

Approved
4/20/2020
SR

NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

February 10, 2020

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: Tammy Rossi, Patricia Doherty, Peter Scirica, Daniel Tolve, Theresa Sullivan Duva, John Cafone, Gregory Tolve, Suzanne Brown-Vice Chairwoman, Frank Graziano-Chairman, Diana Powell McGovern, Esq.

EXCUSED: Joseph Battaglia

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No. 1: 109 King Street : ADJOURNED

Applicant: Mr. & Mrs. Maurizio Turano

Application: to convert the existing two (2) family dwelling into a three (3) family dwelling, in an R-2 zoning district, as shown on the plans prepared by Dassa-Haines Architectural Group, LLC, dated April 22, 2019, along with the applicant's letter of intent, and to leave as erected masonry columns constructed in the side yard along Wesley place.

Appearances: Mr. Tom DiBiasi, DiBiasi & Rinaldi, LLC

Letter of Denial: was not read

With no further questions from the members and no one in the audience with questions or comments, Counsel for the Applicants requested an adjournment of the application to the March 16, 2020 regular meeting due to the vacation schedule of counsel.

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No. 2: 371 Franklin Avenue - ADJOURNED

Applicant: Franklin Realty LLC

Application: for a construction permit, at the above referenced premises, to alter the existing ground floor area, and construct a 2,530 square foot restaurant with a drive-thru, and to make site improvement to the existing site, as shown on the plans prepared by Stonefield Engineering and Design, dated November 4, 2019, and building signage plan along with architectural plans, dated October 22, 2019, prepared by Kimmerle Newman Architects

Appearances: Applicants Attorney-Robert Gaccione, Esq, Real Estate Management Company-Sam Kuperstein, Architect-Paul Neman, Neighbor-Patrick McDevitt, Engineer-John Istramyi

Letter of Denial: was read by Patricia Doherty

This property is located in a B-3 district and the rear parking lot in an R-3 district as shown on the Nutley Zoning Map

Chapter 700, Article VII, Section 700-39 F of the Codes of Nutley prohibits drive-in restaurants in a B-3 zoning district.

Chapter 700, Article XVI, Section 700-67 B (1) of the Codes of Nutley states no detached accessory building or accessory use shall be located nearer than three feet or 1/2 the height of such building up to a distance of six feet, whichever is greater, to a side or rear lot line. ***The proposed trash enclosure is constructed in the rear yard on the property line.***

Chapter 700, Article XIII, Section 700-102 A of the Codes of Nutley permits one (1) loading space per building of 2,000 square feet of floor area or more.

Chapter 700, Article XII, Section 700-84 B of the Codes of Nutley states the permitted surface display area is the building width 82' X 1.5 = 123 square feet is the total permitted surface area. ***Total proposed signage is 194 square feet as indicated on the building signage plan dated October 22, 2019 prepared by Kimmerle Newman Architects.***

Chapter 700, Article XII, Section 700-84 A (2) of the Codes of Nutley states ground signs not exceeding five feet in height, which shall not be erected within five feet of any property line and which shall have a maximum display area not exceeding 25 square feet in a B-3 zoning district. ***The proposed ground sign will have a surface display of 25 square feet for both sides for a total of 50 square feet on the ground sign.***

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 impervious coverage not to exceed 90% in an B-3 zoning district. ***The proposed will be 96.4%. This is a pre-existing non-conforming condition.***

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 impervious coverage not to exceed 70% in an R-3 zoning district. ***The proposed is 78%. This is a pre-existing non-conforming condition.***

Chapter 700, Article XIII, Section 700-98 of the Codes of Nutley states where any parking or loading area adjoins a lot in any R District, a landscaped buffer strip at least six feet in width containing plantings at least six feet high shall be provided. ***This is a pre-existing non-conforming condition.***

Chapter 700, Article VII, Section 700-39 H of the Codes of Nutley prohibits advertising signs, roof signs and pylon signs in a B-3 zoning district. ***This is a pre-existing non-conforming condition***

Chapter 600-1 of the Codes of Nutley requires a site plan application to be approved by the board. A copy of the site plan checklist and application is attached. A preliminary review of the site plan prepared by Stonefield Engineering and Design, dated November 4, 2019, indicates the following items are missing from the site plan checklist:

- F (6) The zone district and the zone districts of adjoining properties within 400 feet.
- F (7) All entrances and exits to public streets on site and within 400 feet thereof.
- F (8) All property lines, streets, roads, retaining walls, rock outcrops, marsh areas, ponds and streams within 400 feet.
- F (26) All existing easements, deed restrictions, other covenants and previous variances granted for the property.
- F (30) Applications filed with the county.
- F (31) Construction Official may require building elevation views of adjacent properties.

Waivers may be requested and approved by the board.

Once the revised plans are complete and approved, 22 copies of the application, revised plans, site plan checklist and fees will be required.

Applicant’s attorney, Robert Gaccione, Esq. presented the application. Mr. Sam Kuperstein of 17 Merlin Drive, Lakewood, New Jersey testified that his company is a real estate management company and he is an officer of Franklin Realty, LLC (The Applicant). Franklin Avenue Realty Group is the contract purchaser of the property. Mr. Kuperstein testified that the applicant is seeking to renovate and refresh the property and to keep the size of the building as is. The Applicant would like to create two commercial spaces on the first floor with the bank that currently occupies the first floor reducing its space to half and in the other half of the first floor the intention is the lease the property to a coffee shop. Mr. Kuperstein did not want to reveal the name of the

coffee business as he does not have a signed agreement, but as the testimony unfolded the Applicant advised that they were in talks with Star Bucks.

Architect Paul Neman of 1109 Mt. Kemble Road, Harding, New Jersey testified as an architectural expert that the existing building consists of three stories with the upper two floors currently unoccupied and the bank on the first floor. The lower level has a safe and safe deposit boxes. The upper floor area is 17,388 square feet.

The alterations planned for the building include new HVAC which will be penthouse mechanical and which will not be as visible from the outside as exists currently. The Applicant will renovate all the bathrooms and install a new elevator in the rear which will be in closer proximity to the handicapped parking spaces. The renovations will bring the building up to ADA standards.

Mr. Newman testified that they would like to enclose the vestibule area and create two separate fronts with a hallway down the middle. There will be a rear and front entry with the elevator in the rear. The left side of the first floor will be the restaurant (South side closest to the drive-through) and the right side will be the bank. The bank will have two of the three drive-through lanes with one lane for an ATM and one lane for the pneumatic tubes for banking. The third lane closest to the building will be the drive through lane for the restaurant.

The restaurant area was described as having seating for 20, a rear area for storage and cleaning (Consisting of a utility sink area) and a reach in refrigerator. There will be no stoves or hoods and only a convection/microwave oven will be in use. There would be espresso and coffee machines.

The exterior of the building was presented as including painting the brick a dark gray and adding a side column of durable decorative aluminum that has a look of wood. Mr. Graziano expressed concern regarding the maintenance of the painted brick because when brick or metal are painted they peel. The architect testified that when painted with the correct technique, the paint should last without peeling for 10-15 years.

The proposed rendering included vertical numbers consisting of the address. The existing pylon sign will remain for the bank and then there is a proposed sign over the ATM and a small monument sign to the left of the building that is intended to identify all of the businesses in the building. The proposed monument sign is 3ft high and 6'8" wide for a total square footage of 50 square feet. Ms. Brown stated that it was "overkill" to have "371" so largely displayed on the building as everyone these days has GPS. Additionally, Ms. Brown pointed out

Applicant agreed to conditions which would limit the restaurant cooking equipment to just a convection microwave and no cooking units that would require hoods or require an Ansul fire suppression system.

Patrick McDevitt of 50 Hillside Avenue asked about the hours of operation and the effect of painting on the environment. The Architect did not know the hours but testified that the painting would be done within environmental standards.

John Istramyi of 92 Park Avenue, Rutherford, New Jersey from Stonefield Engineering, testified as an expert in engineering. Mr. Istramyi introduced an aerial exhibit which showed the overhead view of the lots. The Chestnut Street lot will remain as a parking lot. The main lot is Block 4602 Lot 20 and is approximately an acre in size. The Chestnut Street lot is lot 58 and is 1/5 of an acre. The parking lot will be re-stripped and will continue to have the same number of parking spaces with 3 ADA spaces close to the rear of the building.

Right now there are three (3) drive through lanes for the bank. The proposed restaurant drive-through lane will be closest to the building with the middle and exterior lanes for the bank. The rear has two dumpsters which will be moved to a block enclosure at the south part of the site. All lighting will be replaced with LED lighting that will not spill over and as per the lighting requirements at ATMs.

Ingress and egress will remain the same and striping will be done as per the Fire Department report.

A traffic study was done on Tuesday, July 23, 2019 in the morning and evening and on Saturday July 20, 2019. The Chairman pointed out that school was not in session and Nutley has much less traffic in July due to vacations. The engineer testified that they added 50% to the calculations due to school not being in session in their calculations. The que expected at the drive through is as per Starbucks standards for a 6 vehicle que and the lanes holds 5-6 vehicles and can handle peak demands for both the bank and Starbucks.

Mr. Daniel Tolve indicated he was concerned about several people exiting at the same time from the bank and the coffee shop and school kids who walk in the area at lunch. Mr. Tolve asked if the engineer had taken these issues into consideration. Ms. Doherty indicated that she was concerned about the narrow radius and that there was no data presented for the bank next door (Spencer Bank), the Day Care Center across the street or the Shop Rite down the street and the traffic that can back up to the pedestrian walk at Shop Rite at peak school hours.

Ms. Brown raised concerns about the commercial tenants on the second and third floors and the potential impact on traffic from the commercial tenants. Ms. Doherty also expressed concern about the idling time for cars in the que of the drive through and compliance with regulations that limit idling time to under 3 minutes.

The applicant agreed to additional car counts when school was in session, taking into consideration the concerns of the Board.

Todd Hay, the Board's engineer from Pennoni Engineering testified that as per his report signs were needed on the plans to indicate ingress and egress, and signage to provide information for usage of the various drive through lanes needs to be addressed. Mr. Hay also noted that the application required County of Essex approvals.

Mr. Hay also indicated that the stacking analysis should include seven (7) vehicle minimum stacking. Mr. Hay also expressed concern that the current plan needs a

clearer description of vehicles who want to exit and by pass the drive through including exiting in an emergency. Mr. Hay suggested that the applicant might want to remove some parking spaces to make exiting less tight. Mr. Hay also recommended that the Applicant provide a pedestrian count.

Mr. Daniel Tolve advised the applicant that they should look at the position of the dumpsters and the effect on the drive-through.

With no further questions from the members and no one in the audience with questions or comments, requested an adjournment of the application to the March 16, 2020 regular meeting.

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No. 3: 39 Oak Crest Place Approved 7-0

Applicant: Ms. Schevone Johnson, 39 Oak Crest Place, Nutley, NJ 07110

Application: to install a six (6') foot solid type fence on a corner property, which is located on the street side and is in the front yard of the adjoining property along Daily Street, as shown the survey prepared by James Pica, dated April 12, 2018, is denied for the following.

Appearances: Neighbor-Steve Donahue, Neighbor-Mary Appel

Letter of Denial: was read by Patricia Doherty

This property is located in an R-1A district as shown on the Nutley Zoning Map.

Chapter 700, Article XI, Section 700-71 A of the Codes of Nutley states no fences of any type shall be permitted in any front yard.

Chapter 700, Article XI, Section 700-71 D of the Codes of Nutley states a fence erected on any corner lot shall conform to the fence requirements for the adjoining properties.

The portion of the fence is located in the front yard of the adjacent property along Daily Street.

Mr. Cafone recused himself from this application.

Shevone Johnson of 39 Oakcrest Place testified that she has a corner lot hardship and seeks to install a six foot solid fence in line with the garage that faces Dailey Street. The proposed fence would be 10 feet from the street and inside the arborvitae's that are

located on the neighboring property. Applicant testified that she wanted the fence because she has a small child and a dog.

Steve Donahue of 42 Dailey Street testified that he would prefer a chain link fence because he does not like the look of a solid fence and he also thinks that it is better for the child and dog to see out of the fence.

Mary Appel of 46 Dailey Street testified that she objects to the solid fence and the height of the fence. She would prefer a four (4') foot 50% open fence.

The applicant was asked if she would accept a 5ft solid, one (1') foot lattice top fence for a total of 6 feet but the applicant indicated that she would prefer a board on board style fence if she was required to have some type of opening.

Ms. Brown made the motion to approve the variance to install a six foot (6') solid white vinyl board on board fence because the property is a corner lot hardship. The motion was seconded by Ms. Duva and was approved 7-0.

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No. 4: 145 Hancox Avenue Approved 7-0

Applicant: Mr. & Mrs. Rafael & Michelle Wilches

Application: to construct a new two (2) story addition, having a sixteen-point-eight (16.8') front yard setback, and to increase your existing fourteen (14') foot driveway and curb cut to the left for a total width of twenty-six (26') feet, which will reduce your required 60% front yard coverage to 39%, as shown on the plans prepared by Architect, JMA Architects, LLC, dated November 22, 2019,

Appearances:

Letter of Denial: read by Patricia Doherty

This property is located in an R-2 district as shown on the Nutley Zoning Map.

Chapter 700, Article VIII, Section 700-46A of the Nutley Township Code, entitled "Schedule of Regulations as to Bulk, Height and Other Requirements," requires in an R-2 district a twenty-five (25') foot front yard setback. ***The proposed front yard setback is sixteen-point-eight (16.8') feet.***

Chapter 700, Article VIII, Section 700-94A of the Nutley Township Code, entitled "Additional Regulations on Off-Street Parking for One- and Two-Family Dwellings," requires that a driveway is not to exceed sixteen (16') feet in width. ***The proposed driveway width is twenty-six (26') feet.***

Chapter 700, Article VIII, Section 700-94A (3)(a) of the Nutley Township Code, entitled "Additional Regulations on Off-Street Parking for One- and Two-Family Dwellings," requires that curb cuts in an R-2 district do not exceed 16 feet in length. ***The proposed curb cut length is twenty-six (26') feet.***

Chapter 700, Article VIII, Section 700-48 of the Nutley Township Code, entitled "Landscaping of Front Yard for Residence Lots," requires that one- or two-family residences have landscaping in at least 60% of the front yard. ***The proposed landscaping consists of 39% of front yard coverage.***

Mr. Rafel Wilches and Ms. Michelle Wilches of 145 Hancox Avenue testified that they have lived for 9 years at 145 Hancox Avenue and in that time they had two children. The current house is a two-bedroom with a converted attic that they use as a bedroom which can only be accessed by walking through an existing bedroom.

The house has a pre-existing non-conforming 14-foot front yard setback which is similar to the rest of the houses on the block. The proposed addition will be constructed over where the existing driveway is. The applicants are building a garage but due to the position of the front of the house, a car in front of the garage will hang over the sidewalk and that is the reason for the requested side yard driveway.

Ms. Doherty proposed a reduction in the impervious coverage and curb cut width that was shown on an exhibit marked as A-4 which would allow parking next to the house but reduce the curb cut to 18 feet. The side driveway would be 10'6" and the area to the right of the driveway would have a two-foot grass strip. The Applicants agreed to the suggestions of the Board to reduce the curb cut and impervious coverage.

A motion was made to grant the variance by Suzanne Brown who noted that the addition is in line with the existing structure and with the conditions agreed to the impervious coverage would be reduced. The motion was seconded by Ms. Duva. The variance was approved 7-0.

RESOLUTIONS MEMORIALIZED: 153 Ohlson Avenue Block & Lot 5403/8
32 San Antonio Block & Lot 8301/1

MINUTES: January 10, 2020 approved

INVOICES: NJ Planning Officials \$121.00, Pennoni and Associates 10 Kingsland
\$948.00 Inspections

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,

A handwritten signature in cursive script that reads "Lisa Zitola-McGuire".

Lisa Zitola-McGuire