

NUTLEY ZONING BOARD OF ADJUSTMENT

November 21, 2011 Minutes – Public Session Meeting

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CALL TO ORDER: A meeting of the Nutley Zoning Board of adjustment was called to order at approximately 7:30 p.m. by Chairman Scrudato. The Pledge of Allegiance was recited. Roll was called and the Sunshine Notice was read.

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

ABSENT: --

EXCUSED: Frank Graziano

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No. 1 McClafferty Approved 5-2

Applicant: Shane McClafferty 18 Manhattan Court Block/Lot/District: 5801/42/R-1

Application: request to enlarge an existing driveway to 16 feet in front of the existing dwelling and to increase the existing curb cut to 16 feet

Appearances: Kim McClafferty, 18 Manhattan Court; Michael Garner (Sworn)

Hardship: Narrow property

Exhibits: None

Letter of Denial: Mr. Demerjian read the letter of denial. Codes of Nutley states that front yard of a lot which is located in a one-or two-family dwelling that shall be used for the parking of motor vehicles, except that motor vehicles may be parked upon a driveway in the front yard. The use of a driveway for the parking of motor vehicles shall be subject to the following limitations: Front yard. The driveway shall consist of the area directly opposite to an attached garage, detached garage, or depressed garage or the extension of the side yard into the front yard. The driveway width shall not exceed 16 feet. However, if there is no garage and no available side yard, a driveway not to exceed 16 feet in width from the side lot line may be constructed. The proposed width increase will be in front of the existing house.

Codes of Nutley states a curb cut for a one-car garage shall not exceed 12 feet in length. The proposed curb cut will be 16 feet with a one-car garage.

McClafferty stated that the property is what it is. The neighbor's driveway encroached on her property for many years. Since the previous owner didn't have a car, this was not a problem. The driveway is very long and narrow. It's a non-conforming lot. There is a wall on the left side of the driveway. There is less than a one foot clearance to open the car doors. This makes it very difficult to get the three children in and out. There should also be stairs on that side of the house leading to the kitchen. If she were to put in stairs to code, cars would not be able to access the driveway at that point. She doesn't want to ask her elderly neighbors to change something that has been there for many, many years, but she does need more room in the driveway for her vehicles. Ms. McClafferty cited several neighbors that have widened their driveways. She would like to add five feet to hers in front of the front stairs.

(Mr. DaCosta Lobo entered the meeting about this time.)

The Chairman advised the applicant that she has to show a hardship to the property. His suggestion is that the applicants park the car in the back where there is more room and then they can access the stairs. Ms. McClafferty said there is an entrance on the side of the house but there are no stairs because there is no room to pull in the car. She would have to seal off the door and then not be able to use it. The Chairman said it could still be used. The applicant said that the door is 16 inches off the ground and that is in violation of other codes by not putting in stairs to access the door. She said cannot have it both ways. (Chairman Scrudato's comments were broken up on the recorder).

Mr. DaCosta Lobo's and Mr. Pastore's questions could not be heard clearly.

Mr. Garner testified that he and the applicant (Mr. McClafferty) had to drive the truck over the stairs in order to get to the back; this in turn caused the stairs to disintegrate. The applicant must have stairs to access the kitchen and the basement.

The Chairman said that the Board would be the heavy if the neighbor had to have the move their wall. The applicant does not want to make her hardship her neighbors' hardship. She again noted that her other neighbors have widen their driveways and just wants to do the same. Chairman Scrudato said they do not know the conditions under which the neighbors have widen their driveways (further comments were blanked out).

Mr. O'Brien asked if the intent is to have a driveway in order to park two cars side by side. The existing condition as to hardship is general everyday access to the house. He said there is plenty of room on the property to park two cars, but to put in steps on the side of the house to meet code, the applicant would not be able to get to the garage in the back which would leave the garage useless for parking cars. He asked if the building department is aware that she wants to put steps in on the side of the house. The applicant said that is Step 2. She cannot do anything else until this Board makes a decision.

Mr. Demerjian's questions were in and out.

Ms. Brown said based on the survey there is only 24.12 from the property line to the front of the house which does not include the steps and the walk; so she can't fit a car where she is looking to make space.

Chairman Scrudato requested a motion. A motion was made by Mr. Pastore and seconded by Mr. DaCosta Lobo. The motion was approved by a vote of 5-2 with Ms. Brown and Chairman Scrudato voting against.

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No. 2 VRANOS Approved 7-0

Applicant: Mr. & Mrs. S. Vranos, 145 Raymond Avenue, Block/Lot/Zone: 5304/8/R-1

Application: request to leave as erect, a 9'x16' unroofed deck, having an 8'x9" set back to the existing garage

Appearances: Stefanos Vranos (sworn)

Letter of Denial was read by Mr. DaCosta Lobo. Codes of Nutley states no detached accessory building shall be located nearer than 10 feet to a main building. An attached accessory

structure or accessory use shall be considered to be a part of the main building. The proposed built deck has an 8'x9" set back to the existing garage.

Mr. Vranos advised the board that he recently had work done and stated that the contractor made a mistake making the deck one foot longer. He wants to charge the applicant to fix it. He presented the board with some photos of the deck. He said he has no problems with the neighbors; they like the deck. He paid the contractor \$9,000 cash. Mr. O'Brien asked if the applicant had a permit and if the deck was built according to the permit. He did have a permit and it was built larger than the permit allowed. He charged the same. The initial inspection by the town approved the foundation. The final inspection (a different inspector) did not approve it; it was not 10 feet from the garage. Mr. Vranos told the contractor that he had to knock it down, but the contractor said he would have to pay again.

The Chairman asked if he was going to report him to the Better Business Bureau or if he was going to sue the contractor – he is not. Mr. DaCosta Lobo's comments were unrecorded.

With no one in the audience to speak in favor of, nor against, this application, Chairman Scrudato requested a motion. Mr. O'Brien made a motion to grant the variance stating that the encroachment was unintentional and in his opinion does not seem to be a hardship to the attempt to get vehicles through and around the property. Seconded by Mr. Pastore. Approved 7-0.

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No. 3 SARIGEDIK APPROVED 7-0

Applicant: Mahmut Sarigedik, 23 Cleveland Avenue, Block/Lot/Zone: 1803/12/R-1

Application: permit to install a 4' open picket fence in the front yard of the property and a 4' open picket fence at the rear of the property.

Appearances: Mahmut Sarigedik (sworn)

Letter of Denial was read by Mr. Da Costa Lobo. Codes of Nutley states no fence of any type in any front yard shall be permitted. The 4' open picket-type fence in the front yard along the Cleveland Avenue side and the 5' chain link fence at the rear yard is in the front of the adjoining properties along Lakeside Drive is prohibited.

The applicant has a child and is concerned for its safety. The chain-link fence is ugly and in need of repair. Ms. Brown wanted to clarify that the fence will be only 4 foot. That is correct.

Mr. O'Brien asked why the applicant wants a fence in the front. She replied that she wanted it for safety and privacy issues. People cross over the yard and feel free to use it as public access.

Mr. Demerjian asked if the appliance would consider lining the house and the fence. The applicant said that the way the house is line is setback from the street – if you put a fence from the house line, it creates a sectional T with the neighbor's chain-link that goes all the way to the street. There would be lost space and make the yard smaller.

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. Pastore and seconded by Mr. Marino, the application was approved by a vote of 7-0.

No. 4 De ARMAS APPROVED 6-1

Applicant: Mr. & Mrs. Pablo De Armas, 14 Donna Court, Block/Lot/Zone 9001/8/R-1

Application: permit to widen driveway to 20 feet; to enlarge the existing curb cut to 16 feet; and to install a six foot PVC solid fence adjacent to the Pauline Drive property line.

Appearances: Pablo De Armas (sworn)

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

1. A driveway width shall not exceed 16 feet; the proposed driveway will be 20 feet;
2. A curb cut for a one-car garage shall not exceed 12 feet in length; the proposed curb cut will be 16 feet;
3. No fences of any type shall be permitted in the front yard; and
4. A fence erected on any corner lot shall conform to the fence requirements for the adjoining properties. The proposed fence is in the front yard of the adjoining property on Pauline Drive.

Mr. De Armas explained why he is requested the above. He and his wife work different schedules and always have to jockey vehicles. Seeking privacy so they can enjoy their back yard and have cookouts and parties, etc. Feels they are living in a fishbowl now.

Ms. Brown asked for clarification about the walkway. It was there when the house was built. Ms. Brown would prefer the applicant have a five-foot total height fence -- four foot solid, one foot lattice. The natural fence line (arborvitaes) fell to the wayside because they didn't have time to maintain it.

Mr. Demerjian suggests a six-foot buffer from where the arborvitaes end. A five or six foot fence is too high for that area. The applicant was having a hard time seeing what he is suggesting.

Mr. O'Brien said the responsibility of this Board is to uphold the codes of the township, except if the property has a hardship. The Board considers that hardship, sometimes the Board has to step off the code. This property is beautifully large; other properties come before this board with very small or narrow properties with no options. So, he offers another opinion. He suggests adding more plantings. Codes do not allow six foot fences, so there are other options. The yard is large enough to put up beautiful plants and have all the privacy he needs. If they come off the retaining wall about six and put some plantings, this could create a beautiful area and still afford the applicants the privacy they desire.

With no one in the audience to speak neither in favor of nor against this application, Chairman Scrudato requested a motion. Mr. O'Brien made a motion to approve the application – the driveway and the fence – with the condition that the fence is set back off of the retaining wall by three; maximum 4 foot high fence and the driveway – 20 foot with a 16 foot curb cut. The PVC fence to be a max five foot total, four foot solid, one foot lattice setback three feet, for reasons that the property is very open on three sides. Seconded by Ms. Brown, the application was approved by a vote of 6-1. Chairman Scrudato voted against the motion.

No. 5 Carry over from last month

Applicant: 26 Carrie Court

Application:

Appearances:

Letter of Denial

Applicant was a no-show tonight

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BUSINESS:

Resolutions and Minutes:

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

There were no minutes to be approved.

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No. 7 255 CENTRE STREET

Applicant:

Application: Increase dwelling units.

Appearances: Thomas DiBiasi, Esq.

Letter of Denial

Mr. DiBiasi requested an adjournment until the next meeting (December 19, 2011). Moved and approved.

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No. 7 MEKA – PRELIMINARY SITE PLAN REVIEW AND VARIANCES – Reverse Sub-Division

Approximately 9:15 on the disc.

Applicant: Kenny Meka, 57 East Centre Street; 45 East Centre Street and 49-51 East Centre Street, Block/Lot/Zone: 9700/1, 2, 3/B-4; M-1 (combined lots)

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

Appearances: Thomas DiBiasi, Esq.; Steven Corso, Architect; Charles Stewart, Engineer; Todd Hay, Engineer, Township of Nutley (sworn)

Exhibits: A 1-2

Letter of Denial was read by Mr. Da Costa Lobo. Codes of Nutley prohibit a building having commercial uses and dwelling units in a B-4 district. A final site plan and variances were

granted by the Board of Adjustment on September 30, 2002, to build two structures for a total of 92 one-bedroom units and 30 two-bedroom units located in the M-1 and B-4 districts.

Mr. DiBiasi presented his client's application to the Board. The exhibits were marked prior to testimony. He gave a smaller version for Mr. Graziano's review. He also noted that Mr. Burgess, Mr. Intendola and Mr. Hay were in attendance for the township. Mr. DiBiasi noted that the work on this application has been on-going for the last seven months. He summarized the background of the site. This Board approved the 123 units on this site back in 2002. Those units have been built and rented. The site was previously owned by Benjamin Moore. There were major environmental issues to overcome – more than \$1,200,000.

Mr. Meka purchased the property sixteen months ago. He has built on several sites in the township. One site, the neighbors appealed and he backed off and set his sights on E. Centre Street. The project was successful, and filled up quickly. As the success of this project became a reality, there were three eyesores in front of the building that was part of the original purchase. The building was used by the fire department for training purposes. There were two other buildings that Mr. Meka made a decision to purchase the two other buildings, to level them and clean up the area. The lender bank was surprised about the success of the project in this climate. The bank is partnering with the applicant on this project – an additional 40 units and retail space.

He said that they are confident they will attract businesses to East Center Street and really start a renaissance. They believe the other project started that. They believe they are moving the area in a positive direction. They have been in touch with the Master Plan Committee and knows that there is a high probability that this particular area would be zoned as a B-3 zone, a mixed-use zone. This project has been designed looking forward, at the Master Plan, assuming it is adopted that way and developing it as a mixed use. He will represent to the Board that what the members see in the exhibits is what will be built, if approved.

One of the reasons the applicant is requesting a reverse sub-division, the lender does not want a hodge podge of developments. The lender is looking for one consolidated piece so there would be one consolidated blanket mortgage. They would not approve separate project (residential and business).

The plan for tonight is to get through the architectural testimony and the engineering testimony. Engineering would, generally be a huge issue, but because they have spent many months on this meeting with both the applicant's engineer and the township engineer, many of the problems have been worked out. There are no major problems in terms of the engineering aspect. Many hours of engineering testimony is not to be. Planning, traffic and other such issues will be discussed at the next meeting.

Mr. Corso was the project designer on a previous project of Mr. Meka. He described Exhibit A-1 the front elevation. It is designed as a three-story structure. It was designed to front E. Centre street. The first floor is commercial most of the parking is underground and between the building and there is some in the back. Employees are to park underneath. Mr. DiBiasi interjected saying there will be a card system for employees and tenants.

(Mr. Corso's testimony was in and out of range)

The majority of the building's brick with some stucco accents. In response to Mr. DiBiasi's question about a typical unit, Mr. Corso said a one-bedroom goes from 950 to 1,100-1,200 square feet. There are 17 one-bedroom units and 23 two-bedroom units on the plans. Mr. DiBiasi said they do not need a variance for parking, because they meet the requirements, in fact, there is excess parking. The parking spaces are designed without need of a variance for width, length, or aisle width. One feature of the design was to create some plazas in the front of the building to soften up and improve the streetscape. The buildings are set back at different depths. There are street lamps that are carrying through the look of Franklin Avenue. (testimony was in and out of range).

Mr. DiBiasi asked Mr. Corso to go through the architectural side of the exterior lighting (this was not picked up on the recorder). All the lighting has been diffused so as not to shine on the neighbors. They will be designed in the character of Franklin Avenue.

Mr. DiBiasi offered up the witness to the board.

Chairman Scrudato asked Mr. Corso how close this project and the other are to each other. Mr. Corso said the back, the eastern portion – about 11 feet; 17 feet for the building on the western side. (testimony was broken up). Mr. DiBiasi interjected saying, that, as a follow up to the chairman's question, Mr. Corso designed the building, he thought about "that" issue, and the north end of both apartment that exist now, the 60 units and the 60 units, he made sure that he was not blocking any units because those end units were designed not to have windows with views. Would you explain that? Mr. Corso said the northern wall of both buildings have decorative windows. They are actually closets.

The Chairman asked how far back from Centre Street? Mr. Corso: the closest is 10 feet. (more broken testimony). The chairman said one of the things glaringly missing on the presentation is what type of heat will be used in the buildings. (not picked up). The chairman asked, as to the commercial portion of the building, where is the signage? Mr. Corso said they anticipate having signs on the awnings. Mr. DiBiasi told the chairman that the applicant will comply with all sign ordinances so they will not be seeking a sign variance. If this is to go forward, they will be working with the sign and façade committee.

The chairman inquired as to the problems with the soil on the previous project; how does that affect this project? Mr. DiBiasi said it does not, there are no environmental issues with these separate lots. The issue was contained on the Benjamin Moore site and did not spill over on to neighboring sites. They know this because the DEP wanted wells at different gradients to make sure there was no spillage. This is what took them 10 years to prove. The soil has been tested and there are no environmental issues.

Ms. Brown asked if this was a split HVAC system, where are all the condensers going? (response not heard). Ms. Brown: so then your elevation would change to show things coming out the walls. She said the Board would like to accurately see that. Mr. Corso said it would be the same system that the 120 units is currently using. Ms. Brown said it would be helpful for the plans to show where they will be when the architect returns.

Mr. Demerjian wanted to go back to the site plan and its proximity to the other buildings. He asked if Mr. Corso could draw an outline of the structure above the plaza level. Mr. Corso's explanation was in and out of range and not clear enough to understand). Mr. Demerjian asked about parking. Ms. Brown said none of this garage is open; it is definitely mechanically

ventilated garage. She said the card system would keep cars out, but not people. People could be potentially hurt. Mr. DiBiasi asked Ms. Brown what she might suggest, as they are willing to take recommendations under advisement. Ms. Brown is stated that she is not the architect on this project, but she thinks this should be re-looked at. It causes a dismal and dangerous space beneath the building. Mr. DiBiasi said there will be lighting and they will make it bright; they could do a garage door that can open and close. He said that they were actually praised for this design. Ms., Brown said the old Pathmark building had an underground garage with an elevator and stairwell. The garage was closed because it was too dangerous. Mr. DiBiasi is very familiar with that property and the problems associated with the garage. But he said this site and that are truly different in the magnitude and scope of that. Ms. Brown said if they took the suggestion of Mr. Demerjian and cut the building back, there would actually be light in that lower level.

Mr. Corso said the commercial spaces are going to have higher ceilings. (More unrecorded questions and testimony). Ms. Brown said as nice as the dormers look, they should be removed so as not to encourage using the rooms as living space. Mr. DiBiasi said he thinks there are ways of making sure that people don't live up there, because the dormers do look nice. They will look into that issue.

Mr. O'Brien asked if the former space is usable. It is attic space. Is there a way for the residents to get up there? Is it storage? Yes. Residents can get up there. Mr. O'Brien asked if they were involved in any discussions about what type of business would be there. Mr. DiBiasi said the lending company thought may a dry cleaner, a salon or maybe a small accounting office or small law firm. Architecturally, some of these spaces look long and narrow. Might this be inappropriate for some businesses? This would lend itself to some smaller stores. Mr. DiBiasi's advised that his client would be willing to make the dormers decorative only.

Mr. DiBiasi said the Mr. Intindola's letter was very precisely written; he used the word "presently" as to what the current zoning is. He is saying "presently" because he is aware of the fact that the Master Plan Committee has a very high probability of making recommendation of making this East Centre Street to go to a B-3 zone. In conversations with Town Hall, they stated that this will be designed to meet B-3 criteria. Mr. Intindola was in the back of the room and could confirm any conversations that the team had with the town. Mr. DiBiasi said the above is not formal. The Master Plan has not been finalized. These are recommendations that were made and that is why they are seeking a use variance.

Mr. DiBiasi said, in response to a member's question, he doesn't think the planning testimony will be hearsay. Mr. Bauman will present strong reasons why he thinks this project makes sense here. The Chairman said they are then designing for the future. Mr. DiBiasi agreed. He said if the Master Plan Committee made this official, the applicant would be before the Planning Board and not the Zoning Board of Adjustment.

The Chairman asked Mr., DiBiasi to make note of the time. Mr., DiBiasi said he had his engineers here who could give a summary of their testimony and recognize that when they come back they will take the Board's comments seriously. Mr. Corso said that he could adopt some of the recommendations.

Mr. DiBiasi led his engineer, Charles Stewart, through his testimony. He asked Mr. Stewart if it is correct that he and Mr. Hay have been in meetings, face to face and telephone conferences over the last few months. He said that is correct. He also received a report with

recommendations from Mr. Hay. Mr. Stewart is in a position to adopt each and every one of Mr. Hay's suggestions. He said there will be no negative impact regarding the engineering aspect of the project. There are some minor technical issues that need to be worked out. He certified to the Board that he will comply. When they come before this Board again. He will have a letter from Mr. Hay saying that there are not even any technical issues.

The Chairman said the next meeting will identify any issues outstanding. Mr., DiBiasi said he is sure that if Mr. Hay were to come up he could testify as to his issues. The Chairman said he would be surprised if the Board did not get a report from Mr. Hay.

Mr. O'Brien asked what, specially, engineering problems are an issue? Mr. DiBiasi said it is the draining issue.

Todd Hay approached the podium. He said he issued a draft letter to Ms. McGovern to share with Mr. DiBiasi to review. It was a number of site plan and engineering related issues, mostly focusing on storm water engineering and grading; it also focused on the utilities that would be at the site. He did get correspondence saying that all these issues would be met and complied with. He learned of some issues tonight - he wasn't aware of the street scape component. He sees that the right of way will be improved. He thinks that the plans should be amended to show that, so he and the Board get a better idea and so forth. Another issue not in the letter that is pertinent in protecting the town is the condition of East Centre Street. The condition of East Centre Street with the development of 65 River Road as well as the original units, makes him think that it should become a matter of record what the applicants will do about the condition of the road. There will be a lot of trucks and excavation. What is the applicant willing to do? Other issues for the Board's consideration is that there are ordinances with respect to the off-tract improvements that are allowed at MOUL, as well as under 630:18. He would like the applicant to think about how that is going to be addressed. Finally he said there is an issue with the residential development fees. He is hoping that this could also be addressed. Mr. Hay will provide an amended letter. The township has a concern about these issues and he wants to be sure that the Board would address them. The chairman would like a copy of Mr. Hay's letter with an addendum as to these issues. Mr. Hay said that he will provide because he hasn't seen a plan of the street scape. He did have a question as to whether the frontage is limited to the frontage of the development as well as the entire subdivision or will it extend down to River Road. This was not on the previously submitted site plan.

Mr. Demerjian asked about the storm water management plan. (this response was broken up). Mr. Hay said the applicant has already shown the reductions on a large portion of the site. He said the calculations for the entire site should be able to show there is a diminimus effect in terms of meeting the 70%, 75%, 80% on a hundred year. As long as they can show that. He is confident that the drainage plan can be amended. The street scape needs to be taken in to consideration.

Mr. DiBiasi concluded his presentation. The next time this team comes before the board will be January for a special meeting.

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LITIGATED MATTERS: None

Respectfully submitted,

Marie L. Goworek

Marie L. Goworek