

# NUTLEY ZONING BOARD OF ADJUSTMENT

## December 19, 2011 Minutes – Public Session Meeting

\* \* \* \* \*

### **INCOMPLETE. FOR OPRA REQUEST AS TO 45, 49-51 AND 57 EAST CENTER STREET**

**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. Roll was called and the Sunshine Notice was read.

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

**ABSENT:** none

**EXCUSED:** none

\* \* \* \* \*

Mayor Cocchiola stopped by to say goodbye and to thank the members for all their hard work and dedication to the Board of Adjustment. She announced that she was stepping down from her position as Mayor and will be assuming the position of Nutley's Municipal Court Judge.

\* \* \* \* \*

### **No. 1 Adjourned**

**Applicant:** 45, 49-51 and 57 East Centre Street  
**Application:** Preliminary and final site plan and variances  
**Appearances:** Darren DiBiasi, Esq.

At the request of applicant's attorney, this matter was adjourned to a special meeting date, January 9, 2012. The applicants waive any applicable time restraints.

\* \* \* \* \*

### **No. 2 AURIEMMA Approved 7-0**

*Mr. Graziano recused himself from hearing this application.*

**Applicant:** Mr. Nick Auriemma, 39 Wilson Street, Block/Lot/Zone: 8401/17/R-1  
**Application:** request to leave as erect, a 20 foot driveway and 18 foot curb cut.  
**Appearances:** Nick Auriemma (sworn)  
**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. Codes of Nutley states that

a curb cut for a one car-garage shall not exceed 12 feet in length. The existing curb cut is 18 feet.

Mr. Auriemma bought the house a year ago. He claims that he has several cars and the property is too small to accommodate the cars. He can now open the doors of his cars without hitting anything. He had the work done by someone in Nutley and the applicant was not aware of the restrictions. He had to buy the property behind him when he purchased his residence. He is having the same issue with the other property too. He felt he should bring that to the attention of the Board. The Chairman said each issue is listened to and decided on its own merits. This was not an issue now.

With no one in the audience to speak in favor of, nor against, this application, Chairman Scrudato requested a motion. Mr. Pastore made a motion to grant the application to leave as erect. Seconded by Mr. Marino. Approved 7-0.

\* \* \* \* \*

**No. 3 AT&T WIRELESS APPROVED 7-0**

**Applicant:** New Cingular Wireless, PCS, LLC, 304 Hillside Ave., Block/Lot/Zone: 2001/2/R-1

**Application:** permit to install wireless antennas on the roof of 304 Hillside Avenue, including equipment in the basement

**Appearances:** Michael Lavigne, Esq. (Day Pitney); Edward Butler, Engineer; Peter Tolischus, Planner; Yvan Joseph, Design Engineer/Radio Frequency Specialist; Dave Collins; Andrew Garruto, St. Paul's Place; Steve Kornis, 660 Franklin Ave. (sworn)

**Exhibits:** A-1 Multiple photos on board.

**Letter of Denial** was read by Mr. Da Costa Lobo. Chapter 700, Article V, Section 700-9 of the Codes of Nutley lists the permitted uses in an R-1 district. Wireless antennas are not listed as permitted use. Chapter 700, Article XIV, Section 700-106 A requires site plan approval; Chapter 600, Section 600-5 lists the requirements to be submitted for the site plan.

Mr. Lavigne explained that technology is changing and AT&T needs to make upgraded modifications to all its existing sites. In order to migrate to the 4G technology, a total of three more antennas need to be added which would bring the total to four antennas to this sector. An additional equipment cabinet needs to be added but this would not be visible. He said there is a wireless telecommunications ordinance, but this only makes the sites permitted on municipally owned property. It is not permitted on privately owned property. This application is not a new tower site; this is on top of the existing building.

As per the denial letter, the applicant has submitted an application for a "D" variance, height variance and site plan approval.

Mr. Butler described the project. It is an existing facility with three antennas on the roof now. They are adding an additional antenna to each sector. The antenna will be at the same elevation as the others. It will be bolted properly to withstand the wind loads. He said there are construction codes and building codes that govern this type of installation. The upgrade will also include the cabinet internal to the building. There will be occasional maintenance checkups. There will be no other utilities added, but just a few cables. There will be no increase in electrical load.

The Chairman asked if the cabinet in the basement was fire-protected. Mr. Butler said it is done in accordance for standard fire protection.

Mr. Lavigne had the photo board marked as Exhibit A-1 (the pictures are identical to what the Board received in their packages). Mr. Tolischus advised that he visited the site and took a series of photographs and explained each one. The antenna was super-imposed on the photos to show how the facility will look. In his opinion, these new antennas will create no visual detriment whatsoever. He thinks it would take a very sharp eye to notice that anything is different. The Supreme Court said if the applicant has an FCC license that in itself advances the public welfare criteria because “cellular communications provide for the general . . . (blank).” Fifteen years ago, there were 35 million users; today, there are over 300 million cellular users in the United States (some people carry two phones). The benefits have multiplied, from 1G to 2G to 3G, texting, photo information, videos coming through the phone and now 4G which is 10 times faster than what we are used to today. One major benefit for the medical community; the power is so great that medical information can be transferred via photos and video. In the last quarter, 30 million people upgraded their cellular phones. The Supreme Court also said the site should be particularly suited to meet the positive criteria, and this site certainly is.

On the negative side, the Supreme Court said to use the SIKa test, four part balancing test. Under standard use variance, there is no noise, traffic or population increases; there are no new buildings being added. This additional antenna is like a silent sentry. The new antennas will match the others. It is Mr. Tolischus’ opinion that the positive criteria way outweighs the negative criteria. He believes the application can be granted without any detriment to the zoning ordinance.

Mr. Graziano asked how long before they may be back with 5G. Mr. Lavigne thinks that might be better answered by his radio frequency expert.

Mr. Lavigne asked Mr. Joseph to comment on how this upgrade will have any benefits to users in terms of increasing capacity and decreasing the chances of getting a dropped call or a failed call.

Mr. Joseph said AT&T is upgrading the entire network top the next generation (4G), so this is the next generation of wireless technology. The original was the 1G (analog) and steadily progressed to a more advanced digital technology. This is the fourth generation. As the technology increases, they are many more advantages – increase capacity, more reliability and faster data through put. There are a lot more services, a lot more applications that can be provided to government agencies and hospitals, other than just voice, that they will be able to provide with this 4<sup>th</sup> generation technology.

Mr. Lavigne asked that if a lot of these smart devices and the data transfers are migrated to the 4G technology, will that free up capacity and space on the other existing technologies to provide more access for voice calling so that there will be fewer dropped calls among strictly voice users. Mr. Joseph said that is correct. Basically, with this implementation, they are adding additional frequencies and additional spectrum to current facilities. He said it is very hard to speculate the future. He can say when they may reach 5G, but technology is always improving and increasing.

*The Chairman’s and Mr. Lavigne’s comments here were broken up.*

Mr. Lavigne said there was a structural letter submitted with the application. He said the supporting structural calculations would normally be done as part of the building permit phase when the submit construction drawings. He said, certainly, if Mr. Hay would like the opportunity to separately review those calculations, the applicant would be happy to submit those to him and make those subject . . . (blank).

Ms. McGovern comments were in and out of range, but Mr. Lavigne responded that with regard to the detail drawings of the installation, absolutely and to the extent that there's a need to show the on-site parking, they can certainly show that on the plans. He doesn't want to create the impression among the board members that that is necessarily open to the technicians, because if anyone has been on site, and as the drawings can tell you, there are signs posted on the property in the parking lot that says that parking is reserved, assigned resident parking only. 8:16:19

After further discussion, and with no one in the audience to speak in favor of, nor against, this application, Chairman Scudato requested a motion. Upon motion by Mr. Pastore and seconded by Mr. Marino, the application was approved by a vote of 7-0.

\* \* \* \* \*

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

**Applicant:** Mr. Suhey Nevarez, 21 Freeman Place, Block/Lot/Zone 7200/48/R-2

**Application:** permit to erect a three-foot, 50% open type fence on the top of an existing stone wall approximately three feet in the front yard of a corner property.

**Appearances:** Torres (sworn)

**Exhibits:** Applicant passed around his I-Pad.

**Letter of Denial** was read by Mr. Da Costa Lobo. Codes of Nutley states no fence of any type shall be permitted in any front yard; this would be a front yard fence on the adjoining property on Freeman Place. A fence erected on any corner lot shall conform to the fence requirements for the adjoining properties.

With no one in the audience to speak neither in favor of nor against this application, Chairman Scudato requested a motion. Mr. O'Brien made a motion to approve the application. Seconded by Mr. Graziano, the application was approved by a vote of 7-0.

\* \* \* \* \*

**No. 5 GONZALEZ DRIVEWAY APPROVED 5-2; POOL APPLICATION WITHDRAWN**

**Applicant:** Jose Gonzalez, 50 Passaic Avenue, Block/Lot/Zone: 9301/10/R-2

**Application:** Request for a permit to widen the existing legal non-conforming driveway and curb cut from 20 feet to 27 feet and to install a 16'x24' above ground pool having a 14-foot side yard setback to Hancox Ave side street line and install pool equipment within the eight foot setback

**Appearances:** Jose Gonzalez (sworn)

**Letter of Denial:** Mr. DaCosta Lobo read the letter of denial. Codes of Nutley states:

- the driveway shall consist of the area directly opposite to a detached garage. The proposed driveway extends into the rear yard.
- a curb cut for a two-car garage shall not exceed 16 feet in length. A pool shall be no closer than eight feet to any side or rear lot line; or nearer to the side street line of a corner lot than the main building on the lot; or if the abutting lot to the rear faces said street line, then the distance equal to the depth of the front yard required on said lot to the rear. However, in no case shall a swimming pool on a corner lot be required to be set back more than 25 feet from a side street.
- All pumps, heaters and filtration systems shall be kept to a maximum distance from all property lines and shall be at least eight feet from any property line.

After further discussion, and with no one in the audience to speak in favor of, nor against, this application, Chairman Scudato requested a motion. Upon motion by Mr. Pastore and seconded by Mr. O'Brien, the application was approved by a vote of 5-2. Ms. Brown and Mr. Marino voted against the application.

\* \* \* \* \*

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

**Applicant:** Mr. & Mrs. Thomas Wassman, 79 William Street, Block/Lot/Zone: 5902/14/R-1

**Application:** permit to leave as erect, an above-ground pool having a three-foot side yard setback

**Appearances:** Dawn Wassman

**Letter of Denial** was read by Mr. DaCosta Lobo. Codes of Nutely states that a pool shall be no closer than eight feet to any side or rear lot line. The proposed above-ground pool on the north side yard has a three-foot side yard.

After further discussion, and 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. Marino, the application was approved by a vote of 7-0.

\* \* \* \* \*

**No. 7 FRENCH APPROVED 7-0**

**Applicant:** Mr. & Mrs. Andrew French, 189 Walnut Street, Block/Lot/Zone: 4001/36.01/R-1A

**Application:** request for a permit NOT to build a one-story, 22'x22' detached garage have a six foot side yard and rear lot line setback, as shown on the minor sub-division plot.

**Appearances:** Sandra French (sworn)

**Letter of Denial** was read by Mr. DaCosta Lobo. A minor sub-division had been approved by the Nutley Planning Board on March 321, 2010. Paragraph C of the resolution states the sub-division and development shall be in accordance with the plan submitted. The approved plan shows a proposed 22'x22' garage. Codes of Nutley states a single family dwelling shall be required to have two parking spaces and one space must be in a garage.

After further discussion, and with no one in the audience to speak in favor of, nor against, this application, Chairman Scrudato requested a motion. Upon motion by Mr. O'Brien and seconded by Mr. Graziano, the application was approved by a vote of 7-0.

\* \* \* \* \*

**No. 8 PICCIANO APPROVED 5-2**

**Applicant:** Mr. Steven Picciano, 4 Stockton Place, Block/Lot/Zone: 4001/11/R-1AA

**Application:** permit to install a five-foot aluminum, picket-type fence in the side and rear yard along the Nutley Avenue side, adjacent to the adjoining property and in the side yard,

**Appearances:** Steven P. Picciano; Dave Wilson, 174 Nutley Avenue (sworn)

**Exhibits:** A-1 letter; A-2 Fence; A-3 Police Report; A-4 Photos; A-5 Survey

**Letter of Denial** was read by Mr. DaCosta Lobo. Codes of Nutley states a fence erected along the side lines from the rear line of a main structure to the rear property line and along said property line and within such lines shall not exceed six feet in height and not be of solid construction; states fence erected on any corner lot shall conform to the fence requirements for the adjoining properties. The proposed fence installed along the side and rear property line along the Nutley avenue side will be in a front yard of an adjoining property; and prohibits any type of front yard fences.

After further discussion, and with no one in the audience to speak in favor of, nor against, this application, Chairman Scrudato requested a motion. Upon motion to deny by Ms. Brown and seconded by Mr. Marino, the application was denied by a vote of 5-2. Mr. DaCosta Lobo, Mr. Graziano; Mr. O'Brien, Mr. Pastore, and Chairman Scrudato voted against the motion to deny.

\* \* \* \* \*

**No. 9 26 Carrie Court - ADJOURNED**

**Applicant:**

**Application:**

**Appearances:**

**Letter of Denial**

\* \* \* \* \*

**BUSINESS:**

**Resolutions and Minutes:**

Ms. McGovern read the resolutions from the October, 2011 meeting. All approved.

There were no minutes to be approved.

\* \* \* \* \*

**LITIGATED MATTERS:** None

Respectfully submitted