

**HARDING TOWNSHIP BOARD OF ADJUSTMENT
MINUTES
November 21, 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	Excused
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 October 17, 2019 minutes. Mr. Newlin seconded the motion. On a voice vote, all were in favor of approving the minutes.

ADMINISTRATIVE

Mr. Flanagan noted that BOA# 09-19 Mezzalingua and BOA# 17-18 Verizon were carried until the December 19, 2019 meeting.

RESOLUTION

<u>Application BOA# 10-19</u>	Carolyn Ferolito 81 & 87 Village Road, B 16/L14 & 14.01, R-R Zone
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Mr. Flanagan made a motion to adopt Resolution BOA #10-19 Ferolito with an amendment. It was seconded by Mr. Newlin. On a voice vote all eligible members were in favor of adopting the resolution.

<u>Application BOA# 11-19</u>	Fred & Mary Alice Lawless 614 Spring Valley Road, B3/L4, R-1 Zone
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Mr. Flanagan made a motion to adopt Resolution BOA #11-19 Lawless. It was seconded by Mr. Symonds. On a voice vote all eligible members were in favor of adopting the resolution.

Resolution BOA# 08-2019

Do Not Exceed Limit for Gary Hall

Mr. Flanagan made a motion to adopt Resolution BOA #08-2019 Do Not Exceed Limit for Gary Hall. It was seconded by Mr. Newlin. On a voice vote all eligible members were in favor of adopting the resolution.

A copies of the resolutions are 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

Robert Templin, Engineer

William Page, Planner

Rosanna Moncayo, Owner

Mr. Hall swore in Mrs. Moncayo, Mr. Templin and Mr. Page for testimony.

- Ms. Stone-Doherty noted the reduction and revisions made to the plans since the October meeting.
- Mr. Gitomer noted the reduced footprint, the reduced setback to 50ft. and the reduced height of the accessory garage. He noted the reduced size of the office space in the accessory garage and the relocation of the powder room to the first floor of the garage.
- Mr. Templin addressed the Board Engineer's report. He noted that the existing septic fields drove the placement of the accessory garage. He agreed to an evergreen buffer along the driveway. He addressed the impervious coverage and turnaround area on the driveway. He agreed that the drywells would be to code.
- Mr. Page presented Exhibit A-1 and A-2, aerial views of the sites giving the board perspective of the neighboring properties.

Mr. Flanagan made a motion to approve the application with the condition of landscape screening along the driveway, dark sky ordinance lighting, and the removal of the driveway appendage. The motion was seconded by Mr. Newlin. A roll call vote went as follows:

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

Against: None

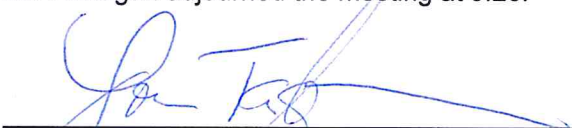
OTHER BUSINESS

Master Plan Discussion

The Board discussed the upcoming Master Plan Reexamination. Ms. Taglairino will send the 2013 Reexamination and last five annual reports and the 2008 Split Lot Study to the Board members for information.

ADJOURNMENT

Mr. Flanagan adjourned the meeting at 9:20.



Respectfully submitted by

Lori Taglairino, Board of Adjustment

HARDING TOWNSHIP BOARD OF ADJUSTMENT RESOLUTION

**Grant of (d)(3) Variance & Conditional Use/Minor Site Plan Approval
Carolyn Ferolito - Application No. 10-19
81 & 87 Village Road - Block 16, Lots 14 & 14.01
Adopted November 21, 2019**

WHEREAS, Carolyn Ferolito applied to the Harding Township Board of Adjustment for a (d)(3) variance and conditional use/minor site plan approval pursuant to Section 105-178 of the Land Use and Development Ordinance, and a related (c) variance from the 100' minimum setback requirement in Section 225-122(F), to permit construction of an accessory structure containing an accessory residence on the second floor with a side setback of less than the required 100' on property located in a RR Zone at 81 and 87 Village Road, currently designated on the Township Tax Map as Lots 14 and 14.01 in Block 16, that will be merged to be a single lot that will be designated as new Lot 14.02 in Block 16; and

WHEREAS, the Board of Adjustment conducted a public hearing on the application at meetings on September 19, 2019 and October 17, 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 at a noticed public session on October 5, 2019; and

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

WHEREAS, at the meeting on October 17, 2019, the Board of Adjustment adopted an oral resolution approving the 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 21st day of November 2019, that approval of the application of Carolyn Ferolito for a (d)(3) variance, a (c) variance, and conditional use/minor site plan approval to permit construction of an accessory structure containing an accessory residence is hereby memorialized as follows:

Findings of Fact and Statement of Reasons

1. The property currently consists of 2 contiguous lots in common ownership located at 81 and 87 Village Road in a RR Zone. It has a combined area of 25.840 acres.

2. Lot 14, which has an area of 6.6 acres, is improved with a single-family residence and related accessory structures. Lot 14.01, which has an area of 19.1 acres, previously was improved with a residence, but is now vacant. Except for the former residence site and the driveway connected to Village Road, Lot 14.01 is subject to a conservation easement conveyed to the Harding Land Trust in 1996. The property and current improvements were shown on a survey prepared by Solstice Surveying, dated April 3, 2019.

3. The applicant proposed to merge the 2 contiguous lots and construct an accessory structure on the unrestricted area on current Lot 14.01 that would have a garage and work area on the lower level and a guest suite on the upper level, as shown on a variance plan prepared by French & Parrello Associates, dated July 1, 2019, and on architectural plans prepared by F. J. Rawding, A.I.A., dated May 3, 2019.

4. The proposed carriage house structure would have a minimum east side setback of 78', requiring a variance from the 100' minimum side setback requirement in Section 225-122(F).

5. The proposed guest suite requires conditional use and minor site plan approval pursuant to Section 225-178 of the Ordinance, which governs accessory residences.

6. The proposed improvements would conform with all conditional use criteria applicable to accessory residences in Section 225-178, except for the 100' minimum setback requirement in Section 225-178(E), thus requiring a (d)(3) conditional use variance.

7. The applicant was represented in proceedings before the Board of Adjustment by Simone Calli, Esq. of Calli Law.

8. No neighbor or member of the public objected to the application.

9. The Township Department of Health issued a memorandum dated August 1, 2019 that indicated the absence of any objection, subject to approval of a complete application prior to issuance of a building permit.

10. Board Planner McKinley Mertz, P.P./A.I.C.P., issued a memorandum, dated October 14, 2018, that commented on the application.

11. Township Engineer Paul D. Fox, P.E., issued a memorandum, dated October 15, 2018, that commented on the application.

12. Board Planner Mertz and Township Engineer Fox both attended the public hearing and responded to oral questions.

13. Testimony in support of the application was provided by property manager Casey Masterson, who indicated that the garage and work area on the lower level of the proposed structure would be used mainly for vehicle storage for property maintenance and related purposes. There would be limited use for garaging personal vehicles associated with the primary residence. The accessory apartment was intended to be used for guests, rather than by an on-site employee.

14. The applicant's representatives acknowledged that the conditional use regulations for accessory apartments in Section 225-178 limit occupancy to temporary guests, immediate family members and employees working on the premises. Unrestricted rental is only permitted if

the structure is specifically determined to be a contributing historic structure. The applicant did not request such a determination or any variance relief from the occupancy restrictions.

15. Testimony was provided by engineer Denis Keenan, who indicated that a conforming side setback could be provided by shifting the location of the proposed structure, but doing so would require removal of some mature trees. This alternative was considered to be less appropriate than the limited proposed deviation from the 100' side setback requirement.

16. Architect Jeff Rawding testified concerning the architectural plans. He indicated that the proposed accessory residence complied with all applicable size criteria. He noted that the 1,200 square foot living space limit might be slightly exceed if the lower level entry area were included in the calculation, but in his opinion doing so would not be appropriate. That opinion was not questioned.

17. Engineer Fox noted that a literal reading of the Ordinance might produce a determination that the proposed location of the accessory structure would be in front of the front building façade for the residence, which would require a separate conditional use variance from Section 225-178. This was discussed by the Board, resulting a conclusion that the Ordinance should not be literally interpreted in that manner, since the accessory structure would not have the appearance of being in front of the principal residence in this particular situation.

18. The Board of Adjustment concludes that variance relief is appropriate pursuant to N.J.S.A. 40:55D-70(d)(3) to permit construction of an accessory structure containing an accessory residence with a side setback of 78' versus a 100' minimum based on the following:

- a. The accessory structure will comply with all other conditions and zoning requirements.
- b. The setback deviation is limited to a corner of the abutting property, and the residence on that property is separated and buffered by a significant wooded area.
- c. The site of the proposed accessory structure was previously improved with a single-family residence.
- d. Following the required merger of current Lots 14 and 14.01, the property will have a total area of 25.8 acres, much of which will continue to be subject to the current conservation easement restricting development. A future subdivision to permit an additional building lot is unlikely.
- e. The accessory structure will not be visually obtrusive due to its location.
- f. Granting the requested variance will avoid the necessity for tree removal.
- g. The proposed accessory residence will have no impact on neighboring properties.
- h. Under these particular circumstances, the proposed accessory residence use will be consistent with the purpose of the accessory residence conditional use regulations notwithstanding the noncompliant side setback for the accessory structure.

19. For the same reasons, variance relief from the 100' minimum setback requirement in Section 225-122(F) is appropriate pursuant to N.J.S.A. 40:55D-70(c)(1) & (2).

20. All of the requested variance relief 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.

21. Subject to compliance with all conditions in this resolution, the applicant's proposal complies with all requirements for conditional use and minor site plan approval for an accessory residence

Description of Development Approvals

1. A variance is hereby granted pursuant to N.J.S.A. 40:55D-70(d)(3) from Section 225-178(E) of the Land Use and Development Ordinance to permit an accessory residence in the second floor area of a proposed accessory structure with a minimum side setback of 78', as shown on a variance plan prepared by French & Parrello Associates, dated July 1, 2019, and on architectural plans prepared by F. J. Rawding, A.I.A., dated May 3, 2019.

2. A variance is hereby granted from the 100' minimum setback requirement in Section 225-122(F) of the Ordinance to permit construction of an accessory structure with a minimum side setback of 78', as shown on the variance plan and architectural plans.

3. Conditional use and minor site plan approval is hereby granted pursuant to Section 225-178 of the Ordinance to permit construction on the applicant's property of an accessory structure containing an accessory residence in the second floor, as shown on the variance plan and architectural plans.

Approval Conditions

1. The applicant shall obtain Health Department approval, a building permit and any other necessary approvals for the accessory residence and comply with comments in the memorandum issued by the Board Engineer.

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

3. These approvals are granted based on the specific proposed improvements as set forth in the testimony and plans. New or amended variance relief may be required for any materially different improvements.

4. The conditional use approvals are limited to the second floor area of the proposed accessory structure. The interior area may be modified to provide up to 2 separate bedrooms, but the living area of the structure devoted to accessory residence use shall not be enlarged.

5. In accordance with Section 225-178 of the Ordinance, occupancy of the accessory residence shall be restricted to immediate family members, employees working on the premises and/or temporary guests.

6. These approvals are granted subject to the condition that the applicant shall submit a proposed lot merger deed for review and approval by the Board Attorney, and evidence of recording the approved lot merger deed shall be submitted prior to issuance of a building permit for the accessory structure.

7. These variance approvals shall expire if construction of the authorized accessory structure is not commenced within 2 years of the date of this resolution

Vote on Resolutions

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

Against the Oral Resolution: None.

For the Form of the Written Resolution: Flanagan, Maselli, Newlin, Rosenbaum, Sovolos & Chipperson.

Against the Form of the Written Resolution: None.

HARDING TOWNSHIP BOARD OF ADJUSTMENT RESOLUTION

**Fred & Mary Alice Lawless - Application No. BOA 11-19
614 Spring Valley Road - Block 3, Lot 4
Adopted November 21, 2019**

WHEREAS, Fred and Mary Alice Lawless applied to the Harding Township Board of Adjustment for variances from Section 225-115(B) of the Land Use and Development Ordinance, which prohibits the enlargement of nonconforming structures, and from Section 225-122(F), which requires 100' setbacks, in order to authorize construction of additions to their nonconforming residence on a lot located in a R-1 Zone at 614 Spring Valley Road and designated on the Township Tax Map as Block 3, Lot 4 and also a contiguous small parcel in the rear corner designated on the Chatham Township Tax Map as Block 140, Lot 4.03; and

WHEREAS, the Board of Adjustment conducted a public hearing on the application at a meeting on October 17, 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 determined that a site inspection was not necessary based on the characteristics of this specific property and development proposal; and

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

WHEREAS, at the meeting on October 17, 2019, the Board of Adjustment adopted an oral resolution approving the 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 21st day of November 2019 that approval of the variance application of Fred and Mary Alice Lawless is hereby memorialized as follows:

Findings of Fact and Statement of Reasons

1. The applicants' property is located in a R-1 Zone at 614 Spring Valley Road. It is a corner lot with the residence facing Spring Valley Road and driveway access from Loantaka Lane North. It has a combined lot size of 8.811 acres, including a small contiguous undeveloped parcel in Chatham Township.

2. The property is improved with a single-family residence that is a nonconforming structure due to front setback from Loantaka Lane North (76.4' versus 100' minimum). The property also contains a swimming pool opposite the south end of the residence, a conforming shed in the south side of the rear yard, and a shed in the north side of the rear yard with a front setback from Loantaka Lane North of less than 100'. The rear portion of the property contains freshwater wetlands and related regulated wetlands transition areas that are not impacted by any existing or proposed improvements. The current improvements were shown on an Overall Site Layout Plan and on a Variance Plan, both prepared by Dykstra Walker Design Group, dated May 4, 2019.

3. The applicants proposed to modify their nonconforming residence by constructing a two story addition and covered porch to the south end of the residence opposite the swimming pool, a one and two story addition to the rear of the north end and a one story entry addition to the northwest corner facing Loantaka Lane North, as shown on the variance plan and on architectural plans prepared by Richard W. Nelson, AIA, last dated July 7, 2019.

4. The proposed additions to the north end of the residence would maintain the nonconforming front setback from Loantaka Lane North of 76.4', requiring variance relief from the 100' minimum setback requirement in Section 225-122(F).

5. The proposed additions also require a variance from Section 225-115(B) to allow enlargement of the applicants' nonconforming residence.

6. The applicants were represented in proceedings before the Board of Adjustment by David Brady, Esq. of Brady & Correale, LLP.

7. Testimony in support of the application was provided by engineer Mark Walker, P.E. He testified that the expanded first floor of the residence would provide an additional garage bay, additional/modernized common living space, a new guest suite, and a new entry at the northwest corner. The expanded second floor would provide an enlarged master bedroom suite, an enlarged relocated bathroom, and other enhanced living space.

8. The Township Department of Health provided a comment memorandum dated August 5, 2019 that indicated no objection to the variance application, subject to approval of a separate application prior to issuance of a building permit.

9. The Township Historic Preservation Commission issued a comment memorandum dated October 3, 2019 that noted that the property is an independent contributing site and recommended approval of the variance application.

10. No member of the public or neighbor objected to the application.

11. The need for setback variance relief for the additions is attributable to the nonconforming location of the residence relative to Loantaka Lane North.

12. The nonconforming front setback from Loantaka Lane North setback will not be reduced, the conforming front setback from Spring Valley Road will not be altered, and the limited expansion of the building footprint to the rear of the residence will not appreciably alter the appearance of building mass when viewed from Loantaka Lane North.

13. The additions will conform with all other setback requirements and will not alter compliance with the building area and lot coverage ratio limits.

14. The applicants' representatives agreed to comply with all outdoor lighting regulations, add additional landscaping on both sides of the driveway between the additions and Loantaka Lane North, and correct the zoning table included with the application.

15. Under these particular circumstances, the proposed improvements will not result in any adverse impacts on adjacent properties.

16. In the case of this specific property and the location and design of the existing and expanded residence, strict application of the zoning requirements would impose peculiar and exceptional practical difficulties on the applicants by precluding the proposed additions, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).

17. The variance relief 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 Variances

1. A variance is hereby granted from the 100' setback requirement in Section 225-122(F) of the Land Use and Development Ordinance to authorize construction of additions to the north end of the residence that will maintain the nonconforming front setback from Loantaka Lane North of 76.4', as shown on a variance plan prepared by Dykstra Walker Design Group, dated May 4, 2019, and on architectural plans prepared by Richard W. Nelson, AIA, last dated July 7, 2019.

2. A variance is hereby granted from Section 225-115(B) of the Ordinance to allow expansion of the applicants' nonconforming residence by construction of additions, as shown on the variance plan and architectural plans.

Variance Conditions

These variances are granted subject to the following conditions:

1. The applicants 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 improvements as set forth in the testimony and plans. New or amended variance approval may be required for any materially different improvements.
4. These variances are granted subject to the condition that the applicants shall comply with all outdoor lighting regulations, add additional landscaping on both sides of the driveway between the additions and Loantaka Lane North, and submit a corrected separate zoning table, subject to review and approval by the Board Attorney prior to issuance of a certificate of occupancy.
5. In accordance with Section 225-35(C) 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 Resolutions

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

Against the Oral Resolution: None.

For the Form of the Written Resolution: Flanagan, Newlin, Rosenbaum, Symonds, Chipperson, & Sovolos.

Against the Form of the Written Resolution: None.

**HARDING TOWNSHIP BOARD OF ADJUSTMENT
RESOLUTION BOA#8-2019**

**AUTHORIZING INCREASE IN CONTRACT AMOUNT FOR PROFESSIONAL LEGAL SERVICES –BOARD OF ADJUSTMENT
ATTORNEY- GARY HALL OF MCCARTER ENGLISH
NOVEMBER 21, 2019**

WHEREAS, the Board of Adjustment previously contracted Gary Hall, Board of Adjustment Attorney, of the firm McCarter English for legal services on January 17, 2019 via resolution BOA#3-2019 for an amount not to exceed \$9,500.00; and

WHEREAS, due to additional legal services now anticipated for 2019, there exists a need to increase the contract amount by an additional \$4,000.00; and

WHEREAS, the cost of this contract is not anticipated to exceed \$17,500; and

WHEREAS, the Board of Adjustment recommends that the total contract amount be increased to \$13,500.00; and

WHEREAS, the Chief Financial Officer has certified that additional funds are available and shall be encumbered through account #01-2019-1185-0185-2-00035 in an amount not to exceed \$13,500.00.

BE IT RESOLVED, by the Board of Adjustment of the Township of Harding in the County of Morris and State of New Jersey that an amendment to the existing contract with McCarter English to increase the contract amount by \$4,000.00 for a total not to exceed amount of \$13,500.00 be and is hereby approved; and

BE IT FURTHER RESOLVED, that the Board of Adjustment be and are hereby authorized to execute an appropriate Amendment to Contract on behalf of the Board to reflect the increased contract amount authorized by this resolution; and

BE IT FURTHER RESOLVED, that notice of this contract will be published as required by law within ten days of the passage of this Resolution.

DATED: November 21, 2019

I, Lori Taglairino, Board of Adjustment Secretary of the Township of Harding, County of Morris, State of New Jersey, do hereby certify the foregoing resolution to be a true and correct copy of a resolution adopted by the Board of Adjustment at the meeting held November 21, 2019.