

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF ESSEX FELLS
MINUTES OF THE MEETING OF AUGUST 24, 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, Vice-Chairman Michael Spellman, Secretary Thomas O'Beirne, Chris Shearin, Oscar Bate, Allison Semaya (7:35 p.m.), William Kovacs and MJ Jolda. In addition, Michael D. Sullivan, Board Attorney, was present.

On a motion made by Board Member Jolda, seconded by Board Member Shearin, the minutes of the meeting of July 27, 2023 were adopted unanimously by all those eligible to vote.

On a motion made by Board Member Jolda, seconded by Board Member Shearin, the resolution of Kelly and Edward J. 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 was approved by a vote of 6 – 0 (Chairman Candido, Secretary O'Beirne and Board Members Shearin, Kovacs, Jolda and Bate voting in the affirmative).

The next matter to come before the Board was the application of 179 Old Chester Holdings LLC, 179 Old Chester Road, Block 8.03, Lot 1.02 for side yard setbacks, floor area ratio, front yard setback and impervious coverage variances. Nicole Magdziak, Esq. was present on behalf of the applicant. Ms. Magdziak noted the applicant is seeking "c" variances relating to side yards, front yard and impervious coverage and a "d(4)" variance for floor area ratio. She indicated the applicant intends to save the home and construct additions. Board Attorney Sullivan noted he had reviewed the affidavit of mailing and service and it was satisfactory.

Ms. Magdziak called Scott Ticker, 11 High Mountain Drive, Montville, New Jersey who is the owner and home builder. He indicated the home was purchased in August 2022, he loved the neighborhood, has family in town and saw tremendous potential. The previous owner was passionate about not tearing the house down. The home currently is uninhabitable. Mr. Ticker referred to the architectural plans prepared by Aric Gitomer, Architect, Sheets A-1 and A-2 dated December 26, 2022, Sheets A-3 through A-6 dated December 26, 2022 revised through April 21, 2023. Mr. Ticker referred to Sheet A-1 consisting of the existing basement, first and second floor plans. He referred to Sheet A-2 consisting of photographs of the various elevations noted the brick construction, the fact that the home contains low ceilings and the garage is undersized and it cannot accommodate a standard SUV. He has been working for seven months sourcing brick for the additions to match the existing home. He referred to Sheet A-4 consisting of the proposed first floor plan noting it still is a center hall colonial with a 2 ½ car garage which includes a pool dressing room with bathroom so as not to further increase the floor area ratio. He referred to Sheet A-5 proposed second floor plan and noted there will be five bedrooms in total. He referred to Sheet A-6 consisting of the various elevations and noted the neighbors to the rear and southwest fully support the application. In response to a question from Mr. Bate, Mr. Sullivan noted that the Board can accept the testimony that the applicant spoke to the two neighbors but cannot give any weight to their support for the proposal as they are not present at the hearing. Mr. Ticker stated that 75% of the home will remain, the additions will blend in. Mr. Ticker noted there are two offices on the second floor because he and his wife work from home

and there would not be individuals coming to the home in connection with their work. The existing pool will remain and it is the owner's intention to live in the house. In response to questions from the Board, Mr. Ticker clarified that the home would not be entirely brick as Hardie board would be utilized for trim around the window.

Ms. Magdziak introduced Exhibit A-1 consisting of a series of five photographs prepared by the applicant's planner who would testify later. In response to questions from the Board, Mr. Ticker indicated the horizontal siding shown on the architectural plans is not correct which will be brick. Specifically, it will be 4 inch deep brick and not brick veneer. Behind the brick will be ¾ inch Hardie board, a house wrap and weather proof sheathing behind. Each floor will be raised two feet and the maximum building height will not be exceeded. All windows will be replaced with Anderson vinyl windows.

Mr. Bate questioned the gable roof on the left side of the home which seemed to be unbalanced in his opinion. Mr. Ticker indicated it was a design element which he favored. Mr. Ticker clarified his testimony and noted the existing roof will be raised and replaced. In response to questions from the Board, Mr. Ticker acknowledged the building length will be increased from 82 feet 5 inches to 127 feet 6 ½ inches and the depth was decreasing. Mr. Ticker said all existing exterior walls would be retained except some have to be opened for additions. The entire surface of the second floor will be removed. All load bearing walls on the first floor will remain. Mr. Ticker reiterated that 75% of the volume of the existing home will remain.

Chairman Candido noted the review memorandum prepared by Petry Engineering, LLC dated June 19, 2023 states: "Based upon the survey information provided, it appears as if the proposal is to demolish the existing home and construct a new home. None of the existing perimeter walls appear to align with the existing walls as shown on the survey." In response to questions from the Board, Mr. Ticker indicated the increased floor area ratio is necessary to make the home functional. Chairman Candido questioned the right side yard setback variance and Mr. Ticker noted the driveway currently exists and the garage would be one story which contains less bulk.

Ms. Magdziak called Patrik McClellan of MCB Engineering Associates, LLC, 11 Furler Street, Totowa, New Jersey who was accepted by the Board as an expert engineer. Mr. McClellan referred to the Lot Development Plan & Lot Grading / Utility Plan prepared by his office dated January 31, 2023 revised through June 5, 2023. He noted the lot size is approximately 45,000 square feet measured to the centerline and contains mature evergreens along the front adjacent to Old Chester Road. He stated for the record that a patio previously existed around the pool but was subsequently removed. He included the patio in the existing impervious coverage calculations and a new patio will be constructed with the same impervious coverage as the previous patio. In response to a question from Board Attorney Sullivan, Mr. McClellan acknowledged that some areas that were previously pervious are now impervious but that overall there was an 8 square foot reduction in impervious coverage. No drywalls are proposed because of the reduction in impervious coverage.

Mr. McClellan noted the proposed garage is depicted over an existing sanitary sewer line. He introduced Exhibit A-2 consisting of his plan now with a revision date August 24, 2023 which highlights in yellow a proposed sanitary sewer easement. He noted sanitary sewer runs from the

front property line through the neighbor's property to the rear and out to Gordon Road. There currently does not exist an easement and the proposal is to relocate the pipe around the structure. Mr. McClellan acknowledged that RSIS requires a 20-foot wide sanitary sewer easement. Exhibit A-2 depicted a 20-foot easement up to the garage which then would be reduced to 10 feet and then after the structure would be 20 feet to the rear property line. Although Exhibit A-2 shows four new manholes, only three new manholes would be required. Following a discussion with Ms. Magdziak, Mr. McClellan indicated that the applicant's proposal would be revised to eliminate part of the garage to provide a minimum 15-foot sanitary sewer easement adjacent to the structure. 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 4.7, 4.9, 5.1 and 5.3 through 5.5 which the applicant agreed. The reduction in size of the garage would provide a 15 foot 6 inch side yard setback and slightly reduce floor area ratio. Vehicles would be able to turn around in the driveway rather than having to back up onto Old Chester Road.

Ms. Magdziak called Matthew Flynn, 101 Gibraltar Drive, Morris Plains, New Jersey who was accepted by the Board as a professional planner. Mr. Flynn referred to Exhibit A-1 and noted the property has a number of unique characteristics which warrant granting a floor area ratio variance. The property is dilapidated, has character and is worth saving. The unique characteristics of the application include preservation of the existing building, existing vegetation noting no trees would be removed and the home would be shielded from the street. The length of the home would be comparable to existing area properties. The property is uniquely shaped. Mr. Flynn referred to Exhibit A-2 and noted there is an approximate lot width of 248 feet at the street which makes the property appear much larger than it is. The floor area ratio will appear proportional because of the appendage property on the adjacent property to the southwest which is unlikely to be developed. Mr. Flynn outlined the variances. A front yard setback of 93.24 feet to the house and 88.63 feet to the covered porch is required where 93.4 feet is existing and a minimum of 98.6 feet is required. A left side yard setback of 36.76 feet is proposed where 43 feet is existing and a minimum of 45 feet is required. He pointed to the appendage on the adjacent property which provided a built-in 70 foot separation and noted there is in excess of 150 feet from the property line of the subject property to the adjacent home. A right side yard setback variance is requested to allow 12.62 feet where 45.5 feet is existing and a minimum of 45 feet is required. The home on the adjacent property is 100 feet from the property line so there will be a separation of approximately 115 feet. The ordinance contemplates a setback between buildings of a minimum of 90 feet since the required setback is 45 feet on each lot. Mr. Flynn stated the variances could be granted under N.J.S.A. 40:55D-70c(2) as they advance various purposes of the Municipal Land Use Law as approval promotes the general welfare (-2a); provides sufficient space in an appropriate location for residential use (-2g); promotes a desirable visual environment (-2i); encourages coordination of the various public and private procedures shaping land development with a view of lessening the cost of such development and to the more efficient use of land (-2m). Approval of these variances could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance.

Mr. Flynn noted the applicant initially sought a floor area ratio of 20.3% which will be slightly reduced by the reduction of the garage. Approval will convert a vacant dilapidated property back

to a modern home. He reiterated the purposes of the Municipal Land Use Law advanced by the granting of the bulk variances would also be advanced by approval of the floor area ratio variance. This would be a vast improvement of the property and represents a substantial visual improvement. He also noted that approval of the application provides adequate light, air and open space (-2c).

Mr. Flynn noted the intent of the Master Plan is to keep properties somewhat in scale with surrounding properties even though lots may be overly large.

Chairman Candido noted that with respect to the right side yard setback if the adjacent property built to the minimum 45-foot side yard setback, there would then only be a separation of buildings of 60 feet. Mr. Flynn acknowledged that was a "fair point" but believed this was a better alternative than what is existing.

The matter was open to the public. John Haydu, 81 Avon Drive, Essex Fells, New Jersey thanked the Board for their time and efforts. He indicated he was the listing agent for the house. He was approached by the former owner with regard to the sale of the home. He couldn't believe the condition of the home when he entered it. A home inspection of the home was done which was highly critical which would have to be part of the seller disclosure. The former owner did not want the house knocked down and he believed that based upon the home inspection 99% of the potential home buyers would knock the house down. The public portion of the meeting was closed.

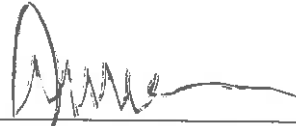
Ms. Magdziak stated they had listened to Board comments and requested the matter be carried so they have the opportunity to revise the plans. Board Attorney Sullivan noted that the revised plans should identify whether exterior walls are to remain or to be removed.

Board Member Shearin stated he was still concerned with the right side setback and acknowledged the building setback argument but that could be a problem if the adjacent property owner built an addition. This is a formerly beautiful Essex Fells home which now in poor condition. He was not overly concerned with the FAR noting the property is unique. Secretary O'Beirne stated the floor area ratio and right side yard setback are unacceptable. He thought there were too many audibles in the testimony and was insulted by the owner's testimony with respect to the dirt pile that existed in the driveway. Vice-Chairman Spellman stated it was admirable to save the home. He did not have a problem with the proposed FAR noting the appendage next door helps. He had some difficulty with the right side yard setback and suggested possibly rotating the garage. Chairman Candido said he was very concerned with the FAR which is nearly double the maximum allowed by ordinance. The Board has not granted such a FAR deviation on properties this size as it is nearly an acre. The proposed FAR is egregious as is the right side yard setback proposed. He is concerned that the testimony and drawings seem to be in conflict as to what exterior walls are being saved. He could not approve the application "as is." Board Member Bate acknowledged the wide frontage and thought the FAR and right side yard setback were huge problems. He felt the proposal is approaching a tear down as most of the features are being done away with. He suggested the architect develop a better plan. Board Member Semaya did not have a big FAR concern and suggested the applicant look at further reduction of the garage. Board Member Kovacs liked the idea of keeping the

home including the brick. He was not opposed to the FAR or right side yard setback. The discrepancy in the plans needs to be rectified. He suggested the architect be present at the next meeting. He noted the testimony was not forthcoming. Board Member Jolda indicated the FAR was a “big ask” and applauded the design of the home and encouraged retaining bay windows. She was also concerned with the FAR and right side yard setback.

On motion made by Vice-Chairman Spellman, seconded by Board Member Shearin the matter was carried to the Board’s September 28, 2023 meeting at 7:30 p.m. with no further notice by a vote of 6 – 1 (Chairman Candido, Vice-Chairman Spellman and Board Members Jolda, Semaya, Bate and Shearin voting in the affirmative and Secretary O’Beirne voting in the negative). Ms. Magdziak agreed to retain Exhibits A-1 to A-2 and bring them to the next meeting.

There being no further business to come before the Board, on a motion made by Vice-Chairman Spellman, seconded by Board Member Jolda, the meeting was duly adjourned at 10:00 p.m. by unanimous vote.



A. MICHAEL CANDIDO, Chairman
Zoning Board of Adjustment
September 12, 2023