

**HARDING TOWNSHIP BOARD OF ADJUSTMENT  
MINUTES  
DECEMBER 19, 2019  
7:30 PM**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Board of Adjustment Vice-Chair Mr. 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.

**ROLL CALL**

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

Ms. Sovolos	Present	Mr. Newlin	Present
Mr. Flanagan	Present (8:15)	Mr. Maselli	Excused
Mr. Rosenbaum	Present	Mr. Addonizio	Present
Mr. Symonds	Present	Ms. Chipperson	Present
Mr. Cammarata	Excused		

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

**REGULAR MEETING**

**MINUTES**

Mr. Symonds made a motion to approve the November 21, 2019 minutes. Mr. Rosenbaum seconded the motion. On a voice vote, all were in favor of approving the minutes.

**ADMINISTRATIVE**

Mr. Newlin noted that BOA# 09-19 Mezzalingua and BOA# 17-18 Verizon were carried until the January 16, 2019 meeting.

**RESOLUTION**

<u>Application BOA# 08-19</u>	Jacob and Rose Moncayo
	4 Baxter Farm Road, B33/L7.08, B-2 & R-3 Zone

Mr. Newlin made a motion to adopt Resolution BOA #08-19 Moncayo. It was seconded by Ms. Sovolos. On a voice vote all eligible members were in favor of adopting the resolution.

A copy of the resolution is appended to the minutes.

**NEW BUSINESS**

<u>Application BOA# 14-09</u>	George Ty Monk
	83 Meyersville Road, B55/L1, R-2/R-1 Zones

Applicant is requesting Variance relief for a front setback for an existing non-conforming dwelling as per NJSA 40:55D-70(c).

Presenting:

Candice Davis, Engineer

George Monk, Owner

Mr. Hall swore in Mr. Monk and Ms. Davis.

- Mr. Monk shared his proposed plan to do a second story renovation and improvements, raising the roof of the existing dwelling.
- Ms. Davis noted that there would be no increase to the footprint of the existing non-conforming structure. Ms. Davis also noted that the applicant was seeking a front setback for the existing non-conforming structure.
- Ms. Davis also noted to the Board that the structure is in a split-zone lot and that all of the construction would be in the R-2 Zone.
- Ms. Davis stated that the proposed new height of the renovation would be 34.8 feet. She noted that the first floor would remain with an 8 foot ceiling height and that the renovated second floor would have a 9 ft. ceiling height.
- Mr. Symonds inquired as to why the applicant needed the extra ceiling height for the second floor.
- There was a discussion about the bulk elements of the application.

Mr. Newlin made a motion to approve the application as submitted. The motion was seconded by Mr. Rosenbaum. A roll call vote went as follows:

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

Against: Mr. Symonds,

### **OTHER BUSINESS**

Master Plan Discussion

The Board discussed their position as to making decisions for the upcoming Master Plan Reexamination. After a lengthy discussion the Board identified items to be looked at but had no recommendations for change and asked Mr. Hall to prepare a memo for the Planning Board.

### **ADJOURNMENT**

Mr. Flanagan adjourned the meeting at 8:50.



Respectfully submitted by

Lori Taglairino, Board of Adjustment

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HARDING TOWNSHIP BOARD OF ADJUSTMENT

RESOLUTION

Jacob & Rosana Moncayo - Application No. BOA 8-19  
4 Baxter Farm Road - Block 33, Lot 7.08

**Adopted December 19, 2019**

WHEREAS, Jacob and Rosana Moncayo 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 maximum building height restriction of 25' in Section 225-146(D), and (c) variances from Section 225-146(E), which permits minimum side setbacks of 50' as increased to 75' for the north side setback as a condition of the prior subdivision approval that created this lot, and from the maximum building height restriction of 25' in Section 225-146(D), in order to permit construction of a partial second story addition to an existing residence and a detached garage on property that is primarily in the B-2 Zone and partly in the R-1 Zone with an address of 4 Baxter Farm Road, 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 meetings on September 19, 2019, October 17, 2019 and November 21, 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 October 5, 2019; and

WHEREAS, the proposal was revised in response to comments received at the meeting on October 17, 2019, and the revised proposal was submitted and then considered at the meeting on November 21, 2019; and

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

WHEREAS, at the conclusion of the meeting on November 21, 2019, the Board of Adjustment adopted an oral resolution approving the revised variance application of Jacob and Rosana Moncayo, 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 19th day of December 2019, that the oral approval of the revised application of Jacob and Rosana Moncayo for (d) and (c) variances is hereby memorialized as follows:

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

1. The applicants own the property at 4 Baxter Farm Road that is improved with a single-family residence. The property is a through lot with frontage on both Baxter Farm Road and Mt. Kemble Avenue. The driveway for the residence is connected to Baxter Farm Road, which is a dead end street connected to Mt. Kemble Avenue.

2. The portion of the property within 200 feet of Mt. Kemble Avenue is in the B-2 Zone, which applies to most of the lot, including the footprint of the residence. A smaller portion of the lot abutting Baxter Farm Road is in the R-1 Zone.

3. Lot 7.08 (the applicants' property) was created in 1985 by a subdivision approved by the Planning Board (Application # 4-85) that split former Lot 7 (which had an area exceeding the 3 acre minimum for the R-1 Zone) into current Lots 7.08 and Lot 7.09. Former Lot 7 had been part of a subdivision approved in 1970 that also created Baxter Farm Road and 6 other lots exceeding the 3-acre minimum lot size for the R-1 Zone. The subsequent subdivision in 1985 that created Lots 7.08 and 7.09 was approved by the Planning Board because most of the area of these lots was in the B-2 Zone and complied with the minimum lot size requirement of 40,000 square feet for the B-2 Zone, that was deemed to apply notwithstanding frontage on Baxter Farm Road in the R-1 Zone. One concession to the split zone character of Lot 7.08 was a subdivision approval condition requiring a minimum north side setback of 75', rather than the otherwise applicable 50' minimum side setback requirement for the B-2 Zone.

4. The applicants' property has a total lot size of 64,625 square feet that exceeds the 40,000 square foot minimum for the B-2 Zone. The property has a conforming floor area ratio ("FAR") of 7.62% that complies with the 8.5% maximum, conforming setbacks and a conforming lot coverage ratio (13.55% vs. 30% maximum). The residence has a nonconforming building height (32.85' v. 25' maximum). The existing improvements were shown on a plot plan prepared by Templin Engineering Associates, initially dated October 15, 2018 and last revised July 18, 2019.

5. The applicants proposed to construct a partial second addition to the north end over the attached garage to provide a master bedroom suite and a single-story rear addition to expand the kitchen, along with various interior renovations. They also proposed to construct a detached garage that would have an improved second story studio with a powder room and kitchenette. The initial proposed improvements were shown on architectural plans prepared by Aric Gitomer Architect, LLC, dated December 26, 2018.

6. The initial plans indicated that the proposed improvements would increase the conforming FAR from 7.62% to 12.08%, 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. The application was subsequently revised to reduce the size of the detached garage, thus decreasing the proposed new FAR to 10.81%, reducing the extent of the requested variance relief.

7. The proposed partial second story addition would have a roof ridge line elevation of 30.43', as calculated in relation to average grade, which would be slightly less than the nonconforming building height of 30.92' for the main section of the current residence. Variance relief pursuant to N.J.S.A. 40:55D-70(d)(6) is required for the portion of the second story addition that would exceed by more than 10% the 25' maximum in Section 225-146(D) applicable to all buildings in the B-2 Zone.

8. Since the current residence is nonconforming as to height, the proposed enlargement of the residence requires variance relief from the restriction against enlargement of nonconforming structures in Section 225-115(B).

9. As initially proposed, the proposed detached garage would have a north side setback of 42.50', requiring a variance from the enhanced minimum of 75' imposed as condition of the subdivision approved by the Planning Board in 1985 (Application # 4-85). The proposed setback was increased to 50' under the revised proposal, thus reducing the extent of the required variance relief.

10. As initially proposed, the proposed detached garage would have a calculated height of 34.48', requiring variance relief from the 25' maximum in Section 225-146(D) that applies equally to principal and accessory structures in the B-2 Zone. The revised proposal reduced the proposed height to 24.75', eliminating this variance request.

11. The applicants were represented in proceedings before the Board of Adjustment by Rosemary Stone-Dougherty, Esq.

12. Testimony in support of the application was provided by the applicants and by architect Aric Gitomer, professional engineer Robert Templin, and professional planner William Page.

13. Comments on the initial and revised proposal were provided by Board Planner McKinley Mertz in memoranda dated October 11, 2019 and November 14, 2019. Ms. Mertz attended and participated in the public hearing proceedings.

14. Comments on the initial and revised proposal were provided by Board Engineer Paul Fox in memoranda dated October 15, 2019 and November 20, 2019. Mr. Fox attended and participated in the public hearing proceedings.

15. The Township Health Department issued a memorandum dated August 23, 2019 that indicated that the proposed improvements 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.

16. Proceedings at the initial substantive hearing on October 17, 2019 focused on the unusual prior approval history of this property (as noted above) and an overview of the proposal. Concerns were expressed as to the size, potential use and location of the proposed detached garage. In response, the applicants agreed to adjourn the public hearing proceedings and consider potential modifications to their proposal.

17. A revised proposal was subsequently submitted and considered by the Board at the meeting on November 21, 2019, as set forth on a revised plot plan last dated October 25, 2019 and on revised architectural plan sheets D-sk-1 & 2 dated October 28, 2019. The revised proposal was explained in testimony by architect Gitomer, who stated that the primary changes were:

- a. Reduce the location, footprint and height of the proposed detached garage to eliminate the garage height variance and reduce the extent of requested variance relief for the north side setback and reduce the FAR variance.
- b. The changes to the second story of the proposed detached garage eliminated the powder room and kitchenette and reduced the usable floor area, thus responding to concerns as to the potential for increased on-site activity.

18. Engineer Templin testified that a more conforming location for the detached garage was not practical due to the septic field locations and other factors.

19. In connection with discussion of the revised proposal, the applicants agreed to:

- a. Install a minimum of 6 evergreen trees (spruce and white pine with initial planting heights of 6'-8') opposite the proposed detached garage and driveway to provide screening for the abutting residential property to the north.
- b. Eliminate the existing impervious parking space to the northwest side of the driveway.
- c. No flood lights on the north side of the proposed detached garage.
- d. Strictly comply with all outdoor lighting regulations.

20. Planner Page presented his opinion as a licensed professional planner that variance relief was appropriate under the unique circumstances of this property and proposal and that all requested variance relief could be granted consistent with the statutory negative criteria requirement.

21. No owner of adjacent property or member of the public expressed any concerns as to this application.

22. Subject to comments in their memoranda and the additional agreed upon conditions, no objections to the revised proposal were expressed by either Board Planner Mertz or Board Engineer Fox.

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

a. The partial second story addition will not increase the nonconforming building height and will not appreciably alter the appearance of building height.

b. The building height will continue to be lower than the 35' minimum applicable to principal structures in the R-1 Zone that applies to the front yard along Baxter Farm Road.

c. The need for variance relief from the floor area ratio requirement is mainly attributable to the partial second story addition and the detached garage that will not appreciably alter the appearance of building mass from the front.

d. The partial second story addition will facilitate more efficient use of the residence without expanding the building footprint.

e. The lot coverage ratio will continue to be significantly less than the applicable minimum.

f. The conforming front setbacks will not be altered.

g. 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 for the B-2 Zone, which are primarily designed to regulate commercial development.

24. 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 and building height requirements.

25. The request for (c) variance relief from the requirements as to side setback and enlargement of nonconforming structures is modest is scope.

26. The need for (c) variance is largely attributable to pre-existing conditions and unusual circumstances of this particular property and proposal, 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.

27. All of 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 (d)(4) variance is hereby granted 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 addition and detached garage that will increase the current conforming FAR from 7.62% to 10.81%, as shown on a plot plan prepared by Templin Engineering Associates, initially dated October 15, 2018 and last revised October 25, 2019, and on architectural plans prepared by Aric Gitomer Architect, LLC, dated December 26, 2018 and revised sheets D-sk-1 & 2 dated October 28, 2019 (for the detached garage).

2. A (d)(6) variance is hereby granted from the building height maximum of 25' in Section 225-146(D) of the Ordinance to permit a partial second story addition that will have maximum height of 30.43' that will not exceed the current nonconforming building height of 30.92' for the main section of the existing residence, as shown on the architectural plans.

3. 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, as shown on the architectural plans.

4. A variance is hereby granted from the 50' minimum north side setback requirement imposed by the Planning Board in 1985 as a subdivision approval condition on Application # 4-85 to permit construction of a detached garage, as shown on the revised plot plan and revised architectural plans.

#### Variance Conditions

These variances are granted subject to the following express 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 partial second story rear addition and cupola as presented by the applicants 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 applicants shall install a minimum of 6 evergreen trees (spruce and white pine with initial planting heights of 6'-8') opposite the proposed detached garage and driveway to provide screening for the abutting residential property to the north.
  - b. The applicants shall eliminate the existing impervious parking space to the northwest side of the driveway and re-seed that area.
  - c. No flood lights shall be placed on the north side of the detached garage.
  - d. The applicants shall strictly comply with all outdoor lighting regulations.
  - e. The applicants shall submit a revised plot plan showing the landscaping and impervious lot coverage removal required by Conditions 1 and 2 and adding plan notes referencing Conditions 3 and 4. The revised plans shall be reviewed for consistency with this resolution prior to issuance of a building permit.
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: Addonizio, Chipperson, Flanagan, Maselli, Newlin, Symonds, & Rosenbaum.

Against the Oral Approval Resolution: None.

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

Against the Form of the Written Resolution: None.