

**Nutley Board of Adjustment
June 15, 2009
Meeting Minutes – Public Session**

CALL TO ORDER: A meeting of the Nutley Zoning Board of Adjustment was called to order at 7:44:40 Chairman Scrudato. The Pledge of Allegiance was recited. Roll was called and the “Sunshine Act” notice was read.

PRESENT: Robert Beck, Suzanne Brown, Thomas DaCosta Lobo, John Halligan, Ralph Pastore, Diana Petolino, Michael Naughton, Thomas O’Brien, Paul Scrudato, Chairman and Diana McGovern, Board Attorney

ABSENT/EXCUSED: Frank Graziano

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No. 1 7:46:40 CARRINO

Applicant: 44 Sylvan Place

Appearances: Mr. Carrino

Ms. McGovern asked that this matter be carried to July 20, 2009. The matter is in litigation and the hearing before Judge Kennedy was moved last week until July 10.

The Chairman asked for a motion to continue this until the next meeting scheduled for July 20, 2009. Moved by Mr. DaCostaLobo, seconded by Mr. Pastore. Approved.

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No. 2 7:49:05 MARINO - Settlement

Applicant: Nicholas Marino, 56 Stanford Court, Totowa

Application: 510 Franklin Avenue, Nutley

Appearances: Thomas DiBiasi, Esq.

Mr. DiBiasi addressed the Board stating that he was pleased to report that a settlement has been worked out on this matter. He reminded the Board that the applicant received approvals to renovate what is formerly the Franklin Movie Theatre – offices, apartments and indoor parking. During the course of construction, dormers went on the roof. These dormers were not part of the plans. There has been litigation from the construction code official in terms of a violation of the site plan. Mr. DiBiasi’s office filed an appeal and with the cooperation of this Board counsel and Board’s counsel, a settlement has been worked out.

The settlement has been in written form for several months. Pursuant to the request of the Chairman and the Board, he has sent out legal notice to all affected property owners within 200 feet and also published it in the Nutley Sun.

The reason for tonight’s meeting is to have Mr. Marino go on the record to ratified, under oath, each and every covenant of the settlement. Discussions with the construction code official have been ongoing. The final CO has been held in abeyance until this matter is, once and for all, concluded. The Board was provided a copy of a draft deed, which is part of the settlement. If this form is acceptable, then Mr. Marino will also testify under oath that he will sign it, have

notarized, and record with the county. The Board will then be provided with a certified true copy of the deed (inclusive of the settlement restrictions in it and it would run with the land).

Mr. Marino was sworn in. At the request of Ms. McGovern, Mr. Marino verified his signature on a letter dated January 7, 2009. (Marked Exhibit 1).

Ms. McGovern took Mr. Marino through the agreement point by point.

On the last point, Mr. DiBiasi said the architect will do that work.

DIANA, PLEASE MY SEE NOTE AT THE END OF THE MINUTES

With no further questions from the Board members and no one else in the audience having questions or comments, Mr. Pastore made a motion to approve the application; seconded by Mr. Naughton. Approved.

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No. 3 8:01:21 TERRAZZA'S RESTAURANT to be continued July 20, 2009

Applicant: Magliara, 507 Franklin Avenue, Zone B-3

Application: Install an attached 49'x3'9" awning projecting six feet from the building façade

Appearances: Thomas DiBiasi, Esq. and Harry Teaster, 75 Laurel Avenue, Roseland, General Manager

Letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley states awnings and awning signs shall project no more than three feet from the façade of the building from which they are attached and not farther than the awnings on the same side of the street, within 200 feet on either side. A use variance for outdoor seating in front of the building was granted by this Board in May, 1998, at which time a 6'6" wide awning was approved, but such approval lapse because the building permit was not secured.

Ms. McGovern asked if the letter of denial was correct in stating the proposed awning is 49'x3'9" was incorrect. Mr. DiBiasi said that it is incorrect; it is going to be wider than 3'9". This is the reason for the variance.

Mr. Scudato noted that he does not have a certified survey of the property. He asked if he is missing it or was it not provided. Mr. DiBiasi handed the Chairman a copy for his and the Board's review.

Mr. Teaster was sworn in. In response to Mr. DiBiasi's questions, Mr. Teaster said he has been the general manager of Terrazzo's Restaurant for the last 10 years. His responsibilities include everything but the cooking.

He explained that the customers were asking for more of a sun block or awning for their outdoor eating. He said when the weather turned, the staff would have to bring the customers eating outdoors into the restaurant. On Friday and Saturday nights, the inside tables would be full and there would be an issue disturbing other patrons.

He described the awning as being six feet coming off the building (not 3'9"). It will be mahogany with no details. Clear vinyl drop downs (which would be rolled up when not needed for rain) will also be installed. The awning will be a permanent structure.

He said that the awning will help the business immensely so far as being able to accommodate patrons on a regular basis. The company that supplies the awning have done work before on the avenue. The addition will be aesthetically pleasing. There will be no lettering or wording on the awning. There is already a sign above that that was approved by the Board at another time.

The Chairman asked Mr. Teaster about the vinyl sides. He explained that the sides (shown on the plans) are just heavy-duty, roll-up vinyl sidings, which would be made of clear panels with windows (a frost color). The Chairman asked if there were exits through the three sides. Mr. Teaster said it is actually shaped like an "L". If you were looking at the front of the building, on the right hand side would be an exit and then through the sliding glass doors, which exist on the building now, would be the exit/entrance for that way, also.

Ms. Brown said it would be extremely helpful for herself and the other members on the Board to actually see what this looks like. The picture supplied to the Board is a sketch from the awning company with many questionable things on it. She does not understand that these things are, meaning "these things" below the awning. She said the building is an attractive, and she would like to see how this integrates into the existing architecture. Based on the sketch, she cannot get a picture in her mind as to what it would like, how it affects the signage, the exterior lighting, or anything. She requested that a rendering be brought to the Board so that they could evaluate it properly. Mr. Teaster said he could ask the awning company for something of that nature.

Mr. Beck had several questions:

1. He wanted to be certain they received approval from the commissioners for outside dining.
2. Does the sketch that was provided to the members conform in all respects with the prior awning that was approved? (He asks because the date of this is 4/8/09, which is substantially after the original variance.)
3. The applicant has indicated that they not only want an awning; they basically want to enclose it in the front.
4. The six feet of the awning - is that going to encroach out onto the sidewalk into the public right-of-way, so that if you walk by, while the patrons will be dry, you don't have your umbrella and you're a pedestrian, you're gonna get drenched.

Mr. Teaster said the awning comes out 6 feet to the end of the terrace and where the railings end. The plans show this. Mr. Beck said the only problem with that is the plans are downstairs on the second floor; no one on the Board has had access to those plans, so they are operating in a vacuum here. The chairman said it may not be an omission of the applicant, but rather the building department; nevertheless, it has a use here. Mr. Teaster will be sure they get copies of anything they need. Ms. McGovern asked if the applicant gave the Code Office other documents that are not included in the package that the Board was given. He said no; he followed the code official's instructions and submitted what was requested. Mr. DiBiasi said the client did follow what the construction code official told him to do. And if this Board wants

to go beyond what this application is and get colored renderings, he said he knows Terrazzo's would be willing to do that. He also knows that the summer season is here and this is an important timing issue for them. Ms. Brown said she cannot make a decision without seeing it in context. The picture just does not do it for her. The Chairman asked Mr. Beck if all of his questions have been addressed. Mr. Beck asked Mr. DiBiasi if his client received approval from the commissioners for outdoor seating and dining. Mr., DiBiasi said they have had outdoor seating and dining approvals for several years – since they opened the restaurant.

Mr. Beck said the application indicated that a prior awning was approved. He asked if this awning is *exactly* the same as the one that was approved before. Mr. DiBiasi said across the building it is, but this is somewhat wider. So, no, it is not. This is a new application and they are treating it that way. Mr. Beck said he would have to check the enforcement code and see as to whether that constitutes an awning or by enclosing it, it constitutes something more than an awning.

Mr. DiBiasi said he has gone through this same issue, administratively, with Regina Marguerita and that issue worked out administratively. He thinks things the construction code office would not handle this any differently, especially since the plastic would be rolled down if there was rain and rolled up if not. Mr. Beck said it is his recollection that the enclosure at Regina Marguerita is only three feet high. Mr. DiBiasi said it actually is enclosed; it comes all the way down. Mr. Beck asked if the awning is permanent; yes, it is. It will not be rolled up when not in use.

Mr. DiBiasi asked Mr. Teaster is the awning will withstand snow accumulation in the winter. Mr. Teaster said it would. In the winter, the sides would be rolled up as there is no need for them since the tables will be moved inside for the season (the time frame allowed as per the township). Mr. Beck said it would be responsibility of clearing any snow that falls to the sidewalk from the awning. Mr. Teaster said he understood that.

Mr. Halligan asked what are the materials that the awning would be made of. Mr. Teaster said it is a heavy duty, canvas material, mahogany colored which matches the brown and orange color scheme of Terrazzo's.

Mr. Naughton said that outdoor café statutes may not actually allow windows or doors or that sort of thing. He does not know if the code enforcement official brought up that issue with the applicant. That is a concern that he has. Mr. DiBiasi said that since the structure is not permanent, it has not turned out to be an issue. If it were permanent, Mr. DiBiasi would agree with Mr. Naughton that a whole dimension would open up on that. Mr. Naughton said then that that is the code official's interpretation. Mr. DiBiasi said that is why this application was deemed complete and the letter of denial was spelled out the way it was. The construction code official saw this as a Flexible C for the width, the depth of the awning.

Mr. Naughton said the statutes require that outdoor seating be renewed on an annual basis. Has this been done? Mr. DiBiasi said there is a fee for that and asked Mr. Teaster to confirm that he has been paying that and he did. Mr. Naughton asked how or if the applicant plans to heat the space. Mr. Teaster said there is no use for heat out there because the outdoor seating will not be used during the cold climates.

Mr. Halligan agreed with Ms. Brown that the application is lacking; it is tough to tell what the awning will look like from the sketch. He said the Board likes to see people prepared. Considering it is getting into the season, July 20 is halfway through the summer, and the economy is not great, all things considered, he thinks they can consider the application as they see it now.

The Chairman advised Mr. DiBiasi that it appears that for the Board to go forward, they will need additional information. Mr. DiBiasi said the only piece of information they can bring would be a color sample. The applicant has testified that it will be of the same color scheme as Terrazzo's; but if that is an issue . . . The Chairman reminded the applicant that Ms. Brown would like a drawing of what the awning, the supports would look like and any other information that would be helpful to the Board in making decision. He realizes that time is of the essence, but it should be done right the first time so that this type of problem does not arise.

Mr. O'Brien asked who wide the sidewalk is from the front of the building to the curb. Mr. Teaster said it is 7'2" from the façade to the sidewalk; from the end of the terrace to the end of the curb is 5'10". The awning goes right to the railing. Mr. O'Brien asked how much room there is for people to walk by. Mr. Teaster said it is the normal width; the awning comes down on the inside of the railings. The sidewalk width will not change.

Mr. Beck referred to the Outdoor Café and Sidewalk Café Section 240:21-2(f)(5)(a) "the enclosure shall not contain doors or windows, nor air conditioning or heating equipment and shall be open at all times to the air from a height of not more than three feet." That seems to be inconsistent with the plan attached to the application. Mr. DiBiasi said he can only respond that the construction code official has interpreted that section and wrote the letter of denial. The applicant is relying on that letter. If this Board believes that interpretation is inaccurate, he asks that the Board let the applicant know that before they come back the next time because the applicant does have the right to rely on the official document from the construction code official. Mr. Beck does not want to banter words with Mr. DiBiasi, but if the code official is wrong or incorrect, and the applicant has not completed and received the CO, he does not know that he is totally entitled to rely on what the code enforcement official says. If this Board thinks that a variance may be required, it is obligated to raise that question. Mr. DiBiasi will go back to the code official with these concerns and then report back..

Mr. Beck wanted to know why the applicant won't consider a retractable awning. Mr. DiBiasi said his client believes that this will actually improve the aesthetic value of Terrazzo's and he considers it as something that will be an actual benefit to Franklin Avenue and to his business.

Ms. Petolino asked if there are any vertical structural elements that will be required. Mr. Teaster said no; the awning will be anchored and welded to the wall in the form of a triangle. There will be no posts.

Mr. Naughton said one other thing the applicant needs to do when he resubmits next month -- he has to show the Board a hardship for their position. Mr. DiBiasi said this is not going to be a hardship case; it is a Flexible C. There is no hardship for this. Mr. Bauman will present the case for the Flexible C. He thought it would be a good idea not to bring Mr. Bauman up tonight since there is the issue with the interpretation.

With no further questions from the Board members and no one else in the audience having questions or comments, Mr. Pastore made a motion to continue the application until the next regularly schedule meeting on July 20. Mr. DaCostaLobo seconded. All in favor.

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No. 4 8:34:45 BELAS Approved 7-0

Applicant: Joseph Belas, 52 Lakeside Drive, Block 601, Lot 29, Zone R-1

Application: Request to build a second story addition, having a front yard setback of approximately 23 feet; and a rear yard setback of approximately 26 feet; and a rear addition having a rear yard setback of approximately eight feet.

Appearances: Joseph Belas and Carmen Oliveri, 55 West Street, Bloomfield (contractor) (sworn)

Letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley requires a minimum front yard set-back of 25 feet; a minimum rear yard set-back of 30 feet; and states that no detached accessory building shall be located nearer than 10 feet to a main building.

Ms. Brown said it appears that the applicant is just adding a second level over the existing footprint of the house. Mr. Belas said that was correct; it will be a second bedroom. Ms. Brown asked if the only new construction on the first floor is a very small (5'x6') addition, otherwise staying within the existing boundaries of the house, which is on an irregularly shaped lot. Because of the way it is placed, the setbacks are somewhat skewed.

Ms. Petolino asked if the border of trees on the side and the back of the house would remain as is. Mr. Belas said everything would remain. Ms. Petolino asked what other improvements will be made - is Mr. Belas going to side the house, the garage . . . Mr. Belas said at the very least he will be painting the house.

The Chairman noted that the lot is an odd shape; the topography runs down towards Kingsland Avenue. It has a less-usable area than if it was just a flat square area.

With no further questions from the Board members and no one else in the audience having questions or comments, Mr. Naughton made a motion to approve the application for the variance stating that the lot is of irregular dimensions; seconded by Mr. DaCostaLobo. Approved 7-0.

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BUSINESS: No new business.

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MEMORIALIZATIONS/MINUTES: (8:45:50) 57 East Centre Street (extension of time) and 408 Walnut Street. Approved.

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LITIGATION: Ms. McGovern asked to go off the record to discuss litigated matters.

Respectfully submitted,

Marie L. Goworek

Recording Secretary - ZBA

Diana: in the Marino matter – please advise if you would like to physically attach the January 7, 2009 letter to the minutes or if you would like me to enumerate them in the body of the minutes. If you want them individually listed, please provide me with a copy of the letter so that I may refer to it. It would be so much easier to just copy them from a real copy.

Thanks!