

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

**MINUTES OF THE MEETING OF APRIL 22, 2021**

The meeting was conducted via Zoom and was called to order at 7:32 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, Secretary Thomas O'Beirne, Chris Shearin and MJ Jolda. In addition, Michael D. Sullivan, Board Attorney, was present.

On motion made by Board Member D'Avella, seconded by Board Member Albuлесcu, the minutes of the meeting of March 25, 2021 were adopted unanimously by all those eligible to vote.

On motion made by Board Member D'Avella, seconded by Board Member Shearin, the resolution of Gary and Susan Botwinick, 235 Oldchester Road, Block 9.03, Lot 6.02 for floor area ratio and side yard setback variances was approved by a vote of 6 – 0 (Chairman Candido, Vice-Chairman Spellman and Board Members O'Beirne, D'Avella, Scolnick and Shearin voting in the affirmative).

The next matter to come before the Board was the application of Anthony & Natalia Luberto, 60 Fellswood Drive, Block 1.01, Lot 13.05 for a side yard setback variance. At the applicants' request, a motion made by Board Member Bate, seconded by Board Member D'Avella, to carry the application to the June 24, 2021 meeting without further notice provided any revised plans must be submitted on or before June 3, 2021 was approved by unanimous vote.

The next matter to come before the Board was the application of Ali Shojaee and Sareh Khajehnouri, 158 Fells Road, Block 1, Lot 8 for impervious coverage, front yard setback and fence location (type and height) variances. Elizabeth Durkin, Esq. was present on behalf of the applicants. Board Attorney Sullivan advised the application was complete and notice was acceptable. Ms. Durkin noted the property is located in the A-4 Zone and contains a single-family home. Her clients wish to install a pool, however, the property is encumbered by a 10- foot wide sewer easement running through the rear of the property.

Ms. Durkin called John Lord of Ramirez Engineering, 964 Fischer Boulevard, Toms River, New Jersey, a professional engineer of the State of New Jersey who was accepted as an expert by the Board. Mr. Lord indicated that the applicants were seeking variances for front yard setback to permit 76 feet where a minimum of 94.51 feet is required; maximum impervious coverage to permit 32.2% where 25.5% is existing and a maximum of 25% is allowed as well as fence height and location. The property also contains preexisting nonconformities relating to front yard setback, floor area ratio and building height which are not affected by this application.

Mr. Lord referred to the topographic survey and pool plot plan prepared by his office dated February 17, 2020 revised through March 18, 2021. Mr. Lord stated the property slopes from the front to the rear and from right to left looking from the street. The property is encumbered by a 10-foot wide sewer easement running through the rear of the property. Mr. Lord noted the

average front yard setback was calculated from the front setbacks of adjacent properties within 500 feet and results in a requirement of 94.51 feet. The street curves sharply and the required front yard setback cuts off a corner of the existing home and by the time you get to the southerly side of the home, the setback line is located behind the house. The applicants propose to construct an in-ground pool with concrete walk. The majority of the pool is to be located to the rear of the house. The pool could not be located in compliance with the front yard setback requirement due to the sewer easement. Mr. Lord noted that a Geotechnical Investigation Report was submitted to the Board prepared by Frank H. Lehr Associates dated December 16, 2020. Mr. Lord addressed the review memorandum prepared by Petry Engineering, LLC dated March 31, 2021 specifically regarding stormwater management. Soil permeability is poor and a trench drain with perforated pipe with inlets around the pool was proposed. His office discussed revising the stormwater management with Mr. Petry and Ms. Handel and they agreed to revise stormwater management to eliminate the perforated pipe and provide an outlet structure leading to a scour hole. Board Attorney Sullivan reviewed the outstanding items contained in the Petry report with Mr. Lord. Ms. Durkin stipulated that in the event of an approval they would comply with comments 3.5 through 3.10, 3.12 and 4.1 through 4.4 and install double gates at either end of the sewer easement to allow access for maintenance.

Mr. Lord discussed the landscape plan prepared by Louis Michael Pools dated March 25, 2021. In response to a question, he indicated the proposed 24 Green Giant arborvitae would have a planting height of 8 feet. The landscaping is proposed in front of the fence to block its view from the street. With regard to the impervious coverage variance, drainage improvements will provide increased storage capacity and there will be no runoff concerns. In response to a question, Mr. Lord indicated that the southerly side yard setback of the pool ranges from 15.5 feet to 16.4 feet where a minimum of 15 feet is required. Board Member Albulescu asked Mr. Lord whether the applicants considered a smaller 32 foot by 16 foot pool. Mr. Lord responded that a reduced size pool would still require a variance from the front yard setback as almost the entire backyard is encumbered by the sewer easement. In response to a question from Board Member Bate, Mr. Lord indicated that the stormwater management is designed for a 2 inch rainfall. In response to a question from Board Member Bate, Board Attorney Sullivan noted that pursuant to Section 170-136 pools may be erected in the side and or rear yard and shall not be less than 15 feet from any lot line. Mr. Lord noted that the bulk of the pool is located in the rear yard with a portion in the side yard. The only lighting associated with the pool would be an internal pool light and there would be no exterior lighting to extend the hours of operation. Mr. Lord referred to the plan which provided the calculations in arriving at the required front yard setback. Chairman Candido noted that the property contains lot area of 35,819 square feet where a minimum of 20,000 square feet is required in the zone. The property contains existing impervious coverage of 25.5% and 32% is proposed where a maximum of 25% is allowed.

Ms. Durkin called the applicant, Ali Shojaee, 158 Fells Road, Essex Fells, NJ. He advised the Board he lives at the home with his family and two twin 5 ½ year old daughters. He purchased the house in August 2019 and installed the existing fence in September 2019. He installed a 6-foot high fence because he was concerned about security and traffic on Fells Road as well as the townhomes to the rear. The applicant indicated he hired a fence company to construct the fence which does not comply with the ordinance. Board Attorney Sullivan noted the fence ordinance was adopted by the Borough in May 2019. Mr. Shojaee stated that approximately two or three weeks after installation of the fence he received a zoning violation from the Borough.

The Board determined the composition of the fence and determined it was less than 25% solid. Board Attorney Sullivan noted that pursuant to the swimming pool ordinance a fence height of at least 4 feet is required.

The matter was opened to the public. Charles Marisca, 24 Dorset Circle, Caldwell, NJ stated he had concerns regarding noise levels, the size of the pool and lighting, however, his real concern was drainage. He discussed the slopes of the property and noted that area properties have drainage problems. Mr. Lord noted the subject property is impacted by the sewer easement which is primarily sanitary but may connect to a storm sewer. Mr. Lord discussed the brook which runs into Grover Cleveland Park. Moore Craig, 25 Dorset Circle, Caldwell, NJ said he was concerned with noise and cited the Borough's noise ordinance. Ms. Durkin responded that the proposed pool location is actually further away than what would ordinarily be permitted. Mr. Craig requested a limitation of hours of usage for the pool. Board Attorney Sullivan stated that there is no limitation of usage in the ordinance and to his knowledge the Board had not imposed any such condition in the past. Dennis Madej, 23 Dorset Circle, Caldwell, NJ expressed concerns about drainage.

Ms. Durkin summed up and noted the applicants are requesting "c" variances. The property is encumbered by a 10-foot wide sewer easement which prevents constructing the pool in a conforming location. The slope and location of the house also affects the use of the property. The fence is existing and although it was installed without permits, the proposed arborvitae will block the view of the fence and the pool. The applicants' engineer has gone to great lengths to address drainage concerns and will comply with the recommendations of the Borough's Engineer. She noted that the pool would be located closer to the townhouses to the rear if the sewer easement didn't exist. The applicants will comply with all noise and lighting ordinances. Ms. Durkin reiterated that other than an in-pool light there would be no exterior lighting of the pool. The matter was closed to the public.

Board Member Albuлесcu thought it was a borderline case and referenced the size of the pool and spa. Board Member Scolnick stated the testimony explained what was driving the variance requests and was opposed to downsizing the pool to lessen the front yard setback. The landscaping is enormously helpful and the good news is there is no side yard setback issue. The drainage issue will be addressed through Petry Engineering. The fence is a whole other issue. Unfortunately, the property owners did not obtain the proper approvals. The existing fence would not have been approved by the Board without a pool. Chairman Candido noted the pool is essentially in the side yard which is permitted. He is concerned because the lot is substantially oversized and the impervious coverage is substantially greater than what is allowed. The Board often hears matters involving undersized lots arguing that the lot is too small and requires relief. This case is the opposite as the lot is oversized. The proposed impervious coverage is a problem as drainage issues are a problem in the area. Had the fence come before the Board we would not have approved it. He did note that a pool requires a 4-foot high fence.

Board Member O'Beirne was not concerned with the increase in impervious coverage. He noted the property owner had a year and half to rectify the fence issue. Vice-Chairman Spellman complimented the applicants' attorney's presentation and noted he had no problem with the impervious coverage variance. He did note the 6-foot high fence was a problem. Board Member

D'Avella stated that the Borough Engineer will take care of any drainage issue. The curvature of the road causes the front yard setback variance. The proposed location is the only place the pool could be located due to the existence of the sewer easement. He didn't think we should tell the applicants they should have a smaller pool. He was not troubled by the balance of the application. Board Member Shearin noted that fence height and impervious coverage are big issues in the town. Board Member Jolda noted the impervious coverage and fence height variances are challenges given the vision of the town. Board Member Albuлесcu further expressed drainage concerns. Board Member Bate noted the drainage improvements will resolve any impervious coverage problems resulting from installation of the pool. He believed the pool was inappropriately sized and located. He also believed the fence height should be reduced to 4 feet to conform to the ordinance.

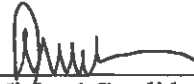
Ms. Durkin advised the Board that the applicants wish to amend the variance request and seek a variance to allow a 4-foot high fence. Ms. Durkin discussed with the Board the possibility of carrying the matter to a future hearing in order to allow the applicants to submit revised plans to the Borough Engineer. Board Members were polled by the Chairman and six of the seven voting members believed there was no need for submission of revised plans prior to a vote. Ms. Durkin consulted with her client and requested the matter proceed to a vote.

On motion made by Board Member D'Avella, seconded by Vice-Chairman Spellman to grant a variance to permit a front yard setback of 76 feet where 94.51 feet is required and impervious coverage of 32.2% where a maximum of 25% is allowed subject to the following conditions: (1) compliance with comments 3.5 through 3.10, 3.12, 4.1 through 4.4 contained in the review memorandum prepared by Petry Engineering, LLC dated March 31, 2021; (2) installation of double gates at either end of the sewer easement to allow for maintenance; (3) installation of the landscaping depicted on the landscape plan prepared by Louis Michael Pools dated March 25, 2021 with a planting height of 8 feet for the proposed Green Giant arborvitae, said landscaping shall be maintained by the property owners; and (4) other than an in-pool light, exterior lighting of the pool shall be prohibited was approved by a vote of 5 – 2 (Vice-Chairman Spellman, Board Members D'Avella, O'Beirne, Albuлесcu and Scolnick voting in the affirmative and Chairman Candido and Board Member Bate voting in the negative).

On motion made by Board Member D'Avella, seconded by Board Member Albuлесcu to grant a variance to permit a 4-foot high semi-open fence from front building line to side and rear lot lines at the existing location was approved by a vote of 7 – 0 (Chairman Candido, Vice-Chairman Spellman and Board Members D'Avella, Albuлесcu, O'Beirne, Bate, Scolnick voting in the affirmative).

Chairman Candido reminded Board Members that the Local government Ethic's Law Financial Disclosure Statements are due to be filed on or before April 30, 2021. Board Member D'Avella discussed the conflict with the fence ordinance and the requirement that swimming pool fences must be 4-foot high and suggested this should be addressed. Chairman Candido advised that the Mayor was aware of this issue and the Board could address it as part of its annual report.

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 10:14 p.m.



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A. Michael Candido, Chairman  
Zoning Board of Adjustment  
May 27, 2021