

NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

January 23, 2017

CALL TO ORDER: A meeting of the Nutley Zoning Board of Adjustment was called to order at approximately 7:30 p.m. by Chairman Frank Graziano. The Pledge of Allegiance was recited. Roll was called and the Sunshine Notice was read.

PRESENT: Joseph Frusteri, Daniel Tolve, Lori Castro, Peter Sirica, Lou Fusaro, Mary Ryder, Gary Marino, Tom DaCosta Lobo, Suzanne Brown, Chairman Graziano and Board attorney, Diana McGovern, Esq.

ABSENT: None

EXCUSED: None

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No. 1 90 Msg. Blake Plaza CONTINUED TO NEXT MEETING

Applicant: Ms. Karen Yeamans, Nutley Public Schools, 315 Franklin Avenue

Appearances: Thomas DiBiasi, Esq.

Letter of Denial: was not read

Thomas DiBiasi, Esq., testified that they wished to continue this matter to the next Zoning Board meeting because they are attempting to find another location for the school buses. The Board Chairman indicated to counsel that if the Board of Education was not ready to proceed with the application that they should withdraw the application.

With no further questions from the members and no one in the audience with questions or comments, a motion to continue this application to the next meeting on February 13, 2017, was granted.

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No. 2 Centre Street & Bloomfield Avenue APPROVED 5-2

Applicant: Mr. Thomas DiBiasi, Esq. , 345 Centre Street, Block-Lot: 7800-1,2,3 & 25

Application: to build a three (3) story mixed use building consisting of the 1st floor/ground level, 1,200 SF of retail space, 948 SF mechanical room and lobby area, and a parking area, the 2nd floor with 11 one (1) bedroom units, and the 3rd floor with 11 one (1) bedroom units for a total

of 22 one (1) bedroom units, as shown the plans prepared by Dassa-Haines, Architectural Group LLC, dated August 15, 2016,

Appearances: Mr. Thomas DiBiasi, Esq., Paul Bauman, Joseph Haines, Frank Conturso, Penny Landry, Paul Ricci, Rory Moore, Michael Arias

Letter of Denial: was previously read.

These properties are located in the following zoning districts as shown on the Nutley Zoning Map:

<u>Block/Lot</u>	<u>Zoning District</u>
7800/1, 2, & 25	B-2
7800/3	R-2

Chapter 700, Article V, Section 700-12 of the Codes of Nutley, list the permitted uses in a R-2 zoning district. Residential above business is not listed as a permitted use.

Chapter 700, Article VIII, Section 700-46 of the Codes of Nutley entitled "The Schedule of Regulations" requires the following in an B-2 zoning district for residential above business:

	<u>Required</u>	<u>Proposed</u>
Stories	2	3
Height	25'	34'6"
Lot Coverage	45%	59.8%

Chapter 700, Article XIII, Section 700-94 A (3) of the Codes of Nutley states each property shall not have more than one driveway and one curb cut.

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Proposed Mixed Use Building/Corner Property
Centre Street & Bloomfield Avenue
Block-Lot: 7800/1, 2, 3, & 25

Chapter 700, Article XIII, Section 700-94 A (3) (b) of the Codes of Nutley states curb cuts in all other districts shall not exceed 20 feet in length. **Proposed curb cuts are 24' each.**

Chapter 600, Section 600-1 of the Codes of Nutley requires site plan review, see attached site plan checklist which will indicate all required information to be required on the site plan for review.

Ms. Mary Ryder recused herself from this matter. Mr. Joseph Haines testified to the board that the height of the proposed building was 22 feet to the top of the second floor. He stated that the apartment complex across the street was 22 feet as well on one side (Also the measurement to the second floor soffit), with the east corner standing at 25.5 feet. Mr. Haines stated that the Garden Apartments were 22.5 feet. He explained the close comparison in height to the board. The board members had questions as to where Mr. Haines got the 22 feet measurements. He stated that the measurement is 22 feet from the bottom of the soffit to the ground level. Mr. Haines also made the Board aware that within 500 feet of this application, there were 6 three-story buildings. Mr. Haines explained to the board that he added in a community room on the

second floor with exercising equipment, as well as a television. He also explained that he added in fences, benches, and landscaping on this application. Ms. Suzanne Brown expressed to the architect that she felt the building was still too massive. Mr. Haines responded that he had kept the building 10 feet from the street when the code only called for 3 feet, and that he had taken all necessary precautions to soften the building and make it appropriate for the neighborhood. Mr. DiBiasi called realtor Frank Conturso to discuss real estate in Nutley. Mr. Conturso expressed that he went and looked at upscale one bedroom apartments in Nutley. He stated that the upscale apartments came complete with hardwood floors, granite counters, and that one bedrooms were "still hot." Mr. Conturso stated that there were currently zero vacancies in one bedroom apartments in Nutley. Professional Planner Paul Ricci testified to the board that he was hired by the Zoning Board of Adjustment for an independent study. Mr. Ricci refers to Exhibit A1, when he questioned whether or not the application actually meets the front yard setback. Mr. Ricci expressed that the building was large, however he felt it was up to the board whether or not it fit into the neighborhood. He stated how the property currently was, was not a positive look for the town. Mr. Ricci stated that there was clearly a need for Affordable Housing and he did not see another way for the application to be laid out. He agreed that the application also met the parking needs. Mr. Rory Moore, Ms. Penny Landry, and Mr. Michael Arias all made comments to the board, Mr. Ricci, and Mr. DiBiasi, regarding their displeasure with the application and asked the board to deny this application. Mr. DiBiasi made his closing remarks to the board, explaining that Dr. Russ had invested his life and business in bringing positive changes to the community.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this variance was made by Mr. Gary Marino, seconded by Mr. Lou Fusaro. The variance was granted by a vote of 5-2 with Mr. DaCostaLobo and Ms. Brown voting no and first alternate, Lori Castro voting "yes" as Ms. Ryder had recused herself.

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No. 3 434-438 Centre Street CONTINUED TO NEXT MEETING

Applicant: Mr. Thomas DiBiasi, Esq., Block-Lot:

Appearances: Thomas DiBiasi, Esq.

Letter of Denial: was not read

Thomas DiBiasi, Esq., testified that they wished to continue this matter to the next Zoning Board meeting.

With no further questions from the members and no one in the audience with questions or comments, a motion to continue this application to the next meeting on February 13, 2017 was granted.

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No. 4 510 Franklin Avenue APPROVED 7-0

Applicant: Mr. Thomas DiBiasi, Esq., 510 Franklin Avenue, Block-Lot: 3107-5

Application: To operate a portion of the existing ground floor area for a commercial school (Pinot's Palette) which is a permitted use, and will also require a total of 11 additional parking spaces as shown on the plans prepared by Architect, Mileto-Godsall Associates LLC, dated May 25, 2016;

Appearances: Thomas DiBiasi, Esq., and Colleen Carlee

Letter of Denial: was read by Mr. Tom DaCosta Lobo.

AND the Code Official having denied said permit by letter dated November 22, 2016, citing Chapter 700, Article XIII, Section 700-91 A of the *Codes of Nutley* the schedule of "Minimum Required Parking Spaces" which requires the following for a mixed use building in a B-3 district are as follows:

- Existing ground floor retail 1,000 SF ÷ 2 = 5 parking spaces credit
- Place of Public Assembly per plan 40 occupants; two (2) parking spaces for five (5) occupants: 40 ÷ 5 = 8 X 2 = 16 spaces.
- 16 spaces – 5 credits = 11 additional required parking spaces;

Mr. Thomas DiBiasi, Esq., testified to the board that he was representing the applicant in this application. He introduced his first witness as Ms. Colleen Carlee, part owner of the proposed application. Ms. Carlee testified to the board that she was under lease, however that would be subject to the board's approval. Ms. Carlee expressed that she wished to open a Pinot's Palette, which she currently owns in Montclair. She stated that they would teach two hour long classes, which were more like parties for adults or children, usually occurring on the weekends and at night. Ms. Carlee explained that it would usually just be her in the building during the day, and that the maximum number of people to each class would be 40 with 1 or 2 employees but that most of the parties were for 12 to 20 people. She stated that her Montclair location did not have onsite parking and the Nutley location wouldn't either. She stated that most of her clients would carpool, use Uber, or get dropped off. Ms. Suzanne Brown asked Ms. Carlee about the parking spaces. She responded that they were 11 short of the code, but wished the board to consider the street and municipal parking.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this variance was made by Mr. Tom DaCosta Lobo, seconded by Mr. Gary Marino. The variance was granted by a vote of 7-0.

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No. 5 110 Crestwood Avenue APPROVED 7-0

Applicant: Mr. and Mrs. Anthony Davino, 110 Crestwood Avenue, Block-Lot: 8902-24

Application: To construct a two level deck approximately 1,240 SF around the existing 12' round above ground pool in the rear yard having a zero-foot side yard setback on both sides which will increase the lot coverage to 39%, as shown on the plan prepared by mba Architect, dated August 30, 2016, and property survey prepared by Richlan, Lupo, Associates, dated March 14, 2008;

Appearances: Anthony Davino

Letter of Denial: was read by Mr. Tom DaCosta Lobo

AND the Code Official having denied said permit by letters dated November 30, 2016, citing Chapter 700, Article III, Section 700-3 of the *Codes Nutley* entitled "Definition" of a noncommercial swimming pool is an outdoor or indoor swimming pool or pool or swimming tank, whether permanently installed, portable, collapsible or otherwise, situated above or below grade level, with a wide water depth in excess of 36 inches or a surface in excess of 120 square feet or a capacity in excess of 1,400 gallons, designed or maintained upon any premises by any person for use by himself, his family or guests, and shall include all buildings, structures, equipment and appurtenances thereto. The attached deck structure to the pool will have a zero-foot side yard setback on both sides. The required setback is eight (8') feet,

And also citing Chapter 700, Article VIII Section 700-46 A of the *Codes Nutley* entitled "Schedule of Regulations as to Bulk, Height and Other Requirements," which requires a property in an R-1 zoning districts lot coverage not to exceed 35%. The proposed is 39%,

And finally citing Chapter 700, Article XI, Section 700-67 A of the *Codes of Nutley* which states a detached accessory buildings and accessory uses may occupy in the aggregate an area not to exceed 30% of the area of any rear yard. The height of a detached accessory building shall be one story not to exceed 14 feet. The maximum rear yard coverage is 30%. The proposed is 32%;

Application Anthony Davino testified to the board that his property had a huge slope and he could not maintain the grass. He stated that the poor would be level with the lower level, and that he wished to attach the fencing to the deck. Chairman Graziano asked the applicant if the deck would be the same elevation as the neighbor's deck. Mr. Davino responded that it would be. Chairman Graziano asked the applicant if the deck would have wood railings. He responded that it would. Mr. Davino advised the board that he would be building a garden in the back of the yard. Mr. Tom DaCosta Lobo expressed his concern about the entire area being decked in with a solid fence. The applicant agreed to an open style fence. The Board also added a condition that the fence be no more than six (6') feet high from the ground and so if the fence were to be placed on the deck and the deck is one foot off the ground the fence should be no more than 5 feet.)

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this application was made by Mr. Tom DaCosta Lobo, seconded by Mr. Gary Marino. This variance was granted by a vote of 7-0.

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No. 6 10 Daily Street APPROVED 7-0

Applicant: Mr. Salvatore Corvino, 10 Daily Street, Block-Lot: 2902-21

Application: To increase the width of the addition from 22' wide to 26' wide having a 13'55" rear yard setback which was previously approved by the Zoning Board of Adjustment on March 21, 2016, as shown on the revised plans prepared by Architect/Planner, Sal Corvino, dated October 19, 2016;

Appearances: Mr. Salvatore Corvino

Letter of Denial: was read by Mr. Tom DaCosta Lobo

AND the Code Official having denied said permit by letters dated December 2, 2016, noting that a previous variance was granted March 21, 2016 for a rear yard variance. This application increased the width of the addition from 22' to 26'

And citing Chapter 700, Article VIII, Section 700-46 A of the *Codes of Nutley* entitled "Schedule of Regulations as to Bulk, Height and Other Requirements" which requires a rear yard setback in an R-1A zoning district to be 30'. *The proposed widen addition will have a 13'55" rear yard;*

Mr. Salvatore Corvino testified to the Board that he had been before the Board on this application before. He stated that the interior is simply a little wider than the previous application. He explained that it was really just a matter of design. Mr. Corvino expressed that his client's property is a hardship due to the depth of the property and that the change in design included an addition of 35 square feet, thus resulting in the need to represent the request for a variance.

With no further questions from the members and no one in the audience with questions or comments, a motion to approve this application was made by Ms. Suzanne Brown, seconded by Mr. Lou Fusaro. This variance was granted by a vote of 7-0.

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No. 7 75 Ridge Road APPROVED 7-0

Applicant: Ms. Gabriella Perrone, 75 Ridge Road, Block-Lot: 5503-28

Application: To construct a new roof canopy over the front steps with a 23' front yard setback to the main dwelling, as shown on the site plan submitted and survey prepared by George Anderson, dated October 4, 2016;

Appearances: Joseph Perrone

Letter of Denial: was read by Mr. Tom DaCosta Lobo

AND the Code Official having denied said permit by letter dated December 14, 2016, citing Chapter 700, Article VIII, Section 700-46 B (4) (d) of the *Codes of Nutley* which states by any terrace or porch having its floor level no higher than the floor level of the first story of the building and having no railing or other member higher than three feet above floor level: six feet. The required front yard setback in an R-1 district is 25'. *The proposed setback is 23'; the setback to the canopy roof is 19';*

Applicant Joseph Perrone testified to the board that he wished to build a porch, simply by covering the existing platform. He stated he wanted to improve the look of the home and create a covering over the top step so that persons entering the house could be protected from the elements.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this application was made by Ms. Suzanne Brown, seconded by Mr. Gary Marino. This variance was granted by a vote of 7-0.

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RESOLUTIONS MEMORIALIZED: 11 Cathedral Avenue, 384 Bloomfield Avenue

MINUTES: December 12, 2016 minutes approved.

INVOICES: Mr. Paul Ricci, for two Zoning Board Meetings, \$1,440.00

NEW BUSINESS: None

LITIGATED MATTERS: None

NOTE: THE PROCEEDINGS IN THIS MATTER WERE VOICE RECORDED. THE RECITAL OF FACTS IN THE MINUTES IS NOT INTENDED TO BE ALL-INCLUSIVE, BUT IS A SUMMARY AND HIGHLIGHT OF THE COMPLETE RECORD MADE BEFORE THE ZONING BOARD.

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Respectfully submitted,

Anjelica L. Mitchell

Minutes Approved

Anjelica Mitchell 2/13/17