

NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

April 17, 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, Gary Marino, Tom DaCosta Lobo, Suzanne Brown, Chairman Graziano and Board attorney, Diana McGovern, Esq.

ABSENT: None

EXCUSED: Mary Ryder

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No. 1 71 Harrison Street CARRIED TO NEXT MEETING

Applicant: Mr. Savalia, 71 Harrison Street, Block-Lot: 9200-10

Application: to construct a new two (2) family dwelling on an existing vacant property with a lot size of 50' X 102', at the above referenced premises, as shown on the plans prepared by Mileto-Godsall Associates LLC, with revised plans dated April 24, 2017, and property survey prepared by George Anderson, dated August 8, 2016,

Appearances: Thomas DiBiasi, Esq., Mr. Gunnala, Frank D Mileto, Paul Bauman, Mr. Savalia, and members of the public: Salvatore Ferraro, Jose Kehagias

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

Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley, entitled "Schedule of Regulations as to Bulk, Height and Other Requirements," has requirements in an R-2 district (see attachment).

Chapter 700, Article VIII, Section 700-46 B (4) (d) of the Codes of Nutley 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 ground floor is considered a story; therefore, the proposed deck is a 2nd floor deck.*

Mr. Thomas DiBiasi, Esq., made his opening remarks to the board, stating he was bifurcating this applicant in order to minimize the amount of variances the application would need. He stated this property would be no larger than a one family home would be. The first witness was Mr. Gunnala, applicant. He testified that he wanted a bigger home with a backyard, and he would be purchasing this property with his uncle, whom he would share the two family home with. Frank D Mileto testified to the board as the expert architect of this application. He explained that he had completed a site inspection and he felt the application would fit in with the surrounding neighborhood. He introduced Exhibit A1, which was a color rendering of the application. Mr. Mileto stated that this would be a duplex family dwelling, side by side. He expressed this would promoted privacy. Mr. Mileto stated that there would be 3 bedrooms in both apartments, with the bedrooms being on the third floor. He explained that the height of a one family home would be equal to the height of this project, with the volume of the homes being the same as well. He stated that the neighbors would also have the same view if this property was a one family or a two family. Mr. Mileto explained that the outside would be brick and cement, with a shingled roof. He stated that they would be removing the deck. Exhibit A2 was pictures of the surrounding homes. Mr. Mileto ended his testimony by stating he felt the board could approve this application without it negatively impacting the Zoning Plan or neighborhood. Mr. Paul Bauman testified as the planner of this application. He began by explaining circumstances that were not able to be changed on this application, including the lot area, lot width, minimum lot area per dwelling, and front yard landscaping. He explained he felt the board could grant these variances because they were all bulk variances and not use variances. Exhibit A3 was a colored taxed map of the area. Chairman Graziano asked Mr. Bauman if two curb cuts would crowd the property. Mr. Bauman stated you would need to exercise the same amount of caution when pulling in and out of the driveway, regardless of the amount of curb cuts. Mr. Tom DaCosta Lobo questioned whether or not the planner had looked into the rules and regulations regarding the cross walk, which ends on the sidewalk of the application. Mr. Bauman said he had not, but he would look into it. Neighbor Salvatore Ferraro asked Mr. Bauman if he had researched whether or not these variances had been in place when the older homes were built, to which he responded that he had not. The next witness Mr. DiBiasi introduced was the other possible owner of the property, Mr. Savalia. He stated that he worked in the city with his nephew and wanted to live closer to the city. Mr. DiBiasi told the board he would be submitting revised plans and would look into their concerns. Neighbor Salvatore Ferraro expressed that the homes in the area had been there over 100 years, and he felt the board should abide by the Zoning Laws. Neighbor Jose Kehagias testified that he did not want to see so many people living in dwellings.

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 granted.

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No. 2 209 Centre Street APPROVED 7-0

Applicant: Mr. Robert Cadena and Ms. Karina Diaz, 209 Centre Street, Block-Lot: 7200-31

Application: To leave as erected a five (5') foot solid type fence in the side yard, and to install a 10' X 16' above ground pool, having a four (4') foot side and rear yard setback, as shown on the property survey prepared by GB Engineering LLC dated April 20, 2006;

Appearances: Robert Cadena

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

AND the Code Official having denied said permit by letters dated February 28, 2017, citing Chapter 700, Article V, Section 700-9 D (2) of the *Codes of Nutley* which requires a pool to have an eight (8') foot side and rear yard setback. *The proposed pool will have a four (4') foot side and rear yard setback*, and also 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. *The five (5') foot solid type fence is in the side yard;*

Applicant Robert Cadena testified that he wanted to install a fence to keep his children safe. He stated he wanted a pool for his children and he was trying to align it with his home. Mr. Daniel Tolve asked the applicant where the pool filter would be going. He stated that he would follow the board's guidelines and put the filters toward his driveway. Ms. Suzanne Brown stated she felt 4 feet was too close to the fence, and that it would be hard for the board to grant a variance when the applicant had other solutions present. The board agreed on a 6 foot by 6 foot setback.

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 7-0.

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No. 3 189 Centre Street APPROVED 6-1

Applicant: Mr. and Mrs. Michael Duva, 189 Centre Street, Block-Lot: 7200-36

Application: To install a 12' X 17' ground pool attached to the existing deck, having a 17' rear yard setback, and a five (5') foot side yard setback, as shown on the survey prepared by Mark Lee Baker Professional Engineering and Land Surveying, dated November 9, 1999;

Appearances: Michael Duva

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

AND the Code Official having denied said permit by letters dated March 2, 2017, citing Chapter 700, Article V, Section 700-9 D (2) of the *Codes of Nutley* which requires a pool to have an eight (8') foot side and rear yard setback. *The proposed pool will have a five (5') foot side yard setback*, and also citing

Chapter 700, Article XI, Section 700-67 D of the *Codes of Nutley* which states an attached accessory structure or accessory use shall be considered to be a part of the main building. *The existing deck and the proposed pool is attached to the main dwelling*, and also 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 to be 30’ in an R-2 zoning district. *The attached pool will have a 17’ rear yard setback;*

Applicant Michael Duva testified to the board that he wished to install a 17 foot by 12 foot pool. The board noted there was a change in the letter of denial. He explained that his wife had been in a bad accident and could not use stairs to access the pool. He wished to have the deck against the pool. Chairman Graziano asked the applicant how large his shed was. Mr. Duva stated it was an 8 foot by 10 foot shed. Ms. Suzanne Brown asked the applicant how far the shed would be from the pool. The applicant responded that it would be 2 to 4 feet from the pool. Ms. Suzanne Brown pointed out that this was a potentially dangerous situation. Chairman Graziano suggested the applicant install a pool with a built in fence around it. The applicant agreed and stated he would install a locking door with a staircase on the pool. Chairman Graziano stated he felt the fence should be three foot tall, to which the applicant agreed.

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. This application was granted by a vote of 6-1, with Mr. Louis Fusaro voting against the granting of the variance.

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No. 4 600 Passaic Avenue APPROVED 7-0

Applicant: Mr. Jack Bermeo, 600 Passaic Avenue, Block-Lot: 1803-3

Appearances: Jack Bermeo

Application: To renovate the existing unfinished attic, which is considered a 3rd story, into living space as shown on the plans prepared by ANDesigns, LLC, dated January 10, 2017;

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

AND the Code Official having denied said permit by letter dated March 2, 2017, citing Chapter 700, Article III, Section 700-3 B of the *Codes of Nutley* entitled “*Definitions – Attic Habitable*” which states a habitable attic shall be an attic that has a code conforming stairway as a means of access and egress and in which the ceiling area at a height of seven feet above the attic floor is not more than one-third the area of the next floor below. A habitable attic shall not include a bedroom or bathroom unless authorized by applicable codes. A habitable attic shall not include a kitchen. *The proposed square footage of the finished attic exceeds the allowable square foot as per the formula in the definition. The square footage of the existing 2nd floor is 988 sq. The proposed finished attic with a seven (7) foot ceiling is 725 sq.,* and also citing

Chapter 700, Article XVI, Section 700-113 B (2) of the *Codes of Nutley* which states the enlargement will not increase the nonconformity of the nonconforming features. *The existing 3rd story is non-conforming and is an unfinished space;*

Applicant Jack Bermeo testified to the board that the home had been vacant for a long time before he had purchased it. He explained that he wanted to improve the home by adding a master bedroom in the attic. Mr. Bermeo told the board that the home was built in 1910 and

therefore the ceilings would 11 feet high. Ms. Suzanne Brown expressed to the board she didn't feel they could deny someone from using their own space in their home. Mr. Tom DaCosta Lobo asked if the Zoning Board had jurisdiction on this issue. Diana McGovern, board attorney, assured the board they had discretion, and stated she would make it a condition.

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 7-0.

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PLEASE NOTE: Mr. Tom DaCosta Lobo stepped out after the application of 600 Passaic Avenue, and Alternate Daniel Tolve took his place.

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No. 5 88 Highfield Lane APPROVED 7-0

Applicant: Ms. Barbara Pieroni-Pizza, 99 Highfield Lane, Block-Lot: 3602-28

Application: To install a 12' X 24' above ground pool, having an eight (8') foot setback to the main dwelling and a six (6') foot rear yard setback, as shown on the property survey prepared by Steven L. Koestner, PE dated August 21, 2013;

Appearances: Barbara Pieroni-Pizzi, Mary Jo Pignataro

Letter of Denial: was read by Mr. Gary Marino

AND the Code Official having denied said permit by letter dated March 15, 2017, citing Chapter 700, Article V, Section 700-9 D (2) of the *Codes of Nutley* which requires a pool to have an eight (8') foot rear yard setback. *The proposed pool will have a six (6') foot rear yard setback*, and also citing

Chapter 700, Article XI, Section 700-67 C of the *Codes Nutley* which states no detached accessory building shall be located nearer than 10 feet to a main building. *The proposed pool will be eight (8') feet from the main building*;

Applicant Barbara Pieroni-Pizzi testified to the board that she owned the property with Mary Jo Pignataro. The applicant stated that they wished to install a pool, however, their property was narrow. Chairman Graziano asked how you would access the pool. Ms. Pignataro stated that you would go down the deck stairs and up a latter into the pool. She explained that she would be installing a new fence, which she already had a permit for.

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 7-0.

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No. 6 204 Harrison Street APPROVED 7-0

Applicant: Mr. Peter Centanni, 204 Harrison Street, Block-Lot: 7606-20

Application: To construct and renovate the existing one (1) family dwelling and to convert the premises to a two (2) family dwelling in an R-1 district as shown on the plans prepared by Architect, Thomas J. Mesuk, dated January 27, 2017 and property survey, prepared by Rigg Associates, PA, dated September 12, 2016;

Appearances: Peter Centanni and member of the public Deanna Centanni

Letter of Denial: was read by Mr. Gary Marino

AND the Code Official having denied said permit by letters dated February 28, 2017, citing Chapter 700, Article V, Section 700-9 of the *Codes of Nutley* which lists the permitted uses in an R-1 district. A two (2) family dwelling is not a listed permitted use, and also citing

Chapter 700, Article VIII, Section 700-46 of the *Codes of Nutley*, entitled "*Schedule of Regulations as to Bulk, Height and other Requirements*", which requires variances for minimum front yard (25' is required and 18.5' is proposed), maximum lost coverage (35% is the limit, 37% is proposed);

Applicant Peter Centanni testified to the board that he wished to turn his one family home into a two family home. Ms. Suzanne Brown asked the applicant if he would be knocking down the house. Mr. Centanni stated that he would not be knocking it down but building around it. He stated that there would be two bedrooms in each apartment, as well as a two car garage and a two car long driveway. Mr. Tolve asked the applicant if the driveway was existing. The applicant responded that it was. Ms. Deanna Centanni testified to the board that the existing home was in disarray.

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 7-0.

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No. 7 122 Alexander Avenue APPROVED 7-0

Applicant: Mr. and Mrs. Michael Bischak, 122 Alexander Avenue, Block-Lot: 2703-8

Application: to reconstruct the existing 20' X 22' one (1) story garage, which is located in the side yard, having a three (3') rear yard setback, and to construct a 12' X 20' addition to the garage, having a four (4') foot rear yard setback, as shown on the plan prepared by Mileto-Godsall Associates LLC dated March 1, 2017,

Appearances: Micheal Bischak

Letter of Denial: was read by Mr. Gary Marino

Chapter 700, Article XI, Section 700-67 A of the Codes of Nutley 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 proposed addition to the garage and workshop addition is located in the side yard of the corner property.*

Chapter 700, Article XI, Section 700-67 B (1) of the Codes of Nutley states no detached accessory building or accessory use shall be located nearer than three feet or 1/2 the height of such building up to a distance of six feet, whichever is greater, to a side or rear lot line. *The existing garage proposed rear yard setback is three (3') feet. The required is six (6') feet. The addition to the garage proposed rear yard setback is four (4') feet. The required is six (6') feet.*

Applicant Michael Bischak testified that he wanted a bigger garage to fit his truck as well as a storage area and workshop space. He explained to the board that there was no way to put the garage in the rear, because it is only four feet deep. Mr. Bischak stated that he had a corner property, which was a hardship.

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. Lou Fusaro. The variance was granted by a vote of 7-0.

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RESOLUTIONS MEMORIALIZED: 14 Essex Street, 37 Chase Street, 53 Emily Street, 434-438 Centre Street.

MINUTES: March 20, 2017 minutes approved.

INVOICES: None

NEW BUSINESS: Board Attorney, Diana McGovern, Esq., notarized corrected oaths for the the Alternate Board Members, Mr. Scirica and Chairman Graziano.

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 5/15/17