

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF ESSEX FELLS
MINUTES OF THE MEETING OF JUNE 22, 2023**

The meeting 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, Secretary Thomas O'Beirne, Allison Semaya, William Kovacs, MJ Jolda and Chris Shearin. In addition, Michael D. Sullivan, Board Attorney, was present.

On motion made by Board Member Jolda, seconded by Board Member Shearin, the minutes of the meeting of January 30, 2023 were adopted unanimously by all those eligible to vote.

The next matter to come before the Board was the request for a six-month extension by Eiler Marcher and Dorothy Zajac, 4 and 6 Wootton Road, Block 10.02, Lots 26 and 24. Present at the hearing was Dorothy Zajac, 4 Wootton Road, Essex Fells, New Jersey. Board Attorney Sullivan noted by resolution adopted November 14, 2022, the Board granted minor subdivision approval and variances relating to floor area ratio, lot area and impervious coverage to effectuate a lot line adjustment and relocate and renovate the existing home at 6 Wootton Road. Pursuant to the Municipal Land Use Law, the minor subdivision approval expires 190 days from the date of adoption of the resolution unless perfected. Section 170-16 provides variances granted by the Board shall expire within nine months of adoption of the resolution unless construction or alteration has been commenced. The applicants' plan to relocate and renovate the existing home at 6 Wootton Road is complicated requiring additional time. Chairman Candido and Board Member Semaya recused themselves. Ms. Zajac advised that the approval was received just prior to the holidays and they have experienced delays with contractors but are now ready to move forward. They recently applied for a lot drainage permit. On motion made by Board Member Jolda, seconded by Board Member Shearin the applicants' request to grant an extension of variance approvals and to perfect the minor subdivision for six months from adoption of the resolution was approved by a vote of 3 – 1 (Board Members Jolda, Shearin and Kovacs voting in the affirmative and Secretary O'Beirne voting in the negative).

The next matter to come before the Board was the application of Kelly and Edward Fritz, 19 Welsh Road, Block 12.03, Lot 4 for a swimming pool and cabana in front yard, impervious coverage, floor area ratio and slope disturbance variances. John R. Dusinberre, Esq. was present on behalf of the applicants. Mr. Dusinberre advised the Board that the applicants were seeking variances to permit (1) a pool in the Arden Lane front yard, which is functionally the rear yard; (2) a cabana in the front yard; (3) impervious coverage of 32.6% where 27% is existing and a maximum of 25% is allowed and (4) to permit disturbance of steep slopes greater than 25%.

Board Attorney Sullivan referenced the June 19, 2023 memo from Petry Engineering, LLC and noted that if the application is approved it would be subject to compliance with comments 2.1 through 2.4, 4.1 through 4.9 and 5.1 through 5.4. Mr. Dusinberre indicated the applicants were seeking a waiver so as not to have to verify the height calculation of the existing home which is unchanged. Board Attorney Sullivan advised that application is subject to a Scarce Resource

Restraint Order and sewer moratorium which Mr. Dusinberre acknowledged he has discussed with his client.

Mr. Dusinberre called Edward J. Fritz, 19 Welsh Road, Essex Fells, New Jersey. Mr. Fritz indicated he purchased the property in 2015 and has not made any changes to the home which was built in 1969. He is unaware of any changes made to the home and the house is of consistent age. Mr. Dusinberre noted that a pool was previously located in approximately the same location as is proposed in this application. He introduced Exhibit A-1 consisting of a demolition permit dated March 18, 2014. Mr. Fritz noted the proposed location of the pool to the rear of the home is the most logical as it is a flat area and there is no other reasonable location. There will be a construction access from Arden Lane which will eventually be landscaped similar to the existing landscaping. The proposed cabana is a four post structure with a solid roof 20 foot by 20 foot. One of the sections facing the neighbor to the north will be solid. Otherwise, it is an open air cabana. Board Attorney Sullivan advised that the cabana triggers a floor area ratio variance which requires five affirmative votes and noted only six Board Members were present this evening.

In response to questions, Mr. Fritz indicated he would be open to reducing impervious coverage by reducing the distance between the cabana and the pool. He will plant trees in the Arden Lane construction access area once it is no longer needed. No landscaping would be damaged. A new 4 foot fence around the pool proper is proposed and the existing fence along Arden Lane shall remain. The spa is a hot tub into the pool.

Richard Coulter, 11 Arden Lane, Essex Fells, New Jersey asked questions which were deferred to the applicants' engineer. In response to a question from David Levy, 10 Arden Lane, Essex Fells, New Jersey, the applicant indicated that since the cabana was going to be moved closer to the pool there would be no tree removal as part of this application.

Mr. Dusinberre called David Egarian of DJ Egarian & Associates, Inc., 271 Route 46, Suite G208, Fairfield, New Jersey who was accepted by the Board as an expert engineer. Mr. Egarian referred to his Pool Location & Grading Plan consisting of one sheet dated October 12, 2022. The property consists of lot area of 41,064 square feet is irregularly shaped and located in the RA-1 zone. There is substantial landscaping on the property which slopes down from Arden Lane to the rear. The property has two frontages and the applicants are proposing a 16 by 32 foot in-ground pool, 1,207 square feet of paver patio and a 400 square foot cabana. Drains are scattered throughout the patio and three drywells are proposed for stormwater management. Net fill on the site will be 31.45 cubic yards. Maximum impervious coverage allowed is 25% and it is currently 27% which is 821 square feet over the maximum allowed. The proposed 32.6% improved lot coverage would be 3,120 square feet over the maximum allowed. The applicants are proposing to disturb 14.6% of slopes greater than 25%. 4.6% disturbance relates to the construction entrance, 5.7% relates to installation of stormwater management measures and 4.3% represents small areas around the pool. All of the slopes greater than 25% to be disturbed by this application will be restored. The pool will provide 256 cubic feet of storage which relates to 1,915 gallons of stormwater. The three 1,290 gallon seepage pits will provide 1,484 cubic feet of storage.

Mr. Dusinger called Peter G. Steck, 80 Maplewood Avenue, Maplewood, New Jersey who was accepted by the Board as an expert planner. Mr. Steck suggested the cabana could be moved 8 feet to the south closer to the pool which would result in a reduction of impervious coverage of approximately 400 square feet which would reduce the proposed impervious coverage to 29.76%. Mr. Dusinger requested the application be amended accordingly. Mr. Steck also noted the pool filter and equipment could be shifted 8 feet to the south.

In response to questions, the applicant indicated the hot tub would remain. The pool would be concrete or gunite with a 6 foot maximum depth. In response to Board questions, Mr. Egarian indicated that subsurface ground water was investigated. Mr. Egarian stated the pool would not be visible from Welsh Road and would be screened from Arden Lane. Mr. Egarian indicated additional screening would be added to protect the view from adjacent neighbors.

A discussion ensued about further relocating the proposed cabana and pool. The applicant agreed to amend the application to move the cabana 16 feet to the south from its original plan which would provide a 28 foot setback from the northerly property line. In addition, the distance between the cabana and pool would be reduced by 8 feet.

Rich Coulter, 11 Arden Lane, Essex Fells, New Jersey asked questions about intrusion into the slopes greater than 25% and questioned whether there were alternatives to avoid this. David Levy, 10 Arden Lane, Essex Fells, New Jersey asked questions about the view of the pool from people walking along Arden Lane to the south.

Mr. Steck introduced Exhibit A-2 which he prepared containing Sheets P-1 through P-6 consisting of infrared aerial and site photographs. Mr. Steck noted the property is an irregularly shaped steep lot sloping from Welsh Road up to Arden Lane. The property contains a number of nonconformities including lot area of 41,063 square feet, a side yard setback of 39.4 feet, rear yard setback of 29.8 feet and impervious coverage of 27%. The northerly wall of the cabana will be solid to protect the neighbor. Mr. Steck discussed the master plan and noted the floor area ratio discussion focuses primarily on principal buildings and discussed appropriate regulation of recreational facilities. Mr. Steck noted the floor area ratio requirements generally measures land use intensity and a cabana would not result in any increase. The pool and cabana are functionally in the rear yard and the improved lot coverage is now reduced from the original proposal. Mr. Steck indicated the variances could be granted under c(1) as there is a hardship relating to the irregular shape and steep slope of the property and the proposed location of the pool is the most appropriate. The property is subject to peculiar physical characteristics relating to slope and the home existing on the property is nonconforming as to floor area ratio. The applicants are willing to supplement landscaping and restore landscaping in the construction area. Mr. Steck indicated the variances could also be granted under c(2) as they advance purposes under the Municipal Land Use Law; namely, N.J.S.A. 40:55D-2a and g. With respect to the negative criteria, there is phenomenal landscaping adjacent to Arden Lane. The pool is a low level structure and the cabana is less than the maximum 15 foot height requirement. Existing landscaping will stay and stormwater improvements accommodating a 100-year storm. The proposed location of the pool is the most appropriate. The cabana will have two or three sides open and is for seasonal use.

In response to questions from Board Members, Mr. Steck indicated that the lot areas depicted on Sheet P-5 of Exhibit A-2 were estimated by utilizing the NJGeoWeb site. Mr. Fritz was asked about lighting of the pool. Board Attorney Sullivan noted that the ordinance provides in Section 170-136D that lighting which extends the hours of operation, other than in-pool lights shall be prohibited. Mr. Fritz indicated he would utilize in-pool lights and some decorative lighting around the pool. The cabana would have a ceiling fan and light and some ground level lighting. There would be no pole lights around the pool.

Mr. Steck suggested that landscaping consisting of 6 to 8 foot high plantings on the northerly side of the property would shield the pool area. Mr. Fritz stated arborvitae could be planted at a height of 7 to 8 feet along the northerly property lines starting with the westerly edge of the cabana up to the existing heavy shrubbery toward Arden Lane. The proposed height of the cabana is 14.5 feet. Mr. Egarian indicated that the pool could handle 256 cubic feet of storage which is equivalent to 2.7% of impervious surface.

The matter was opened to the public, David Levy, 10 Arden Lane, Essex Fells, New Jersey stated his objection to the plan. The cabana is 28 feet away and the pool filter is too close to his property. His family room is 23 feet away from the common property line and he objects to the view of the cabana. The trees would only partially buffer the view. He objects to the noise associated with the pool filter and equipment and believes the plan would have a detrimental impact on the value of his property. He requested that the Board either deny the cabana or move it away and out of the direct line of sight from his home. He requested the filter and equipment be moved further away and noted his driveway is only 2 feet away from the common property line so he is unable to remediate the impact of this project. He introduced Exhibit O-1 consisting of a picture from his family room to the approximate location of the cabana. Mr. Dusinger noted the pool filter could possibly be moved to the other side.

The hearing was paused to address the application of Mahboob Bhatti, 4 Hilltop Way, Block 10.06, Lot 21 seeking variances for floor area ratio, side yard setback, front yard setback and impervious coverage. The Chairman advised that the Board does not take any testimony passed 10:30 p.m. and as a result, this matter would not be reached this evening. In addition to the applicant, also present was Seth Leeb, Architect. On motion made by Board Member Semaya, seconded by Board Member Shearin, the matter was carried to the July 27, 2023 meeting at 7:30 p.m. with no further notice by unanimous vote.

The Board returned to the Fritz hearing. Mr. Dusinger asked questions of Mr. Levy relating to the width of his driveway and location of his garage and home. Mr. Levy indicated the home is 24 feet away from the common property line. Mr. Dusinger asked questions regarding the retaining wall at the end of the driveway. Mr. Levy requested a landscape plan.

Richard Coulter, 11 Arden Lane, expressed his serious concerns about the project and noted it was fundamentally flawed and could not be rectified. He noted the zoning ordinance protects the public interest and is concerned about the aesthetic impact. He understood the Board could not do anything with the existing nonconformities. He noted the lot is too small for the existing development and not appropriate for further development. He cited Section 170-109G which states that impervious surface coverage at the maximum, should not be further increased. He

noted the lot is .93 acres and should be larger to accommodate the existing impervious coverage and floor area ratio. He stated he moved to Essex Fells because of the ambiance and large lot sizes. He stated the existing home is a McMansion already and shouldn't be made worse and the application should not be approved. In response to a question from the Board, he indicated he could see the backyard of the subject property only from the second floor of his home. Mr. Coulter reiterated he was concerned with the impact of this application on the Borough in general.

Mr. Dusinberre suggested the arborvitae could be relocated from the northerly property line to just behind the rear of the relocated cabana. He noted the house was built in 1969 and there were no apparent changes. He noted we would not be talking about the floor area ratio if the cabana did not have a roof. The pool is the only logical location and could be shielded to minimize the impact on the neighbors. The proposed setback from the northerly property line is now 24 feet for the equipment and 28 feet for the cabana. With respect to the steep slope variance, 1/3 of the disturbance is relating to stormwater management and all of the steep slopes will be restored.

The Board began deliberations. Secretary O'Beirne indicated he was generally alright with the floor area ratio request. The engineer's testimony with regard to the drainage was adequate. Revised plans should be submitted prior to Board action. Board Member Jolda indicated she was generally satisfied with the plan but wanted to hear from other Board Members with respect to the floor area ratio request. Chairman Candido noted the proposed cabana contained one solid wall to screen the neighbors and possibly a second wall facing Arden Lane but the structure was generally open. Board Member Shearin noted the cabana was an open air structure. He appreciated how the applicant revised the plan at the hearing to address concerns. He suggested one possibility would be to flip the pool and cabana. He wants to see a revised plan so as to avoid any unintended consequences. Board Member Semaya complimented the changes to the plan made at the hearing which represents a benefit to all. Board Member Kovacs complimented the changes made to the plan. In response to a question from a Board Member, Board Attorney Sullivan noted that if approved, a condition of approval could require the cabana remain as an open structure. Mr. Dusinberre indicated the applicants were not in favor of flipping the pool and cabana.

Mr. Dusinberre requested that the applicants carry the matter to revise the plan to address Board concerns. On motion made by Board Member Semaya, seconded by Board Member Kovacs, the matter was carried to the Board's July 27, 2023 meeting at 7:30 p.m. with no further notice by unanimous vote.

The next matter to come before the Board was to formally schedule the special meeting of June 29, 2023. By motion made by Board Member Shearin, seconded by Board Member Jolda, the Board scheduled a special meeting to be held on June 29, 2023 at 7:30 p.m. by unanimous vote.

There being no further business to come before the Board, on a motion made by Board Member Shearin, seconded by Board Member Jolda, the meeting was duly adjourned at 10:37 p.m. by unanimous vote.



A. MICHAEL CANDIDO, Chairman
Zoning Board of Adjustment
June 29, 2023