

NUTLEY ZONING BOARD OF ADJUSTMENT

April 25, 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, Thomas Da Costa Lobo, Serge Demerjian, Frank Graziano, Gary Marino, Ralph Pastore, Mary Ryder, Paul Scrudato, Chairman, Diana McGovern, Esq. Board Attorney

ABSENT: None

EXCUSED: Thomas O'Brien

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No. 1 COCCA REALTY ADJOURNED TO MAY 16, 2011

Applicant: Dr. Fred Cocca, 93 Schindler Way, Fairfield, NJ

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

Appearances: Thomas DiBiasi, Esq.

Mr. DiBiasi requested an adjournment until the May meeting.

Chairman Scrudato requested a motion to adjourn this matter, at the request of the applicant, to May 16, 2011. A motion was made and seconded to adjourn this matter to May 16, 2011 and was approved by a vote of 7-0.

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No. 2 MALTSSEN ADJOURNED TO MAY 16, 2011

Applicant: Konstantine Maltsen, 180-184 Centre Street

Application: to subdivide the premises to build two mixed-use buildings, having professional use on the first floor and two one-bedroom dwelling uses on the second floor.

Appearances: Thomas DiBiasi, Esq.

The Letter of Denial was read into the minutes of the March 21, 2011 meeting

Mr. DiBiasi requested an adjournment until the May meeting.

Chairman Scrudato requested a motion to adjourn this matter, at the request of the applicant, to May 16, 2011. A motion was made and seconded to adjourn this matter to May 16, 2011 and was approved by a vote of 7-0.

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No. 3 GUISTO (Frank's Italian Ice) APPROVED 7-0

Applicant: Mr. and Mrs. Gary Giusto, 1403 Town Center Way, Livingston, NJ 07039

Application: 108 Franklin Avenue, Block 9104; Lot 5; Zone B-3 request for a construction permit to install a serving window on the Harrison Street side having a side yard setback of approximately 12 inches.

Appearances: Deborah and Gary Giusto, Anthony Chimento (property owner) (sworn)

Letter of Denial was read by Mr. DaCosta Lobo. Codes of Nutley lists the permitted uses allowed in a B-3 zoning district. Code states that no building shall hereafter be erected and no existing building shall be moved, altered, added to or enlarged not shall nay 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. A takeout serving window is not listed in a B-3 district; therefore it shall not be allowed.

Chairman Scrudato advised the applicant that this is a "D" Variance, and would, therefore, require five affirmative votes. Ms. McGovern explained that it is the applicants' duty to show that the variance they are seeking is essential to the well-being of the township; the positives have to outweigh the negative.

Mr. Giusto thinks that installing a service window would be beneficial in the way of safety. The line of people would be away from the main street and traffic. Mothers won't have to park strollers outside and bring their children into the store.

Mr. DaCosta Lobo asked if he had a survey, because it wasn't in the package. (testimony was not on the recording.) Mr. Giusto said there is a window there already,

Mr. Pastore asked how many parking spaces there are – seven – some for the business and some for the tenants. The employees park elsewhere; there is no seating in the store.

How is using the sales window on the sidewalk a benefit? Mr. Giusto said it is safe for his customers to be off the main street, to avoid traffic congestion (foot and vehicle). It is not conducive to hanging out; it's more convenient for customers.

Chairman Scrudato asked how the building sits on the property line on the corner. It's a 12 inch setback on Franklin. Mr. Chimento said the building is oddly shaped on the Harrison Avenue side; it's on an angle.

Mr. Demerjian said that he doesn't see how this is a benefit to the neighborhood.

Mr. Giusto said this window is very important to him and his customers. They only have 800 square feet of space.

The Chairman asked about the awning – it is about 24 inches off the wall.

Mr. Marino appreciates that the applicants want to improve the space. How are they going to direct the people from the door? The suggested that they could put an arrow “line forms here.” Ms. McGovern said they can’t put anything on the walls.

There will be outdoor lights (on the side of the building and in the awning and on the new awning on the side window). The lights will be off when the business shuts down for the night.

Mr. Chimento feels that this side of town is improving. He thinks the store is a great addition to the town. He thinks it will be a big plus for the residents to have a store like this.

Hours of operation are noon to 10 pm Monday through Thursday and noon to 11 pm Friday, Saturday and Sunday. The business is closed December, January and February.

With no one else 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. Graziano, the application was approved by a vote of 7-0 with conditions (sign on the building to show the queuing to extend away from parking lot, the hours of operation, the lighting will shut down at the end of the night and the business will be closed three months.) Mr. Pastore said he believes this will enhance the business area.

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No. 4 CHIMENTO APPROVED 7-0

Applicant: Mr. and Mrs. Ralph Chimento, 74 Mapes Avenue, Block 2700; Lot 7; Zone R-1 **Application:** request for a construction permit to install a 12’x12’x54” (280 sq. ft.) semi in-ground pool in the rear yard having a setback of approximately six feet from the rear building line and have 37% lot coverage.

Appearances: Mr. Ralph Chimento (sworn)

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

- states no detached accessory building shall be located nearer than 10 feet to a main building. The proposed semi in-ground pool has a setback of six feet from the house;
- states an attached accessory structure (deck) shall be considered to be a part of the main building; therefore the rear deck establishes the rear building line; and
- Schedule of Regulations requires maximum lot coverage not to exceed 35% in an R-1 district. The proposed semi in-ground pool will increase the lot coverage to 37%.

Mr. Chimento clarified that the depth of the pool is not 54 feet – he’s not digging to China. He said that he has the space except where the deck is. He said water runs through the deck; it is not as impervious as the town claims.

Ms. Brown asked how far into the ground is the semi-in-ground pool? Mr. Chimento said that it will be recessed 27 inches in to the ground to meet the height of the deck in

the future. He has a four-foot fence in the yard. He will put in a five-foot fence with a smaller link and a locking gate.

The Chairman asked if the pool will have a deck around it. Mr. Chimento said it will not have deck all around it. He wants to take the existing deck and bring it up to the pool. This would be a six and a half or seven foot extension from the existing deck.

Mr. DaCosta lobo asked if the deck would be open righto the edge of the pool. It would. That was concern for Mr. DaCosta Lobo. Ms. Brown pointed out that it is nearly the same as having an in-ground pool – there is nothing to stop anyone from walking right in. Mr. DaCosta Lobo was concerned about a drop into the pool that there is not.

The Chairman said a condition would be that the applicant would have to comply with all safety regulations as to alarms.

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

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No. 5 PECORA APPROVED 7-0

Applicant: Ms. Christine Pecora, 253 Grant Ave, Block 6504, Lot 2; Zone R-1.

Application: request for a construction permit to build a 12’x32’ one-story rear addition having a rear yard setback of 26 feet.

Appearances: Christine Pecora and Joseph Turano (sworn)

Letter of Denial was read by Mr. DaCosta Lobo. Codes of Nutley Schedule of Regulations requires a 30 foot rear yard setback in an R-1 district. The proposed addition has a rear yard setback of 26 feet.

Ms. Pecora is guardian for her mentally challenged sister. She would like to expand her kitchen and make a put a handicap bathroom in on the first floor to accommodate her sister and her needs.

Mr. Turano said they are not adding onto the house. There is already an addition to the house on the back. They would like to tear it down and reconstruct it correctly. There is already 30 feet between that back wall and the rear of the yard. The survey scales at 27 feet and he doesn’t know what the discrepancy is, but there are not going beyond what is already there except to square off the back right hand corner of the house – foundation and all.

Mr. Pastore asked if the addition would match the rest of the house and roof – yes. Any lighting? Outside the double French door there will be decorative sconces. They most likely will not be motion-sensored.

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

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BUSINESS: Mrs. McGovern, read the resolutions from the March 25, 2011, meeting and the members voted to approve all.

The resolutions for Donadio, and Brown were approved.

Ms. McGovern advised the Board that the undersigned will be away on vacation and unable to record the July 18, 2011 meeting. It was suggested that a replacement cover the duties of the recording secretary. Ms. McGovern will be on vacation and unavailable for the August meeting. That meeting will be rescheduled for the following week.

LITIGATED MATTERS: None to be discussed.

Respectfully submitted,

Marie L. Goworek