

**NUTLEY ZONING BOARD OF ADJUSTMENT**

**Public Session Meeting Minutes**

**December 17, 2018**

**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:** Daniel Tolve, Greg Tolve, Theresa Duva, Gary Marino, Suzanne Brown, Chairman Graziano, and Board attorney, Diana McGovern, Esq.

**ABSENT:** None

**EXCUSED:** Peter Scirica, Joseph Battaglia, Thomas DaCosta Lobo

**No. 147 Washington Avenue CARRIED TO THE NEXT MEETING**

**Applicant:** Mr. Thomas DiBiasi, Esq.

**Application:**

**Appearances:**

**Letter of Denial:** was not read.

Mr. Thomas DiBiasi, Esq. informed the board via letter that he was seeking an adjournment on this application.

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 regular meeting was granted.

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**No. 2 390 Bloomfield Avenue APPROVED 6-0**

**Applicant:** Mr. and Mrs. Francis Eco, 390 Bloomfield Avenue, Block-Lot: 5702-1

**Application:** To install a six (6') foot solid type fence in the rear yard on a corner property, which is located in the front yards along Valley Road, to install a 2 1/2' to 3' front yard picket type fence, and to increase the existing driveway to the left side eight (8') feet for a total width of 20' for the driveway and curb cut, as shown on the survey prepared by Richard J. Hingos, Inc., dated November 22, 2017;

**Appearances:** Francis Eco

**Letter of Denial:** was read by Mr. Gary Marino

AND the Code Official having denied said permit by letter dated May 2, 2018, citing Chapter 700, Article XI, Section 700-71 A of the *Codes of Nutley* which states no fences of any type shall be permitted 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 fence will be installed in the front yards of the adjoining property along Valley Road and Bloomfield Avenue, and also citing,

Chapter 700, Article XIII, Section 700-94 A (1) of the *Codes of Nutley* which 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, and finally citing,

Chapter 700, Article XIII, Section 700-94 A (1) of the *Codes of Nutley* which requires a curb cut not exceed 16' in length in R-1 districts;

Applicant Francis Eco testified that he wanted to increase his driveway to 20 feet because he had four cars. He also stated he wanted to add a fence, as well as a shed. Diana McGovern, Esq., notified the applicant that the shed was not in the letter of denial and therefore the neighbors were not notified. The board could only hear the driveway, fence, and curb cut. Ms. Suzanne Brown suggested the applicant make the fence four feet along Valley Road, and the applicant agreed. Exhibit A1 was the copy of the survey the board had drawn on. Chairman Graziano asked the applicant if there was a masonry base on the porch. Mr. Eco stated that there was not. The board agreed that the applicant must install a cement base that was two feet tall, in order to prevent someone from accidentally driving forward into the porch and home. Mr. Eco expressed that the hardship of his property was that the property was a 3 way open lot (With three front yards). The applicant agreed to a 20 foot curb cut.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this application was made by Ms. Suzanne Brown, seconded by Mr. Gary Marino. The variance was granted by a vote of 6-0.

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**No. 3 158 Brookfield Avenue APPROVED 5-0**

**Applicant:** Mr. and Mrs. David Harrison, 158 Brookfield Avenue, Block-Lot: 3200-10

**Application:** To erect a six (6') foot solid type fence on the left side is located in the side yard, as shown on the property survey prepared by William Di Marzo & Son Assoc., Inc., dated July 22, 2009;

**Appearances:** David Harrison

**Letter of Denial:** was read by Mr. Gary Marino

AND the Code Official having denied said permit by letter dated October 1, 2018, 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;

Ms. Suzanne Brown recused herself from this application.

Applicant David Harrison testified that he wanted to replace his current fence with a 6 foot cedar fence. He stated that he was concerned for his daughter's safety, since a commercial parking lot bordered their property. Mr. Harrison testified that the fence would go in the exact same spot it had been since he purchased the property.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this application was made by Mr. Gary Marino, seconded by Mr. Daniel Tolve. The variance was granted by a vote of 5-0.

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**No. 4 268 High Street APPROVED 6-0**

**Applicant:** Ms. Mugin Zhang, 268 High Street, Block-Lot: 2401-53

**Application:** To erect a six (6') foot solid type fence along the left side, requires the consent from the adjoining neighbor, which the neighbor will not sign, and a portion of the fence and gates proposed, are six (6') feet solid and located in both side yards, as shown on the property survey prepared by Brunswick Surveying Incorporated, dated August 1, 2012;

**Appearances:** Thomas Noss, Mugin Zhang, and neighbors: John and Linda Russo, Doris Sanecki, Mr. Sungar

**Letter of Denial:** was read by Mr. Gary Marino

AND the Code Official having denied said permit by letter dated October 1, 2018, 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 H of the *Codes of Nutley* which states a solid fence requires written consent of the adjoining property owner/owners is filed with the Construction Official;

Applicant Thomas Noss testified that he wanted to install a fence on the left side of his property, as well as his backyard. He wanted a 5 foot fence with 1 foot lattice. The applicant stated he had seen footprints on his property and was concerned due to the fact that he lives in a high traffic area. Chairman Graziano asked the applicant why he wanted a privacy fence. Mr. Noss responded that it was for privacy and was in his rear yard so it would not cause any safety

hazards. Mr. Noss also mentioned that his property was sloped downward, therefore the fence would not create shade on the neighbor's property. Chairman Graziano asked the applicant how high the existing fence was. He responded that it was 4 foot tall and actually his neighbor's fence. The board expressed they wanted an open fence and suggested that privacy could be accomplished by planting tall bushes such as arborvitae. Mrs. Mugin Zhang testified that she did not have time to maintain trees, and her goal with the fence was to block out the neighbor's weeds growing on her property. Mr. Daniel Tolve suggested the applicants buy low maintenance trees. Neighbor John Russo testified that he did not have weeds on his property and that this fence would be an eyesore. He introduced Exhibit A1, which was photos of his property, with his back to High Street. He explained that there was no height differentials in the properties like the applicant had testified. Neighbors Doris Sanecki and Linda Russo agreed that the fence would be an eyesore and was unnecessary. Mrs. Russo introduced Exhibits A2 and A3, which were additional properties in relation to the property in question. Ms. Diana McGovern, Esq., explained to the applicants that they must prove their property has a hardship in order for the board to grant a variance. Chairman Graziano suggests a 4 foot open fence. The applicants decided to withdraw the part of the application which included fences across the side yards, and go forward with a 5 foot solid, 1 foot lattice fence across the rear of their property. Neighbor, Mr. Sungar, testified that he was in favor of the 6 foot fence across the rear yard. There will be two gates in the front of the property, with each gate being 4 foot solid.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this application was made by Mr. Gary Marino, seconded by Ms. Theresa Duva. The variance was granted by a vote of 6-0.

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**No. 5 405 Harrison Street APPROVED 6-0**

**Applicant:** Mr. Fernando J. Diban, 405 Harrison Street, Block-Lot: 8301-3

**Application:** To construct an add a level addition over the existing footprint, with a two (2') foot cantilever in the front of the dwelling, having a 23.02' front yard setback, and a 4.64' side yard setback on the left side, as shown on the plans prepared by Architect, Crane Associates, PC, dated November 11, 2018;

**Appearances:** Fernando Diban

**Letter of Denial:** was read by Mr. Gary Marino

AND the Code Official having denied said permit by letter dated November 21, 2018 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 in an R-1 district a 25' front yard setback and a six (6') food side yard setback. *The proposed front yard setback is 23.02' and side yard is 4.64' on the left side;*

Applicant Fernando Diban testified that he wanted to add space to make his home more even. He stated that his lot was only 85 feet deep, creating a hardship. Mr. Diban stated it would still look like it is at full setback. The applicant testified that he would reside the entire home, as well as install a new roof.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this application was made by Ms. Suzanne Brown, seconded by Mr. Gary Marino. The variance was granted by a vote of 6-0.

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**PUBLIC COMMENT: None**

**RESOLUTIONS MEMORIALIZED:** 98 Mapes Avenue, 184 Centre Street

**MINUTES:** November 19, 2018 minutes approved

**INVOICES:**

**NEW BUSINESS:** None.

**LITIGATED MATTERS:** *None discussed.*

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**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 1/14/19