

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF ESSEX FELLS**

MINUTES OF THE MEETING OF JANUARY 28, 2021

The meeting was conducted via Zoom and was called to order at 7:34 p.m. The Open Public Meetings Act announcement was read as required by law. Those present were: Michael Candido, Michael Spellman, Henry Albulescu, Bernard D'Avella, Thomas O'Beirne, Chris Shearin and MJ Jolda. In addition, Michael D. Sullivan, Board Attorney, was present.

Board Member Albulescu nominated Michael Candido to be Chairman, Michael Spellman to be Vice-Chairman and Tom O'Beirne to be Secretary for the ensuing year, which was seconded by Board Member Spellman, there were no further nominations and the vote was unanimous.

On motion made by Board Member D'Avella, seconded by Vice-Chairman Spellman, resolutions appointing Michael D. Sullivan, Esq. as Board Attorney for 2021, establishing the meeting dates for 2021 and the first meeting of 2022 and designating the *Star Ledger* and *The Progress* as official newspapers were adopted by unanimous vote.

On motion made Vice-Chairman Spellman, seconded by Board Member D'Avella, the minutes of the meeting of December 10, 2020 were approved unanimously by all those eligible to vote.

The next matter to come before the Board was the application of Gary and Susan Botwinick, 235 Oldchester Road, Block 9.03, Lot 6.02 for floor area ratio and side yard setback variances. Jason Ritte, Esq. was present on behalf of the applicants who are seeking variances relating to floor area ratio and side yard setbacks. The applicants are proposing renovations and additions to the existing home including a 606 square foot addition to the first floor, a 724 square foot addition to the second floor, a 486 square foot addition to the garage and a new pool and patio. Mr. Ritte noted the property contains preexisting nonconforming lot size, lot width, side yard setbacks and floor area ratio. Specifically, the applicants are seeking a floor area ratio variance to permit 20.9% where 17.8% is existing and 11% is allowed. The applicants are seeking a left side yard setback of 38.75 feet where 39.1 feet is existing and a minimum of 45 feet is required. The applicants are also seeking a right side yard setback variance of 40.75 feet where 42.1 feet is existing and a minimum of 45 feet is required.

Mr. Ritte called Christine L. Miseo, 205 Mount Pleasant Avenue, East Hanover, New Jersey, a registered architect and professional planner of the State of New Jersey and was accepted as an expert by the Board. Board Attorney Sullivan noted the Affidavit of Publication and Service submitted by Mr. Ritte was acceptable. Ms. Miseo indicated the home was recently purchased by the applicants who wish to construct various additions and renovations to the home. Ms. Miseo reiterated the requested relief for side yard setback variances and noted there is a cantilever on the left side of the home which was added for aesthetic reasons. The addition to the garage is requested so that additional storage would be available. With reference to the floor area ratio variance, proposed floor area is 7,982 square feet where 6,955 square feet is existing and 4,185 is allowed. She noted the house is a ranch and 1,400 square feet of floor

area which is half of the basement is counted towards the floor area ratio. The 724 square foot garage addition will be used for storage of lawn furniture, pool equipment and outdoor furniture. The additional garage space will obviate the need for a shed. Ms. Miseo referred to Sheet A-1A which she prepared dated October 5, 2020 revised through January 4, 2021 and noted there is no request for a variance for lot coverage. She referred to Sheet A-1 which she prepared dated October 5, 2020 which included front and right side elevations. She noted the property is a 1970's ranch with a dormer to the rear. She referred to Sheet A-2 which she prepared dated October 5, 2020 containing left and rear side elevations. She referred to Sheet A-3 which she prepared dated October 5, 2020 which contained first and second floor plans.

Ms. Miseo analyzed approximate floor area ratios of three area homes. She discussed the home at 228 Oldchester Road which is directly across the street. The home is 6,300 square feet with a three-car garage. The lot size is 49,220 square feet and total floor area is 8,500 square feet where a maximum of 54,074 square feet is allowed. The house at 185 Forest Way is directly behind the subject property. The home is 6,070 square feet with a three-car garage. The lot size is 40,078 square feet and contains total floor area of 8,400 square feet where a maximum of 4,408 square feet is allowed. The adjacent home at 239 Oldchester Road contains a 4,650 square foot home with a two-car garage. Total floor area is 6,250 square feet where a maximum of 4,101 square feet is allowed. She noted all three homes contain floor area ratios considerably larger than what is allowed. Approval of the application will allow for beautification of a blah looking ranch style home. Many of the homes going up Oldchester Road have upgraded recently. Approval would not be contrary to the intent and purpose of the zoning ordinance as the massing is not too large for the lot and most of the addition is to the rear. She noted the subject property is undersized containing 38,054 square feet where a minimum of 43,560 square feet is required in the zone. The lot width is also undersized containing 168 feet at the frontage where a minimum of 175 feet is required.

Ms. Miseo stated the applicants have a "hardship" since the two existing side yards are preexisting nonconforming conditions. In response to a question, she indicated the entire roof would be replaced and aluminum leaders and gutters would be installed on the whole house. A new 4-foot high fence is proposed for the pool area in the rear which would comply with the ordinance. In response to a question, she was not sure when the three homes she cited were built. She believed the home across the street had been renovated within the last 10 to 15 years and the home behind the property had also undergone numerous renovations. In response to questions from Board Attorney Sullivan, Ms. Miseo confirmed the existing generator to be relocated as part of this application, does not exceed 20 kW and complies with the ordinance. Ms. Miseo stipulated the applicants would comply with comments 4.1.3, 4.1.6, 5.1, 5.2 and 5.4 contained in the Petry Engineering, LLC review memorandum dated January 15, 2021.

The matter was opened to the public. Karen McGregor, 239 Oldchester Road, Essex Fells, New Jersey stated she is the owner of the home immediately adjacent to the south. Ms. McGregor noted that a number of these properties developed in the 1940's are one-story ranches on lots smaller than those typical in Essex Fells. Maintaining the floor area ratio in Essex Fells is essential. She disputed the fact that the property is undersized and believed the request for variances is self-created. She obtained information from the State information website and calculated floor area ratios in the neighborhood as follows: 5 Old Eagle Rock

Avenue 9.81%; 11 Old Eagle Rock Avenue 12.85%; 58 Oval Road 6.91%; 175 Forest Way 8.83%; 181 Forest Way 9.31%; 185 Forest Way 15.11%; 193 Forest Way 11.83%; 199 Forest Way 6.79%; 218 Oldchester Road 7.1%; 223 Oldchester Road 13.3%; 227 Oldchester Road 11.9%; 228 Oldchester Road 12.79%; 239 Oldchester Road 6.97%; 242 Oldchester Road 11.76%; 243 Oldchester Road 5.74% and the subject property, 235 Oldchester Road, at 17.8% is the highest in the area. The proposed floor area ratio exacerbates an existing problem and would violate the scale of the entire neighborhood. She noted the proposed side yard setback is 38.75 feet and the setback from her home to the common property line is 30 feet. This is too small of a separation between properties. This would result in a considerable decrease in light, air and open space. She also questioned the sufficiency of the water supply to the home which could lead to pressure problems to her property and others in the area. She noted on the floor plans there are references to two office spaces on the first floor and was concerned a professional office suite is proposed. Essex Fells prohibits professional office space in a residence except for medical doctors. She believed the applicants' proposal would not benefit the community, the structure is too large and out of scale with the neighborhood. The FAR is almost double that which is permitted under the zoning ordinance and approval would result in lower property values. She stated the purpose of the ordinance is to protect the neighborhood and quality of life and requested the variances be denied.

Ms. Miseo questioned the accuracy of the floor area ratio calculations provided by Ms. McGregor. She believed that her calculations included only the first and second floor of the homes and did not include any basement area or garage. She stated that no professional offices were proposed but rather areas to work from home. The separation between the subject property and the McGregor property is almost 70 feet and would not affect their light or air. She also noted that a number of the homes along Eagle Rock and the McGregor home are located in the RA-3 zone. The applicant, Gary Botwinick, 4 Everett Court, West Caldwell, New Jersey advised the Board he would not be seeing clients in the home.

The matter was closed to the public. Secretary O'Beirne noted the increase in floor area ratio is approximately 3.1%, however, there is an aesthetic benefit and the addition is primarily to the rear. The side yard deviations are not detrimental and he would be in favor of the application. Vice-Chairman Spellman noted that beginning with the subject property the homes start to get larger and believes this would fit into the neighborhood. Board Member D'Avella noted no other neighbors with the exception of the McGregors appeared in opposition and believes there is an aesthetic improvement than what currently exists. He also noted the property is on the RA-1 border. Board Member Albulescu said the side yard was not material and the FAR does not look big and meets the negative criteria. The expansion to the rear has limited visibility from the street. Chairman Candido noted the house is attractive and this represents a visual improvement but was concerned by the fact that the property is already substantially over the maximum floor area ratio permitted. Board Member Shearin noted the applicants' request is one of convenience and luxury and not a hardship. Board Member Jolda did recognize that a lot of thought was put into the plans but was opposed to the application.

After consultation with his client, Mr. Ritte requested that the matter be carried so that the applicants may review revisions to the plan. On motion made by Board Member Albulescu, seconded by Board Member Shearin, the matter was carried to the Board's March 25, 2021

meeting at 7:30 p.m. without further notice by unanimous vote. The sign in information for the meeting which will be held via Zoom will be the same as tonight's meeting and will be posted on the Borough's website.

The next matter to come before the Board was the application of Christopher and Lucy DeStefano, 22 Stewart Road, Block 8.02, Lot 5 for floor area ratio, rear yard and front yard setback variances. Lucy DeStefano, 22 Stewart Road, Essex Fells, New Jersey was present. Also present was Gerald Novak, 16 Sunset Drive, North Caldwell, New Jersey, a registered architect in the State of New Jersey and was accepted as an expert by the Board. Mr. Novak indicated the applicants are seeking a FAR variance as well as two setback variances. He referred to a partial survey site plan which he prepared Sheet SP-2 dated September 7, 2020. Mr. Novak described the proposal which includes two small additions. The applicants are proposing to construct a pitched roof over the existing patio including four columns without any walls in the rear of the property. In addition, the applicants are proposing to construct a raised wood deck level with the second floor over existing asphalt where cars park. Mr. Novak referred to the floor area legend Sheet SP-3 which he prepared dated September 7, 2020 revised through October 19, 2020. Mr. Novak noted that the existing floor area ratio is 14.9% and the proposed floor area ratio is 16.2% where a maximum of 11% is allowed. The increase in floor area is 512 square feet resulting from the proposed roof over the existing patio. Mr. Novak noted that there is substantial vegetation blocking the view of the existing patio which would minimize the visual impact of the roof.

In response to questions from Board Attorney Sullivan, Mr. Novak stipulated the applicants would comply with comments 4.4, 5.1 through 5.4 contained in the review memorandum dated December 21, 2020 prepared by Thomas R. Solfaro, P.E., C.M.E., C.P.W.M. of Neglia Engineering Associates. Mr. Novak referred to the photographs depicted in Sheets SP-5 through SP-8 of his plans. He asserted the deck in the front yard would barely be seen if at all. The deck is supported by four columns without any walls. In response to Board questions, Mr. Novak conceded the deck would be visible from Stewart Road looking up the driveway. The deck would be wood framed possibly with fiberglass and a drywell would be installed. The deck is 26 feet wide by 24 feet deep. Mr. Novak clarified that although the plans show a spiral staircase in fact the stairs would be wood and L shaped. With respect to the roof over the patio, the shingles would match the roof shingles on the house. He indicated the home was an original Tudor style and the columns supporting the roof over the existing patio would match the style of the home.

The matter was opened to the public. Polly Morozov, 6 Stewart Road, Essex Fells, New Jersey noted the roof over the proposed patio is not a Tudor style. Although she cannot see the patio as it exists today, installation of a roof will make it very visible. The purpose of a setback requirement is privacy. The applicants have failed to provide sufficient plans and specifications as to the proposed roof which is unacceptable. The proposal will put undue pressure on her property and Stewart Road. She noted the applicants received a variance to install a sport court in the front yard in 2013. She asserted there is no hardship associated with this application and the proposed wood deck is unlike anything that exists in Essex Fells. She further noted the photos from Stewart Road do not accurately depict the views.

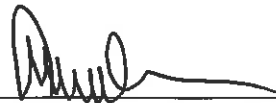
Pete Hutchinson, 89 Gordon Road, Essex Fells, New Jersey stated he did not believe the photographs shown on Sheet SP-6 accurately depicted the views from Stewart Road. The house is clearly visible from Stewart Road and the lighting of the house is not residential in character but more like a stadium parking lot. He further stated the house is visible from all of Stewart Road.

Mr. Novak advised the Board that the applicants wish to withdraw that portion of application relating to the raised wood deck which included variances to permit a setback of 50 feet from Stewart Road where a minimum of 60 feet is required and to permit an accessory structure within the prohibited Stewart Road front yard.

Secretary O'Beirne stated the requested setback variance was severe and criticized the lack of specifications provided for the proposed roof over the existing patio. Vice-Chairman Spellman noted the patio is existing and he was in favor of the application. Board Member D'Avella stated the application is limited to a roof with four columns over an existing patio and noted the shape of the property is difficult. Board Member Albuлесcu was opposed to the application stating the proposed roof created bulk which would be visible to the neighbors. Board Member Shearin stated the property is enormously private in the area where the roof is proposed and would be in favor of the application. Chairman Candido noted the proposed roof does not match the style of the home and the setback encroachment is egregious. Board Member Jolda noted the proposal was not much of a change and was in favor of the application.

On motion made by Board Member D'Avella, seconded by Vice-Chairman Spellman to grant variances to permit a floor area ratio of 16.2% where a maximum of 11% is allowed and to permit a southwesterly side yard setback of 25 feet where a minimum of 45 feet is required subject to compliance with comments 4.4, 5.1 through 5.4 contained in the review memorandum dated December 21, 2020 prepared by Thomas R. Solfaro, P.E., C.M.E., C.P.W.M. of Neglia Engineering Associates was denied by a vote of 4 – 3 (Vice-Chairman Spellman, Board Members D'Avella, Jolda and Shearin voting in the affirmative and Chairman Candido and Board Members O'Beirne and Albuлесcu voting in the negative).

There being no further business to come before the Board on a motion made by Board Member D'Avella, seconded by Vice-Chairman Spellman, the meeting was duly adjourned by unanimous vote at 10:43 p.m.



A. Michael Candido, Chairman
Zoning Board of Adjustment
February 25, 2021