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10/21/2020  
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**NUTLEY ZONING BOARD OF ADJUSTMENT**

**Public Session Meeting Minutes**

**September 21, 2020**

**CALL TO ORDER:** A meeting of the Nutley Zoning Board of Adjustment was called to order at approximately 7:30 p.m. via Zoom by Chairman Graziano. The Pledge of Allegiance was recited. Roll was called and the Sunshine Notice was read.

**PRESENT:** Tammy Rossi, Patricia Doherty, John Cafone, Gregory Tolve, Peter Scirica, Daniel Tolve, Theresa Sullivan Duva, Joseph Battaglia, Chairman Graziano, Diana Powell McGovern, Esq.

**EXCUSED:**

**ABSENT:**

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Chairman Graziano states that Suzanne Brown has stepped down from her position on the board. Mr. Graziano thanks Ms. Brown for her time and service to the town of Nutley. Nominations for Vice Chair and board secretary proceed.

Tammy Rossi nominated Joseph Battaglia for Vice Chair of the board and the nomination was seconded by Theresa Duva. The vote was passed by a vote of 7-0.

Theresa Duva nominated Patricia Doherty for board Secretary and the nomination was seconded by Tammy Rossi. The vote was passed by a vote of 7-0.

**No. 1: 79 William Street**

**Applicant:** Mr. & Mrs. Thomas & Dawn Wassman, 79 William Street, Nutley, NJ, 07110

**Application:** Your request for a permit, at the above referenced premises, to leave as erected a 4'x24', 96 square foot addition to the existing deck, which has a six (6') foot setback to the existing garage, as shown on the property survey prepared by Frank J. Ernst, dated September 11, 2000, and on the plan submitted by the homeowners, received on April 21, 2020

**Appearances:** Thomas & Dawn Wassman

**Letter of Denial:** The Letter of Denial was read by Patricia Doherty

Chapter 700, Article XI, Section 700-67 D of the Codes of Nutley, entitled "Accessory buildings and uses," states that "an attached accessory structure or accessory use shall be considered to be part of the main building."

Chapter 700, Article XI, Section 700-67 C of the Codes of Nutley, entitled "Accessory buildings and uses," states that "no detached accessory building shall be located nearer than 10 feet to a main building." ***The existing garage has a six (6') foot setback from the proposed deck.***

Mr. and Mrs. Wassman stated that they were unaware that they needed a permit to extend their deck. They stated that they hired a contractor who said a permit was not needed for the proposed deck extension. The extension of the deck has left 6' 11 3/4" space between the garage and the deck. The new deck is not 24' 11' in width.

With no further questions or concerns a motion to leave the existing deck erected was made by Joseph Battaglia and seconded by Gregory Tolve. The variance was granted by a vote of 7-0.

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**No. 2: 126 San Antonio Avenue**

**Applicant:** Mr. & Mrs. Steven Stavriotis, 126 San Antonio Avenue, Nutley, NJ, 07110

**Application:** Your request for a permit, at the above referenced premises, to demolish the existing one car garage at the rear of the property, as shown on the property survey, prepared by Shepard & Shepard

**Appearances:** Steven Stavriotis

Chapter 700, Article V, Section 700-9 A of the Codes of Nutley states a single family dwelling shall be required to have two (2) parking spaces and one space must be in a **garage**.

Steven Stavriotis states that the garage was never used to store a vehicle since he bought the home in 1997. He states that a tree from his neighbor's yard fell onto his garage and part of his deck. Mr. Stavriotis feels there is ample parking with his three-car driveway. Mr. Stavriotis would like to extend his deck. They deck extension would make the deck 16' x 14' and about 4' or 5' shorter than the width of the house.

Louis Perez and Katherine Rodgers who live directly behind the home feel that the deck is too larger and will intrude on their privacy. The applicant states that there would be a 19' setback from the deck to the fence and feels that the setback would leave sufficient space as to not impede on his neighbor's property.

The Chairman noted that the property includes an unbuildable lot to the left which makes the lot wide but the lot is short on length.

With no further questions or concerns a motion to approve this variance was made by Theresa Duva and was seconded by Joseph Battaglia. The variance was approved by a vote of 7-0.

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**No. 3: 45 Hope Street**

**Applicant:** Peter Russo, 45 Hope Street, Nutley, NJ, 07110

**Application:** Your request for a permit, at the above referenced premises, to construct a portico roof over the existing stairway platform, having an approximate front yard setback of five (5') feet, as shown on the plans submitted by owner, and on the property survey by George J. Anderson, LLC, dated March 14, 2000

**Appearances:** Peter & Michele Russo

**Letter of Denial:** The Letter of Denial was read by Patricia Doherty

Chapter 700, Article VIII, Section 700-46 B (4) of the Codes of Nutley, entitled "Schedule of Regulations as to Bulk, Height, and Other Requirements," refers to "extensions of a structure into a **required** front or rear yard." ***The proposed portico roof will be constructed over an existing stairway platform that does not have the required front yard setback.***

Chapter 700, Article VIII, Section 700-46 B (4) (d) of the Codes of Nutley, entitled "Schedule of Regulations as to Bulk, Height, and Other Requirements," states that "extensions of a structure into a required front or rear yard shall be permitted as follows: by any terrace or porch having its floor level no higher than the floor level of the first story of the building and having no railing or other member higher than three feet above floor level: six feet." ***The proposed portico roof encroaches approximately 66", but the premises do not have the required front yard setback per the regulations.***

Mr. and Mrs. Russo want to construct a portico roof over their front landing to improve the look of the home. The home was built in 1912 and is setback less than 10' from the sidewalk. The Board noted that the roof would extend only over the front landing of the steps and not increase the pre-existing set back problem.

With no further questions or concerns a motion to grant the variance was made by Daniel Tolve and was seconded by Theresa Duva. The motion was approved by a vote of 7-0.

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**No. 4: 87 Ohlson Avenue**

**Applicant:** Michael Fazio, 87 Ohlson Avenue, Nutley, NJ, 07110

**Application:** Your request for a permit, at the above referenced premises, to install a 12'x17'x54" above-ground pool, and to install a six (6') foot solid type fence, and to leave

as erected an 8'x12' shed, having a zero (0') foot setback, as shown on the property survey by James Pica, dated October 28, 2016

**Appearances:** Michael Fazio

**Letter of Denial:** The Letter of Denial was read by Patricia Doherty

Chapter 700, Article V, Section 700-9 D (2) of the Codes of Nutley, entitled "Permitted uses in R-1 Zoning District," states that "the pool shall be no closer than eight feet to any side or rear lot line; or nearer to the side street line of a corner lot than the main building on the lot; or if the abutting lot to the rear faces said street line, then the distance equal to the depth of the front yard required on said lot to the rear. However, in no case shall a swimming pool on a corner lot be required to be set back more than 25 feet from a side street." ***The proposed above-ground pool will be nearer to the side street line of a corner lot than the main building on the lot.***

Chapter 700, Article XI, Section 700-67 A of the Codes of Nutley, entitled "Accessory buildings and uses," states that "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." ***The proposed above-ground pool will not be located in the rear yard.***

Chapter 700, Article XI, Section 700-71 A of the Codes of Nutley, entitled "Fences and retaining walls," states that "no fences of any type shall be permitted in any front yard." ***The proposed six (6') foot solid type fence will be in the front yard of this corner property.***

Chapter 700, Article XI, Section 700-71 D of the Codes of Nutley, entitled "Fences and retaining walls," states that "a fence erected on any corner lot shall conform to the fence requirements for the adjoining properties." ***The proposed six (6') foot solid type fence will be in the front yard of the adjoining property.***

Michael Fazio would like to leave his existing shed that has been there since he bought the home in 2016. Mr. Fazio would like construct a 12' x 17' x 54" semi-inground pool. His home is a corner property, and his yard is a side yard. Mr. Fazio states that the filter would be placed between the pool and the shed.

With no further questions or concerns a motion to approve the shed and the pool was made by Joseph Battaglia and seconded by John Cafone. The variance was approved by a vote of 7-0.

Mr. Cafone recuses himself from the rest of the application pertaining to the proposed fence. Mr. Fazio states that he wants to install a 6' solid privacy fence on 3 sides of his yard. He agrees to leave the fence slightly off the ground to maintain the landscaping. There is also a condition put in place to keep the landscaping blocking the fence on the existing sides. There will also be a 6' gate for access in and out of the yard.

With no further questions or concerns a motion to grant the variance for the fence was made by Joseph Battaglia and was seconded by Theresa Duva. The motion was approved by a vote of 7-0.

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**No. 5: 3 Union Avenue**

**Applicant:** HuaPing Dong & XueRong Tang, 3 Union Avenue, Nutley, NJ, 07110

**Application:** Your request for a permit, at the above referenced premises, to install a five (5') foot solid fence with a one (1') foot lattice, for a total height of six (6') feet, in the side yard on the right side, and to install a gate of the same type in the left side yard, as shown on the property survey prepared by Butler Surveying & Mapping, Inc., dated November 1, 2016

**Appearances:** HuaPing Dong & XueRong Tang

**Letter of Denial:** The Letter of Denial was read by Patricia Doherty

Chapter 700, Article XI, Section 700-71 B of the Codes of Nutley, entitled "Fences and retaining walls," states that "a fence erected along the side lines shall not exceed four feet in height ... and shall be of 50% open construction." ***The proposed side yard fences are five (5') foot solid fences with a one (1') foot lattice, for a total of six (6') feet in height.***

Elaine Dong (Daughter of the Applicants who do not speak English) and Pete Bachato (Next door neighbor) are testifying on behalf of HuaPing Dong and XueRong Tang. Ms. Dong states that the family has a large dog that can jump over a 4' fence. They would like a 6' fence, 5' solid and 1' lattice. Mr. Bachato states that he has no problem with the fence, and it will be on his property line as well. Mr. Bachato states that there are very similar style fences in the area.

With no further questions or concerns a motion to approve the variance was made by Theresa Duva and was seconded by Gregory Tolve. The motion was approved by a vote of 7-0.

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**No. 6: 3 Burnett Place**

**Applicant:** Maria McGarry, 3 Burnett Place, Nutley, NJ, 07110

**Application:** Your request for a permit, at the above referenced premises, to install a six (6') foot picket fence located in the side yard of the corner property along Walnut Street, which is in the front yard of the adjoining property along Walnut Street, and without having consent from the neighbor, as shown on the property survey prepared by Gluckler & Den Bleyker, dated October 11, 2018

**Appearances:** Maria McGarry

**Letter of Denial:** The Letter of Denial was read by Patricia Doherty

Chapter 700, Article XI, Section 700-71 D of the Codes of Nutley, entitled "Fences and retaining walls," states that "a fence erected on any corner lot shall conform to the fence requirements for the adjoining properties." ***The proposed fence will be located in the side yard on the street side which is in the front yard of the adjoining property.***

Chapter 700, Article XI, Section 700-71 A of the Codes of Nutley, entitled "Fences and retaining walls," states that "no fences of any type shall be permitted in any front yard." ***The proposed fence will be located in the side yard on the street side which is in the front yard of the adjoining property.***

Chapter 700, Article XI, Section 700-71 H of the Codes of Nutley requires written consent of the adjoining property owner or owners when a privacy fence with no open construction may be erected.

The Board expressed concern over the rear fence and that it would affect the neighbors' front yard in a negative manner. The Applicant testified that she wanted to place the fence between her bushes and the neighbor's house which faces Walnut Street but the Board noted that should the neighbor's bushes be removed then the neighbor's front yard would be faced with a solid fence. The Applicant agreed to a condition to change the rear fence to 50% open small chain link which would be less intrusive on the rear neighbor.

Ms. McGarry states that she would like to construct a 6' white vinyl fence on the inside of her arborvitaes and along her neighbor's fence. A condition is put in place that evergreen landscaping must be maintained to block the fence and the fence must be high enough to maintain landscaping behind it. The board makes a condition that the applicant put a black aluminum or 1" chain link fence at the rear of the property in order to blend in with the bushes and not harm the appearance of the neighbor's property. The other sides of the fence would be 6' solid.

With no further questions or concerns a motion to approve the variance was made by Joseph Battaglia and was seconded by Gregory Tolve. The variance was approved by a vote of 7-0.

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**No. 7: 6 Cortland Street (Limited inquiry regarding evidence not presented at last hearing)**

**Applicant:** Ms. Natalie De LA Rosa & Mr. Kelvin Batrista, 6 Cortland Street, Nutley, NJ, 07110

**Application:** Your request for a permit, at the above referenced premises, to install a six (6') foot solid type fence on the left side lot line, which is located in the side and rear yard lot line, and without having consent from the neighbor, as shown on the survey received by Code Enforcement, dated May 19, 2020

**Appearances:** Ms. Natalie De LA Rosa & Mr. Kelvin Batrista, Patricia Schulze, Fernando Medina, Barbara Polito

**Additional Testimony Presented:** Patricia Schulze who raised her hand for 6 Cortland at the last meeting but was not called upon due to error was heard and a decision on whether to reopen the case was made. Mrs. Schulze feels that the fence is not necessary and makes a dark ally for their neighbor. Applicant, Kelvin Batrista feels that the fence is not a hardship for Mrs. Schulze. The board did not believe there was a reason to reopen the case so the decision will stand and the resolution was memorialized as written.

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**Invoices: Secretary pay of \$150.**

**Public Comment:** Fernando Medina states that he was thankful for the closing of 6 Cortland and understood Mr. Batrista's concerns.

Barbara Polito asks how she can address that her neighbors are not maintaining the property between the fences. Ms. Polito was instructed to contact the Code Office.

**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 horizontal stroke at the end.

**Paul Marranzino**

**Board Secretary**