

**Nutley Board of Adjustment
March 24, 2008
Meeting Minutes**

CALL TO ORDER: A meeting of the Nutley Zoning Board of Adjustment was called to order at 6:32:50 (recorder time) by Chairman Scrudato. The Pledge of Allegiance was recited, the "Sunshine Act" notice was read, and roll call was taken.

PRESENT: Robert Beck, Suzanne Brown, Thomas DaCosta Lobo, John Halligan, Frank Graziano, Diana Petolino, Paul Scrudato, Chairman

ABSENT/EXCUSED: James Blanda, Kirk Chagnon, Ralph Pastore

MEMORIALIZATIONS/MINUTES: Ms. McGovern read the memorializations from the previous meeting: 57 East Centre Street; Tran; Marino. Approved by all. The minutes of August 20, 2007 and September 17, 2007 were approved.

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Darren DiBiasi, Esq., requested an adjournment of 620 Homer Street. Mr. Beck asked Mr. DiBiasi if he waived time restraints. He does. Mr. Beck made a motion to carry the matter as per the applicant's request to April 21, 2008. Seconded by Ms. Brown. All in favor.

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203 Darling Avenue – Dunkin Donuts site plan. Ms. McGovern said this was not noticed. It will not be heard tonight.

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No. 1 6:36:45 MONTE Approved 6-0

Applicant: Raffaele Monte, 6 Clinton Lane, Wayne

Application: 188 Prospect Street, Block 97, Lot 15, R-1 Zone. Request for a permit to widen the driveway to 19 feet with a 19-foot curb cut by removing a portion of the existing building to accommodate the increased driveway width.

Appearances: Self and Geralyn Monte (sworn),

The letter of denial was read by Mr. Beck. Codes of Nutley restricts a driveway width to a maximum of 16 feet, and states that in no case shall a curb cut exceed 20 feet in length.

Mr. Monte's testimony was difficult to understand because of his heavy accent. Unfortunately, too, he was not close enough to the microphone. He asked to extend the driveway because it is difficult for his tenants to find parking at night.

Mr. Beck asked if he intended to remove a portion of the building to accomplish this. Mr. Monte said that was correct. Mr. Beck asked what is in that portion right now. Mr. Monte said it is a store. Mr. Beck said if he takes away a part of the building, then he would have less building space to rent out. He is basically going to take away the Puppy Store, which means the building will be smaller, a smaller footprint. Mr. Monte said that was right. Mr. Beck said the commercial use is a non-conforming use in a residential zone, so, by demolishing part of the store, he is bringing the whole structure and the use more into conformity with the zoning code. He is making it less non-conforming as to both the building, which uses up a lot of space; and also, as to the commercial use that is there in a residential zone. Is that correct? Mr. Monte seemed to

have difficulty understanding/answering Mr. Beck's question. He is going to reduce the size of the front by approximately 10 feet.

Ms. Petolino asked if she was correct saying this was a mixed use building, not a one- or two-family; it is partly commercial and partly residential, partly professional.

Chairman Scudato asked if there was any property available adjacent to this site that Mr. Monte could purchase to help him with his parking problem. Mr. Monte said no. Mr. Beck said he believes the majority, if not all of the homes surrounding this are residential homes. That would make it even more difficult to find parking for his tenants. He does not know how he could put one car behind the other, but that is something Mr. Monte will have to figure out.

Ms. Monte has been living there for a few years. Fortunately, she was able to park her cars there and just switch back and forth with her husband. Now there are more adults moving into the apartments with more cars and it is difficult to park. The second driveway will be able to accommodate two or three more cars. There may still have to be an agreement with the tenants as to how and where they are going to pull in.

Mr. Beck asked if was possible to put in the tenants' lease where they will park - left or right side, so at least the tenants wont have to be going back and forth, they can jockey their own cars in and out on one side or the other. If this is approved, that is what he would suggest they do with the leases, that way there is full disclosure to tenants, also.

With no further questions from the Board members and no one in the audience to speak either in favor of or against the application, Mr. Beck made a motion that the application be granted saying that he thinks this is a good application because one of the things it does is reduces the non-conformance of the non-conforming use of the commercial use in the building; secondly, it will give some comfort to the tenants and have a more orderly situation for the parking. It will be beneficial to the neighborhood by reducing the commercial use. Ms. Brown seconded. Mr. Halligan said his kids recently bought a puppy from there and they were horrified. He assured them that the puppies would not be in the building at the time. He voted yes. The application was approved a vote of 6-0.

Ms. McGovern advised that Mr. Monte has to apply for a permit and start working on the project within one year after receiving the resolution, which will be memorialized at the April 21 meeting.

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6:49:50 Gaetano Ray, here was in the audience for the Dunkin Donuts matter. Chairman Scudato told him the application was faulty in that the notice was not published in the paper in the prescribed period of time. Ms. McGovern said the applicant must re-notify everyone, so he will get another letter. He asked what this second variance is. They were granted one the last time they were here. Ms. McGovern said this next hearing is just for site plan approval. Mr. Beck said the variances have been granted. After a side discussion, Ms. McGovern said apparently they are coming for another variance. It is not set in stone yet. They cannot discuss it. ___ said it looks like you might grant it. Mr. Scudato said that was not necessarily so. It will be granted or defeated on its merits.

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BUSINESS: 6:52:50 Mr. Scrudato said he asked Mr. DiBiasi, attorney for the application on 57 East Centre Street (the contamination site). Mr. Scrudato would like to put Mr. DiBiasi's letter on the record.

"Dear Tom: Pursuant to the town's request through you for a brief summary of the environmental work that has taken place at the captioned property, please find the bullet points below."

Mr. Scrudato explained that he asked Mr. DiBiasi what the specific contaminants are on the property.

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- Asbestos abatement performed in several buildings to be demolished;
- Buildings demolished;
- concrete slabs and pads demolished;
- delineation wells installed and samples to delineate ground water plumes and remedial action reports submitted to the New Jersey Department of Environmental Protection;
- PILOT treatment program of injecting into the ground water with hydrogen peroxide chemical and an iron-based catalyst to break down the complex petroleum, hydrocarbons contaminant into the carbon dioxide and water.

"Three rounds of treatments have been completed and two rounds of samplings have been completed with mixed results. The goal is to get consistent levels over a protracted period of time so as a natural aeration can be approved as the method of remediation.

"Tom, the above brief summary is the work that has taken place over the last several years. Should the town request more details, just let us know and we will be happy to provide." It was signed by Marshall B. Goldstein, 57 East Centre Street Associates.

The Chairman said that it is possible with the little bit of knowledge that he has that this method of remediation to the property can sometimes work in the negative. If improper amounts of hydrogen peroxide are injected into the ground, it can reverse the natural process, which they are talking about the natural process taking place to remediate the hydrocarbons. He doesn't know that. He is not qualified to ask whether it is the right amount, but they could actually set back the remediation process.

He asked if there were any questions on this subject. Ms. McGovern told the members this letter was sent in response to the condition that the Board be given an update. She asked the Board if they were satisfied with the response or would the Board like to her to reach out to the attorney for the developer and request more specific information. If it satisfies the condition the Board put on it, it will be put in the file and if additional time is requested or another application is made, the Board will have this to refer back to.

If the Board feels as though they would like more information because it does not satisfy the condition they put on the most recent extension of time, let her know and she will reach out to counsel. Nothing can really be decided here without giving notice to counsel and to the applicant.

Chairman Scrudato said the process takes this form: The remediation company submits their findings of the groundwater contaminants, whatever they are, to an outside lab (a third lab). The lab reviews those findings of the groundwater contaminants and submits a finding. That finding

is sent to the DEP for its review and approval or denial of cleanup on the property. This Board has very little input until the EPA says yes, it is cleaned up and it is satisfactory to them. Until that takes place, there is nothing anyone can do – not the building of the condos – he can't go ahead.

Chairman Scudato has a problem continuing this six-month extension all the time. Although it is supposed to be written in the statute, it is not the State that is holding up this process, it's the remediation company – the applicant – who is holding up this process of clean up.

Ms. Petolino asked if that was so. Ms. McGovern said she needed to caution the Board, she does not think it is appropriate for them to discuss the merits of the extension time at this point. The applicant should be privy and be able to respond. The question is, do they satisfy the condition, or would the Board like additional information.

Mr. Beck thought that they were supposed to get something from the environmental company, not something from a member of the limited partnership. Ms. McGovern said she did notice that and will be happy to write to counsel saying that the instructions were that the Board wanted a letter to come from the environmental company.

Ms. Petolino asked if the condition didn't include two things – a list of the contaminants and a copy of the no further action letter from DEP. Mr. Beck doesn't think they made that a condition. Ms. Petolino thought it was in the minutes. Ms. McGovern will advise the attorney that this letter is not what the Board was looking for; they want a letter from the EPA.

Chairman Scudato had a second letter addressed to himself regarding 203 Darling Avenue (Dunkin Donuts). Everyone has the letter. The matter is not on for tonight, so it should not be discussed.

The minutes for August 20, 2007 and September 17, 2007, were approved at this time.

LITIGATION: Ms. McGovern had issues to be discussed off the record.

ADJOURNMENT: 7:02:45

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Respectfully submitted,

Marie L. Goworek

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Recording Secretary