments, a motion to grant the variance for a second floor deck at 347 Passaic Avenue was made by Mr. O'Brien. He stated that it is a narrow lot with existing conditions. With respect to the testimony from the neighbor, he believes the design is more friendly than what could otherwise be allowed. Seconded by Mr. Marino. The variance was granted by a vote of 6-1. Ms. Brown voted against the variance.

\* \* \* \* \*

**No. 7 ALESSIO APPROVED 7-0**

**Applicant:** Dr. MaryAnn M. Alessio Olde Town Realty of Nutley, LLC, 349 Passaic Avenue, Block/Lot/Zone: 4301/47/B3

**Application:** request, for a permit at the above referenced premises, to convert the existing basement into office space.

**Appearances:** Toni Belford Damiano, Esq.

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

- Chapter 700, Article XIII, Section 700-91 A of the Codes of Nutley requires parking to be on site.
- Chapter 700, Article XIII, Section 700-91 of the Codes of Nutley is the Schedule of Parking which requires the following for the building:

Two (2); two (2) bedroom apartments	Four (4) spaces
Ground floor office 2002 ÷ 300 =	Seven (7) spaces
Proposed basement office 2036 ÷ 300 =	Seven (7) spaces

The required parking shall be 18 spaces total parking provided as per plans are 12 spaces. The difference is six (6) spaces and the applicant is requesting to utilize the adjacent parking lot; block-lot; 4301-48 owned by the applicant of this premises.

- Pursuant to Section 700-44; this is a permitted conditional use and shall require Site Plan approval by the Township of Nutley Planning Board.

Ms. Damiano said the application is here seeking a pre-emptor on a permitted application. Applicant received all the permits. She is not seeking to do anything more than what has already been approved by another department of the township. She is trying to do the right thing. All the permits were given in 2009. the CO was given except for the portion of the basement because there wasn't enough parking which is now in conformance due to the above application. There are now 18.

The chairman said Dr. Alessio should be complimented on how the property has been improved.

With no further questions from the members and no one in the audience with questions or comments, a motion to approve the application of 349 Passaic Avenue was made by Mr. Pastore. Seconded by Mr. DaCosta Lobo. Mr. DaCosta Lobo added a condition regarding the modification of the easement recorded at Book 12298 page 3681 that the parking plan includes six spaces as shown on the plans submitted with the application. The variance was approved by a vote of 7-0.

\* \* \* \* \*

**No. 8 LAFASCO to be heard March 18, 2013**

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

**Application:** request for a permit, at the above referenced premises, to widen the existing 20' driveway an additional 10' for a total width of 30', and to widen the existing 34' curb cut an additional 10' for a total width of 44'

**Appearances:** Mr. LaFasco

**Letter of Denial** was not read.

Mr. LaFasco said that since his application was not going to be heard tonight, could he request that it be held next month. A motion was made to hear this application on March 18; all approved.

\* \* \* \* \*

**BUSINESS, INVOICES, MINUTES, LITIGATED MATTERS:** None.

**RESOLUTION:**

Ms. McGovern said that changes were made as to how professionals get paid in town. In order for the Board's expert planner to be paid, she had to prepare a resolution for the Board's approval. The resolution empowers the board to appoint such staff as the board may deem necessary, as follows: the Zoning Board of Adjustment wishes to retain an independent planning expert to assist the Board in reviewing evidence submitted with applications. Paul Ricci, AICP, is willing and able to provide such expert review of plans, applications, and other documents and the local public contract law permits contracts for professional services without competitive bidding. The term of the contract is from October 31, 2012 to October 31, 2013 and to be paid by voucher at the rate of \$100 an hour; the planner will present malpractice and liability insurance.

Motion to accept the resolution was made and seconded. All approved.

\* \* \* \* \*

**ADJOURNED:** 11:40 p.m.

Respectfully submitted,

*Marie L. Goworek*