

NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

March 18, 2019

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: Patricia Doherty, Daniel Tolve, Greg Tolve, Joseph Battaglia, Peter Sirica, Gary Marino, Suzanne Brown, Chairman Graziano, and Board attorney, Diana McGovern, Esq.

ABSENT: None.

EXCUSED: Tammy Rossi, Theresa Duva, Thomas DaCosta Lobo

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No. 116 Msgr. Owens Place APPROVED 7-0

Applicant: Saint Mary's RC Parochial School, The Phoenix Centre, 16 Msgr. Place, Block-Lot: 7003-1

Application: To install two (2) cantilever shade structures, 28' by 20' by 15' in height, with a two (2') foot setback to the side yard street side, and one (1) thirty 30' by 20' by 16' in height, having a three (3') foot setback to the main building located in the side yard along St. Mary's Place, as shown on the site layout plan received by Code Enforcement on November 27, 2018;

Appearances: Mr. Thomas DiBiasi, Esq., David Sangiacomo, Amol Olsen, James and Mrs. Russomano, Paul Bauman

Letter of Denial: was read by Mr. Gary Marino

AND the Code Official having denied said permit by letter dated March 18, 2019, citing Chapter 700, Article XI, Section 700.67 A of the *Codes of Nutley* which states detached accessory buildings and accessory uses may occupy in the aggregate an area not to exceed 30% of the area of any rear yard. The height of a detached accessory building shall be one story not to exceed 14 feet; 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 two (2) Cantilever shade structures are located in the side yard along St. Mary's place, one (1) is*

located approximately three (3') feet to the main building, and one having an approximately two (2') foot setback to the side yard on the street side, and one of them exceeding the maximum height of an accessory structure of 14' in height;

Thomas DiBiasi, Esq., made his opening remarks to the board, stating he represented Cantilever Shade Structure for The Phoenix Centre, which is independent of St. Mary's Church. Ms. Julie Mower testified as the director of The Phoenix Centre, stating she wanted to install two shade canopies in order to keep the children out of the sun all day long. She advised the board that some of her students have sensitivities to sunlight. Ms. Mower stated that she would take down the canopies in the winter, but the posts would stay. She explained one post would be inside the chain link fence and one outside. Exhibit A1 was a Google Earth photo of the property. David Sangiacomo testified as the contractor on this application. He stated that he and the Center would have a contract to remove and install the canopies each season. He advised that this structure would eliminate only two parking spots during school days, which the board made a condition. Exhibit A3 showed the board the areas with a high UVF, which were highlighted in blue. Amol Olsen, church member, stated he approved of the application, as well as James and Anne Russomano who members of the Executive Board testified that there is a significant need for the shaded play area. Mr. Paul Bauman testified as the expert planner on this application, stating that 14 feet were permitted and they were requesting 16 feet. Mr. Bauman stated that there would be no detriment to the area with this application, but beneficial aspects to students and staff, and will have no negative impact on the public good.

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 Battaglia, seconded by Mr. Gary Marino. The variance was granted by a vote of 7-0.

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No. 2 41 Prospect Avenue APPROVED 7-0

Applicant: Mr. and Mrs. Edward Arguelles,, 41 Prospect Avenue, Block-Lot: 8801-10

Application: To leave as erected the existing garage which was made into living space, as shown on the floor plan and sketches submitted

Appearances: Anthony Arguelles

Letter of Denial: was read by Mr. Gary Marino

AND the Code Official having denied said permit by letter dated October 2, 2018, citing Chapter 700, Article V, Section 700-9. A of the *Codes of Nutley* which requires two (2) parking spaces for a single family home; *at least one must be in a garage*; 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. By converting the garage into living space, this eliminates the garage and puts the location of the driveway in an area not permitted;

Applicant Anthony Arguelles testified to the board that he had Power of Attorney over his father, Edward Arguelles. He stated that his father had done the conversion in 1978 and that they did not market the garage as an extra bedroom. Mr. Arguelles advised the board he would fit two cars in his driveway. The applicant also demonstrated through the photographs that the area immediately in front of the driveway where cars park was used for storage and was not living space thus alleviating any safety issues should a car pull forward. The garage doors would be left in place allowing access to the storage area.

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. Greg Tolve. The variance was granted by a vote of 7-0.

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No. 36 Van Riper Place APPROVED 7-0

Applicant: Mrs. Margaret Cozzarelli, 6 Van Riper Place, Block-Lot: 705-2

Application: To leave as erected an existing 19' driveway and curb cut, as shown on the survey prepared by P2 Land Surveying, Inc., dated February 5, 2019;

Appearances: Margaret Cozzarelli, Hassan El-Shadasy, Tamar El-Shadasy, Dawit Zerighi

Letter of Denial: was read by Mr. Gary Marino

AND the Code Official having denied said permit by letter dated February 11, 2019, 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. *The existing driveway is 19'*, 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 proposed increased curb cut will be 19'*;

Applicant Margaret Cozzarelli testified to the board that she had just purchased this home and the driveway was 3 feet too wide, and was apparently done without a permit. She explained that she got a temporary Certificate of Occupancy and if she did not receive a variance she would have to rip up the driveway. She stated that her neighbor had the same size driveway, and Ms. McGovern stated that the driveway had been the same for 20 years. Additionally, the curb cut would not create the loss of any on street parking. Neighbors Hassan and Tamar El-Shadasy were confused regarding the application and Chairman Graziano advised that this application would not affect them, however, by law they had to notify them. Dawit Zerighi, 2 Van Riper Place, testified that he approved of the application.

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. Greg Tolve. The variance was granted by a vote of 7-0.

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No. 4 19 Carrie Court APPROVED 7-0

Applicant: Mr. Enrique Salinas, 19 Carrie Court, Block-Lot: 8700-44

Application: To widen the existing driveway and curb cut on the left and right for a total width of 20', as shown on the survey prepared by William Held Associates, Inc., dated August 10, 2001;

Appearances: Enrique Salinas

Letter of Denial: was read by Mr. Gary Marino

AND the Code Official having denied said permit by letter dated February 11, 2019, 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. *The proposed increased driveway will be 20'*; 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 proposed increased curb cut will be 20'*;

Applicant Enrique Salinas testified to the board that he discovered he would need a wider driveway while working on his retaining wall. Chairman Graziano pointed out the rise in elevation, and suggested bringing up the wall 4-6 inches high. Mr. Salinas stated that would make it difficult to open car doors. Mr. Salinas stated he wanted to make the wall one level, and, because Chairman Graziano was concerned a car could possibly drive over the wall, he decided to finish the elevation to the pavers (4 inches minimum). The new retaining wall was being installed properly so it will withstand a car parking next to it. The Applicant testified that due to the sloping of the land he wanted to make the driveway flat which resulted in the need for the variance.

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 Joseph Battaglia. The variance was granted by a vote of 7-0.

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PUBLIC COMMENT: None.

RESOLUTIONS MEMORIALIZED: 25 Cathedral Avenue, 10 Donna Court, 47 Washington Avenue, 5 Howard Place

MINUTES: February 11, 2019 minutes approved

INVOICES: Pennoni for 551 Centre Street, \$255.00

NEW BUSINESS: None.

LITIGATED MATTERS: None.

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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 5/13/2019 