

# NUTLEY ZONING BOARD OF ADJUSTMENT

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

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

**ABSENT:** Frank Graziano

**EXCUSED:** None

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### **No. 1 COCCA REALTY ADJOURNED to April Meeting**

**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 \_\_\_\_; Lot \_\_\_\_, Zone B-4

**Appearances:** Thomas DiBiasi, Esq., Paul Bauman (sworn)

**Letter of Denial** read and put on the record at the meeting of February 28, 2011.

Mr. DiBiasi requested a continuation to the April meeting as his client is unavailable this month. Chairman Scudato requested a motion to adjourn this matter, at the request of the applicant, to April 2011. A motion was made and seconded to adjourn this matter to the April 2011 meeting. The motion was approved by a vote of 7-0.

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### **No. 2 DONADIO APPROVED 6-0**

***Chairman Scudato and Mrs. Ryder recused themselves from this matter because they both live within 200 feet of this property. Mr. Pastore presided.***

**Applicant:** Mr. and Mrs. Michael Donodio, 51 Highfield Lane, Block 3802; Lot 4; Zone R-1

**Application:** request for a permit to construct a 22.7' x 16' (363 sq. ft.) second story addition having a 25.9' rear-yard setback.

**Appearances:** Suzanne and Michael Donodio (sworn)

**Letter of Denial** was read by Mr. Da Costa Lobo. Codes of Nutley requires a minimum rear-yard setback of 30 feet in an R-1 zone. Codes of Nutley states the minimum side, front and rear yard dimensions for the alteration of or addition to a one-family or two family dwelling, provided that the same do not increase the existing lot coverage and/or footprint of existing building outline, shall not apply to the extent that said side, front, and rear yard dimensions (meet or exceed the requirements for side, front and rear yards set forth in the Schedule of Regulations, prior to July 25, 1987) shall be no less than 80% of the required minimum set forth in the

Schedule of Regulations. The proposed 2<sup>nd</sup> floor addition will increase the existing footprint of the existing building.

The applicants have three daughters and only two bedrooms. They want to add another bedroom to the back. There is a cathedral ceiling downstairs and all the electric - ceiling fan, etc. - are up there. He doesn't want to lower the ceiling to eight feet.

With no further questions or comments from the board, and one in the audience to speak either in favor of or against this application, Acting Chairman Pastore requested a motion. Upon motion by Mr. DaCosta Lobo and seconded by Ms. Brown, the application was approved by a vote of 6-0.

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**No. 3 BROWN APPROVED 7-0**

**Applicant:** Mr. and Mrs. Jason Brown, 27 Homer Avenue, Block 9000; Lot 80; Zone R-1

**Application:** request for a building permit to reconstruct and enlarge the 6'7"x 16'4" existing non-conforming open porch to a new width of 22'3" having a front yard setback of 13'3".

**Appearances:** Catrin and Jason Brown (sworn)

**Hardship:** Irregular lot / easement.

**Letter of Denial** was read by Mr. Da Costa Lobo. Codes of Nutley states an open porch may be permitted to extend into a required front yard six feet. The required front yard is 25 feet. Code state no nonconforming use or structure nor any lawful use on a nonconforming lot shall be enlarged, extended, reconstructed or structurally altered, except that such structure or use may be structurally altered to correct an unsafe condition. A non-conforming structure or a lawful structure on a nonconforming lot may be restored or repaired in the event of partial destruction thereof. Increasing the existing length of the porch is prohibited.

Mr. Brown said there originally was enclosed porch. They want to make an open porch which would allow more sunlight and look more pleasing. The length of the house would remain and would stay along the lines of the houses on the street. The porch would just be a little longer on either side. The chairman questioned the position of the air conditioner. It will not violate the side yard setbacks.

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 7-0.

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**No. 4 Maltsen Properties. ADJOURNED TO APRIL 2011**

**Applicant:** Konstantine Maltsen, 180-184 Centre Street, Block\_\_\_; Lot\_\_\_; Zone: R-2

**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.; Robert Schuster, Architect; Konstantine Maltsen, owner; Paul Bauman, Planner; Joanne Andriola (sworn)

**Letter of Denial** was read by Mr. Da Costa Lobo. Codes of Nutley states: prohibits mixed use structures in the R-2 district; requires passageways and driveways to be required on the lot on which same are situated; plans show ingress on one lot and egress on the other; requires any business and commercial use to have one off street loading area per building of 2,000 square feet of floor area; lot one proposed first floor business area has 2,700 square feet; code lists the requirements be included on the plat for a major subdivision. Review shows waivers must be requested for the following missing items: the record owner or owners be listed; requires contours at five-foot intervals for slopes averaging 10% or greater and at two-foot intervals for lesser slopes. Codes require the following: with each application for preliminary subdivision approval (a) proof that no taxes or assessments are due or delinquent on the property proposed for subdivision; (b) in the case of subdivision by corporation or partnership the names and addresses of all stockholders or individual partners owning at least 10% interest shall be provided in accordance with N.J.S.A. 40:55d-48.2; requires the location, width and purpose of any easements or rights-of-way existing or proposed. If successful in granting the use variance and subdivision, an application will be required for preliminary and final site plan.

The Chairman noted that this is a use variance and requires five affirmative votes. He is aware that Mr. DiBiasi has an expert planner and additional witnesses lined up. He suggested that the application be bifurcated for the site plan approval IF the site plan is approved. Mr. DiBiasi said he agrees with that the testimony being presented tonight is only for the use variance. He advised the board that he has been negotiating and working with the construction department for the last seven or eight months with this design. They all, therefore, agree that bifurcation is the way to go. Tonight they will discuss landscaping and drainage in detail. While the above matters were being heard, Mr. DiBiasi had an opportunity to speak with the neighbors that appeared tonight. He said he has representations that he will make on behalf of each of the neighbors for some of their concerns and how his team has come up with a program to alleviate some of those concerns.

The Chairman stated that the board may want to call a planning expert. If that is the case, Mr. DiBiasi would be notified as to what escrow to set up with the town. The Chairman asked if the sale of the building is contingent on a variance being granted. Mr. DiBiasi said that is true. The attorney for the McMunn estate is also present. Mr. DiBiasi stated that, under the terms of the contract, his client will assume all the conditions that may be put forth by the Board.

Mr. DiBiasi gave a brief history of the building and property, and then outlined the plans for the buildings. One of the buildings would have two professional suites on the first floor; one of the suites will house Dr. Molsten's specialized dental practice. When they come back with site plan, they will be changing the roof line and giving some diversity, adding more meaningful architectural developments; they will not be going with a "cookie cutter" look – all this, if they are successful tonight in obtaining a variance. They are two one-bedroom apartments planned for each building. This project meets all bulk requirements – lot coverage, side yard, rear yard and parking. There will be no on-street parking necessary for this project.

Mr. DiBiasi had two exhibits to present to the Board; one being the elevations (Exhibit 1) and Exhibit 2 is a copy of the proposed subdivision and what will turn into a site plan. He said the construction department liked the idea of having an interior entrance and exit between the two buildings. The thought pattern was to protect any future residential development on the east

by having all traffic internalized. That would mean that the ownership must be by one party and cross easements would have to be filed and made running with the land in perpetuity. This was a very important issue to the construction department.

Mr. DiBiasi listed concerns that the neighbors had: parking (which was explained above; use of buildings (professional use only; no Chinese restaurant or restaurants of any kind); location of dumpster (this building will not have a dumpster because there will not be that kind of waste); construction schedule (12-18 months). When it comes time for buffering, the applicant has agreed to do some private buffering on the residential side.

Mr. DiBiasi called Dr. Maltson to the stand. He told the Board that he has been in Nutley for about 6 years and would like to set up a permanent practice in Nutley. He repeated much of what Mr. DiBiasi had previously stated. He added information about the hours of operation he expected (Monday through Thursday 8 a.m. to 5 p.m.; Friday 8 a.m. to 3 p.m. and Saturday 9 a.m. to 1 p.m.). His patients are schedule one hour apart. He has a staff of four or five; four full time.

Mr. Pastore asked about the bus stop. Mr. DiBiasi said that wasn't a problem because they do not need on-street parking.

The Chairman noted that he has had root canals and they have never taken more than an hour at a time; he questioned the hour that the doctor books for patients. The doctor said he schedules four patients in the morning, but leaves time for emergencies. The Chairman sees that the basement area is to be used for storage. He inquired as to whether or not it would be used for anything else or if the applicant would have an issue if a condition was put in the variance that it be used only for storage. The applicant said that so far that will be used for storage because he has enough space now. Mr. DiBiasi cut in and advised both the Board and his client that Mr. Intendola said storage means storage and if the applicant wanted to expand in the future, he could not do that unless he came back before the Board, because that would require a parking variance and the chance of getting that is close to zero.

Ms. Brown asked why the applicant needed to sub-divide this and put two buildings there. Mr. DiBiasi said they did this for financial purposes. Having separate lot and blocks, the bank was able to look at each one individually and loan on each individual building. Ms. Brown asked if they couldn't just have one building on the property like it is now. The applicant said it would look nicer on the street because the area is mostly single family houses. Ms. Brown said it would be interesting if the applicant would superimpose the existing structures on the elevation because then they would be able to see the actual scale of the proposal versus what is already existing in the area. Applicant's architect will explain that when he testifies.

A member inquired as to the number of examining rooms the doctor would have in 1300 square feet of space. He would have four exam rooms, could possibly see four patients simultaneously, have four to five employees, himself and tenants. He was concerned about the parking. Mr. DiBiasi said the ordinance dictates the parking based upon square footage and they do meet the requirements. The member asked if financing was in place and Mr. DiBiasi said Chase Bank is waiting on the outcome of this application.

Ms. Brown asked about the parking. She asked since the doctor has four examining rooms, what is to prevent him from bringing in a partner – now he would double the staff, double the patient load – now they don't have enough parking based on the physical space that he has.

The reality is he could bring someone else in because he doesn't need four exam rooms, he only needs two. (The applicant's response was difficult to hear). Mr. DaCosta Lobo noted that that is half the building. There is another professional office that might need similar parking requirements. Mr. DaCosta Lobo also said that he prefers two buildings as opposed to one large building, but the buildings are pushed up to 10 feet as opposed to the R-2 setbacks of 25 feet. The existing building is 25 feet and these two buildings would be much closer than that. He assumes that they are pushed this much forward to making parking available. He continued that the Board may think that despite the fact that parking is sufficient for code, it may not be sufficient in actuality. The buildings have been moved forward in the extreme of where they can be located and still not have enough parking to perhaps satisfy the Board.

Mr. DiBiasi said this was designed based on a mixed use B-2 zone.

Mr. DiBiasi requested a motion to adjourn this matter to April.

With no one in the audience to speak neither in favor of nor against this application, Acting Chairman Scudato requested a motion. Upon motion and second, the Board approved adjourning the application to the April 2011 meeting.

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

The resolutions for Quinn and Lupo were approved.

The minutes of the January 2011 meeting were unanimously approved.

**LITIGATED MATTERS:** None to be discussed.

Respectfully submitted,

*Marie L. Goworek*