

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF ESSEX FELLS
MINUTES OF THE MEETING OF SEPTEMBER 28, 2023**

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 Michael Candido, Vice-Chairman Michael Spellman, Secretary Thomas O'Beirne, Chris Shearin, Oscar Bate, Bernard D'Avella and MJ Jolda (7:37 p.m.). In addition, Michael D. Sullivan, Board Attorney, was present.

On a motion made by Vice-Chairman Spellman, seconded by Board Member Bate, the minutes of the meeting of September 12, 2023 were adopted unanimously by all those eligible to vote.

On a motion made by Board Member Bate, seconded by Board Member Shearin, the resolution of Mahboob Bhatti, 4 Hilltop Way, Block 10.06, Lot 21 denying variances for floor area ratio and impervious coverage was approved by a vote of 4 – 0 (Chairman Candido, Vice-Chairman Spellman and Board Members Shearin 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. Board Attorney Sullivan noted that Member D'Avella had signed a certification by absent members that he listened to the recording of the August 24, 2023 hearing and is eligible to vote. Ms. Magdziak noted the plans have been revised and the floor area ratio has been reduced from 20.3% to 16.9%, the right side yard setback has been increased from 12.62 feet to 40.53 feet, the left side yard setback has been increased from 36.76 feet to 40.88 feet and the front yard setback has been increased from 88.63 feet to 91.13 feet. Impervious coverage has slightly increased from 25.5% to 25.7%.

Ms. Magdziak called Patrick McClellan of MCB Engineering Associates, LLC, 11 Furler Street, Totowa, New Jersey who was previously accepted by the Board as an expert engineer. Mr. McClellan outlined the revised plans and changes to the request for variances. He noted the request for impervious coverage had increased by 40 square feet to allow the continued use of the driveway; a portion of which had previously been planned to be removed. In response to a question from Board Attorney Sullivan, Ms. Magdziak agreed that in the event the application is approved a 20-foot wide sanitary sewer easement would be provided subject to review and approval by the Borough Engineer.

Ms. Magdziak called Aric Gitomer, 30 Emerson Road, Morris Plains, New Jersey who was accepted by the Board as an expert architect. Mr. Gitomer referred to Sheet A-4 of the plans prepared by his office dated September 12, 2023 and described the first floor plan. He noted that a number of walls were shaded which indicated walls to be salvaged and that all other existing walls would be demolished. The walls to be salvaged consisted of approximate 40% of the first floor exterior walls. Mr. Gitomer noted the three-car garage has been rotated and now has a side entry. He referred to Sheet A-5 of the plans prepared by his office dated September 12, 2023 and described the second floor plan. He noted the first floor ceiling would be raised up 2 feet in

height and that the overall square footage had been reduced by 18% from the initial plan. He referred to Sheet A-3 prepared by his office dated September 12, 2023 and described the foundation/basement plan. He noted the plan retains the entire basement. Mr. Gitomer noted that all walls indicated to be salvaged includes the framing and brick and not the wall board. He referred to Sheet A-6 prepared by his office dated September 12, 2023 and described the various elevations. With respect to the front elevation, the project will retain the brick and bay windows. There will be some brick on the sides and Hardie board. The owner is no longer planning on obtaining brick from an outside source but instead will utilize brick from the back of the house on the front façade. The small one-story additions on the left and right side of the home will not increase the presence of the home from the street. Board Member Bate questioned the symmetry of the bay windows. Mr. Gitomer indicated the bay windows were not moving. The existing first floor ceiling height is 7 feet 11 inches which would be increased to 10 feet, the existing second floor finished ceiling is 7 feet 8 inches and that would be increased to 9 feet. The proposed balustrade above the front door consists of a synthetic material and would likely be painted white. The roof height increases from 29 feet to 34 feet 9 inches.

Ms. Magdziak recalled Scott Ticker, 11 High Mountain Drive, Montville, New Jersey who is the owner and home builder. Mr. Ticker noted that due to the revisions to the house plan he no longer needs to source the brick but rather brick for the front façade will be taken from the rear of the home. The entire front elevation of the home would be brick except for a few small areas. The bay windows will be replaced with the same dimensions. In response to a question from a Board Member, Mr. Picker indicated he did not have a structural engineer investigate the home.

The matter was opened to the public. John Haydu, 81 Avon Drive, Essex Fells, New Jersey stated that the property owner is not going to knock the house down. He has had three people contact him regarding purchasing the home. The owner is not intending to flip the home.

Board Attorney Sullivan raised the comments contained in the review memorandum prepared by Petry Engineering, LLC dated September 20, 2023. The applicant stipulated it would comply with comments 4.7, 4.9, 5.1, 5.3, 5.4 and 5.5.

The Board began deliberations. Chairman Candido noted the plans had been scaled back and this is a much better plan. He was concerned about the FAR which was 50% over the maximum allowed and wondered whether it could have been scaled back to the existing conditions. He noted the Board recently denied a request for a FAR of 16.9% where a maximum of 12% was allowed in that zone. Vice-Chairman Spellman noted the floor area ratio is mitigated by the appendage property on the adjacent property which will not be built on. The property owner is not trying to knock the house down and the home will fit the streetscape and the massing is minimized. This is seminal corner in Town and this home will fit in with the beautiful homes in the area. The property owner could knock it down and build something out of character. Board Member D'Avella noted he had listened to the recording of the August 24 meeting and believes the house is gorgeous and he did not have a problem with the proposed floor area ratio. Board Member Bate noted there is a lot of frontage to support the high FAR. Board Member Jolda agreed with the comments of Vice-Chairman Spellman and Board Member D'Avella. Secretary O'Beirne noted the lot is undersized and the proposed FAR is high. There was no testing of the front wall and no guarantee the front wall will remain. Board Member Shearin stated he was

sensitive to the FAR issue but with the appendage next door and frontage this is a credible opportunity to improve this home. He was concerned with what could happen if the home was knocked down. In response to a question from the Board, the applicant stipulated that the front façade of the home would utilize brick from the rear of the home, however, during construction if the front wall fails it shall be rebuilt with the existing brick.

A motion made by Board Member D'Avella, seconded by Board Member Bate to approve the application for floor area ratio, side yard setbacks, front yard setback and impervious coverage variances subject to the following conditions: (1) compliance with comments 4.7, 4.9, 5.1, 5.3, 5.4 and 5.5 contained in the review memorandum prepared by Petry Engineering, LLC dated September 20, 2023, (2) as stipulated by the applicant, the front façade of the home will utilize brick from the rear of the home, however, during construction if the front wall fails it shall be rebuilt with the existing brick, (3) as stipulated by the applicant, a 20-foot wide sewer easement shall be provided subject to review and approval by the Borough Engineer, (4) the applicant shall be bound by all representations made in testimony to the Board and (5) the applicant shall be responsible for payment of all escrow charges incurred in review of this matter was approved by a vote of 6 – 1 (Chairman Candido, Vice-Chairman Spellman and Board Members Shearin, Jolda, D'Avella and Bate voting in the affirmative and Secretary O'Beirne voting in the negative).

The next matter to come before the Board was the hearing on the application of Aanand and Mukti Geria, 193 Rensselaer Road, Block 12.02, Lot 4.06 for floor area ratio, impervious coverage, front yard setback, steep slope disturbance and retaining wall variances. Michael Lipari, Esq. of Mandelbaum Barrett PC was present on behalf of the applicants. Mr. Lipari noted the applicants intend to construct a new single-family residential dwelling in the RA-3 Zone. The applicants seek variances relating to floor area ratio, front yard setback, steep slope disturbance and retaining wall in the front yard. The plans have been revised to reduce impervious coverage so that a variance is no longer required. The property is encumbered by topographic conditions and a deed restriction in the rear. It is the largest lot in the area, has unique characteristics and the home will fit into the Borough.

Mr. Lipari called Dr. Aanand Geria, applicant and owner, 600 Harbor Boulevard, Unit 1059, Weehawken, New Jersey. Dr. Geria told the Board he was born and raised in New Jersey and is a dermatologist practicing in New Jersey and his wife is a nurse. One of his two dermatology facilities is located in nearby Verona. He would be honored to call Essex Fells his hometown as it is a tight close-knit community with schools noted for academic excellence. He cited a 2021 *New York Times* article which describes Essex Fells as reminiscent of a Norman Rockwell painting. He looked forward to serving the dermatology needs of the community.

Mr. Lipari called Afton Savitz of Stonefield Engineering, 92 Park Avenue, Rutherford, New Jersey who was accepted by the Board as an expert engineer. Ms. Savitz referred to Sheet C-4 site plan prepared by her office last revised September 14, 2023. She identified the property and the private lane to the west. To the east and south are single-family homes. The property contains 44,237 square feet and is a parallelogram and is located in the RA-3 Zone. The topography of the property is such that it climbs 33 feet from front to back. There is a deed restriction encumbering the rear of the property which prohibits building. A sewer and water

easement bisects the property. The applicants propose to construct a two-story 7,272 square foot home.

Mr. Lipari cited an instrument dated March 24, 1945 in Deed Book E105, Page 197 which reserves the right of the property owner to relocate the sewer and water line which serves the property to the rear. The relocation cost would be the responsibility of the owners of the subject property. The applicants have identified the 35-foot wide area on the left side of the property where the sewer and water line could be relocated. In response to a question from Board Attorney Sullivan, the applicant stipulated it would grant a 20-foot wide sewer and water easement subject to review and approval by the Borough Engineer.

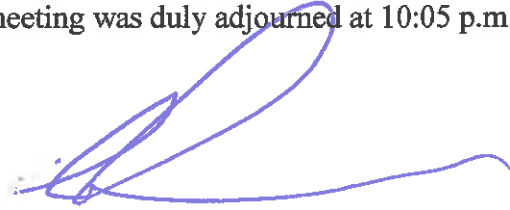
Ms. Savitz noted the application requires a front yard setback variance as 45.1 feet is proposed and a minimum of 68.15 feet is required. The front yard setback is based upon the average of the two adjacent properties. The intent of the ordinance is to establish a continuing corridor. The required front yard setback is impacted by the home at 6 Welsh Road which is an outlier. The average front yard setback of the homes on the northerly side of the street in the area is 43.58 feet. Front yard setbacks of homes within 300 to 400 feet of the subject property exclusive of 6 Welsh Road, is 42.8 feet. Ms. Savitz introduced Exhibit A-1 consisting of a front yard setback exhibit prepared her office dated September 28, 2023. She noted impervious coverage is now compliant at 24.6% where a maximum of 25% is allowed. The location of the retaining wall in the front yard requires a variance but the height is compliant. She noted there are two drywells proposed for stormwater management. She referred to Sheet C-1 Steep Slope Plan prepared by her office last revised September 14, 2023. The applicants are disturbing 55.9% of slopes ranging from 15 to 19.9 % where a maximum of 50% is allowed, disturbing 55.4% of slopes between 20 and 24.9% where a maximum of 33.3% is allowed and disturbing 37.2% of slopes greater than 25% where none are allowed. The steep slopes are generally centralized on the lot and it is not feasible to construct a home without disturbing steep slopes. The proposed location of the home is the most appropriate.

In response to a question from Board Attorney Sullivan, the applicant stipulated it would comply with comments 3.2.1, 4.1, 4.2, 4.3, 4.5, 4.15, 4.18 through 4.23 and 5.1 through 5.5 contained in the review memorandum of Petry Engineering, LLC dated September 26, 2023. Ms. Savitz indicated the purpose of the steep slope ordinance is relating to controls for stormwater, erosion and the environment. She believed that the proposal would not have any adverse impacts. In response to a question from a Board Member, she conceded that if the size of the house was reduced and a driveway removed there would be less impact on steep slopes. A question arose as to the setback from Holly Lane which is a private road and serves as a driveway. In response to a question from the Board, Ms. Savitz indicated that relocation of the water/sewer line will impact disturbance on the site. In response to a question from a Board Member, Mr. Lipari indicated the property will be cleaned up significantly. Mr. Lipari indicated he had not reviewed what restrictions are imposed on use of Holly Lane. Ms. Savitz noted that soil erosion and sediment control certification would be required. Board Member Bate noted there are serious water issues in the vicinity of Holly Lane and Roseland Avenue.

Mark Badcock, 200 Rensselaer Road, Essex Fells, New Jersey asked questions regarding the adequacy of stormwater management. Ms. Savitz indicated there were two large drywells proposed and there are designed for a 100 year storm.

Chairman Candido suggested that this was a good point to stop the testimony for the evening. A discussion ensued with Mr. Lipari regarding his availability and he eventually requested that the matter be carried to the November 20, 2023 meeting. On motion made by Board Member D'Avella, seconded by Board Member Shearin, the matter was unanimously carried to the Board's November 20, 2023 meeting at 7:30 p.m. with no further notice required.

There being no further business to come before the Board, on a motion made by Vice-Chairman Spellman, seconded by Board Member D'Avella, the meeting was duly adjourned at 10:05 p.m. by unanimous vote.



MICHAEL SPELLMAN, Acting Chairman
Zoning Board of Adjustment
October 26, 2023