

**NUTLEY ZONING BOARD OF ADJUSTMENT**

**Public Session Meeting Minutes**

**February 13, 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:** Daniel Tolve, Peter Sirica, Lou Fusaro, Gary Marino, Suzanne Brown, Chairman Graziano and Board attorney, Diana McGovern, Esq.

**ABSENT:**

**EXCUSED:** Lori Castro, Lou Fusaro, Mary Ryder, Tom DaCosta Lobo and Joseph Frusteri

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**No. 1 90 Msg. Blake Plaza WITHDRAWN WITHOUT PREJUDICE**

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

**Appearances:** Thomas DiBiasi, Esq.

**Letter of Denial:** was not read

Mr. Thomas DiBiasi, Esq. announced that the Board of Education withdrew this application without prejudice.

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**No. 2 434-438 Centre Street CARRIED TO NEXT MEETING**

**Applicant:** Mr. Thomas DiBiasi, Esq. , 434-438 Centre Street, Block-Lot:

**Application:** Your request on behalf of your client, to build a mixed use building at the above referenced premises, as shown on the preliminary plans prepared by Architect, Steven Corso, dated June 8, 2016, consisting of pages A-1, A-2 and A-3 and site plans dated August 8, 2016 prepared by Charles Osterkorn Jr., P.E., L.S., P.P., consisting of pages SP-1, SP-2, SP-3, SP-4, SP-5 and SP-6, having a first floor 870 SF office space with 40 parking spaces, a second floor having three (3) two bedroom and nine (9) one bedroom apartments, a third floor having two (2) two bedrooms and nine (9) one bedroom apartments. An average building height of three (3) stories, 35'4", is denied for the following reasons.

**Appearances:** Thomas DiBiasi, Esq., Frank Oliver, Caroline Kaplonski (105 William Street), Steven Corso (Architect), John Vicchiariello (109 William Street), Charles Osterkorn, P.E. (Engineering Expert), Joseph Staigar (Traffic Expert).

**Letter of Denial:** was read by Ms. Suzanne Brown

Chapter 700, Article V, Section 700-12 of the Codes of Nutley prohibits a mixed use building in an R-2 district.

Chapter 700, Article V, Section 700-7 C of the Codes of Nutley, requires a minimum rear yard setback of 30'. **Plans shows a rear yard setback of 20.7'.**

Chapter 700, Article VII, Section 700-40 of the Codes of Nutley requires side yards of at least four (4') feet and 10'. **The side yards are six (6') feet each side.**

Chapter 700, Article VII, Section 700-40 E of the Codes of Nutley requires a maximum height of two stories. **The height is three (3) stories.**

Chapter 700, Article VII, Section 700-40 F of the Codes of Nutley requires a maximum lot coverage of 45%. **The lot coverage is 58%.**

Chapter 700, Article XIII, Section 700-3 (a) of the Codes of Nutley states curb cuts in an R-2 zone shall not exceed 16' in length. **The curb cut is 30'.**

Mr. Thomas DiBiasi, Esq., made his opening remarks to the board, stating that he was representing the owner who is also the developer. He explained that this would be a bifurcated application. Mr. DiBiasi called his first witness, Frank Oliver, who was the applicant as well as the developer. He testified that he purchased the first property in 2001 and the second property in 2015. He stated that he wished to create a community room with exercise equipment. Mr. Oliver also explained that he felt this application would not impact the traffic or parking in the area. He stated that he had met with many of the neighbors and that they approved. Steven Corso then testified as an expert architect. He introduced Exhibit A1, which was a color rendering of the application. Mr. Corso stated there would be 23 apartments, as well as one office. There would be 5 two bedroom apartments and 18 one bedroom apartments. The application would include all brick with limestone, as well as double hung windows. Mr. Corso stated the dwelling would be 3 stories, with the stop story having stucco walls. He said there was an inch difference between the height of the application and the height of the neighbors, and that the application really appeared as more of a two story building. Exhibit A2, A3, and A4 were all pictures of the area. Mr. Corso explained there would be parking in the back of the property, underneath the building, and would come with high end interior products. He explained the trash would be collected by a private company. Ms. Suzanne Brown asked how high the wall would be. He stated it would be a six foot wall, with two feet between their rear neighbors. Neighbor Mr. Vicchiariello requested that the applicant install a seven foot fence because his property sat higher than theirs. Mr. DiBiasi introduced the next expert, Charles Osterkorn, expert engineer, who stated that he went to the sight with a field crew. He explained that he found the average height of the surrounding buildings was between 30 to 35 feet. Exhibit A5 was an aerial photograph of the area. Joseph Staigar then began his testimony as a traffic expert. Mr. Staigar stated that he made 5 site visits, as well as reviewed the plans. He found that the application complied with the parking requirements and he also found the internal circulation of parking to be satisfactory. He explained that each resident would have control of a gate to the property. Mr. Staigar explained that the private garbage pickup was simply to accommodate the size of the garage. He stated he felt in his professional opinion

that this application followed sound traffic engineering principles and would not negatively impact the township.

With no further questions from the members and no one in the audience with questions or comments, a motion to carry this application to the next meeting was made.

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**No. 3 71 Harrison Street CARRIED TO NEXT MEETING**

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

**Appearances:** Thomas DiBiasi, Esq.

**Letter of Denial:** was not read

Thomas DiBiasi, Esq., requested that the application be continued 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 4 Corsay Road APPROVED 5-0**

**Applicant:** Mr. Christian Crespo, 4 Corsay Road, Block-Lot: 8204-25

**Application:** To install a six (6') foot (4' solid, 2' lattice) type fence located in the South side, side yard and the rear yard portion of the street side along Mt Vernon, and a four (4') picket fence in the side yard along Mt. Vernon Street, as shown on the survey prepared by James Pica dated July 5, 2016;

**Appearances:** Christian Crespo

**Letter of Denial:** was read by Ms. Suzanne Brown

AND the Code Official having denied said permit by letter dated January 25, 2017, citing Chapter 700, Article XI, Section 700-71 B of the *Codes of Nutley* which states a fence erected along the side lines from the front line of a main structure to the rear line of such structure and within such lines shall not exceed four feet in height and shall be not less than two feet in height and shall be of 50% open construction (i.e., the open spaces in the fence shall be at least the same width of each picket, slat or other construction element of such fence). The setback for any such fence shall be in line with the furthest setback of the adjacent property or the property upon which the fence is being erected, whichever setback is greater. The proposed six (6') foot (4' solid - 2' lattice) type fence will be installed in the South side, side yard and the portion of the rear line in the side yard along Mt. Vernon, and also citing,

Chapter 700, Article XI, Section 700-71 D of the *Codes of Nutley* which states a fence erected on any corner lot shall conform to the fence requirements for the adjoining properties. The four (4') foot picket fence along the Mt. Vernon property line is considered a front yard of adjacent properties;

Applicant Christian Crespo testified to the board that he had two small children and he was scared of his neighbor's dog. He stated he wanted to keep his children safe, but faced the hardship of a corner property. The applicant stated that he was willing to make the fence shorter in length. Mr. Crespo introduced Exhibit A1 and A2, which was pictures of his yard and the neighbor's property. Exhibit A3 was the board's corrections on the survey. The board and applicant decided on a white vinyl fence.

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 Ms. Suzanne Brown, seconded by Mr. Gary Marino. The variance was granted by a vote of 5-0.

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**No. 5 207 Hillside Avenue APPROVED 5-0**

**Applicant:** Mr. Nicholas Longo, 207 Hillside Avenue, Block-Lot: 3002-16

**Application:** To leave as erected a six (6') foot solid type fence located in the Southside side yard, as shown on the survey prepared by Richard J. Hingos, Inc., dated April 12, 2012;

**Appearances:** Nicholas Longo

**Letter of Denial:** was read by Ms. Suzanne Brown

AND the Code Official having denied said permit by letter dated December 2, 2016, citing Chapter 700, Article XI, Section 700-71 B of the *Codes Nutley* which states a fence erected along the side lines from the front line of a main structure to the rear line of such structure and within such lines shall not exceed four feet in height and shall be not less than two feet in height and shall be of 50% open construction (i.e., the open spaces in the fence shall be at least the same width of each picket, slat or other construction element of such fence). The setback for any such fence shall be in line with the furthest setback of the adjacent property or the property upon which the fence is being erected, whichever setback is greater;

Applicant Nicholas Longo testified that he wished to continue his fence because his neighbor's fence is in disrepair. Exhibits A1-A4 are pictures of the neighbor's fence and property. Ms. Diana McGovern, Esq., explained to the applicant that there was nothing in the denial letter regarding adding onto the fence and that the applicant cannot make that request today because the neighbors were not noticed. Mr. Longo testified that that he wished to leave the fence as erected and deal with the extension process at another time. Mr. Gary Marino asked how long the fence had been up. Mr. Longo responded that it had been up since the summer. He stated that it was a six foot vinyl fence. The Board took notice of the highly elevated topography of the property such that the fence could not be seen from the street.

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. Gary Marino, seconded by Ms. Suzanne Brown. This variance was granted by a vote of 5-0.

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**No. 6 71 Quarry Street APPROVED 5-0**

**Applicant:** Mr. Ibrahim Abutaah, 71 Quarry Street, Block-Lot: 6701-10

**Application:** To construct an additional 10' wide driveway and curb cut to the left side which is in front of the main dwelling, and will reduce the required front yard coverage to 33%, and to construct a canopy over the front steps approximately eight (8') feet wide and 15' deep to the edge of the bottom step, having a 20.7' front yard setback to the main dwelling, as shown on the plans prepared by Architect, Jacob Solomon, dated October 3, 2016, and pictures showing canopy;

**Appearances:** Mr. Ibrahim Abutaah

**Letter of Denial:** was read by Ms. Suzanne Brown

AND the Code Official having denied said permit by letter dated December 14, 2016, citing Chapter 700, Article XIII, Section 700-94 A (1) of the *Codes of Nutley* which states a driveway shall consist of the area directly opposite to an attached garage, detached garage or depressed garage or the extension of the side yard into the front yard. The driveway width shall not exceed 16'. However, if there is no garage and no available side yard, a driveway not to exceed 16' in width from the side lot line may be constructed. *The additional 10' driveway is located in front of the main dwelling,*

and also citing Chapter 700, Article XIII, Section 700-94 A (3) of the *Codes of Nutley* which states each property shall not have more than one driveway and one curb cut, and also citing, Chapter 700, Article VIII, Section 700-48 of the *Codes of Nutley* which states any lot containing a residence for one or two families shall have at least 60% of the required front yard in landscaping. This area shall not be covered with paving, walkways or any other impervious surface. Landscaping may consist of grass, ground cover, shrubs and other plant material. *The required landscaping is 60%; the proposed is 33%.*

and finally 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-2 district is 25'. *The proposed setback is 20.7'; the setback to the canopy roof is 10';*

Applicant Ibrahim Abutaah testified to the board that he wished to create a second driveway for his tenant. He explained that this way a two family dwelling and he lived on the second floor. He stated that there currently was no driveway, but he wished to create two driveways. Chairman Graziano asked the applicant if he had garage. He responded that he did not but he would build one. Ms. Suzanne Brown suggested that the applicant built one large driveway where cars would be parked side by side. The applicant explained that he wanted the overhang to entirely cover the steps, however the board members agreed they did not like the size or look of the proposed overhang. Mr. Abutaah agreed to minimize the size of the overhang, to make it only cover the top step.

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 Mr. Gary Marino, seconded by Ms. Suzanne Brown. This variance was granted by a vote of 5-0.

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**No. 7 40 Enclosure APPROVED 5-0**

**Applicant:** Mr. and Mrs. Joseph Battaglia, 40 Enclosure, Block-Lot: 4301-33

**Application:** To construct a two (2) story addition located in the front yard having a 6.38' side yard setback and a 57'8" front yard setback, as shown on the plan prepared by Architect Dassa-Haines dated August 12, 2016;

**Appearances:** Mr. Joseph Battaglia

**Letter of Denial:** was read by Ms. Suzanne Brown

AND the Code Official having denied said permit by letter dated January 4, 2017, 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 in an R-1A district a side yard be eight (8') feet and 10'. *The proposed will be 6'4" and 11'*, and also citing Chapter 700, Article VIII, Section 700-46 B (6) (c) of the *Codes of Nutley* which requires the front yard not to exceed 50'. *The proposed front setback is 57'8"*;

Applicant Joseph Battaglia testified to the board that his home was very old. He stated that the house had been added onto around 4 times, with the last addition being added on in the late 1980s. Mr. Battaglia stated he needed a front yard and side yard variance and that he wished to line the addition up with the existing house, simply continuing the house. Ms. Suzanne Brown pointed out that the applicant would actually be more in compliance by creating the addition.

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. Gary Marino. This variance was granted by a vote of 5-0.

**RESOLUTIONS MEMORIALIZED:** 2 Centre Street & Bloomfield Avenue, 510 Franklin Avenue, 110 Crestwood Avenue, 10 Daily Street, 75 Ridge Road

**MINUTES:** January 23, 2017 minutes approved.

**INVOICES:** Mr. Paul Ricci, for two Zoning Board Meetings, \$1,440.00 (was approved but not signed at previous meeting).

**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 3/20/17