

NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

October 16, 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, Lori Castro, Peter Sirica, Gary Marino, Tom DaCosta Lobo, Suzanne Brown, Chairman Graziano and Board attorney, Diana McGovern, Esq.

ABSENT: None

EXCUSED: Daniel Tolve

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No. 1 108 King Street DENIED 6-1

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., Mohammad Muhaysin, Paul Bauman, and members of the public: Ellen Koehler, Antonio Torreneo, Louis Gaccione, Silvana Doganiero, Mr. Algieri, Donna Tamang, Paul Delucca, James Palmitessa, David Coto, Marsha Coto, Steve Foote, Mary Ritacco, Sandra Vicuna, and Florence Castranova

Letter of Denial: was read by Mr. Gary Marino

Thomas DiBiasi, Esq. introduced his first witness, which was Ms. Nelsha Moorji who testified she was a realtor and sold this property to the applicant. Exhibit A1 was the survey and Exhibit A2 was a picture of the property from 2009 clearly showing the spot in question as a parking space. Ms. Moorji stated that she should the property with the area representing a parking spot. Applicant Mohammed Muhaysen testified that he purchased the home in 2013 and the extra parking space made him pick the property. He stated he changed in from gravel to pavers for esthetics. He stated that he did not use concrete to make the space permanent, thinking it was not an issue. Mr. Muhaysen stated he never saw a red sticker, representing to stop working, on his property. Exhibits A3 was the October denial letter and Exhibit A4 was the second violation

letter. Mr. Muhaysen stated he never touched the property after the first letter of violation. The applicant stated he wanted to keep the space for efficiency and relief. Chairman Graziano asked how many cars could fit in the driveway. He stated 3 cars. Ms. Suzanne Brown pointed out discrepancies of 3 feet in the plans. Ms. Diana McGovern, Board Attorney, introduced the Board's Exhibits, which were photos of the property under construction by Code Enforcement. Mr. DiBiasi stated that his client was not disputing the fact that a red sticker was put on his property, but that he wanted a variance for the parking spot. Chairman Graziano stated that there would be nothing from stopping a car from crashing into the house. Mr. Paul Bauman testified that there had never been an alteration to the curb cut since the property was purchased. Mr. Bauman expressed he felt a compact space with a safety barrier or shrubs would be appropriate. He said the benefits of the application outweighed the detriments. Mr. Bauman stated that this was an older section of town that did not have adequate parking, as well as gave 5 examples of front yard parking in the area. Mr. Bauman stated that the parking spot would not change the character of the neighborhood. Chairman Graziano stated that the board could not be sure if any of the examples of front yard parking were legal or not. Ms. Suzanne Brown pointed out that the applicant could fit 4 full sized cars in the driveway if he moved his shed. Neighbors including: Ellen Koehler, Antonio Torremeo, James Palpessa, Thomas Cox, David Coto, Steve Foote, Sandra Bina, Florence Castronova, Marsha Coto and Louis Gaccione, testified that they felt there wasn't enough parking in the neighborhood and they wanted the variance granted. Liz Argeri of 90 King Street testified that she has lived in the neighborhood over 60 years and now there are more people who rent their properties there are more people that park on the sidewalk. A tenant in the subject property, Ms. Dalmananga testified that she was in favor of the application because her husband is a limo driver and he parks his full sized car in the space in question. Thomas Cox testified that everyone in that neighborhood parks on the sidewalks so this request was not so bad. Mary Ritacco testified that she has to walk in the street in this area because too many cars park on the sidewalk. Neighbor Silvana Doganiero testified that she was against the application because she did not like the look of it and when she has walked by this property the car on the lawn extends over the sidewalk and she has to step into the street to get around it.

With no further questions from the members and no one in the audience with questions or comments, a motion to deny this variance was made by Ms. Suzanne Brown, seconded by Mr. Gary Marino. The variance was denied by a vote of 6-1, with Tom DaCosta Lobo voting against the denial of the application.

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No. 29 Union Avenue APPROVED 7-0

Applicant: Mr. George Maxvetry, 9 Union Avenue, Block-Lot: 9407-10

Application: To install a six (6') foot solid type fence located in the South side, side yard, as shown on the survey prepared by Schmidt Surveying, dated July 26, 2016;

Appearances: Donald Rinaldi, Esq., George Maxvetry

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

AND the Code Official having denied said permit by letter dated June 5, 2017, 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 George Maxvetry testified that he lived at this property with his wife and four year old son. Donald Rinaldi, Esq., expressed that the applicant needed the fence for privacy reasons as well as safety reasons. Mr. Maxvetry stated a 4 foot fence would not keep his son contained and that his neighbor was in favor of the fence, as well. Mr. Maxvetry stated the fence would be suburban and tan colored, which was shown in Exhibit A2. Exhibit A1 was the highlighted survey. The applicant also pointed out that the home had been vacant for some time and people would use their lawn to cut through the property. Mr. Maxvetry stated that he would like a solid fence in the back yard, however, he wanted a 5 foot solid 1 foot lattice fence on the sides, which would begin after the electrical box.

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.

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No. 3 422 Franklin Avenue CARRIED TO THE NEXT MEETING

Applicant: Mr. Vilmary Kritharist, 422 Franklin Avenue, Block-Lot: 4401-4

Application: to install new channel letter roof mounted sign and a flat wall sign to the right side of the building which will increase the total permitted signage as shown on the rendering, dated April 21, 2017, submitted by Signarama

Appearances: Aaron Culton, Esq.

Letter of Denial: was read by Mr. Gary Marino

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

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No. 4 236 Park Avenue APPROVED 7-0

Applicant: Mr. and Mrs. Louis Torres, 236 Park Avenue, Block-Lot: 6600-21

Application: to install sections of a four (4') foot high 50% open fencing on a corner property along Park Avenue and Myrtle Avenue, as shown on the survey prepared by George Anderson, dated July 18, 2005

Appearances: Nilda Dejesus

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

AND the Code Official having denied said permit by letter dated June 26, 2017, 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. Sections of fencing will be installed in the front yards of the adjoining property along Park Avenue and Myrtle Avenue;

Applicant Nilda Dejesus testified that she wanted to install a gate on her side yard and front yard, facing the street. She wanted to install a 4 foot picket fence in front and a 4 foot picket fence with 1 foot of lattice on both sides of the property. Exhibit A1 was the photos of her home and a car accident near her home, which occurred due to speeding. Ms. Suzanne Brown pointed out that the bushes were town property. Ms. Dejesus stated that the fence would be on her 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 Ms. Suzanne Brown, seconded by Mr. Gary Marino. The variance was granted by a vote of 7-0.

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No. 5 20 Carteret Place CARRIED TO THE NEXT MEETING

Applicant: Mr. Maurizio Turno, 20 Carteret Place, Block-Lot: 5701-24

Application: to construct a new two (2) family dwelling in an R-1 zoning district, at the above referenced premises, as shown on the plans prepared by Guzzo & Guzzo Architects LLC, dated May 9, 2017,

Appearances: Thomas DiBiasi, Esq.

Letter of Denial: was not read

Chapter 700, Article V, Section 700-7 A of the Codes of Nutley states no building shall hereafter be erected and no existing building shall be moved, altered, added to or enlarged, nor shall any land or building be used, designed or arranged to be used for any purpose other than is included among the uses listed in this article as permitted in the district in which such building or land is located nor in any manner contrary to any of the requirements specified in this article.

Chapter 700, Article V, Section 700-9 of the Codes of Nutley lists the permitted uses in an R-1 district. A two (2) family dwelling is not listed; therefore is not a permitted use.

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

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No. 6 77 Elm Place APPROVED 7-0

Applicant: Mr. and Mrs. Richard O'Callaghan, 77 Elm Place, Block-Lot: 1900-14

Application: To erect a six (6') foot solid type fence in the north side rear yard adjacent to block/lot 1900/13 as shown on the survey by Lakeland Surveying dated July 5, 2016;

Appearances: Richard O'Callaghan, Stephen Emde

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

AND the Code Official having denied said permit by letter dated July 21, 2017, citing Chapter 700, Article XI, Section 700-71 H of the *Codes of Nutley* which states a solid type fence may be erected with written consent of the adjoining property owner or owners bordering the fence. *Written consent has not been filed with the Construction Official;*

Applicant Richard O'Callaghan testified that he had a young son and would soon be purchasing a dog. He wanted to install a fence due to safety concerns, in part to his neighbor's property. He also stated that he previously had a neighbor hit his back steps and that the property had been that way since July 2016. Neighbor Stephen Emde testified that he was disabled and would not be able to open his car door fully, when exiting his vehicle, if Mr. O'Callaghan installed a fence. Exhibit Emde 1 was the objector's photograph of his driveway. Mr. Emde wanted Mr. O'Callaghan to move the fence 1 foot behind his property line. The board advised Mr. Emde they could not make that 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 Mr. Joseph Frusteri, seconded by Mr. Peter Sirica. The variance was granted by a vote of 7-0.

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No. 7 87 Ridge Road APPROVED 6-0

Applicant: Mr. and Mrs. Michael Ostrowski, 87 Ridge Road, Block-Lot: 5503-25

Application: To construct a new portico roof over the front stairway, having a 24'10" front yard setback to the building and a 21'9" setback to the roof, and to install an existing and new A/C condenser located in the right-side side yard as shown on the plans prepared by Dassa-Haines, dated June 22, 2017;

Appearances: Tara Ostrowski, Michael Ostrowski

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

AND the Code Official having denied said permit by letter dated August 15, 2017, 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 right-side side yard which is less than six (6') feet required to the face of the unit;* and also 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 AC condenser is located in the right-side side yard which is less than six (6') feet required to the face of the unit;*

Please note: Mr. Joseph Frusteri recused himself from this application. Applicant Michael Ostrowski testified that he had recently put an addition on his home and now had a very small yard. He stated that he wanted to place the new AC equipment would go next to the existing units. Mr. Ostrowski stated he also wanted a portico over front landing, but not over the 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 Mr. Tom DaCosta Lobo, seconded by Mr. Gary Marino. The variance was granted by a vote of 6-0.

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No. 8 515 Washington Avenue APPROVED 7-0

Applicant: Mr. and Mrs. Piyush Dave, 515 Washington Avenue, Block-Lot: 704-16

Application: To *LEAVE AS ERECTED* a 23' driveway and a 17' curb cut which will reduce the required 60% front yard landscaping to 53%, as shown on the survey submitted to the Code Department August 11, 2017, and inspection pictures with sizes;

Appearances: Piyush Dave, Tom Cullari

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

AND the Code Official having denied said permit by letter dated August 25, 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 increased driveway of 23' exceeds the required 16'*; and also citing,

Chapter 700, Article XIII, Section 700-94 A (3) (a) of the *Codes of Nutley* which states curb cuts shall not exceed 16 feet in length. *The increased curb cut is 17'*; 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 front yard landscaping is reduced to 53%*;

Applicant Piyush Dave testified that there was gravel spreading over his property, causing a mud issue. He stated that he hired a contractor to do the repairs by code, however, when he was away the contractor was told by Code Enforcement to stop working. Mr. Dave stated that he used a Mr. DeFrank as a contractor. The applicant stated that he wished to leave the driveway as erected. Ms. Diana McGovern, Board Attorney, stated that the previous owner of the home had previously applied for the same variance and were denied. Mr. Dave stated that he was unaware of this fact. The board suggested reducing the driveway to 19 feet, which would eliminate the

landscaping variance. Neighbor, Tom Cullari, stated that he had Belgium block along his driveway.

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

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No. 9 141 Beech Street APPROVED 6-0

Applicant: Ms. Loredana Bresnan, 141 Beech Street, Block-Lot: 5302-7

Application: To not rebuild the existing two (2) car garage as shown on the survey prepared by Shepard & Shepard dated July 2, 1986;

Appearances: Loredana Bresnan

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

AND the Code Official having denied said permit by letter dated August 8, 2017, citing Chapter 700, Article V, Section 700-9 A of the *Codes of Nutley* which states a single family dwelling shall be required to have two (2) parking spaces and one space must be in a garage;

Please note: Chairman Graziano recused himself from this application. Applicant Loredana Bresnan testified that she wanted to demolish her garage for more space. She explained that her grandchildren played in her yard and it would be a financial hardship to rebuild the garage, which was in disrepair. Ms. Bresnan stated that she could park 3 cars in the driveway and she would replace the garage with a shed.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this variance that required the Applicant to remove 4 feet of the asphalt and the Belgium block at the rear of that four foot portion of the driveway and to plant grass where the removed asphalt was located, thus allowing a variance for a two foot widening of the existing driveway was made by Mr. Tom DaCosta Lobo, seconded by Mr. Gary Marino. The variance with those conditions was granted by a vote of 6-0.

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No. 10 13 Prospect Street CARRIED TO THE NEXT MEETING

Applicant: Mr. and Mrs. John Cataldo, 13 Prospect Street, Block-Lot: 8808-7

Application: to erect a 18' by 21' pergola attached to the existing house, having an approximately one (1') foot setback to Sharlene Road and 19' setback to the rear property line, an approximate five (5') feet setback to the existing above ground pool, and a lot coverage of 3,332 SF when only 35% is permitted (1,810 SF) all as shown on the survey prepared by Jeffrey Canfora P.L.S., dated February 21, 2003,

Appearances: John Cataldo

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

Chapter 700, Article VIII, Section 700-46 of the Codes of Nutley, the schedule entitled "Schedule of Regulations as to Bulk, Height and Other Requirements," requires a minimum 25' setback to a secondary street (Sharlene Road). ***The plan shows one (1') foot setback.*** Also, limits a maximum lot coverage to 35%. ***The plan shows a lot coverage of 64%.*** And a minimum rear yard of 30'. ***The plans shows a rear yard setback of 19'.***

Chapter 700, Article XI, Section 700-67 C of the Codes of Nutley requires the detached pool to be a minimum of 10' from the main dwelling. The pergola is considered to be part of the main dwelling.

Applicant John Cataldo testified that he wanted to put up a pergola for snow coverage. He stated he had a very small property. Ms. Suzanne Brown stated that the applicant's pictures were not similar to what he would actually be installing. Mr. Cataldo introduced Exhibits A1 and A2, which were sketches of what the pergola would look like. Chairman Graziano said he felt the board needed professional drawings of the proposed pergola. Applicant agreed to submit drawings at the next hearing.

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

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RESOLUTIONS MEMORIALIZED: 299 Kingsland Street, 2 DeVausney Place, 40 Gless Avenue, 162 Walnut Street, 47 Sylvan Place

MINUTES: July, August, and September 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

Anjelica L. Mitchell
11/13/17