

NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

July 17, 2017

approved
9/18/2017
DFM

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, Lori Castro, Peter Sirica, Lou Fusaro, Gary Marino, Suzanne Brown, Chairman Graziano and Board attorney, Diana McGovern, Esq.

ABSENT: None

EXCUSED: Daniel Tolve, Tom DaCosta Lobo

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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: Richard Valerio, Esq., Frank D Mileto, Paul Bauman, Salvatore Ferraro

Letter of Denial: was previously read

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.***

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PLEASE NOTE MR. LOU FUSARO AND MR. PETER SIRICA LISTENED TO THE TAPE ON THIS APPLICATION.

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Richard Valerio, Esq., testified that he would be taking over for Mr. DiBiasi on this application. First witness, Mr. Paul Bauman, testified that there had been many modifications made to make the application resemble a 1 family home. These changes included: consolidated curb cuts and driveways, one single entry door, elimination of all brick material, elimination of two separate decks, and added landscaping. Mr. Bauman stated he felt this would not be an over build for the size of the lot. He stated that after all the changes made, the applicant was left with 3 required variances; minimum lot area, lot width, and lot area per dwelling. Mr. Bauman explained that the lot was irregularly shaped and the front yard landscaping was a variance that could not be avoided due to the driveway and curvature of Harrison Street. He stated he felt the benefits of this application outweigh the detriments and the safety factors would allow the board members to approve this application. Member of the public Salvatore Ferraro asked Mr. Bauman when the other nonconforming lots in the neighborhood were built. Mr. Bauman responded that they were built between 1925 and 1930, but that the surrounding properties still showed the characteristics of the neighborhood regardless of when they were built. Mr. Ferraro responded by stating the variances were made to move the town forward and not backward, and expressed that he wished the board would follow the zoning requirements. Ms. Suzanne Brown expressed her confusion on how many stories the application was. Architect Frank Mileto testified that from every direction, except the front, the application was a two story dwelling. Mr. Mileto stated he felt there would be no negative impact from this application and he felt it was the right use for the property. Chairman Graziano asked Mr. Mileto if there was ever a home on the lot. He responded that he was unable to determine that but there was no available records stating that there had been. Mr. Salvatore Ferraro expressed to the board he felt the dwelling was 3 stories from all sides. There was confusion between the board members and what qualified as a story and whether the application was 3 stories or 2.5 stories. Ms. Diana McGovern, Esq., asked the board members if they wanted to discuss the issue with Code Enforcement. The board members agreed they would like to hear from Code Enforcement on the issue.

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

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No. 2 108 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.

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No. 3 2 Devausney Place CARRIED TO THE NEXT MEETING

Applicant: Ms. Puricello, 2 DeVausney Place, Block-Lot: 7700-11

Application: to convert the existing one (1) family dwelling into a new two (2) family dwelling, at the above referenced premises, as shown on the plans prepared by Mileto-Godsall Associates LLC, dated March 22, 2017, and survey prepared by George Anderson, LLC, dated September 30, 2016,

Appearances: Thomas DiBiasi, Esq.

Letter of Denial: was not read.

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

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No. 4 72 & 74 Dodd Street APPROVED 7-0

Applicant: Mr. Pasquale Custode, 72 & 74 Dodd Street, Block-Lot: 3103-2 & 3

Appearances: Thomas DiBiasi, Esq., Charles Osterkorn, Paul Bauman, and members of the public: Rory Moore and Father Thomas Nicastro

Application: To subdivide the above referenced properties, as shown on the Major subdivision plan, prepared Osterkorn Engineering Associates, dated May 25, 2017, consisting of SP-1, SP-2, SP-3, SP-4, SP-5, SP-6, and SP-7;

Letter of Denial: was read by Mr. Gary Marino

Proposed Lot 3.01:

Approved variance for commercial parking lot September 19, 2016. The parking area is to be extended to the rear for 2.5 parking spaces.

Chapter 700, Article XI, Section 700-71 B of the Codes of Nutley 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. *There is a proposed six (6') foot solid type fence on both side yards.*

Proposed Lot 3:

Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley, entitled “Schedule of Regulations as to Bulk, Height, and Other Requirements, requires a side yard setback to be six (6’) feet in an R-1 zoning district. *The east side will have a four (4’) foot side yard setback.*

Chapter 700, Article XI, Section 700-71 B of the Codes of Nutley 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. *There is a proposed six (6’) foot solid type fence on both side yards.*

Proposed Lot 2:

Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley, entitled “Schedule of Regulations as to Bulk, Height, and Other Requirements, requires a side yard setback to be six (6’) feet in an R-1 zoning district. *The west side will have a 4’.2” foot side yard setback.*

A preliminary review of the major subdivision plan prepared by Osterkorn Engineering Associates, dated May 25, 2017, indicates the following items are missing as per Chapter 630, Article III, Section 630-16 Major Subdivision Requirements.

630-16 A (2) (b) (1) – the recorded owners

630-16 A (2) (b) (2) – owner agent if any

630-16 A (2) (e) – location of driveways with 200 feet

630-16 B (1) – name of owners

630-16 B (9) – a certification that the applicant is the owner of the land to be subdivided.

Thomas DiBiasi, Esq. made his opening remarks to the board, explaining that the board had previously approved an application on this property for a parking lot. He explained that there would be one lot for commercial parking and the other two lots were homes. Mr. DiBiasi also mentioned that this will not increase runoff. Engineer Charles Osterkorn testified that runoff would not increase and that his testimony from the previous application still stood. Member of the public, Rory Moore, asked if cars would be parked near the garden they would be installing. Mr. Osterkorn responded that they would not. Mr. Paul Bauman testified as the planner and asked the board to extend the use variances. He said this was not for increasing parking, but for realigning. Mr. Bauman stated that the parking lot would relieve the township in the lack of parking and that the parking lot would not affect street traffic. Mr. Bauman also stated that there would be 6 foot solid privacy fences for the two homes, which would prevent headlight glare, as well as provide better security. Member of the Public, Father Thomas Nicastro testified that he would go to Ralph’s Pizzeria several times a week and believed there was serious parking issues. He stated he felt this proposal will alleviate the parking problem in downtown Nutley. Ms. Suzanne Brown suggested a 5 foot solid fence with 1 foot lattice. The board members agreed that all the conditions from the previous application must be followed.

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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No. 5 10 Kingsland Street CARRIED TO NEXT MEETING

Applicant: TFJ Kingsland, LLC, 10 Kingsland Street, Block-Lot: 602-5

Application: to construct a self-storage facility, as shown on the site plan prepared by SESI Consulting Engineers, dated April 24, 2017, and 3D views and floor plan prepared by Remus Architecture, received by Code Enforcement, May 15, 2017

Appearances: Meryl Gonchor, Esq., Chris Richter, Franz Lako, and member of the public: Rory Moore

Letter of Denial: was read by Mr. Gary Marino

Chapter 700, Article V, Section 700-20 of the Codes of Nutley lists the permitted uses in the M-O zoning district. A self-storage facility is not a listed permitted use.

Chapter 700, Article VIII, Section 700-46 A of the Codes of Nutley, entitled "Schedule of Regulations as to Bulk, Height and Other Requirements," for an M zoning district requires a 10' and 20' side yard. ***The proposed is 106'36" and zero foot at the Nutley/Clifton boundary line.***

Chapter 700, Article XIII, Section 700-102 A of the Codes of Nutley entitled the "Minimum Required Loading Spaces" states no building or premises shall be used nor shall any building be erected or reconstructed, nor shall any building be altered so as to expand its usable floor area unless there is provided off-street loading space. ***4 loading spaces required none provided.***

Manufacturing, industrial and warehouse uses, for each principal building	1 for each 5,000 square feet of total floor area, or fraction thereof, plus one for each 10,000 square feet of total floor area or fraction thereof in excess of the first 10,000 square feet
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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. ***The proposed Nutley side curb cut along Kingsland will be 30'.***

Chapter 600, Section 600-1 A of the Codes of Nutley requires site plan approval for all new self-storage facility.

Chapter 700, Article XII, Section 700-85 of the Codes of Nutley permits maximum signage not to exceed 200 square feet. Ground sign equals 80 square feet (both sides) plus two wall signs 75 square feet each for a total of 230 square feet.

Meryl Gonchar, Esq., made her opening remarks to the board stating that she was representing the applicant. She explained that this was an application for a 3 story self-storage facility, which would straddle municipal and county lines. Ms. Gonchar introduced her first witness, Chris Richter, who was the project manager. He stated that there would be 2 employees with a single office. Officer hours would 9-5, with varying hours on the weekends, and would be closed on Sundays. Mr. Richter stated there would be a security gate open from 6 am until 10 pm, and that

there would be rules and regulations for every tenant. Ms. McGovern asked Mr. Richter if there would be company vans. He responded that there would be no vans and that there would be security cameras on the property. Chairman Graziano asked Mr. Richter how he would ensure that banned items aren't brought into the facility. He responded that not every box would be inspected, but that there would be video surveillance. Engineer Franz Lako testified to the board that exhibit A1 was an aerial photograph of the property and surrounding areas. He explained that 2/3 of this application would be located in Clifton and 1/3 of this application would be located in Nutley. Exhibit A2 was a color rendering of the project, which in total would be 122,400 square feet and 3 stories tall. Mr. Lako testified that he was proposing an entrance on Kingsland Avenue and another entrance on Baltimore Street, with 16 parking spaces, including 1 handicap space, along with ADA compliant access. Mr. Lako said they made the parking spaces large, at 9x19, for unloading purposes. He stated that there would not be a separate loading area. Mr. Lako told the board that there would be landscaping around the entrance, as well as an island with evergreens and shrubbery, and 40 feet of trees to give the neighbors proper privacy and screening. He explained that there would be 5 shade trees and the existing fence would be removed. Mr. Lako described LED light fixtures would be mounted 15 feet tall along the outside of the building. He said that there would only be spillage of light at the entrances, but residents would not be affected. In total, Mr. Lako stated there would be 5 signs, 3 in Nutley and 2 in Clifton. The signs would be 3x8, illuminated, and mounted on the building. Ms. Gonchar explained that the applicant is seeking a portion of land from Nutley property, and if granted, the applicant would repave Baltimore Avenue. Joseph Staigar, traffic expert, testified that he did many traffic studies at the location and that this business would be a low trip generator with no trucks or trailers permitted. He explained that during his studies, there were 9 trips in the morning and 16 trips during rush hour. Mr. Gary Marino expressed concern that motorists would be tempted to cut through the property to avoid traffic. Ms. Todd Hay, town engineer, agreed with Mr. Marino that it would be enticing for motorists to cut through and he recommended a controlled gate to the applicant.

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

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No. 6 39 Rhoda Avenue CARRIED TO THE NEXT MEETING

Applicant: Ms. Janet Strachan, 39 Rhoda Avenue, Block-Lot: 2601-22

Application: to leave as erected the existing 22' driveway with a portion in front of the main dwelling, which will decrease the required front yard required 60% landscaping to 56%, as shown on the survey prepared by Dudley R. Shepard, dated January 15, 1958

Appearances: None

Letter of Denial: was not read.

Chapter 700, Article XIII, Section 700-94 A (1) of the Codes of Nutley 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 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 existing driveway is 22' and a portion in front of the main dwelling.***

Chapter 700, Article VIII, Section 700-48 of the Codes of Nutley 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 front yard landscaping is 60% the proposed if 56%.***

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

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No. 7 162 Walnut Street CARRIED TO THE NEXT MEETING

Applicant: Mr. and Mrs. Kenneth Hegel, 162 Walnut Street, Block-Lot: 3900-1.02

Application: to leave as erected a five (5') foot solid type fence adjacent to your deck in the side yard of the property, and to continue the five (5') foot solid type fence in the side yard as shown on the survey prepared by George J. Anderson LLC, dated March 22, 2016,

Appearances: None

Letter of Denial: was not read.

Chapter 700, Article XI, Section 700-71 B of the Codes of Nutley 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 not be less than two feet in height and shall be of 50% open construction. ***A portion of the five (5') solid fence is installed adjacent to the deck, the deck is an attached structure which is the rear line of the dwelling.***

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

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No. 8 63 Msgr. Owens Place APPROVED 7-0

Applicant: Mr. and Mrs. Paul Poplawski, 63 Msgr. Owens Place, Block-Lot: 7001-24

Application: To install a 18' round above ground pool in the rear yard, having a three (3') foot side and rear yard setback and a five (5') foot setback to the main dwelling, which will increase the total lot coverage to 41%, as shown on the property survey prepared by Papparizzi Associates, Inc., dated July 12, 2012 ;

Appearances: Paul Poplawski

Letter of Denial: was read by Mr. Gary Marino

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 and side yard setback. *The proposed pool will have a three (3') foot rear and side yard setback;* and also citing

Chapter 700, Article XI, Section 700-67 C 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 be five (5') feet from the main building;* 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 lot in an R-1 zoning district not to exceed 35% lot coverage. *The proposed will be 41%;*

Applicant Paul Poplawski testified that he had a small backyard and did not meet the required setbacks. He stated that he currently had a chain link fence which was unable to be climbed. Ms. Suzanne Brown asked the applicant why he did not wish to install a rectangular pool. The applicant replied that he wanted to maximize the use of his yard and that the round pool was a perfect fit with his patio. Mr. Poplawski explained that there would be 1.5 feet between the pool and the fence. Ms. Lori Castro asked the applicant if he would consider a 15 foot pool instead. The applicant replied that he wanted a 18 foot pool. Ms. Suzanne Brown pointed out that the applicant had other options and must prove a hardship. The applicant agreed to a 125 foot pool. Chairman Graziano stated that the pool should be 6 feet from the house and 4 feet from the side yard.

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. Lori Castro. The variance was granted by a vote of 7-0.

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No. 9 55 Hillside Crescent APPROVED 7-0

Applicant: Mr. David Fontinelli, 55 Hillside Crescent, Block-Lot: 6001-3

Application: To leave as erected an A/C condenser located in the Northside side yard, as shown on the survey prepared by Lakeland Surveying., dated April 27, 2017;

Appearances: David Fontinelli

Letter of Denial: was read by Mr. Gary Marino

Citing Chapter 700, Article III, Section 700-3 of the Codes of Nutley entitled "*Definitions; Side Yard*" is an open unobstructed space between the building and the side line of the lot extending through from the front to the rear yard or to another street, into which space there is no extension of the building above the grade level. *The AC condenser is located in the Northside side yard which is less than six (6') feet required to the face of the unit;*

Applicant David Fontinelli testified to the board that he recently bought the property. Upon purchase, he realized the AC unit was broken and had it replaced. Mr. Fontinelli explained that he later found out his contractor did not get proper permits to do so. The applicant expressed that there was no other place to put the AC unit and that his neighbors were fine with it staying in place.

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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RESOLUTIONS MEMORIALIZED: 12 Webster Street, 21 Eerie Place, 28 Ridge Road, 33 Raymond Avenue, 132 Rhoda Avenue, 275 Harrison Street, 582 Prospect Street

MINUTES: June 19, 2017 minutes approved

INVOICES: None

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 9/18/2017