

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF ESSEX FELLS
MINUTES OF THE MEETING OF MARCH 24, 2022**

The meeting 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, Bernard D'Avella, Oscar Bate, Thomas O'Beirne and MJ Jolda: In addition, Michael D. Sullivan, Board Attorney, was present.

On motion made by Board Member D'Avella, seconded by Board Member Jolda, the minutes of the meeting of January 27, 2022 were adopted unanimously by all those eligible to vote.

The next matter to come before the Board was the hearing on the application of Alan Landy and Vivienne Decker, 186 Devon Road, Block 4, Lot 10 for variances in connection with the installation of a generator. Board Member Albuлесcu recused himself from the hearing as he owns property within 200 feet of the subject property. Present at the hearing was Alan Landy, 186 Devon Road, Essex Fells, New Jersey. Mr. Landy stated he wished to install a generator in the Oval Road front yard due to the gas pipe location and as close to the house as possible. The applicants submitted a boundary survey prepared by Richard J. Hingo, Inc., dated July 13, 2020 with a sketch of the generator location added. He indicated he would extend the existing boxwoods to provide additional screening of the generator. Board Attorney Sullivan noted the applicant requires variances to permit the generator in the front yard facing Oval Road where a generator is only permitted in the rear or side yards and to permit a 24kW generator where a maximum 20kW generator is allowed.

Mr. Landy stated the 20kW and 24kW generators are both the same size, however, he is seeking the 24kW generator because it could power his entire home. The generator would not be visible from Oval Road due to an existing 6-foot high solid fence. There are also a number of large trees in the front of the property that would block the view of the generator from Devon Road. Board Member D'Avella noted the proposed location of the generator is actually on the side of the house and this is a typical problem with corner lots. Mr. Landy noted the existing fence facing Devon Road is porous. Mr. Landy indicated he spoke with David Liable of Reliable Energy who advised him that the proposed location of the generator is the safest location due to the placement of the gas line. In response to a question from Secretary O'Beirne, Mr. Landy indicated he was not certain as to the size or location of the gas line.

The matter was open to the public. Henry Albuлесcu, 110 Oval Road noted the applicant's rear fence is chain link. Mr. Albuлесcu said it may be possible to see the generator from the front of his home. Mr. Albuлесcu stated that a 20kW generator has a noise level of 54 dB and a 24kW generator has a noise level of 57 dB but he didn't believe the difference was material. Mr. Albuлесcu concluded that based upon the additional buffer and fence he had no concerns with the application.

Board Members Bate and D'Avella stated this was an easy application to approve. Vice-Chairman Spellman had no issue with the 24kW generator, but was somewhat concerned that we are not actually sure where the gas line is located. Secretary O'Beirne was opposed to granting a

variance to permit a generator in the front yard and stated there was access to a gas line in the backyard. Board Member Jolda stated the application visually works. Chairman Candido noted he viewed the property and it was pretty well screened.

Board Attorney Sullivan noted that if the application is approved, it should be subject to items 3.1 (except a landscape plan would not be required), 4.1 through 4.4 contained in the review memorandum prepared by Petry Engineering, LLC dated February 5, 2022.

On motion made by Board Member D'Avella, seconded by Board Member Bate to grant variances to permit a 24kW generator where a maximum 20kW generator is allowed located in the front yard facing Oval Road where a generator is only permitted in the rear or side yard subject to compliance with items 3.1 (except a landscape plan is not required), 4.1 through 4.4 contained in the review memorandum prepared by Petry Engineering, LLC dated February 5, 2022 was approved by a vote of 4 – 2 (Chairman Candido, Board Members Bate, D'Avella, Jolda voting in the affirmative and Vice-Chairman Spellman and Board Member O'Beirne voting in the negative).

The next matter to come before the Board was the hearing on the application of Adam and Karen Goldman, 88 Forest Way, Block 8, Lot 4.02 for floor area ratio and side yard setback variances. Board Member D'Avella recused himself from the hearing as he owns property within 200 feet of the subject property. Present at the hearing was Adam Goldman, 88 Forest Way, Essex Fells, New Jersey. Also present was Perry Petrillo, 9 Park Avenue, Park Ridge, New Jersey, a licensed architect of the State of New Jersey who was accepted as an expert. Board Attorney Sullivan noted the applicant seeks variances to permit a floor area ratio of 16.2% where a maximum of 11% is allowed as well as a northerly side yard setback of 29.2 feet where a minimum of 45 feet is required.

Chairman Candido asked Board Attorney Sullivan to outline the proofs required. Board Attorney Sullivan stated the Board has the power to grant variances to permit an increase in the permitted floor area ratio pursuant to N.J.S.A. 40:55D-70d(4) in particular cases and for "special reasons." This is the so-called positive criteria of a d(4) FAR variance. As it pertains to the positive criteria, the Appellate Division has held that a d(4) FAR variance is more akin to a d(3) conditional use variance than a d(1) use variance so that the Board's focus must be on whether the site will accommodate the problems associated with the proposed permitted use but with a larger floor area than permitted by the ordinance. *Randolph Town Center v. Randolph*, 324 N.J. Super. 412 (App. Div. 1999) holding that the standard enunciated in *Coventry Square v. Westwood Board of Adjustment*, 138 N.J. 285 (1994) pertaining to a d(3) conditional use variance applies to a d(4) FAR variance. A d(4) FAR variance application need not show the property is particularly suited for more intensive development. The Board may not exercise its power to grant a d(4) variance otherwise warranted, however, unless the so-called negative criteria has been satisfied. No variance or other relief may be granted without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. Under the *Randolph Town Center* rationale, the Board's focus regarding the negative criteria in a d(4) FAR variance is identical to a d(3) conditional use variance; namely, determining whether conditions can be imposed in its approval to insure that the deviation from the FAR requirements

do not cause substantial detriment to the public good and substantial impairment of the intent and purpose of the zone plan and zoning ordinance. Unlike a d(1) use variance, this standard does not require an “enhanced quality of proof” and does not require the applicant to reconcile the grant of the variance to allow the larger than permitted FAR with the ordinance restriction on FAR. Board Attorney Sullivan noted that the purpose of FAR ordinances is to control the size and mass of a home in relation to lot size and regulate intensity and prevent overbuilding.

With respect to the side yard setback, under c(1), the applicants must prove a hardship relating to the physical characteristics of the land and also satisfy the negative criteria. Under c(2), the applicants must prove a public benefit and that the benefits substantially outweighs detriments and also meet the negative criteria.

Mr. Goldman stated that he moved to Essex Fells approximately 2 ½ to 3 years ago. He has a mother-in-law who is 89 years old, widowed and living on her own with some difficulty. Most likely she will move into the home. His mother is also in her late 70s and possibly may move in. The proposed addition will allow for independent living. The existing garage is not suitable for today’s vehicles and contains little area for storage. Approval of the application will get an additional vehicle off the driveway and into the garage.

Mr. Petrillo marked into evidence Exhibit A-1 consisting of Sheet P-1 dated March 23, 2022 prepared by his office consisting of elevations, photos, key map and aerial. He also referred to Sheet T-1 revised March 10, 2022 prepared by his office consisting of a zoning schedule and site plan. Mr. Petrillo noted that they are adding a cover over the existing front porch which will count towards the floor area ratio. He described the proposed new garage addition which is 8 feet by 21 feet as well as a screened porch in the rear. Mr. Petrillo referred to Sheet A-1 dated June 16, 2021 prepared by his office consisting of floor plans and elevations. He noted the existing garage is undersized.

Board Attorney Sullivan advised the applicant that there were only six Board Members present this evening and a full complement of the Board is seven members. This application involves a floor area ratio variance which required five affirmative votes to approve. Board Attorney Sullivan noted that when the testimony is completed the applicant would have the opportunity to request a vote or carry the application to a subsequent hearing in order to have the full complement of the Board available to vote.

Mr. Petrillo continued to describe the proposed additions referring to Sheet A-1. The second floor plan over the garage would include a living area, study, bedroom and bathroom. Mr. Petrillo referred to Sheet EX-1 dated June 16, 2021 prepared by his office which contained the existing floor plans and elevations. He noted the existing low slung roof pitch doesn’t tie in to the context of the main house. The proposed additions would improve aesthetics and would utilize consistent materials. Mr. Petrillo referred to the zoning schedule on Sheet T-1 and noted there are three preexisting nonconforming conditions. The lot area is 38,854 square feet where 43,560 square feet is required. The front yard setback is 82.05 feet where a minimum of 100 feet is required. The right side yard setback is 30.63 feet where a minimum of 45 feet is required. Mr. Goldman indicated he had discussed the project with his neighbor. Mr. Petrillo identified

the new variances requested including a side yard setback of 29.2 feet where a minimum of 45 feet is required and a floor area ratio of 16.2% where a maximum of 11% is allowed.

Mr. Petrillo discussed the review memorandum prepared by Petry Engineering, LLC dated March 21, 2022 and had no issue with the comments. With reference to comment 4.2, he was not sure that the new sewage restrictions imposed by the Superior Court relating to the scarce resource constraint applied to this project. The home previously had more bedrooms but understood that if the project was approved it would be addressed in resolution compliance.

Mr. Petrillo discussed the requested side yard setback variance. He stated there would be no detriment to the zone plan or public if it was approved. The aerial map showed the addition is good distance from the neighbor. The additional encroachment over the existing condition is just over one foot. The addition would not be visible by the neighbor due to dense landscaping. Mr. Petrillo discussed the floor area ratio variance. He noted the screened porch in the rear counts towards the floor area ratio calculation but would be open on two sides. The screened porch would be utilized for three seasons but still counts towards the floor area ratio. He noted the area over the garage will increase value and if it was ½ story it wouldn't count toward floor area ratio. The existing lot is undersized and adds to the need for an additional floor area. If the proposed additions were located on a conforming lot, the floor area ratio would only be exceeded by approximately 3%. The most affected neighbors would not be impacted due to the mature vegetation and across the street is a pond.


The matter was opened to the public. Bernard D'Avella, 105 Rensselaer Road stated he approved of what the applicants proposed. Chairman Candido stated the proposal is approximately 50% above allowable floor area ratio. Mr. Petrillo noted the screen porch counts towards floor area ratio and consists of approximately 700 square feet. In response to a question from Chairman Candido, Mr. Goldman indicated that the addition to the garage would be accessible to the elderly by use of a stair chair. Chairman Candido wondered whether the scale of the project could be reduced. Mr. Goldman responded that if he had to he would eliminate the screened porch. Chairman Candido responded even with the elimination of the screened porch, the floor area ratio would be too high. In response to questions from Board Member Bate, Mr. Petrillo noted the existing ridgeline is just under 26 feet and the existing garage is approximately 16 feet high. The proposed ridgeline for the garage would be 22.5 feet. Secretary O'Beirne noted there are two existing air conditioning units and a generator on the side of the home and questioned whether additional equipment would be needed. Mr. Petrillo noted that there is a mechanical equipment area in the second floor addition where a vertical unit could be added for heat and air conditioning along with a condenser outside. In response to a question from Board Member Albulescu, Mr. Goldman indicated there is very little room for storage in the basement. Mr. Goldman stipulated that if the application was approved he would agree the screened porch would have to remain open on two sides and not enclosed. Board Member Bate questioned whether a one-story addition could be added to the left side of the home. Mr. Goldman indicated that the left side of the home is the original part of the house and where the air conditioning units and generator are located and he wanted to maintain that side. In response to a question from Board Attorney Sullivan, Mr. Petrillo indicated that if the screened porch consisting of 676 square feet was removed it would reduce the floor area ratio to approximately 14.5%.

The Board began deliberations. Chairman Candido indicated the proposed FAR is too great to approve. There is some “low hanging fruit” to reduce it. The applicant should look at the screened porch, garage addition and addition over the garage. Board Member Bate said he thought the FAR was stretched too far but the sunroom is so hidden it would not affect any neighbor. The overall design is gorgeous. The existing foliage to the right would shield the 1 ½ story addition. The Board is generally tight with side yard setbacks and he would be more comfortable with a one story encroachment. Chairman Candido noted that the Town Council passed a floor area ratio ordinance which should be complied with except when there are special circumstances. Board Member Albuлесcu noted we have seen other undersized lots that we have granted floor area ratio variances but not this high. He understood the issue with the applicant’s mother-in-law possibly living in the home but he wasn’t giving credit for what might occur in the future. The design of the home is good but the floor area ratio is too high. Vice-Chairman Spellman noted the extent of the FAR request is a “heavy lift.” Secretary O’Beirne noted the FAR request was too much. Board Member Jolda complimented the design but also felt the FAR was too high.

The applicant requested the matter be carried to a subsequent hearing so that plan revisions could be considered. On motion made by Vice-Chairman Spellman, seconded by Board Member Bate to carry the application to April 28, 2022 at 7:30 p.m. with no further notice and revised plans submitted at least 14 days in advance was approved unanimously. The applicant agreed to an extension of time for the Board to act until the new hearing date.

Chairman Candido discussed the need for additional meetings to be held. On motion made by Vice-Chairman Spellman, seconded by Board Member D’Avella to add new meetings of the Board on May 16 and June 13, 2022 at 7:30 p.m. was approved unanimously.

There being no further business to come before the Board, on motion made by Vice-Chairman Spellman, seconded by Board Member D’Avella, the meeting was duly adjourned by unanimous vote at 9:17 p.m.


A. MICHAEL CANDIDO, Chairman
Zoning Board of Adjustment
April 28, 2022