

NUTLEY ZONING BOARD OF ADJUSTMENT
February 28, 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 Da Costa 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 MARCH 21, 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 _____; Lot _____, Zone B-4

Appearances: Darren DiBiasi, Esq., Dr. Fred Cocca, (sworn) Paul Bauman, present – no testimony

Letter of Denial was read by Mr. Da Costa Lobo. Variance was previously granted in June 1998 to permit a second story on the existing structure containing five one-bedroom apartments with offices on the remaining first floor. Codes of Nutley:

- states no non-conforming use shall be enlarged, extended, reconstructed, or structurally altered.
- requires a multiple-family dwelling to have two parking spaces for each dwelling unit of two or more bedrooms; 10 spaces would be required for apartments. 7500 square feet of office space requires 25 additional spaces, for a total of 35.
- requires any parking located in the front yard abutting the street to be within 10 feet of the property line. Space 2 and 14 violate this requirement, Spaces 1, 12, and 13 are in the street right-of-way
- requires any business use of 2,000 square feet or more to have on-site loading space.
- definition of parking spaces requires direct usable access to the street; parking spaces 22 and 23 violates this requirement.
- requires a landscape buffer strip at least six feet in width, containing plantings at least three feet high where the parking area adjoins any “R” district. Rear-yard property line abuts an R-2 zone.

Chairman Scudato noted that this is a D-Variance which requires five affirmative votes out of seven to be approved. It is incumbent upon the applicant to show special reasons why this variance should be granted.

Mr. DiBiasi addressed the Board advising that this is a mixed use building. He explained that there are professional offices on the first floor and five residential apartments on the second. He has owned the building without incident for over 30 years. There is a growing demand for two-bedroom apartments over one-bedrooms because of demographic lifestyle changes. The applicant is not seeking to change the

external size or dimension of the building 7. This is simply an internal reconfiguration. There is more than enough parking to accommodate the apartments and the businesses. Dr. Cocca responded to questions from Mr. DiBiasi. There have been no citations against the owner or building in all the years he has owned it. There was only one incident relating to trash which was taken care of immediately. There are four professional offices including a dentist, a pediatrician, and a chiropractor; the fourth space is currently vacant. There have been no complaints from any of the neighbors or tenants regarding the professional offices. The tenants have not had any negative comments about the parking facilities. Four of the five apartments are currently occupied.

Dr. Cocca has said that over the years college students have sought two-bedroom apartments because one-bedrooms are too expensive. He said that elderly people are looking for two-bedroom apartments, downsizing from bigger homes. He further stated that there are many divorces and a need for two-bedroom apartments for the visiting child.

Four years ago, Dr. Cocca requested permit to convert two of the apartments to two-bedroom apartments to this application. The building department allowed the conversion of two one-bedroom apartments to two-bedroom apartments. The building department did not require Dr. Cocca to appear before this Board. He recently approached the building department again to request a permit to reconfigure the remaining apartments. The building department denied the instant permit stating that the other permit was given in error; therefore they were not going to compound their error by issuing permits for the other three apartments. They said he would have to appear before the zoning board. He is here tonight to request permission for all five apartments.

Chairman Scrudato was concerned about going forward with this application because the Board was not provided with a certified site plan by a licensed surveyor. Some other issues that needed clarification:

- impervious coverage;
- refuse – where will it be stored and picked up;
- handicap parking space;
- scale of parking spaces;
- snow plowing;
- insufficient landscaping;
- second floor plan;
- three parking spaces directly in front must be moved.

The applicant requested an adjournment until March 21, 2011 at which time he will return with the architect and revised plans. Ms. Brown requested a second floor plan and updated project data including apartments D and E. She believes the building area is incorrect.

Chairman Scrudato requested a motion to adjourn this matter, at the request of the applicant, to March 21, 2011. A motion was made by Mr. Da Costa Lobo and seconded by Mr. Pastore to adjourn this matter to March 21, 2011. The motion to adjourn was approved by a vote of 7-0.

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No. 2 BRAMLEY APPROVED 7-0

Applicant: Mr. and Mrs. K. Bramley, 31 Parallel Street, Block 8303; Lot 10; Zone R-1

Application: request for a permit to erect a six-foot solid fence (five-foot solid with one-foot lattice) located in the side yard.

Appearances: Sally Bramley (sworn)

Letter of Denial was read by Mr. Da Costa Lobo. Codes of Nutley regulates a fence located from the front line of a main structure to the rear line of such structure and within such lines to a maximum height of four feet and shall be of 50% open construction.

This is a reapplication of a similar one made previously in October 2010. There was a misunderstanding as to the type of fence.

The Chairman advised the applicant that this Board does not generally consider a second application of basically the same request within a six month period. Since there weren't many applications on the calendar, the Chairman opted to proceed with this matter.

The applicant did further research as to what type of fence is allowed and is amenable to comments from the board. She needs a fence for her children's protection. She noted several fences that she would be willing to go with. She wants to enclose the side yard near the driveway, but the driveway will not be enclosed. The Chairman was concerned about a car pulling in to where the children are playing. He asked if the applicant was willing to have that portion of the driveway removed since the applicant has a second driveway. Ms. Bramely said that would just then be blacktop and it's been that way since they bought the property. The Chairman countered that it would be the front yard just like everyone else's. She said though that she would absolutely consider it. In response to Mr. Da Costa Lobo's question, she said that it is and has always been a fully- functioning driveway. She did ask the chairman as to why it should be removed. He gave the following reasons:

- not in compliance with ordinance to have two driveway cuts on a single property;
- a car pulling into the driveway could be a danger to the children behind the fence.

The applicant asked if she had a four-foot fence, would the above still apply? The Chairman said this was his opinion, the other members may not feel the same, regardless of what type of fence she gets, the driveway should be removed. Ms. Bramely asked if she were to put shrubbery in front of the fence, would she then be able to keep the driveway? The Chairman said that would be nice for the neighbors, but he is still concerned about the driveway being active.

Mr. Demerjan asked if she would consider concrete planters between the driveway and the fence. Ms. Bramley said she would. The Chairman did not like that idea.

Mrs. Brown said that it is not cited, but the impervious coverage is more than it should be. It appears to her that there is a lot of asphalt on the property. She asked if the children were going to play on the driveway or is she putting grass there? Ms. Bramely said she isn't sure yet.

With no further questions or comments from the board, and one in the audience to speak either in favor of or against this application, Chairman Scrudato requested a motion. Upon motion by Mr. Pastore to grant the variance for a four-foot and one foot lattice semi-private fence with a condition to remove the curb cut; seconded by Ms. Brown, the application was approved by a vote of 7-0.

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No. 3 MARTIN APPROVED 7-0

Applicant: Mr. and Mrs. William Martin, 56 South Spring Garden, Block 2802; Lot 15; Zone R-1

Application: request for a building permit to construct an eight-foot wide by 28'2" long open porch, with a roof having a 21-foot front yard setback, and extend the front entrance way four feet wide by six feet in length, having a 25 foot front yard setback.

Appearances: Barbara and William Martin (sworn)

Letter of Denial was read by Mr. Da Costa Lobo. Codes of Nutley requires a front yard setback to be the average depth of adjoining lots on the same side within 200 feet in the same zone, The average setback for the above captioned premise will be 29 feet. The entrance way requires a 29 foot setback. Code states all pumps, heaters, and filtration systems shall be kept at a maximum distance from all property lines and shall be at least eight feet from any property line. Code limits an open porch to encroach six feet into the required front yard. The required setback is 23 feet.

The applicants said there is a lot of traffic because of the school that is across the street from their home. They are looking for a porch to add some sense of privacy. Deliveries to the residence are left out in the open; double parking is a problem. They intend to have the porch match the rest of the house. The chairman thinks it would add to the look of the house and would not be a detriment to the neighborhood.

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 Ms. Brown, the application was approved by a vote of 7-0.

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No. 4 PETRUCCI, JR. APPROVED 7-0

Chairman Scrudato recused himself from this matter; Mr. Pastore sat in as Chairman.

Applicant: Mr. and Mrs. J. Petrucci, 45 Ackerman Street, Block 7806; Lot 1; Zone R-1

Application: request for a permit to construct a four-foot solid type fence in the front yard of a corner property.

Appearances: Mr. Tom Petrucci (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;
- on every corner lot within the triangle formed by the street lines on such lot and a line drawn between points on such lines at the distance from their intersection specified below, there shall be no fence or wall higher than 2½ feet nor any other obstruction to vision other than a post, column or tree not exceeding in cross section one square foot or one foot in diameter between a height of three feet and a height of 10 feet above the established grade of either street;

for a lot having an interior angle of 90° or more at the street corner thereof: 20 feet.

Mr. Petrucci wants to erect a small fence along the side of his house. He lives on a corner property and would like some form of privacy. Ms. Brown asked if he would be open to having a three-foot high picket type fence.

With no one in the audience to speak neither in favor of nor against this application, Acting Chairman Pastore requested a motion. Upon motion by Ms. Brown and seconded by Mr. Marino, the application for a variance was approved by a vote of 7-0.

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No. 5 FABIANO APPROVED 7-0

Applicant: Ms. Nicole Fabiano, 23 Vine Street, Block 7700, Lot 4; Zone R-1.

Application: permit to leave as erect an 18 foot above-ground pool having a seven-foot side yard setback on both sides and an attached deck to the pool having a three-foot rear yard setback, no side yard setback on the right side and seven-foot side yard setback on the left side. Also, to leave as erect the on-grade decking totaling approximately 730 square feet in the rear of the property.

Appearances: Nancy Fabiano (sworn)

Letter of Denial was read by Mr. Da Costa Lobo. Codes of Nutley states that a non-commercial swimming pool, as an accessory use, shall be no closer than eight feet to any side or rear lot line; or nearer than eight feet to an side or rear lot line or nearer to the side street line of a corner lot than the main building on the lot; or if the abutting lot to the rear faces said street line, then the distance equal to the depth of the front yard required on said lot to the rear. However, in no case, shall a swimming pool on a corner lot be required to be set back more than 25 feet from the side street.

Code of Nutley – Schedule of regulations states the maximum imperviable coverage shall not exceed 70% and maximum lot coverage shall not exceed 35%. The survey submitted shows 80% imperviable coverage and 62% lot coverage.

The applicant claims that this is a very narrow and irregular lot and is therefore difficult to comply.

Mr. DacostaLobo asked what is behind the rear deck. There is a chain-link with slats. She believes there is three feet from the top of the fence to the deck. The pool is an 18-foot round.

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. Marino and seconded by Mr. Pastore, the application to leave as erect was approved by a vote of 7-0. Mr. DaCostaLobo required the removal of the on-grade decking.

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BUSINESS: Mrs. McGovern, read the resolutions from the January 24, 2011, meeting and the members voted to approve all. The resolutions for Quinn and Lupu were approved.

There will be a joint meeting with the Planning Board on March 16, 2011. Ms. McGovern explained the reasons for the meeting – one being that the two groups can discuss trends to see if the Code can be made more user-friendly.

LITIGATED MATTERS: None to be discussed.

Respectfully submitted,

Marie L. Goworek

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