

2/7/2022
approved
DPM

NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

January 24, 2022

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: Daniel Fragnals, Patricia Doherty, Lorraine Castro, David Schiedel, Yvette Wallace, John Cafone, Gregory Tolve, Daniel Tolve, Theresa Sullivan Duva, Chairman Graziano, Diana Powell McGovern Esq.

EXCUSED:

2022 Board Nomination:

Frank Graziano is nominated for Chairman and approved unanimously.

Daniel Tolve is nominated for Vice Chairman and approved unanimously.

Patricia Doherty is nominated for Board Secretary and approved unanimously.

Paul Marranzino is appointed Board Recording Secretary and approved unanimously.

Diana McGovern is appointed Board Attorney and approved unanimously.

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No. 1: 127 King Street – Adjourned 7-0

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: Robert Gaccione Esq., Arthur Kuyan (Engineer), Tom Maoli (Owner), Marc Parette (Architect), Paul Ricci

Letter of Denial: Letter of Denial was previously read.

John Cafone recuses himself

Robert Gaccione states that he would like to go over the amendments to the application. Mr. Gaccione first calls Arthur Kuyan, civil engineer. Mr. Kuyan states that the position and shape of the building has been revised in order to increase the rear setback on the property. The new plan leaves more room for a fenced off landscaped area as well as an enclosed area for trash bins. A dry well will be installed on the property to help remove storm water and improve existing conditions on the property. Mr. Tolve inquired as to what the size of the dry well would be and the engineer stated there was no size chosen. There will be 3.2' on the left side of the building and 6.8' on the right side of the building. Ms. Wallace noted that while there was a change in the plans to move the building forward, there was no reduction in the number of apartment units. The property has 10 parking spaces, one of which is a handicapped accessible spot. There will be no dumpster on the property each apartment will have its own trash bins. Board member Scheidel expressed concern that the garbage area allowed only one trash can per unit and Ms. Doherty inquired as to where recycling would fit. Tom Maoli, the owner of the property states that he is okay with having the trash area enclosed with a roof and a gate. Mr. Graziano inquired as to where garbage was kept when the bakery was in operation and Mr. Greg Tolve responded that it was kept in dumpsters up in the front of the building. Mr. Graziano noted that the new position of the garbage would be close to the neighbors and even though it would be covered it would not stop the smell.

Robin Zitola, the rear yard neighbor and a member of the virtual audience asks about what kind of landscaping will be planted in the rear of the building. Mr. Kuyan states that the current plan is to plant holly trees in the rear which will grow up to 20'. Ms. Zitola expressed concern that the holly bushes which have berries would result in the berries dropping onto her property. Dana Melillo, who resides directly across the street from the project asked if the parking spaces would be level with the street with apartments above and whether there would be any yard in the rear or just a place for garbage. Frank Gaccione, a member of the virtual audience who also lives across the street from the building, asks about whether there will be an area for children to play and whether the parking lot will accommodate guest parking. Mr. Kuyan states that there is currently no area for play, but it could be possible to create a small play area if they remove a parking space from the plan. The applicant then states that he would be willing to plant 15' arborvitaes in order to shield the neighboring property.

Next Mr. Gaccione calls architect, Marc Parette, to discuss the design of the building. He states that the building is now 400 square feet smaller, and the building was pushed about 20' to the front of the property. He also states that the building will have 3 two-bedroom and 2 one-bedroom apartments. Paul Ricci, states that he prepared a report that makes reference to the requirement for a play area on the property. Mr. Gaccione did not receive the email, so he requested to adjourn the hearing to the next regularly scheduled meeting on February 7, 2022 (To be heard via Zoom). With no further questions or concerns a motion to adjourn was made by Theresa Duva and was seconded by Daniel Tolve. The motion was granted by a vote of 7-0.

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No. 2: 82 Ridge Road- Approved 7-0

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: Michael Cafone, Patrick Dwyer Esq., James Bissel (neighbor). David Berry (Zoning Officer)

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

John Cafone recuses himself

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 an R-1 zone a lot coverage of 35% and a rear yard setback of 30'. ***The proposed lot coverage is 39%, and the proposed rear yard setback is 13'.***

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," states that "the regulations listed in said schedule for each district are hereby adopted and prescribed for such district and, unless otherwise indicated, shall be deemed to be minimum requirements in every instance of their application, except as modified by the following special provisions: Extensions of a structure into a required front or **rear** yard shall be permitted as follows."

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 "the regulations listed in said schedule for each district are hereby adopted and prescribed for such district and, unless otherwise indicated, shall be deemed to be minimum requirements in every instance of their application, except as modified by the following special provisions: Extensions of a structure into a required front or rear yard shall be permitted as follows: (a) By cornices, canopies and similar extensions which are 10 feet or more above grade: one foot. (b) By open, fireproof fire escapes: four feet, in rear yards only. (c) By eaves: two feet. (d) 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 required rear yard in the R-1 zone is 30'. The allowable encroachment is six (6') feet. The required rear yard setback is 24', and the proposed is 13'.***

Mr. Cafone states that he would like to extend his deck to make it 20' x 16'. This will make the deck have a 14' rear setback to the property line as opposed to the 24' required. States that for like 16 years he has had no real use of the yard because it is severely slanted. The deck would be used for family and entertainment. Patrick Dwyer Esq., the attorney for the neighbor states he feels that new deck would create a privacy issue for his clients. Mr. Cafone agrees to the condition to plant 6' tall arborvitaes 20' across the

rear of his yard to give his neighbor privacy. Mr. Dwyer states that based on the way the town code is written the deck should need a 30' setback instead of the 24' cited by Mr. Berry. Mr. Berry states that the code was always interpreted in this way even before he was the zoning officer and that the code includes a porch with a roof over it as allowing for a 24' rear yard setback and a deck has always been classified as identical to the requirements of a porch for setback calculations.

James Bissel, the neighbor's son, states that there is often a lot of water that flows into his yard from Mr. Cafone and causes his family's basement to flood. He also states that the deck will be so high that Mr. Cafone will basically be looking into his second story windows. Chairman Graziano suggested that the additional arborvitae bushes will assist in drainage. Mr. Bissel admitted that there were water issues at his house even before the house was built 15 years ago.

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

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No. 3: 150 Metro Boulevard -Approved 7-0

Applicant: PB Nutclif Master, LLC – 150 Metro Blvd

Application: Interpretation of accessory use or use variance

Appearances: Meryl Gonchar Esq. Jia-Jeng Chu (Engineer), Tod Hay (Zoning Board Engineer)

Letter of Denial: No LOD

Meryl Gonchar states the are here for Road D final site approval, she states that Road D was inspected and approved. Mr. Chu also states that the road is in the west portion of lot 1 and that they have received a letter from Mr. Berry stating that the road was constructed correctly in accordance with the site plan. Mr. Hay confirms this and a motion to grant final site plan approval was made by Theresa Duva and was seconded by David Schiedel. The site plan was approved by a vote of 7-0.

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No. 4: 24 White Terrace- Approved 7-0

Applicant: Scott and Jill Kremer, 24 White Terrace, Nutley, NJ, 07110

Application: Your request for a permit, at the above referenced premises, to increase the existing driveway and curb cut to a 16' width, which will decrease your required 60% front yard landscaping coverage to 52%, as shown on the property survey prepared by Bernard W. Criscenzo, dated May 31, 2003

Appearances: Scott Kremer

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

Chapter 700, Article III, 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 proposed front yard landscaping will be 52%.***

Mr. Kremer states that he and his wife both work full time, and his daughter will soon turn 17 and get a car of her own. He would like to widen the driveway from about 9' to 16' feet so he will be able to park two cars side by side. He states that most of the driveways on his street are double driveways and he will also increase the curb cut and with no further questions or concerns a motion to grant this variance was made by Yvette Wallace and was seconded by Greg Tolve. The variance was approved by a vote of 7-0.

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No. 5: 129 Stager Street- Approved 7-0

Applicant: Jessica Zuluaga, 129 Stager Street, Nutley, NJ, 07110

Application: your request for a permit, at the above referenced premises, to leave as erect a four (4') foot picket fence in the front yard, and a six (6') foot solid fence in the side yard, as shown on the property survey prepared by Wm. DiMarzo & Son, Assoc., Inc., dated July 5, 2007

Appearances: Jessica Zuluaga

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

John Cafone recuses himself

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 four (4') foot picket fence is located in the front yard.***

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 fence is a six (6') foot solid fence.***

Ms. Zuluaga states that she moved in 2019 and there was an existing chain link fence that was falling apart. She has a 70-pound dog and a 10-month-old child, so she wanted to install a fence for their safety. She states she got all the signatures need from her neighbors but the company she hired to install the fence never got the permit needed to complete the project. She states that she was told the permits were taken care of. She would like to leave the fence erected as is. The Board noted that the property has no rear yard and the side yard is like a corner property hardship as it borders Stager Street.

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

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No. 6: 59 Brown Street-Approved 7-0

Applicant: Deanna N. Fit, 59 Brown Street, Nutley, NJ, 07110

Application: Your request for a permit, at the above referenced premises, to install a six (6') foot solid type fence located in the side yard of your corner property, which is located in the front yard of the adjoining property along Harrison Avenue, as shown on the property survey prepared by David J. Von Steenburg dated October 8, 2021

Appearances: Deanna Fit

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

John Cafone recuses himself

Chapter 700, Article XI, Section 700-71 A of the Codes of Nutley, states that 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 that a fence erected on any corner lot shall conform to the fence requirements for the adjoining properties.

Ms. Fit states that she would like to install a 6' solid white fence in front of her rear neighbor's retaining wall. This fence would also on her retaining wall around her driveway inside the bushes she planted. The retaining wall around her driveway is about 4' tall at its highest point. The Board noted that the property is a corner lot.

With no further question or concerns a motion to grant the variance was made by Yvette Wallace and was seconded by Theresa Duva. The variance was granted by a vote of 7-0.

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No. 7: 38 Glenview Road-Approved 7-0

Applicant: James and Michelle Mastropalo, 38 Glenview Road, Nutley, NJ, 07110

Application: Your request for a permit, at the above referenced premises, to construct a deck attached to the pool, having a four (4') foot side yard setback to the property line, and a four (4') foot setback to the main dwelling, as shown on the property survey prepared by Lakeland Surveying dated October 12, 2017

Appearances: James and Michelle Mastropalo

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

Chapter 700, Article III, Section 700-3 of the Codes of Nutley states the definition of a noncommercial swimming pool is an outdoor or indoor swimming pool or pool or swimming tank, whether permanently installed, portable, collapsible or otherwise, situated above or below grade level, with a wide water depth in excess of 36 inches or a surface in excess of 120 square feet or a capacity in excess of 1,400 gallons, designed or maintained upon any premises by any person for use by himself, his family or guests, and **shall include all buildings, structures, equipment and appurtenances thereto.**

Chapter 700, Article V, Section 700-9 (2) of the Codes of Nutley states 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 required setback for an attached structure is eight (8') feet, the proposed is four (4') feet.***

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. ***The required setback is 10', the proposed is four (4') feet'.***

Ms. Mastropoalo states that they would like to construct a deck that attached to their existing pool. The required setback on this deck is 8' but the proposed deck only has a 4' foot setback. She states that their yard currently slants down to the right and accessing the pool can sometimes be challenge. The proposed deck will allow access into the pool but will only leave a 4' setback from the house and there will only be 4' on the side of the pool as well. The board states that they want the deck to start at the edge of the concrete and not wrap around the "L" shaped portion of the concrete. This condition is set as well as to make sure the deck and concrete remain 4' from the existing fence. With no further questions or concerns a motion to grant this variance is made by Theresa Duva and seconded by Daniel Tolve. The variance was granted by a vote of 7-0.

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Invoices:

Secretary pay of \$150.

Counsel Fee for Special Meeting: \$800

Public Comment:

**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, flowing style with a long horizontal stroke at the end.

Paul Marranzino

Board Secretary