

**ZONING BOARD OF ADJUSTMENT  
BOROUGH OF ESSEX FELLS  
MINUTES OF THE MEETING OF MAY 16, 2022**

The meeting was called to order at 7:34 p.m. The Open Public Meetings Act announcement was read as required by law. Those present were: Chairman Candido, Oscar Bate, Bernard D'Avella, Secretary Thomas O'Beirne, Ann Marie Scolnick and Chris Shearin (7:41 p.m.). In addition, Michael D. Sullivan, Board Attorney, was present.

On motion made by Board Member D'Avella, seconded by Board Member Bate, the minutes of the meeting of April 28, 2022 were adopted unanimously by all those eligible to vote.

On motion made by Board Member Bate, seconded by Secretary O'Beirne, the resolution of Adam and Karen Goldman, 88 Forest Way, Block 8, Lot 4.02 for floor area ratio and side yard setback variances was approved by a vote of 3 – 0 (Chairman Candido, Secretary O'Beirne and Board Member Bate voting in the affirmative).

Chairman Candido announced that Board Members Scolnick and Albulescu were resigning. He thanked them both for their service.

The next matter to come the Board was the continued hearing on the application of Kai Olderog, 320 Runnymede Road, Block 13.02, Lot 13 for preliminary and final site plan, floor area ratio and bulk variances. Michael Piromalli, Esq. of the firm of Gaccione Pomaco, P.C. was present on behalf of the applicant. Board Member Shearin arrived at the meeting. Board Attorney Sullivan noted that Board Member Scolnick signed a certification that she listened to the tape of the April 28, 2022 meeting and therefore, would be eligible to vote. Board Attorney Sullivan advised Mr. Piromalli that only six board members were present and because the application involved a use variance, five affirmative votes are required to approve where a full complement of the Board is seven members.

Mr. Piromalli called Vladimr Kaushansky, 6 Sandra Court, Old Bridge, New Jersey who was accepted by the Board as an expert architect. Mr. Kaushansky noted the building was unique and contained 6,600 square feet. He referred to Sheet A-1 of the plans he prepared dated May 25, 2021 revised through April 5, 2022 and described existing condition floor plans. He noted the building was constructed in two phases consisting of a main three-story masonry building and subsequently a wood frame two-story addition. He referred to Sheet A-2 of the architectural plans prepared by his office dated May 25, 2021 revised through April 5, 2022 and described the proposed floor plans. He noted the occupancy limit according to building codes is 160 persons. Mr. Kaushansky noted that in order to be fully compliant with ADA requirements a handicap lift is required which is not a typical elevator as it is not for everyday use. Mr. Kaushansky referred to Sheet A-3 prepared by his office dated May 25, 2021 revised through April 5, 2022 which depicted existing and proposed front elevations. Mr. Kaushansky noted that the proposed lift is non-reflective safety glass. The only change to the exterior is the installation of the lift. The lift is 5 feet by 6 feet (30 square feet) with a platform in front consisting of 30 square feet for a total of 60 square feet. Mr. Kaushansky stated the applicant would be reusing the existing sign which is depicted on Sheet T-1 of his plans which is located approximately 15 feet off the driveway.

The number of plumbing fixtures would be reduced by approximately 30% due to the reduction in students to 80. Board Member O'Beirne questioned whether the lift could be placed inside the building. Mr. Kaushansky replied that it would be difficult and costly. Mr. Kaushansky stated the building plans do not show sprinklers at this time. A further review is necessary and if the applicable codes require, the wood frame two-story addition would have fire sprinklers. There are no signs proposed on the building.

Ken Porro, Esq. of the firm of Chasan, Lamparello, Mallon & Cappuzzo appeared on behalf of George and Kathleen Haydu, 28 Buttonwood Road and Mason and Stephanie Kirsch, 322 Runnymede Road, Essex Fells, New Jersey. In response to questions from Mr. Porro, Mr. Kaushansky stated two of the three sides of the elevator could be enclosed and the door is facing Runnymede Road. Mr. Kaushansky stated the elevator could be located inside however it would cost an enormous amount of money. Mr. Kaushansky said code requires a net 20 square foot per student. The school will fully comply with all building codes. Ken Monroe, Chief Essex Fells Fire Department, 255 Roseland Avenue, Essex Fells, New Jersey asked questions about the proposed elevator.

Mr. Piromalli called Charles Stewart, 2517 Route 35, Manasquan, New Jersey who was accepted by the Board as an expert engineer. Mr. Stewart noted the existing lot is 24,296 square feet and shares a driveway with the Essex Fells Water Department. There are currently 20 parking spaces on site. Three and one half of the parking spaces are located on property owned by Essex Fells. The plan is to reconfigure the parking lot striping and provide two required ADA handicap spaces. The parking on the Essex Fells property will be eliminated. Total parking will be 28 spaces including two handicap spaces. Mr. Stewart referred to a stormwater discharge open pit inlet on the property. He noted that his former firm, Stewart Engineering, occupied the property from 2003 to 2010 and at no time did that inlet ever overflow. Mr. Stewart indicated they will need to do additional stormwater management following soil testing which will comply with all applicable regulations.

Mr. Stewart referred to Sheet SP-103.00 which he prepared dated August 24, 2021 revised February 1, 2022 consisting of the landscaping and lighting plan. Eight 25-foot high teardrop decorative light poles are proposed along with three wall-mounted fixtures. Mr. Stewart discussed comment 4.1 contained in the Petry Engineering review memorandum dated April 24, 2022 and noted they could provide additional lighting. Mr. Stewart reiterated refuse collection would be by private hauler likely with garbage cans behind the building. Mr. Stewart introduced Exhibit A-1 titled "Driveway Widening Exhibit" which he prepared dated May 16, 2022. The exhibit depicts a driveway width of 20 feet which would allow for two-way traffic. Mr. Stewart indicated snow would be plowed to the back of the property or removed off site if necessary. Mr. Stewart referred to comment 3.4 in the Petry Engineering review memorandum and stated the "future parking area" is included in the impervious calculations. If Exhibit A-1 is implemented, impervious coverage would increase. Mr. Stewart identified the proposed 6-foot stockade fence which would be located in the side yard which is not permitted at that height. Mr. Piromalli requested the application be amended to seek a 6-foot high solid wood stockade fence in the side yard where a maximum height of 3 feet semi-open or open fence is allowed. Mr. Stewart indicated all sight lighting will be turned off at 8 p.m. A discussion ensued as to whether the driveway could be widened to 24 feet which Mr. Stewart indicated is typical for two-way traffic.

Mr. Stewart indicated he would look at whether or not the driveway width could be widened. In response to Board Member questions, Mr. Stewart stated that a sidewalk could be added to the plan and the parking lot reconfigured which would be looked at. The plan currently results in impervious coverage of less than ¼ acre which if exceeded would involve greater stormwater management regulations.

In response to questions from Mr. Porro, Mr. Stewart indicated the stockade fence is proposed to be located along the existing curb in front of the existing trees. Additional landscaping could be added. The light poles could be lowered and the applicant would look at that. The applicant would also look at whether the seepage pit is to code. Mr. Porro advised that he was concerned about the privacy and buffers relating to his clients' property. In response to questions from Ken Monroe, Chief Essex Fells Fire Department, Mr. Stewart confirmed a fire engine cannot get in and turnaround on the site. Mr. Monroe indicated concern with fighting a fire in the upper floor which would require "mutual aid" from a ladder truck from a nearby fire department. In response to a question from William Musser, 332 Runnymede Road, Essex Fells, New Jersey, Mr. Stewart indicated there is a fire hydrant on Runnymede Road closer to Buttonwood Road. Board Attorney Sullivan read an email sent to the Board from Chief Monroe dated April 21, 2022 which stated: "The only comment we had was about the driveway and being able to turnaround on the property. The issue was addressed, and although we're not happy about not being able to turnaround (drive in/back out), there are other properties in town with the same issue."

Board Member Shearin advised he is residing at property within 200 feet of the subject property and would step away from the matter and left the meeting. Mr. Piromalli indicated his intent to call his planning witness. Mr. Porro objected to proceeding since the site plan would likely be revised. The Board, however, allowed Mr. Piromalli to proceed. Mr. Piromalli called Erik Deline, 105 Grove Street, Montclair, New Jersey and was accepted by the Board as an expert planner. Mr. Deline stated he had reviewed the Master Plan, Zoning Ordinance, various reports and visited the site in preparation for his testimony. The property is located in the RA-6 Zone. The existing building is three stories with a two-story addition on a lot consisting of 24,296 square feet. The applicant plans to reuse the existing commercial building for a Pre-K through grade 12 school. Mr. Deline reviewed the various permitted uses in the zone. The applicant is seeking a d(1) use variance as the proposed school is not a permitted use. The applicant is seeking a d(4) FAR variance where a maximum of 25% is allowed and 27% is existing and 27% is proposed. The proposed FAR is increasing very slightly due to the proposed elevator. The applicant seeks a bulk variance for impervious coverage of 60.24% (subject to revision) where 40.76% is existing and a maximum of 25% is allowed. The applicant also seeks variances to permit a drive aisle width of less than 24 feet and to permit a 6-foot high sold fence in the side yard.

The existing building has been dormant for over ten years and the footprint will generally be unchanged. This is an adaptive reuse of the property and a school is an "inherently beneficial use" as defined in the MLUL. The increased impervious coverage is necessary to provide parking. Runnymede south of the site includes single-family residential and the residential transitions to non-residential as Runnymede heads north towards Caldwell. Mr. Deline noted that N.J.S.A. 40:55D-4 specifically defines a school as an "inherently beneficial use." He also

referred to the definition of “institutional and public uses” in the Essex Fells Zoning Ordinance which included public and private schools. He noted inherently beneficial uses presumptively satisfy the positive criteria. The applicant must still meet the negative criteria. The enhanced quality of proof does not apply. Mr. Deline referred to the Sica test which requires the Board to (1) identify the public interest at stake, (2) identify any detriments that might ensue from the grant of the variance, (3) consideration of appropriate conditions imposed by the Board to reduce the aforementioned detriments and (4) balance interest against public detriment.

Mr. Deline noted the property is specifically shown in the 2018 Master Plan as a nonconforming commercial use on pages 19 and 83. The Master Plan also recognizes “There is only one non-conforming commercial use in the Borough (on Runnymede Road) in the form of an engineering office containing 9 employees” (page 83). The Master Plan further notes that in 2004 the subject property changed from an insurance brokerage office to a civil engineering and surveying consulting business. The Master Plan notes that school growth will stabilize, but will be significant during the next 10 to 25 years (page ix). Mr. Deline opined that the proposed school will contribute to accommodating growth and provide an additional type of educational institution other than a public school. Community reaction from events noted in the Master Plan include “To support primary education and the Essex Fells School as the heartbeat of the community” (page 21). Mr. Deline noted that approval of the application would advance the purposes of zoning, promoting the general welfare and providing a desirable visual environment consistent with subsections a and i of N.J.S.A. 40:55D-2.

Mr. Deline outlined various conditions which the applicant has agreed to which include limiting the maximum number of students to 80; no activities after 6 p.m. on weekends, weekdays or holidays with the exception of cleaning or guides/prospective parent meetings; sight lighting shall be turned off no later than 8 p.m.; trash and recycling to be conducted by a private hauler; students shall not be permitted to drive to school; no ingress/egress via Buttonwood Road driveway and compliance with the outstanding items contained in the Pety Engineering, LLC review memorandum dated April 24, 2022. Mr. Deline noted the Board must weigh the positives against the negatives and determine if the detriments substantially outweigh the positive impacts. He noted the key word is “substantial.” The property has historically been a commercial use and concluded the requested d(1) variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

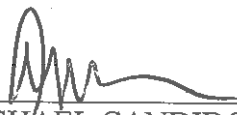
Mr. Deline discussed the d(4) FAR variance. The proposed increase is minimal and the applicant is required to show that the site will accommodate the problems associated with a floor area larger than that permitted by the ordinance. Mr. Deline noted the increase in FAR is required to meet Federal ADR requirements and it remains at roughly 27%.

Mr. Deline discussed bulk variances under c(2) including impervious coverage, driveway width and fence height and location. The maximum impervious coverage variance will allow efficient parking operation. The additional parking above and beyond the 11 required spaces addresses concerns over cars backing up onto Runnymede Road. The proposed 6-foot high solid wood stockade fence in the side yard will minimize any adverse visual impact on adjacent property owners.

Board Member D'Avella noted the property has been empty for 10 to 12 years and questioned whether the site is appropriate for affordable housing. Mr. Deline noted that the site could be used for affordable housing or even possibly a cell tower. Mr. Deline noted the property has been vacant for 10 to 12 years and this is not Class A office space. A residential use would be subject to the 25% FAR requirement. In response to a question from a Board Member, Board Attorney Sullivan noted that public or private schools are inherently beneficial under the MLUL even if they don't pay taxes. Mr. Deline noted the Acton Academy is not a traditional K-12 school and is involved with more "self-learning." The school offers an alternative for parents wishing to choose education outside a traditional K-12 school. In response to questions from Mr. Porro, Mr. Deline noted that the impervious coverage could be reduced and opined that moving the elevator inside the building would have no real impact. Mr. Deline also stated that whether the garbage was inside or outside had no real impact but did acknowledge that sidewalks would be a benefit. In response to a question from Rachel Cusack, 40 Maple Lane, Essex Fells, New Jersey, Mr. Deline did note that there are educational benefits that are derived from an alternative education which works for different people.

Mr. Piromalli requested the matter be carried so the applicant could look at plan revisions. Board Attorney Sullivan noted that all plan revisions must be submitted at least 14 days in advance. On motion made by Board Member D'Avella, seconded by Board Member Bate, the matter was carried to June 13, 2022 at 7:30 p.m. with no further notice required by unanimous vote.

Chairman Candido again thanked Board Member Scolnick for her service and noted she was a valued member of the Board. There being no further business to come before the Board, on a motion made by Chairman Candido, seconded by Secretary O'Beirne, the meeting was duly adjourned at 10:20 p.m. by unanimous vote.



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A. MICHAEL CANDIDO, Chairman  
Zoning Board of Adjustment  
May 26, 2022