

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

MINUTES OF THE MEETING OF FEBRUARY 25, 2021

The meeting was conducted via Zoom and was called to order at 7:30 p.m. The Open Public Meetings Act announcement was read as required by law. Those present were: Chairman Michael Candido, Vice-Chairman Michael Spellman, Henry Albuлесcu, Oscar Bate, Bernard D'Avella, Anne Marie Scolnick, Chris Shearin and MJ Jolda. In addition, Michael D. Sullivan, Board Attorney, was present.

On motion made by Vice-Chairman Spellman, seconded by Board Member Albuлесcu, the minutes of the meeting of January 28, 2021 were adopted unanimously by all those eligible to vote.

On motion made by Board Member D'Avella, seconded by Vice-Chairman Spellman, a revised resolution establishing meeting dates and times was adopted unanimously by all those eligible to vote.

On motion made by Chairman Candido, seconded by Board Member Albuлесcu, the resolution of Christopher and Lucy DeStefano, 22 Stewart Road, Block 8.02, Lot 5 denying floor area ratio and side yard setback variances was approved by a vote of 2 – 0 (Chairman Candido and Board Member Albuлесcu voting in the affirmative).

The next matter to come before the Board was the application of Anthony and Natalia Luberto, 60 Fellswood Drive, Block 1.01, Lot 13.05 for a side yard setback variance. Anthony Luberto, 60 Fellswood Drive, Essex Fells, New Jersey stated the application consists of a one-story carport addition to the left side of the home. He and his wife moved into the home this past September and are interested in starting a family. He noted that not having covered access to the house is difficult. The carport would provide year round protection from the elements. He advised the Board that his wife's sister who visits has special needs and this would assist her. He noted aesthetics would be improved and allow for drainage improvements. As configured now, the two existing garage bays are difficult to pull vehicles into. They explored looking at removing the center beam in the garage but were advised that due to the age of the home this would not be feasible. They currently use the garage bays for storage.

Giuseppe Barberio, 74 East Passaic Avenue, Nutley, New Jersey, a registered architect of the State of New Jersey was accepted as an expert by the Board. Mr. Barberio referred to the plan prepared by his office dated October 30, 2020. The carport is an open structure with a low pitched hip roof and columns. An evergreen buffer is proposed between the edge of the carport and the neighboring property. The required side yard setback is 22 feet and the proposed is 3 feet 10 inches. Typical parking spaces are 9 feet by 18 feet and the paved area under the carport will allow for two vehicles to be parked. Mr. Luberto advised the Board they own two SUVs. He drives an Escalade and his wife drives a Macan. The rear of the carport has a width

of 21 feet 6 inches and the front of the carport has a width of 25 feet 6 inches. Mr. Barberio noted the design of the carport is efficient and would not really add to the bulk of the house.

Mr. Luberto discussed the difficulties they encounter in accessing the garage spaces. The approach angle to the garage is problematic and the garage doors are too narrow. The Macan barely fits into the garage but the Escalade is a big problem. The closest structure on the neighbor's property is a patio and that property is approximately 5 feet below grade. The retaining wall separating the two properties is approximately 5 feet high. A discussion ensued regarding the width of the garage doors which the plan indicates are 7 feet 6 inches wide. There is access from inside the garage directly into the home. Attempting to pull the Escalade into the garage bay leaves only approximately 4 inches on either side. In response to a question from a Board Member, Mr. Barberio said that he would have to further investigate the possibility of installing a steel beam so that the existing center column could be removed freeing up space. He was concerned that this could affect the integrity of the home. Mr. Luberto said the existing center beam is approximately 16 inches wide.

The matter was opened to the public and no one wished to be heard.

Board Member Bate noted the request is egregious and does violence to our zoning. Board Member Scolnick said she understood the challenges faced by the Lubertos but a side yard setback of only 3 feet is too close to the neighboring property. Board Member Albuлесcu suggested that the carport could be reduced in size. Board Member D'Avella was not in favor of the proposal but thought the applicants could consider a carport for one vehicle and make the garage work for one vehicle. Vice-Chairman Spellman likes the look of the project and liked the idea of a one car carport. Board Member Shearin inquired as to the setback of a one vehicle carport. Board Member Jolda questioned whether a one vehicle carport would work. Chairman Candido asked for Board comments regarding a one vehicle carport with a side yard setback of 10 feet. Board Member Shearin was sympathetic but was opposed as such a request would not be within the character of the town and would be too close to the neighboring property. Board Member D'Avella noted the applicants' hardship and believed that such an open structure with small columns would be acceptable. Board Member Albuлесcu noted the issue is the roof as the vehicles can park there currently. He believed a 10 to 11 foot side yard setback would be satisfactory. Board Members Bate and Scolnick stated they would need to see a plan before they could make a determination. Vice-Chairman Spellman thought that a 10 foot side yard setback would be fine since they are already parking two vehicles in the paved area. Board Member Jolda was not in favor of the single vehicle carport.

Following a discussion with the Board, Mr. Luberto requested that the matter be carried so that the applicants could explore revising the plan to increase the setback consistent with the Board's comments. Chairman Candido cautioned Mr. Luberto that such a revision was by no means a "slam dunk." On motion made by Board Member D'Avella, seconded by Board Member Shearin, the matter was carried to the April 22, 2021 meeting at 7:30 p.m. by unanimous vote. Mr. Luberto consented to an extension of time for the Board to act until such date.

The next matter to come before the Board was the application of Peter and Karen Milano, 121 Gordon Road, Block 8.03, Lot 1.01 for variances to permit installation of a pool, equipment pad, patio and 4-foot high fence in the front yard. Board Attorney Sullivan noted the Affidavit of Publication and Service submitted by the applicants was acceptable. Peter Milano, 121 Gordon Road, Essex Fells, New Jersey advised the Board he wants to install a pool in the backyard, small patio on one side and code compliant fence to enhance outdoor enjoyment for his family. He noted the property has two front yards.

Richard Wostbrock, 44 Garrett Place, Midland Park, New Jersey, a licensed professional engineer in the State of New Jersey was accepted as an expert by the Board. Mr. Wostbrock noted the proposed location of the pool feels like a rear yard, however, the property has two front yards. The applicants propose to install an 800 square foot pool, an 824 square foot patio, stepping stones, walls and pool pad. One tree will be removed. Mr. Wostbrock referred to the pool plan prepared by his office dated September 21, 2020 revised through November 18, 2020. He noted the bulk zoning requirements chart needs to be revised to reflect the lot area is 74,302 square feet measured to the centerline of the road and 65,327 square feet measured to the right-of-way. The side yard setbacks are 61 feet respectively and impervious coverage is 21.7% existing and 24.2% proposed.

Mr. Wosbrock noted the property is irregularly shaped and looks like a "frying pan." The property contains a variety of existing fence types including some which must be upgraded to meet the pool safety code. The proposed pool and associated improvements are common personal recreational facilities. Board Attorney Sullivan referred to the fence ordinance and noted that open fences 3 feet in height are permitted anywhere on the lot up to the lot lines. A semi-open fence at a height of 3 feet is allowed from the front building line to the side and rear lot lines. A solid fence 6 feet in height is permitted from the rear building line of the principal structure to the side and rear lot lines. Swimming pools are regulated in Chapter 252 which is outside the zoning ordinance. Swimming pools must be completely surrounded by a fence, wall or other enclosure at least 4 feet in height and shall be constructed as not to have openings, holes or gaps larger than 4 inches in any dimension except for doors or gates. There are also regulations regarding doors and gates.

Chairman Candido asked for Board comments regarding the applicants request to construct a pool and associated improvements in the front yard. Board Member D'Avella noted the Oval Road front yard is not really a front yard and the purpose of the ordinance was not to stop pools in this kind of a layout. Vice-Chairman Spellman noted that the Oval front yard is really a technicality. Board Member Albulescu indicated he was in favor of the pool but suggested the proposed green giant arborvitae are too close to the pool and the applicants should consider an automatic pool cover. The remaining Board Members indicated they had no issue with the pool.

Chairman Candido indicated he had a problem with the 4-foot high fence in the Oval Road front yard. The Mayor and Council are extremely concerned with fences and the proposed fence doesn't meet the spirit of the fence ordinance. Mr. Milano responded that he does not want to install a 4-foot high fence along the pool which would be unsightly. Perimeter fences are typical and he does not want to impede views of the property. He also has security concerns

as individuals can walk onto the property from Oval Road. He has had to clean up debris, beer bottles and trash in the area adjacent to Oval Road which is a nuisance. Mr. Milano noted the adjacent Berlet property at 77 Oval Road has a fence on Gordon Road and Oval Road. Chairman Candido noted that in response to those type of fences, the Council adopted a new fence ordinance.

The Board reviewed the 3-foot high white picket fence which runs approximately from the front building line to the southerly side yard setback. The applicants intend to replace this fence with a 4-foot high white picket fence which requires a variance. Mr. Milano indicated that the fence blocks the existing air conditioning units from view. Board Member D'Avella indicated he was in favor of the 4-foot high fence along Gordon Road but was not in favor of the Oval Road fence as proposed. Vice-Chairman Spellman suggested that the Oval Road fence could be pushed away from the property line. Mr. Wostbrock noted that the ordinance prohibits fences in the right-of-way and can be no closer than 10 feet to a curb line or to the edge of paved roadway. As a result, the fence would have to be pulled back from Oval Road. Board Member Bate noted the most impacted property is the adjacent property which fronts on Oldchester Road. He explored permitted fence heights if that property owner were to install a fence in the rear yard. Board Member Scolnick noted that the fence location is a solvable problem and there needs to be a reasonable compromise. She had no problem with the proposed Gordon Road fence. Board Member Shearin was not concerned with the Gordon Road fence as it was over 100 feet away from the street. He was opposed to a fence wrapped tightly around the pool but did not want to see a fence up to the street line. Board Member Jolda agreed with Board Members' comments.

The matter was opened to the public and no one wished to be heard.

On motion made by Board Member Scolnick, seconded by Vice-Chairman Spellman to grant a variance to permit the pool and associated improvements in the front yard subject to compliance with comments 3.2 through 3.8 and 4.1 through 4.4 contained in the review memorandum prepared by Petry Engineering, LLC dated February 16, 2021 and compliance with the swimming pool fencing requirements contained in Section 252-2 was approved by a vote of 7 – 0 (Chairman Candido, Vice-Chairman Spellman, Board Members Albulescu, Bate, D'Avella, Scolnick and Shearin voting in the affirmative).

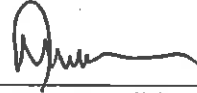
On motion made by Board Member D'Avella, seconded by Vice-Chairman Spellman to grant a variance to permit replacement of the 3-foot high white picket fence which runs approximately from the front building line to the southerly side yard setback with a new 4-foot high white picket fence was approved by a vote of 5 – 1 – 1 (Vice-Chairman Spellman, Board Members Albulescu, D'Avella, Scolnick and Shearin voting in the affirmative, Chairman Candido voting in the negative and Board Member Bate abstaining).

On motion made by Board Member D'Avella, seconded by Board Member Shearin to grant a variance to allow a 4-foot high chain link fence with earth tone colors in the Oval Road front yard subject to relocating the fence away from Oval Road outside the right-of-way or 15 feet from the curb line or edge of paved roadway whichever is greater was approved by a vote of 6 –

1 (Chairman Candido, Vice-Chairman Spellman, Board Members Albuлесcu, D'Avella, Scolnick and Shearin voting in the affirmative and Board Member Bate voting in the negative).

On motion made by Board Member D'Avella, seconded by Vice-Chairman Spellman a resolution adopted the 2020 Annual Report passed unanimously.

There being no further business to come before the Board on a motion made by Vice-Chairman Spellman, seconded by Board Member Scolnick, the meeting was duly adjourned by unanimous vote at 9:57 p.m.



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