

**HARDING TOWNSHIP BOARD OF ADJUSTMENT  
MINUTES  
August 15, 2019  
7:30 PM**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Board of Adjustment Vice-Chair Alf Newlin, 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.

**APPOINTMENTS**

On August 12, 2019 the Harding Township Committee meeting the Committee made the following appointments:

Thomas Addonizio	Regular Member	4 year unexpired term expiring December 31, 2021
Elizabeth Sovolos	Alternate # 1	2 year unexpired term, December 31, 2019
Michael Cammarata	Alternate # 2	2 year term expiring December 31, 2020

Board Attorney, Gary Hall, swore in the appointees.

**ROLL CALL**

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

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

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

**REGULAR MEETING**

**MINUTES**

Mr. Newlin made a motion to table the July 18, 2019 minutes until the September meeting. The motion was seconded by Mr. Symonds. On a voice vote all members were in favor of tabling the minutes.

**ADMINISTRATIVE**

There was a discussion about choosing a topic for ongoing training.

Mr. Newlin stated that the BOA# 07-19 Stein application had been withdrawn, thus also canceling the Site Inspection meeting that was scheduled for August 24, 2019.

Mr. Newlin noted that BOA# 04-19 Gargiulo was carried until the September 19, 2019 meeting.

Mr. Newlin state that the BOA# 17-18 Verizon application was carried until the September 19, 2019 meeting.

### **EXTENSION**

Application BOA# 13-18                      Michael Cavanaugh  
23 Miller Road, B12/L29

The applicant was seeking an extension to start this project. The delay was a result of waiting for DEP approval.

Mr. Newlin made a motion to approve the one year extension. The motion was seconded by Mr. Maselli. On a voice vote, all were in favor of approving the extension.

### **RESOLUTION**

Application BOA# 06-19                      906 Harding Group, LLC  
906 Mt. Kemble Ave. B 35.01/L16, B-2 Zone

There was a motion by Ms. Chipperson to adopt Resolution BOA# 06-19 906 Harding Group. It was seconded by Mr. Newlin. On a roll call vote, Ms. Chipperson and Mr. Newlin were in favor of adopting the resolution.

### **NEW BUSINESS**

Application BOA# 09-19                      Daniel and Eugenia Mezzalingua  
88 Lees Hill Road, B49/L11, RR Zone  
Applicant is requesting variance relief for a front setback, enlarging a non-conforming structure as per NJSA 40:55D-70(c) and NJSA 40:55 (d) (2) expansion of a non-conforming use.

Presenting:  
Tom Conway, Architect  
Daniel Mezzalingua, Owner

Mr. Conway and Mr. Mezzalingua were sworn in for testimony.

- Mr. Conway presented proposed plans for a renovation on this historic property.
- Mr. Conway noted that the applicant was seeking variances for the enlargement of an existing non-conforming house and a front setback.
- Mr. Conway indicated the accessory structures on the property both historically contributing and non-contributing.
- Mr. Conway noted that one of the accessory structures contained an existing residence.
- Mr. Hall noted that the proposed basement, nanny suite bore consideration.

The Board scheduled a Site Inspection for this property on September 7, 2019 at 9:00am.

### **OLD BUSINESS**

Application BOA# 05-19

New Cingular Wireless  
22 Village Road, B 15/L 1 R-3 Zone  
Applicant requesting variance relief for NJSA 40:55D-70(d)3 from  
Sections 225-162 and 163.

Presenting:

Judy Fairweather, Attorney  
Daniel Penesso, RF Specialist  
David Revette, Engineer

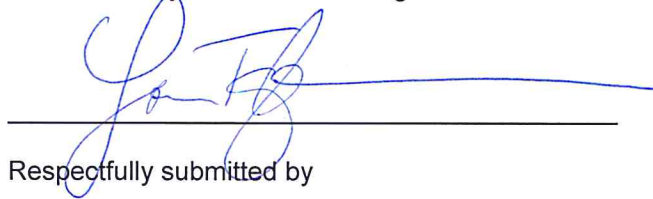
Mr. Penesso and Mr. Revette were sworn in for testimony.

A transcript of the testimony is appended to these minutes.

### **OTHER BUSINESS**

### **ADJOURNMENT**

Mr. Newlin adjourned the meeting at 11.00.



Respectfully submitted by

Lori Taglairino, Board of Adjustment

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### **906 Mt. Kemble Avenue - Block 35.01, Lot 16**

#### **Adopted August 15, 2019**

WHEREAS, 906 Harding Group, LLC, applied to the Harding Township Board of Adjustment for a variance pursuant to N.J.S.A. 40:55D-70(d)(4) from Section 225-146(C) of the Land Use and Development Ordinance, which permits a maximum floor area ratio ("FAR") of 8.5% in the B-2 Zone, a variance pursuant to N.J.S.A. 40:55D-70(d)(6) from the front elevation building height requirement in Section 225-146(D), (c) variances from the rear elevation building height requirement in Section 225-146(D), lot coverage ratio requirement in Section 225-146(F), and the restriction against enlargement of nonconforming structures in Section 225-115(B), and for minor site plan approval in order to permit construction of a second story rear addition and install a cupola on an existing commercial building located at 906 Mt. Kemble Avenue in the B-2 Zone on property designated on the Township Tax Map as Lot 16 in Block 35.01; and

WHEREAS, the Board of Adjustment conducted a public hearing on the application at a meeting on 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 determined that a site inspection was not necessary in light of the particular characteristics of this property and proposal; and

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

WHEREAS, at the meeting on July 18, 2019, the Board of Adjustment adopted an oral resolution approving the application of 906 Harding Group, LLC, subject to certain conditions and based on findings and conclusions as memorialized herein;

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 15th day of August 2019, that the oral approval of the application of 906 Harding Group, LLC, for variances and minor site plan approval is hereby memorialized as follows:

#### ***Findings of Fact and Statement of Reasons***

1. The applicant is the owner of the property at 906 Mt. Kemble Avenue that is improved with two commercial buildings and a large gravel parking area to the rear, along with several parking spaces to the front and side. This property has been devoted to commercial use for many years.

2. The property has a total lot size of 30,013 square feet, which is less than the 40,000 square foot minimum for the B-2 Zone. Due to the limited lot size, the property has a nonconforming floor area ratio ("FAR") of 24.3% that exceeds the 8.5% maximum, and a nonconforming lot coverage ratio of 71% that exceeds the 30% maximum. The minimum front setback of 3.4' is nonconforming as to the 50' minimum, and the building height is nonconforming as to both the front and rear calculations (front façade height of 28.75'



v. 25' maximum & rear façade height of 38.2' vs. 37.5' maximum). The existing improvements were shown on an architectural site plan included with architectural plans prepared by Pickell Architecture, LLC, initially dated April 21, 2019.

3. The applicant proposed to construct a partial second addition to the rear to provide additional usable floor area, along with limited renovations, as shown on the architectural plans. A second handicapped parking space would be designated and improved to the rear.

4. The initial plans indicated that the proposed addition would increase the nonconforming FAR from 24.3% to 25.9%, requiring a variance pursuant to N.J.S.A. 40:55D-70(d)(4) from Section 225-146(C) of the Ordinance, which permits a maximum FAR of 8.5% for property in the B-2 Zone. Testimony at the hearing indicated based on further calculation that the proposed FAR increase would be limited to 25.6%.

5. The proposed addition would slightly increase the nonconforming building height from 38.2' to 38.75' as measured at the rear elevation and from 28.75' to 29.33' as measured at the front elevation, requiring variance relief pursuant to N.J.S.A. 40:55D-70(c) & (d)(6) from the 37.5' and 25' maximums in Section 225-146(D).

6. The applicant proposed to install a cupola on the existing roof that would have a maximum additional height of 8' above the current roof line, potentially requiring additional variance relief.

7. The proposed improvements would not alter the nonconforming lot coverage ratio of 71%, but variance relief is still required since the 30% maximum in Section 225-146(F) would continue to be exceeded.

8. Variance relief is also required from the restriction against enlargement of nonconforming structures in Section 225-115(B).

9. The applicant was represented in proceedings before the Board of Adjustment by John M. Mills, III, Esq. of Mills & Mills, P.C.

10. Testimony in support of the application was provided by applicant's principal Tor Alden and by architect Christopher Pickell.

11. Mr. Alden stated that since acquiring ownership of the property he has been upgrading its physical condition and appearance.

12. Architect Pickell testified concerning the design of the proposed improvements. He noted that additional floor area would be provided by expanding the second level to the rear and thus would not alter the front appearance, as shown on an exhibit presented at the hearing. Mr. Pickell also testified that the parking area would continue be unstriped, with wheel-stops to designate parking space locations. He stated that the delineation of parking spaces shown on the architectural site plan was hypothetical for the purpose of demonstrating compliance with applicable requirements as to the minimum number of parking spaces.

13. The Township Health Department issued a memorandum dated April 22, 2019 that indicated that the proposed partial second story addition would not appear to have any adverse impact on the on-site well and septic, subject to further review and approval prior to issuance of a building permit.

14. The Morris County Planning Board issued a memorandum dated May 9, 2019 indicating exemption from any County approval requirement.

15. The representative of an entity holding title to adjacent undeveloped property to the rear and side expressed concern as to existing stormwater runoff and potential increased adverse impacts. Upon hearing the applicants presentation and input from the Township Engineer, he did not object to the proposal. No other owner of adjacent property or member of the public expressed any concerns as to this application.

16. The limited increase in the nonconforming floor area ratio would be confined to a partial second story rear addition that would not appreciably alter the appearance of building mass from the front. The addition would facilitate more efficient use of the building without expanding the building footprint.

17. The nonconforming lot coverage ratio would be maintained.

18. The nonconforming front setback would not be altered.

19. The increase in the nonconforming rear elevation building height would be less than 1 foot, and the abutting property to the rear is occupied by busy Route I-287.

20. The proposed cupola would enhance the appearance of the structure and would be similar to mechanical equipment that may have an additional height of 8' under Section 225-116(H)(2).

21. The Board of Adjustment finds that the applicant demonstrated satisfaction of the statutory special reasons requirement for the requested FAR variance from Section 225-146(C) and the slight increase in front elevation building height pursuant to N.J.S.A. 40:55D-70(d)(4) & (6) as follows:

a. The addition will facilitate and enhance use of the building for permitted nonresidential use, thus contributing to continued economic vitality of the B-2 Zone.

b. The increase in the FAR and further deviation from the FAR requirement will be limited in magnitude and the additional building mass will be located to the rear.

c. The increase in the calculated front building height will be limited in magnitude and the additional building mass will be located to the rear and will not appreciably alter the appearance of building height.

d. The improvements will include handicapped accessibility improvements.

e. Under the particular circumstances of this property and proposal, including the absence of any appreciable increase in the appearance of building mass, approval of this proposal will not be contrary to the purpose of the FAR or building height requirements.

22. The requested (d) variance relief can be granted without substantial detriment to the public good and without substantial impairment of the Master Plan or Zoning Ordinance for the reasons stated above. The enhanced burden of proof under the Medici case to reconcile a use variance with its omission from the Zoning Ordinance is not applicable to this (d)(4) and (d)(6) variance application involving the FAR requirement and building height.

23. The request for (c) variance relief from the requirements as to rear building height, cupola height, lot coverage ratio, and enlargement of nonconforming structures is modest in scope.

24. The need for (c) variance is largely attributable to pre-existing conditions and the limited lot size, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1) in the case of this specific property and proposal.

25. Granting variance relief for this proposal will significantly enhance the appearance of this property, and this benefit will substantially outweigh any detriment thus also making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(2) in the case of this specific property and proposal.

26. All of 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.

27. The proposed building addition complies with all requirements for minor site plan approval.

#### Description of Variances

1. 906 Harding Group, LLC is hereby granted a (d)(4) variance from the 8.5% maximum FAR requirement in Section 225-146(C) of the Land Use and Development Ordinance to allow construction of a partial second story rear addition that will increase the current nonconforming FAR from 24.3% to 25.6%, as shown on architectural plans prepared by Pickell Architecture, LLC, dated April 21, 2019.

2. A (d)(6) variance is hereby granted from the front elevation building height maximum of 25' in Section 225-146(D) of the Ordinance to permit a partial second story addition that will slightly increase the nonconforming front elevation building height from 28.75' to 29.33', as shown on the architectural plans.

3. A variance is hereby granted from the rear elevation building height maximum of 37.5' in Section 225-146(D) of the Ordinance to permit an addition that will slightly increase the nonconforming rear elevation building height from 38.2' to 37.5', as shown on the architectural plans.

4. A variance is hereby granted for the building height limits in Section 225-146(D) and the exceptions in Section 225-116(H)(2) to permit the applicant to install a cupola on the existing roof that will have a maximum additional height of 8' above the current roof line, as shown on the architectural plans.

5. A variance is hereby granted from the 30% maximum lot coverage ratio requirement in Section 225-146(F) of the Ordinance to permit improvements that will maintain the nonconforming lot coverage ratio of 71%, as shown on the architectural plans.

6. A variance is hereby granted from the restriction against enlargement of nonconforming structures in Section 225-115(B) of the Ordinance to permit construction of a partial second story rear addition and cupola as shown on the architectural plans.

#### Variance Conditions

These variances are granted subject to the following express conditions:

1. The applicant shall obtain a building permit and any other necessary approvals.

2. Any outstanding property taxes, application fees and technical review fees shall be paid prior to issuance of a building permit and certificate of occupancy.

3. These variances are based on and authorize only the specific proposed partial second story rear addition and cupola as presented by the applicant in the testimony and plans. 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 submit for review and approval revised plans consistent with testimony at the hearing.
- b. The applicant shall work cooperatively with the Township Engineer concerning any appropriate adjustment to the stormwater management plan.

5. In accordance with Section 225-35(C)(1) of the Ordinance, these variances shall expire unless the authorized construction is commenced within one year from the date of this resolution and is subsequently pursued in a reasonably diligent manner.

#### Vote on Resolution

For the Oral Approval Resolution: Flanagan, Newlin, Sovolos, Chipperson & Rosenbaum.

Against the Oral Approval Resolution: None.

For the Form of the Written Resolution: Newlin & Chipperson.

Against the Form of the Written Resolution: None.