

**Nutley Board of Adjustment  
March 16, 2009  
Meeting Minutes – Public Session**

**CALL TO ORDER:** A meeting of the Nutley Zoning Board of Adjustment was called to order at 6:42:30 p.m. (see time stamp on disk – actual 7:30) by Chairman Scrudato. The Pledge of Allegiance was recited. Roll was called and the “Sunshine Act” notice was read.

**PRESENT:** Robert Beck, Suzanne Brown, John Halligan, Ralph Pastore, Michael Naughton, Paul Scrudato, Chairman and Diana McGovern, Board Attorney

**ABSENT/EXCUSED:** Thomas DaCosta Lobo, Frank Graziano, Diana Petolino

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**No. 1 7:49:05 – URCINOLI Continuance from March 16 Approved 7-0**

**Applicant:** Joseph Urcinoli, 60 Wharton Avenue, R-1 District

**Application:** above ground pool

**Appearances:** Joseph Urcinoli

Mr. Urcinoli is still under oath as he was sworn at the last hearing.

Chairman Scrudato asked that Mr. Urcinoli bring the Board up to speed as to what he has done as far as this application and the suggestions made at the prior hearing regarding the pool change.

Mr. Urcinoli testified that he returned to the place where he purchased his pool and ordered a smaller one as the Board recommended. His original application was for a 12’x20’; he is now applying for a 12’x16’. It will be positioned right off the deck, two steps down and a continuation of the other deck. He will comply with the lock and alarm on the gate.

Ms. Brown compared the two plans. The pool is four feet smaller but the rear yard setback as increased by only one foot. What happened to the other three feet? Mr. Urcinoli said he couldn’t answer that. Ms. Brown said the dimensions aren’t working.

Mr. Pastore asked if the 12 feet to the back fence was from the edge of the pool or from the edge of the deck to the pool? Mr. Urcinoli said it was from the edge of the pool to the property line; that will be none feet behind the pool. He doesn’t have the other plan, so he doesn’t see what the Board is talking about (the Chairman lent him his copy of the first plan). He said he understands now. He didn’t draw this up; it should be from 8 feet to 12 feet instead of 9 feet because he is reducing it four feet. It should be 12 feet. The pool man did this working from the property survey.

Mr. Halligan said the pool will be sunk into the ground and above grade 24 inches. There will be one step off the deck.

Mr. Pastore asked if there is a metal deck around the pool? Yes, it will be 18 inches wide with a 42-inch fence around that. In total, it will be 66 inches in height.

Ms. Brown asked how wide the deck will be on either side of the pool. Mr. Urcinoli said it will be 36 inches around the pool except in the back where there will be no deck. Chairman Scrudato said he would be surprised if its 36 inches. Mr. Urcinoli said it might be a little smaller.

Mr. Halligan asked if there was enough room to get between the pool, the deck and the fence to maintain it. Yes.

Mr. Naughton said a concern was the proximity to the main building. The deck is considered an extension of the building. He asked Mr. Urcinoli if he considered dismantling a portion of the deck. Mr. Urcinoli said that never entered his mind.

With no further questions from the Board members, and no one in the audience, the Chairman Scrudato asked for a motion. Mr. Pastore made a motion to grant the variance stating that the lot is a smaller lot than normal causing a hardship. He did reduce the size of the pool as the Board requested. Mr. Halligan asked that an alarm and gate with a lock be added as a contingency. Mr. Halligan seconded. Mr. Halligan stated that he appreciated Mr. Urcinoli working with the Board, but he still doesn't like the deck around the pool, but realizes that it is difficult with the yard. All approved.

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**MEMORIALIZATIONS/MINUTES:** All approved.

1. 48 Spruce Street
2. 36 Gless Avenue
3. 5 Msgr. DeLuca Plaza

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**BUSINESS:**

1. The Marino matter (the theater on Franklin Avenue) will be coming before the Board again. Ms. McGovern said the Court was advised that they were expected to come back either in February or March. They didn't get the updated list and didn't have enough time to make it for March, so they are on for April.
2. Ms. McGovern said there is a new case that they were brought into (Carrino's fence and the next door neighbor, Canfield). Conditions were made when granting the variance: the fence that borders the Canfield property must be placed into Mr. Carrino's property by 18 inches, to facilitate any planting to be accomplished between the neighbor's property and the fence; and with the permission of Mrs. Canfield, Mr. Carrino would put in bushes. Mr. Carrino, again, didn't get anything in writing, but said that Ms. Canfield approved orally the installation site of the fence. But then he ran into a problem in the back corner because of a swing set and some type of a cement wall. It is or it isn't 18 inches from the Canfield property and then he said that she changes her mind bout bushes; that she wanted lattice instead. Mr. Carrino e-mailed Carl Tunnel that, so Mr. Tunnel took him at his word. Mrs. Canfield complained and Mr. Tunnel went back. Mr. Carrino said Mrs. Canfield didn't want him undoing the bushes. The resolution read "with permission" (so if the woman wont let him on the property, you can't make her). Mrs. Canfield did not have a problem with the bushes. In fact, she wanted them. She also wanted the fence 18 inches from her property, no matter what,

regardless of the playground equipment. So, she filed an Order to Show Cause and named just the Township because they felt it enforced the variance. The Chancery judge got the case and sent it to Law Division and the Law Division judge who said this is Board of Adjustment all over the place. So, the Board of Adjustment is a defendant. She said Canfield is right, the condition should be enforced and he's too late to take an appeal. Carrion should have come right back to this Board if he had a problem to explain why or why not he couldn't enforce the condition. Ms. McGovern has prepared an answer and will file it.

3. Mr. Halligan asked if the Zoning Board plays any formal role in the revision of the town plan? Ms. McGovern said no. This Board can only vote as individual citizens. The Board does have an expertise of sorts because they now what types of variance come up all the time (fences, driveway, etc.) The Zoning Board may ask for the Board's opinion, but no, it has not say in decisions. Mr. Scrudato said, as a matter of fact, he is meeting with the Planner this week. The members discussed the issue of fences and parking. The discussion continued on about prior approvals and how the Board had be criticized in the past by the building department for granting some variance.

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**LITIGATION:** (See #2 above)

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**ADJOURNMENT:** 7:19:43 (disk time; real time 8:19)

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Respectfully submitted,

*Marie L. Goworek*

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Recording Secretary - ZBA