

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF ESSEX FELLS
MINUTES OF THE MEETING OF SEPTEMBER 12, 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 and MJ Jolda. 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 August 24, 2023 were adopted unanimously by all those eligible to vote.

The next matter to come before the Board was the continued hearing on the application of Mahboob Bhatti, 4 Hilltop Way, Block 10.06, Lot 21 for floor area ratio and impervious coverage variances. Mahboob Bhatti, 364 Roseland Avenue, Essex Fells, New Jersey was present along with Seth A. Leeb, 1719 Route 10 East, Suite 100, Parsippany, New Jersey who was previously accepted by the Board as an expert architect. Board Attorney Sullivan noted that Vice-Chairman Spellman signed a certification that he listened to the recording and reviewed the exhibits in connection with the July 27, 2023 hearing and would be eligible to vote. Mr. Leeb thanked the Board for allowing the applicant to return with revised plans which are responsive to comments from the public and the Board. Mr. Leeb noted the property contains preexisting nonconforming lot area, front yard setback, side yard setback and impervious coverage.

Mr. Leeb referred to his architectural plans Sheets V-1 through V-5 revised through August 23, 2023. Mr. Leeb noted that the plans have been modified to eliminate the request for variances for side yard setback and front yard setback from Essex Road. The front yard setback measured to the second floor addition from Essex Road is 67.63 feet at its closest point where 60.7 feet is existing and a minimum of 63.79 feet is required. Impervious coverage is preexisting nonconforming at 27.9% and 27.7% is proposed where a minimum of 25% is required resulting in a reduction of approximately 19 square feet. A floor area ratio variance is requested seeking 34.10% where a maximum of 25% is allowed. Mr. Leeb referred to Sheet V-2 containing the existing and proposed first floor plans. He noted the addition of a front covered porch which he believes is a good amenity and adds character to the home. He referred to Sheet V-3 containing the proposed second floor plan noting they reworked the floor plan and reduced square footage in order to bring down the floor area ratio 4.5%. A new air conditioning unit is proposed to the left of the home which is compliant.

Mr. Leeb indicated he surveyed 46 homes in the area on Hilltop Way, Essex Road and Park Lane visually and reviewing aerial photographs, tax records and speaking with the Tax Assessor. He noted his survey included six ranch homes, 13 cape style homes and 27 two-story homes of varied styles such as colonials and tudors. Mr. Leeb introduces Exhibit A-4 which depicted a hip roof at 28 Essex Road. Mr. Leeb noted the windows have been centered on the revised plan and shutters added and overall height has been reduced by approximately one foot. The proposal will not result in any light or air hazards, will improve functional space for a growing family and enhances the architectural character of the home. There is no detriment to the public and the

plan does not adversely impact the residential character of the neighborhood. Furthermore, there would be no substantial impairment of the zoning ordinance.

In response to a question from the Board, Mr. Leeb indicated he explored attempting to reduce the floor area ratio to 30%, however, he could not get it to work due to the space allocated for the stairs to the second floor and window placement. Mr. Leeb noted that the existing air conditioning unit to the rear of the home is not being replaced. Mr. Leeb noted the applicant is not increasing the ceiling height of the first floor which is approximately 8 feet. The applicant intends to keep all three trees subject to pruning. In response to a question from the Board, Mr. Leeb noted that when he reviewed the tax records he was not sure if the lot size was indicated only livable square footage. When asked by a Board Member whether lot size should have been a consideration, Mr. Leeb indicated his study was not intended to be a FAR comparison noting some lots are of similar size to the subject property, some are larger and some are irregularly shaped. In response to a question from a Board Member as to whether there are any unique characteristics of the lot Mr. Leeb noted it is a corner lot with two front yard setbacks which affects how the home is situated on the property, the lot is slightly undersized and the plan does not encroach on the Essex Road setback.

Eric Wurtenberg, 29 Essex Road, Essex Fells, New Jersey asked questions of the witnesses. He introduced Exhibit O-5 "Essex Rd/Park Lane/Hilltop Way FAR Analysis" which identified 29 homes in the area. Mr. Wurtenberg acknowledged the information was obtained from MLS and was "not perfect." Mr. Leeb noted that the FAR figures in the Exhibit were not accurate as they do not include garages. Mr. Wurtenberg noted that even if the lot was conforming in size, the proposed home would still require a FAR variance. Mr. Wurtenberg introduced Exhibit O-6 which was a response from the Borough to an OPRA request and noted it did not appear that a permit was obtained for the existing air conditioning unit. Mr. Bhatti noted that he did not install the air conditioning unit. Mr. Sullivan noted this was an enforcement issue for the Zoning Officer. Mr. Bhatti noted that he could demolish the house and build a new house which would be fully compliant with the zoning ordinance and be approximately 8 foot higher than what is proposed. In response to a question from Mr. Wurtenberg, Mr. Bhatti stated this was an investment property that perhaps could be occupied by a family member and he would act as the general contractor on the project.

Karen Huelbig, 25 Essex Road, Essex Fells, New Jersey asked questions about the side door on the Essex Road side of the property. Mr. Leeb responded that a patio was not proposed on that side. She noted that the walk-in closets and laundry room on the second floor were luxuries. The laundry room could be relocated to the basement. Mr. Leeb responded that the laundry room and everything on the second floor was reduced. Ms. Huelbig responded that very few homes in that area have a master bathroom. Mr. Bhatti clarified prior comments and noted that his intention was to keep the three trees on the property, subject to pruning, and any dead or dying tree would be replaced. Ms. Huelbig noted this was an extremely busy corner and Mr. Leeb responded that the applicant would submit a landscape plan subject to approval by the Board Engineer to ensure there would be no sightline issues.

Amy Woods, 30 Essex Road, Essex Fells, New Jersey noted that the garage is very small and there is insufficient parking on property which is not maintained. The proposed home looks

nicer but is still too big on a small piece of property. Mr. Leeb clarified that his study of 46 homes did not include any homes in Caldwell. Mr. Leeb also indicated that if the application was approved they would comply with comments 5.1 through 5.5 contained in the review memorandum prepared by Petry Engineering, LLC dated September 6, 2023.

Eric Wurtenberg stated that the information contained in Exhibit O-5 was obtained from MLS except for the square footage of the existing home on the subject property which was obtained from the applicant's worksheet. He stated the proposed home is a better design but it is like trying to put the "whole turkey dinner into a Ziploc bag." The FAR is not reduced all that much and is still 9% over the required. Even if you add garage numbers into the FAR calculations in Exhibit O-5, the applicant is asking for too much. If the lot was fully compliant, the applicant would only be permitted to build a home of 2,178 square feet. The applicant is asking for 460 square feet more and the request for a d(4) variance is a high bar. This is not a situation where the applicant is asking for 2 or 3% over the allowable FAR. The applicant failed to show a plan depicting a compliant 25% FAR. He acknowledged the applicant did address the side yard setback variance by eliminating it. He believes his property is getting the brunt of the application and the plan does not make sense for the neighborhood. The plan is a detriment to the public, there is a parking issue and does not meet the positive or negative criteria. Mr. Wurtenberg urged the Board to deny the application.

The Board began deliberations. Secretary O'Beirne noted this is a small lot and the proposed house increases the footprint by 22 square feet. The proposed house is very attractive. Board Member Shearin stated the request for a 34% FAR is egregious. Vice-Chairman Spellman agreed this was an egregious ask for the FAR. He noted the applicant could construct a new home with a taller roof. Board Member Bate noted the revised plan was a dramatic improvement. He believed Exhibit O-5 did not contain a useful analysis. He noted there are not a lot of homes on Essex Road with FAR deviations. He believed the corner lot could support a higher FAR. Board Member Semaya noted the lot is small but is uniquely visible because it is a corner lot. She noted that if the application was denied the applicant could knock the home down and the height of the home would likely increase. Board Member Jolda expressed concern about the request for a FAR of 34%. Chairman Candido stated that this was a large ask on behalf of the applicant. The property is not uniquely shaped and he doesn't see any special reasons for granting the variance. The existing lot size is 89% of the required lot size. He complimented the design of the home but can't justify the FAR variance.

A motion made by Secretary O'Beirne, seconded by Board Member Semaya to approve the application for floor area ratio and impervious coverage variances subject to the following conditions: (1) compliance with comments 5.1 through 5.5 contained in the review memorandum prepared by Petry Engineering, LLC dated September 6, 2023; (2) submission of a landscape plan for approval by the Board Engineer to ensure no sightline issues; (3) preservation of the existing three trees on the property, exclusive of pruning, except if a tree is dead or dying it shall be replaced; (4) the applicant shall be bound by all representations made in testimony to the Board and (5) the applicant shall be responsible for the payment of all escrow charges incurred in review of this matter failed by a vote of 2 – 5 (Secretary O'Beirne and Board Member Semaya voting in the affirmative, Chairman Candido, Vice-Chairman Spellman and Board Members Shearin, Bate and Jolda voting in the negative).

There being no further business to come before the Board, on a motion made by Vice-Chairman Spellman, seconded by Board Member Semaya, the meeting was duly adjourned at 9:20 p.m. by unanimous vote.



A. MICHAEL CANDIDO, Chairman
Zoning Board of Adjustment
September 28, 2023