

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF ESSEX FELLS**

MINUTES OF THE MEETING OF JANUARY 25, 2024

The meeting was called to order at 7:05 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, Oscar Bate, Bernard D'Avella, MJ Jolda, Chris Shearn, William Kovacs and Allison Semaya (7:50 p.m.).

Board Member D'Avella moved Michael Candido to be Chairman, Michael Spellman to be Vice-Chairman and Tom O'Beirne to be Secretary for the ensuing year, which was seconded by Board Member Bate, there were no further nominations and the vote was unanimous.

On motion made by Board Member D'Avella, seconded by Board Member Shearin, the minutes of the meeting of December 11, 2023 were adopted unanimously by all those eligible to vote.

On motion made by Vice-Chairman Spellman, seconded by Board Member D'Avella, a resolution appointing Michael D. Sullivan, Esq. as Board Attorney for 2024 was adopted by unanimous vote.

On motion made by Board Member D'Avella, seconded by Board Member Bate, a resolution establishing the meeting dates for 2024 and the first meeting of 2025 was adopted by unanimous vote.

On motion made by Board Member D'Avella, seconded by Vice-Chairman Spellman, a resolution designating the Star Ledger and the Progress as official newspapers was adopted by unanimous vote.

On motion made by Board Member D'Avella, seconded by Board Member Bate, a resolution adopting amended by-laws was adopted by unanimous vote.

On motion made by Board Member Shearin, seconded by Board Member D'Avella, at the request of the applicants, the application of John and Catherine Walsh, 14 Essex Road, Block 10.07, Lot 10 for front, side and rear yard setbacks, floor area ratio and impervious coverage variances was unanimously carried to the Board's February 22, 2024 meeting at 7:00 p.m. without further notice.

The next matter to come before the Board was the continued hearing on the application of Aanand & Mukti Geria, 193 Rensselaer Road, Block 12.02, Lot 4.06 for floor area ratio and bulk variances. Michael Lipari, Esq., of Mandelbaum Barrett, PC was present on behalf of the applicants. Mr. Lipari reiterated his clients desire to move to Essex Fells and the plans have been revised to address concerns from the Board, professionals and public. Mr. Lipari noted that since the initial submission a number of variances have either been eliminated or reduced. The front yard setback, impervious coverage and maximum wall height variances have been eliminated. The steep slope disturbance variances have been reduced, the house has been

reoriented and the driveways relocated, improved stormwater measures have been implemented and the floor area ratio has also been reduced.

Mr. Lipari recalled Afton Savitz, P.E. of Stonefield Engineering, 192 Park Avenue, Rutherford, New Jersey. Board Attorney Sullivan noted that Board Member Jolda had signed a certification by absent member that she listened to the recording of the hearing held on November 20, 2023 and is eligible to vote. Ms. Savitz referred to Sheets C-4 "Site Plan" of the engineering plans prepared by her office dated November 15, 2022 revised through January 12, 2024. Ms. Savitz stated the house has been pulled back and reduced in size and now conforms to the required front yard setback of 68.15 feet. Impervious coverage has increased but still complies with the ordinance. Wall heights have been reduced and none exceed 6 feet and one wall has been pulled out of the easement area in the rear. The applicants do require variances for solid walls in the front yard. The applicants require relief as the easterly driveway has a curb opening of 21.7 feet and the westerly driveway has a curb opening of 23.7 feet where a maximum of 15 feet is allowed pursuant to Section 170-77A. This is consistent with a number of other properties in the area. Ms. Savitz referred to Sheet C-13 regarding steep slopes. The applicants require variances to permit slope disturbance of 51.2% for slope between 20 and 24.9% where maximum disturbance of 33% is allowed and slope disturbance of 32.5% for slopes greater than 25% where maximum disturbance of 0% is allowed. The disturbance of slopes is inevitable in order to develop the property. The applicants stipulated they would comply with the outstanding comments contained in the review memorandum of Petry Engineering, LLC dated January 18, 2024.

In response to questions from the Board, Ms. Savitz indicated the floor area ratio has been reduced from 19.4% to 16.54%. A discussion ensued as to whether or not the garage should be counted towards floor area ratio. Ms. Savitz stated the garage is below the first floor and is included in the floor area ratio calculation. Board Attorney Sullivan said that he spoke with Mr. Petry who had spoken with the Zoning Officer who advised that garages at the cellar or basement level, first floor level or detached count towards floor area ratio. The garage is below the first floor and is included in the floor area ratio calculation. The property has a grade change of 33 feet from front to back and discussed ensued regarding grading, retaining walls and stormwater management.

Mr. Lipari recalled Yuval Wellisch, R.A., 211 West End Avenue, Raritan, New Jersey. Mr. Wellisch stated the house has been shrunk by 1 to 2 feet in every direction with the exception of the sunroom which was shrunk by 6 inches. As per the floor area calculation, the first floor is 3,249 square feet, the second floor is 3,118 square feet, the garage is 777 square feet and the second floor air space is 662 square feet for a total floor area of 7,317 square feet. If you subtract the garage, second floor air space and area under the covered porches, floor area would be 5,705 square feet and floor area ratio would be 12.9%. If the garage was taken out of the equation, the floor area ratio would be 14.7%. The height of the garage is 8 feet and the height of the house is 34.77 feet which complies with the ordinance. The proposed house has interior ceiling heights of 10 feet for the first floor, 9 feet for the second floor and 8 feet for the basement.

Board Member Semaya arrived at 7:50 p.m.

Mr. Lipari called Christine Nazzaro Cofone, P.P., 125 Half Mile Road, Suite 200, Red Bank, New Jersey who was accepted by the Board as an expert planner. Ms. Cofone noted the property is located in the RA-3 Zone and the application requests a floor area ratio variance. The focus for the Board for an FAR variance is whether or not the site will accommodate the problems associated with the proposed permitted use but with a larger floor area than permitted by ordinance in accordance with the *Randolph Town Center* case. The overage of floor area is 1,567 square feet which she said can be accommodated on the site. The garage space of 777 square feet, the two second story air spaces of 284 square feet over the second floor foyer and 378 over the second story family room and 173 square feet of floor area under the two porches adds up to 1,612 square feet which space is not usable or habitable. The lot can accommodate the excess floor area as it is oversized consisting of 44,237 square feet where a minimum of 21,780 square feet is required. Utilizing the tax maps, of the 12 lots in the immediate area, this is the second largest lot with the exception of 16 Holly Lane and the remaining lots contain area as low as 22,000 square feet. Approval of the floor area ratio variance would not do violence to the Zone Plan. The bulk variances can be approved under the c(1) standard. The property has a grade change of 33 feet and is encumbered by a sewer and water easement and an easement in the rear. The slopes are concentrated such that development is not feasible without disturbance. The bulk variances can also be approved under c(2) as they advance purposes of the Municipal Land Use Law specifically providing sufficient space in an appropriate location for residential use (-2g), promotes a desirable visual environment (-2i) and encourages the more efficient use of land (-2m). With respect to the negative criteria, there would be no substantial detriment to the public good. The intent of the steep slope ordinance is to ensure proper stormwater management, avoid erosion and protect the environment. The applicants are proposing two large drywells and improved stormwater measures. Ms. Cofone cited the *Pullen* case which held that the Board should focus on the benefits flowing from the entire application. Board Attorney Sullivan clarified that the applicants seeking a floor area ratio variance need not prove undue hardship or that the property is particularly well-suited for the use.

The matter was opened to the public, Cheryl Stoye, 200 Rensselaer Road, Essex Fells, New Jersey noted that the proposed home would be two to three times larger than surrounding homes inconsistent with the aesthetics of Essex Fells. She stated her home was approximately 2,400 square feet and her neighbors home was approximately 3,300 square feet. She also expressed concerns about stormwater and noted that in an ordinary rain the intersection of Holly Lane and Rensselaer Road becomes a pond. The public portion of the meeting was closed.

Mr. Lipari stated that his clients wish to build their dream home in Essex Fells. They have gone to great expense and effort in trying to address the issues raised. The final result is a good product and there has been extensive testimony by Ms. Savitz addressing stormwater management.

Board Attorney Sullivan noted the purpose of FAR ordinances is to control the size and mass of a home in relation to lot size and regulate the intensity and prevent overbuilding. The Board has the power to grant an increase in the permitted floor area ratio for "special reasons." The Board's focus must be on whether the site will accommodate the problems associated with the proposed permitted use with a larger floor area than permitted by the ordinance. *Randolph Town*

Center v. Randolph, 324 N.J. Super. 412 (App. Div. 1999). The applicants must also meet the negative criteria in that there would not be substantial detriment to the public good that is the impact on area properties and would not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance.

The Board began deliberations. Chairman Candido noted the property has difficulties and was satisfied with the request for the “c” variances. He saw no reason to grant an FAR variance noting that a home on a typically conforming lot of 21,780 square feet in the RA-3 Zone could construct a home with floor area of 2,831 square feet. The subject property is more than two times the minimum lot size. The applicants have the ability to construct a home with a floor area of 5,751 square feet without requesting a floor area ratio variance. The applicants propose a house with a floor area of 7,317 square feet which is 27% over the maximum floor area allowed by ordinance. The property also borders the RA-1 Zone which permits a maximum floor area ratio of 11% and a home of 4,792 square feet could be built on home with the minimum lot area. The proposed house is 53% larger than such a home. The applicants can easily construct a home in conformance with the ordinance.

Board Member Shearin expressed concerns about the application and stormwater. Board Member Jolda stated she agreed with the comments of Chairman Candido. Secretary O’Beirne acknowledged this was a difficult lot to develop and it is more suited for a much smaller home. Vice-Chairman Spellman stated he was generally in favor of the application. Board Member Bate expressed his belief that the floor area attributable to the garage should not be held against the applicants but the second floor areas and the area over the covered porches should be considered. This is a vacant lot with a blank slate. Board Member D’Avella questioned whether or not a small home would be feasible in light of the cost to address development on this lot. If you take the floor area attributable to the garage out of the equation, he would not have a problem with the application. Board Member Kovacs noted the lot was a challenge to build on and stated there would be stormwater benefits if the application was approved. Board Member Semaya stated the property can accommodate the requested floor area ratio variance.

Mr. Lipari requested the Board adjourn one more time to look at possible reductions in the size of the home. He granted an extension of time for the Board to act through the end of April 2024. On motion made by Board Member D’Avella, seconded by Board Member Bate, the matter was carried to the Board’s March 28, 2024 meeting at 7:00 p.m. without further notice with a vote of 5 – 2 (Chairman Candido, Board Members Shearin, Jolda, D’Avella and Bate voting in the affirmative and Secretary O’Beirne and Vice-Chairman Spellman voting in the negative).

The next matter to come before the Board was the hearing on the application of Salvador and Ana Vitaliti, 223 Runnymede Road, Block 13, Lot 3 for a floor area ratio variance. Salvador Vitaliti, 14 Garrett Street, Cedar Grove, New Jersey was present. Mark Montalbano, R.A. of Coppa Montalbano Architects, 97 Lackawanna Avenue, Totowa, New Jersey advised the Board the proposed addition has been substantially reduced while still preserving the existing home. He referred to the architectural plans prepared by his office Sheets C-1 and A-1 through A-4 dated June 7, 2023 revised through January 16, 2024 and outlined the interior changes and the reduction of the garage to a single-car garage. The FAR has been reduced from 32.25% to 16.87%. The applicants initially sought an impervious coverage variance of 25.57% where a

maximum of 25% is allowed, however, that has been reduced to a compliant 18.99%. In response to a question from a Board Member, Mr. Vitaliti stated that he did not have any conversations with the property owner of the land to the rear in connection with the possibility of purchasing some additional land.

A discussion ensued regarding the FAR calculation worksheet submitted by Mr. Montalbano dated January 10, 2024. The last vertical column indicates proposed floor area of 2,557.46 square feet which yields a proposed floor area ratio of 16.87%. The box below indicates a proposed floor area of 4,886.87 square feet which Mr. Montalbano noted was an error and would be corrected. Mr. Montalbano stipulated that the applicants would comply with comments 2.3, 2.6, 4.2, 4.5, 4.11 and 5.1 through 5.4 contained in the review memorandum of Petry Engineering, LLC dated January 18, 2024.

The matter was opened to the public and no one wished to be heard. Board Attorney Sullivan noted that Secretary O'Beirne had signed a certification by absent member that he listened to the recording of the hearing held on December 11, 2023 and is eligible to vote.

The Board began deliberations. Chairman Candido noted the property is located in the RA-3 Zone which requires a minimum lot size of 21,780 square feet. The subject property is 15,153 square feet which is approximately 30% smaller than the minimum lot size required. Although the proposed floor area ratio is nonconforming, the house would be of a similar size to a home compliant with the FAR on a standard size lot. Board Member Shearin stated he was in favor of the application. Board Member Jolda stated the application addressed the concerns of the Board and would retain the existing home with its historical significance. Secretary O'Beirne voiced opposition to the application noting that preserving the existing home did not justify the floor area ratio variance and he did not like the front façade. Vice-Chairman Spellman complimented the fact that the application would be preserving the original home and was in favor of the application. Board Member Semaya noted the size of the addition has been significantly reduced and was in favor of preserving the existing home with historical significance. Board Member Kovacs stated he was in favor of the application as did Board Members D'Avella and Bate.

A motion made by Board Member D'Avella seconded by Vice-Chairman Spellman to approve the application for a floor area ratio variance of 16.87% subject to the following conditions: (1) a corrected FAR worksheet confirming floor area ratio of 16.87% shall be submitted; (2) compliance with comments 2.3, 2.6, 4.2, 4.5, 4.11 and 5.1 through 5.4 contained in the review memorandum of Petry Engineering, LLC dated January 18, 2024; (3) the applicants shall be bound by all representations made in testimony presented to the board and (4) 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 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).

Chairman Candido stated there are no applications ready to be heard for the February 13, 2024 meeting and it could be cancelled. On motion made by Board Member Shearin, seconded by Vice-Chairman Spellman the February 13, 2024 meeting of the Board was cancelled by unanimous vote.

There being no further business to come before the Board on a motion made by Vice-Chairman Spellman, seconded by Secretary O'Beirne, the meeting was duly adjourned at 9:26 p.m. by unanimous vote.



A. MICHAEL CANDIDO, Chairman
Zoning Board of Adjustment
February 22, 2024