

NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

May 13, 2019

*Approved
6/17/2019*

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: Tammy Rossi, Patricia Doherty, Daniel Tolve, Gregory Tolve, Peter Scirica, Theresa Sullivan Duva, Secretary, Suzanne Brown, Frank Graziano – Chairman, Diana Powell McGovern, Esq.

EXCUSED: Gary Marino, Joseph Battaglia, Thomas Da Costa Lobo

ABSENT: None

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No. 1: 150 Kingsland Street – CONTINUED TO JUNE 17, 2019 MEETING

Applicant: Everas Community Services, Inc., 24 K Words Fair Drive, Somerset, NJ 08873

Application: for a permit at the above referenced premises, to increase the existing driveway to the left, in front of the dwelling for a total width of 22', which decreases the required 60% front yard coverage to 44%, as shown on the survey prepared Leo A. Kalieta & Co., dated June 2, 2016

Appearances:

Letter of Denial:

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

Chapter 700, Article XIII, Section 700-94 A (1) of the Codes of Nutley 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.

Chapter 700, Article VIII, Section 700-48 of the Codes of Nutley requires 60% of the front yard to be landscape.

Ms. Diana McGovern informed the board that the applicant requested more time, and requested the case be adjourned to June 17, 2019. A motion approved the adjournment to June 17, 2019 by a vote of 7-0.

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No. 2: 378 Franklin Avenue

Applicant: Christine Sandowick, 378 Franklin Avenue, Nutley, NJ 07110

Application: Your request on behalf of your client, Franklin 378, LLC, to construct a new 917 square feet addition on the second floor to expand the existing day care center, at the above referenced premises, as shown on the drawings prepared by Dassa Haines Architectural Group, LLC, dated January 16, 2019

Appearances: Thomas Dibiasi Esq. for Dibiasi & Rinaldi, Christine Sadowick, Daniel Sadowick, Joseph Haynes, Architecture expert, Joseph Staigar, Traffic Expert, Paul Bauman, Planning Expert

Letter of Denial: The Letter of Denial was read by Ms. Patricia Doherty

Chapter 700, Article VII, Section 700-45-B of the Codes of Nutley requires a conditional use for a day care and nursery school to be reviewed and approved by the Board of Adjustment.

Chapter 700, Article VII, Section 700-45-B (2) of the Codes of Nutley requires a lot containing a day care center shall contain at least 10,000 square feet and shall be at least 75' wide. The pre-existing lot size is 50' wide by 125.67' in depth, and 6,283 square foot in lot area.

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.

Chapter 700 Article, XIII, Section 700-96 of the Codes of Nutley states parking and loading areas located in any front yard or side yard abutting a street shall not be permitted within 10' of the right-of-way line of a street. **The minimum setback of off-street parking and loading area from any other lot line shall be five (5') feet.** The five (5') foot parking and loading area setback need not be provided between properties which have common access and/or common parking areas.

Chapter 700 Article III, Section 700-3 of the Codes of Nutley, entitled "Definitions"; a **PARKING SPACE** is an off-street space available for the parking of one motor vehicle and having minimum dimensions of nine feet in width and 18 feet in length, exclusive of passageways and driveways appurtenant thereto and giving access thereto, **and having direct usable access to a street.**

The Zoning Board of Adjustment approved a use variance with conditions for the 1st floor of the premises to be utilized as a daycare center on January 8, 2007, and also

approved a use variance with conditions for the 2nd floor of the premises to be utilized on December 21, 2009.

Mr. Thomas Dibiasi Esq. of Dibiasi & Rinaldi called his first witness, Christine Sadowick, the owner of Little Kingdom Child Care Center, to the stand. Mrs. Sadowick testified that the new 917 ft addition over the driveway would allow up to 26 potential new students to attend the daycare. Mr. Dibiasi includes that Childcare facilities is a growth industry and the demand for daycare is only increasing. Chairman Graziano questions the safety of the operation, as small children will be getting dropped off while potential employees or other parents could be pulling into the lot. Mrs. Sadowick states that safety is her number one priority and that her students are all met at their cars and brought into school, so no student is ever left unattended. Mrs. Sadowick testifies that with the size of her facility now she is unable to grow her business and has to turn potential customers away because of the lack of space. On top of this she states that the addition would also increase curb appeal.

With the new addition a playground will be constructed on the side of the building. Chairman Graziano questions the safety of the playground being right next to the driveway, but Mrs. Sadowick reassures him that the play area will be to side of the new addition and not under it. Next Mr. Dibiasi Esq. calls Daniel Sadowick, the husband of Mrs. Sadowick and co-owner of the childcare center. Mr. Sadowick is a retired North Arlington police lieutenant. Mr. Sadowick also testifies that his employees go out and escort children from their cars to the facility and that no child is ever left unsupervised. He also states that he will be there during the construction to help escort kids safely. The construction time for the project is estimated at 6-10 weeks and he assures the board that the children will always be separated from the construction with fencing.

Mr. Dibiasi then calls Joseph Haines, an architecture expert from Dassa Haines Architectural Group. Mr. Haines testifies that project would include the new addition and would also create a new staircase in the back that would be completely enclosed for the safety of the children. The lot in the back would also be expanded to 8 spots with two of them being strictly drop off spots. He states that the playground will also remain the same size 12ft x 24ft. The addition will consist of a hallway, a bathroom, and a new playroom which would allow up to 26 new children. Chairman Graziano asks for clarification on the parking area. Mr. Haines states the old playground will be paved over and there will be an 8'6" clearance under the driveway which is high enough for an emergency vehicle like an ambulance. Mr. Sadowick then returns to the stand and states that he will see to it that the playground has a rubberized flooring instead of blacktop and that there will be a 4ft high chain link fence that runs around the play area and there will be one gate.

The next witness is a traffic expert, Joseph Staigar, an engineer from Dynamic Engineering. Mr. Staigar states that with the completion of the new addition the facility will be allowed 54 students. Mr. Staigar uses standard trip generators to model the flow of traffic and states that there will be a 2-3-hour window in the morning and the evening

when pickup and drop off is most likely. He states that during the peak hours 20 pickups or drop offs will be the highest hourly rate. He states that this is relatively light traffic and only 9 more than the current peak hourly rate. He states that the average time for a pickup or drop off is around 5.5 minutes but with the employee's assistance that number can likely be cut down to about 4 minutes a drop off. They are expecting at the very most 20 per hour but the facility is capable of 22. He states that with two parking spaces set for drop off only and most of the employees taking public transportation or getting dropped off there will most likely be more than two open spots at any given time. Chairman Graziano states that the drop off spots should be marked and that there should be a large mirror on the wall so pulling out of the lot is easier and safer. They will also eliminate one parking space as there is no requirement for lots under 20,000sqft.

The next witness is Paul Bauman, the planning expert. Mr. Bauman testifies that the parking is more than adequate for drop off and pickup. He states that there are no negative in regard to traffic from this addition. He states that they will leave a 4ft buffer next to the spots to make it easy for cars to pull in and out.

With no further questions from the members of the board or the audience, a motion to grant this variance to add the addition, eliminate parking spot number one, have double painted lines and a stop line when pulling out as well as painted drop off spots and a rubberized playground was made by Ms. Theresa Duva and seconded by Mr. Gregory Tolve. The variance was granted by a vote of 7-0.

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No. 3: 109 Walnut Street

Applicant: Mr. & Mrs. Pinho, 109 Walnut Street, Nutley, NJ, 07110

Application: Your request, on behalf of your client, Mr. & Mrs. Pinho, for a construction permit, at the above referenced premises, to construct an addition on to the existing legal non-conforming two family dwelling in an R-1 zoning district, as shown on the plans prepared by Architect, Mileto-Godsall Associates LLC, dated April 1, 2019, and the submitted property survey, prepared by Surveyor, Manno Surveying dated September 25, 2019

Appearances: Thomas DiBiasi, Esq.

Letter of Denial: Chapter 700, Article XVI, Section 700-113 A of the Codes of Nutley prohibits a non-conforming structure to be enlarged, extended, reconstructed or structurally altered.

Mr. DiBiasi requested an adjournment due to unavailable expert witnesses.
Adjourned until June 17th.

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No. 4: 482 Franklin Avenue

Applicant: Mr. Agop Varvar, 482 Franklin Avenue, Nutley, NJ 07110

Application: Your request on behalf of your client, Mr. Agop Varvar, for a construction permit, at the above mentioned premises, to install a new front canopy, 50'X 40'X 17'6" in height, with 24 square feet of Delta signs on the North and South sides, which is located in the front yard of the existing service station, as shown on the plans prepared by Houser Engineering dated, February 28, 2019, and renderings prepared by TFC Canopy, dated February 28, 2019, and to install a new pylon sign in the same location as the existing one, which is 20' in height and 144 square feet of signage on both sides, as shown on the rendering submitted by the owner/applicant

Appearances: Thomas Dibiasi Esq. from Dibiasi and Rinaldi, Tyler Vanderlk, engineer, Agop Varvar, son of owner, Joseph Staigar, traffic expert, Paul Baunan, Planning Expert and neighbors, Michael and Cindy Zaca, Robert Lohf

Letter of Denial: The Letter of Denial was read by Ms. Patricia Doherty

Chapter 700, Article XI, Section 700-67 A of the Codes of Nutley states a 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.

Chapter 700, Article XI, Section 700-67 B (2) of the Codes of Nutley states no detached accessory building or accessory use shall be located within 50 feet of the front lot line of the lot

A previous variance was granted by the Board of Adjustment in 1989 for the canopy in its existing location. This application is to increase the size of, and to move closer to both street lines to improve gas truck deliveries.

Chapter 700, Article III, Section 700-3 of the Codes of Nutley states the definition of a **PYLON SIGN** is any business sign supported by uprights, braces or masonry wall which is attached to the ground and is not attached to any building, exceeding five feet in height to the top of the sign. Pylon signs are prohibited in all zones. An example of a pylon sign is a gas station sign.

Chapter 700, Article XII, Section 700-79 N of the Codes of Nutley prohibits signs on accessory buildings or structures.

Chapter 700, Article XII, Section 700-84 B of the Codes of Nutley states the permitted total surface display area of business signs, including ground signs, shall be the number of square feet determined by the application of the formula set forth above, including the exception for a corner lot and the exception where premises abut a public parking lot. In no event shall the maximum display area for a premises exceed 150 square feet. The total surface display shall include both sides of a double-faced sign.

A previous variance was granted by the Board of Adjustment in 1997 for the existing pylon sign for 100 square feet both sides in its present location.

The building width is 48 feet x 1.5 = 72 which is the maximum sf for the building

Canopy signs North and South side= 48 sf

Proposed pylon sign = 144 sf

Existing box sign on building = 24 sf

Total signage 216 sf

Chapter 700, Article XVI, Section 700-113 A of the Codes of Nutley prohibits a non-conforming structure to be enlarged, extended, reconstructed or structurally altered.

Thomas Dibiasi Esq. states that applicant is looking to replace the existing canopy with a new 50' x 40' x 17' 6" canopy. He also states the life expectancy of underground gas tanks are approaching and they need to relocate the new pumps for better circulation. The first witness in an engineer from Brentonwood NJ, Tyler Vanderlk. Mr. Vanderlk states the gas station needs two new 12,000-gallon storage tanks compare to the two 6,000-gallon tanks they have now. He also states that the canopy is damaged and looks like it has been hit by delivery trucks. They also want to widen between the pumps to make it easier for delivery trucks to get in and out. Mr. Vanderlk states that the new 40' x 50' canopy is industry standard. Chairman Graziano asks how the canopy will be moved. Mr. Vanderlk states that the canopy will now be moved to 4 ft from the street. He also states that the existing pylon sign will be taken down and will be replaced on the north side of the station and will stand at 18' tall just like the previous one did. The light on the sign will go off 30 minutes after closing.

Michael Zaca a local resident comes to the stand to voice his concern about the new signage at the Delta station. He states that this signage will light up right out the window of his home. He also states the bright LEDs will not look good on Franklin Avenue. Then Ms. Diana McGovern states that red, amber or green lights are not permitted to be within 100ft of traffic lights. Mr. Vanderlk then states that the sign will be white and backlit at all time it is on. Next Robert Lohf, another local resident who lives at 85 Vreeland, states that he is in favor of the new sign as it will make the neighborhood look so much better than the old sign they have now. Then Ms. Theresa Duva asks why the pylon sign cannot be the same height as the canopy. They agree and say they will lower the pylon sign 6" so it is 17' 6" the same as the canopy.

Next the owner's son, Agop Varvar is the next witness and he states that he wants the larger canopy in order to keep his employees and customers dry and safe from the weather. He also states that widening the space between the pumps will make it easier for tucks to pull out and now they will not have to back out onto Franklin Avenue which affects the traffic. The next witness was a traffic expert Joseph Staigar, an engineer from Dynamic Engineering. Mr. Staigar testifies that as of right now the trucks cannot pull out

the station so they have to back out onto Franklin Avenue and that if there are any cars across the street, they will need to be moved so the trucks have enough room. The movement of the canopy will allow the trucks to pull out onto Vreeland. Mr. Staigar also states that they will turn the lights off at closing time which is 10 p.m. He goes onto say that it is very important that the sign has both the logo and the name to attract customers.

The next witness is Paul Bauman, Planning Expert, who states that it is important that people are able to see the sign as they are coming north from Belville. Mr. Bauman also states that this project creates no public detriment. Ms. Diana McGovern questions the brightness of the sign and they agree that it will not exceed 75 footcandles as per the code.

With no further questions or comments from the board and audience a motion to grant this variance was made by Peter Scirica as long as the pylon sign is 17' 6", the sign from the corner is removed, the lights go off at 10p.m., only approved color white will be within 100 feet of traffic light, and the brightness cannot exceed 75 candles. This motion was seconded by Ms. Patricia Doherty. The variance was granted by a vote of 7-0.

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No. 5: 4 Enclosure

Applicant: Leonardo Almeida, 4 Enclosure, Nutley, NJ, 07110

Application: Your request for a fence permit, at the above referenced premises, to install a six (6') foot solid type fence located in the front yard of the adjoining property along Passaic Avenue on a corner property, as shown on the survey submitted to Code Enforcement

Appearances: Leonardo Almeida and Tatiana Almeida, homeowners

Letter of Denial: The Letter of Denial was read by Ms. Patricia Doherty

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.

Chapter 700, Article XI, Section 700-71 B of the Codes of Nutley states 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.

Leonardo Almeida testified that he and his wife, Tatiana, want to install a 6-foot solid fence in order to ensure the safety of their 4-year-old and 4-month-old children. Mr. Almeida wants to have the fence around the backyard in order to keep children safe from the street and because he has recently found bottles from the local bar on his property. Ms. Theresa Duva suggested that a 4ft 50% fence on the street side and the rest of their yard they can have a 6ft fence, 5 feet solid and the top foot lattice would provide the same security and allow for site lines for automobiles. This suggestion was accepted by the Applicants.

With no further questions or comments from the board, a motion to grant this variance was made by Theresa Duva if the fence was 4ft and 50% on street side and 5ft Solid and 1ft lattice on the top around the rest of the backyard. This motion was seconded by Mr. Gregory Tolve. The variance was granted by a vote of 7-0.

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No. 6: 452 Bloomfield Avenue

Applicant: Mr. and Mrs. Roberto Rosa, 452 Bloomfield Avenue, Nutley, NJ, 07110

Application: Your request for a permit at the above referenced premises, to increase the driveway width to 24'4" which will be in front of the existing dwelling, which will decrease the landscape coverage, as shown on the plan prepared by Architect, Alan Feld, dated December 21, 2018

Appearances: Architect, Alan Feld

Letter of Denial: The Letter of Denial was read by Ms. Patricia Doherty

Chapter 700, Article XIII, Section 700-94 A of the Codes of Nutley states no front yard of a lot upon which is located 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 proposed 24'4" driveway will be in front of the existing dwelling.***

Chapter 700, Article XIII, Section 700-94 A (1) of the Codes of Nutley 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 driveway shall be 24'4".***

Chapter 700, Article VIII, Section 700-48 of the Codes of Nutley requires landscape coverage of at least 60%. ***The proposed landscape coverage shall be 42.9%.***

Mr. Feld testifies that Mr. and Mrs. Rosa want to widen their driveway to 24' 4" in order to have another parking spot. Mr. Feld states that the design protects the house as the cars will still be in front of the driveway. He claims that there will be no negative effect on the neighborhood.

With no further questions or comments from the board or audience, a motion to grant this variance was made by Ms. Suzanne Brown and seconded by Ms. Theresa Duva. The variance was granted by a vote of 7-0.

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No. 7: 41 Plymouth Road

Applicant: Mr. & Mrs. Randall Baumann, 41 Plymouth Road, Nutley, NJ, 07110

Application: Your request, at the above referenced premises, to widen the existing 10' driveway to 16', four (4') feet to the right, and two (2') feet to the left in front of the dwelling, which will decrease the required front yard landscaping to 54%, as shown on the survey submitted to the Code Enforcement department, March 6, 2019

Appearances: Randall Baumann

Letter of Denial: The Letter of Denial was read by Ms. Patricia Doherty

Chapter 700, Article XIII, Section 700-94 A (1) of the Codes of Nutley 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.

Chapter 700, Article XIII, Section 700-94 A (3) (a) of the Codes of Nutley states each property shall not have more than one curb cut and shall not exceed 16 feet in length.

Chapter 700, Article VIII, Section 700-48 of the Codes of Nutley 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 required front yard landscape coverage is 60%, the proposed will be 54%.***

Randall Baumann testifies that he wants to make his driveway wider, so that his daughter will have another parking spot when she comes of driving age shortly. The

driveway would be expanded 4ft to the right and 2ft to the left in front of the house. This would take the driveway to 4ft from the property line. Chairman Graziano states that it would be close to the neighbors house and recommends he add a 6" curb to both side of the driveway.

With no more questions or comments from the board or audience. A motion to grant the variance was made by Ms. Suzanne Brown, if the driveway was surrounded on both side by a 6" curb. The motion was seconded by Mr. Gregory Tolve. The variance was granted by a vote of 7-0.

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No. 8: 11 Knox Place

Applicant: Walter Murray, 11 Knox Place, Nutley, NJ, 07110

Application: Your request for a permit, at the above referenced premises, to construct a 10' X 16' covered roof over the patio in the rear of the property, which will have a five (5') foot setback to the in-ground pool, as shown on the survey submitted to the Code Enforcement department

Appearances: Walter Murray

Letter of Denial: The Letter of Denial was read by Ms. Patricia Doherty

Chapter 700, Article XI, Section 700-67 C of the Codes of Nutley states no detached accessory building shall be located nearer than 10 feet to a main building.

A variance was granted 1989 by the Board of Adjustment to install an in-ground pool.

Mr. Murray testifies that he wants to add a 10' x 16' roof over his patio that will be 5' away from his inground pool. Mr. Murray states that he has had skin cancer and this roof would help lessen sun exposure. Chairman Graziano confirms that the roof will be in line with the house.

With no further questions or comments from the board or the audience, a motion to grant this variance was made by Ms. Theresa Duva, and was seconded by Mr. Gregory Tolve. The variance was granted by a vote of 7-0.

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Invoices: None.

Public Comment: 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.**

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Paul Marranzino". The signature is written in a cursive style with a long, sweeping underline.

Paul Marranzino

Board Secretary