NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

February 11, 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, Greg Tolve, Theresa Duva, Gary Marino, Tom DaCosta Lobo, Suzanne Brown, Chairman Graziano, and Board attorney, Diana McGovern, Esq., Joseph Battaglia

ABSENT: Peter Scirica

EXCUSED: None.

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No. 15 Howard Place APPROVED 7-0

Applicant: Garootz Industries, LLC, 5 Howard Place, Block-Lot: 5602-30

Application: To demolish the existing two (2) car garage and expand the driveway in the rear which will reduce the impervious coverage, and to increase the existing 16' curb cut to 22', as shown on the site plan prepared by Mark A. Palus, PE, PP, dated June 25, 2018;

Appearances: Andrew Garuto, Mark Palus

Letter of Denial: was read by Mr. Tom DaCosta Lobo

AND the Code Official having denied said permit by letter dated January 9, 2019, 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 impervious coverage not to exceed 70%. ***The proposed impervious coverage will be 90%.***; 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' in length, and also citing,

Chapter 700, Article XIII, Section 700-96 & 700-98 of the *Codes of Nutley* are not applicable in an R-1 zoning district; however, the Code Official recommended that a buffer be discussed by the board, and also citing,

Chapter 700, Article XVI, Section 113A of the *Codes of Nutley* which states no nonconforming use nor structure nor any lawful use on a nonconforming lot shall be enlarged, extended, reconstructed or structurally altered, except that such structure or use my be structurally altered to correct an unsafe condition. A nonconforming structure on a nonconforming lot may be restored or repaired in the event of partial destruction thereof. The existing multi-family structure is located in an R-1 zoning district and it is nonconforming;

Applicant Andrew Garuto testified that he was both the applicant, and an attorney of the Corporation. He stated that they needed a D2 variance for this five apartment unit. He stated that there would be one two bedroom apartment, and four one bedroom apartments. He stated that the building was completely renovated. Mr. Garuto explained that the prior owner used to have the tenants parking behind each other, causing issues. The applicant stated it was a narrow driveway and wanted to continue the driveway behind the building, which could fit four vehicles. The applicant stated that 4 were rented and the last one had not been rented since he purchased the building because it did not have a parking spot. Mr. Mark Palus testified as the expert planner on this application. He stated he wanted to remove the garage, which would create three spots behind the building, and three spots on the side on a diagonal. He stated that he would make the drainage changes so that no water patterns would change. Mr. Palus explained that they would be using storm chambers that would be able to store 1000 gallons. Mr. Palus told the board that they would be building a retaining wall to raise the grade up. Ms. Suzanne Brown asked why all the greenery would have to be removed. Mr. Palus responded that there were a few small patches of grass, however, it was not usable green space. He explained that there was no opportunity for planting, but he would be installing the wall, which would be aesthetically pleasing. Chairman Graziano asked Mr. Palus where the guide rail would be. Mr. Palus responded that it would be on the western side and wrapped around the rear a bit. He reminded the board that they would not be increasing the size or the number of units, and would be improving the aesthetics and the draining. There would be no additional lighting installed. Anthony Rosa, 3 Howard Place, wanted to make sure the snow would be removed and the water would not overflow into his yard. Mr. Palus assured him the snow would be professionally removed and water would not flow into his property. Ms. Evans stated that the garage was in extreme disrepair and that they were excited to upgrade the property.

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

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No. 2 47 Washington Avenue APPROVED 7-0

Applicant: Vjollca Kurti, 47 Washington Avenue, Block-Lot: 9504-11

Application: To add on the second floor and additional two (2) bedroom units to the existing non-conforming mixed use building, and to add a driveway and a curb on the Hunt Street side, as shown on the survey prepared by John Evans, and plans prepared by Architect Matt Evans, dated March 1, 2018;

Appearances: Thomas DiBiasi, Esq., Alyssa Kurti, Matthew Evans, Paul Bauman, Robert Frannicola

Letter of Denial: was read by Mr. Tom DaCosta Lobo

AND the Code Official having denied said permit by letter dated July 30, 2018, citing Chapter 700, Article XVI, Section 700-113A of the *Codes of Nutley* which states that no non-conforming use shall be enlarged, extended, re-constructed or structurally altered. The existing building consists of the following:

BASEMENT: Unfinished 1,220 SF

FIRST FLOOR:	Existing commercial space 409 SF
	Existing commercial space 1,207 SF
	Existing 2 bedroom dwelling unit 733 SF
SECOND FLOOR:	Existing commercial space 581 SF
	Existing 3 bedroom dwelling unit 1,550 SF
	Separate proposed 2 bedroom dwelling unit

And also citing Chapter 700, Article XIII, Section 700-91A of the *Codes of Nutley* which requires the following parking schedule:

Office one (1) space for 300 SF

1.5 spaces for each dwelling unit

2 spaces for each dwelling units of two (2) bedrooms

First Floor	Existing commercial space 408 SF- 2 parking spaces
	Existing commercial space 1,207 SF- 6 parking spaces
	Existing 2 bedroom dwelling unit- 2 parking spaces
Second Floor	Existing commercial space 581 SF- 2 parking spaces
	Existing 3 bedroom dwelling unit- 2 parking spaces

The parking requirement is 14 spaces and is pre-existing—no change. The proposed 2 bedroom dwelling unit on the 2nd floor will require a variance for 2 parking spaces.

There are two (2) existing parking spaces on site;

And finally citing, Chapter 700, Article XIII, Section 700-94A (3) of the Codes of Nutley which states that each property shall not have more than one driveway and one curb cut. (Applicant proposed a new 16' driveway on the Hunt Street side);

Thomas DiBiasi, Esq., made his opening statement to the board, stating he represented the applicant. Mr. DiBiasi stated that the property had fallen into disrepair and his client wanted to renovate the property. He started by stating he wished to withdraw the second curb cut request from the application, which the board approved. Mr. DiBiasi stated that they would need a parking variance, since there were only two parking spaces on the property, then introduced his first witness, Alyssa Kurti. Ms. Kurti stated that her family owns 47 Washington Avenue and

had, unsuccessfully, tried to lease parking from numerous neighbors. Ms. Kurti explained she did everything in her power to solve the parking issue. Chairman Graziano asked the applicant what kind of tenants were presently renting. She stated that the building was empty. Chairman Graziano asked the applicant why young professionals would need two bedroom apartments. Ms. Kurti responded that they would like office space, as well as a bedroom. Ms. Doherty asked if the first floor apartment would be ADA compliant and suggested that that might be a good space to create handicapped accessible housing. The Applicant agreed on the record that as a condition of any variance they would renovate that first floor apartment and create a completely ADA compliant living space, complete with wider doors and a larger bathroom and ramps where required. Mr. Matthew Evans testified as the architect. He introduced Exhibit S1, which were current photos of the property. He explained that there would be no additions to the building. Exhibit A2 was the floor plans and elevations. Mr. Evans proposed new stucco, windows, and stone façades. He stated that there would be a first floor apartment with a handicap bathroom, as well as two interior staircases that would remain. The second floor would have two, two bedroom apartments. Mr. Bauman, expert planner, explained that there were currently two apartment units on the second floor with one of those apartments a studio (One bedroom) and the other a three bedroom and that there was also a commercial space on the second floor and retail/commercial space on the first floor with a one bedroom apartment on the first floor. The second floor would be renovated to create two apartments each with two bedrooms and the remainder of the spaces would remain as they were currently (One commercial space on the second floor and retail on the first floor with the one bedroom first floor apartment.) Mr. Bauman explained that the number of bedrooms was not increasing. Mr. Bauman stated he felt the units would attract older people with no children, or younger people with no children who need an office. He stated that modernizing this building would be a plus to the community and prevent the property from becoming an eyesore. He stated this application would have no negative impact on the neighboring properties and would promote efficient use of land. Mr. Robert Frannicola, of 7 Hunt Place, stated that the handicap spot in question was no longer used as it had been assigned to Carmen Orecchio who is deceased. Mr. Frannicola stated he was in favor of the application and himself and the applicants were working together to make the corner a nicer place.

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

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No. 3 10 Donna Court APPROVED 7-0

Applicant: Mr. and Mrs. David Lelinho, 10 Donna Court, Block-Lot: 9001-9

Application: To replace the existing A/C unit located on the left side of the dwelling, having less than the six (6') foot side yard requirement (no permit on record), as shown on the survey prepared by P2 Land Surveying, Inc., dated December 5, 2016;

Appearances: David Lelinho

Letter of Denial: was read by Mr. Tom DaCosta Lobo

AND the Code Official having denied said permit by letter dated November 16, 2018, citing Chapter 700, Article III, Section 700-3 B of the *Codes of Nutley* entitled "Definitions" which requires a side yard dimension to be unobstructed space. The A/C unit is located in this space;

Applicant David Lelinho testified to the board that the ac unit was there when he purchased the home. He stated that he felt it was not his mistake and that the neighbors were not disturbed by the AC units. Mr. Lelinho stated he just wished to replace the unit with a high efficiency unit which would be even quieter than the one presently in place. The testimony also established that the AC unit was not visible from the street and there was sufficient clearance between applicant's house and the neighbor's house in case of an emergency.

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 Ms. Theresa Duva. The variance was granted by a vote of 7-0.

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No. 4 25 Cathedral Avenue APPROVED 7-0

Applicant: Mr. and Mrs. Camell Villanueva, 25 Cathedral Avenue, Block-Lot: 300-51

Application: To leave as erected, found on a 2015 zoning application inspection, a second story balcony the projects four (4') feet away from the building and which is connected to the ground with 4 x 4's, as shown on the survey submitted prepared by Richard J. Hingos, dated October 3, 2014 and the photos taken by the Code Enforcement department;

Appearances: Camell Villanueva

Letter of Denial: was read by Mr. Tom DaCosta Lobo

AND the Code Official having denied said permit by letter dated December 3, 2018, citing Chapter 700, Article III, Section 700-3 of the *Codes of Nutley* entitled "Definitions" which states that a Balcony is a raised platform attached to an upper story of a structure which does not extend more than three feet beyond the wall of the structure and which does not have any contact with the ground. The balcony has a projection of four (4') feet and is connected to the ground;

Applicant Camell Villanueva testified that he purchased this home in October 2014 in a foreclosure sale and that the structure was already there. Mr. Villanueva explained that he discovered many things were done to the home without permits, and this was the last thing he needed to take care of to bring the home to code. The applicant stated he bought the property in foreclosure. The Applicant also testified that the backyard sloped downward toward his home and therefore the balcony was not overlooking anyone's backyard or encroaching on any neighbor's privacy. Chairman Graziano asked the applicant if he wanted to enlarge the balcony. The applicant responded that he wanted to keep it the same size. The board made it a condition that the balcony stay the same size.

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 Tom DaCosta Lobo. The variance was granted by a vote of 7-0.

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PUBLIC COMMENT: None.

RESOLUTIONS MEMORIALIZED: None.

MINUTES: January 14, 2019 minutes approved.

INVOICES: Pennoni for 10 Kingsland Street, $650.00

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 A Mitchell 3/18/19