

NUTLEY ZONING BOARD OF ADJUSTMENT

March 7, 2012 Minutes – SPECIAL 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 Scudato. The Pledge of Allegiance was recited. The Sunshine Notice was read and the Roll was called.

PRESENT: Suzanne Brown, Serge Demerjian, Thomas DaCosta Lobo, Frank Graziano, Gary Marino, Thomas O'Brien, Ralph Pastore, Mary Ryder, Paul Scudato, Chairman, Diana McGovern, Esq. Board Attorney

ABSENT: None

EXCUSED: None

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No. 1 MEKA

Applicant: Kenneth Meka, 57 East Centre Street; 45 East Centre Street and 49-51 East Center Street Block/Lot/Zone: 9700/1, 2, and 3/B-4 and M-1

Application: preliminary/final site plan and variances to build at the above premises, a three-story structure having 17 one-bedroom dwellings, 23 two-bedroom dwelling units, 9,200 sq. ft. of commercial space, and consolidate by deed, lots 1, 2, and 3.

Appearances: Thomas DiBiasi, Esq. Thomas Sposato (Board of Education) sworn; Steven Corso, Architect; Paul Bauman, Planner; Eassili Goteosko of 19 East Center Street; Carmine Allesio, 81 East Center Street

Exhibits:

The Chairman asked if Mr. DiBiasi would mind if Mr. Sposato made a presentation on some matters that could affect the Board.

Mr. Sposato gave a little bit of his background to the Board. He is a Board Trustee with the Nutley Board of Education; he is the Vice President. He is also the advisor, on behalf of the NBE, to the Planning Board and the Zoning Board. He had a list of answers to some of the questions that were presented to him by the Board at a previous meeting.

The Chairman asked how the student population has changed over the last five years. Mr. Sposato said Washington student body has increased; but, said the school year can start with an increase of 15 students over the previous year, but the number can decrease by 10 come the end of the year. Mr. Sposato was unable to provide an answer as to how many students reside in the multi- unit developments. The Chairman asked if there was staff and classroom space, if required. There are no additional classrooms in the building. Additional staff would be needed to add a section to any grade. The lower the student to teacher ratio, the better the learning. The chairman asked several more questions about the student population and Mr. Sposato answered them as best he could; some questions could not be answered.

Mr. DiBiasi refreshed the Board members memories with a summary of what has already been presented at the previous meetings. He said they have heard from the applicant's engineer and the Board's engineer; issues that have been raised by the town engineer have been satisfactorily addressed by the applicant's engineer. The township planner and the applicant's planner; the two planners agreed with their conclusions which were positive for this project. The traffic engineers also had a conscious of opinion that this project would not negatively impact on the traffic at this site or the neighborhood. The fire department had questions about the ingress and the egress and also had concerns about the underground parking; this was also satisfactorily addressed. He heard from the NPD and there are no negative impact concerning the police.

He said that his team has respectfully listened to each of the members' earlier comments and have taken, what they believed to be as solid application and has improved it more. They have taken the board's comments in a constructive way and have adopted each one of the suggestions. The plans before the members this evening will show that the project has been downsized. Ten feet has been taken off the width of the building; the retail space has been downsized from 9200 to 8200 square feet; a two-door elevator had been added to the plans; the height of the building has been lowered; the look of the building has been softened; it has been pushed back, from 10 feet to 15 feet; there is a 25-foot separation from buildings to the building in the rear. The dorms are now aesthetic and non-functional; the underground security has been improved with an up and down, card-access security gate; ventilation and lighting have been improved; refuge and recyclable containers have been moved to another location.

A question had been asked at a previous meeting if this project would fit at this location and what about the 40 units. The 40 units are at the top of Mr. Burgess' comfort level. What they have done is reduced the number of units to 35. Even though the number of units was decreased, the number of two-bedroom units will not be increased; there were 23 before, they will still have 23.

Mr. DiBiasi stated that the architect is here and will be able to take care of the remaining architectural issues. He has his full complement of expert witnesses here tonight in case the Board has any questions of them. He is hopeful to conclude this application tonight. He stated that they appreciate the how the Board has granted the applicant several meetings; they appreciate the time the town has given them and he thanked everyone, including Mr. Hay, for all their input into this project. After listening to Mr. Sposato, he believes that the Board of Education is on board. State-wide statistics would generate up to five additional students; now that there are only 35 units, that number is a good comfort level.

Mr. DiBiasi asked Mr. Corso, the architect to come up. Mr. Corso explained that they decreased the depth of the building by 10 feet and they pushed the entire structure back five feet. He testified as to what Mr. DiBiasi summarized above. (some of his testimony was in and out of the range of the microphone.) He noted that the generator is located directly behind on the east side of the structure. He talked about the reduced number of units and the reduced area of the commercial space.

Ms. Brown asked Mr. Corso to elaborate on the generator. He said it is a residential generator, 36 kilowatts. He said it has a decibel level of 64. Ms. Brown said that they have to comply with the New Jersey Noise Control Act – at night, that would be 50 decibels. Mr. Corso said that was

at the property line. Every distance reduction to the property line would bring it down below that. It will be used for emergency lights throughout the hallways and in the parking garage, as well as the garage exhaust fan.

Mr. Demerjian asked what is the total size of the building. Mr. Corso response was not heard. Mr. Demerjian said the proposal was to create something as big as Franklin School on the site. Mr. Corso doesn't know the size of Franklin school (more testimony unheard).

Ms. Brown compared this to the one on Bloomfield avenue saying this is substantially larger. Mr. Corso said this is structure broken up and Ms. Brown disagreed and said this is one huge mass.

The chairman asked about the heating and air conditioning units. Mr. Corso's response was broken up. The Chairman asked about the decibel level of the units, but Mr. Corso does not know. A question about signage on the commercial part was asked (did not hear response).

The Chairman inquired about the fire emergency lane. He noted that it goes across some curbing. Mr. Corso said what he is looking at is the line of the existing driveway super-imposed on the new driveway. The driveway location is being altered, so it's not conflicting with the old one.

Mr. Demerjian question and Mr. Corso's response was not clear.

Mr. Pastore's question was not heard, but Mr. Corso's answer was "100%." Mr. Demerjian said that cannot be guaranteed. It was suggested that this become a condition; Mr. DiBiasi said that his client would guarantee it and it would be certified. Mr. Demerjian asked by whom would it be certified. The construction department. Mr. DiBiasi said they are making a statement to a question, they are being respectful to each other. The question was a serious question, and they are giving a serious answer – the products are going to be 100% from the United States; they are going to abide by that. He said that Mr. Meka will go under oath on that recognizing that if he doesn't do that, it's perjury. He said he would call him up to the podium right now, because they take this very seriously. Mr. Pastore said it is understandable that a product that is needed is not available then they should get it from wherever they could. Mr. DiBiasi said Mr. Meka could have used foreign materials for the kitchen in his 120 units and saved hundreds of thousands of dollars, but he did not do that. He does not build that way. Mr. Pastore commended him.

Mr. O'Brien asked Mr. Corso how much was the building height lowered. Mr. Corso said over all, one foot, nine inches. Did the space come from the attics, the basement or maybe the overall floor. Mr. Corso said it came out of the first floor, commercial floor level height. Because of the slope, the height of the commercial floor varies. The biggest change was on the easterly side, where there was a one foot change and then smaller changes throughout. Mr. O'Brien asked if this change was good – is it a better building now or was it a better building before these changes. He believes that the suggestion from the board member was a good one. He was able to take the suggestion and incorporate it into the plans. He said it is better to have it closer there. He took the suggestion regarding the parking area. Mr. O'Brien said then, that they now have a tighter building and a better building. Mr. Corso agreed.

Mr. Marino asked Mr. Corso what the height is from the ground to the peak near the stair section. Mr. Corso said the highest point is _____. (Blank)

Mrs. Rider asked about the dormers – is there usable space or is just faux, not some little space that could be used for anything. Mr. Corso said it is not usable space; there will be no space in the attic.

Mr. O'Brien asked if the number of units was reduced because the building was shorted or was there a design change. Mr. Corso said it was part of a decision that was made to accommodate suggestions by the Board members for a bigger front yard (some of this testimony was broken up). Mr. DiBiasi said one of the reasons they changed the configuration of the apartments was the Joe Burgess report. The 40 units were at the top of his comfort level. When the applicant heard the concerns and suggestions of the Board members as to what the façade would look like from East Centre Street, they took these comments and pushed the building back to 15 feet, made the building less wide and then came down on the bedroom count. The applicant's planner and the applicant agreed with it and that is the new direction they are going.

Mr. O'Brien asked about the comfort level of the 40 units. Mr. DiBiasi said one of the members asked about the density of this project and that was as a result of Mr. Bauman's testimony, that was not a density issue. Mr. DiBiasi said if you look at the letter of denial, density was never an issue with this project. However, from a planner perspective, Mr. Burgess thought that 40 units would work, but it was at the top end of his comfort level. The team discussed this and decided they did not want something that is at the top end of something that is satisfactory. They decided to cut it back to allow for wiggle room and will be more conservative. It was also tied into Mr. Burgess testimony about five school children being the top number at 40 units based upon the Ruckter Urban study. They wanted to keep this number low. Ms. McGovern's notes reflect that Mr. Burgess' testimony was one public school child for every nine or 10 units. Her notes also say when asked about the appropriate density, Mr. Burgess's comment was it is at the high end of appropriate.

Mr. O'Brien thanked Ms. McGovern. As a follow up to his question, he asked Mr. DiBiasi if reducing the number of units, did the square footage of the units change? Mr. Corso said they are relatively the same. Mr. O'Brien asked if the nature of the units change. The answer was yes. Some of them got a little plusher. Mr. O'Brien asked if these units will go for more money, will they bring in a different class of people; does the nature of these units change because the number of them has changed? Mr. Corso said, in that sense, some of them are a little higher caliber. Mr. O'Brien thanked Mr. Corso.

Mr. Pastore stated that from all the testimony heard, this project will have little or no effect on the school system. Mr. DiBiasi said that is what the planner said and that is what he gathered from Mr. Sposato's testimony. He said he knows that Mr. Sposato left, but he wanted to have the catch-all question of just what Mr. Pastore asked. Mr. Demerjian said that is subject to interpretation. Mr. Demerjian said they heard the testimony that the class size was at its current ideal scenario – that range. Mr. DiBiasi realized that Mr. Sposato was still in the audience and he asked that he return to the microphone.

Mr. DiBiasi asked Mr. Sposato if, based on the research done, does the Board of Education believe this project will negatively impact on Washington school. Mr. Sposato said no and he apologized for not making the statement, but after he read the report and listened to the minutes, the BOE is going to go with the decision of the experts that the town hired. The BOE does not believe that under five children, if at all, will have an impact on the school. He said he believes the school can handle that.

The Chairman asked Mr. Sposato if he was familiar with the Town and Country condos at the end of Washington Avenue. He is. The Chairman said he was at a meeting where a person had a similar position on the BOE as Mr. Sposato. This BOE member said it would not add more than two students to the school system. He does not believe that is a fact; it is something that is not known. The Chairman continued, saying when there is a two-bedroom unit the chances of a child being in that bedroom is pretty good. Mr. Sposato added, "in your opinion." The Chairman agreed. Mr. Sposato said the school in the Town and County area is one of the most highly recommended schools by people outside the district. He said there are children coming from other districts and going to that school. Nutley residents can request to go to a school outside their district. Over the years, these requests have been granted, based on availability. The BOE is looking to change policy. The children are not bussed to the schools outside their district.

Mr. DiBiasi provided data about the 120 units. A one-bedroom rents for \$1600 and the two-bedroom units rent at \$1900; these units are to 100% occupancy. He said Mr. Meka's developments are not speculated. He builds and he owns. He has become one of the largest residents of Nutley and handles these complexes as if they are his home, so the guests who pay rent are an extension of his family and he makes sure and screens them very carefully. As a result of this, he has had amazing success. Mr. Meka has become a part of the community. Mr. Meka has been very cooperative with the various town departments and the Board. Any suggestions that are thrown his way, he has agreed to.

The Chairman asked Mr. Corso about the refuse area. Mr. Corso said it has been relocated to the back of the building (the rest of this testimony was choppy, at best). As to the commercial refuse, the commercial tenant would be responsible for private pick up.

Mr. Bauman approached the podium to testify. The Chairman said the recreation requirements per building are 500 square feet. Mr. Bauman said this merging of two or more lots into one, the complex has to be evaluated in whole because that's where all the shared facilities might be located as far as trash, recycling, etc. Codes of Nutley does not have requirements for a play area for recreational use in a mixed use. By way of association, with the fact that there is an existing play area for the 120 units behind this proposed building, the management, the owner, will allow any residents of the 35 unit complex to have access to that recreation area. The Chairman asked the size of the recreation area. Mr. Bauman was advised that there is 3,000 square feet dedicated to the play area. If they are trying to divide that by 160 units, then they are down to 200/190 square feet per unit. In 2002, by way of variance, the Board recognized the fact that it was a higher density and granted the variance for 3,000 square feet for 120 units. This is not exacerbating the situation because there is no need for play area for mixed use. It is just a matter that there is the contingency because the lots are contiguous, now they become merged. When the original approval was granted, it was on the number of units; but, the variance was granted for that. The owner is committed to sharing the 3,000 square foot area with all tenants of the old and new structures.

Mr. DiBiasi said there is a large passive area between the two buildings. Anyone living in the 35- unit structure will also have that park-like section with a winding trail and benches.

Mr. DiBiasi has no other witness or testimony. He concluded his application.

The Chairman asked if there was anyone in the audience who wished to speak in favor of this application.

The owner (Eassili Goteosko) of 19 East Center Street. He thinks this is a good project. He owns the property right there and it the property needed renovation. This will bring something new to the town. He is in favor of this project. In response to a board member's question, he stated that he owns two residential properties and a commercial piece on Centre Street.

The Chairman asked if anyone wanted to be heard in opposition to the granting of this variance. Carmine Alessio stepped up. After being sworn he stated that this project is over-development. He thinks 35 units is a lot; he said the zone will be changed because of the commercial unit. His concern is the congestion that may be caused by the new structure. He is concerned his property being encroached upon; parking is very limited. (comments/questions by the board were not picked up on the microphone.) He thinks it will have an effect on his property. In talking about the underground parking, he said the ground is contaminated and the building will disrupt what is under there. He claims that his house has gone down substantially in value like everyone else. He said top change the zone will be like a thorn in his side because it is light industry here. That's what it's all about there. There are semi-trucks coming in and out; it's an industrial park. He thinks the numbers are wrong about the number of school children. Why do they have to put the Taj Majal there? This is going to totally ruin his changes of a future.

There was a large gap of silence here.

Mr. Graziano made a motion to grant the variance. They heard testimony by experts brought in by the applicant and by the Board recommending that this would be a good project and will fit well in the neighborhood. Height issues have been addressed. The applicant has made adjustments to the property as suggested by the experts who testified and by the Board members. The building will now flow and fit into the neighborhood. The density variance is not an issue, as we've heard by the experts, and does not pose a problem. Traffic studies have shown that no congestion will be added to the area, if this project is built. We've heard testimony from our school board representative that the impact to the schools will not be detrimental. He believes the stores will also be an asset to the neighborhood; it may actually cut down on people leaving the area. It may cut down on traffic because people would be able to stay in the neighborhood and use some of the services offered right there. So for this and for other reasons the granting of the variance shall be made with the following terms and conditions:

- All American-made products – unless an American-made product is not available;
- Balconies will be as per code;
- (did not pick up on the recorder)

Ms. Brown said that based on the testimony she heard, it was not proven to her that special reasons have been met; it does not promote general welfare. In her opinion, it does not provide adequate light, air and open space; she believes the densities are still too (blank); does not promote the preservation of the character of the neighborhood nor the conservation of neighborhood values; the height and mass of the building is completely out of scale and way too big. Ms. Brown voted no.

Mr. DaCosta Lobo said because he believes the neighborhood is in need of some investment along the lines of this project, mindful of what he thinks are valid grounds to disapprove as out forth by Ms. Brown. Also, he hopes he does not come to regret this vote the way he hopes the

Planning Board regrets its vote on the Bloomfield Avenue project and the reasons set forth in the move to grant this variance.

Mr. Marino said he supports the development; he cannot support the application based on the sheer size and scope of the project. Mr. Marino voted no

Mr. Graziano voted yes.

Mr. O'Brien said he believes this is an attractive project for Nutley. He does not seem to think it is inconsistent with growth patterns that seem to be along the river and on River Road. He does recognize the concerns that it is perhaps a different scale than East Center Street, that it will present a change to the neighborhood. It is a good change and he believes in it. Mr. O'Brien voted yes.

Mr. Pastore's reasons for his vote could not be heard.

Chairman Scudato's reasons for his vote could not be heard.

Mr. DiBiasi thanks the Board.