

**NUTLEY ZONING BOARD OF ADJUSTMENT**

**January 23, 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. 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 Scrudato, Chairman, Diana McGovern, Esq. Board Attorney

**ABSENT:** None

**EXCUSED:** None

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***Ms. Brown recused herself from the following application.***

**No. 1 EVANS – APPROVED 7-0**

**Applicant:** Thomas Evans, 18 Edgewood Avenue, Block/Lot/District: 3500/17/R-1AA

**Application:** To leave as erect a 20-foot driveway and an 18-foot curb cut.

**Appearances:** Paul G. Jemas, Esq.; Tom Evans (applicant); Frank A. Oliver (Contractor); Charles J. Stewart (Planner); Louis Scerbo (Edgewood Ave. resident); Carmine Alessio (Centre Street, resident)

**Exhibits:** A1, A2, A3, A4, O1, O2, O3, O4, O5, O6

**Letter of Denial** was read by Mr. DaCosta Lobo: Codes of Nutley states a driveway width shall not exceed 16 feet. The existing driveway is approximately 20 feet. 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 curb cut is 18 feet.

Paul Jemas had his client Thomas Evans approached the podium to give testimony. Mr. Evans testified that he was the owner of this property on or about March 3, 1992. At that time, he started a project to improve the existing retaining wall and widen the driveway. The curb cut was enlarged. He hired a contractor to do that and the contractor did the design and arranged for the work. The contractor applied for and obtained a permit for that work. Mr. Jemas asked Mr. Evans if the document he was showing him, labeled construction permit notice, dated March 3, 1992 and signed by Mr. Intindola is the document that was presented to him by the contractor as a permit for the work that was to be undertaken? Mr. Evans said it was. The document was marked as Exhibit A1.

Mr. Jemas asked if the work was completed pursuant to the plans that were submitted in connection with that permit. Yes. Mr. Evans did not function at all during that work as a general contractor and any way involved in the participation or performance of the work. Mr. Jemas asked if, at the end of the work, was the certificate of occupancy issued. To the best of his knowledge, yes. Mr. Jemas showed Mr. Evans a certificate that was signed by Mr. Intindola, the construction official. Is that the Certificate of Occupancy that was issued in conjunction with the permit for the work in 1992? Yes. This was marked as A2 and the survey dated December 10, 1991 was marked as A3.

Continuing with his questions, Mr. Jemas asked if, after that job was completed, was anything else to the property? Specifically the driveway and the curb? Extensive improvements during the 2007/ 2008. And part of that was an improvement that was necessitated because of a

common sewer line that was coming through the property from adjoining properties. The contractor that he hired for this job was Frank Oliver. Mr. Jemas asked if Mr. Oliver got the permit for that work to be done. Mr. Evans said that Mr. Oliver was responsible to getting it. To the best of his knowledge those permits were obtained and the work was completed in conjunction with those permits.

Mr. Evans state that at no time with either the 1992 work or the work done in 2006, was he aware of any issues relating to the conformance of the work or their improvements with the applicable laws and codes, that is until his neighbor made him aware that this driveway was too big. He received a letter from the town asked them to go inspect the driveway and let him know. They measured and told him that his driveway was wider than allowed. As a result of that, he is here before the board with this application.

Mr. Jemas asked Mr. Evans if the walls that are there today, and the driveway width, are the same as they were in 1992. Mr. Evans said they are the same. The curb cut has been that way since 1992 for over 20 years.

The Chairman told Mr. Evans that even though the contractor who did the driveway, and got the permits, he was ultimately responsible for the permit. Mr. Evans was aware of that.

Mr. DaCosta Lobo as what in particular about the topographical conditions necessitate the wider curb cut and driveway for safety purposes? Mr. Evans said that looking at the elevations in the driveway, you can see the driveway isn't level.

Mr. O'Brien asked if the driveway, as it was shown on the drawings, is what he received a permit for. That it was built the way it was shown on for the permit application. Mr. Evans said that to his knowledge, yes. Mr. O'Brien asked if he understood correctly that the width of the driveway has been consistent for the last 10 years or so. Mr. Evans said it was the curb cut. Mr. O'Brien corrected his statement. The curb cut didn't change. Mr. Evans stated that when he purchased his house, the driveway could not accommodate a standard size car by today's standards. He also has big trees.

Mr. Jemas called Mr. Oliver to testify. Mr. Oliver was the contractor that Mr. Evans engaged in 2006 and 2007 to do the most recent modifications and improvements to the property. It included a sewer line that was relocated or modified. He also dealt with the driveway and retaining walls. He did not do a curb cut. He worked on the driveway and the sewer line. Mr. Jemas asked if, in conjunction with that, did he apply for and obtain permits from the Municipality for the work. Mr. Oliver said he did. He got them from the construction officer. He spoke with Mr. Spiezio and walked the site with him. Mr. Jemas asked if the plans that were submitted for the permit in conjunction with the issuance of the permit approved. Mr. Oliver said they were.

Mr. Graziano asked if the way the driveway is now, the way it was on the plans, were approved by the building department and the code official. Mr. Oliver said yes.

Mr. Demerjian asked if he had a copy of the plans that were submitted. Mr. Oliver said he did, but not with him now. He would have to go through his files.

Mr. Jemas asked Mr. Stewart to approach to testify. Mr. Stewart stated he is familiar with the application, and he observed the conditions on the site. He had taken pictures of the property, the front portion of the property. There is a close up of the driveway, the garage; the wall is located on the left hand side and the right-hand side of the property. The pictures show that the driveway slopes upward from the roadway. And the property is elevated on the left hand side of the driveway and also on the right hand side.

Mr. Stewart continued. In accordance with the variance request, he believes the variance can be granted under: one, which is by reason of exceptional topographical conditions or physical features of property. The property is elevated on each side so it's difficult to pull a car in and have enough room to get in and out of the car with the retaining walls located on either side; so, therefore, the width of that property is important and also under the C2 the benefits out-weigh the detriments in the granting of this variance would not be a substantial detriment to the purpose of the zoning ordinance. The front, left hand corner where the driveway widens out towards the north and this retaining wall at the entrance way ties in with the adjacent property and the driveway on the property further to the north. He thinks that is a nice streetscape and the way the topography works out there; it ties in quite nicely with the adjacent property. There is plenty of visibility here as far pulling out, as far as sight distances, so he did not see it being a safety problem. The work that has been done on the property and the retaining walls and the whole front portion of the property has been done very nicely and it blends in with the character of the neighborhood.

Lou Scerbo, 21 Edgewood Ave, approached the podium. He said he knows for a fact that the driveway has been made wider over the last, say 20 years; but that's a separate issue. The issue that he has is that that curb cut is not a 20-year old curb cut. Curb cuts are made completely differently over the last 10 years. The joints are different. That curb cut was made in 2006 when the other work was done. He said he was told by Code Enforcement Department that "the Code Enforcement Department does not have a permit for curb cut for 18 Edgewood Ave. I was advised that the driveway was repaired and permits were not issued for repairs in 2006; but since then, the laws have changed." This was from the municipal court clerk. He said the laws haven't changed since 2006. You still need variances for wider driveways and wider curb cuts. He heard Mr. Evans testify that nothing was done to the curb since '92/93, and he finds that hard to believe. He wanted someone from the Board to go out and take a look at that curb and tell him that curb that was put in in 1992. I have these, may I present these . . . Mr. Jemas wanted to see what Mr. Scerbo had to submit. Mr. Scerbo had an OPRA request and actual permits that were signed off on by a code official who witnessed the new curb and he wonders how that is done without variances when some have to go in front of Boards and get approvals before work can begin. I think we're setting a precedent here. Mr. Jemas had an objection to the OPRA request. Mr. Scerbo asked why. Mr. Jemas addressed the chairman saying that he understands that Mr. Scerbo's not an attorney, but if he would direct questions to you. Mr. Jemas said the OPRA request is not evidential at all in this proceeding, number 1. Number 2, there are hand-written comments from Mr. Scerbo on the document; Number 3, there is nothing on this document shows that it has been filed and received by the municipality. That's an e-mail; he has an e-mail OPRA request submission, so that even if he were to submit the OPRA request, the handwritten comments on it are inappropriate because that's not part of the request. Mr. Scerbo read the handwritten comments. They just say that the law hasn't changed and the permits weren't submitted. There's nothing indicative or anything. Mr. Jemas objected to Mr. Scerbo's testimony. As to the other documents that he has, he has no objection.

The Chairman asked if there is a date. Mr. Jemas said one date is issued 9/7/2007 and permit no. 070118 - 9/7, same. Mr. Scerbo said that is what they gave him. He said there is a date on the OPRA request. He further stated that has been filed with the township; whether or not his notes are on it or not it is not the question.

Ms. McGovern said she is wrestling with this record; normally it would be allowed. But this is e-mail. Part of her problem is that we don't have anyone but Mr. Scerbo, who can testify to what he has written here. She said she understands what Mr. Scerbo is saying – that he wants to submit this as proof. She's not saying it's not the truth, it's just that the Board is not able to ask this person questions . . . Mr. Scerbo then requested that this be postponed until the board has that information. Mr. Scerbo said a there's question to what someone is saying under oath, that

curb was not done since 1992, but clearly, if you look at that curb, that curb was done since 2006/2007. That is not an 18-year old curb.

Mr. DaCosta Lobo asked if it is possible that the curb was 20-feet and was repaired, made nicer, upgraded, without having been widened? Mr. Scerbo said it's possible that the curb was 12 feet and was made wider in 2006. Mr. DaCosta Lobo asked Mr. Scerbo if he was sure. He replied that he is. He wanted the Board to go and look at the driveway. The Chairman said he can be sure that all the members have seen the property. Mr. Scerbo asked if they think the curb looks like it was done 18 / 19 years ago.

Mr. Marino noted that Mr. Scerbo lived across the street for 15 years, at least. When did they widen the driveway? He responded when the work was done, by Mr. Oliver. That's when the driveway was widened; that's when the curb cut was brand-spanking new -- along with the sidewalks, by the way. Mr. Marino asked if it was his opinion, before the 2006 work, that the driveway was 12 feet wide. He said the driveway was not as wide as it is. The driveway was made wider in the time period that we're talking about. So was the curb.

Mr. Demerjian asked Mr. Scerbo if he finds the widened curb cut or driveway objectionable. Mr. Scerbo said we have to all go for variances in order to do the work and that work was done without variances. And when he widened his driveway with an 18-foot curb cut, he went in front of the Board for and was granted a variance. I got it a variance for an 18-foot curb cut and he made the 18-foot curb cut. He further stated that his driveway was six inches off and the construction official made him fix it -- six inches off. I fixed it. So now he has a 16-foot driveway and an 18-foot granted curb cut. He said that if you want to make your driveway wider or your curb cut wider because you think it's safer, then you go through the proper channels. You go for a permit; you go for variances like we all have to do, regardless of your job or whatever position you hold.

Mr. Demerjian's understanding is that the contractor went and got a permit. Now maybe by mistake, a permit was released, unknowingly that they're in violation of the ordinance, but the applicant went and got a permit. Your issue . . . Mr. Scerbo said that he was told by the town that no permits were granted.

Mr. Demerjian asked Mr. Scerbo if his issue is more with the person getting the permit, that it's no longer the construction official, not this Board, not the applicant. Mr. Scerbo has no issues with the Board. He does have issues with the formalities that people are doing work without variances. Mr. Demerjian said he did go for a permit. Mr. Scerbo was told there were no permits issued. Mr. Demerjian said the contractor testified that he did go for the permit. Was the permit for a curb cut? That's where we're back to the same position. That curb has been changed. That means he needed a permit and a variance.

Mr. Jemas said that the testimony that has been presented by the applicant, both on Mr. Evans' behalf, by Mr. Evans and as well as by his contractor, was that there was no change to the curb. I can bring them back; I can bring the contractor back up and tell you exactly . . .

The Chairman wanted to clear that up. He asked that the contractor come back to the microphone.

Mr. Oliver testified, again, that they did not cut a new curb in. The curb is existing. What they did was, with Mr. Spiezio, when he went to the site as well, which is documented on the plans, as well, because of the depth of the driveway, which means the curvature of the driveway we opened the driveway up. Mr. Jemas asked what he meant by "opened the driveway up"? Mr. Oliver said that means we kept the existing, we kept the spot of the existing right wall, looking at the house, the existing right wall, which we had to repair after we found an underground sewer line going, which goes through a lot of those houses there because there was one estate at one

time. There was a main house at the back. All in the rear on the left side what we did was we widened it because it was so narrow on top, we widened it up on an angle. And I'm almost positive, if you take the top and take the bottom, which is like an average, you'd be where we'd need to be. Mr. Jemas asked Mr. Oliver is he widened the curb cut? He replied that he did not; not at all.

Mr. Demerjian asked if he replaced the apron. Mr. Oliver said they did have to replace pieces of the apron because when they put a new sewer line in, Mr. Evans' own direct sewer line they had to cut across it, so they exchanged pieces of the sidewalk and the apron. Again, this is almost four years ago. Mr. Demerjian asked if it stayed the same width. "Absolutely." The mouth of the driveway, the actual mouth, was not cut, did not have to be widened.

The Chairman asked Mr. Oliver how long he has been in business. He said he has been doing construction since he was 14 years old, I'm 45. He's had his own construction business since 1996. The chairman how much of his work is done in Nutley. Mr. Oliver said very little. He does very little work for individuals. He did Mr. Evans' because he is a friend. He has built houses and developments in Wayne, Paterson, and Garfield. He built his own house in Nutley.

Ms. McGovern just wanted to do something technical. She was going to mark the OPRA document as an exhibit; but, instead, she is going to keep it. She would allow the Board to see it, but just the response from the code official, which would be without Mr. Scerbo's handwritten notes. She marked it just so there is a record of this document.

Mr. O'Brien thanked Mr. Scerbo for his testimony. He asked if he did go to the town personally for a variance for a curb cut and he now currently has an 18-foot curb cut at his house. Mr. Scerbo said that is correct. Mr. Scerbo lives right across the street from Mr. Evans. Mr. O'Brien asked Mr. Scerbo if he is opposed to an 18-foot curb cut or is he just commenting on the procedure? Mr. Scerbo said the procedure needs to remain the same. That's what the rules are . . . go first . . . you get it granted and then you go. Mr. O'Brien said then this is what the proceeding is about. Isn't this for a variance to leave it remaining. Mr. Scerbo said no. He believes you're going for a variance on work you already did that required a variance. They're two different things, because if you're going to keep it the same, that's stating like it was ok to do it, and he's saying that you shouldn't have done the work until you've come here. We're one step ahead of ourselves.

Mr. O'Brien said then he might be wrong, but it is his understanding is that's why we are here -- because it needs a variance and this is a variance to leave it as built, recognizing that it should have been in place, previously. Mr. Scerbo said that's what he wants to get out -- recognizing that it should have been done first, as all homeowners have to do it. That's the key point here, and he swears that curb is new; it was done in the last six years and not in the last 19 years. He challenged the Board to take a look at that.

The Chairman told Mr. Scerbo that the Board has to take under consideration the application of this piece of property as if it were presented for the first time in front of the Board. It will be judged it on its merits and on different testimonials from two sides. The applicant has the right to file for a variance. You have the right to object. I have a little bit of a problem with you objecting when you have an 18-foot wide curb cut. Mr. Scerbo asked how he got that 18-foot wide curb cut. The Chairman said he will ask the questions. Mr. Scerbo has two curb cuts on his property. Mr. Scerbo said not anymore. He sold that property. The Chairman asked if he went for a permit on both those curb cuts. Mr. Scerbo said he inherited the two curb cuts on the lot that he sold and he went for a variance to get the 18-foot. Before he did the work, he went for the variance. The chairman said that's generally the way it's done, although. . . Mr. Scerbo said that's right, generally.

The chairman said the board gets many cases here after the fact, to leave-as-erected. The Board will, in most cases, not try to penalize the applicant, even as-erected. The application will be judged it on its merits.

Mr. Scerbo asked if another homeowner decides tomorrow that it's safer to widen their driveway, widen their curb cut, they do it and then a couple of years later when it's brought up to them, then they come and beg forgiveness or should they do it properly? The chairman said that is a hypothetical. As he said, the Board judges each application it on its merits and its merits alone.

Carmine Alessio, 81 East Centre Street, said he just happened to be sitting here witnessing this, and his question to the Board is: why do the rules pertain to certain people and other people have another set of rules? The Chairman stated: "I take umbrage with that. All the rules apply to every member of the town. Sometimes, they fall between the cracks, sometimes there are mistakes made by this board and by the building department and by the code enforcement office. We will judge it, when it comes in front of us on its merits and its merits alone." The Chairman asked for a motion. Ms. McGovern noted for the record that since Ms. Brown had to recuse herself, Mrs. Ryder would be voting on this application.

Mr. Graziano made a motion to grant the variance stating that, "The evidence demonstrates that the topography of this property makes it, I think, a good idea to widen the driveway. The testimony that the curb cut of the driveway was never widened since 1992 and will go with that testimony. I do not feel it's a detriment to the area, public good or to the zoning ordinances of Nutley and for such other reasons as may be more fully set forth in a written resolution to be prepared by counsel to the Board within the next few days. A copy of which will be supplied." Seconded by Mr. Marino.

The Chairman asked that the members give a reason for their vote. Mr. DaCosta Lobo stated, "For the reasons set forth in moving the resolution, because of testimony. While there is, essentially, some disagreement between the applicant and the neighbor, as to the existence of the curb cut, there doesn't seem to me to be evidence of any sort of mal-intent on the part of the applicant that might weigh against granting of a leave-as-erect which isn't the first leave-as-erect and isn't the last we see on this Board. So, yes."

Mr. Marino voted yes because evidence shows that the apron at the driveway seems older (*inaudible*) (blank).

Mr. Graziano voted yes and added that it is not the first time the Board has heard a leave-as-erect and I'm sure it won't be the last time. And if I had heard this case presented to me tonight for the first time and it was not already done, I feel my vote would still be yes.

Mr. O'Brian voted yes. He accepts the topographical conditions as a hardship to the property and that the construction, as built, is consistent with the intent and purpose of the zoning laws.

Mr. Pastore voted yes based on the evidence that was submitted here this evening.

Mrs. Ryder said after viewing the property, the topography of that property and all along the width of the driveway, the width of the curb cut is in line and should be left as erected.

The Chairman voted yes and for the reasons stated by the members and it does not impair the intent of the zoning board and the township of Nutley. The variance was granted by a vote of 7-0.

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*Ms. Brown returned to her seat.*

**No. 2 GARRUTO APPROVED 6-1**

**Applicant:** Andrew Garruto, 5-7 St. Paul's Place, Block/Lot/Zone: 2002/5/B-1

**Application:** permit to lease some or all of the residential portions of the above premises to someone other than a resident professional

**Appearances:** Andrew Garruto (owner), Paul Bauman (Planner); Joanne Andriola, (610 Franklin Avenue resident); Andrew Naideck, (640 Franklin Ave. resident) (Sworn)

**Exhibits:** O-1 (photos of vehicles by nursery school)

**Letter of Denial** was read by Mr. DaCosta Lobo. A previous variance was granted October 15, 2001, to permit a subleased office to a non-resident practitioner. Another variance was granted April 21, 2003, to expand the non-conforming structure with office space and residential on both the first and second floors.

Codes of Nutley permits professional offices and uses necessarily incidental thereto, provided that any residential use of the structure, lot, or premises involves only occupancy by a resident professional practitioner and his family and shall not be subleased in part or in full.

Mr. Garruto advised the Board that he has been a resident of Nutley all his life. In 2000, he bought his house and has been renovating it and his law office since then. He is working on the garage and the next project is the basement. When he renovated in 2005 (which was completed in 2007) he wasn't married and had made the home a three bedroom, down from a four bedroom. His family is outgrowing the home. This is a great spot for his office; he has no intention of leaving it. He feels that his recreational space is limited and not sufficient for his children's use. The side yard would have to be cut in half if a fence should be installed. He is restricted from moving his family to a larger home because cannot rent the residential space. His application is to change that so that he may have the ability to rent the residential part of the structure. He does not have any immediate plans to move since the kids are still small, but he would like the right to do so. He is an active member in the community and plans to continue to be. He named several civic organizations in town that he is involved in.

Renting out the space will do no harm to the integrity of the neighborhood. He will retain his office regardless of where he lives. This will allow him to have hands-on day-to-day management of the property. The building and grounds will continue to be well maintained. His presence at the office will preclude deterioration of the property as might happen with an absentee landlord. The utilities are all closely related; they go through the garage, which then run under a crawl space under the living room in the basement of the office, so if he would rent the premises, it would be to someone he knows pretty well.

The Chairman reminded Mr. Garruto that this is a use variance. He is aware.

Mr. O'Brien asked about Mr. Garruto statement on the application form that says with one exception, none of the professional offices on Franklin Ave. have resident professional in the residential portion of the building. Is he reasonably sure about that? Mr. Garruto said as far as he knows. He has been there 11 years. The B-1 zone is on Franklin Ave. and he is right in the middle of it It's only a two block stretch between High St. and Kingsland. There may be one or two other properties that are B-1. The only resident professional that he knows is Dr. Funari who lives there and has an office there. He's been referring to his for the last five years as the professional district, hoping that the term may catch on, thinking that is an appropriate title for the area. Mr. O'Brien asked if they are being occupied by residents; that they are not vacant. He doesn't think there are any vacancies. Responding to Mr. O'Brien's question, Mr. Garruto said he has been there since 2001 and has no intention of selling. He put a fortune into the place. He custom built the office for himself and he will continue to invest in it.

Mr. O'Brien asked the Chairman, if this application be approved, would the variance go with the property, should the property be sold at a later date? The Chairman said the variance is given to the property, not the person.

Mr. DaCosta Lobo said looking at B-1 mixed-use buildings for commercial and residential uses are permitted. Ms. McGovern said this is St. Paul's Place (the rest of her comment was out of range). Mr. Garruto said 60% of the building is his house. The residential / professional use exemption is that you live in the house that you practice in. Mr. DaCosta Lobo asked, if the variance was approved, could a condition be made that the occupancy of it, at least a portion of the building, whether residential or the professional be of the owner? Mr. Garruto said he might not want to live there soon. Mr. DaCosta Lobo said if he continued to occupy the professional portion of the building, then he could lease the residential portion. If he ceases to occupy either, then that would not be permitted. Ms. McGovern had some concerns about a professional partner that were not picked up on the recorder. Mr. Garruto said he invested considerably in the house. He cannot imagine if he ever were to sell it, that someone would go through the expense of destroying the kitchen, the bathrooms, etc. to expand the use for anything else or rent it to anyone that they would be close with especially since the utilities run from one section of the property through to the other (the fire alarm, the burglar alarm, the phones, the VIOS, the cable, everything).

The Chairman said there were two previous requested and granted variances on this property. He is now asking this Board to make it into a two family by putting another family . . . Mr. Garruto is not asking for a two family, it would still be an office on one side and the residential on the other with two separate entrances. It's a corner property. It cannot be split the way the house is. It is a three bedroom house and an office. The office entrance is completely separate. Fred Scalera was the first official at the time; he required a one hour fire rating, double 5/8 sheet rock in between every section of the residence and the office. There is a zone fire alarm that was required.

Mr. Demerjian said it sounds like Mr. Garruto is going for a mixed use building. He is not withdrawing the incidental use; he is going for a mixed-use building. Mr. Garruto said it is a mixed-use building the way it is. He lives there and he works there. He sublets office space to others. It will still be offices, with no change at all. He just wants the right to rent the house to someone else, he can live elsewhere. He will still stay in the office.

Ms. McGovern asked if he just wanted to rent it to one family. He said yes. Ms. McGovern said that is a condition the Board can put on it. Mr. Demerjian said right now it is a professional office with a residential incidental use or . . . residence with an incidental professional office. Yes. Mr. Demerjian asked why not just reclassify it as mixed use? And follow the guidelines under mixed use because that is really what it is. Mr. Garruto said this is not his area of practice, but it is his understanding that it is a mixed use. Mr. Demerjian said that right now, that is not how it is classified. The applicant asked if a B-1 isn't a mixed use. Mr. Demerjian said then that he would have to comply with all the regulations of a mixed use. Mr. Garruto said he is applying to remove a restriction on the mixed use. In a B-1 one is not permitted to rent any residential aspect of this property and that is what he wants to change.

Ms. McGovern read part of the letter of denial: A previous variance was granted in a non-conforming structure with office space and residential on both first and second floors. Mr. DaCosta Lobo said the plans that were submitted show residence and office on first and second floor. Yes. Ms. McGovern said in a mixed use building, you would have residences on the second floor and all office on the first. Mr. Garruto said that is not the way it is. Ms. McGovern said that's the problem. That is what Mr. Demerjian suggested – if you go straight to mixed use, you would put all the residence use on the second floor and you keep the office use on the first floor . . . Mr. DaCosta Lobo pointed out that the residential portion of this building doesn't not front on Franklin; it fronts on St. Paul's, which is maybe there's a reason why there is a difference from a

typical mixed use situation here. Ms. McGovern said it is an unusual circumstance here because you have the residential part in the residential zone and the commercial space in the commercial zone. Mr. Garruto never planned on leaving here. Looking at the photo attached to his application, the brick building is predominately the office – two stories on Franklin Avenue. The vinyl sided area is the residence. Ms. McGovern said this is different from what the ordinance allows. The board is being asked to leave the uses the way they are with the residence in the back on the St. Paul's side and on the Franklin Ave. side, where it's brick is all office use. One condition that the board could attach to this is that the residence portion be a one family; a single-unit and not multiple. Mr. Garruto said to amend it right now.

Mr. Demerjian said the applicant has to look at complying with the mixed-use guidelines – off street parking . . . he would have to come back and explain how he is meeting that criteria. Mr. Garruto said he would have to research that and find out what all of that means. Mr. Demerjian said that's the point. Mr. Garruto thought it might help the board if he could call his planner, Mr. Paul Bauman, as a witness.

Mr. Bauman wanted to clarify for the board what Mr. Garruto wanted to do. He was previously granted two variances, one to expand a non-conforming use to permit him to expand his building. He was also granted permission to sub-lease a portion of his professional office so that he could have two separate professional uses at the same location. The building is constructed such that there is a definite demarcation between the residential side, which is two stories and occupied by one family – own, and the professional office use, also two stories which is occupied by himself and another attorney – not necessarily in partnership, but in the same law practice. All Mr. Garruto wants to be able to do is have the ability to be able to lease the residential portion to a single family, when his family outgrows this space. He does not want to bifurcate into a two-family, he just wants to use the single family residence as a potential tenant location, while he continues to use his professional space with perhaps one attorney, that he is presently configured with.

The Chairman asked if he is saying he is running out of room. Mr. Bauman said he is running out of room as his family grows. The Chairman asked if there was a point at which property can be over-built on. Mr. Bauman said that the applicant is not looking to build. The chairman didn't say this is, he is just asking. Mr. Bauman said yes, there is.

The chairman asked where the additional parking would be. Mr. Bauman advised the board that Mr. Garruto was granted permission to create the expanded building without having to provide additional parking. That is already in the variance from the early 2000's. Mr. Scudato said the applicant is asking for additional residential parking. Mr. Bauman said that is not the case; the applicant doesn't require it; he already meets the parking requirements. All the applicant wants to do is to be able to move his family when they outgrow this space, retain the commercial space for his office and to rent out the residential space to a tenant. This would not change the number of people, the number of cars or anything.

Mr. DaCosta Lobo thinks that this might change. Most likely a person living in the house would have a car and the person working in the front of the building would have a car. An additional space would now be needed for that person. Can the property support this? There might be one additional parking space required perhaps, by the ordinance.

Mr. Garruto said when he applied for the variance, he had two roommates and five vehicles; a two-car garage and a driveway that fit three cars. Now it is just he and his wife with fewer cars. Parking is easier here than it was when he was on Franklin Ave by the Burger King. There is parking on Franklin and St. Paul's for his clients. Parking isn't an issue. Mr. DaCosta Lobo said the board has to be clear about the parking before they can vote. The applicant said there is enough parking for five. The chairman said he only sees enough for four cars. Mr. Garruto said there is a two-car garage and his driveway and apron accommodates three cars. The Chairman

did not see that when he visited the site. The driveway was right in front of the garages. There is an additional lane near his St. Paul's neighbor.

The Chairman questioned Mr. Garruto comments that he is running out of space (the rest of this comment was broken up). Mr. Garruto said that he would move his family to another home and someone else would move in and rent the space. The chairman said that the variances granted on this property are not being properly used. The variances granted on the property would not be in compliance if someone else were to move in.

Mr. Demerjian suggested that they go to a mixed-use condition, under mixed-use guidelines.

Mr. O'Brien asked if he understood correctly that this is a residential or the intent of this zoning is that it is a residential building that allows an office to take place within it. Mr. Garruto said that the way *he* understands it, the office is incidental to the residence. Mr. O'Brien said that the structure that is in this zone ... the intention is that you can have a residential home and operate an office outside that residential home. That is correct. What he is seeing here is an existing built structure, but it is not a residential home with an office operating out of it; it is clearly an office with a residential structure behind it. It almost appears to be two structures attached. He is making the "judgment" that if the occupant can no longer live there because his family is getting larger and he has to move out (and if he has to move out and the Board does not grant this and he is believing the testimony), then they have a property here this is going to be very interesting to try to get this occupied by somebody, because he thinks there is no way you can get a person to move in that would fit this structure the way it is now. He almost sees a hardship to the property if the applicant moves out. This is what he sees. The Chairman said to Mr. O'Brien that the applicant has stated that he has no intention of ever moving from that site. Mr. O'Brien said he doesn't want to move from his office. He does want to move from the residential section. The Chairman noted that the hardship on the property is one that was caused by the applicant.

Mr. Garruto told the Board that the use of the building has evolved. When he went for the first variance, Mr. Intindola did not think Mr. Garruto would be able to sublet some of the office space. As he read the code, he thought that any use incidental to a professional use was subletting space. It was just a polite disagreement about the interpretation of the code, he applied for the variance. The Board agreed with his interpretation. He included that aspect of his variance relief in the variance request he already had pending and the Board granted that. He was also permitted to rent the second floor as commercial use. Because of that, he built that building, at considerable expense. Since then, his family life has changed and this is the reason for his application.

The chairman remembers being on the Board that approved the first variance and he remembers voting against it. Mr. Garruto said he hoped that Mr. Scudato regretted that vote. He hopes that he is happy with what he did with the property.

Mr. Bauman presented some of the positive and negative criteria that the applicant needs to demonstrate. He repeated what was said above.

The Chairman asked Mr. Bauman to address the parking, recreation. He has no qualms about the aesthetics of the buildings. They are very well presented and maintained. (The chairman's comments were broken up). Mr. Bauman addressed Mr. Scudato's concerns saying that the recreational use is part of the situation that he is confronted with as his children grow up. When he made the original applications, the facts behind his personal situation were different than they are today. When this Board heard the application years ago, the Board felt that he had proven his legal obligations to grant the variance for expansion of what was then a nonconforming use. When he was allowed to add the additional occupancy to the professional use, that was something which existed in this neighborhood already. The board had different

sets of facts based on what decisions they rendered in each of those two cases; those facts have changed to today's situation. And yes, we don't know what the future is going to be with his family. He doesn't have any imminent plans on relocating; but, he would like that latitude and while he has it on his mind to make the application, he is just asking the board to say, alright, at some point in time that's not going to be something that violates the spirit and intent of the zoning ordinance, so therefore, the Board has the ability to grant the variance to him. The chairman said the previous variances were granted in 2001 and 2003.

Ms. McGovern said that the ordinance has changed since the variances were granted. There are differing definitions for mix-use. The current mixed use definition doesn't specify that there has to be residences on the bottom. Mr. DaCosta Lobo pointed out to Ms. McGovern, that this is in the definitional section of mixed use; it only qualified the floors as to the B3A. However, when you go to 700-40, the definition of mixed use, there, is different. And this does require only second floor residential. Ms. McGovern said the code official cited this time was the professional use occupied by the owner. She thinks the Board should take a look at the application and listen to the planner's testimony about what is a special reason here. Look at the situation. The applicant is not looking to put an additional on, he is looking for the opportunity to bring a different single family in that building. There would be the applicant's car (and if his wife worked at the office, a second car)... Mr. Garruto said it's a residential driveway. Ms. McGovern said, if the residence was rented out, then Mr. Garruto would have to find parking elsewhere. That would be one additional car on the street. Mr. Scudato asked where Mr. Garruto's clients would park. Mr. Garruto said they would park on the street like they do now. There is plenty of parking on Franklin Ave.

Mr. Graziano asked Mr. Bauman about Dr. Funari's building. He commented that the doctor lives there. Mr. Bauman noted that she has a tenant there, also, so it's not an exclusive . . . Mr. Graziano said the doctor still lives there, like the applicant.

Mr. O'Brien asked if the residential section of this building was rented as offices, would a variance be required. Mr. Bauman said he believes so, because the Board, in granting the previous variances depicted the office on a plan that was approved. There is a segregation between the office use and the residential use. This was clearly defined in the earlier testimony about the double thickness fire-rated walls between the commercial and residential. He doubts very much that they would be interchangeable in terms of use without having to come before this Board, plus making substantial modifications under building codes. Mr. O'Brien said then if he were to move his family out, he would not be able to rent that as an office space.

Mrs. Ryder asked Mr. Garruto about the five parking spaces. She thinks that the curb cut isn't wide enough, so he would have to maneuver any cars to the left of the fifth spot to get out. Is that correct? She was thinking if the Board is concerned about the parking, perhaps a condition could be made that the tenants only get four parking spaces in the driveway and two garages and that Mr. Garruto would get that fifth spot. Although, that may not work under these conditions, would it? Mr. Garruto said it would because that fifth spot does not have a bay in front of it. He would be able to move in and out without disturbing the tenants.

Joanne Andriola noted that there are two pieces of property that are not owner occupied on Franklin. The difference between those properties and the applicant's is that there are parking lots for the tenants and their people. How Mr. Garruto got a variance for his building (albeit a beautiful building) without one parking spot is amazing to her (but that is neither here nor there). She does think he has done a marvelous job with the property. Her building is across the street. Before she got her variance, she had to provide one parking spot for every 300 square feet. The building is owner occupied and she has been there 40 years, since the building was built. There is a definite parking problem. If he thinks he is going to pull out those cars from the driveway, turn around, get them back in . . . the nursery school is across the street. That is a busy, busy school; people are coming and going and parking and double parking. She had

pictures to prove it. He moves out, people move in. He is still going to need a spot to park his car on the street when he goes to the office. There are secretaries, there are other people going on and out. Parking is a terrible situation. The photos were submitted as evidence (O2). She cannot see this variance being granted because of the situation and the parking never being addressed from the very first application.

Mr. DaCosta Lobo asked Ms. Andriola to explain what the pictures are. The pictures of St. Paul's Place where the residential building is and where the nursery school is. The pictures depict how it is all day long. Mr. DaCosta Lobo asked if this was on the opposite side of Mr. Garruto's residence. Ms. Andriola said it is his street; it is a one way. She lives directly across the street from him. These photos are looking up from the other side.

Mr. O'Brien asked Ms. Andriola if she thought another family moved in, would the situation change? She said yes, probably, because they are going to use the driveway, and he will come in with his business and again, when the clients come in, for example for a closing, they could have three or four cars. Fortunately, she has a parking to accommodate her clients. How are we to say that if this variance is granted, that the apartment he wants to rent can never be commercialized?

Andrew Naideck has his law office across from Mr. Garruto's and he has been there since 1995. He finds the comments about the problem parking interesting because when his clients come in he asks where they park and they say on the street. There seems to be no parking problem on that section of Franklin Ave. It is quieter than the middle of Franklin Ave. Very often, he goes out to lunch and sees many open parking spaces. Parking is not a problem on this stretch of Franklin Ave.

Mr. Garruto addressed the Board again. Before he bought this building, it was a dental office. There was much more patient traffic than he has for his law office. Most days he is either at court or doing paperwork. He has few clients during the day, much less than the two-patient room dental office. As far as the use of the driveway – when that variance was approved, he had two roommates, two motorcycles and four motor vehicles. The photos were probably taken at 9 a.m. but after that, it lightens up, until lunch time when some of the children are picked up for the day and then again at the end of the day. It is an accurate picture of the 9 a.m. traffic. And it is only like that when the nursery school is open. Other than that, there is ample parking right in front of his office and along that stretch of Franklin and across the street in front of the Andriola's building.

With no one in the audience to speak in favor of, nor against, this application, Chairman Scudato requested a motion. Mr. DaCosta Lobo made a motion to grant a variance on the grounds that if this building were to be considered a mixed use building, it would need to restrict the residential use to the second floor. However, given the makeup of the building and the fact that the residential portion of the building does not front on Franklin, but instead on St. Paul's and is in keeping with the residential character of that street and with the condition that there is no residential use in the portion of the building fronting Franklin and that the residential portion be limited to one unit, this variance can be granted with any detriment to the zone plan and the benefits thereof in retaining the character of both Franklin and St. Paul's outweigh any detriment. Seconded by Mr. Graziano.

Ms. Brown said what Mr. Garruto is requesting is pretty much what is existing now. It is a one family and a business. The requested variance can be granted without substantial detriment to the public good or the ordinance.

The application was approved by a vote of 6-1. The Chairman voted against the application.

\* \* \* \* \*

**Chairman Scudato recused himself from this matter because Mrs. Scudato is an employee of the NFSB. Mr. Graziano stepped in to Chair the hearing.**

**Ms. Brown also recused herself.**

**Applicant:** Nutley Family Services Bureau, 155 Chestnut Street, Neil Henning, Trustee, Block/Lot/Zone: 6402/8/R1

**Application:** permit to build a new side addition of 112 square feet and a covered entry step of 60 square feet.

**Letter of Denial** was read by Mr. DaCosta Lobo. The existing use is located in a legal non-conforming business building in a residential district having parking spaces in the adjoining municipal lot. Codes of Nutley states no non-conforming use, nor structure, nor any lawful use on a non-conforming lot shall be enlarged, extended, reconstructed or structurally altered.

Andrew Garruto, Esq. introduced himself to the Board. He asked that the applicant come up and be sworn. Neil Henning is the trustee of the Nutley Family Service Bureau. In response to Mr. Garruto's questions, he explained that the NFSB is a mental health agency. The facility is not handicapped accessible and that is what the application is about. Along with that, they would like to make it more HIPA compliant. During a conversation with the Mayor about getting the agency state licensed, building needing to be handicapped accessible and how they needed funding to do it, the Mayor advised Mr. Henning that the NFSB may be eligible for a grant to make the building more compliant. Based on that conversation, his office started the process with getting the grant to make the building handicapped accessible. They grant was approved and they have the funding to complete the work.

Once they received the grant, they hired an architect to draw up the formal plans and a bid was secured to start construction. The HIPA compliance has not yet been met. The files are by the staff in the front near the entry. To be HIPA compliant the files have to be in a separate room away from the public area and visitors. The plans fall for a HIPA compliant office, bathroom, entryway and ramp. The addition would be on the municipal lot side. Mr. Garruto asked if the variance was denied, would the NFSB lose the money. Yes.

Mr. O'Brien asked if this project is going to take any municipal parking spaces; will the lot have less parking? It will not encroach on the lot; it is only bumping out about eight feet. There are sixteen to twenty feet between the property and the parking lot.

Mr. Garruto presented his next witness, Joseph Haines. Mr. Haines was charged with creating plans to come proved better accessibility into the facility. This meant providing adequate handicap accessibility, to promote better safety in which the building was laid out, and more privacy pursuant to HIPA requirements. The administrative area was laid out in a way that did not prevent anyone from coming going into this area and accessing the offices.

Mr. Garruto asked Mr. Haines if granting this variance would be detrimental to the public good. It would not. It will not substantially impair the intent and purposed of the zoning plan. Across the street from the NFSB are all commercial uses. That is a B3 zone; the applicant is in an R1 zone. For some reason this side was never re-zoned. The addition is only about 10% of the building size. It will not encroach on any other property. It is next to a municipal lot.

Mr. Demerjian said there are a series of slopes that brings you up to a higher elevation. Will the slopes require handrails? Mr. Haines said the way it is designed it is a sloping sidewalk. They carefully worked the grades and scissored back on it. (The reason they did this was not picked up on the audio). Mr. Demerjian said there will be no handrails will be expected along that route.

With no one in the audience to speak in favor of, nor against, this application, Acting Chairman Graziano requested a motion. Upon motion by Mr. Pastore and seconded by Mr. Marino. Before the vote of the members was taken, Mr. Graziano reminded the members and the applicant that this is a use variance and that five affirmative votes are required for approval. The application was approved by a vote of 7-0.

\* \* \* \* \*

Chairman Scrudato and Ms. Brown returned to their seats.

**No. 4 NUTLEY LIQUID CHURCH DENIED 6-1**

**Applicant:** Chris Kim, Pastor, Nutley Liquid Church, 300 and 325 Franklin St. ,  
Block/Lot/Zone: 6001/9; and 4/R1

**Application:** request to install four church flags, one church banner, three parking directional signs on the John Walker Middle School property and two parking signs at the Nutley high school for Sunday church services, held in the John Walker Middle School.

**Appearances:** Darren DiBiasi, Esq.; Chris Kim; Victor Cugliari, 10 Cadmus; Richard Baumann, Vincent Place

**Exhibits:** A1

**Letter of Denial** was read by Tom DaCosta Lobo. Codes of Nutley defines an advertising sign which directs attention to a business commodity, service or entertainment offered elsewhere than upon the premises or not exclusive related to the premises. Advertising signs are specifically prohibited in all zones. Codes of Nutley prohibits banners in all districts.

Mr. DiBiasi introduced himself to the Board. He opened his presentation by explaining who and what this application is. Pastor Chris Kim is the campus pastor for the Nutley location of what is known as the Liquid Church. This is non-denominational Christian congregation with locations in Morristown, New Brunswick and Nutley. Pursuant to a lease signed with the Nutley Board of Education, it opened its doors in Nutley in September 2011. Services are held in the John Walker Middle School auditorium; parking is available in both the middle school and high school parking lots. The Church is expanding; each weekend there are 300-400 attendees.

The applicant is here seeking permission to erect signage for the Sunday services. They would be put in place just prior to the service and taken down immediately after. Signage is particularly important to this church because of the location in the middle school. The church obviously does not have a traditional look, such as a church or synagogue. Many of the attendees to this church are first time visitors. Mr. DiBiasi said this will enhance public safety by limiting the circling of the building and making it more identifiable not only for new visitors, but for all parishioners.

Mr. Kim was called to testify. Mr. Kim has been in Liquid Church Ministry for 13 years. He explained how the main campus is in Morristown. That church grew and many of the attendees were from New Brunswick. They opened a chapter there, so that the church members from that area would not have to travel all the way to Morristown for services. Now they have one here. The Liquid Church came out of a young professional bible study from a church in Basking Ridge in the early 2000's. In 2007 it launched itself as the Liquid Church and has been growing ever since. The response they have seen has been positive. They have been drawing in new people, first-timers, people that normally would not attend church have found a comfortable environment in the church. The partnership between the Church and the Board of Education has been very positive – between using the school facilities and the parking facilities on two school lots. The church attendees park in the middle school lot which is relatively small and across the street. There are two services on Sunday – 9:30 and 11.

Mr. DiBiasi said in the past five months, Liquid Church has been holding services. Has there been any negative feedback from the Board of Education? Pastor Kim said no, that as a matter of fact, the church and the Board of Education are in negotiations to renew the lease for 2013. It is his opinion that this is a win/win. The middle school principal and custodial staff has been very welcoming to the group. The church has been able to install some new equipment in the school. They are happy to be in Nutley and want to stay here.

The Pastor explained the signage (marked as A1). The banners and flyers would all be on school property, in front of the building and in or around the parking lots. They would put the signs up at 8:30 and take them down by 12:30-1:00. He is aware that if the Board does grant the application, it is his responsibility to be sure the signs are up not put up too early and they are removed following the services. The signs are important because there are quite a number of people that attend – many for the first time – and the location is not easily recognizable.

Mr. Graziano asked if there were any other events going on at the school while they are holding the church services. Pastor Kim said they are the only organization using the facility on Sunday. So there are no school activities during those times. Pastor Kim said there might be a basketball camp on early Sunday afternoon. They use the gym upstairs. He doesn't know if the schedules overlap, but the gym does have a separate entrance. He is not aware of any programs at the high school that might have need of the parking facilities there.

Mrs. Ryder asked how the members know where the church is located – is there an address they are given. He said they are given the middle school address. She said the middle school is quite large and is curious as to why they need such large signs if they are looking for a school. Mrs. Ryder said she drove past the school on Sunday and saw a blue sign over the billboard. It was discreet and obvious that the blue sign was the Liquid Church. It seemed sufficient and the signs they are seeking seem larger than life. Why do they need to be so large? The pastor said they put that signage up in lieu of the signs they used to have up (they were given permission by the Board of Ed.) They want to let people know they are in the neighborhood. He said there are times they feel that sign draped across the billboard is not sufficient. Mrs. Ryder said there football games and a lot of events across the street. People come from other towns that are not familiar with the area. There has never been a need to direct to handicap or for “turn here,” “park over here” signs, so is it really that much of a concern that they won't find a parking space They could kind of figure it out. The pastor said that it is intuitive for most people to go on the website, know where to go, find parking; but as a church, they want to be very accessible for first timers, heighten their customer service and make an attendee's first visit and exemplary one so they would want to come back.

Mr. Marino asked who would be responsible for erecting the flags on a Sunday morning. They have a guest services team – church volunteers – that come early in the morning before the service to set up. Who makes the decision in inclement weather? The pastor said it would be the team lead (lost audio).

The Chairman asked what days of the week the church holds its services. Pastor Kim responded that the services are held on Sundays, only, from 9:30 to 11. There may be some periodic events throughout the year that they may have an event on Saturday. This past Christmas season, they had an Operation Christmas Angel Outreach, where they served the underprivileged of Nutley. That happens only once, maybe twice a year. The chairman asked if anyone is bussed in. No.

Referring to the photo the applicant provided to the board, Mr. O'Brien said he can clearly see the handicap sign and arrows directing traffic and parking. He asked if these are the church flags that stand vertical that say Liquid Church.com. The diagram shows the pictures of the banners and the flags. Are the flags the same size as the banner? No, they are a smaller. All the signage is vertical and they all say the same thing. Mr. O'Brien said it looks like the church wants to have four flags running down Franklin with the banner behind it. Mr. O'Brien said the

flags all say relatively the same thing. What he is taken by is that they say “.com,” which to him poses advertising of some sort. It’s not just the “Liquid Church,” it’s the “Liquid Church.com.” It’s like the church is trying to send people *somewhere* instead of just having them come to the church. They have this so that anyone driving by may want to see what it is about. Even their parishioners want more information about the church. That was Mr. O’Brien’s point; it strikes more as advertising and not just a location. He is not a designer, but he thinks that someone could identify a color or a simple thing.

Ms. Brown said there are a lot of businesses on Franklin, and they all have one sign. Why does the church feel it’s necessary to have four signs, a banner and four parking signs? The pastor said they want to be very clear about where attendees can find parking. As a church, they want to make it very accessible for all attendees and especially the newcomers.

Mr. Graziano said the variance goes with the building. How do they deal with something like this? (blank) Mr. Graziano said, then, it’s not with the building, so if the middle school decides they want to rent out space to Hell’s Angels on Saturday morning, they wouldn’t be allowed to put up Hell’s Angels signs, would they. (Ms. McGovern’s comments could not be heard).

Mr. DiBiasi said they were not cited for the square footage of the signage. Mr. Graziano asked if any of the signs would be fixed to the ground in any way to stop them from falling over. Pastor Kim said they would be kept in place with sandbags. The banners are designed to withstand wind.

The chairman asked if the church had a lease with the Board of Ed. and if it was renewable yearly. It is renewable yearly, and the lease does not specify use or no use of banners. The directional signs are about 2’x4’, the banner is 2’x8’, and the flags are 1’x6’. These are good-faith approximate sizes.

Mr. DaCosta Lobo said if this approved based on those sizes given, and they are actually bigger, then the applicant would have to get new ones.

Mr. Demerjian is concerned about the quantity and size of the signs and the precedence that is being set here. There are many churches in this area; what if they came to the board and said they wanted to put banners and signs across every part of the street, the front lawns, in and around the corner. When he drove by, it looked to him that there was an event being held there, an event with large crowds, large groups of people. That is what the sign geared to; it’s more of a stadium event where you have to guide a significant amount of people to the facility. But in this case there are only about 200-300 people – a typical church congregation. He doesn’t understand the need for such large sign and so many of them.

Mr. DiBiasi said in response, that a typical church *looks* like a typical church and doesn’t have a need for signage to identify itself. The Liquid Church has that challenge. It would like to continue its relationship with the Board of Education and the township of Nutley. Mr. Demerjian said that can be done with a single banner. Mr. DiBiasi said they are trying to seek an appropriate balance. This is a large building in a large area and the attendees are parking over a large footprint. To identify the church, they are in need of some signs, temporarily for five hours on a Sunday morning.

Mr. Demerjian asked what is to stop Shop Rite from having a turkey special on Sundays and they want to put banners up along Franklin Avenue; it’s the same thing. You have to put it into perspective in terms of the appropriateness and the size and the scale about what is being asked here. If every church asked for the same consideration, there would be banners everywhere.

Mr. DiBiasi pointed out again that the Liquid Church doesn’t look like every other church in Nutley. The middle school is an extraordinarily large building that does not look like a church. They need some form of identification. Many of the attendees come from outside of Nutley and

they need to be able to find it. The signage makes that more efficient, makes the location of parking more efficient.

Mr. Demerjian believes that can be done with one sign; all the rest are pure advertising. It would look like a stadium arrangement and that is not appropriate for a small town.

Mr. Graziano said the town has a pretty strict sign and banner regulation. There are businesses in town that want to put up small sales signs on the sidewalk and they get cited all the time. This will not go over well with businesses when they see something like this going up.

Mr. DiBiasi said the scale of those businesses relative to the signage is a little different from that of the middle school relative to this signage. The applicant was not cited for the square footage of the signage. They are being cited for the installation of flags and the fact that the signage is not necessarily germane to the primary use of the building.

Mrs. Ryder asked Pastor Kim how long he has been using the banner that she saw displayed on Sunday. (??) She asked if the membership has been affected in a negative because there were few signs. He replied that he thinks it has.

Mr. Marino said the signs look really cool. He thinks the colors and the graphics are great, but a little overwhelming. He thinks they can go back and forth, but it's time to try to come to a compromise. He thinks the application is requesting a lot. He said that the church could send out a blast e-mail – telling the parishioners where they can park. This might work and they can lessen what we have here instead of dancing around all night. He thinks the one banner might be sufficient.

Mr. Demerjian said given the restrictions that other businesses have by the town, Liquid Church is blowing that away by miles by with what is being requested. He strongly urged Pastor Kim to consider a single banner.

Mr. DiBiasi asked what the board's thoughts were on the directional signs. Did they feel they were unnecessary. Not speaking for the Board, but himself, Mr. DaCosta Lobo said he can understand that a sign in front of the high school at the corner Booth might be necessary because that parking area is not obvious and the sign on Hillside because the parking lot is not fronting in the building. The parking sign that's in the lot right next to the building seems unnecessary. The sign on Vincent seems unnecessary. He feels the banner is more than is necessary.

After consulting with his client, Mr. DiBiasi advised the Board that they are amending the application by removing the request for the church flags, which are the four green thumbtacks on Exhibit A1; they will remove three of the church parking signs (one on Vincent Place, the one on Hillside and the one closest to Church Street). They would like to retain the parking sign on Booth and the one closest to the Personal Touch Florist by North Franklin. The client is concerned that unless this parking lot is indicated for the middle school, some of the parishioners may inadvertently park in the lot for businesses. Ms. McGovern asked that another plan with the changes be marked as Exhibit A2. Red tack is for the banner, green would be the flags crossed out and the parking flags that he wants are the blue circled ones.

Mr. Pastore's comments were not picked up, but Mr. DiBiasi responded that all those businesses should have other signage to indicate what that business is. The Liquid Church is limited because it doesn't have any signage at all. It's located in the middle school; they signed a lease with the BOE; the BOE has welcomed this use in the building. It does need some form of identification for Sunday mornings for a five-hour window. They cannot have any permanent signage at the school, so the banner allows the church to quickly put it up and quickly remove it and limits its exposure to anyone riding up and down Franklin Avenue.

Ms. Brown asked if they are seeking to place the banner over the Franklin Middle School sign. Pastor Kim said it would be right off the steps.

Mr. O'Brien asked if the parishioners entered through the front door of the school or are there other ways to enter the building. (blank) He asked if there were any directional signs on the building. Pastor Kim said on nice days they do have volunteers.

Mr. Graziano asked if they couldn't just drape a sign over the permanent sign on the lawn and eliminate sandbags. (blank)

Mrs. Ryder said the blue sign is attractive and recognizable; you can't miss it. Because of the size of the bulletin board, it almost lends itself to the perfect situation – it's temporary, it's eye catching, it's easy up/easy down.

Mr. O'Brien said he personally is inclined to support making use of the middle school (he is sure this helps the BOE and helps Nutley with whatever the arrangements are with the lease) and recognizes that the church wants people to know where they are. It's not hard to find the school or the entrance, but perhaps for this particular kind of business it might be helpful to know that this is where the Liquid Church is. He does have a personal objection to the ".com" because it suggests advertising. He thinks it is important for people to know *where* the church is not that this is a web site. This information could be handed out when they get there. The banners almost have an entertainment sense. His personal opinion is that it should be a little more reserved.

The pastor said that the church does want to be readily identifiable. The signs are pretty they're nice. They want this to stick in the minds of the newcomers. This is a church they can come to; invite friends, people that might have had a bad experience with church or religion. There is a unique type of environment they are trying to create.

Mr. O'Brien needed to respond to Nutley's quest to have no banners. How does this board allow what the church needs. There are certain conditions, but we start out with no banners.

Mr. DiBiasi said we have a very unique situation here. He understands the fear of setting precedence here, but the precedent really could be limited to this specific instance of allowing a banner temporarily on a Sunday morning for a church pursuant to a lease that was signed with the BOE. Provided that the size and scale of the banner were limited, the signage is small relative to the size of the building. It is proportionately insignificant and temporary. The church needs to identify itself to be successful. It is not a traditional main-line denomination. The signage allows brand itself and to set itself apart. It is not a typical church environment. The colors that are used on the signage are done for a specific purposed.

Mr. Graziano said that they are willing to compromise – to allow a sign on the lawn. They don't like banners and directional signs. The applicant is talking about the signs like they are the be-all-end-all of everything the church is trying to promote. That message should be spread within the church. Many people have Goss and have been able to find their way to their destination. He said they are looking for something that says the middle school is the Liquid Church right now. His opinion is that one sign at the school is sufficient.

Mr. DiBiasi spoke with his client. They will remove all the parking signage from the application, provided they can do that without prejudice. They will amend the application to the one banner in front of the school. If after a few months they find that the parishioners are having difficulty with the parking, then they will come back to the board at that point. For now, they trust the board's insight and hope that the signs that exist for the middle school and the one banner will be enough.

The Chairman said directions could be put on handouts and given to the parishioners when they come into the church. Pastor Kim said they could do that, but his concern is for the people who are not familiar with the parking.

*[Most of Ms. McGovern's comments were not picked up on the recorder.]*

The chairman asked if marriages were performed at the church. Yes. That would be an additional event. Ms. McGovern asked if there was a set schedule as to when other events may be. Pastor Kim said it may be like a luncheon for the volunteers. Ms. McGovern asked if the Board would like to set a time limit how long the signs may be posted on days when there may be an event – maybe an hour, four hours?

Mr. O'Brien said he is getting nervous about this conversation regarding events. He has a level of comfort with a Sunday morning service; but, then special events start to open a door that he is uncertain about. If the church has regular parishioners that come on Sunday mornings and there is a special event on a Tuesday evening or whenever, he thinks they should know where the church is and where to go. Ms. McGovern asked if there was something in the lease stating how many times they can use the school. The lease includes a certain amount of Sundays. It would be a separate request to use the school for another event.

Mr. O'Brien doesn't think they need a banner for an event. Ms. McGovern said that if approved the signage would be for use at the middle school as long as the church has a lease for that location. The variance is non-transferable to some other place in town.

Victor Cugliari, 10 Cadmus Street, said that this area, Chestnut and Franklin, is the heart of Nutley. The first mistake is that the middle school is rented out to become a church. That is beyond our control. When he goes to Franklin Ave. on a Sunday, it is for a parade. Now they want to put up signs for a church. He said we are giving this town away. What saves this town is the people and the people who put the town in front. What is in the best interest of the town? How does this benefit Nutley? Nutley is bordered by the better part of Belleville and the Allwood section of Clifton. The chairman interrupted Mr. Cugliari asking him not to give a history lesson. Mr. Cugliari said he would be brief and continued his comments. He talked about how he loved this town even though the taxes are sky high, his kids go to the schools. The Chairman asked him to address his comments as to the flags. He doesn't think signs should be allowed. The Chairman said his point was well-noted. He then asked that his application, 10 Cadmus, be adjourned until next month. Mr. Cugliari asked if anyone had objections to that. Chairman Scudato asked Mr. Cugliari if he didn't mind if he ran the meeting.

Ms. McGovern said the next meeting is February 13. There are other applications already on the agenda before him. The chairman asked for a motion to postpone 10 Cadmus to February 13 at the request of the applicant. Moved and approved.

Richard Baumann said he would be short, since he's been here for three hours. He congratulated Pastor Kim for bringing people into church that other churches are not doing successfully. He is a member of Vincent church. He came here to argue the sign and Vincent Place and the Board has taken care of that. He thanked the Board.

Mr. DiBiasi submitted the application for a vote. Just the one banner. Ms. McGovern read the terms: the hours of display would be 8:30 a.m. to 1:00 p.m. on Sundays; no more than two events on non-Sundays; not permanently affixed; as long as the lease with the middle school is in effect; and not to be transferable to any other location or organization.

With no one in the audience to speak in favor of, nor against, this application, Chairman Scudato requested a motion. Mr. Pastore made a motion to deny the variance and seconded by Mr. Graziano. Ms. McGovern said that a yes vote would be to deny the application. Mr. DaCosta Lobo said he wished the applicant good luck, but he cannot see clear to permit a banner; he

voted yes. Mr. O'Brian also voted yes. He supports the applicant's cause, but it is just too troubling to put a banner in this location. The application was denied by a vote of 6-1 with Mr. Marino voting in the affirmative.

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**No. 5 SYLVAN LEARNING CENTER APPROVED 7-0**

**Applicant:** William Boher, 160 Franklin Avenue, Block/Lot/Zone: 6201/1/B3A

**Application:** Request for a zoning permit to utilize approximately 2,121 sq. ft. for Sylvan Learning Center, 240-244 Franklin Avenue, having approximately 10-15 students per hour, two full-time instructors and 4-6 part-time instructors

**Appearances:** Andrew Naideck, Esq.; William Boher, Director of Sylvan Learning Center; Michael Evans, Architect/Planner (Sworn)

**The Letter of Denial** was read by Mr. DaCosta Lobo. Codes of Nutley states no building shall hereafter be erected and no existing building shall be moved, altered, added to or enlarged nor shall any land or building be used, designed or arranged to be used for any purpose other than is included among the uses listed in this article as permitted in the district in which such building or land is located nor in any manner contrary to any of the requirements specified in this article (Chapter 700, Article V, Section 700-7). Codes of Nutley does not list Sylvan Learning Center as a permitted use.

Mr. Naideck addressed the Board giving the members a brief history of the Sylvan Learning Center. He asked Mr. Boher how long Sylvan Learning Center been in Nutley? Approximately six years. It provides tutoring to children after school and has an enrichment program; it also preps student for the SATs. The school range is K-12. He previously had to go for a use variance and that variance was approved and the center has been operating under that use variance ever since then. The new space will be a duplicate of what they have at their other site. There will be one bathroom, a lobby, two offices and an area for tutoring services. Students from all the schools in Nutley attend as well as children from out of town. It is not only a benefit for the tutored students, but also the town, because the parents will drop the children off and use the nail salon next door, go for dinner or go to Shop Rite.

Parking is in the municipal lot, to the rear of the building. The school is not a drain on parking, because most parents drop off and go about their business. Maybe two or three parents will stay in the lobby. (blank) The public parking is metered. The first tutoring session begins at 4:00, Monday through Thursday and then Saturday morning.

Mr. Evans said they took a portion of the Jeanette Shop (the other two portions are already under contract. This portion will be refit with a main entrance to the rear, two small offices, ADA barrier free bathroom and open instructional space to the rear or toward Franklin Avenue. The existing stairs will be reconfigured and the basement will be used for storage space. This use is not permitted in the zone, but it is not prohibited. The use is beneficial to the neighborhood; the high school is not far away. It would not be detrimental to the neighborhood or Nutley.

Mr. O'Brien asked if Mr. Evans did other work in Nutley. Yes, the Scott Trade, the Sports Care, Jersey Joint, the façade for the building. Mr. O'Brien asked if the Sylvan school would be classified as training. He asked the architect if he was familiar with the intent of the plan for Nutley for Franklin Avenue and the master plan for the intent of planners for the use on Franklin Avenue – the different businesses. Yes. He sees this as fostering the intent of developing Franklin Avenue. The small space would limit the usage of the place. The area is more commercially oriented for restaurants and different uses that are permitted in the zone, but he doesn't feel with would negatively impact the surrounding uses. It would not detract

from those uses. Mr. O'Brien asked if there was anything similar to this use now on Franklin Avenue. Currently, Sylvan school is at 160 Franklin Avenue – about 1/4 of a mile away.

Mr. Demerjian asked the applicant how many students are currently enrolled in the program. Mr. Boher said there about 45 active students. They may have 10 kids on a Sunday for SATs.

Ms. McGovern said she remembers the last time the applicant got a variance for where they are, there were restrictions on the hours they the Center would be operating. What are the hours of operation, Monday - Thursday, 4-8 and Saturdays, 9-1. Sundays are for SAT prep. 12-4.

The Chairman asked what is the greatest number of students they have at one time. About 12. There are three students per instructor plus two-full time people. A discussion about parking was not picked up on the recorder.

With no one in the audience to speak in favor of, nor against, this application, Chairman Scudato requested a motion. Upon motion by Mr. Graziano and seconded by Mr. DaCosta Lobo, the application was approved by a vote of 7-0.

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There were three applicants in the audience whose application could not be heard because of the late hour (no new testimony or applications will be heard after 11 pm). The Chairman said he knows it has been a long, arduous night, but there is nothing he can do about that. He said these applications will be heard at the next scheduled meeting and will be heard at the front end of the evening. All the applicants agreed to be heard in February.

The Chairman requested a motion to continue 32 Mapes; 56 San Antonio; and 26 Carrie Court. The clock shall not run against the Board. Moved and approved.

\* \* \* \* \*

**BUSINESS:** The joint meeting with the Planning Board and the Zoning Board is on Feb. 7.

**ADJOURNMENT:** A motion was made and seconded to adjourn the meeting at approximately 11:10 p.m.

Respectfully submitted:

*Marie L. Goworek*