

**HARDING TOWNSHIP BOARD OF ADJUSTMENT  
MINUTES  
October 17, 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	Present
Mr. Rosenbaum	Present	Mr. Addonizio	Present
Mr. Symonds	Present	Ms. Chipperson	Present
Mr. Cammarata	Present		

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

**REGULAR MEETING**

**MINUTES**

Mr. Flanagan made a motion to approve the September 19, 2019 minutes with an amendment and a typographical correction. Mr. Newlin seconded the motion. On a voice vote, all were in favor of approving the minutes with the corrections.

Mr. Flanagan made a motion to approve the October 5, 2019 Site Inspection minutes. It was seconded by Mr. Newlin. On a voice vote, all were in favor of approving the Site Inspection minutes.

**ADMINISTRATIVE**

Mr. Flanagan noted that BOA# 09-19 Mezzalingua was carried until the November 21, 2019 meeting.

**RESOLUTION**

<u>Application BOA# 04-19</u>	Patricia Gargiulo
	595 Van Beuren Road, B5/L8, R-1 Zone

Mr. Flanagan made a motion to adopt the resolution. It was seconded by Mr. Rosenbaum. A roll call vote went as follows:

For: Mr. Flanagan, Mr. Maselli, Mr. Rosenbaum, Ms. Chipperson and Ms. Sovolos

A copy of the resolution is appended to the minutes.

**OLD BUSINESS**

Application BOA# 08-19

Jacob and Rose Moncayo

4 Baxter Farm Road, B33/L7.08, B-2 & R-3 Zone

Applicant requesting variance relief for a side setback as per NJSA 40:55D-70(c), an FAR variance as per NJSA 40:55D-70(d)(4), a building height variance as per NJSA:55D 70(d)(6) and an accessory residence variance as per NJSA:55D 70(d)(1).

Presenting:

Rosemary Stone Dougherty, Attorney

Aric Gitomer, Architect

Mr. Gitomer was sworn in for testimony.

Ms. Sovolos and Mr. Flanagan both noted that they visited the site.

- Ms. Stone-Dougherty presented proposed plans for a rear addition to the home to enlarge the kitchen and a two-car detached garage with a studio office.
- Ms. Stone- Dougherty noted that the property is in split B-2/R-3 zones with a bulk of the dwelling in the B-2 zone thus enforcing B-2 requirements for setbacks, height and FAR.
- Mr. Gitomer presented elevations for the proposed renovation. Mr. Gitomer showed the new kitchen expansion and the relocation for the master suite to the second floor over the existing garage.
- Ms. Stone Dougherty noted the additional change in foot print to the house is 220 square feet and the additional square footage to the home is 1200 square feet.
- Mr. Gitomer showed the garage elevation with 2 garage bays and a studio office above. He noted that Mr. Moncayo wanted a high ceiling in the garage to work on cars and that Ms. Moncayo wanted an office with a kitchenette, sink, microwave, refrigerator, a powder room and a closet.
- Mr. Gitomer noted that the square footage of each floor is 960 sq. ft.
- Mr. Gitomer noted that the height of the detached garage is 34 feet.
- Mr. Newlin asked how to prevent the studio office from becoming an apartment in the future.
- Ms. Stone-Dougherty noted that the applicants were willing to deed restrict the property to prohibit that possibility.
- Mr. Hall noted that the permitted height is 25 feet for the garage.
- Mr. Flanagan noted the height far exceeds the ordinance and the setback request for this property is very large. Mr. Flanagan asked if there was any way to position the garage into a more conforming location.
- Ms. Stone-Dougherty noted that the septic, impervious coverage and view drove the concept for the location of the garage.
- Mr. Hall also noted that the application is proposed at 50% above the FAR for the lot.
- Mr. Maselli noted the mass of the detached garage does not say rural garage.
- Ms. Stone-Dougherty asked to carry the application until the November meeting so the applicant's engineer can be present to address the stated objections.
- The board members discussed their concerns.

Application BOA# 10-19

Carolyn Ferolito

81 & 87 Village Road, B 16/L14 & 14.01, R-R Zone

Applicant requesting variance relief for side setback, as per NJSA 40:55D-70(c) and a conditional use variance as per NJSA:55D 70(d)(1).

Presenting:

Simone Calli, Attorney

Dennis Keenan, Engineer

Frank Rawding, Architect

Mr. Rawding and Mr. Keenan were sworn in for testimony

Ms. Sovolos Mr. Symonds and Mr. Flanagan visited the property.

- Ms. Calli presented proposed plans for a carriage house/garage accessory structure.
- Ms. Calli noted that the owner is proposing to consolidate the two lots.
- Ms. Calli noted that there was a D(3) conditional use variance and a site plan on this application.
- Mr. Keenan noted that presently the lot is vacant with an existing driveway.
- Mr. Keenan clarified the proposed use of the accessory garage/carriage house and its access to the main dwelling.
- Mr. Hall noted that there are Harding Land Trust conservation easements on the property with a foot path between the existing two properties.
- Mr. Flanagan and Ms. Sovolos questioned the side yard setback of 78 feet and the location of the garage on the lot.
- Mr. Newlin noted that it was pointed out at the site inspection that moving the building to avoid the setback would result in the removal of several mature trees.
- Mr. Keenan addressed the reasons for the proposed relief.
- Mr. Rawding explained the garage use would be for agricultural equipment and a luxury car.
- Mr. Rawding noted that they are using the same foot print of a prior existing home on the lot.
- Mr. Rawding noted that the apartment would be for overflow of guests.

Mr. Flanagan made a motion to approve the application upon the contingent of the lot consolidation of the two lots. It was seconded Mr. Newlin. A roll call vote went as follows:

For: Mr. Flanagan, Mr. Newlin, Mr. Symonds, Ms. Chipperson, Mr. Maselli, Mr.

Addonizio, and Mr. Rosenbaum.

Against: None

Application BOA# 11-19

Fred and Mary Alice Lawless

614 Spring Valley Road, B3/L4, R-1 Zone

Applicant requesting variance relief for setbacks, as per NJSA 40:55D-70(c).

Mr. Maselli recused himself for the application.

Presenting:

David Brady, Attorney

Fred and Mary Alice Lawless, Owners

Mark Walker, Engineer

Mr. Walker was sworn in for testimony.

- Mr. Brady presented plans for a proposed renovation on a lot that is situated in both Harding and Chatham.
- Mr. Brady noted an existing home from the 1930's and a pool and some sheds on the property.

- Mr. Brady noted that they are proposing to add another garage bay and an expansion of the kitchen on the Loantaka Lane side of the dwelling.
- Mr. Brady noted that the reports from the HPC and BOH were favorable.
- Mr. Brady noted the variance is for an existing 76 ft. setback extending along the garage line.
- Mr. Hall noted an existing shed within the setback.
- Mr. Brady noted the existing pool is in front of the house.
- Ms. Flanagan noted an error on the zoning table for building area. The actual building area is 3367 square feet.
- Mr. Symonds noted that shielded lighting should be taken into consideration to preserve the Night Sky.
- Mr. Walker presented Exhibits A-1 and A-2, aerial photos for the property.
- Ms. Chipperson noted that screening should be considered for the additional driveway pavement.

Mr. Flanagan made a motion to approve the application with the condition of a revised zoning table being submitted and with landscape screening be installed along the driveway. Mr. Rosenbaum seconded the motion. A roll call vote went as follows:

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

Against: None

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

Dr. Bruce Eisenstein, RF Specialist

Frances Boschulte, RF Specialist for Verizon

Mr. Hall is recused from this application. Mr. Steve Mlenak is counsel on this application.

Rob Simon, Attorney for objectors

A transcript of the testimony is appended to the minutes.

Mr. Newlin left early at 9:15.

**OTHER BUSINESS**

**ADJOURNMENT**

Mr. Flanagan adjourned the meeting at 11.00.

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Respectfully submitted by

**HARDING TOWNSHIP BOARD OF ADJUSTMENT  
RESOLUTION**

**Michael & Patricia Gargiulo - Application No. BOA 4-19  
595 Van Beuren Road - Block 5, Lot 8  
Adopted October 17, 2019**

WHEREAS, Michael and Patricia Gargiulo applied to the Harding Township Board of Adjustment for a variance from Section 225-122(H) of the Land Use and Development Ordinance, which limits the maximum lot coverage ratio to 10%, to permit installation of a swimming pool patio and other paved areas on their residential property located in a RR Zone at 595 Van Beuren Road and designated on the Township Tax Map as Block 5, Lot 8 and a contiguous parcel designated on the Morris Township Tax Map as Block 7504, Lot 8; and

WHEREAS, the Board of Adjustment conducted a public hearing on the application at meetings on May 16, 2019, July 18, 2019 and September 19, 2019 at the Harding Township Municipal Building, for which public notice and notice by applicants were given as required by law; and

WHEREAS, the Board of Adjustment conducted a site inspection at a special meeting on June 8, 2019, for which special meeting notice was provided; and

WHEREAS, the application was amended several times during the public hearing process to reduce the proposed lot coverage ratio, thus reducing the magnitude of the requested variance relief; and

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

WHEREAS, at the meeting on September 19, 2019, the Board of Adjustment adopted an oral resolution approving the amended variance application, 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 17th day of October 2019, that approval of the amended variance application of Michael and Patricia Gargiulo is hereby memorialized as follows:

**Findings of Fact and Statement of Reasons**

1. The applicants' property is a flag lot located in a RR Zone at 595 Van Beuren Road. It includes a small undeveloped parcel to the north side that is located in Morris Township that contains .685 acres of land. The flag staff has an area of 1.428 acres. The lot size for zoning purposes includes the land in Morris Township and excludes the area of the flagstaff, resulting in net lot size of 7.066 acres.
2. The property is improved with a single-family residence and related improvements that are being constructed to replace the prior residential improvements, as shown on plans prepared by Yannaccone, Villa & Aldrich, LLC, initially dated March 12, 2019. The current residential improvements are being constructed pursuant to permits issued based on plans showing compliance with all zoning criteria, specifically including the 10% lot coverage ratio limit in Section 225-122(H).
3. The applicants requested necessary variance approval to permit installation of a swimming pool patio and other impervious lot coverage shown on the variance plan in order to implement the original plan for residential redevelopment of the property that had been prepared premised on the erroneous assumption that the replacement residential development could continue to utilize the nonconforming lot coverage ratio of 11.7% for the residential improvements being replaced.
4. As initially proposed, the proposed additional improvements would result in a lot coverage ratio of 12.7%, requiring a variance from the 10% maximum in Section 225-122(H). As described below, the proposal was revised several times, resulting in a final proposed new ratio of 10.7%.
5. The applicants were represented in proceedings before the Board of Adjustment by Nicole M. Magdziak, Esq. and Thomas J. Malman, Esq., of Day Pitney LLP.
6. Testimony in support of the application was provided by engineer Greg Yannaccone and by landscape architect Brian Bosenberg.
7. No neighbor or member of the public appeared at the public hearing.
8. Testimony at the hearing indicated that the initial design work for residential redevelopment or the property proceeded on the erroneous assumption that the property was subject to grandfathering protection for the nonconforming lot coverage ratio of 11.7% even though the prior nonconforming residential improvements were designated for complete removal and replacement. Upon learning that this assumption was erroneous, the applicants' consultants revised the plans to eliminate proposed lot coverage areas, such as the pool patio and walkways, in an amount sufficient to show a new lot coverage ratio compliant with the 10% maximum in Section 225-122(H), thus permitting issuance of construction permits. At the same time, the applicants' professionals prepared and submitted an application for a variance for a 12.7% lot coverage ratio to allow additional lot coverage consistent with the original plan for residential redevelopment of the property.
9. Concern was expressed by Board members that consideration had not been given to reducing any of the sprawling building footprint in order to retain more outdoor lot coverage without exceeding the 10% lot coverage ratio limit. As a practical matter, that option had been largely negated by the time of the variance application as a result of the applicants' decision to submit a conforming application and initiate construction prior to requesting variance relief for lot coverage that had been planned for at the outset.
10. The application was amended in response to the foregoing concerns. The initial revised proposal was presented at the site inspection held on June 8, 2019, which reduced the proposed lot coverage ratio to 11.7%, equal to the prior nonconforming ratio. A further revision reduced the proposed ratio to 10.7%, as shown on plans revised August 29, 2019 that were discussed at the final public hearing on September 19, 2019.
11. Notwithstanding continued concerns, a majority of the Board concluded that the requested variance relief should be granted for the final revised proposal.  
The proposed pool patio and related lot coverage improvements will enhance the residential use of the applicants' property.
12. As a result of the size and surrounding land use context of this flag lot and existing and proposed perimeter evergreen buffering, the improvements will be screened from surrounding properties.
13. The applicants will be providing dry well/stormwater management improvements in excess of applicable requirements, thus mitigating any impact of the lot coverage variance.
14. Under these particular circumstances, granting variance relief for the proposed improvements will not result in any adverse impacts on adjacent properties.

15. In the case of this specific property, and the location and characteristics of existing and proposed improvements, perimeter vegetation and the surrounding land use context, strict application of the lot coverage ratio limit would impose exceptional practical difficulties on the applicants by precluding the proposed pool patio and related lot coverage improvements, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).

16. The variance requested by the applicants 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 10% maximum lot coverage ratio limit in Section 225-122(H) of the Land Use and Development Ordinance to allow installation of a swimming pool patio and other lot coverage improvements on the applicants' property that will result in a lot coverage ratio of 10.7%, as shown on plans prepared by Yannaccone, Villa & Aldrich, LLC, initially dated March 12, 2019 and last revised August 29, 2019, and on a proposed lot coverage plan prepared by Bosenberg Landscape Architecture, dated May 14, 2019 and last revised August 29, 2019.

**Variance Conditions**

This variance is granted subject to the following conditions:

1. Any outstanding property taxes, application fees and technical review fees shall be paid prior to the start of any site work.

2. The applicants shall obtain any other necessary approvals.

3. This variance is based on and authorizes only the specific lot coverage improvements proposed by the applicants as set forth in the testimony, application and revised variance and lot coverage plans. New or amended variance approval may be required for any materially different improvements.

4. In accordance with Section 225-35(C)(1) of the Ordinance, this variance 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 Resolutions**

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

Against the Oral Resolution: Newlin & Symonds.