

**Nutley Board of Adjustment
October 20, 2008
Meeting Minutes**

CALL TO ORDER: A meeting of the Nutley Zoning Board of Adjustment was called to order at 7:38:40 by Chairman Scudato. 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, Michael Naughton, Ralph Pastore, Diana Petolino, Paul Scudato, Chairman and Diana McGovern, Board Attorney

ABSENT/EXCUSED: Frank Graziano

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No. 1: 7:41:00 Major League Auto was adjourned – insufficient documentation.

65 Franklin Avenue – Request to alter the driveway dimensions. Zone R-3.

Appearance: Darren DiBiasi, Esq. and Salvatore Corvino, Architect

The Letter of Denial was read into the record by Mr. DaCosta Lobo. The Resolution dated, June, 2001, approved the preliminary and final site plan. In order to amend the approved site plan, the applicant must revisit the Board of Adjustment seeking approval for changes.

Mr. DiBiasi gave a brief summary of the site and explained what the applicant is seeking to do. He is seeking to amend site plan approval; specifically to add an additional lane for vehicular traffic. This will allow him to better service his customers, limit the amount of time cars are idling; and prevent the rare instances where cars are backing up onto Franklin Avenue.

Mr. DiBiasi asked his expert witness, Mr. Corvino to approach. Mr. Corvino has been retained by the applicant to prepare an amended site plan. Using Exhibit A-1, Mr. Corvino explained how traffic current enters the site. He went on to explain what is on the site and the business that the car wash generates.

Ms. McGovern stopped the testimony to advise Mr. DiBiasi that the Board does not have the site plan resolution. She said the first resolution she has is the original use variance that was granted and in *handwriting* on the signature page it says "this is use variance only; site plan will be done subsequently." There was another variance for the vacuum, but no site plan was done for that. They are missing the actual item that the applicant is seeking to amend. In Ms. McGovern's mind, this is also an expansion of a non-conforming use because it is an R-3 zone. Mr. Corvino said it is a conditional use. It is a B-3 zone, adjacent to an R zone. The rear portion is R-3. She said there was some talk that maybe they were going to begin this tonight, but she doesn't know what Mr. DiBiasi's thought was on that.

Mr. DiBiasi said the applicant did receive site plan approval several years ago. He dropped off copies of the resolution to the building department. That as with the affidavit and publication notice. He has one copy of the site plan approval with him tonight.

The Chairman asked that copies be made of the resolution for the Board.

Mr. Pastore remembers when they did the original site and plan asked if there was not a restriction that the Board put forth that there would be no queue heading south on Franklin Avenue. Ms. McGovern said there are limitations in the actual use variance. Number 17 says “no queuing will be permitted off-site on public roads;” and “a professional trained traffic control officer will be retained to direct traffic at peak hours.” Mr. DiBiasi said they are self-policing the site and to some extent, that has been effective. That is why they are requesting this additional lane – to bring more cars onto the site and off the road.

Mr. Beck said this was characterized in the plans as a conditional use. He does not believe it is a conditional use. The way he reads the zoning ordinance is that conditional uses for B-4 and M-1 -- not B-3 and R-3. Because driveways were addressed in the original variance, adding an additional driveway does a couple of things: 1) it would expand an existing non-conforming use; 2) there is a request for signage which appear need to require variances.

Mr. DiBiasi said he detects the same problem. He finds it difficult to go forward tonight. He does not have a planner and there is certainly a notice deficiency, as well. He wanted to make the record clear that it is the Board’s understanding that the applicant is going forward on what is an expansion of a non-conforming use, in addition to amended site plan approval and signage.

He asked if the Board would prefer to have the township engineer review the application. He would like to go ahead next month and have all these issues resolved in advance. The Chairman said the signage doesn’t need the engineer, but the driveway may. Mr. Beck said he doesn’t know what the engineer would review; basically, what is being done here – there was a stipulation there is no queuing on the street.

The Chairman wants to know how many times a traffic director is required on site. That is something that Mr. DiBiasi was going to get into tonight. Mr. Scudato said there are man questions, but said they would be put off tonight until the applicant returns with the proper documentation.

Ms. McGovern said the application has to be re-noticed.

A motion was made by Mr. Beck to adjourn this matter until November 17, 2008; seconded by Mr. DaCosta Lobo. Approved 7-0.

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No. 2 8:02:30 BRUSH Denied 3-4 (Mr. Brush intends to appeal.) (See transcript)

Applicant: Eleanor and Robert Brush (sworn) 234 Harrison Street, Block 7600, Lot 1, Zone R-1

Application: Request to erect a driveway widened to 20 feet (leave as erect).

Appearances: Mr. and Mrs. Brush; Jack Baumgartner (sworn)

Letter of denial was read by Thomas DaCosta Lobo. Codes of Nutley restricts a driveway width to a maximum of 16 feet.

Mrs. Brush opted to respond to questions from the Board. The Chairman said by ordinance and code, the members have to find a hardship to the property, not to the applicant.

Mr. Halligan asked Mrs. Brush is she was aware that needed a variance to construct a 20 foot wide driveway. She said she was not. When construction was complete, she received a notice from the township.

Mr. Naughton asked what the original width of the driveway was. She said according to the letter it was 16 feet, but said it was always bigger than that. He is surprised that the contractor didn't raise the issue as a problem. He asked if Mrs. Brush had any hardship that she could raise to the Board. She said her driveway looks beautiful – how is that a hardship. He said that is not what he means; was there a special issue that required the work. Ms. Brush said there was a tree that uprooted during a storm and was in danger of falling on a neighbor's house. It had to be removed in an emergency manner. It was then necessary to repair the driveway.

Chairman Scudato said being that the applicant is on a hill, it would be difficult to see and been seen getting out of the driveway. Mrs. Brush said he is not on a hill.

Ms. Petolino asked if the original driveway went to the back of the house. It did. The applicants redid that part of the driveway with pavers.

Chairman Scudato asked Mr. Brush is the property is on an up climb on Harrison Street. Mr. Brush said they are on a hill. He said the driveway was over 16 feet and when the tree uprooted, they used that space to widen the driveway. He wasn't aware that a variance was required for a couple of extra feet, so he went ahead and paved it from the front to the back of the house.

Mr. Baumgartner addressed the board saying that widening the driveway is helpful especially to Mrs. Brush, for getting into and out of the driveway. He asked the Board to approve the variance.

With no further comments from anyone in the room, Mr. Pastore made a motion to approve that variance stating that to pull out of the driveway with any cars park on Harrison Street in that particular area would be extremely difficult with the narrow driveway that existed. As far as the tree is concerned, he doesn't think that has any bearing on widening this particular driveway. It is unfortunate that the applicants did not go to the town for a permit and follow the correct procedure to widen the driveway; but, right now the old driveway was a real burden and it could have been a disastrous situation with children walking up and down that sidewalk. Mr. Pastore thinks that by widening it to 20 feet, the applicants have a better view up and down Harrison Street to move in and out of the driveway. Seconded by Mr. Da CostaLobo, the variance was denied by a vote of 3-4. Ms. Brown voted against the variance stating that a 16 foot wide driveway is more than adequate for this situation. Mr. Halligan feels is this application came to the Board through the proper channels, a 20-foot variance would not have been granted. It is difficult, regardless of the reasoning to allow people to go ahead and make changes that go against code. Mr. Beck and Ms. Petolino also voted against the application. Ms. Petolino said that property was made more impervious.

Mr. Brush asked then, where they go from here. The Chairman advised him that the applicants have a couple of options: appeal to Superior Court. Ms. McGovern said they have the right to petition the Board of Commissioners; she said that they should make sure they preserve their right if they want to go to Superior Court.

No. 3 8:23:00 CONTEY Denied 7-0

Applicant: Joseph Roche (sworn) 103 Chestnut Street, Block 4200, Lot 10, Zone R-1A

Application: Request to widen the driveway to 20 feet.

Appearances: Mr. Roche; Ann Bator, 104 Chestnut Street (sworn)

Letter of denial was read by Thomas DaCosta Lobo. Codes of Nutley restricts a driveway width to a maximum of 16 feet.

Mr. Roche said that he wants to widen the driveway in order to park more cars off the street, and since he does not have a sidewalk in front of his house, this will allow access to the house. His location is near the first aid squad and there are several restaurants in the area. Both are good reasons to allow him to have off street parking. His plan is to have an 18-foot curb cut with a 16-foot wide driveway, with an additional four-foot wide walkway on the side. The walkway would be of a different material to distinguish between the driveway and the walkway.

Mr. Beck said he thought that before the applicant elected to remove the driveway from the rear of the property and change it to lawn and landscaping, the problem for parking would have been alleviated to a great extent. He said the applicant has instead made a decision to remove the driveway in the back and put more parking in the front. Mr. Roche said he didn't think the driveway to the back was done to code. He noted that the driveway was all blacktop to the back causing a lot of runoff down the street. Mr. Beck understood, but feels that that something could have been done to allow parking to the back (pavers, gravel, etc.) The plans submitted by the applicant does not show how wide the driveway is going to the rear of the property, nor does it show the side bay window of the neighbor.

Mr. Halligan asked when the rear yard was reconfigured (three years ago). The Chairman asked how many vehicles are presently parked on the property (four). The garage is used for storing bikes, skateboards, etc. Answering the chairman's question, Mr. Roche agreed there would be room for a lot more parking if the blacktop were still in place to the back; he said however, that there would be no place for the kids to play. He said his plays football, basketball, and baseball and there is not a lot of room to do much along side the driveway. The plans do not depict a koi pond that is also in the yard. The chairman feels this is a self-imposed hardship. If the shrubbed area had been moved back 20 feet, there would have been ample room for parking. Mr. Roche said that was done four years ago to make a grassy play area for the children and he didn't think about the need for parking then. The chairman asked Mr. Roche if he could demonstrate a hardship. Mr. Roche said his in-laws visit frequently and there is not sidewalks to walk safely. Mr. Scudato said that is not a hardship to the property. Mr. Roche said then that he does not have a hardship.

Mr. DaCosta Lobo said given that the ordinance does allow 16 feet, because typically that is enough to fit two cars side by side, he asked Mr. Roche if there some reason that 16 is not sufficient and 20 was necessary. Mr. Roche said with 16 feet, he would not have a walkway to the house from the street.

Mr. Pastore said that Mr. Roche testified earlier that he would be satisfied with a 15-foot curb cut. Would he be satisfied with an 18-foot driveway as opposed to a 20-foot driveway. Mr. Roche said if the alternative was not getting anything - then yes. Mr. Pastore said if the Board is in agreement, he would like to make a motion for this format.

Mr. Halligan asked how many cars currently fit to the back fence (4-5 the way it is now). Mr. Halligan asked if the walkway could go through the center of the lawn leading to the front door? Aesthetically, it might be a little better. Mr. Roche said exiting landscaping would have to be removed, but it is possible. Ms. Brown said a walk up the center of the lawn would work much better with the style of the house. She thinks Mr. Roche should respect that because it looks like he has respected the style of the house with everything he has been doing. Mr. Roche said he restored the house to the way it was built in 1903. Ms. Brown said she walks by the house everyday and thinks it would be a much nicer approach to the house; the cars won't be taking precedence and it won't look like a parking lot on the front lawn.

Mrs. Bator said she believes there is an ordinance for every house to have room for two cars - one in a garage. This property is 200 feet deep with a garage. She doesn't see this as a hardship. She lives directly across the street and said it will be looking at parking lot.

Mr. Naughton said the driveway is pretty long and at least five regular sized cars can fit there (half of Nutley would like to have a driveway that could fit that many cars. He said as far as the variance goes, it would be a hard sell for him to see that hardship as a reason to approve the application. He pointed out the option of going up to what code allows. The applicant would not need to request a variance for that.

Ms. Petolino said this a quite a large lot; she believes the driveway can be redesigned to end in a double-spaced area in the back so the applicant could angle it and have a place for two cars so that the applicant wouldn't have the problems he has now. She said that making the extra width in the front does affect the aesthetics of the neighborhood. She is not really sure how this Board could support giving such a variance when the lot is not an undersized lot.

Mr. Beck said he sees only a self-created hardship. There is no need for a variance here; the applicant can do a 16-foot wide driveway, run the walkway down the middle. It is not the obligation of the Board to find the most cost-effective way for people to necessarily do things. The smaller driveway would look better and be more in conformity with the neighborhood.

Mr. Beck made a motion to deny the application stating there is no hardship and seconded by Ms. Brown, the variance was denied by a vote of 7-0.

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No. 4 8:41:43 DAMASO Denied 5-2

Applicant: Roland Damaso (sworn) 141 Spatz Avenue, block 8503, lot 1, zone R-1

Application: Request to widen the driveway to a total of 32 feet (leave as erect).

Appearances: Self

Hardship: hill, narrow street

Letter of denial was read by Thomas DaCosta Lobo. Codes of Nutley restricts a driveway width to a maximum of 16 feet.

Mr. Damaso said first and foremost the reason for this application is because he has chronic back problems and gout. He needs a permanent spot for his car without being obstructed by other cars parking in the driveway. He, his wife and their children all have different work schedules. He house is on a dead end, but it is on a hill and the street is narrow.

Mr. Halligan said the construction has already been done. He asked if the driveway is finished. It is. Mr. Damaso said he was unaware that a permit was required to widen the driveway. Mr. Halligan asked how wide the curb cut is. Mr. Damaso said the actual measurement is 22 feet; he added 10. It is currently 32 feet. He has a two cars garage which is occupied by his two dogs.

Mr. Naughton asked if the existing driveway is original to the house. He said it appears that it is an variation to the existing non-conformance. He thinks that the existing width of the driveway needed a variance in order to be built.

Ms. Petolino asked the applicant when he starting doing this work. Mr. Damaso said it was sometime in August. The work was finished, but the curb was left untouched. He did get the notice from the town in August, but was uncertain of the exact date.

Mr. Pastore asked who paved the original driveway. Mr. Damaso said it was part of the original house. Mr. Pastore believes that when the parkway went through there, it was cut and instead of redoing the landscaping in front of the subject driveway, and along that entire side, the entire section was just paved. This was done to quite a few of the homes along there.

The Chairman said Mr. Pastore could be right, but doesn't know how they can determine that. The parkway cut through back around 1952, but this house is not that old - it was built approximately 2003.

With no one in the audience to speak neither in favor of nor against the application, Ms. Brown made a motion to deny the variance. She states there is no real hardship and the applicant is asking for more than double what is permitted as far as driveway width. She feels there is no justification for it. Seconded by Mr. Beck. The variance was denied by a vote of 5-2. Mr. DaCosta Lobo and Mr. Pastore voted in favor of the variance.

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No. 5 8:53:30 MERICH Denied 7-0

Applicant: Jeanne Merich (sworn), 30 White Terrace, Block 3601, lot 16, Zone R-1

Application: Request to erect a 3½-foot picket fence in the front yard.

Appearances: Self

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

Ms. Brown asked Ms. Merich to elaborate on the type of fence she is proposing. Ms. Merich described it as a white picket fence. Ms. Brown said according to the plan submitted, it appears that the fence is not starting at the sidewalk; that it is starting back further. Ms. Merich said it will start at the stake depicting her property line.

Mr. Beck said it looks like it's set back a bit because it's only gonna run from the town right-of-way; the driveway itself will extend over the right-of-way into the street. Ms. Merich said that is correct.

Mr. Scrudato asked Ms. Merich if the very attractive landscaping on the side of the house where she is proposing this fence belongs to her or to her neighbor. She said it belongs to the neighbor. He noted that some of the shrubbery is more than three feet high. He asked why then

would Ms. Merich want to erect a fence in front of the shrubbery and flowerbed. Ms. Merich said she was here recently for an addition on this side of the house. She has a fence on the other side and this will even things out. She wants a plain, clean look to her yard. At one point, she had 72 shrubs removed from the property. The fence will make everything neat.

Ms. Petolino asked Ms. Merich if she had gotten a variance to put in the fence on Washington Street. She did – many years ago.

Chairman Scrudato asked if the backyard was fenced. It is, except where the side driveway is.

With no one in the audience to speak neither in favor of nor against the application, Chairman Scrudato made a motion to deny the application stating he did not see a hardship to the property. He noted that there are very attractive shrubs and flowers on the neighbor's property. Seconded by Ms. Petolino. The variance was denied by a vote of 7-0.

Ms. Merich said the shrubbery is lovely, but it also currently three feet deep. Two years ago after a storm, she and the neighbor had all the pine trees on that side cut down. She said it was beautiful because everything was open. Her neighbor likes a lot of shrubbery, and in the last two years the shrubbery has gotten high and deep. The neighbor doesn't trim it and that is not something that she wants to be a part of her property. She feels it makes her property look messy. Coming around the corner, her property appears to look cut off. She feels it would look nicer and neater to have a fence on both sides of the property.

The Chairman said the applicant has a lovely home and it is well-maintained – probably one of the best maintained for many many years. Ms. Merich thanked him and said she has worked very hard. He said it is very difficult for the members to sit up there and find a hardship on the property – he stressed that it is not against the applicant – it is the property. The variance stays with the property forever. If she decided 100 years from now to move away, that fence would still have a right to be there. As to the neighbor not maintaining the shrubbery and keeping it neat, since the neighbor is not present tonight, there is nothing the board can comment on.

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No. 6 9:03:16 WATSON APPROVED 7-0

Applicant: Lori Watson and George Watson, 26 North Road, block 3502, lot 1, Zone R-1AA

Application: Request to erect a 3'x5' open style fence (black) along the side lot line of a corner property.

Appearances: Ms. Watson, Mr. Watson and Mr. Debareieri (sworn)

Letter of denial was read by Thomas DaCosta Lobo. Codes of Nutley prohibits any front yard fences. Codes of Nutley states that a corner property has two front yards.

Ms. Watson and her brother live in this house with their 76 year-old mother, six months a year. The elder Mrs. Watson doesn't move quickly and when the dogs run out the sliding glass doors, she can't catch them.

The Chairman pointed out that the applicant has to prove a hardship to the property. He said many years ago the Board granted a variance to an applicant who asked that it be approved until the dog died; and then the variance would come off the property. The Chairman said they cannot do that – it is illegal to do so. The variance has to stand on its own merits.

Ms. Brown wanted to clarify that this is a corner property and the back yard is on Satterthwaite Avenue. Just by the sheer fact that the backyard is not technically the back of the house, she really doesn't have a back yard. Ms. Brown said the applicant is willing to put in an attractive, three-foot high fence and she is willing to come in 10 - 12 feet off Satterthwaite Avenue and it would be hidden by the vegetation that is there now. Ms. Watson said it is quite possibly 25 feet off the curb. Ms. Brown said the fact that this is a corner property, that is a hardship.

Mr. Scudato asked of the fence types submitted for review, which did the applicant decide on. Ms. Watson said the fence would be three-feet high and black

Mr. Scudato said the letter of denial said the fence was five feet. Mr. Watson said the five-foot section on the survey would start at the back of the house where the patio is. That is where they need five-feet high, it would enclose the area of the pool that they propose to install.

Ms. Petolino asked to clarify that the Board is not voting on the pool at this time. She asked if the Landscaping along Satterthwaite would remain. It absolutely is with additional shrubs. Ms. Petolino asked the applicants if they would consider bring the proposed three-foot fence in line with the patio, instead of between the patio and the property line. Mr. Watson said they could, but there is a problem with the 50-foot pine tree on the edge of the patio. The fence would go behind the pine tree instead of in front of it.

Mr. Beck said the applicants need to be sure there are no spikes on the top of the fence, because they are not permitted. Mr. Watson said the fence is aluminum with what looks like a point, but is decorative and not sharp.

Mr. DeBareieri has no objection to the fence, but he did request the resolution read that the fence be a minimum of 10 feet off the property line. His concern is sight backing out of the driveway.

With no further comments from the Board nor the public, Ms. Brown made a motion to grant the variance for the reasons being this is a corner lot; it is a hardship because the applicants don't really have a back yard or a side yard. It will be 10 feet off the property line; it will not be obtrusive (it is a three-foot high, open-style picket fence). Seconded by Mr. Beck. The variance was approved by a vote of 7-0.

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MEMORIALIZATIONS/MINUTES:

September 15 meeting - approved:
137 Union Avenue
33 Harrison Street
1 Fernwood Terrace

The minutes of May 19, 2008 and June 16, 2008 were accepted as written.

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BUSINESS: The Chairman asked if there was anyone who would not or cannot attend the League of Municipalities scheduled for November 19 in Atlantic City. He said he would ask the Mayor if they are funded and if so, how much. He believes, or it used to be, that the rooms

were funded. He said there are some pretty good meetings and seminars. He felt that he benefited from those he attended in the past.

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ADJOURNMENT: 9:22:35

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LITIGATION: There were no litigated matters to be discussed.

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Respectfully submitted,

Marie L. Goworek