

**Nutley Board of Adjustment
April 20, 2009
Meeting Minutes – Public Session
Municipal Court Chambers
Public Safety Building**

CALL TO ORDER: A meeting of the Nutley Zoning Board of Adjustment was called to order at 7:34:45 p.m. by Chairman Scrudato. The Pledge of Allegiance was recited. Roll was called and the “Sunshine Act” notice was read.

PRESENT: Robert Beck, Suzanne Brown (late), Thomas DaCosta Lobo, Frank Graziano, John Halligan, Thomas O’Brien, Ralph Pastore, Diana Petolino, Paul Scrudato, Chairman and Diana McGovern, Board Attorney

ABSENT/EXCUSED: Michael Naughton

SWEARING IN: Thomas O’Brien (3rd alternate)

* * * * *

[The acoustics in this municipal courtroom, the sounds of emergency sirens outside the building, and the shuffling of papers made it difficult for the undersigned to hear some comments and testimony. Not every member was near enough to a microphone, which made the transcribing process, to say the least, a challenge]

* * * * *

No. 1 NAPOLES Approved 7-0

Applicant: Ruben and Ana Napoles, 18 Entwistle Avenue, Block 9105, Lot 19, Zone R-2

Application: above-ground pool, to leave as erect.

Appearances: Frank Stancel, 24 Entwistle Avenue

Letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley requires eight feet to any side or rear lot line. The pool was installed five feet on the side property line and six feet from the rear property line.

Mr. Napoles said the previous pool was 15’x27’; the extra length is towards the back. He said this new pool is exactly the same position as the first. There is a deck around the pool and a fence around the top of the pool.

Mr. Stancel advised the Board that he had no problem with the pool and asked the Board to approve the application.

Ms. Brown entered the meeting at this time.

Ms. Petolino asked if there was a hardship that requires him to install a new pool so close to the property line? Mr. Napoles said he needed to get a bigger pool because his mother is heavysset. He can’t move it because of the concrete driveway. The entry to the garage is off to the side near the pool. There is also a large tree in the way. Ms. McGovern ask the applicant if, when he went to the code official for a permit that he told the official that the pool was going to be a little bigger? He did, he had the plans and they seems ok. He was given a permit four years

ago. The pool has been in place since then. He doesn't know how or why, now, he was cited for it. He wasn't doing any construction which would have prompted the town officials to observe the pool.

Ms. McGovern said the Board can hear this on the merits. It seems if the applicant wanted to fight it, he would be relying on the code official to his detriment. The Chairman asked if he still have the permit. He doesn't know that he does.

Ms. Petolino said the only problem with hearing this on it merit is that the Board would have to hear it as a normal leave-as-erect. Ms. McGovern said the applicant is giving the Board a hardship. He is showing a drop down to the driveway, there is a large tree, and the entrance into the garage requires the driveway to be place where it is. In terms of facts, she thinks there are things there. If the Board doesn't feel there's merit, she thinks then the Board should give the applicant a chance to get the permit to demonstrate his reliance on the permit. Mr. Graziano said he is short by three feet, but he does have a fence on top of it.

Ms. McGovern said if the Board doesn't think there is merit enough on the application, they should give the applicant time. She also said if they feel they can make a motion, that might be the more expedient way to proceed. There is something said in terms of being fair to people.

The Chairman addressed the applicant saying if he doesn't have the permit in his possession, it must exist in the building dept. The Chairman asked if they can proceed with this subject to getting a copy of the four-year old permit and making it a part of the record, if they can find it. Ms. McGovern said if the building dept can't find it, it's the gentleman's testimony under oath. Mr. Beck said the applicant did his best. His testimony is that he thought he was complying in every way. He said the allegation contained here, said he didn't.

With no further questions from either the Board members or the public, Chairman Scudato asked for a motion. Mr. Beck made a motion to grant the variance based on a C Variance. Applicant has shown a hardship on the layout of the property and that the variance violations are relatively minor. Mr. Pastore seconded. Vote: 7-0. (Since Ms. Brown was late and did not hear the testimony of the applicant from the very beginning, she did not vote on this matter.)

* * * * *

No. 2 - 7:54:07 FIGUEROA Approved 7-0

Applicant: Jose Figueroa, 138 Spatz Avenue, Block 8502, Lot 11, Zone R-1

Application: to widen the driveway to 18'6" and a curb cut to a total of 20 feet.

Appearances: self

Letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley restricts a driveway width to a maximum of 16 feet; limits a curb cut for a two-car garage not to exceed 16 feet in length.

Mr. Figueroa read a prepared statement to the members citing code as to the driveway and curb cut. The Chairman advised Mr. Figueroa the section he cited as to a maximum 20-foot curb cut pertains to commercial curb cuts.

Mr. Graziano asked how wide the current driveway and curb cut are. Driveway is 18.5; curb cut is 20 feet.

Mr. Beck asked if he was correct saying this street is a dead-end. Mr. Figueroa said if you go up the street and come around from the other side, it will make it a two-way street. There is a dirt road that follows around. Mr. Beck asked if the public uses it much? Mr. Figueroa does. Mr. Beck asked if was true that there is not much traffic on that street. Mr. Figueroa said that is correct. Mr. Beck said there is a limitation on curb cuts is because the State of New Jersey has waste-water disposal rules. In the past, the township engineering department has indicated that curb cuts are better able to funnel the water down to the sewers to be properly disposed of into sanitary sewers.

Mr. Halligan asked about the little paved area away from the driveway a little bit. Who does that belong to? The neighbor.

Chairman Scrudato said the Board is looking for a hardship to the property, not to the property owner. He said that is sometimes hard for an applicant to accept. Spatz Ave. is on a grade. He assumes it would be difficult to back out of there looking up the hill for traffic coming down the hill.

With no further questions from the Board members, Chairman Scrudato made a motion to approve the variance including the widening of the driveway to 18'6" and a curb cut of 18'6" (he asked the applicant if he was agreeable to this - he is) stating the topography of the street is quite severe coming down the hill towards the property and could become a danger for cars coming down from the homes above towards this property. Mr. Graziano seconded. The application was approved by a vote of 7-0.

* * * * *

No. 3 8:06:00 DESIMONE Approved 5-2

Applicant: Stefano Desimone (sworn) 199-205 Franklin Avenue, Block 7604, Lot 13, Zone B-3A

Application: to build a 6'8" (w) x. 30'x6' (l) second story porch with a roof above.

Appearances: Philip Desimone.

Letter of denial was read by Mr. DeCosta Lobo. Codes of Nutley require a minimum rear yard setback of 30 feet (plans show 3.32 feet); prohibits an terrace or porch has its floor level no higher than the floor level of the first story of the building and having no railing or other member higher than three feet above floor level (six feet).

Mr. P. Desimone said that this is basically for his parents to go and sit outside.

The Chairman asked where parking is for this building. Mr. P. Desimone said there is a driveway along the side of the property, right on Franklin Avenue which accommodates two cars and then there are three additional parking spaces in front of a second building that is part of the property. There are four one-bedroom and one two-bedroom apartments in the building. The Chairman said the increase of the square footage of the building would require some thought given to additional parking.

The Chairman asked if the plans show that the second property is off the property lines of the application structure. The plot plan states that it's 6.54 on one side and 6.15 on the other. Mr. S. Desimone bought it like that and no one ever said anything. Mr. P. Desimone said that it's been that way since his father purchased it 30 years ago.

Mr. Beck said it seems to him that there is some sort of a porch there right now. Mr. P. Desimone said there is a porch there, but it is for the other apartment, #3. The only access is through the apartment. Mr. Beck agrees with the applicant's reasons for approval of the porch, but said he is struggling because he is not certain that it meets the hardship definition that is required. Mr. P. Simone said there is a windowless, one-story commercial building behind the subject property. Mr. Beck isn't sure that has too much to do with this.

Mr. Halligan asked what is presently in the space where he wants the porch to be. It's just an open space, but not a parking area. Access would be gained through a sliding door from one room, that would be installed, if variance was approved.

Mr. DaCostaLobo asked if this porch would be the same size as the other one that is currently on the building. It would.

With no further questions from the Board members and no one in the audience having questions or comments, Mr. Halligan made a motion to approve the application stating that he doesn't think the porch creates a detriment to the surrounding neighborhood and that the porch will enhance the livability of the existing apartments. Seconded by Mr. Graziano. Approved. Vote: 5-2 Mr. Beck and Mr. Scrudato voted against the application.

* * * * *

No. 4 8:18:50 REYES Approved 4-3

Applicant: Carlos Reyes and Ms. Castillon, 147 Prospect Street, Block 7703, Lot 12 , Zone R-1

Application: to erect a six-foot solid-type fence (five feet with a one-foot lattice) in the front yard.

Appearances: Self

Exhibits: A-1

Letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley prohibits any type of front yard fence.

Ms. Petolino asked Mr. Reyes if he considered landscaping as a privacy barrier? He has, but they would like to have a fence with a gate. The trees and brush won't give them the privacy they are looking for. There is a church and a school nearby which creates heavy car and foot traffic (questions and testimony were blocked by sirens). He thinks the fence would look better and they would feel safer with it.

Ms. Brown asked Mr. Reyes how he picked the location of this fence. Ms. Castillon explained there is an existing fence and they are replacing that. Ms. Brown said she understood that, but asked if they considered moving in back in line with the face of the house versus halfway of the porch area. Mr. Reyes said there is an air-conditioning unit there and they would like to hide that behind the fence. Ms. Brown asked if they had considered a lower fence, maybe four feet. Mr. Reyes said they did, but for safety reasons as testified to earlier, they prefer the five foot with one-foot lattice. He is afraid that if his children are out in the yard, and he is occupied on the deck, anyone can walk passed and grab a child. Ms. Brown doesn't feel that someone could grab a child over a four-foot fence, especially if they add landscaping and put a lock on the gate. Safety is most important to him and his family, with privacy also being very important. His entire yard is exposed from the top of the hill.

Mr. Beck asked Mr. Reyes if he was aware when he purchased this house that there was a church and a school in the immediate area. He was. Mr. Beck said everyone who has a sidewalk can have people walk in front of their homes. Some have more people, some have less. There is a reason why the zoning ordinance limits the heights of fences. Mr. Beck saw the existing fence and doesn't see any problem with that one. He didn't see a door in that fence (Ms. Castillon said there is one). He also doesn't see why they can't put in some trees and shrubs, which he believes would be more beneficial. Ms. Castillon said they think the white fence will look nicer.

The Chairman said that the applicants need to prove a hardship to the property if the Board were to grant this variance. The Chairman asked if Mr. Reyes has children. He does not. They are planning to start a family soon.

Mr. Graziano asked if the fence at the back of the house belong to Mr. Reyes. It does not. Mr. Halligan asked what was on the side of the house. The neighbor has rocks there. Mr. Halligan said the backyard doesn't look too big, so the side yard is where most of the activity happens. He asked of what material the proposed fence would be made? Vinyl.

Ms. Petolino's questions and comments were difficult to hear). Mr. DaCosta Lobo asked that in the event this fence was approved, could the Board impose upon the applicant to add landscaping to the front of the fence to break up the stark white fencing. Mr. Reyes said yes, he will do that, in the corner. The Chairman asked if a four foot fence would still serve the purpose the applicants are looking for. Mr. Reyes said no, because anyone walking up the hill can see into their yard. That is the main area, where they entertain. The Chairman said being able to see into the yard is not always a negative. If the family that the Reyes' are planning are playing in the backyard and there is an emergency of some type, no one will see it from the street. Mr. Reyes said that is the reason they want to go with the five-foot fence with one-foot lattice so there is some visibility as opposed to a solid six-foot fence. Asked if they would consider a 50% open fence. He would like to keep his fences as uniform as possible. That would not match what he has.

With no further questions from the Board members and no one in the audience having questions or comments, Mr. Halligan made a motion to approve the variance stating that a lot of the usable space in the yard is on the side of the house and a condition would be that the gate in the center of the fence would have landscaping placed at either side in the corners to help break up the fence. Seconded by Mr. DaCostaLobo. Approved. Vote: 4-3. Ms. Brown, Mr. Graziano, and Mr. Beck voted against the application.

* * * * *

No. 5 8:37:45 AZZINNARI Approved 4-3

Applicant: Mr. & Mrs. Salvatore Azzinnari, 31 Race Street, Block 7602, Lot 8, Zone R-1

Application:. to build a one-story rear addition having a side yard setback of 5'2" on the existing lot size of 37'5"x125' (4,686 sq. ft).

Appearances: Salvatore (father) and Cosmo Azzinnari (son) (sworn)

Letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley requires:

1. a minimum lot size of 50'x100' (5,000 sq. ft);
2. a minimum side yard set back of six feet;
3. maximum lot coverage of 35%;
4. a maximum impervious surface coverage of 70%; and

5. detached accessory buildings and accessory uses may occupy in the aggregate an area not to exceed 30% of the area of any rear yard. The height of a detached accessory building shall be one story not to exceed 14 feet.

Mr. C. Azzinnari addressed the members by advising them that his mother is handicapped and therefore there is a medical hardship as to the reason why they are seeking the variance. He has a letter from his mother's physician that was not made a part of the package previously submitted to the Board for their review. Chairman Scrudato said that the Board cannot take testimony of someone in the form of a letter. However, he did ask that the letter be circulated among the members. He asked Mr. C. Azzinnari to describe his mother's present limitations. He responded that she has lower back issues, arthritis in the lower spine, sciatica, joint problems at the knees, in and out of the hospital, one time from a fall in the upstairs bedroom and another when she fell down the lower portion of the stairs. This is the only way the family would be able to allow the parents to stay in the house. He noted that his father has also fallen on the stairs. Obviously, the handicap accessibility is paramount. The plans call for a master bedroom and a handicap accessible bathroom on the first floor. They have an undersized lot and the constraints are a driveway on the left hand side. The only direction they could go was to the back.

The Chairman said the Board will certainly take into consideration the medical issues his parents are facing. However, the Board is bound to look at the hardship to the property. He said the property is narrow and undersized. There is an empty lot next to the applicants'. Has the applicant made an effort or an inquiry as to purchasing the property to bring their own into compliance with the existing code? Mr. C. Azzinnari said there has been no inquiry and at this point, his parents are living on a fixed income.

(Ms. Brown's questions were difficult to hear but she was inquiring about the garage.) Mr. C. Azzinnari said one parking bay is for the one automobile, the other is used for storage. At some point in time, it is expected that his mother will have need of a wheelchair. It is also anticipated that a family member will need to move in to help.

Ms. Petolino asked if the existing living space, on the first floor, will be part of their living space. It seems if they were able to use the living room, it wouldn't be the family room and then they could get the handicap accessibility on the one level without making the addition so large. It would reduce the impervious cover, the lot coverage and they can use the access through the garage.

Mr. C. Azzinnari said he understands that, but the fact of the matter is, he is looking more towards long term as far as having somebody come in and take care of them. Ms. Petolino asked him to explain to her closing off the living room helps them. He said that it wasn't closed off; there will be additional alterations required - widening the doorway, ability to maneuver through the kitchen, the dining room. Ms. Petolino said those are minor changes compared to adding an addition. Mr. Azzinnari said that his parents are on a fixed income. The living room, dining room, kitchen are all on the same level, so Ms. Petolino said that it is possible for them to use the downstairs. He agreed, but for only the near term. He said in the last year, his mother's health has deteriorated significantly; his father has fallen several times in the last six months. Ms. Petolino said the addition seems too large for the property. It blocks access to the garage; it exceeds the acceptable lot coverage and the impervious coverage, which are issues of

importance relating to storm water. He testified that the impervious coverage would not be affected.

Mr. Beck asked if the stairs would change to accommodate the handicapped. They will.

[Mr. Graziano's question could not be understood.]

Mr. Halligan asked how many bedrooms are upstairs. Two and one-half bathroom. There is one kitchen now and will be only one kitchen when the work is done. Mr. Halligan asked if there wasn't a reason why the caregiver couldn't live upstairs and still afford his parents their privacy downstairs. He said they have some fairly insurmountable problems here – the lot coverage, the impervious surface problem. He asked why not eliminate the family room, put the master bedroom in the back of the house in its place. The parents will have the existing remainder of the first floor. The master bedroom and bathroom in the back and then the caregiver can have the entire upstairs as well. The kitchen would have to be shared. Mr. Azzinnari said at some point, they may have to consider a live-in.

The Chairman said that he gets the feeling that from Mr. Azzinnari's testimony and looking at the plan that this will, if not immediately, then very shortly, become a two-family home and he understands why it would need to be. He asked if Mr. Azzinnari considered making the new family room smaller.

With no further questions from the Board members and no one else in the audience having questions or comments, Mr. Graziano made a motion to approve the application; seconded by Mr. DaCosta Lobo. Approved. Vote: 4-3. Ms. Brown, Mr. Halligan, and Mr. Beck voted against the application (everyone gave reasons for their vote).

* * * * *

BUSINESS: None.

* * * * *

MEMORIALIZATIONS/MINUTES: 61 Wharton Avenue. Approved.

* * * * *

LITIGATION: Ms. McGovern briefed the members on current matters off the record.

* * * * *

ADJOURNMENT: 9:10.

* * * * *

Respectfully submitted,

Marie L. Goworek

Recording Secretary - ZBA