

**Nutley Board of Adjustment**  
**August 18, 2008**  
**Meeting Minutes**

**CALL TO ORDER:** A meeting of the Nutley Zoning Board of Adjustment was called to order at 7:38:00 by Chairman Scrudato. The Pledge of Allegiance was recited. The "Sunshine Act" notice was read and roll was taken.

**PRESENT:** Robert Beck, Suzanne Brown, Thomas DaCosta Lobo, John Halligan, Michael Naughton, Diana Petolino, Paul Scrudato, Chairman and Diana McGovern, Esq.

**ABSENT/EXCUSED:** Frank Graziano, Ralph Pastore.

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**No. 1 7:40:05 ESCALONA and ESPINO Dismissed Without Prejudice 7-0**

**Applicant:** Marilyn Escalona (sworn) and Sarah Espino, 313 Washington Avenue, Block 3900, Lot 17, Zone R-1.

**Application:** to leave as erect a patio with coverage of approximately 95% of the rear yard.

**Appearances:** Marilyn Escalona.

The letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley restricts impervious coverage to a maximum amount of 70%.

Chairman Scrudato noted that Ms. Petolino was astute enough to do some calculations on this application and asked that she share with everyone what she has learned. Ms. Petolino said when she went to look at the property, it was obvious to her that 95% of the lot was not covered by impervious coverage. She had requested the applicant to provide a survey. Her calculations show a coverage of approximately 66%, which is permitted by the ordinance. The planters around the house will have shrubbery in them. So, based on the information that Ms. Petolino could glean from the survey and what was provided in the applicant's calculations, she said she would like to move to dismiss the application and to return the fee to the homeowner because she does not believe a variance is required.

The Chairman spoke with the code enforcement officer and he is in agreement with Ms. Petolino on the calculations.

Ms. Petolino moved to dismiss the application without prejudice and to return applicant's fee. Seconded by Mr. DaCosta Lobo. Motion passed 7-0.

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**No. 2 7:44:30 DUNKIN DONUTS Final Site Plan 7-0**

**Applicant:** 203 Darling Avenue, Block 285, Lot 6, Zone B-2.

**Application:** Site plan approval.

**Appearances:** Thomas DiBiasi, Esq.

The Chairman said the applicant is here for approval of the site plan. He noted that there have been various and numerous recommendations and comments made by various offices within the town and engineering department.

Mr. DiBiasi is here for final site plan approval. He noted for the record that this applicant was before the board for variances, preliminary site plan, county approval was sought and gained. He said the comments made by the township professionals are comments that his client is willing to accept as a condition of final site plan approval.

Ms. McGovern said the August 7 report from Pennoni finds that the applicant adequately addressed all the aspects as made in the preliminary site plan application. The report lists other minor things. Mr. DiBiasi said these minor issues will be complied with. Ms. McGovern asked if Mr. Barry's letter and Mr. Linson's reports will be conformed to and Mr. DiBiasi agreed that they would be. The Chairman said all of these reports will become a part of the record.

With no questions from any of the Board members, the Chairman asked for a motion to accept the final site plan, with recommendations. Mr. DaCosta Lobo made a motion to accept the final site plan subject to the terms set forth in the letter dated August 14, 2008 from John T. Barry, the comments submitted by John Linson by letter dated July 17, 2008 and recommendations included in the August 7, 2008 letter by Todd Hay of Pennoni & Associates. Seconded by Mr. Beck. Approved 7-0.

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**Mr. Beck recused himself from the following Dunkin Donuts application.**

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**No. 3 7:50:00 DUNKIN DONUTS Approved 7-0**

**Applicant:** 177 Washington Avenue, Block 6603, Lot 10, Zone R-4.

**Application:** request to make interior and exterior alterations and parking lot alterations.

**Appearances:** Thomas DiBiasi, Esq.; Cynthia Falls, 36 Ames Avenue, Lyndhurst, NJ (Architect); Jose Nieves, 75 Winthrop St., Newark (General Manager), Jack Magnifico, 97 Washington Avenue, Nutley (sworn).

The letter of denial was read by Mr. DaCosta Lobo. "Pursuant to the resolution from the Township of Nutley Board of Adjustment dated August 18, 1982, variances were approved. In order to amend to the approved plan you must revisit the Board of Adjustment seeking approval for these changes."

Mr. DiBiasi reminded the Board members that when he presented the application for Darling Avenue, he stated that the outlet would be one of the first to have the new Dunkin Donuts design. It is a new franchise and will be using the new-updated look the corporation is going for.

The plan for the instant application shows some upgrading. Some of the seats will be removed, two illegal parking spaces will be removed. The client is agreeing to each and every condition from the township; professionals including the long list of items from the township forester. The architect will go through the plan for the record. Mr. DiBiasi said the short synopsis is that all Dunkin Donut as they come on cycle will look like the one approved on Darling Avenue.

Ms. Falls was sworn in. While Exhibit A-1 was entered into the record, Ms. Falls provided the Board with her credentials. Ms. Falls was retained by Dunkin Donuts in order to go through the latest architectural design of the outlets. She said Dunkin Donuts Corporate goal is to upgrade and modernize all the Dunkin Donuts (20/15 image) to take them through the next several years. The footprint and the glass façade will not be changed. The outdoor soffits will be removed and replaced with a neutral color efface. They are adding a brown-colored monolith for the signage (shown on the drawings). The colors will be more understated, with just a slight orange cap at the top. The paint will be a neutral beige color.

Mr. DiBiasi told Ms. Falls that the application for the Darling Avenue project has a proposed cup of coffee on the wall that Ms. Brown did not like. The applicant removed it from the proposal. He asked Ms. Falls if it was fair to say this Washington Avenue project does not have a big cup of coffee on the property. Ms. Falls said there is no big cup of coffee; the monolith on this project is strictly on top of the building. It doesn't go all the way down and it is used as background of the signage.

On the interior, some of the seating will be removed and replaced with more counter top seating. This will discourage lingering. Since the baking will now be done off-site, they will reconfigure a wall to make the back area smaller. A small oven will remain and the storage area will be reduced. The bathrooms will not be changed and all the interior finishes will be replaced.

Ms. Falls said all three of the illegal parking spaces will be removed. The curb cuts will be rebuilt to the current county standards. The parking lot will be re-stripped and the general look of the parking lot will be upgraded with additional landscaping and repaving. Pavers along Washington Avenue will be continued as well as the neighbors' sidewalk. This is not shown on the exhibit, but will be addressed during construction. Ms. Falls agreed with Mr. DiBiasi that, if the Board approves the plan, the comments of any Board professional will be adopted into their plan. She said if more landscaping is requested, this will be accommodated. Pavers and additional bollards for pedestrian safety are now a part of the plan.

Ms. Brown asked if the existing pylon sign will be altered in any way. Ms. Falls said the logo will be changed. The square footage of the signage will not change. Ms. Brown asked if the pavers would be continued down Park Avenue. It was Ms. Falls' thought that it was only addressed as to Washington Avenue. Ms. Brown said since it is on a corner, it would be disjointed. Mr. DiBiasi said he would tell his client to balance it off. Ms. Brown asked what material will be used for the sidewalk outside the existing building. Ms. Falls said the plan shows concrete, but said everything will be to whatever the existing city standards are. Ms. Brown asked if the applicant would consider pavers to match. Mr. DiBiasi's client is out of the country, so he will speak with him about that on his return.

Ms. Brown noted that the parking area will be decreased and that the one handicapped parking space is supposed to be van-accessible, but it is not. That means that the parking lot spaces will be reduced further to 14 spaces. Ms. Falls said there is a five-foot clearance on the left hand side of the handicap space. Ms. Brown said it looks like it's only three, so she thinks Ms. Falls should check that. Ms. Falls said she will look into it.

Ms. Brown said the parking calculation allows 19 seats; the plan shows 24. (Ms. Brown had the old plan).

Ms. Brown asked is the awning protruded from the building or if it was flat. Ms. Falls said the awning shown on the proposed front elevation does protrude from the building approximately three feet at an angle. The awning is lit from underneath. MS. Brown said the lit coffee cup in the window is not noted as a sign and should be included in the signage calculation.

Ms. Brown asked about Ms. Falls would go through the paint colors . Ms. Falls said the front will be mostly glass; the upper color s a light beige; the monolith over the entrance is a cement fiber board that is painted a very dark brown, the top bright orange; an orange band will cross the front. The rest of the building will be painted brownish/beige color.

Ms. Petolino asked about the kitchen. Since baking will no longer be done on the premises, she thought that more delivers would be made to the site. She is concerned because loading area is at the narrowest end of the driveway which looks like it tapers off. How is this going to work? Ms. Falls said she cannot address the operations but did say that loading is typically done at 4 a.m. a small truck brings in the product. The driveway can accommodate the trucks that come to the site. Ms. Petolino said this is her concern: Ms. falls doesn't seem to know how big the truck, she is saying the loading area is smaller than required. Ms. Petolino said she does not think the dimension of the driveway outside of the loading area is sufficient for the truck.

Mr. DiBiasi said that the operator of the truck is present tonight and advised Mr. DiBiasi that the truck is a 24 foot. In response to Ms. Petolino's question, Ms. Falls said the width of the driveway at the extreme end of the site is 37'7" from the fence to the edge of the property, which makes the driveway 13'7". The driver will answer anymore questions regarding he driveway and deliveries.

Ms. Petolino moved to the concrete planters. Te current planters were installed by the township to prevent cars from going on the sidewalk. She noted that the planters were not on the new plans. Who is going to pay for the cost of moving those planters? Mr. DiBiasi assumes his client would be. Ms. Petolino said if this application is approved, she would ask that this be made a condition, rather than

make the town pay for it. Mr. DiBiasi said he wasn't expecting the town to do that. The applicant will be following the plan of the town forester, which includes bollards.

Mr. Naughton referred to the town forester's letter where he suggested that the utility pole be relocated. He asked if Mr. DiBiasi has looked into that. Mr. DiBiasi said he doesn't think they are going to go that far. He said it is a pretty big number - a good suggestion, but economically, in these times, they cannot go that far and relocate utility poles. That was a not a condition, only a suggestion; but that is something they applicant cannot afford. Ms. McGovern said the letter was for the "protection or removal." Mr. DiBiasi said that's a different story -- they have money for that. Does the Board have any suggestions? Ms. Falls said she thought that it was suggested that bollards be put around the pole. That would not be a problem.

Ms. Brown asked if the applicant had a detail of the bollard. Is it the typical yellow concrete filled steel tube or is it more decorative? Ms. Falls said it is painted one of the Dunkin Donuts colors (either the pink or orange color). Ms. Falls said they are certainly open to suggestions. Ms. Brown thinks something more decorative as opposed to something so outstanding.

Mr. Naughton said Mr. Linson suggested the pavers be done similar to what is used on Franklin Avenue, which the applicant has agreed to install. He thought they should look at a bollard that is in use on Franklin and use that as a guide. Mr. DiBiasi said that can be set forth as a condition if the Board approves the application.

Chairman Scudato said, years ago, the Board granted the extension of a building behind the main structure. A condition on that application was that a small truck would be able to negotiate and bring deliveries to the area. There would be no tractor trailers on the main parking area. If the bollard is not removed, there is no way of getting back there with the truck, regardless of the size.

Mr. DiBiasi said the manager/operator is better able to respond to that. The Chairman dismissed Ms. Falls. Mr. Nieves was introduced to the Board. He has been the general manager of the Dunkin Donuts for the last 15 years. He explained that deliveries will come in a small truck that will back up to the rear of the store. There is a small ramp on the truck. The product is delivered on covered trays with wheels. Deliveries would be made off peak hours because they need the parking for the customers.

Today, when making deliveries, the truck is backed up onto the Park Avenue side of the store.

The Chairman asked how the waste material is picked up from the dumpster in the rear. A refuse truck pulls partially onto the Park Avenue side of the site and the dumpster is pushed to it.

In response to Mr. Halligan's question, Mr. Nieves said there are two deliveries - the first around midnight, 1 a.m. and then again about 11:00 a.m. - noon.

Ms. DiBiasi concluded his presentation. The Chairman asked if there was anyone in the audience wanting to be heard. Mr. Magnifico is the owner of the building. Dunkin Donuts has been his tenant for over 20 years. He said he has been advised by several sources that the grading around the property has to be level with the building. The water from the Dunkin Donuts site gets into his parking lot and has, subsequently, destroyed a corner of his building.

He said the whole sidewalk is paving block and he thinks it would be a good idea to continue the paving blocks on Washington Avenue. Park Avenue is a mess; the concrete goes from the Dunkin Donuts up to the fence line. He thinks that the planters should be a condition; his fence has been hit numerous time by incoming vehicles and trucks. His major concerns are the grading and the paving and these are conditions he wants to see met.

Ms. Falls returned and said that new curbing will be put in place so people cannot drive up on the sidewalk. There was more back and forth discussion regarding bollards, asphalt, and curbing and where it would all be.

With no further questions from the Board nor anyone in the audience, the Chairman asked for a motion to amend the site plan. Motion was made by Ms. Brown to grant the amendment of the site plan based on the fact that the building is remaining the same; the exterior skin is being changed to comply with the new 2015 Dunkin Donuts scheme; the parking is being reduced, but the parking is going to be improved; the comments noted in the town forester's letter need to be incorporated. The drainage will be accommodated; it will remain on the site and not into other peoples' areas. Ms. McGovern noted the conditions: pavers will be installed on Washington Avenue and Park Avenue sidewalks; the applicant has agreed to the forester's request of July 17, 2008; the applicant agrees to Pennoni's suggestions in its report of August 7, 2008; the applicant will insure that the handicap space is van-compliant; the bollards will match those on Franklin Avenue streetscape improvements and will be placed also in lieu of the planters on Dunkin Donuts property to protect pedestrians on the sidewalk; the parking lot grading will be sloped away from the neighbor's property and as per the plans, dated April 17, 2008. The motion was seconded by Mr. Naughton. Approved 6-0.

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Mr. Beck returned to his seat on the dais.

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**No. 4 8:48:29 MERICH (Approved 7-0)**

**Applicant:** Jeanne Merich-Cetrulo and Sal Cetrulo (sworn), 30 White Terrace; block 3601, lot 16, zone R-1

**Application:** request to build a second story addition above a garage.

**Appearances:** self.

The letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley requires a side yard setback of six feet.

Mrs. Cetrulo said they want to make changes to the residence because they need more closet space. The room will be for storage and a closet area.

Ms. Petolino observed that although the letter of denial indicates that the side yard set back is required to be six feet, she wanted to note that on the survey, the smaller side yard set back is 5.2 which she considers to be a *de minimus* amount. She asked the applicant what was on the side of the neighbor's property adjacent to this proposed addition. Mrs. Cetrulo said there is a fence between the two properties with shrubbery on the neighbor's side of the fence.

Mr. Halligan asked if the addition is going to be flush with the roof line in the front. Yes. He asked if the application considered stepping it back a little bit, to add dimension to the front. Ms. Cetrulo did consider that, but believes it will look much nicer with the house being squared off and straight. He asked if they had an architect draw up the plans. Mr. Cetrulo said they did it themselves in conjunction with the builder.

The Chairman said his house is the same way. It is not squared to the street, which is a common problem with the homes in the area. He noted that the lot is slightly undersized. This imposes a hardship to the applicant.

With no further comments from the members and no one in the audience to speak either in favor of or against the application, Chairman Scrudato asked for a motion. A motion was made by Ms. Petolino to grant the variance stating that the lot is an undersized lot and the amount of variance from the required setback is a *de minimis* amount. The motion was seconded by Mr. DaCosta Lobo. Approved 7-0.

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**No. 5 8:54:59 ALEWEL (Approved 7-0)**

**Applicant:** Scott and Tiffanyh Alewel, 331 Walnut Street, Block 1705, Lot 13, Zone R-1.

**Application:** permit to widen the curb cut to 20 feet.

**Appearances:** Mr. and Mrs. Alewel (sworn).

The letter of denial was read by Mr. DaCosta Lobo. Codes of Nutley limits a curb cut for a one-car garage. Curb cut shall not exceed 12 feet in width.

Mr. Alewel chose to respond to questions. The Chairman noted that in Mr. Alewel's responses on the application he said that he has permission to take down the tree abutting the apron. Mr. Alewel said he has already applied to the Parks Department and Commissioner Tucci has granted him permission to remove it as long he replants and relocates another tree, at the discretion of the township. He does not have it with him, but he does have written permission in the form of e-mail.

The e-mail was sent to Mrs. Alewel's e-mail address. She explained that she went through the parks and rec department and the shade tree committee to get permission to remove the tree. It was denied initially and Commissioner Tucci granted approval. The Chairman said this Board cannot grant that; that's out of it's ability. Mrs. Alewel said the township is waiting for the Alewels to get the variance. The Chairman said if the variance is granted will be conditioned upon that in writing and becoming a part of the record.

Correcting the Chairman, Mr. Alewel said he has a one-car garage with a two-car driveway. The chairman asked if the applicants' cars had a propensity to slide down the driveway in the inclement weather in the winter towards the tree. Mr. Alewel said that was correct. He said it is tight backing out of the driveway.

Mr. Naughton said he hates to see trees come down, but he sees the applicants do have a tough situation getting in and out. He asked if the applicants would consider a 16- foot curb cut as opposed to the full 20. Mr. Alewel said he is fine with that.

Ms. Petolino isn't certain why they did not present the e-mail from the Commissioner as that would be a requirement for this zoning board. Mr. Alewel said he did ask about that at the time they applied for the variance and was advised that they did not need any further documentation for this Board's review. Ms. Petolino said that was part of the premise of the applicants' argument, and then they didn't bring the proof with them. Mr. Alewel said he only brought up the tree in case it was a concern. Either way, he said, he needs to repair and widen the driveway. Ms. Petolino said tress are always a concern. The township has a shade tree commission, so it would be of direct interest int his matter for this Board to know how the shade tree commission/commissioner determined this matter. She said they don't want one town agency working against the interests of another. She said that the applicant did use this issue as a primary reasons for justification for taking out the tree; trying to show the Board he did his due diligence but then didn't show the proof of it. This is a major concern for Ms. Petolino. She asked if it was possible for the applicant to go around the tree, and what assurance does the Board have that the applicant will relocate the tree? And where will it be relocated? Mr. Alewel said the forester has already surveyed the site and has told the applicants where he would like the tree put. This is the agreement they have with the parks department. Financing would come from the Alewels. Mr. Alewel said if the Board wants a stipulation that the tree will be replaced/removed before the tear down, that is something he will do.

The Chairman asked who was paying for the removal of the tree. The Alewels assume it would be the town. The Chairman thinks they may be in for a shock. If necessary, the Alewels would cover the cost of removal and replacement.

Mr. Naughton asked if the driveway was a double width when the applicants moved in. He said he noticed that nearly all the houses on the block had single width drives. Mr. Alewel said there are other residences within their radius with the same situation. Mr. Naughton wondered if this application was going to be the first on the block for such an application. Mr. Alewel said he and his wife saw the same type of work being down at a residence while on their way to the meeting tonight.

The Chairman said his viewpoint on those sort of things are that an application has to stand on its own merits – not what happens elsewhere.

Ms. Petolino asked Ms. McGovern is there is any legal requirement for the township to remove the tree at the owner’s request. Ms. McGovern said she didn’t know about that. Ms. Petolino said the tree is on the right-of-way, but it’s a request for convenience. Ms. McGovern said she hasn’t looked into that; this is fairly new – getting permission to remove a tree. She doesn’t know the process. Ms. McGovern said she would really be surprised to hear that if one makes a request to have a tree removed, that the town would be footing the bill for it.

The Chairman knows of a neighbor who has asked the town for years has been asking the town to remove a tree. Unless the tree becomes a danger or diseased, the town would not uproot it.

Ms. Petolino said she knows that the request to remove the tree did go to the shade tree commission and was rejected. Subsequently, apparently, the applicants got permission from the Commissioner. Mr. and Mrs. Alewel said the decision was overturned by Commissioner Tucci with the stipulation that the tree be replaced.

Ms. McGovern asked if it was correct that the applicant was subject to the Commissioner said the tree can be removed if the applicant got approval for the variance to widen the curb cut to 20 feet. The Alewel said they did not specify the width to be 20 feet. He said they were not specific about the footage, but was told when they filed the appeal, they had to give a figure to it. They used the physical dimension of the driveway.

Ms. Petolino asked if is possible to table this matter until the Alewels actually produce the agreement and then the Board would have to make a conditional approval. They can just get the approval; otherwise, they are in a Catch-22. The Board will have a basis and know what the conditions are.

Mr. Beck said it seems to him that this can be granted tonight and saying it is subject to receiving the approval from the Shade Tree Commission for removal of the tree.

With no further questions from the members and one in the audience to speak either in favor of or against the application, Chairman Scudato asked for a motion. A motion was made by Mr. Beck to grant the variance and that the curb cut be limited to 16 feet, rather than 20 feet. There should be a condition that the widening of the driveway will also be subject to the approval of the Shade Tree Commission relative to removal of the tree which at present would prevent the widening of this curb cut. The tree should be replaced in accordance with the requirements of the Shade Tree Commission. The cost of removal should be paid as directed by the Shade Tree Commission; seconded by Ms. Brown. Approved 7-0.

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**MEMORIALIZATIONS/MINUTES:** The Minutes from April 21, 2008 were approved.

Ms. McGovern read the memorializations from the previous meeting, which were approved by the members.

The Minutes from April 21, 2008 were unanimously approved.

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**BUSINESS:** Ms. Petolino said everyone knows how hard they fought to get a good zoning administrator because of the lack of information and the erroneous information they were getting on an on-going basis. Then they were assigned Julie Viola – who did a great job. Now she is gone and Ms.

Petolino thinks they need to get someone that has the proper training so they can avoid needless confusion and fees. She specifically mentioned 313 Washington as an example.

The Chairman said that the certification process they must go through to sit on the Board is something that maybe the clerical person could do. Ms. McGovern said Ms. Viola went through the whole course and was certified to become a zoning officer. Discussion continued for several minutes.

The Chairman will reach out to the Mayor or Commissioner Evans to see what steps can be taken. Ms. McGovern said the office is in a state of transition and they should wait to see and give the office staff at least a little bit of chance to acclimate themselves. Ms. Petolino said ok.

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**LITIGATION:** Ms. McGovern had no updates on litigated matters.

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**ADJOURNMENT:** Public session was closed at 9:31.40 p.m.

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Respectfully submitted,

*Marie L. Goworek*

Marie L. Goworek  
Recording Secretary