

NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

May 15, 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, Gary Marino, Tom DaCosta Lobo, Suzanne Brown, Chairman Graziano and Board attorney, Diana McGovern, Esq.

ABSENT: None

EXCUSED: Peter Sirica, Mary Ryder, Lou Fusaro

* * * * *

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.

Letter of Denial: was previously read

A motion to carry this application to the next meeting was granted.

* * * * *

PLEASE BE ADVISED MR. GARY MARINO RECUSED HIMSELF FROM THIS APPLICATION. THIRD ALTERNATE, MR. JOSEPH FRUSTERI, TOOK HIS PLACE.

* * * * *

No. 2 169 Chestnut Street APPROVED 6-0

Applicant: Nutley Family Service Bureau, 169 Chestnut Street, Block-Lot: 6402-6

Application: To construct a one (1) story addition to the existing non-conforming building located in an R-1 zoning district, having a 2’8” side yard setback, and a 27’5” rear yard setback, as shown on the plans prepared by Architect, Dassa-Haines LLC, dated February 22, 2017;

Appearances: Thomas DiBiasi, Esq., Eileen Painter, Stanley Novak, Joseph Haines, Paul Bauman, Martha Ray, Jim Kuchea.

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

AND the Code Official having denied said permit by letter dated March 20, 2017, citing Chapter 700, Article XVI, Section 700-113 A of the *Codes of Nutley* which states no nonconforming use nor structure nor any lawful use on a nonconforming lot shall be enlarged, extended, reconstructed or structurally altered, except that such structure or use may be structurally altered to correct an unsafe condition. A nonconforming structure or a lawful structure on a nonconforming lot may be restored or repaired in the event of partial destruction thereof; and also citing,

Chapter 700, Article VIII, Section 700-46 A of the *Codes of Nutley* entitled “the Schedule of Regulations as to Bulk, Height and Other Requirements” which requires the following in an R-1 zoning District:

	<u>Required</u>	<u>Proposed</u>
Side Yard	6’	2’8
Rear yard	30’	27’5”
Lot Coverage	35%	40.4%
Impervious Coverage	70%	84.8%

And also citing, Chapter 700, Article XIII, Section 700-91 A of the Codes of Nutley entitled “Schedule of minimum required parking spaces”; the existing building basement at the 1st floor parking is legal non-conforming, the new 363 SF addition requires 2 parking spaces; and also citing,

Chapter 700, Article XII, Section 700-82 of the *Codes of Nutley* which lists the permitted signage in an R-1 zoning district. **Sign #3 indicated on the plan is not permitted in an R-1 zoning district;** and also citing,

Chapter 700, Article XII, Section 700-78 E of the *Codes of Nutley* which states incidental sign shall not exceed two square feet in area. No property or structure shall contain more than five incidental signs. **The proposed incidental sign #2 indicated on the plan is 5.3 SF.**; and finally citing,

Chapter 700, Article XII, Section 700-79 R of the *Codes of Nutley* which prohibits pylon signs. **Proposed sign #3 is a directional pylon sign;**

Mr. Thomas DiBiasi, Esq., made his opening remarks to the board, on behalf of the applicant The Nutley Family Service Bureau. He stated that the letter of denial was confusing because Chestnut Street was no longer residential. Mr. DiBiasi stated he felt this applicant would benefit the community. First witness, Eileen Painter, Executive Director of the Nutley Family Service Bureau, was introduced. She expressed that the agency needed the renovations for efficiency. She wished to make the thrift shop bigger, as well as create universal accessibility between the different floors. Ms. Painter stated that there would be 3 people in the office at once, along with 3 to 10 volunteers. Board Attorney, Diana McGovern, Esq., stated that the agency was a nonprofit. Mr. Stanley Novak testified to the board that he lived behind the applicant and he supported the project. Mr. Joseph Haines testified as an architectural expert on the application. He introduced Exhibit A1, which was the site plans. Mr. Haines proposed a one story addition on the east side of the building, as well as creating separate entrances for the agency and the thrift shop. He explained that the food pantry would be in the basement, and the thrift shop on the first floor. Mr. Haines stated that there would be a 363 foot addition, along with a new double door in the front, and modified stair cases for appropriate accessibility. Chairman Graziano asked Mr. Haines about signage. He responded that there would be 3 types of signs which each met the zoning requirements. Ms. Suzanne Brown stated that she wished them to move handicap entrance to the front, as well as reduce the signage. Ms. Painter expressed that they need the signs for traffic flow, safety, security, and confidentiality. Ms. Brown also asked about the parking. Mr. Haines responded that they would need 2 additional spots, but that they would not be increasing the occupancy. Board Attorney, Diana McGovern, Esq., pointed out that people wishing to go to the Nutley Family Service Bureau could park on Park Avenue, and therefore not have to cross Chestnut Street. The board members had doubts regarding the number of metered parking spaces in the lot. Mr. Paul Bauman testified as the expert planner on this application. He also pointed out the discrepancies in the zoning of the area in mention. He stated that this application has inherently beneficial uses, and also that they would be in more conformity with the proposed addition. Mr. Bauman stated that there would be a 4 percent increase in lot coverage, and that if this application was in a business zone they would not require variances. Mr. Bauman expressed his expert opinion that the safety outweighed the detriments. Martha Way, President of the Nutley Family Service Bureau, stated that she had not received any complaints regarding parking issues in the past. Additional staff member, Jim Kuchea, stated similar thoughts as Ms. Way. Mr. Haines pointed out that there would be external ground lighting on the signs.

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. Daniel Tolve. The variance was granted by a vote of 6-0.

* * * * *

No. 3 108 King Street CARRIED TO THE NEXT MEETING

Applicant: Mr. Muhammaed Muhaysin, 108 King Street, Block-Lot: 9404-20

Application: to **LEAVE AS ERECTED** a 19' wide driveway and curb cut which a portion of the driveway will be in front the main dwelling, and will reduce the required 60% front lot coverage to approximately 44%, as shown on the survey prepared by Control Layouts, Inc., dated September 12, 2013,

Appearances: Thomas DiBiasi, Esq.

Letter of Denial: was not read.

A motion to carry this application to the next meeting was granted.

* * * * *

No. 4 295 Walnut Street APPROVED 7-0

Applicant: Mr. Louis Petranico and Ms. Joan Kocut, 295 Walnut Street, Block-Lot: 3501-11

Appearances: Joan Kocut, Louis Petronico

Application: To erect a four (4') foot open type fence located in the front yard of a corner property which is also in a front yard of the adjoining property along Walnut Street, as shown on the survey submitted to Code Enforcement, dated March 21, 2017;

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

AND the Code Official having denied said permit by letters dated March 27, 2017, citing Chapter 700, Article XI, Section 700-71 A of the *Codes Nutley* which prohibits any type fence in any front yard, 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 proposed fence is in the front yard of the corner property and is in the front yard of the adjoining property along Walnut Street;*

Applicant Joan Kocut testified to the board that their hardship is their corner property. She explained that their current fence was falling apart and that the applicants wished to replace it. The applicant stated that the fence was installed 30 years ago and they did not receive a permit. Chairman Graziano asked if the fence would go exactly where the old one was. The applicants responded that it would be.

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.

* * * * *

No. 5 111 McKinley Street APPROVED 7-0

Applicant: Mr. David Niland, 111 McKinley Street, Block-Lot: 1700-2

Application: To widen the existing driveway to 18' and approximately five (5') feet to the right in front of the main dwelling, as shown on the survey prepared by Bulls Eye Surveying, LLC, dated April 22, 2015;

Appearances: David Niland

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

AND the Code Official having denied said permit by letter dated March 3, 2017, citing Chapter 700, Article XIII, Section 700-94 A (1) of the *Codes of Nutley* which states no front yard of a lot upon which is located in a one- or two-family dwelling shall be used for the parking of motor vehicles, except that motor vehicles may be parked upon a driveway in the front yard. The 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 feet. However, if there is no garage and no available side yard, a driveway not to exceed 16 feet in width from the side lot line may be constructed. *The proposed driveway increase to 18' will be approximately five (5') feet in front of the dwelling;*

Applicant David Niland testified to the board that he wished to expand his driveway. Chairman Graziano asked the applicant if he would remove the existing walkway. The applicant responded that he would and it will be switched to brick pavers. He explained that this would make his front door more accessible, because the car doors had been hitting the wall when opened. He expressed that this was the only logical proposal for the property.

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.

* * * * *

No. 6 42 Kierstead Avenue APPROVED 7-0

Applicant: Mr. Emmanuel Espinar, 42 Kierstead Avenue, Block-Lot: 8303-1

Application: To install a six (6') foot solid type fence located in the side and rear yards along the street side which is in the front yard of the adjoining property along Frank Street, as shown on the survey prepared by Morgan Engineering & Surveying dated July 12, 2016;

Appearances: Emmanuel Espinar and Maria Espinar

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

AND the Code Official having denied said permit by letter dated April 20, 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, and also citing,

Chapter 700, Article XI, Section 700-71 A of the *Codes of Nutley* which prohibits any front yard fences, 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 proposed six (6') foot solid fence located in the side and rear yards is located in the front yard of the adjoining property;

Applicant Emmanuel Espinar testified to the board that he wished to replace the current fence with a 6 foot solid fence for privacy and security. He explained that his property was close to Demuro Park and there was consistent daily activity in the area. Applicant Maria Espinar testified that she moved to Nutley with her family because it is safe and adding the fence would make her feel more secure. Ms. Suzanne Brown asked the applicant if they would consider making the fence shorter. The board members marked Exhibit A1, which was plans of the property, with orange representing the agreed upon 6 foot area of the fence, and green representing the agreed upon 4 foot solid 1 foot lattice area of the fence. Mr. Tom DaCosta Lobo expressed he felt the fence would be out of character in the surrounding neighborhoods, and suggested shrubs on the 6 foot side of the fence. The applicant agreed to installing shrubs and having the 6 foot area of the fence scalloped.

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. Tom DaCosta Lobo. The variance was granted by a vote of 7-0.

* * * * *

No. 7 33 Kierstead Avenue APPROVED 7-0

Applicant: Mr. and Mrs. Brian Walsh, 33 Kierstead Avenue, Block-Lot: 8302-4

Application: To leave as erected a 12' X 16' deck having a 22' rear yard setback, and to install a 12' X 19' above ground pool having a two (2') foot setback to the deck, which is the main dwelling, as shown on the deck plan submitted by the homeowner, and survey prepared by Manno Surveying, Inc., dated June 29, 2016;

Appearances: Brian Walsh

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

AND the Code Official having denied said permit by letters dated April 18, 2017, citing Chapter 700, Article VIII, Section 700-46 B (4) (d) of the *Codes of Nutley* which states extensions of a structure into a required front or rear yard shall be permitted as follows; 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 rear yard in an R-1 zoning district is 30'. The allowable encroachment is six (6') feet. A 24' rear yard shall be required from the face of the deck, 22' is proposed,* and also citing

Chapter 700, Article XI, Section 700-67 B of the *Codes of Nutley* which states no detached accessory building shall be located nearer than 10 feet to a main building. *The proposed pool will have a two (2') foot setback to the attached deck;*

Applicant Brian Walsh testified to the board that he had a nonconforming property and would like to install a pool surrounded by a deck. He explained that he previously put up a fence, mistakenly, without the permit going through. Mr. Walsh stated that there would be 2 feet between the pool and the deck, with the deck not allowing access to the pool. He expressed he would have a safety ladder to access the pool. Chairman Graziano asked the applicant if the pool would be oval shape, to which the applicant responded that it would be. The applicant agreed to connect the deck to the pool, with a locking gate, due to safety concerns of the board. The applicant also agreed the pool would be moved to be directly adjacent to the deck.

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 Ms. Suzanne Brown. The variance was granted by a vote of 7-0.

* * * * *

RESOLUTIONS MEMORIALIZED: 204 Harrison Street, 122 Alexander Avenue, 600 Passaic Avenue, 209 Centre Street, 189 Centre Street, 88 Highfield Lane

MINUTES: April 17, 2017 minutes approved.

INVOICES: None

NEW BUSINESS: Passaic and Kingsland Applicant received \$ 525.00 refund on escrow.

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.

* * * * *

Respectfully submitted,

Anjelica L. Mitchell

Minutes Approved _____
Angela Mitchell
6/19/17