

**NUTLEY ZONING BOARD OF ADJUSTMENT**

**April 16, 2012 Minutes – Public Session Meeting**

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**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, Thomas DaCosta Lobo, 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 HONG Carried until May 21, 2012 (held over from October, 2011)**

**Applicant:** Mr. & Mrs. Paul and Olivia Hong, OGH & PBH One, LLC, 309 Barrington Drive, Bridgewater, NJ

**Application:** 255 Centre Street, Block/Lot/District: 7301/3/B2

**Appearances:** Darren DiBiasi, Esq.

**Letter of Denial** was not read.

Mr. DiBiasi requested an adjournment in this matter and that it be carried over to the next regularly scheduled meeting, April 16, 2012.

Moved and approved.

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**No. 2 MALTSSEN PROPERTIES Carried over to May 21, 2012**

**Applicant:** Yuriy Abramo, Franklin Avenue

**Application:** 180-184 Centre Street, Block/Lot/Zone: 7201/15 and 7102/1//R2/B2

**Appearances:** Darren DiBiasi, Esq.

**Letter of Denial** was not read.

Mr. DiBiasi requested an adjournment in this matter and that it be carried over to the next regularly scheduled meeting, April 16, 2012.

Moved and approved.

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**No. 3 RASHI INC. Carried over to May 21, 2012**

**Applicant:** Rashi Inc.,

**Application:** 688 Franklin Avenue and 155-159 Kingsland Street. Block/Lot/Zone: 1900/1, 2, 3/B-2, B-2, R-1 Mixed Use building having the first floor of 5,472 square feet of retail space; a second floor having three two-bedroom dwelling units with parking, landscaping, fencing, etc., at the above referenced premises, as shown on sheets C1.0; C2.1; C2.2; C3.3; C2.4; C3.1, C3.2; C3.3 all dated December 2, 2011, and C4.1 and C4.2 dated August 1, 2011 and SV-1 dated February 16, 2011, prepared by Bertin Engineering Assoc.

**Appearances:** Robert Gaccione, Esq.  
**Letter of Denial** was read by Mr. Da Costa Lobo February 13, 2012.

Mr. Gaccione addressed the board and reminded them that this applicant was before them last month. At that time the Board had some suggestions and comments with regard to changes. The applicant is trying to follow most of those changes. He has revised plans but they have not yet been submitted, but expect to be within the next 10 – 15 days. Mr. Gaccione requested an adjournment to the following regular meeting, May 21, 2012, without further notice.

Chairman Scrudato requested a motion to adjourn this matter to the next schedule meeting to be held on May 21, 2012. Upon motion by Mr. DaCosta Lobo and seconded by Ms. Brown, the continuance of this matter was approved by a vote of 7-0, with no further notice required.

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**No. 4 AROMANDO to be continued May 21, 2012**

**Applicant:** Thomas Aromondo, 65 Carrie Court,  
**Application:** 10 Roma Street, Block/Lot/Zone: 6703/2/R-2 Request for a driveway permit to widen the existing legal non-conforming driveway in the front of a two family home, not in front of a garage

**Appearances:** Thomas Aromando (sworn)

**Exhibit:** A1

**Letter of Denial** read by Mr. DaCosta Lobo. The Codes of Nutley states a driveway shall consist of the area Directly opposite to an attached garage. However, if there is no garage, a driveway not to exceed 16 feet in width from the side lot line, may be constructed.

Because of the positioning of the two-family house and the short length of the driveway to accommodate more cars, he is seeking to widen the driveway. The driveway entrance is on Roma Street, and the autos are facing the side of the house. There is no other way to configure the driveway to accommodate more cars. He's improved the property since he bought it. He's added arborvitaes and other plantings. There is a lot of grass yet where the can expand the driveway. The additional parking area is crushed stone.

Ms. Brown noted that Mr. Aromando keeps saying the front of the house is really on the side of the house. As far as the Board is concerned, the side of the house that faces the street, is the front of the house. She noted that the cars are facing both the neighbor's house and his house. A solution that she has come up with to accommodate eight cars is to move the whole driveway next to the house. That way there won't be huge parking area and a sea of cars in front of the house. Mr. Aromando doesn't understand what she means. She showed him a diagram. He asked what that would accomplish. Ms., Brown said it would allow him to park two wide, four deep all the way to the back. He said then that everyone would have to move every time someone came in or out. Ms. Brown said what Mr. Aromando is proposing is that he wants to park in the entire front yard and it looks like a parking lot, not a driveway. She said they understand that Roma Street is narrow and hard to park. Mr. Aromando said that he would have to change and take up the whole side yard. Ms. Brown said yes, but he would gain a front yard. He said he would have to put in a new curb cut. Mr. Aromando said that is quite a hardship.

The chairman asked Mr. Aromando his thoughts on this recommendation. He said he doesn't know if it would look any better aesthetically. He said if maybe instead of gravel he put in white stone to make the front look better would that be acceptable? Ms. Brown said that the applicant provided the members with picture of three cars in the driveway, and already that starts to look like a parking lot, put four more in there and all you see are cars.

Mr. Demerjian said they are trying to get him to go with a more conventional driveway that's as deep as the lot. That way he's using the full depth of the lot as opposed to covering the whole front area with so many cars, side by side, four to five wide. Mr. Aromando said the cars wouldn't be able to turn around they would have to back out. Mr. Demerjian said yes, just like everybody else in Nutley. Mr. Aromando said he needs to digest this because the board must have gone over this for quite a while. Mr., Demerjian said most people do not turn their cars around in the driveway. Mr. Aromando asked how the cars would be parked – diagonally? Mr. Demerjian said into the lot, side by side. The applicant asked what other alternative does he have? He doesn't think this is a good plan. It would be very expensive to redo it and he doesn't think it looks so bad the way he has it. Is this the only way he has to go? Is this the only option? Mr. Demerjian said it was his recommendation. Mr. Aromando asked what the choice was about putting a guardrail in front of the building, (this suggestion was made by a member, but was not picked up on the recorder.) The chairman said it is not a guardrail but concrete bumpers. Mr. Aromando said these would not change the positioning of the cars.

Chairman Scrudato said that they are putting a burden on the applicant to back out a car that is last in line every time someone would need to move. The applicant agreed. Ms. Brown interjected saying that she thought the board had to give a variance to the piece of property, not to the applicant's situation. The chairman said to have to find a hardship to the property. Ms. Brown said there isn't one, when there is a solution.

Mr. DaCosta Lobo asked what happens when someone needs 12 cars to be parked on the property? It's a two-family house; it's an extreme situation to have seven cars, but if he came in and said that he had 14 cars and he needed to park on the side of the house, the back of the house the front of the house in order to fit the 14 cars. At some point it becomes too much.

Mr. Marino asked if it would fit seven cars if the driveway was expanded. Mr. Aromando said seven would fit with the plan he had. Mr. Marino asked what would happen if he rented to another person and there was one more car, making eight – would he comeback to this board looking for a variance? He said that he could not rent to the person and tell the person that as a landlord he cannot accommodate them or if an existing tenant, it can't happen.

Mr. Marino said if the board has to provide seven spots to every two-family house in town, it's a big problem, because most home are not going to be able to fit seven spots.

Mr. Aromando asked if he could digest this or does he have to make a decision immediately? The Chairman said he could ask the Board to comeback next month, if he would like. Mr. Aromando asked if he would be allowed more time to digest this and think about because it is a big undertaking. Moving cars in and out behind each other . . . it is a skinny, narrow spot.

Mr. Aromando asked if at the time will there be any other choice but to do this? Mr. DaCosta Lobo said the Board would certainly consider any other suggestions he may come up with in the meantime.

Ms. McGovern suggested that he go to the code official. The plan that is being suggested here, may not even need a variance. He may be able to work it out with the official. She is not saying that that is a definite. Mr. Armando said then he would have to remove the existing driveway. Ms. McGovern said that is what they are suggesting.

The Chairman asked for a motion to continue this matter on May 21, 2012. Mr. DaCosta Lobo made a motion to continue the matter to May 21, 2012; seconded by Mr. Marino. Approved 7-0. Notice is not required.

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**No. 5 BRATT APPROVED 7-0**

**Applicant:** Mr. & Mrs. Todd Bratt, 470 Chestnut Street, Block/Lot/Zone: 5300/27/R-1

**Application:** request for a construction permit to build a new 190 sq. ft. addition to the existing 2<sup>nd</sup> story floor having approximately 4’6” side yard setback on the westerly side.

**Appearances:** Todd Bratt, Tara Mary (sworn)

**Letter of Denial** was read by Mr. DaCosta Lobo. Codes of Nutley requires minimum side, front and rear yard dimensions for the alteration of or addition to a one-family or two-family dwelling provided that the same do not increase the existing lot coverage and/or footprint of existing building outline, shall not apply to the extent that said side, front, and rear yard dimensions (meet or exceed the requirements for side, front, and rear yards set forth in the Schedule of Regulations, prior to July 25, 1987) shall be no less than 80% of the required minimum set forth in the Schedule of Regulations. The required side yard setback shall be 80% of six feet, which is approximately 4’8”. The proposed setback is approximately 4’6.

Mr. Bratt said there is an existing space that is used for a closet/storage area. They have to crouch down to gain access to this space. He said they want to build up, raise the existing dormer about four and a half feet to make a master bath/closet area. Ms. Brown noted that all the applicants were going to do was to go up on the existing exterior wall. Mr. Bratt said that was correct. He offered up a picture.

With no further questions from the members and no one in the audience to speak either in favor or against the application, the chairman asked for a motion. A motion was made by Ms. Brown to approve the variance indicating that the addition is extending the first floor wall up encroaching two inches which is *de minimus*. Seconded by Mr. Marino. Approved 7-0.

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**No. 6 WASSEF APPROVED 7-0**

**Applicant:** Mr. Ashraf N. Wassef, 287 Hillside, Block/Lot/Zone: 2000/26/R-1

**Application:** request for a construction permit to erect a solid 6’ PVC type fence in the side yard property.

**Appearances:** Ashraf Wassef , Alumet Gerges(sworn)

**Exhibits:** A-1

**Letter of Denial** was read by Mr. DaCosta Lobo. Codes of Nutley states:

- a fence erected along the side lines from the front line of a main structure to the rear line of such structure and within such lines shall not exceed four feet in height and shall not be less than two feet in height and shall be of a 50% open construction;
- a fence erected along the side lines from the rear line of a main structure to the rear property line and along said rear property line and within such lines shall not exceed six feet in height band not be of solid construction;
- an attached accessory structure or accessory use shall be considered to be a part of the main building. The attached accessory (deck) as shown on the survey is the rear line of the house.

Mr. Wassef’s application states that he has a narrow piece of property with a narrow access driveway shared with his neighbors. The driveway is used as a second access for cars and pedestrians to more than three commercial businesses with a lot of traffic between 8 and 9 am and 4-6 pm. This is a dangerous situation for his children. He said he is requesting the variance for safety reasons also citing the two-foot high deck, with the ordinance allowed four-foot high fence will be easy to access and he would like privacy from the passing traffic in the driveway for

his family. The fence has been in existence since the applicant bought the house. It is a six-foot solid; he just wants to replace what is there with the same kind of fence.

The chairman asked if the companies using the driveway have a right of way. Mr. Wassef said they do, but it is only supposed to be used for foot traffic. The chairman asked the applicant if sometime in the future, would he be looking to install a pool in the yard. The applicant responded that he would not.

Mr. O'Brien asked how high the fence was in the picture. It is a solid five with a one-foot lattice.

Ms. Gerges said the most important thing about this variance is for the safety of her three children. She doesn't feel comfortable leaving her children outside with that easement without a six-foot fence.

Mr. Marino asked if the applicant was looking to install a solid six-foot fence, five-feet with a one-foot lattice. He is.

Mr. DaCosta Lobo asked what was going on in the pictures the applicant provided? Was the fence coming down or was it being erected? Mr. Wassef said he was installing it when he was told he had to stop the construction. Ms. McGovern asked if he wanted to continue the installation that he started. Mr. Wassef said that would be great if he could.

With no further questions from the members and no one in the audience to speak either in favor or against the application, the chairman asked for a motion. Upon motion by Mr. Pastore and seconded by Ms. Ryder, the variance was approved by a vote of 7-0.

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#### **No. 7 ESPOSITO APPROVED 7-0**

**Applicant:** Ms. Elizabeth Esposito, 67 New Street, Block/Lot/Zone: 5901/16/R-1

**Application:** request for a construction permit to build a one-story addition, approximately 97 sq. ft.

**Appearances:** Elizabeth Esposito, William Dixon (sworn)

**Exhibits:** none

**Letter of Denial** was read by Mr. Da Costa Lobo. Codes of Nutley prohibits a non-conforming structure to be enlarged, extended, reconstructed or structurally altered.

Ms. Esposito stated that she is seeking to add on to the first floor bathroom to make it wheelchair accessible. The house is under construction. The applicant is creating a ramp and a deck at the back of the house.

Mr. DaCosta Lobo asked Ms. Esposito if she is the owner of this two family house. Mr. Dixon is not a tenant; he is Ms. Esposito's fiancé. Ms. McGovern asked Ms. Esposito how long this house has been a two-family. Ms. Esposito said the house belonged to her parents since approximately 1977 and she believes it was a two family way back then. It has been for at least as long as she's lived there – all her life.

Ms. McGovern advised Ms. Esposito that her application is a D-Variance. Ms. McGovern explained what a D-variance was and that the applicant would need five affirmative votes from the members to get the variance. She asked if this would affect the parking. Ms. Esposito said it would not as they have a large yard. Ms. McGovern noted the property meets all the requirements for a two-family house. There are two existing patios; the one where she would like to have the bathroom installed is not seen from the street or the neighbors.

With no further questions from the members and no one in the audience to speak either in favor or against the application, the chairman asked for a motion. Motion was made by Ms. Brown. She stated that this is an existing non-conforming use; it is very small and has no effect on setback requirements. Seconded by Mr. Pastore. The variance was granted by a vote of 7-0.

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**No. 7 WOODRUFF APPROVED 7-0**

**Applicant:** Ms. Christine Woodruff, 592 Prospect Street, Block/Lot/Zone: 3000/9/R-1AA

**Application:** request for a construction permit to build a two-story addition approximately 16'x40' (640 sq. ft.) at the rear of the property, having a 7'6" setback to an existing in-ground swimming pool, and to leave as erected the existing 19' driveway and curb cut.

**Appearances:** (sworn)

**Exhibits:** None

**Letter of Denial** was read by Mr. Da Costa Lobo. Codes of Nutley states:

- No detached accessory building shall be located nearer than 10 feet to a main building. The proposed two-story addition will have a 7'6" setback to the existing in-ground pool;
- A driveway width shall not exceed 16 feet. The existing driveway is 19' wide;
- A curb cut for a one-car garage shall not exceed 12 feet in length; the proposed curb cut is 19'.

Mrs. Brown asked if the driveway was at its current size when the applicant purchased the house. Ms. Woodruff said it was. She was not aware that it did not meet code requirements. Ms. Brown said the applicant was issued a CO and bought the house. Ms. Woodruff said she inherited the house. She did get a temporary CO to close. Ms. Brown asked if she was issued with a TCO or a CO. She does not know for sure.

Mr. DaCosta Lobo said the proposed second floor overhangs the first floor by a little better than two feet and the set back is measured to the farthest point back, which is the second floor. So, from the first floor to the pool is almost 10 feet. He asked the member architects if he was reading this correctly.

The Chairman asked Ms. Brown what the different is between a TCO and a CO. Ms. Brown said she doesn't really think it matters, but wonders why it comes up now, when it's been like this.

With no further questions from the members and no one in the audience to speak either in favor or against the application, the chairman asked for a motion. Mr. DaCosta Lobo made a motion to approve the variance stating the set back to the pool is measured from the second floor which overhangs the first floor, the is very nearly a 10 foot setback; the difference there is *de minimus*. With respect to the driveway, this is an existing driveway, it was purchased as such. It appears to be offset with the neighbors across the street; thus, the extra width does not create a problem with the neighbors pulling in and out at the same time. Seconded by Ms. Ryder. The variance was approved by a vote of 7-0.

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**No. 8 SALZARULO APPROVED 7-0**

**Applicant:** Mr. & Mrs. Gerald Salzarulo, 63 Ridge Road, Block/Lot/Zone: 5503/31/R1

**Application:** Request for a permit to install two air conditioning condensers located within the six foot side yard.

**Appearances:** JoAnn Salzarulo (sworn)

**Exhibits:** None

**Letter of Denial** was read by Mr. Da Costa Lobo. Codes of Nutley defines a side yard as an open space between the building and the side line of the lot extending through from the front to the rear yard or to another street into which space there is no extension of the building above the grade level. The proposed A/C condenser units will be installed within the six-foot side yard (north side).

Ms. Salzarulo said she just had an additional put on the house and would like to have the ac units installed in the side yard away from where her children play. Having the units placed in the side yard would prevent her children from running into the units, sticking their fingers in them or hiding behind them. The units would be out of site and less likely to be disturbed, Installing the units in the back of the yard would impose on the remaining 30 feet of yard and eliminate the possibility of future plans for a deck with an attached pool or patio. The location selected would not be visible from the street and would not impede on the neighbors because the units would face the garage side of the neighbor's back yard. She said it would be fenced in but would not be a detriment to the neighborhood.

With no further questions from the members and no one left in the audience to speak either in favor or against the application, the chairman asked for a motion. Upon motion by Mr. Pastore and seconded by Mr. Marino, the variance was granted by a vote of 7-0.

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**PROFESSIONAL INVOICES:** Burgess Associates

**BUSINESS:** Ms. McGovern said the board should focus their attention on Section 7-4.3 the last paragraph: "Equitable Consideration" subparagraph (e). There is a discussion there about what happens and how the board can consider applications when things have been overlooked for a while by the code office and then people are faced with needing a variance. Ms. McGovern will take Ms. Brown's suggestion and get a copy to the members. It is just a suggestion on how a board can approach something like that. It is not spot on; it is a little unusual, but analogous to the board's situation.

Ms. McGovern noted that there are cases coming before the board that have been reviewed by former code officials and have been found that variances weren't required. Later, it's been found that variances should have been required and now applicants are coming to the board long after the fact to seek variances.

There is another matter where a CO was issued and 11 years later the owner wanted to refinance. The bank required another inspection and it was determined that something was missed by the code official who signed off on the CO. It was the use of a garage for a living space. The attorney had the listing agreement that showed when the house was advertised and then sold, the garage was being used as a living space. The code official said now, sorry you should have had a variance. The lawyer won't make an application for a variance, but will make an application before this board. The Board has other powers under the statute. He would make an application to make a request that the use of that space be considered a pre-existing non-conforming use. Then hardship will not have to be proven. The Board can say it's been so long standing that it should be allowed as grandfathered in. this is the Board using its equitable powers. It's something along a hybrid because these other things that are already coming before the Board are a little bit different because they are not as long standing as the one she just cited.

**RESOLUTIONS:** All Approved

24 Milton Avenue  
40 Milton Avenue

227 Grant Avenue  
90 Mapes Avenue

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**LITIGATED MATTERS:** None

**ADJOURNED:** 8:45

Respectfully submitted,

*Marie L. Goworek*