

**HARDING TOWNSHIP BOARD OF ADJUSTMENT
MINUTES
July 18, 2019
7:30 PM**

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Board of Adjustment Chair, Mr. Flanagan called the meeting of the Board of Adjustment to order at 7:30 and announced that adequate notice of the meeting had been made in accordance with the New Jersey State Open Public Meetings Act.

ROLL CALL

Ms. Taglairino called the roll. It went as follows:

Ms. Sovolos	Present	Mr. Newlin	Present
Mr. Flanagan	Present	Mr. Maselli	Excused
Mr. Rosenbaum	Present	Mr. Addonizio	Excused
Mr. Symonds	Excused	Ms. Chipperson	Present

Board Attorney, Gary Hall, Board Engineer, Paul Fox, Board Planner McKinley Mertz and Board of Adjustment Secretary Lori Taglairino were also present.

REGULAR MEETING

MINUTES

Mr. Flanagan made a motion to approve the June 20, 2019 minutes. The motion was seconded by Mr. Newlin. On a voice vote all eligible members were in favor of approving the minutes.

OLD BUSINESS

Application BOA# 01-19 Madeline S. Pitney 2008 Revocable Trust
34 Hunter Drive, B48, L8.01, R-1 Zone
Applicant requesting variance relief for a front setback, and pre-existing non-conforming lot and steep slopes as per NJSA 40:55D-70(c).

Presenting:
Thomas Malman, Attorney

There was a discussion regarding the conditions in the resolution.

Ms. Sovolos noted that she listened to the February and March meetings and visited the site.

Mr. Flanagan made a motion to approve Resolution# 01-19 Pitney. It was seconded by Mr. Newlin. A roll call vote went as follows:

For: Mr. Newlin, Ms. Sovolos and Mr. Flanagan
Against: Mr. Rosenbaum and Ms. Chipperson

Ms. Chipperson and Mr. Rosenbaum opposed the application because although they felt the owner has a right to build a house on the lot, the extent of the variances being requested and the disruption to the surrounding environment was too much and the relief requested could have been reduced by either reducing the size of the house further or changing the design to better integrate into the topology of the

lot. Also, they did not believe that the proposed house was consistent with the surrounding neighborhood.

The Resolution is appended to these minutes.

Application BOA# 04-19

Patricia Gargiulo
595 Van Beuren Road, B5/L8, R-1 Zone
Applicant requesting variance relief for lot coverage as per NJSA 40:55D-70(c).

Presenting:

Tom Malman, Attorney

Greg Yannacone, Engineer

- Mr. Malman presented a reduced revised proposal based on the Site Inspection visit.
- Mr. Yannacone presented Exhibit A-10, a color rendering of the proposed removal from the prior lot coverage.
- Mr. Fox noted that the storm water management went above and beyond the township code measures.
- Mr. Newlin asked why the dwelling coverage was built to maximum coverage without consideration for the outdoor areas.
- Mr. Hall requested revised accurate plan revisions and zoning table for the proposed changes.

Further discussion ensued. The Board comments led to the applicant requesting to carry the application to the August 15, 2019 meeting so that they make additional revisions to the plan and application.

NEW BUSINESS

Application BOA# 06-19

906 Harding Group, LLC
906 Mt. Kemble Ave. B 35.01/L16, B-2 Zone
Applicant requesting relief for floor area ratio per NJSA-40:5570(d) (4), setback, lot size and height relief as per NJSA 40:55D-70(c).

Presenting:

John Mills, Attorney

Tor Alden Owner

Chris Pickell, Architect

Mr. Karlbach, Planner

Mr. Alden, Mr. Pickell and Mr. Karlbach were sworn in for testimony.

- Mr. Mills presented proposed plans for a renovation and dormer addition that required an FAR variance along with a variance for existing-non conforming for setbacks and height.
- Mr. Mills stated that this is an historic property dated about 1850.
- Mr. Mills noted that the owner wished to make improvement to the building, siding and insulation.
- Mr. Pickell presented Exhibits A-1-A-4 of photo simulations of the proposed exterior of the building.

- Mr. Pickell presented Exhibit A-5, a photo of the existing building.
- Mr. Karlbach presented Exhibit A-6, an aerial of the existing footprint of the property.
- There was a discussion regarding coverage and the handicap spot and ways to reduce some of the coverage impact on the property.
- There was a discussion about the cupola.

Mr. Flanagan made a motion to approve the application with the condition that revised plans are submitted that show the correct height, along with a revised zoning table and the removal of some lot coverage to lessen the impact on the property. It was seconded by Mr. Newlin. A roll call vote went as follows:

For: Mr. Flanagan, Mr. Newlin, Mr. Rosenbaum, Ms. Chipperson, and Ms. Sovolos.
Against: None

Initially there was an objection from Mr. Jeff Myhre representing 900 Mt. Kemble Ave. regarding the noticing. Mr. Myrhe listened to the application and in the end approved of what the applicant was proposing.

Application BOA# 07-19

Lawrence and Naomi Stein
79 Sand Spring Road, B26/L15, RR Zone
Applicant requesting variance relief for NJSA 40:55(d)(2) an expansion of a nonconforming use.

Presenting:
Rob Simon, Attorney

- Mr. Simon presented a proposed application for an apartment for a caretaker in an attached garage.

The Board scheduled a Site Inspection for August 24, 2019 at 9:00am.

OLD BUSINESS

Application BOA# 17-18

New York SMSA Limited Partnership d/b/a Verizon Wireless
8 Millbrook Road, B17/L1, PL Zone
Applicant requesting variance relief for use, per NJSA 40:55D-70(d) for a cell tower.

Presenting:
Richard Schneider, Attorney
Diane Enright, Verizon Wireless Site Acquisition Consultant

Ms. Enright was sworn in for testimony

The Board Attorney, Mr. Hall is recused from this application. Mr. Ed Purcell is providing counsel.

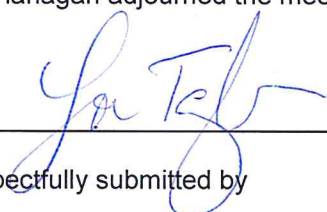
Mr. Rob Simon is an objecting attorney representing several members of the community.

A transcript of the testimony is appended to these minutes.

OTHER BUSINESS

ADJOURNMENT

Mr. Flanagan adjourned the meeting at 11.15.



Respectfully submitted by

Lori Taglairino, Board of Adjustment

RESOLUTION

**Madeline S. Pitney 2008 Revocable Trust - Application No. 1-19
34 Hunter Drive - Block 48, Lot 8.01
Adopted July 18, 2019**

WHEREAS, The Madeline S. Pitney 2008 Revocable Trust applied to the Harding Township Board of Adjustment for variances from Section 225-122(F) of the Land Use and Development Ordinance, which requires a minimum front setback of 100' in the R-1 Zone, and from Section 225-116(N), which requires compliance with the steep slope regulations in Section 225-95, to permit construction of a new residence and related improvements on property located in a R-1 Zone at 34 Hunter Drive and designated on the Township Tax Map as Block 48, Lot 8.01; and

WHEREAS, the Board of Adjustment conducted a public hearing on the application at meetings on February 21, 2019, March 21, 2019, May 16, 2019, June 20, 2019 and July 18, 2019 at the Harding Township Municipal Building, for which public notice and notice by applicant were given as required by law; and

WHEREAS, the Board of Adjustment conducted a site inspection of the property that was open to the public on March 16, 2019; and

WHEREAS, the applicant's proposal was revised during the course of the public hearing process to reduce the extent of proposed deviations from the zoning requirements; and

WHEREAS, the Board of Adjustment considered the testimony and exhibits presented during the public hearing proceedings;

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 18th day of July 2019, that the revised variance application of The Madeline S. Pitney 2008 Revocable Trust is hereby approved subject to certain conditions and based on findings and conclusions as follows:

Findings of Fact and Statement of Reasons

1. The property is a 2.841-acre lot located at 34 Hunter Drive in a R-1 Zone. This lot was created by a subdivision approved in 1964 that created 8 lots on Hunter Drive and 11 lots on Fawn Hill Drive. The recorded subdivision plat indicated a lot size of 3.10 acres. The reason for the lesser current calculated lot size figure of 2.841 acres is not known. However, the lot has not been altered in size or shape since it was created, and pursuant to Ordinance Section 225-115(B) lot size requirements are not applicable to lots created prior to 1967.

2. Although not restricted against development, this lot has remained undeveloped, unlike the other lots created by the subdivision that have been improved over time with single-family residences.

3. The property has an unusual shape that does not conform with the current dimensional requirements for the R-1 Zone, as shown on variance plans prepared by Gladstone Design, Inc., initially dated January 2, 2019, and last revised May 1, 2019, thus resulting in a limited permissible building envelope.

4. The applicant proposed to construct a residence on the property, as shown on the variance plans and on architectural plans prepared by Scialla and Associates Architects, Incorporated, initially dated December 7, 2018 and revised April 9, 2019.

5. As initially proposed, the residence would have a minimum front setback of 79.3', requiring a variance from the 100' setback requirement in Section 225-122(F). The final revised proposal required variance relief to permit a minimum front setback of 78.3'.

6. The property contains extensive steep slope areas as shown on the plans, requiring variance relief from various restrictions in Section 225-95 that are applicable pursuant to Section 225-116(N). Revisions to the applicant's proposal during the course of the public hearing process reduced the number and magnitude of deviations from the steep slope regulations, as shown on the revised plans.

7. The applicant was represented in proceedings before the Board of Adjustment by Thomas J. Malman, Esq. of Day Pitney LLP.

8. Testimony in support of the application was provided by architect Louis DiGeronimo, engineer Rob Moschello, professional planner Charles Heydt, and applicant's trustee James C. Pitney, Jr.

9. Engineer Moschello testified that a segment of Primrose Brook traverses abutting property to the rear of the applicant's property, resulting in a State regulated 300' wide riparian buffer extending onto much of the applicant's property and a 150' wide regulated wetlands transition area extending onto part of the property. These environmental constraints arising from off-site conditions significantly impair the ability to develop a residence on the property. Prior to submitting the present variance application, the applicant engaged in lengthy proceedings with the New Jersey Department of Environmental Protection ("DEP") concerning these regulatory constraints that resulted in issuance of necessary permits to permit development of a residence, subject to numerous conditions that delineate the limited area of the property that may be disturbed as shown on the plans and that also restrict the scope, methods and timing of construction activity. Engineer Moschello stated that the plans conformed with all DEP permit conditions and requirements.

10. Engineer Moschello testified concerning the stormwater management system designed for the property. As shown on the revised variance plans, substantially all runoff from improvements in the area of disturbance would be directed into 4 drywells to the rear of the proposed residence. He noted that the revised plans reduced the area of disturbance and agreed to a tree removal restriction, thus reducing the amount of runoff.

11. Engineer Moschello testified concerning regulated steep slope areas that are present to varying degrees on much of the property. The locations of the different steep slope categories were shown on the plans. The extent of steep slope disturbance was reduced by several plan revisions. These changes included shifting the area of the proposed septic field away from the west side lot line, thus eliminating disturbance adjacent to the side lot line and providing a retaining wall in the front to reduce the area of disturbance and tree removal in the front.

12. Architect Louis DiGeronimo testified concerning the design and layout of the initial proposed residence and a revised plan that reduced the proposed residence from 5 bedrooms to 4 bedrooms and made other changes, as shown on revised plans dated April 9, 2019.

13. Professional planner Charles Heydt testified concerning a planning analysis of the surrounding neighborhood. He stated that the lots along Hunter Drive generally have odd shapes, resulting in a number of lots having at least one deviant setback. Planner Heydt opined that the size of the proposed residence was compatible with nearby homes. He also testified that the proposed steep slope deviations had been minimized by plan revisions and that any impacts would be addressed by engineering controls and enforcement. Planner Heydt presented his professional planning opinion that the requested variance relief was appropriate.

14. Board of Adjustment Planner McKinley Mertz attended the public hearing and orally expressed her concurrence with planner Heydt's planning opinion that variance relief was appropriate.

15. Township Engineer Paul Fox attended the public hearing proceedings and responded to various questions. He expressed the opinion that the proposed stormwater management measures were consistent with all applicable DEP permit conditions and all other regulatory requirements and indicated that there was no need to separate the 4 proposed drywells, as was suggested by a member of the public. Engineer Fox also testified that soil erosion and sediment control measures would be monitored and enforced by his office.

16. The property is traversed by a bridle trail. The applicant agreed to relocate a portion of the trail and subject the entire relocated bridle trail on the property to a permanent easement, as shown on the revised plans. This proposal was viewed favorably by representatives of the Bridle Trail Association.

17. Several neighbors and members of the public objected to the application based on concerns as to potential adverse stormwater runoff impacts, particularly in the event of an unusual rainfall event during construction and the unexpected failure of protective measures. In response, Township Engineer Fox repeated prior statements as to compliance with all applicable requirements and stated that in the unlikely event of any offsite impacts remedial action would be taken.

18. The applicant agreed to specific conditions to restrict tree removal and limit site disturbance. The applicant further agreed to improve the environmental, water infiltration and visual buffering characteristics of the property by supplemental plantings of native trees and shrubs.

19. The need for variance relief is attributable to the unusual environmental and topographic conditions applicable to this particular property and resulting development restrictions. The DEP approval conditions evidence appropriate actions to minimize, avoid and mitigate any adverse impacts.

20. The small permissible building envelope due to the unusual lot shape precludes construction of a residence on this parcel in compliance with all setback requirements. Absent the grant of variance relief, prohibiting development of this vacant lot might be claimed to be contrary to the presumptive right to develop private property and might serve as the basis for assertion in court of a constitutional takings claim seeking monetary compensation from Harding Township.

21. Except for the front setback, the proposed residence will conform with all other setback requirements, and the property will conform with building area and lot coverage ratio requirements.

22. The design, size and appearance of the residence will be compatible with homes in the neighborhood.

23. Based on the foregoing, granting necessary variance relief to permit construction of the proposed residence will not result in any adverse impacts on adjacent properties or the streetscape.

24. In the case of this specific property, and its unusual shape, topography and extensive environmental constraints, strict application of the front setback and steep slope zoning requirements would impose undue hardship on the applicant by precluding construction of the proposed residence, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).

25. The variance relief requested by the applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance of the Township of Harding.

Description of Variance

1. A variance is hereby granted from the 100' front setback requirement for the R-1 Zone in Section 225-122(F) of the Land Use and Development Ordinance to permit construction of a residence with a minimum front setback of 78.3', as shown on variance plans prepared by Gladstone Design, Inc., initially dated January 2, 2019 and last revised May 1, 2019, and on revised architectural plans prepared by Scialla and Associates Architects, Incorporated, dated April 9, 2019.

2. Variance relief is hereby granted from the steep slope regulations in Section 225-95 of the Ordinance that apply pursuant to Section 225-116(N) to allow the specific deviations from the steep slope regulations shown on the revised plans.

Variance Conditions

These variances are granted subject to the following conditions:

1. Any outstanding technical review fees shall be paid prior to issuance of a building permit and certificate of occupancy.
2. The applicant shall obtain Health Department approval, a building permit and any other necessary approvals.
3. These variances are based on and authorize only the specific proposed improvements as described by the testimony and as shown on the variance plans and architectural plans, as revised. New or amended variance approval may be required for any materially different improvements.
4. These variances are granted subject to the express conditions that:
 - a. The applicant shall not remove any trees or vegetation outside the limit of disturbance area shown on the plans, except as expressly authorized by applicable State and local requirements and consistent with the approved landscape plan required by Paragraph d below.
 - b. The architectural plans shall be corrected as to the side and rear elevations to be consistent with the floor plans, subject to review and approval by the Board Attorney.
 - c. The applicant agrees to promptly remediate any adverse impacts on adjacent property resulting from the failure or malfunction of the stormwater management measures, as reasonably recommended by the Township Engineer.
 - d. The applicant shall submit a revised plan showing reasonable planting of native vegetation species consistent with DEP regulations and permit approval conditions to facilitate visual buffering and stormwater management, subject to review and approval by the Township Engineer.
 - e. The Township Engineer is requested to actively monitor and enforce the installation and operation of soil erosion and sediment control measures, particularly in connection with significant rainfall events.
 - f. The applicant shall strictly comply with all conditions of all DEP approvals.

- g. The applicant shall provide and record a bridle trail easement consistent with revised plans, subject to review and approval as to form by the Board Attorney and Township Engineer.
5. These variances shall expire if construction of the authorized improvements is not commenced within one year of the date of this Resolution and is not subsequently pursued in a reasonably diligent manner.

Vote on Resolution

For the Approval Resolution: Flanagan, Newlin & Sovolos.

Against the Approval Resolution: Chipperson & Rosenbaum.