

# NUTLEY ZONING BOARD OF ADJUSTMENT

## June 20, 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 Scudato. The Pledge of Allegiance was recited. Roll was called and the Sunshine Notice was read.

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

**ABSENT:** Serge Demerjian

**EXCUSED:** Mary Ryder, Suzanne brown left the meeting shortly before 10:00 p.m.

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### **No. 1 COCCO REALTY ADJOURNED to July Meeting Use variance – Needs 5 affirmative votes**

**Applicant:** Dr. Fred Cocco, 93 Schindler Way, Fairfield, NJ,

**Application:** application to renovate the existing 5 one-bedroom apartments to 5 two-bedroom units at 242 Washington Avenue, lock 6700; Lot 7, Zone B-4

**Appearances:** Darren DiBiasi, Esq., Dr. Cocco, applicant; Neal Tanis, Architect, Botany Square, Clifton, NJ (Sworn)

**Exhibits:** A-1 (15 photos)

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

This application has been restarted. All previous testimonies in this matter are considered null and void. Mr. DiBiasi had his experts, Paul Bauman, Planner and Neal Tanis, architect ready to testify on behalf of the applicant, Dr. Cocco.

Mr. DiBiasi questioned Dr. Cocco about the tenants in the building. There is a pediatrician, a chiropractor, a dentist and a vacant office. He advised that the office hours are generally either 8 a.m. to 4 p.m. or 9 a.m. to 5 p.m. The chiropractor is the only office open on Saturday (morning). Currently, only four of the five apartments are occupied. Regarding the parking – he has had no complaints from the businesses nor the residents about parking issues or trash. He has never received notices from the town regarding parking violations. Mr. DiBiasi entered 15 photos into evidence. They are photos taken at various times of the day and week to prove that there is sufficient parking.

In 2006, Dr. Cocco, made an application to convert two of the apartments from one bedroom to two bedrooms. Plans were approved within 72 hours. He was not made to appear before the Board of adjustment at that time. He recently went to the building department to get a permit to convert additional apartments and was denied and was advised he had to seek a variance. That is why he is before this Board tonight.

Chairman Scudato asked where the garbage bins are stored (since 1984 they have been enclosed with a chain-linked fence behind the building – the east side). Currently, the handicap parking is near this storage area. Parking spaces are 9'x20, some may be 8'x20. There are what

appear to be three parking spaces in front of the building which are illegal. . Mr. DiBiasi said the plans should indicate that there are planters there. Dr. Cocco has not counted them as part of his available parking. The applicant said that it would be such that anyone trying to come in from Grant Avenue cannot cross Washington Avenue to the larger parking lot. He noted that a large portion of the parking area is blacktop and has been since the property was purchased. Water runoff does not go into the building. He assumes that the water runs to Washington Avenue.

Mr. Graziano asked how the recycling area is enclosed – with a six foot chain link fence. He noted that increasing the size of the apartments will increase refuse. The applicant said removing the trash has never been a problem.

The chairman inquired about snow removal. The applicant has a contractor that does that. He noted that he does have rules for parking. Once an area has been cleaned, the tenants move to that area so the rest of the property may be cleared.

The Chairman asked how many signs are up on the building. Dr. Cocco said he did not know. The Chairman will wait from testimony from the architect to get that info.

Mr. Tanis is familiar with the site. He testified that the building has been there for a long time. There are professional offices on the first floor and five apartments on the second floor, currently two two-bedrooms and three one-bedrooms. The idea is to convert two of the one-bedrooms into two-bedroom units, ultimately having four two-bedroom units and one one-bedroom unit. The existing parking layout has approximately 36 parking spaces. As pointed out by the Chairman earlier, some of those spaces are illegal, specifically in the front. One of the purposes of this application is to change that and to modify the overall parking scheme making it in compliance with the ordinance. The applicant proposes 33 spaces to make them fit within the confines of the perimeter. They are conforming to the typical required space of 9'x19'; there are some, in the southerly parking area, that are a few inches less. The number of "valid" parking spaces will be increased from 28 to 33. There may have been 8 illegal spaces, which now may all be eliminated. Planters will be installed to prevent the illegal spaces from being used to park or drive thru. The building itself, will not be altered. The application still calls for 5 apartment units.

Mr. DaCosta Lobo asked for clarification about the apartment units. He thought the witness said the application was for four two-bedrooms and one one-bedroom, but the application is for five two-bedrooms; and he testified to 33 spaces but the application says 34. He was concerned as to whether or not the Board was looking at the most current plans. Mr. DiBiasi said that because the building department issued a number of denial letters. There was an original set of plans that requested a conversion of the five apartments; the current applicant requests only four. Mr. DaCosta Lobo does not have plans that show a conversion of two units and 33 parking spaces. Mr. DiBiasi says the denial letter refers to plans dated May 3, 2011, *[at this point the recorder did not pick up actual testimony for the next full minute]*.

Ms. McGovern advised the Board that the applicant had 12 revised plans that were dropped off at the Code Office. The revised letter is dated June 1 *[again at this point, the recorder did not pick up the discussion.]* The Chairman said the meeting would recess for 5 minutes to see if they could get into the code office to look for the plans dated May 3.

The Chairman asked how Mr. DiBiasi would like to proceed. Mr. DiBiasi knows how difficult it would be for the Board to make an informative decision without the correct plans. The therefore, requested a continuation to the next hearing date. He thinks it would be best to discard all these plans, because the applicant and the building department were treating this as a new application. A new letter of denial was issued because of the substantial changes to the plans.

Dr. Cocco approached the podium and asked what was going on and where the snafu occurred. Mr. DiBiasi said he would explain to his client what the problem was. The Chairman advised that the Board was not provided with the proper plans.

Ms. McGovern said she tried to get the plans from the code office by they were locked up. It is her opinion that when one relies upon what is told by the code official, the applicant should not be penalized. The chairman wants the applicant to put a post in the newspaper as a new application should anyone be working from the plans that the Board has. Ms. McGovern said the new plans are less intense than the first one. The chairman noted that all the requests for changes have come from Mr. DiBiasi's office. He believes it would be in order, since this is to be postponed, that it be advertised in the paper again. Mr. DiBiasi said this is where an added expense comes in. Chairman Scudato told the applicant to check with the building department as to whether or not it should be re-advertised; notifying residents within 200 feet would not be necessary.

Chairman Scudato requested a motion to adjourn this matter, at the request of the applicant, to July 2011. A motion was made by Mr. Pastore and seconded by Mr. DaCosta Lobo to adjourn this matter to the July 18, 2011 meeting. The motion was approved by a vote of 7-0.

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**No. 2 (8:24:43)DELTUFO Approved 7-0**

**Applicant:** Mr. & Mrs. Christopher DelTufo, 96 Rhoda Avenue, Block 2603; Lot 6; Zone: R-1

**Application:** request for a permit to erect a six-foot, solid fence in the side and rear yard.

**Appearances:** Laura DelTufo (sworn)

**Exhibits:** 4 photos of the fence

**Letter of Denial** was read by Mr. DaCosta Lobo. Codes of Nutley prohibits a six-foot solid fence from the front line of a structure to the rear line of such structure. A maximum height of four feet and 50% open-type construction is only permitted. A six-foot solid type fence may be erected from the rear line of a structure to the rear property line only with written consent from the adjoining property owners.

Mrs. DelTufo submitted photos showing the fence that was in place when she bought the house about 18 months earlier. The photos show a worn and dilapidated fence with missing slats. The house is six feet in the back and partial side yard. She stated that she is here to replace the existing fence. She noted that the fence on the partial side yard is not very visible from the street. She doesn't believe that it would be an eyesore because it would not be flush with the front of the house. She presented a photo of the fence she would like to install. She further noted that the house immediately next door has been up for sale for several months. She believes that if they have this new fence, it will add to the interest of that property. She is very much concerned about the safety factor since she does have an in-ground pool, which by

ordinance, does required a five-foot minimum fence around it. She is also concerned that someone may be able to scale a four-foot fence on the side yard and gain access to the property and pool. Mrs. DelTufo submitted 28 letters from neighbors, all of whom have no objection to this variance. Mrs. McGovern said, that, unfortunately, the letters cannot be accepted as testimony as the letter writers would have to be cross-examined.

Mr. DaCosta Lobo asked if those letters would apply to side yard neighbors. Ms. McGovern said a letter is required from the back fence neighbor. Mr. DaCosta Lobo said the letter of denial seems to indicate that “from the rear line of the structure to the rear property line” which means along the side line. Ms. McGovern wanted to look up the statute because she agrees it could be confusing. She always believed that it was five foot allowed on the side and six feet in the back.

The Chairman noted that the fence is covered with a lot of shrubbery. Mrs. DelTufo said her goal is to do some nice landscaping in the back. Counsel advised that the fence may be six-feet along the side, but it must be 50% open. When asked by the Chairman is she would be amendable to a 50% open fence, the applicant balked and said she didn’t believe that to be so. She does believe she is allowed a six-foot solid across the back. She said she is here for the side yard where it had to be four-feet, 50% open. *[a part of Mrs. McGovern’s comments were unrecorded]*. She pulled three letters, one from each neighbor immediately next door and the rear yard neighbor*[unrecorded]*. The only thing the applicant would need a variance for the portion of the fence that runs along the house and that is what the Board members would be considering. Mrs. DelTufo would like two gates on either side of the house and one by the pool. *[again, more blanks on the disc.]*

The focus of the board would be the style and consistency of the fence along the side of the house.

Mr. O’Brien asked if the new fence will replace the old fence exactly? Yes, but the applicant stated that there is no fence on the left side of the property, but for the sake of symmetry, she is looking for a variance for a fence there, too. The fence right now goes from six- feet to five. The chairman said that there is a concern about the height of the fence if there are children in the yard. They would not be seen by emergency services is necessary.

Mr. DaCosta Lobo asked for the letter from the neighbor. *[Ms. McGovern’s comments were unrecorded]*

With no one in the audience to speak in favor of, nor against, this application, Chairman Scudato requested a motion. *[the motion and the second was not picked up on the recorder]*. Shrubby will be put in place. *[Upon motion by Mr. Pastore and seconded by Mr. Marino, the application was approved by a vote of 7-0. (taken from notes).*

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**No. 3 DUFFY APPROVED 6-1 with modifications**

**Applicant:** David and Robin Duffy, 159 Crestwood Ave., Block 8901; Lot2; Zone R-1

**Application:** request for a permit to erect a six-foot privacy fence in the side yard and rear yard adjacent to the Harrison Street property line.

**Appearances:** David and Robin Duffy; William Van Holland, Pamela Van Holland (149

Crestwood Avenue), Dawn Harrison, 151 Crestwood Ave. (All sworn)

**Exhibits:** None

**Letter of Denial** was read by Mr. DaCosta Lobo. Codes of Nutley prohibits fences of any type in any front yard. A fence erected on a corner lot shall conform to the fence requirements for the adjoining properties. The fence as located would be in the front yard of the dwelling on Harrison Street.

The applicant stated that the property is on an elevated corner lot on a very busy street. There are two children and this fence would provide some security and privacy. Over the years that they have lived there, students from the neighboring school have come onto the property and used the basketball hoop, the sand box and any other personal belongings. A concern is the liability issues that may arise as to the trespassers.

Mr. Duffy testified that being on an elevated piece of property puts them on display to the neighbors and passersby when they have any type of family event or barbeque.

Either Mr. Marino or Mr. Demerjian expressed concern about having a six foot fence on a three foot retaining wall and how imposing that would be. He asked if a four foot fence would perhaps serve the same. The yard slopes and putting a four foot fence would equate to having a three foot or shorter fence. He also noted that it was difficult to slow down and see the property because of the location.

Ms. Brown asked if the applicants have considered landscaping in conjunction with the four-foot fence. Mr. Duffy said they have not. When asked if they would consider it, Mr. Duffy said that it requires more maintenance than he has time for.

Responding to some of the Chairman's concerns, Mr. Duffy said that the fence would cause no obstruction of visibility from the back of the house coming out from the easement. The fence will be in the back by the garage to the front of Harrison Street to the back of the house. There will be two gates – one by the garage and then one on the neighbor's side.

Mr. DaCosta Lobo said the code doesn't not differentiate for reasons that he doesn't know and it's not covered the fence design the applicants have opted for. He wonders if the Board would be more comfortable with a shadow box style. Mr. Duffy said they are totally amenable to changing the style of the fence, it does not necessarily have to be six-feet.

Mr. O'Brien asked about the front yard on a corner property. A front yard fence is not allowed; in this case two of the yards could be considered front yards. Mrs. Duffy said that they could do a five foot with a one foot lattice. The chairman said an argument could be made that the property has a hardship because of the size of the yard and the elevation.

William Van Holland testified that he does feel for the neighbors. However, they share a right-of-way. The driveway is the boundary between the houses and Lincoln school. If he can't turn around because of the number of cars in the driveway, he has to back out practically all the way into the street. His primary concern is not being able to see over the hill for traffic and late arrivals at the school. He noted that piling snow always made it difficult to see; now the snow would have to be moved to the street.

Mr. Pastor's question was broken up on the recorder. He doesn't see how it would be a problem backing out.

Pamela Van Holland added that when one comes to the end of the driveway at the Duffy's house, the driveway dips three feet or more before getting to the apron that goes into the street. Backing out she is already looking towards Crestwood Avenue for approaching traffic and looking the other way for school children. She cannot agree to allow this fence to go up and she hopes the Board will deny the application.

Dawn Harrison had a concern that this fence would obstruct the view of the people coming out of the driveway.

Mr. Duffy wondered if anyone looked the plans. He stated that there is about 30 feet where there is no fence. He also said the planned fence would be elevated. The objections defy logic. It will not impede the sight anymore than the current scenario.

The Chairman said this was a difficult vote. Mr. O'Brien asked if the property had a rear yard. The Chairman said it has two front yards. Would there be a rear yard off of the garage? He said that the witness have an issue with a fence that is coming down towards Harrison Street. He wondered if that is considered a rear yard fence; do they require a variance to put that piece of fence. The chairman said according to the letter of denial they are all front yards.

The Chairman said there needs to be come compromise on the part of the Duffys. They are right to be concerned about the safety of their children and the liability of having others on the property instead of using the sidewalks. He said the neighbors have a concern about the safety of backing out. Mrs. Duffy said that is why they have decided to stop at the garage. They, too have to back out and watch for children just like their neighbors. She said they don't have a new special way of getting out. Mr. Duffy noted that being at the end of the driveway, it is a tighter exit for them.

The chairman does not want to facilitate a danger to anyone. Mr. Graziano asked what the rules are as to line of sight, Ms. McGovern ask how they came to decide to have the fence at the garage: did they choose this themselves or have someone from the code office assist them? Mrs. Duffy said a representative from Artistic Fence suggested this would be the most amicable way of doing this. Ms. McGovern said there is a line-of-sight text that the township engineer would look at for a corner property. Ms. McGovern said even if an applicant is granted a variance, if the township engineer says there is still a problem with line of site or something else in he code, the applicant may not get a permit. The line of site was being calculated by the architects on the board.

The Chairman said while that is being done, they should discuss whether something else may work here. He asked if the fence has to be on the wall area from the rear corner of the home to the garage or four-foot off the wall with a gate. Would that be acceptable or does it have any effect with the kids coming out. He suggested a four-foot fence along the garage and the fence is off the property line by 15 feet. The applicant said she may be amenable to doing a four- or five-foot along the back, but along Harrison street, it is important to do a six-foot fence for the reasons they stated earlier. Mr. Duffy said they would compromise on the style of the fence, the lattice.

The Chairman said that a tall fence is not a deterrent for children over a long period of time. Mrs. Duffy said the children are playing catch in the yard, the ball goes onto Harrison Street. She can't have her children chasing the ball onto the street. Mr. Duffy said the grade and slope

of the yard of the yard is an issue. If they were to put a four-foot fence where it drops off, it would be of very little use in terms of privacy, as well. They have lived in the house for six years.

Pam Van Holland reviewed the plans. She asked if the fence was going to be right on the wall. She was led to believe it is not. It is going to be several feet in from the wall. If that is true, she wanted to know who is going to maintain the property that slopes between the fence and the three-foot wall. It is a dangerous area to mow, once you put a fence there, you have a small area in which to work. Someone told her the wall is town property, not the applicants'. The chairman said the wall is not on the property. From putting up a fence of her own, Ms. Van Holland knows that it has to be within certain number of feet from the property line. Who is going to maintain the property between the fence and the wall? The chairman said the fence could be put right on the property line. Ms. Van Holland was told by someone downstairs that the property line is not at the wall. The Chairman said it is not, it is off. The drawing was not clear enough to show where the property line is, where the wall was, where the street started . . . The chairman said he doesn't know who she spoke with, but it is very clear on the drawing. Ms. Van Holland said it couldn't be explained to her. The chairman did explain. Ms. Van Holland asked again who will maintain the property between the fence and the wall. How many feet is there between the fence and the wall? The wall is what the kids walk on. She can appreciate how the Duffy's feel about having no privacy in their yard, but this is the way it has always been. She said that she has lived there for 60 years. The chairman said the line of the wall is up to 2.81 on the property line. He said he thinks the Duffys would not mind maintaining it. She is concerned what this may have on the value of her house. It will be an eyesore if it is not maintained. The wall is an eyesore and it needs to be maintained.

The Chairman asked Mr. Duffy if he would maintain that two-foot space and he replied that he absolutely would.

Mr. O'Brien said he was inclined to believe, with the shape of the lot, the slope of the lot, the busy streets, the wall and many factors that were brought up, that some barrier there is not inappropriate. In his experience with the Board, he knows that the Board is in favor of landscaping in situations where the visibility of a fence may be harsh with a wall and a fence. The town planning wisdom is that front yards be consistent with front yards be consistent with front yards, and so on. This is why the applicant is turned down. They are appealing because they have a special situation. They are seeking a six-foot fence. He has trouble with a fence of that height. Just in the effort of a compromise, he thinks there might be some receptivity to a four-foot fence with an open top – a solid three with a one-foot open top. That would certainly give a physical barrier. Landscaping would come into play with a visual barrier. He noted that the applicants have a hard corner that comes off of the garage down to Harrison Street and make the turn onto Harrison. The fence has a sharp corner to it. The applicant is 30 feet off the driveway and a case can be made that gives reasonable distance for visibility, but the neighbors are not happy with any fence along Harrison street because they are sitting in a car trying to make the turn and with something sitting on that wall ... anything will be in the way. He would suggest that the corner of the fence be clipped at a 45° angle maybe to allow an additional 5-7 feet. It could be picked up with landscaping. This is just a suggestion to think about.

Mr. Graziano said they have been looking at the sight line and going by what it says in the guidelines; it doesn't seem to be a problem for line of sight – where they're putting the fence

He does agree that a six foot fence is way too high; and he would be inclined to agree with a four foot fence. It is his opinion that the sight line is not as big a problem as everyone thinks. If you took a 45° angle from the corner of the fence back to the easement . . . According to the code, they have plenty of room.

The chairman told the applicant that the Board could vote on the application, with modifications to the fence – in location, height and style. Or they can grant a continuance on this, the applicant can speak again - with the neighbors and come to some resolution that would be acceptable to the board and the neighbors. Mr. Duffy said it sound like there have only been a few dissenters, and as a member said, it doesn't sound like they are open to any fence on the property. He said they are certainly willing to make some concessions. But if it is fence or no fence with the neighbors, then they will stick to their guns. That is why the chairman thinks that they should take 30 days to rethink it and discuss it with the neighbors. He told the applicants to understand that if the board denies the application, they cannot bring back a similar application for at least six months. Mrs. Duffy said she and her husband are not sold on a six-foot fence; they are more than willing to modify the fence to meet approval. However, they want a fence and would like to get it this summer. It is the end of June already, so they would like to move forward.

They applicant said they would be satisfied with a total of five feet.

With no one else in the audience to speak in favor of, nor against, this application, Chairman Scudato requested a motion. Ms. McGovern asked the applicants if they were amending their application for a five foot fence (four-foot solid, one-foot lattice)? Yes. Mrs. Duffy said she is willing to modify the fence. They want a fence. If five feet will get up the board's ire up, then let them know and they will modify it further. Mr. Graziano made a motion to approve the modified application which includes a four-foot solid fence. Seconded by Mr. O'Brien. The application was approved by a vote of 6-1. Chairman Scudato voted against the application.

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#### **No. 4 CHEN DENIED 6-1**

**Applicant:** Mr. & Mrs. Rudolph K. Chen, 158 Rutgers Place, Block 1705 Lot19; Zone R-1

**Application:** permit to erect a 17'x17' unroofed deck, attached to an existing deck, having a side yard setback of five feet, a rear yard setback of six feet, Increasing the total lot coverage to approximately 53%.

**Appearances:** Rudolph and Linda Chen (sworn)

**Exhibit:** A1

**Letter of Denial** was read by Mr. DaCosta Lobo. Codes of Nutley states that an attached accessory structure (the deck) shall be considered to be a part of the main building.

Attachment 2 of the Schedule of Regulations requires a minimum side yard setback of six feet, a rear yard setback of 30 feet, and a maximum lot coverage of 35%.

The letter of denial stated that he wants to extend the existing deck and add on to the deck going further back into the yard. The actually plan is to tear down the existing deck and build a new one that extends the footprint of the original deck by two feet and adds a lower level deck that goes a little further. He's lived at this address for over 34 years; the deck is 25 years old. It is now warped and bowed. He wants to replace it with a composite which would be less

unsightly to the neighbors and his family. For health reasons, he cannot treat and do the necessary work that a wood deck requires. There is grass in the back that also needs to be maintained. This deck will eliminate the need for that.

The chairman asked if Mr. Chen was asking for a deck and a second story deck over it. Mr., Chen said yes. He explained further that the existing deck would be torn down and rebuilt on the existing footprint and then extend it two feet with two steps leading to a lower level deck. The height of the decks will not change; they just go back further. The existing deck is five feet above the ground, the second deck would be 2½ feet above the ground.

Mr. Graziano asked what is the size of the existing deck. Mr. DaCosta Lobo said the survey shows a 17'x17' attached addition. That is an addition to the house. The existing deck is not shown on the survey and the addition to the existing deck is not shown on the survey. Mr. Chen had a copy of a document that showed the existing deck. Mr. DaCosta did not have that document. Mr. Chen said he submitted it. Mr. Graziano said the board has no dimensions of the decks, what space would be left in the rear yard.

Ms. McGovern said to Mr. Chen, that the color-coded document (Exhibit A1) he just handed her has red hash marks for the existing deck and black hash marks for the new bi-level deck, Did she submitted something like this to the code office? He did and he also submitted a more-detailed scale drawing. Ms. McGovern said it was not in the packages that was given to the board members. (blank)

Ms. McGovern said the applicant is also cited for lot coverage. She read, "detached accessory buildings and accessory uses may occupy in an area, not to exceed 30% of the area of any rear yard." (blank) She said that he is still citing 700-67(d) which states "an accessory structure deck shall be considered a part of the main building."

The chairman said the applicant has a great deal of building on his property. Mr. Chen said adding this deck would increase the amount of deck now on the property, yes.

Mr. O'Brien said the building department worded it as "attached to an existing deck." The way Mr. Chen explained it, the existing deck will be a new deck. Mr. Chen said he is going to tear down the existing deck because of its condition. Mr. O'Brien asked if the building department know that the deck was coming down; Mr. Chen replied that he hopes so.

Ms. McGovern said the diagram included in the package says back property line; the schematic says, existing deck, additional main deck and additional lower deck. This looks like he is attaching it and not getting rid of the old deck. He apologized for any confusion, but it was his intent to remove the old deck because of the condition of the wood – its warped and splintered and in really bad shape -- and replace it with a composite. It would be two feet longer than the existing. The lower deck will be 17'x14'. When he had this deck put on about 25 years ago, the builder said that the lot coverage would still be acceptable and the depth of the yard between the rear property and the deck would be acceptable. He is sure since that time, the laws have changed.

Mr. Graziano said if this application were, hypothetically, denied this evening, if you wanted to rip down your deck, you might be right back before this board.

The chairman said the applicant must abide by the new rules/laws not the ones that were in effect 25 or more years ago. He also said the board is very sympathetic to his health problems. The Board cannot look at an applicant's health problems; they have to look at the hardship to the property. Mr. Chen did not understand this. Mr. Scudato said a hardship to the property would be that the lot is too narrow or sloped or not be 5,000 square feet. He doesn't know what this property is, but it is narrower in the back.

Mr. Chen had letters from his neighbors. The chairman said they will not weigh in on the Board's decision.

Mrs. Chen added that there is no house at the back of their property. The people on Walnut street have an L shaped property behind the Chen's, but do not use it nor maintain that part of the backyard.

Mr. Chen further advised that the property is an estate sale and no one is living there now – not for the last six months at least. Last fall, some the neighbors complained to the town about the condition of the property and the town cleaned it up. The Chairman asked for the approximate width of that property, Mr. Chen is guessing about 10 feet.

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 deny the application stating that there is quite a bit of lot coverage. The lot is deep enough and the desire is to build back and back seems like a lot for this site. He thinks pavers it would be much better served to put in pavers back there is they wanted a surface to use. He doesn't believe the lot is challenged enough to allow this over-construction; seconded by Mr. DaCosta Lobo, the application was denied by a vote of 6-1. Chairman Scudato voted against the motion.

Mr. Chen asked what he needed to do if they took down this existing deck and replaced it with a composite in the same footprint. The Chairman said he would need a building permit to tear it down and build a new one. He doesn't see why the applicant would be denied, but he is sure the building inspector will look it over carefully. Ms. McGovern suggested that the applicant not tear it down until he speaks with someone in the building department and explain to them exactly what he wants to do. Mr. Chen asked if he wanted to tear it down, would the board consider allowing them to extend the existing deck two feet because they would like to put a table out there, but they don't have the room to walk from one side of the deck to the other. Would they have to submit another application for a variance. The Chairman said only if they were denied by the building department.

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**Ms. Brown left the meeting at this time.**

**No. 5 REDMONDAPPROVED 6-0**

**Applicant:** Mr. & Mrs. Edmund Redmond, 58 Raymond Avenue, Block 4800, Lot 35; Zone R-1

**Application:** request for a permit to demolish the existing two-car garage.

**Appearances:** Edmund Redmond(sworn)

**Letter of Denial** was read by Mr. DaCosta Lobo. Codes of Nutley states a single-family dwelling shall be required to have two parking spaces and one of which must be in a garage.

Mr. Redmond bought the house three years ago with the garage as it. It is in really bad shape – you can see through the ceiling, the roof is breaking off, there is dry rot in the garage. He noticed carpenter ants this spring. He can't put anything in there because it gets wetter inside than it does outside when it rains. He has two young daughters. The garage takes up a significant amount of space in the yard. He wants to make a play area for the girls. He has one tree and he would like to landscape it with more foliage.

With no one in the audience to speak neither 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 6-0.

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

**Applicant:** Mr. Jason Sperry, 26 Faber Place, Block 5402, Lot 8; Zone R-1

**Application:** request for a permit erect in the rear yard, a 12'x24' above ground swimming pool having a setback of seven feet from the deck attached to the main dwelling and to locate the filter within the required 8 foot rear yard setback.

**Appearances:** Jason Sperry(sworn)

**Letter of Denial** was read by Mr. DaCosta Lobo. Codes of Nutley requires all pumps, heaters and filtrations systems to be at least eight feet from any property line and states that no detached accessory structure (pool) shall be located nearer than 10 feet to a main building. The attached deck is considered a part of the main building. The applicant state in his application, the lot is too shallow to permit the required setbacks.

Mr. Sperry had nothing to add. Mr. DaCosta Lobo asked him where the filter and pump will be. Mr., Sperry said it was supposed to be written on the board copies. Mr. DaCosta Lobo said he was mistaken; it is there. He asked if there is any reason it can't be on the other side so there is no setback issue with it like between the pool and what looks like the concrete area? Mr. Sperry said he could put it on the opposite side; there is room there. There is no reason why he can't put it on the opposite of the yard. Mr. DaCosta Lobo said it would be eight feet from whatever line is involved in the need for a variance.

Mr. Sperry said the submission shows the patio is 25 feet, but he thinks it is only 17 feet. He does have a small shed in the left corner. He showed this to the person at the pool store and he said this is probably what he might want to do this is the reason for the filter being where it is. His neighbor to the left put his own in the back corner and Mr. Sperry figured all the filters in the back corner. No one can say all the noise is coming from one side or the other side.

Mr. Graziano asked what is directly behind Mr. Sperry's house. Another house. Mr. Graziano asked how high the wall is. Mr. Sperry guesses that it is maybe nine feet. There is a chain link fence on top of that. Mr. Sperry said it is not on top of it, it is before the wall. It's been there since he moved into the house. Mr. Graziano said the top of the chain link fence would be about 13 feet high. The fence starts at the same height that the wall ends. The neighbors' property behind him is nine feet below his.

The board suggested the opposite side of the yard and he was agreeable. The Chairman asked if there was a shed; it wasn't on the survey. There is one.

Ms. McGovern showed the witness and other members where on the survey some members had suggested the applicant put the filter in the area on the diagram that was marked with an x (exhibit B1) – on the edge of the concrete patio on the survey.

Mr. O'Brien asked if there was deck on the concrete patio – yes. Mr. O'Brien said it seems like there is a limited amount of grass area around the pool. How does Mr. Sperry plan to access this pool. It is an above ground pool? Yes. He is not sure. There is no rule about against putting it in the ground so far, and that is probably what he would be looking to do.

Mr. Sperry said he is not looking to do something and have a problem. He understands that you can sink an aboveground pool to a certain level and it is not considered an in-ground pool because it has not concrete footings. Mr. O'Brien said he would likely have a set of stairs that would come up over the edge of the pool. Will the stairs lead to a platform? Mr. Sperry said the pool comes with stairs that sit on the grass. Mr. O'Brien asked if you would come off the concrete patio to a set of stairs up into the pool. Mr. Sperry said no; he comes off his patio onto grass. He will approach the pool on the long side of the pool; he won't be going around it. Mr. O'Brien asked how the applicant uses the rest of the yard – does he have a garden, a badminton set, does he play football back there? There is swing set where he wants to put the pool. He will probably move the swing set on the far side. He does want to have a play area in there. Mr. O'Brien said there is not much room left for activities, so he wouldn't want the filter taking up whatever usable yard the applicant may have. The applicant agreed.

Mr. Graziano asked the applicant if he has slats in his chain-link fence. He does. Mr. Graziano said no one would be able to see the filter anyway. Ms. McGovern asked if he was saying they are leaving the filter where he has it. It was Mr. Graziano's opinion is that it should be left exactly where it is. He said though, that it should be a close to the pool as possible. It is marked on the diagram.

With no one in the audience to speak neither in favor of nor against this application, Chairman Scudato requested a motion. Upon motion by Mr. Graziano who stated the pool filter should be where it is in the application but as close to the pool as possible and seconded by Mr. Pastore, the application was approved by a vote of 7-0.

The Chairman asked that Ms. McGovern would go to the building department and authorize the permit for the pool. Ms. McGovern has a soft spot for pools; she said she would have the resolution done in a day or two, go to the building department and let them know ahead of time that she is doing. She expects that Mr. Sperry will have his permit by Friday.

\* \* \* \* \*

**BUSINESS:**

Ms. McGovern advised the board members that Pennoni returned some money in the matter of Ralph's Italian Ice. In order to get the money out of escrow, Ms. McGovern needs the Chairman's signature. The escrow was collected but not used.

**Resolutions and Minutes:**

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

- 313 Washington Avenue
- 301 Franklin Avenue
- 180-184 Centre Street
- 33 Howe Avenue
- 447 Bloomfield Avenue.

There were no minutes to be approved.

**LITIGATED MATTERS:** The recorder was shut down as Mrs. McGovern needed to discuss a litigated matter with the members.

**ADJOURNED:** Approximately 10:30 p.m.

Respectfully submitted,

*Marie L. Goworek*