

approved
12/13/2021
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NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

November 15, 2021

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: Ms. Doherty, Mr. Cafone, Ms. Castro, Ms. Wallace, Mr. Scheidel, Ms. Duva, Mr. Daniel Tolve, Mr. Greg Tolve, Mr. Graziano, Ms. Diana Powell McGovern, Esq.

EXCUSED: Joseph Battaglia

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No. 1: 127 King Street – Adjourned

Applicant: Robert Gaccione, Esq., Gaccione Pomaco, P.C., 524 Union Avenue. PO Box 96, Belleville, NJ 07109. Block-Lot: 9406-3

Application: Your request, on behalf of your client, Veronica Rose Nutley, LLC, at the above referenced premises, for preliminary and final major site plan approval, and for variances to build a two-story multi-family residential building, having one (1) two-bedroom unit on the ground floor, and three (3) two-bedroom units and a one-bedroom unit on the second floor, and a parking lot with 10 spaces, as shown on the preliminary & final site plan prepared by Stonefield Engineering & Design, dated December 24, 2020, and on the architectural plans prepared by Parette Somjen Architects, dated December 28, 2020

Appearances:

Letter of Denial: was previously read

A motion to adjourn to December 13, 2021 was made by the board

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No. 2: 82 Ridge Road ADJOURNED

Applicant: Michael Cafone, 82 Ridge Road , Block-Lot: 5600/19

Application: Your request for a permit, at the above referenced premises, to construct a 20'x16' unroofed deck, having a 13' rear yard setback, and reducing your required rear lot coverage, as shown on the plans prepared and submitted by the applicant, and on the property survey prepared by Drand Surveying, LLC, dated June 8, 2004

Appearances: None

Letter of Denial: not read

A motion to adjourn to December 13, 2021 was made by the board

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No. 3: 150 Metro Boulevard – Adjourned

Applicant:

Application:

Appearances:

Letter of Denial:

Diana advised this will need to be carried because board experts are currently at a business conference and also zoning board missing two key documents.

A motion to adjourn to December 13, 2021 was made by the board

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No. 4: 18 Maple Place APPROVED 7-0

Applicant: Mr. James E. Polles, Schenck, Price, Smith & King, LLP, 220 Park Avenue, PO Box 991, Florham Park, NJ 07932 – Block-Lot: 3304-25

Application: Your request, on behalf of your client, Mr. Michael Hassan, to demolish the existing one family dwelling and construct a new one family dwelling, on a 50' wide by 125' depth lot, located in an R-1A zoning district, as shown on the site development plan prepared by AWZ Engineering, Inc., dated June 25, 2021 and architectural plans prepared by M. Michael Gorenstein, dated June 23, 2021

Appearances: Mr. James E. Polles Esq., Adnan Khan engineering expert,

Letter of Denial: was read by Ms. Doherty

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

Chapter 700, Article VIII, Section 700-46 A "Schedule of Regulations as to Bulk, Height and Other Requirements," of the Codes of Nutley requires the following in an R-1A zoning district:

<u>Existing/Proposed</u>	<u>Required</u>	
Lot Area	6,500 SF	6,250 SF
Lot Width	60'	50'
Per Dwelling Unit	6,500 SF	6,250 SF

Applicant's attorney, James Polles, Esq. called engineering expert, Adnan Khan, who testified that the existing lot is non-conforming for the Zone as it is only 50' wide when 60 feet is required in an R-1A zone. Applicant desires to demolish the existing house and build a new single-family home. The proposed house will meet all the rear, front and side yard setbacks in the zone so no other variances are needed other than a variance for lot area and lot width which are all pre-existing conditions. The engineer also testified that the new house will have added storm water management features with a dry well that will take water into the ground based upon a 100 year storm. The proposed garage will be below grade at about 3-3.5 feet (Due to a slight pre-existing slope) but is trench designed to catch the water that flows down. The proposed driveway will accommodate 3 vehicles which will be adequate for the needs of the house.

A motion was made to grant the variance by Mr. Daniel Tolve and second by Ms. Duva. The variance was granted 7-0.

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No. 5: 433 & 409 Kingsland Street APPROVED 7-0

Applicant: Mr. Ed McKenna, Esq., McKenna, Dupont, Higgins, & Stone, 229 Broad Street, Red Bank, NJ 07701. Block-Lot: 2304-15&16

Application: Your request for a permit, on behalf of your client, Proponent Federal Credit Union, at the above referenced premises, to renovate the existing building into a 2840sf financial institution with a rooftop terrace and a drive-through area at the rear of the property, and to construct site improvements, as shown on the Preliminary and Final Major Site Plan prepared by Petry Engineering, LLC, dated March 30, 2021,

Appearances: Ed McKenna-Attorney, Debbie Van Dorn-President and CEO of Proponent Federal Credit Union, Ryan Robertson-Architect, Sean Delaney-Engineering, Michael Petry – Professional Engineer and licensed planner,

Letter of Denial: was read by Ms. Doherty

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

Chapter 700, Article V, Section 700-16 of the Codes of Nutley, entitled “Permitted uses in B-2 Zoning District,” lists the permitted uses in a B-2 zoning district. The proposed financial institution with a rooftop terrace for Block/Lot 2304/15 with drive-in facilities is not a listed permitted use. The proposed parking lot for Block/Lot 2304/16 is also not a listed permitted use.

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 in a B-2 zone a rear yard setback of 25 feet. ***The proposed rear yard setback will be 17.5 feet.***

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 in a B-2 zone a side yard other setback of 10 feet. ***The proposed side yard other setback will be 1.98 feet. This is a pre-existing 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 in a B-2 zone a maximum impervious coverage of 80%. ***The proposed impervious coverage will be 85.4%.***

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 in a B-2 zone a maximum lot coverage of 35%. ***The proposed lot coverage will be approximately 43%. Please note that, if the lots will be consolidated, no variance will be required for lot coverage.***

Chapter 700, Article XIII, Section 700-98 of the Codes of Nutley, entitled "Buffer for parking areas," states that "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." ***The proposed rear buffer varies from 5.8 to 4.5 feet.***

Chapter 700, Article XIII, Section 700-94 A (3) of the Codes of Nutley, entitled "Additional regulations on off-street parking for one- and two-family dwellings," states that "Each property shall not have more than one driveway and one curb cut. Curb cuts are subject to the following standards: (a) Curb cuts in R-1, R-1A, R1-AA R-2 and R-3 Districts shall not exceed 16 feet in length. (b) Curb cuts in all other districts shall not exceed 20 feet in length." ***The properties each have an existing curb cut on them, and appear to be the same size as the proposed.***

Chapter 700, Article XIII, Section 700-102 of the Codes of Nutley, entitled "Schedule of minimum loading spaces," states that "no building or premises shall be used nor shall any building be erected or reconstructed, nor shall any building be altered so as to expand its usable floor area unless there is provided off-street loading space in accordance with the following schedule: Other business and commercial uses, places of public assembly and schools: 1 per building of 2,000 square feet of floor area or more ." ***1.42 spaces will be required; none are provided.***

Chapter 700, Article XII, Section 700-84 A (2) of the Codes of Nutley, entitled "Signs in B-3, B-3A, B-4, and M-O Zoning Districts," defines a "ground sign" as "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."

Chapter 700, Article XII, Section 700-83 of the Codes of Nutley, entitled "Signs in B-1 and B-2 Zoning Districts," lists the requirements for signs in a B-2 zoning district. A ground sign is not permitted. ***The proposed ground sign is located three (3') feet to the property line, and is 48sf for both sides.***

Chapter 600, Section 600-1 of the Codes of Nutley, entitled "Approval required; exceptions," requires site plan approval by the Township Board.

A preliminary review of the Preliminary and Final Major Site Plan by Petry Engineering, dated March 30, 2021, indicates that the following items are missing per the Township Site Plan Checklist:

B. Eighteen copies of application and site plan.

C. Fee: in accordance with Schedule of Fees, § 85-42.

F. (3) A place for the signatures of the Chairman and Secretary of the approving board (Zoning Board of Adjustment).

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. (24) ~~The floor space of each building and the total number of parking spaces and estimated occupancy of employees.~~

Once the plan has been deemed complete and approved, 21 copies of the site plan, architectural plans, site plan checklist, application & fees will be required.

Applicant's attorney, Ed McKenna, called Debbie Van Dorn, President and CEO of Proponent Federal Credit Union to testify. Ms. Van Dorn has been Proponent for 45 years. She testified that the bank had its original site in Nutley at Hoffman LaRoche (Across the street from this location) and on Washington Avenue and will in the near future be opening offices on Bloomfield Avenue. Pre-pandemic, customers were moving toward digital banking and drive through banking with more frequency, but the pandemic has accelerated the need for a drive through facility. The proposed drive through allows for everyday business to be transacted. The estimated number of vehicles which are expected to utilize the drive through (Based upon counts at the other location on Washington Avenue) is 40-45 vehicles on a daily basis. Included in this car count are appointments for loan consultations inside the building. The interior of the bank has no tellers. The interior offices are for loan consultations. The credit union is open Monday-Friday, from 9AM to 5PM and has 4 to 5 employees on site each day. The proposed green area/roof top terrace is for employees to use on nice days for lunch or breaks and is not available for public use.

Ryan Robertson, Architect, testified that he is licensed in the State of New Jersey. Mr. Robertson testified with the use of a power point presentation (The slides were marked as Exhibit A-1.) Mr. Roberson testified that the project will improve the entire property. The consolidation of the lots will result in 125 feet of frontage on Kingsland Street and 100 feet of frontage on Brookdale Avenue. The current property is completely paved, and Applicant will reduce the impervious coverage to add new landscaping by eliminating some parking which will reduce the impervious coverage from 100% to 85.4%. The new traffic circulation will include passing under a light blue canopy at the drive through. The building will be reduced by 735 square feet to accommodate the

drive through. The proposed Green roof will reduce rainwater and absorb solar radiation. The proposed signs (Signs 2,5,6,7,9 & 13) will be internally lit. Applicant agreed to all recommendations of the Township Forester and to add flower boxes with perennial plantings no higher than 30" at the Brookdale side of the property (As shown on the plans). The trees that will be planted will be taller than the existing fence and will consist of 115 new shrubs and 116 native perennials to provide year-round interest and perimeter screening.

The signs will be illuminated from dusk until 10PM. The Applicant agreed to use unpainted brick to achieve the branding color it desires instead of painted brick which can peel. The ATM is located in the front of the building (Inside the main doors) and not at the drive through.

Sean Delaney, Engineering expert testified that he is a licensed engineer and is employed by Petry Engineering. Mr. Delaney testified that the Applicant is maintaining the current side yard setback. There will be 11 parking spaces with a 24' two-way driveway. The perimeter lights will all face into the parking lot with down lighting. The new design allows for cars to exit onto Kingsland Street whereas the old design directed all traffic to Brookdale Avenue. The sign will be 4 feet high and internally lit to go off at 10PM. Ms. Doherty expressed concern that the light poles in the parking lot may line up directly in front of the windows of the house next door and Applicant agreed that the poles can be moved to be between any windows and not directly in front of them.

Chairman Graziano inquired as to why the storm water drainage was being built to a 25-year storm and not a 100-year storm and the Applicant agreed that they would design storm water to withstand a 100 year storm. The trash collection is mostly done by internal shredding and the small amount of trash that is not shredded will be contained within several garbage cans to be removed by a private trash collector once a week during normal business hours. J.

Michael Petry testified that he is a licensed Professional Engineer and a licensed planner. Mr. Petry stated that the property is located in the B-2 zone which does not permit drive throughs at financial institutions and is next to an R-1 zone. Petry also testified that the merging of the lots would eliminate coverage and setback variances. He testified that the property was used as a 78-seat restaurant with a liquor license and a hair salon with three stations. The ITE trip calculations for a restaurant are 52 weekdays and at peak hour on Saturdays 34 vehicles. Peak parking for a restaurant is calculated as 41 weekdays and 43 on Saturdays (Between 7-8PM). The hair salon peak parking during the day is 6-10. Compared to the proposed bank which is 2842 sq. ft. and has an ITE calculation of 44 vehicles weekday at the drive through. The weekend numbers are not relevant as the bank and drive through are not open.

It was Mr. Petry's opinion that the project met the MLUL positive criteria a) as it promotes health and safety, particularly in these COVID times, that b) the project would protect the area from flooding by incorporating its flood plan, c) that it presented adequate light, air and space because it is increasing the buffer between the neighboring properties; h) that it is improving traffic by re-directing traffic from Brookdale Avenue, a residential street and due to the ground sign that will alleviate sudden turns due to unfamiliarity in the area; and i) that it promotes a desirable visual environment. As such, the project meets five of the purposes of planning which also serve as the benefits for the c2 variances. Mr. Petry opined that the bank will suit the neighborhood better and the negative criteria was lessened from the former use as it is a less intense use.

Mr. Petry also testified that the c2 benefits outweigh the detriments as the rear yard setback is 25' but the canopy is 17 1/2', impervious coverage is being reduced to 85.4% where 80% is permitted, the buffer at the south part of the property is 4.5' where 6' is required but currently is 0; the curb cut max is 20' and the proposed curb cut is 24'. The Master Plan mentions that this section of town should be encouraged for revitalization. Drive throughs are not permitted in a B-2 District because most of the B-2 District is downtown and the prohibition is due to walking traffic. This area is more remote and has less pedestrian traffic. The bank hours are 9AM to 5PM Monday to Friday and presents a much less intense use than the restaurant use that was there. The placement on the County road dictates the need for the ground sign. The size of the curb cut on Brookdale will not affect parking. Neighbor Jason Stauss asked if something could be done with the guard rail that makes it difficult for him to open his door. Mr. Petry noted that the fence that will be installed may provide more room.

A motion was made to grant the variance by Ms. Duva, second by Ms. Wallace. The variance was granted 7-0.

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No. 6: 88 Kenzel Avenue – Approved 7-0

Applicant: Mr. & Mrs. J. Frangui, 88 Kenzel Avenue, Nutley, NJ 07110
Block-Lot: 2400/19

Application: Your request for a permit at the above referenced premises, to install a six foot (6') solid type fence in the side yard of a corner property which is in a front yard of the adjacent property along Kingsland Street and to install a six foot (6') solid type fence in the South side yard in between dwellings

Appearances: Erma and Jose Franqui

Letter of Denial: read by Ms. Doherty

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

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

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

Applicants Erma and Jose Franqui of 88 Kenzel Avenue testified that they want a privacy fence. The property is a corner property, and they currently have a chain link fence that is in poor condition. They have a pool and would like a higher fence for safety reasons. The property is raised on the Kingsland Street side. The proposed 6-foot solid fence would be 12 feet away from the sidewalk on top of a grassy slope that rises gradually. Applicants agreed to a 5-foot solid, one foot picket style fence (Total 6') fence.

A motion was made to grant the variance by Ms. Wallace, second by Ms. Duva. The variance was granted 7-0.

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No. 7: 96 Highfield Lane , APPROVED 7-0

Applicant: Mr. & Mrs. Aiello, 96 Highfield Lane, Nutley, NJ 07110 Block-Lot: 3602-30

Application: Your request for a permit, at the above referenced premises, to construct a second-floor addition for a master bathroom, located on the side yard street side, having 9.85' side yard setback street side, as shown on the property survey prepared by Morgan Engineering, LLC, dated May 31, 2013, and plans prepared by Architect Jacob Solomon, dated July 26, 2021

Appearances: Matthew Aiello

Letter of Denial: was read by Ms. Doherty

This property is located in an R-1 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 side yard street side 25'. ***The proposed will be 9.85'.***

Applicant, Matthew Aiello of 96 Highfield Lane testified that he has lived at the house for 8 years and they would like to add a master bathroom. They are not expanding the footprint of the building but are just squaring off the upstairs. The siding and the roof will match the existing roof and siding.

A motion was made to grant the variance by Mr. Greg Tolve and second by Ms. Duva. The variance was granted 7-0.

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No. 8: 76 Evergreen Avenue APPROVED 7-0

Applicant: Mr. Harris Sheikh Block-Lot: 7303/17

Application Your request for a permit, at the above referenced premises, to construct a new 23' driveway for the new 2 1/2 story two (2) family dwelling, as shown on the plans by Architect, Dassa Haines, dated September 28, 2021

Appearances: Harris Sheikh

Letter of Denial: was read by Ms. Doherty

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

Chapter 700, Article XIII, Section 700-94 A (1) of the Codes of Nutley states 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. ***The proposed driveway will be 23'.***

Chapter 700, Article XIII, Section 700-94 A (3) (a) of the Nutley Township Code states curb cuts in an R-2 and R-3 district shall not exceed 16 feet in length. ***The proposed driveway will be 23'.***

Applicant, Harris Sheikh, testified that he currently lives on Fulton Street with his parents. He is building a two-family house and seeks a 23' wide driveway for the two-family home. He intends to live on one side and his parents will live on the other. The wider driveway will allow each unit to have their own garage. Applicant proposes the center driveway for aesthetics.

A motion was made to grant the variance by Ms. Duva, second by Ms. Wallace. The variance was granted 7-0.

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No. 9: 35 Edison Avenue APPROVED 7-0

Applicant: Ms. Cori Ortega, 35 Edison Avenue, Nutley, NJ 07110 Block-Lot: 2401/43

Application Your request for a permit, at the above referenced premises, to install an inground pool, which will increase the lot coverage to approximately 39.4% and to install a six (6') foot solid type fence partially in the side yard, without consent from neighbors on the right side, as shown on the plans prepared by DJ Egarian & Associates, Inc. dated March 3, 2021

Appearances: Cori and Joaquin Ortega

Letter of Denial: was read by Ms. Doherty

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

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 a maximum impervious coverage of 35%. ***The proposed impervious coverage will be 39.4%.***

Chapter 700, Article XI, Section 700-71 B of the Codes of Nutley, the definition of side yard is a 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. ***The fence is proposed to be partially in the side yard.***

Chapter 700, Article XI, Section 700-71 H of the Codes of Nutley, states a stockade fence with no open construction may be erected in accordance with the location and height limitations and written consent of the adjoining property owner or owners is filed with the Construction Official.

Applicants Cori and Joaquin Ortega of 35 Edison Avenue, testified that they would like to install an inground pool and a six foot solid fence. The existing lot is undersized as it is only 45 feet wide. The existing garage takes up a lot of room in the rear yard. The rear fence belongs to the neighbor behind the Applicants and that neighbor has agreed to remove that rear yard fence.

Neighbor Maria DelRusso Banta of 39 Edison Avenue objected to the fence stating that the side chain link fence is on her property; however, Ms. DelRusso Banta provided a copy of her survey which shows that the chain link fence actually is on the Applicants' property. Ms. DelRusso Banta testified that the chain link fence was in place when she moved into her house 45 years ago and she did not know who put it up originally.

A motion to grant the variance was made by Ms. Wallace and second by Ms. Duva. The variance was granted 7-0.

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RESOLUTIONS MEMORIALIZED:

35 Edison Avenue Block & Lot 2901/32,
76 Evergreen Avenue
96 Highfield Lane
88 Kenzel Avenue
433&409 Kingsland Street
18 Maple Place

MINUTES: Approved from October 18, 2021

INVOICES: \$150.00 Secretary, Pennoni Associates, Inc – Professional Services
\$2,058.00, Ricci planning, 127 King Street Planning Review \$910.00, Pennoni
Associates, Inc - \$2,269.00, Diana P. McGovern - Attendance at ON3 overview meeting
\$800.00

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,



Lisa Zitola-McGuire

Minutes Approved