

NUTLEY ZONING BOARD OF ADJUSTMENT

Public Session Meeting Minutes

September 17, 2018

CALL TO ORDER: A meeting of the Nutley Zoning Board of Adjustment was called to order at approximately 7:30 p.m. by Vice Chairperson, Suzanne Brown. The Pledge of Allegiance was recited. Roll was called and the Sunshine Notice was read.

PRESENT: Daniel Tolve, Greg Tolve, Peter Sirica, Theresa Duva, Joseph Battaglia, Tom DaCosta Lobo, Suzanne Brown, and Board attorney, Diana McGovern, Esq.

ABSENT: None

EXCUSED: Chairman Graziano, Gary Marino

No. 1 109 Walnut Street DENIED 3-4

Applicant: Mr. and Mrs. Edgar Pinho, 109 Walnut Street, Block-Lot: 6602-16

Application: To rebuild a new two family dwelling, located in an R-1 zoning district, as shown on the plan prepared by Mileto-Godsall Associates, LLC, dated December 21, 2017;

Appearances: Donald Rinaldi, Esq., Donald Scott Roll, Frank D Mileto, Paul Bauman, and neighbors: Susan DeJackamo, Linda Downen, Anthony DiFranco

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

AND the Construction Code Official having denied said permit by letter dated August 4, 200May 9, 20186, citing, Chapter 700, Article V, Section 700-9 of the *Codes of Nutley* which does not permit a two (2) family dwelling in an R-1 zoning district;

Donald Rinaldi, Esq. made his opening remarks to the board, stating that he represented the future owners of the property. Mr. Frank D Mileto testified as the architect on this application, stating that the only variance they would need was for a two family dwelling in a one family zone. Exhibit A1 was introduced as the color rendering, with Exhibit A2 being the site plan. Mr. Mileto stated that they fit all parking requirements and had a garage in the basement as well as a storage area. Mr. Mileto explained that both tenants would enter through a single door. He stated one unit would be a 3 bedroom, 2 full bathroom apartment, and the other unit would be the same. Mr. Mileto explained that the home was built in the 1920s and that they would make it safe and energy efficient, which it currently was not, and that they would use all modern materials. Mr. Mileto was asked why the existing house could not be renovated to accomplish similar improvements with a lesser variance needed and Mr. Mileto testified that it would be more expensive to renovate the existing non-conforming home than it would be to raze it and build from scratch. Mr. Paul Bauman testified to the board as the planner on this application.

He stated that it was an oversized lot for R1 or R2 zones, and that the application adequately met all set back requirements. Mr. Bauman stated that they would provide adequate light and space and would significantly improve the neighborhood. He explained that this was currently a two family dwelling and no extra units would be coming in if the board granted the variance. He stated that there was another two family home within 200 feet of the property. Ms. Suzanne Brown stated she felt the home could simply be renovated. Ms. Diana McGovern, Esq., pointed out that they must prove why the site in question is particularly suited for a two family dwelling, since D1 variances had very strict standards as opposed to if they just wanted to add on to the existing two family which, while a d variance, would be lesser proofs needed due to it would just be increasing a non-conforming use. Additionally, Ms. McGovern noted that once the existing two family home is razed then the Board would have to consider the property as if it never had a two-family house on it and the Applicants would have to prove special reasons under a d-1 vaiance. Mr. Bauman stated that the applicants simply wanted to improve the aesthetics. Mr. Joseph Battaglia stated that he had an issue with the density of the application and was also concerned about Washington School crowding. Ms. McGovern stated that the board needed to hear testimony regarding the Master Plan. Neighbors Susan DeJackamo, Linda Downen, and Anthony DiFranco testified that they were against the application due to the size, parking issues, and change it would bring to the neighborhood. Mr. Rinaldi made his closing remarks to the board, stating that this was a simple application. He stated that the property was currently a two family dwelling and they wished to get a variance to keep it a two family dwelling.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this application was made by Mr. Joseph Battaglia, seconded by Mr. Daniel Tolve, with Ms. Teresa Duva, Mr. Joseph Battaglia, and Ms. Suzanne Brown voting against the application. The variance was denied by a vote of 3-4.

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No. 2 46 Mount Vernon Street APPROVED 6-0

Applicant: Mrs. Neva Bray, 46 Mount Vernon Street, Block-Lot: 7905-22

Application: To widen the pre-existing driveway and curb cut to 26' total on a corner property, as shown on the survey, dated March 23, 1950;

Appearances: Neva Bray

Letter of Denial: was previously read

AND the Code Official having denied said permit by letter dated July 18, 2018, citing Chapter 700, Article XIII, Section 700-94 A (2) of the *Codes of Nutley* which states a driveway shall consist of the area directly opposite and adjacent to an attached garage, detached garage or depressed garage or the extension of the rear yard into the side yard which abuts a street. However, if there is no garage and no available rear yard, a driveway not to exceed 16 feet in width from the rear lot line may be constructed. *The side yard on Corsay Road side has an existing 16' driveway and is proposed to be widen an additional 10' for a total width of 26'*; and also citing,

Chapter 700, Article XIII, Section 700-94 A 3 (a) of the *Codes of Nutley* which states a curt cut shall not exceed 16' in length. *The proposed curb cut on the Corsay Road side shall be widened to 26'*;

Applicant Neva Bray testified that she wanted to widen her driveway 2 feet, as well as 5 feet from the driveway to the stairs. Ms. Bray stated she would not need a curb cut, and that the driveway would be 18 feet wide in total. Mr. Daniel Tolve stated he did not want the staircase in the middle of the driveway for safety reasons. Mr. Tom DaCosta Lobo suggested that the applicant either move the stairs or stop the driveway before the staircase. The applicant agreed to an 18 foot wide driveway with no curb cut, and to move the staircase. The board agreed that if the applicant chose not to move the stairs, she would only be able to have the driveway up until the steps.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant this application was made by Mr. Daniel Tolve, seconded by Mr. Greg Tolve. The variance was granted by a vote of 6-0.

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No. 3 39 Wilson Street DENIED 7-0

Applicant: Mr. Michael Killian, 39 Wilson Street, Block-Lot: 8401-17

Application: to leave as erected a six (6') foot solid type fence along the east side property line from the front of the building to the rear lot line, across the rear lot line and along the west property line up to the beginning of the existing one story rear addition and to leave installed, two (2) A/C compressors in the east, six (6') foot side yard both as shown on the survey prepared by Midstate Engineering, dated May 20, 2014, is denied for the following reasons:

Appearances: Michael Killian, and neighbor Nick Auriemma

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

AND the Code Official having denied said permit by an original letter dated March 14, 2018 citing Chapter 700, Article XI, Section 700-71 B and H of the *Codes of Nutley* which limits a fence located in the side yards to a maximum height of six (6') feet, 50% open type construction and only with written consent of the adjoining property owners, and also citing,

Chapter 700, Article III, Section 700-3 B of the *Codes of Nutley* entitled "*Definitions*" of the Codes of Nutley which requires a required side yard dimension to be unobstructed space. *The two (2) A/C compressors are located in this space;*

Applicant Michael Killian testified to the board that his HVAC was in the middle of his backyard so he moved them to the side of his house and put a fence around them to eliminate the sight of them, as well as their sound. Board Attorney, Ms. Diana McGovern, Esq., stated that the Applicant's lot was short by 4' (At 96' deep). Mr. Daniel Tolve asked the applicant if the air condensers were loud. The applicant requested that the board ask his neighbor in the audience if they were loud. Neighbor Nick Auriemma testified that the condensers were 6 feet from his daughter's room and were loud. The applicant stated that he wanted to fix the issues in question and volunteered to take down the fence, which the board stated created safety issues due to the fact that it blocked fire access.

With no further questions from the members and no one in the audience with questions or comments, a motion to deny this application was made by Mr. Joseph Battaglia, seconded by Mr. Daniel Tolve. The variance was denied by a vote of 7-0.

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No. 4 451 Chestnut Street APPROVED 7-0

Applicant: Mr. and Mrs. Matthew Grillo, 451 Chestnut Street, Block-Lot: 5603-10

Application: To install a six (6') foot solid type fence in the side yard along the driveway of Radcliff School as shown on the survey prepared by George Anderson dated March 13, 2018;

Appearances: Matthew Grillo, Diana Grillo

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

AND the Code Official having denied said permit by letter dated May 15, 2018, citing Chapter 700, Article XI, Section 700-71 B of the *Codes of Nutley* which 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 not be less than two feet in height and shall be of 50% open construction. The proposed fence shall be erected in the side yard and shall be six (6') feet in height and solid type fence;

Applicants Matthew and Diana Grillo testified that they had two young children and needed additional property. Mr. Grillo stated that they had no opportunity for landscaping. Mrs. Grillo testified that they had just recently found out that there was never a final inspection done on their radon fan. Mr. Daniel Tolve suggested that they mount the fan in the basement. They stated that the fan was the issue and not the pipe.

The applicants stated that they wished to have a 6 foot solid fence for privacy. The applicants explained that their property was directly next to the parking lot for Radcliff School.

The Board suggested and the Applicants agreed to bifurcate the application and just have the board decide on the fence. Meanwhile, the applicants agreed to look into mounting the radon fan inside the basement to alleviate that variance and as such the radon fan variance was adjourned to the next meeting (October 15, 2018) and in the event that the fan could be mounted inside the Applicants would withdraw their request for a variance for the radon fan in the side yard.

With no further questions from the members and no one in the audience with questions or comments, a motion to grant the fence 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. 5 43 Jackson Street APPROVED 7-0

Applicant: Mr. and Mrs. Michael Bruno, 43 Jackson Street, Block-Lot: 501-11

Application: To replace the existing fence to a three (3') foot picket type fence and a six (6') solid type fence in the front yard and to install a six (6') foot solid fence located in the side yard, as shown the survey prepared by W.H. Canada, LS, dated April 25, 2015;

Appearances: Michael Bruno and neighbor Donald Bumpus

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

AND the Code Official having denied said permit by letter dated June 28, 2018, citing Chapter 700, Article XI, Section 700-71 A of the *Codes of Nutley* which states no fences of any type shall be permitted in any front yard, and also citing,

Chapter 700, Article XI, Section 700-71 B of the *Codes of Nutley* which 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;

Applicant Michael Bruno testified that many trees had fallen on his home and he was advised by the town that many trees were in failing health. Mr. Bruno stated he decided to clear the hill in his hard of all ivy. He introduced Exhibit A1, which was 10 photos of his property. The applicant stated that he needed the fence because strangers stand at the top of the hill and look down at his property. Mr. Bruno stated that he would remove the chain link fence that was currently there, and that his home was the last one on the street so it would not affect any neighbors. He stated that this area was a health hazard as well as an eyesore to his unusually shaped property. Neighbor, Donald Bumpus, testified that he was in favor of this application and introduced Exhibit A2, which was pictures of his property and Mr. Bruno's property. Applicant agreed to execute a hold harmless agreement with the town for the portion of the fence that would be installed on township 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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PUBLIC COMMENT:

RESOLUTIONS MEMORIALIZED: 29 Friedland Road, 135 Margaret Avenue, 166 Highfield Lane, 209 Alexander Avenue, 681 Franklin Avenue

MINUTES: July 16, 2018 regular session meeting minutes and executive session meeting minutes

INVOICES: Pennoni for \$800 for 10 Kingsland application.

NEW BUSINESS:

LITIGATED MATTERS:

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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

Anjelica L Mitchell 11/19/18