

**Nutley Board of Adjustment**  
**February 23, 2009**  
**Meeting Minutes – Public Session**

**CALL TO ORDER:** A meeting of the Nutley Zoning Board of Adjustment was called to order at 7:42:00 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, Thomas DaCosta Lobo, Frank Graziano, John Halligan, Ralph Pastore, Michael Naughton, Paul Scrudato, Chairman and Diana McGovern, Board Attorney

**ABSENT/EXCUSED:** Diana Petolino

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**No. 1 7:49:05 – ENE Continuance to March 16**

**Applicant:** Mrs. Ene, 60 Wharton Avenue, R-1 District

**Application:** above ground pool

**Appearances:** Joseph Ursanoli (sworn)

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

1. states that no detached accessory use shall be located nearer than 10 feet to a main building. The existing deck is considered an extension of the main building;
2. requires 8 feet from any side or rear lot line;
3. states any accessory uses, pool, cannot exceed 30% of the area of any rear yard; and
4. states maximum lot coverage will not exceed 35%.

Mrs. Ene stated that she and her husband feel the pool is necessary for both kids (12 yrs and 4 months). It will be good for them.

Mr. Graziano said a problem is that the pool is close to the side yard, and the deck is going to be right on top of the fence line. Mrs. Ene said that was correct. She said her neighbor has no problem with this. The deck will be entirely closed in. The deck around the pool will be a drop down from the existing. There will be gate with a lock and an alarm between the two decks blocking access to the pool deck. Mr. Graziano would also like to see a floating alarm in the pool. He noted that the lot is only 40 feet wide.

Mr. Naughton noted that pretty much all of the yard space is taken up. His concern is that it is very close to the fence line. He asked about the size.

Mr. Ursolino said the pool will be 24 inches into the ground; it will 24 inches above ground and the deck will be continuous around it with a 42 inch fence around that. Mr. Naughton is concerned about safety issues and wants further discussion on this. He wants conditions imposed. The applicants said that the only access to the pool will be from the back door.

Ms. Brown asked if there had to be a deck around three sides of the pool (contiguous to the deck). The applicant said in order to build railings to prevent access to the pool, it is necessary.

Mr. Halligan mentioned a neighbor of the applicant who had a similar situation – not a lot of room. They had a 12-foot round, above ground pool, in the corner. They needed a variance because it was close to the fence, but it worked well in the space. He thinks this may be a better solution for the applicants' space. She wants something that will look nicer than that.

Mr. DaCosta Lobo asked about the decking at the back of the pool – is there any railing between the pool and the rest of the yard? There is a four-foot fence between the properties and there will be a railing but no deck. It will meet the same height as the rest of the deck.

The Chairman said this pool will not satisfy a 14 year old swimmer. The applicant said it does the job. The Chairman said the couple had one child when they purchased the house in 2007 and they knew the size of the backyard; they now have two children. With this pool, the applicants will totally wipe out any other use of the yard. How will the back behind the pool be maintained. The wife said they would be concrete back there if they could. The Chairman said that would be another violation. The husband said he would weed whack it.

Mr. Pastore water cannot drain through the concrete. He suggests if anything were to be put back there, pavers would be the best bet. The applicant said he would most likely put gravel back there. Mr. Pastore said that would be fine.

The applicant is not keen on a 12-foot round pool; he would rather a 20-foot to get maximum pleasure out of it. A 12-foot would not accommodate all their friends and family when they have parties.

The Chairman noted that the variance does not go to the owners of the property; it goes with the property. The applicant said this is not permanent structure. If the future owners of the property want to take it out, they can. The Chairman is having a problem with this. If the variance is denied, he advised the applicants that they may not come before this Board with a similar application for six months. He asked if the applicants would consider the earlier suggestion made by a member for a round or oval pool. The wife said no.

Mr. Beck noted some of his observations: Where the pool is located on the survey, it looks like at least 85% of the lot will be covered by the pool, the house, the decks, the garage, which is a substantial deviation from the Code of Nutley which allows a maximum of 35% coverage. Code requires that the pool not exceed 30% of the rear yard. The applicants were aware when they bought the property, that there was not a big backyard. Rather than attempt to squeeze in a pool that big, a smaller pool is in order. The applicants said people at Nutley Pool and Spa advised them of the size of the best pool. They asked for 12'x15' pool.

The Chairman said that if the applicants so desire, he can grant a continuance to consider this. If approval fails tonight, they cannot come back for at least six months. The Board would have to see any other size on the plan before it can be approved.

The applicant doesn't understand why they wouldn't be able to get the pool they want. She understands the yard is small, but if they aren't approved for something like the 12'x16', she said she's not even sure why they moved to this house. If they can't have the pool, their daughter will miss out on it. She doesn't see why they should be denied and if they are, she wouldn't even want to be in this town anymore.

The Chairman said that is a threat they hear all the time. The applicant said it is not a threat, she is just telling the Board how she feels. The Chairman said if the Board were to succumb to those threats, there would be chaos in the town. The applicants will come back in 30 days.

Ms. McGovern said they should come back with the survey showing the downsized pool so the Board can visualize it. They do not have to re-file, pay another fee, or make copies of the plans; just make copies of the survey with the new pool on it.

Mr. Halligan advised the applicants that there are other pool places; the deck is part of the problem (a deck around it, is not necessary to enjoy a pool); digging down two feet is a big consideration if the pool comes down in the future and it needs to be filled. Look around, shop. The applicant said she doesn't want to go to another pool place. Mr. Halligan said the Board is only trying to guide them, but the applicants have to work with them, too.

With no further questions from the Board members, Chairman Scrudato asked for a motion to continue this application to the next regularly scheduled meeting on March 16, 2009 at the request of the applicant, and the applicant to waive all time constraints against the Board. Mr. Graziano made a motion to continue the matter. Mr. Halligan seconded. All approved.

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**No. 2 - 8:12:20 GAWLEY Approved 7-0**

**Applicant:** George "Rob" Gawley (sworn) 153 Bowden Road, Cedar Grove, NJ

**Application:** 48 Spruce Street. Block 2304, Lot 21, Zone R-1. New, one-family dwelling.

**Appearances:** Bobbi Jean Plummer, 47 Spruce Street (sworn)

**Exhibits:** 1

**Letter of denial** was read by Mr. DaCostaLobo. Codes of Nutley:

1. requires a minimum lot size of 50'x100' or 5,00 sq. ft.; [approx. 80'w x 40'd]
2. requires a front yard set back of 25 feet (proposed: 10 feet);
3. requires the side yard setback of six feet. The right side yard setback is five feet;
4. requires a rear yard set back of 30 feet (proposed: five and one/half feet);
5. requires the 70%is maximum impervious surface coverage (not shown on survey);
6. states that no detached accessory building shall be located nearer than three feet of half the height of such building up to six feet, whichever is greater, to a side or rear lot line;
7. states that a detached accessory building shall be within 50 feet of the front lot line of the lot;
8. states that a detached accessory building shall be within six feet of a rear lot lone that abuts a side lot line of a contiguous lot.
9. states that no attached accessory building shall be located nearer than 10 feet to a main building;
10. prohibits the width of a driveway to exceed 16 feet; and
11. prohibits a curb cut for a one-car garage shall not exceed 12 feet in length.

Mr. Gawley presented a color rendering to the Board members. He said the building has been on-site for at least 70 years, and doesn't fit in with the rest of the neighborhood. The actual square footage of the house is 1,068 - not including the basement, which is approximately another 300 square feet.

In response to Mr. Beck's question, Mr. Gawley said the property is currently used for antique storage and internet sales. By building the house, said Mr. Beck, the applicant will be bringing the use to conformity to what is permitted in that district.

Mr. Gawley explained why he needed a curb cut exceeding the allowable. The garage next door is very close to the street. That neighbor cannot park between the front of the garage and the street. They have to go in on an angle; sometimes hanging over the edge where the curb would be. He tried to move his garage back as far as possible and left space between the house and the garage for a car to slip into.

Mr. Beck said, all in all, the proposed set backs and other changes are a step in the right direction.

The Chairman asked if the shed at the rear property line is the applicant's. It is not.

The widest part of the driveway would be 20-22 feet. Mr. Graziano thinks it would be closer to 25 feet. The applicant is seeking an 18-foot wide curb cut. Mr. Halligan said if the garage was brought down to 16 feet, the applicant would be able to get away with a 16 foot curb cut and asked if that would still be acceptable to the applicant. He said it was fine.

Ms. Plummer testified in favor of the application.

Before a motion was made, Mr. Halligan asked that pavers become a condition if this is approved. Mr. Naughton made another recommendation before the motion - downsize the garage and reduce the curb cut and try to come more within the guidelines. Mr. Gawley said he is agreeable to have the garage brought down to 12 feet and the curb cut to 16 feet.

With no further questions from the Board members and no comments from anyone else in the audience, Mr. Graziano made a motion to approve the variance stating that the evidence shows a very peculiar shaped lot. This will improve the neighborhood greatly. The terms and conditions are: the driveway will be all pavers; the curb cut will be 16 feet; and the garage will be reduced to 12 feet wide. Mr. Halligan added that, on the condition that this proposed house gets built, or a similar house. (Mr. Gawley added that as long as these plans are still available on the internet, this is the house he is going with. If he finds that the plans are no longer available on line, he will come back before the board for approval on another one. Seconded by Mr. Pastore. The variance was approved by a vote of 7-0

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**No. 3 8:37: 20 CAPALBO Approved 6-1**

**Applicant:** Angelo Capalbo, 5 Monsignor DeLuca Plaza, Block 9204, Lot 4, Zone R-2.

**Application:** Proposed one-family modular home.

**Appearances:** LuAnn Jones, Gemini LLC Realty, 220 Broten Avenue, Bloomfield, NJ; Theodore Frank, Spencer Pomeranz buyers

**Letter of denial** was read by Mr. DaCosta Lobo. Codes of Nutley requires a lot size of 60'x100' in this zone.

Ms. Jones compared the above lot to a couple of others in Nutley citing similarities. The Chairman noted that the applicants were not the property owners yet and that ownership would be contingent on approval of the variance.

Mr. Beck asked Ms. Jones if her client has offered to sell the land to adjoining property owners are seek to buy property from the others. Ms. Jones doesn't think her clients have offered to sell off the land or to even buy more from the neighboring properties. Ms. Jones said this is a hardship because there is not much land to build on in Nutley. Mr. Beck said bottom line is that the owner did not ask the church would like to buy it or to see if anyone wanted to sell of a part of their rear yards. Ms. Jones said the church has been using pieces of the property for its air conditioning unit, which will be removed.

Ms. McGovern asked how the property owner is. Ms. Jones said it was Mr. Capalbo. Ms. Jones admitted that she was not empowered to make or agree to any conditions for her clients, the buyers, that the Board may set forth. The Chairman asked Mr. Capalbo to step forward to be sworn in. The Chairman wanted to builder to step forward, but he was unable to attend tonight. Mr. Scudato said then that neither of the two people before the Board could agree to any conditions the Board recommends. Ms. Jones said it is a modular home; the plans are before the Board and the builder could not be here tonight for personal reasons.

Ms. McGovern asked who the buyers were and if they were present, because the buyers are the people that have to agree to any changes or conditions the Board puts out there. She said that since Mr. Capalbo is the owner of the land, he could consent; but he cannot consent to the Board's suggestions such as the garage has to be smaller, the driveway has to be small. The Board would like to see both parties, the owner and buyer, in agreement.

Theodore Frank and Spencer Pomeranz, the buyers, were sworn in. Mr. Halligan asked them if they were having the house built to live in or sell. Mr. Frank said they may live in it, but selling is also an option; they are not sure yet.

With no further questions from the Board members and no one in the audience having questions or comments, Mr. Pastore made a motion to approve the application stating that it will enhance the particular neighborhood – the way the lot is now, it is not conducive to that area, as per plans 20776 database that is on the setoff plans. Seconded by Mr. Graziano. Ms. Brown voted against the application saying this proposal is shoehorning something in a place that does not fit. She added that she doesn't think it is good for the area or in keeping with the zone. Mr. Naughton asked if all the issues, such as impervious coverage, were calculated and submitted to code enforcement. Code Enforcement said the variance wasn't for anything other than building on an undersized lot. Ms. McGovern said, typically, if the applicant is not cited, they do not need a variance. She said there have been mistakes, but right now, that's what the Board goes with. The Chairman said if there is a violation other than what has been cited, and the building department picks it up at a later date, after construction has begun, could they be cited at that point? Ms. McGovern said if the Board approves the application based on these plans, especially now since it is being discussed, then they are going to say it's part and parcel of the variances that were granted. If the Board really thinks this is a problem, they can stop now and calculate.

Mr. Naughton clarified that it was his intent to vote for the variance that has been requested and not for anything else, that may be apparent on these plans that wasn't specifically requested. If that is the understanding, then he is going to call for a re-vote; either that or a revision of the motion.

Mr. Pastore said he made a motion; it was approved. The Chairman said that a question has arisen. Mr. Pastore said the question should have been asked before the motion. The Chairman said ok but that still doesn't close down the problem that the Board is trying to point out to the applicant - if he starts construction and it's cited, is he going to be stopped. Mr. Pastore said that is the applicant's problem. Mr. Graziano said the board doesn't recalculate what they're told; the Chairman says they do. Mr. Halligan said based on the letter from David Berry, he could only say yes to the motion, because he doesn't see any other violations.

The Chairman said it was his turn to vote and he voted yes. Approved 6-1.

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**No. 4 GUARINO Approved 7-0**

**Applicant:** Michael and Diane Guarino, 36 Gless Avenue, Block 9601, Lot 3, Zone R-2.

**Application:** Second story addition.

**Appearances:** Michael Guarino (sworn)

**Letter of denial** was read by Mr. DaCosta Lobo. Codes of Nutley requires a minimum front yard setback of 25 feet and requires a minimum lot size of 60'x100'.

Mr. Guarino said he needed the space for his family. He said there are two families that have the same kind of structure on his side of the street - the raised roof. He said it fits in with the character of the neighborhood. He is also trying to improve his home.

Ms. Brown said he is basically adding a second level onto an existing non-conforming house which is why he is here for the front yard set back. Mr. Guarino said the second level is livable (that's his bedroom); all he is doing is lifting the roof and adding more bedrooms. Ms. Brown said the reason why Mr. Guarino is here is because the house is existing and he doesn't currently meet the requirements. He said that is right.

Mr. Graziano asked if this area was always 60'x100' or was that changed after the house was built there. None of the neighbors' lots are 60'x100'.

The Chairman said a condition will be that the home is to remain a one family home. The off-street parking will not change; there will still be parking for three.

The house will be resided and the roof will match what is there. Mr. Graziano made that a condition.

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 variance stating that the front yard setback is not going to change; it is currently a non-conforming lot. He thinks the improvement will beautify the entire neighborhood. Conditions are that the siding will be new and that house will remain a one-family home. Seconded by Mr. DaCostaLobo. Approved 7-0.

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**MEMORIALIZATIONS:**

- 1. Omnipoint Communications
- 2. 118 Lakeside Drive
- 3. 90 Mount Vernon Street

Approved.

**MINUTES:** December 15, 2008 public and closed sessions. Approved.

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**BUSINESS:** Joint meeting with the Planning Board, Master Plan meeting, Frank Cocchiola Parks and Recreation Building, March 4, 2009, 7 p.m.

There were law students from Seton Hall in the audience from who were there to observe. They are taking a zoning class.

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**LITIGATION:** None

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**ADJOURNMENT:** 9:08:50 Mr. Halligan.

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Respectfully submitted,

*Marie L. Gowreck*

Recording Secretary - ZBA