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ZAC

**TOWNSHIP OF NUTLEY  
PLANNING BOARD MEETING MINUTES  
Wednesday, December 19, 2018**

A meeting of the Planning Board of the Township of Nutley was held on the third floor of the Township of Nutley Municipal Building, One Kennedy Drive, Commission Chambers. Adequate notification was published in the official newspapers of the Herald News, the Star Ledger and the Nutley Sun on December 14, 2017.

**Roll Call**

Ms. Castro – Present  
Mr. Malfitano – Present  
Mr. Contella – Present  
Mr. Kirk – Excused  
Mr. Greengrove – Present  
Ms. Kucinski – Excused  
Mr. Algieri – Excused  
Mr. Del Tufo – Present  
Mr. Arcuti - Present  
Ms. Tangorra – Present  
Mr. Kozyra – Present  
Commissioner Evans – Excused  
Mayor Scarpelli – Excused

**Meeting Minutes**

The Meeting Minutes for December 5, 2018 were accepted by the Board.

**Communications/Bills**

An invoice for Gail Santasieri in the amount of \$150 for her attendance at and preparation of the November 14, 2018 Meeting Minutes was approved by the Board.

An invoice for Gail Santasieri in the amount of \$150 for her attendance at and preparation of the December 5, 2018 Meeting Minutes was approved by the Board.

**Old Business**

None. Mr. Kozyra stated that there would be applications forthcoming for the Prism Campus, but nothing for consideration tonight.

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 Planning Board.

## **New Business**

### **293 Prospect Street Subdivision Hearing**

Thomas DiBiasi, Esq., 345 Centre Street, Nutley, NJ, representing the owner, Dr. Konstantin Maltsen.

Mr. DiBiasi stated that the Board has had a long history with this application. The original subdivision was presented five years ago by the now Hon. John Gizzo. At that time, the original subdivision was for seven lots. When Mr. DiBiasi took over control of the application, he filed another application with the Board, which was reduced to five lots. He met with neighbors and private counsel and worked out a subdivision plan that was never submitted to the Board. The current application is now reduced to three lots – one at 293 Prospect Street and two on Clover Street - because the owner, Dr. Maltsen, is no longer interested in doing any real estate developments.

Dr. Maltsen wants to sell the property and several realtors and builders have looked at designs and the best idea they were given was to carve out the lot on Prospect Street and have two large lots in back. Several meetings were held with the Township Engineer and they are only looking for a preliminary subdivision and the permission to do obtain three deeds, and then the properties will go on the market. Any developer will then have to come back before the Board for final subdivision approval. Mr. DiBiasi stated that Sound Development is very interested in the two properties on Clover Street and is waiting for the outcome of tonight's hearing. Jeff Blank is interested in the lot on Prospect Street.

The Applicant also has a plan that shows a change of proposed street structure – the addition of a cul-de-sac [which had been approved by the Board for the site in an earlier application]. This cul-de-sac was not reflected on the original submitted plans.

Mr. Kozyra stated that Mr. DiBiasi has provided notice of the publication in the Nutley Sun on December 6, 2018 (Ex. A-1) and an Affidavit of Service indicating delivery to neighboring property owners dated December 7, 2018 (Ex. A-2).

## **Witnesses**

Dr. Konstantin Maltsen, 180 Centre Street, Nutley, NJ, is the current owner of the property and at one point wanted to develop five lots on Clover Street and one lot on Prospect Street. He then considered four lots on Clover Street and one lot on Prospect Street. These were plans with his father-in-law who no longer lives in New Jersey and Dr. Maltsen no longer has an interest in any real estate development.

No comments or questions from the Board.

Syed B. Husain, PE, PP, Engineer. The Board accepted Mr. Husain's credentials as an expert witness in engineering.

Mr. Husain testified that he prepared the subdivision plan, dated February 16, 2018 and revised September 24, 2018, and both he and Mr. DiBiasi attended work sessions with representatives of the Township, the Construction Code Official and the Township Engineer. He stated that the Plan was prepared by himself and/or others under his direction.

Mr. Husain presented the following Exhibits:

1. A-5 – Township of Nutley Tax Map #58 fronting Prospect Street with one structure showing on the property.
2. A-3 – Property Location, showing it zoned as R1 and showing all surrounding areas are also zoned R1.
3. A-6 - Subdivision Plan proposing to subdivide the 1.3 acre lot into three lots (9,392 sq. ft.). The Applicant is not seeking any new variances for the one lot on Prospect Street or the two lots on Clover Street (24,000 sq. ft.). The first variance sought on 293 Prospect should not be considered as a setback variance because all other properties on the street are in the same street scape line.
4. A-4 - Plan showing the exact layout of how the three lots will fit into the already existing area structures.

Mr. Husain feels that this plan will not negatively affect anyone. It was his belief that the street layout be proposed without a cul-de-sac until he received the latest engineering report. He was surprised to see the street layout previously approved for the site had a cul-de-sac. His plans are different regarding the road structure. He agreed with Mr. DiBiasi that if the Board wants a cul de sac he defers to the Board. He did not favor a cul de sac due to water runoff concerns. Regarding the size of the lots, he feels that because of the large lot sizes there would be no crowding of neighboring properties.

Mr. Husain testified that much of the engineering report commentary is applicable if the Applicant were going for final subdivision approval, but the waivers they are seeking would not be appropriate if going for preliminary subdivision approval because there are engineering issues. In his opinion as an engineer, since they are only seeking legal lot lines the waivers are appropriate.

### **Board Comments/Questions**

A Board member commented on the set back issue and the cul-de-sac working better for DPW trucks.

Mr. Husain stated that right now there is no cul-de-sac so the DPW would continue as is currently normal. He believes a cul-de-sac will create runoff issues and he feels you do not want to add any additional runoff issues and would not recommend the cul-de-sac.

A Board member questioned the configuration of the lots and forcing builders to build two long and narrow houses. The Board member also offered that a cul-de-sac will provide for more building creativity.

Mr. Husain stated that a cul-de-sac for a development with only two lots does not make sense. He also stated that the houses look long and narrow because of the size of the lots.

Paul Bauman, Planner. The Board accepted his credentials as an expert witness in planning.

Mr. Bauman testified that he reviewed the Board planner's report and agrees that the report is thorough and professionally prepared. However, regarding preliminary aspects vs. final aspects, they are very different. He feels the crux of the application as to planning lies with new lot #803, which requires two variances: one for front yard setback; one for side yard setback. Both are (c)(1) variances and it would be counter-productive to force bringing the property into compliance by tearing down the current structure to make that one building compliant. Mr. Bauman asked the Board to approve the two (c)(1) variances for front and side yard setbacks.

Mr. Bauman stated that the Board previously approved the subdivision with some variances when it was for five lots. Nothing has changed since the decision to seek two lots. The grounds for development remain the same and several earlier variances have been resolved by creating only two new lots. He feels the Board can grant variances because there is no detriment to the public good. On the negative side, it will not impair the zoning ordinance or the Master Plan.

### **Board Comments/Questions**

A Board member commented on the 6 ft. regular setback as compared to a 4½ ft. set back because of the size of the lots.

Mr. Kozyra stated that regarding the number of waivers requested the professionals do not agree with all waivers. The cul-de-sac was recommended by the engineer (not present at tonight's meeting). He feels that the variances may conform with other properties in the neighborhood and might not be continued if the Prospect Street property is demolished.

A Board member asked if a developer buys both properties and wants to put in a cul-de-sac does he have to come before the Board?

Mr. Kozyra stated yes, as long as one developer bought both properties.

A Board member asked if the fire department reviewed the plans?

Mr. Kozyra stated that the plans were submitted but no objections were received.

A Board member asked if there are any problems with the structure that currently exists?

Mr. Kozyra stated the lots and building are currently empty.

A Board member asked if the lots can be zoned R2?

Mr. Bauman stated no they are not and they would have to go before the Zoning Board.

A Board member is concerned about the long, narrow houses shown on the plans.

Mr. Bauman stated the lot sizes are very large and he feels that good sized houses will be built.

Mr. DiBiasi stated that Sound Development is very serious about the two lots. He will disclose to the Sound Development that the Board will want generous side yard and rear yard setbacks. He believes the Board will want to look at elevation also.

Mr. DiBiasi also stated that the structure on Prospect Street is under discussion regarding rehabilitation or starting from scratch. If too costly to rehabilitate then there will be no choice but to start from scratch.

Mr. DiBiasi stated that he liked the cul-de-sac idea when it was first discussed. A cul-de-sac lends itself to easier turn arounds for fire engines and sanitation trucks, but he believes if a cul-de-sac is approved the project could not be built because of the expense.

### **Public Comments**

None

### **Board Roll Call**

The Board voted unanimously regarding the motion to approve the subdivision without a cul-de-sac and with the variances for Lot 18.03 as requested and all waivers as directed by engineer,

Ms. Castro – Yes  
Mr. Malfitano – Yes  
Mr. Contella – Yes  
Mr. Greengrove – Yes  
Mr. Del Tufo – Yes  
Mr. Arcuti - Yes  
Ms. Tangorra – Yes

The meeting concluded at 7:56 p.m.

The next meeting is scheduled for Wednesday, January 9, 2019 at 7:00 p.m.