

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF ESSEX FELLS
MINUTES OF THE MEETING OF JULY 27, 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, Chris Shearin, William Kovacs, MJ Jolda, Allison Semaya and Oscar Bate. In addition, Michael D. Sullivan, Board Attorney, was present.

On motion made by Board Member Shearin, seconded by Secretary O'Beirne, the minutes of the meeting of June 29, 2023 were adopted unanimously by all those eligible to vote.

On a motion made by Board Member Shearin, seconded by Secretary O'Beirne, the resolution of Dominic M. Garabedian, 242 Fells Road, Block 6.03, Lot 15 for a front yard setback, rear yard setback and impervious coverage variances was approved by a vote of 3 – 0 (Chairman Candido, Secretary O' Beirne and Board Member Shearin voting in the affirmative).

The next matter to come before the Board was the continued hearing on the application of Kelly and Edward Fritz, 19 Welsh Road, Block 12.03, Lot 4 for a swimming pool and cabana in the front yard, impervious coverage, floor area ratio and slope disturbance variances. John R. Dusinberre, Esq. was present on behalf of the applicants. Mr. Dusinberre indicated the applicants listened to the Board's comments at the prior hearing and revised the plans accordingly. He called Jeff 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 the "Pool Location & Grading Plan" prepared by his office dated October 12, 2022 revised through July 12, 2023. Mr. Egarian referred to his July 13, 2023 correspondence to Michael Petry of Petry Engineering, LLC outlining the changes to the plan as follows:

1. The proposed cabana, patio and pool construction have been moved 16 feet south to yield a 28 foot side line offset from the northerly property line.
2. A significant amount of patio has been eliminated. The total impervious coverage is now 30.40%. As discussed at the meeting, the pool itself captures 256 cubic feet of water before overflowing, equivalent to 355 square feet of impervious surface, or 0.86% of impervious coverage. Applying the pool volume as a credit towards the impervious coverage, the net impervious coverage would be $30.40 - 0.86 = 29.54\%$. A target of 29.76% was discussed at the meeting. The calculation is on the site plan.
3. The pool filter has been moved to the south side of the lot.
4. The planters and such have moved with the cabana.
5. The tree designated to be removed is now saved.
6. An arborvitae screen has been placed on the northerly side of the cabana.

7. Additional trees have been added along Arden Lane. Planting details are now on the drawing.

8. The reduction of the impervious coverage has down sized the seepage pits from 4 to 2 – 1290 gallon units. The overflow pipe has been increased to 6 inches and a scour hole added. A detail is on the drawing.

9. The zoning and lot coverage tables have been amended accordingly.

10. A perimeter drain has been added around the pool.

11. A signed and sealed copy of the PAX topo survey is attached hereto (2.1).

12. The applicants are requesting a waiver from the front yard setback requirements (2.2 and 2.3).

13. The applicants are requesting a waiver for the building height requirements; we have shown the building height calculation on the plan (2.4).

14. Grate and invert elevations are shown on the plan (4.1).

15. A scour hole is now shown (4.2).

16. Seepage pits - filter fabric and ground water notes have been added (4.3).

17. Inlet filters have been added to the drains (4.4).

18. The tree in question is no longer designated to be removed (4.5).

19. Finally, the applicants will comply with the requirements of 4.6-4.10 and 5.1-5.4 of your letter.

The Board reviewed the memorandum prepared by Petry Engineering, LLC dated July 19, 2023. With respect to comment 2.3, the Board determined the applicants request for a waiver so as not to provide the requested front yard setback analysis was reasonable and was granted.

The matter was opened to the public and no one wished to be heard. Mr. Dusinger noted that at the end of the day this is a really good plan, with the proposed improvements centered on the lot, additional landscaping provided adjacent to Arden Lane and the pool equipment relocated. Impervious coverage has been reduced from 32.6% to 30.4%. Mr. Steck provided the planning basis for granting the variances at the prior hearing. All slopes greater than 25% will be restored.

David Levy, 10 Arden Lane, Essex Fells, New Jersey asked to be heard. Mr. Levy indicated that he appreciated the modifications to the plan and wanted to make sure all landscaping proposed

would be installed. Chairman Candido noted the proposed landscaping as testified is shown on the plan and must be installed.

The Board began deliberations. Board Member Shearin noted the applicants addressed the concerns of the Board from the prior hearing. Board Member Kovacs noted this was a better plan than what was previously submitted. Board Member Semaya complimented the plan which is good for the neighbors. Board Member Jolda indicated she agreed with the comments of Board Members. Secretary O'Beirne and Board Member Bate noted they were in favor of the application. Chairman Candido agreed with Board comments noting this was a better plan than what was originally submitted. On motion made by Board Member Kovacs, seconded by Board Member Shearin to approve the application for variances relating to floor area ratio, impervious coverage, swimming pool and cabana in the front yard and disturbance of steep slopes greater than 25% subject to the following conditions: (1) compliance with the Order Imposing Scarce Resource Restraint; (2) compliance with comments 4.6 through 4.10 and 5.1 through 5.4 contained in the review memorandum prepared by Petry Engineering, LLC dated July 19, 2023; (3) the northerly side of the cabana (only the northerly side) shall be enclosed; (4) the pool lighting shall conform to Section 170-136D; (5) all slopes greater than 25% disturbed shall be restored; (6) the applicants shall be bound by all representations made in testimony presented to the Board and (7) the applicants shall be responsible for the payment of all escrow charges incurred in connection with review of this matter was approved by a vote of 7 – 0 (Chairman Candido, Secretary O'Beirne and Board Members, Shearin, Kovacs, Jolda, Semaya and Bate voting in the affirmative).

The next matter to come before the Board was the application of Mahboob Bhatti, 4 Hilltop Way, Block 10.06, Lot 21 for floor area ratio, side yard setback, front yard setback and impervious coverage variances. Mahboob Bhatti, 364 Roseland Avenue, Essex Fells, New Jersey advised the Board that he wishes to bring the house up to today's standards by raising the roof and adding a second floor. Seth A. Leeb, 1719 Route 10 East, Suite 100, Parsippany, New Jersey was accepted by the Board as an expert architect. Mr. Leeb introduced Exhibit A-1 consisting of a picture board containing 16 photographs of the home and area properties. He noted the subject property contains a ranch and is directly across the street from the Essex Fells Elementary School. In reviewing Exhibit A-1, Chairman Candido noted that the photos do not include two ranch houses in close proximity to the subject property. Mr. Leeb referred to his architectural plans Sheets V-1 through V-5 dated February 14, 2023 revised through May 4, 2023 and noted there is a typographical error in the zoning requirements chart the correct lot size is 7,755 square feet. Mr. Leeb noted the minimum required lot size is 8,712 feet. The property contains a nonconforming front yard setback. The applicant proposes to add a second story over the existing footprint which will increase the home from two bedrooms to three bedrooms. The two bedrooms on the first floor would be eliminated and all three bedrooms would be located on the second floor. This will increase functionality of the home and will fit in with other two-story houses in the neighborhood.

Mr. Leeb stated the bulk variances can be granted under both c(1) and c(2). The existing side yard setback is 10.1 feet where a minimum of 12 feet is required and the proposed side yard setback would range from 10.1 feet to 10.3 feet. The applicant requested a variance to permit floor area ratio of 38.63% where 19.64% is existing and a maximum of 25% is allowed. Mr.

Leeb referred to Sheet V-2 containing the existing and proposed first floor plan, Sheet V-3 containing the proposed second floor plan, Sheet V-4 depicting existing and proposed front elevations and Sheet V-5 depicting existing and proposed side and rear elevations. Mr. Leeb introduced into evidence Exhibit A-2 consisting of a rendering looking from Hilltop Way to the house. He also introduced Exhibit A-3 consisting of a rendering looking from Essex Road to the house and the adjacent home. He noted existing trees will remain. He noted there will be shutters on all sides of the home. He identified the adjacent home on Exhibit A-3 as 29 Essex Road. He discussed the existing front yard setbacks of homes on Essex Road depicted on Sheet V-1. The height of the proposed home is similar to some homes and lower than some homes. There are no dormers proposed. He stated the benefits outweigh the detriments as this is a modest second floor addition which is architecturally compatible with the neighborhood.

In response to Board questions, Mr. Leeb indicated that in order to conform to the floor area ratio requirement, he would be limited to a 415 square foot second floor addition which could include one bedroom, one bathroom, stairs and a closet. He indicated possibly two very small bedrooms and closets could be located within 415 square feet. In order to comply with the floor area ratio requirement, he would have to eliminate over two thirds of the proposed second-story addition. With respect to the existing impervious coverage, the increase is only 17.4 square feet. Board Members questioned the proposed modern glass feature on the Hilltop Way elevation. Mr. Leeb indicated it could be modified so as to not look as modern. The chimney will be eliminated and hardi plank and textured hardi plank used. The proposed glass element is opposite the school and could be made more traditional.

Board Members asked whether floor area ratio calculations of area properties had been investigated. Mr. Leeb indicated he researched the tax records but did not go in any homes. He stated there are no homes in the immediate area with a floor area ratio in excess of 30%. Board Attorney Sullivan noted that the applicant obtained an exemption from the Scarce Resource Restraint Order by correspondence dated April 7, 2023 from Frank Banisch, AICP/PP to the applicant. Mr. Leeb indicated a second condenser would be added next to the existing condenser. Board Member Bate questioned whether the architecture was appropriate as the first floor appeared to be "art deco" and the second floor appeared to be "colonial style."

Eric Wurtenberg, 29 Essex Road, Essex Fells, New Jersey asked questions of the witnesses. Mr. Leeb stated that two homes in the area have floor area ratios just under 29% including 29 Essex Road and 10 Hilltop Way. Mr. Wurtenberg introduced Exhibit O-1 consisting of a photo looking south from his property, Exhibit O-2 consisting of a photo taken from his dining room looking south. Mr. Leeb testified that he did not believe there would be much of an impact of natural light since there is already a substantial number of trees. Mr. Leeb also stated that construction of the addition would not affect plants growing on the window shelf in the dining room of the Wurtenberg house. The Wurtenbergs would see a taller home from their dining room. Mr. Wurtenberg introduced Exhibit O-3 consisting of a picture of his home office view. Mr. Wurtenberg introduced Exhibit O-4 consisting of a photo from the south side of the home. Mr. Leeb responded that the home with the proposed addition would not "gobble up" the Wurtenberg house. Mr. Leeb indicated there was no issue as to fire safety. The proposed home would comply with all applicable building codes and there was sufficient separation between the buildings.

Amy Woods, 30 Essex Road, Essex Fells, New Jersey asked questions regarding Exhibit A- 2 and the proposed modern element. Mr. Leeb responded that shutters would be added all around the home and there would be no tree removal, only trimming of trees. Karen Huelbig, 25 Essex Road, Essex Fells, New Jersey questioned why the applicant could not comply with the floor area ratio requirement and why a proposed floor area ratio of 38% was necessary.

The matter was opened to the public. Eric Wurtenberg, 29 Essex Road, Essex Fells, New Jersey stated he would welcome the applicant's son if he moved in, however, he was concerned with the requested variances and noted setbacks exist for a reason. There would be a substantially negative impact on his property due to the proximity of the two homes. He said he home is 2,200 square feet and the proposed home is 3,000 square feet which would impair the enjoyment of his property. The proposed 38.6% floor area ratio is ambitious and a significant deviation from the zoning ordinance requirement. This is a highly visible location and he has a reasonable expectation that a second floor would not be added to this home. There would be a loss of natural light, adverse impact of sight lines and the value of his home may be reduced. He requested the Board to vote against the application. Any hardship was self-created and there is no compelling reason to approve this application.

Amy Woods, 30 Essex Road, Essex Fells, New Jersey stated this is a corner property seen by all. She investigated area floor area ratios through Zillow. She testified 36 Essex Road has a floor area ratio of 17%, 28 Essex Road has a floor area ratio of 22%, 29 Essex Road has a floor area ratio of 20% and 30 Essex Road has a floor area ratio of 25%. She stated there has to be a way to make this more aesthetically pleasing and the proposal does not fit in with the neighborhood.

The Board began deliberations. Board Member Shearin noted the requested 38% floor area ratio is the big issue and is a "big ask." The majority of floor area ratio variances granted by the Board consist of small deviations. Board Member Kovacs stated it's not unreasonable for a home to go from two bedrooms to three bedrooms but he was concerned with the doubling of the floor area ratio. Board Member Semaya stated consideration should be given to a partial second floor. The proposal is a huge jump in size and perhaps a smaller addition could meet the applicant's needs. Chairman Candido stated the second floor results in a floor area ratio which is too large. The Board has never approved anything of that magnitude. The existing home is in close proximity to the adjacent neighbor and the addition of the second story is an egregious variance request. He further noted that Mr. Leeb had indicated a smaller addition would not be satisfactory to the applicant. Board Member Jolda was concerned with the magnitude of the floor area ratio request. Board Member O'Beirne stated he would not vote for the application. Board Member Bate noted the subject property has a large frontage on Hilltop Way and that the floor area ratio would actually appear more like 30%. Chairman Candido reiterated there are two small ranches in close proximity to the subject property.

Mr. Leeb requested a postponement so the applicant could revise plans. Chairman Candido stated the Board should vote on what is in front of them. On motion made by Board Member Bate, seconded by Secretary O'Beirne, the Board agreed to allow the applicant to carry the application and revise plans was approved by a vote of 6 – 1 (Secretary O'Beirne, Board

Members Shearin, Kovacs, Jolda, Semaya and Bate voting in the affirmative and Chairman Candido voting in the negative).

The Board discussed scheduling a special meeting in September. On motion made by Board Member Shearin, seconded by Board Member Kovacs, the Board scheduled a special meeting to be held on September 12, 2023 at 7:30 p.m. by unanimous vote.

On motion made by Board Member Shearin, seconded by Board Member Semaya, the application of Mahboob Bhatti, 4 Hilltop Way, Block 10.06, Lot 21 was carried to the Board's September 12, 2023 meeting at 7:30 p.m. with no further notice required by a vote of 6 – 1 (Secretary O'Beirne, Board Members Shearin, Kovacs, Jolda, Semaya and Bate voting in the affirmative and Chairman Candido voting in the negative).

There being no further business to come before the Board, on a motion made by Board member Semaya, seconded by Board Member Jolda, the meeting was duly adjourned at 10:20 p.m. by unanimous vote.



A. MICHAEL CANDIDO, Chairman
Zoning Board of Adjustment
August 24, 2023