

**HARDING TOWNSHIP  
PLANNING BOARD MINUTES  
SEPTEMBER 28, 2020**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE-**

The Planning Board Vice-Chair, Mr. Clew called the electronic meeting to order at 7:30 and announced that adequate notice of this meeting had been made to the Daily Record and Observer Tribune. Notice was posted on the Township web page and on the bulletin board in the Township Hall on Blue Mill Road in Harding, New Jersey, and filed with the Township Clerk.

**ROLL CALL**—Ms. Taglairino

The roll was called. The following were present:

Mr. Bjorkedal, Mr. Clew, Mr. Jones, Mr. Dietz, Mr. Modi, Mr. Saulnier, Mr. Chipperson, Ms. Claytor, Mr. Edgar, Mr. dePoortere and Mr. Newlin.

Mr. Hall, the Board Attorney, Mr. Fox, the Board Engineer, Ms. Taglairino, Board Secretary and Ms. Mertz, the Board Planner were also in attendance as well as Ms. Gable, the Planner for the Open Space Element.

**REGULAR MEETING**

**MINUTES**

Mr. Jones made a motion to approve the August 24, 2020 minutes with a grammatical correction and a note that Mr. Clew did not stay until the end of the meeting. The motion was seconded by Mr. Chipperson. On a voice vote, all eligible members voted to approve the minutes.

**RESOLUTION**

<u>Application PB # 02-20</u>	529 Waterfront Properties, LLC 579 Van Beuren Road, B5L5, RR-Zone Applicant seeking a 3 lot subdivision with 3 bulk variances.
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Mr. Clew made a motion to adopt Resolution PB# 02-20 529 Waterfront Properties. It was seconded by Mr. Newlin. A roll call vote went as follows:

For: Chipperson, Clew, Dietz, Edgar, Jones, Newlin, Saulnier and Claytor.

Against: None

**ADMINISTRATIVE**

Mr. Saulnier announced that the Master Plan Reexamination was carried until the October 26 meeting.

## **MASTER PLAN**

There was a robust discussion about the Open Space Element with suggested changes to the draft. The discussion included but was not limited to the history of the events in open space preservation and goals for environmental protections, wildlife habitat, and water resources. A revised draft will be presented at the October 26, 2020 meeting.

## **OTHER BUSINESS**

### **Training**

Mr. Saulnier announced that the Board of Adjustment will be holding an ongoing training session to discuss zoning, DEP matters and the permit process on October 15, 2020. The Planning Board members may join in the training session.

### **Ordinance Review**

Mr. Clew noted that the ARC met to discuss the highest priorities for possible changes to ordinances including: a review of the B-2 Business Zone (particularly permitted uses); side-yard setbacks in Harding Green; expanding the ordinance permitting emergency generators in side-setbacks to include other essential equipment such as a/c condenser pads; and adding electric vehicle charging stations explicitly as a permitted use in the B-1, B-2, and OB Zones. It was also suggested that COVID-19 relief for outdoor dining could be given by extending the hours for serving food in the B-1 and B-2 Business Zones beyond the current 9:00pm cut-off. Also discussed was the "floor area ratio" requirements for the B-1, B-2 and OB zones as they may unduly restrict development.

Mr. Clew noted that future items for discussion by the ARC and the Board could include a sliding scale for lot coverage based on lot size rather than the current fixed 10% limit and a review of split-zoned lots, permissible home occupations, telecom facilities, lighting and sustainability guidelines.

Mr. Fox suggested reviewing the gutter ordinance for new construction and allowing by ordinance two residences on a lot temporarily, while the new residence is being constructed. He will bring specific suggestions for the October meeting.

The last item addressed was possibly allowing childrens' playsets in setbacks, particularly on constrained lots. Mr. Fox agreed to draft language allowing such non-permanent structures and present it to the Board in October.

### **Public Comment:**

Ms. Dadzie commented on the effects of the pandemic, cost, process and hardship to set up a playset in Harding Township.

### **Budget**

Mr. Clew made a motion to pass the budget. It was seconded by Mr. Dietz. On a voice vote all were in favor of passing the budget.

## **EXECUTIVE SESSION**

Mr. Newlin made a motion to adjourn into executive session for Professional Review. It was seconded by Mr. dePoortere. With that the regular meeting ended.

## **ADJOURNMENT**

The meeting was adjourned at 11.01

Respectfully Submitted by

*Lori Taglairino*

Lori Taglairino, Planning Board Secretary

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### **HARDING TOWNSHIP PLANNING BOARD**

#### **RESOLUTION**

#### **Grant of Minor Subdivision Approval & Variance**

#### **529 Waterfront Properties, LLC - Application No. PB 2-20**

#### **579 Van Beuren Road - Block 5, Lot 5**

**Adopted September 26, 2020**

WHEREAS, 529 Waterfront Properties, LLC applied to the Harding Township Planning Board for minor subdivision approval and variances for a flag lot subdivision to create 2 new undeveloped lots and an improved remainder lot that will continue to contain a swimming pool, pool house and pool patio in front of the principal structure, with all lots to be accessed by shared use of the existing driveway, on property located at 579 Van Beuren Road in a RR Zone and currently designated on the Township Tax Map as Lot 5 in Block 5; and

WHEREAS, the Planning Board deemed the application to be conditionally complete and opened the public hearing at a virtual meeting held on June 22, 2020, for which public notice and notice by applicant were given as required by law; and

WHEREAS, the Planning Board conducted a site inspection of the property at a special meeting on July 11, 2020; and

WHEREAS, the Planning Board conducted a continued public hearing on the application at virtual public meetings on July 27, 2020 and August 24, 2020; and

WHEREAS, at the final public hearing, the applicant presented a concept plan for a revised proposal that substituted a bowed lot line for the perpendicular lot line between proposed improved remainder Lot 5 and a proposed new Lot 5.01, which eliminated the need for a setback variance in order to retain the existing pool improvements, while continuing to comply with the 5 acre minimum lot size requirement; and

WHEREAS, the Planning Board considered the testimony and exhibits presented during the public hearing process; and

WHEREAS, at the virtual public meeting on August 24, 2020, the Planning Board adopted an oral resolution approving the revised application, subject to certain conditions and based on findings and conclusions as memorialized herein;

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Planning Board, this 28th day of September 2020, that approval of the revised minor subdivision and variance application of 529 Waterfront Properties, LLC is hereby memorialized as follows:

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

1. The property consists of a 19.3 acre lot owned by the applicant located at 579 Van Beuren Road in the RR Zone.
2. The property is improved with a large residence and a swimming pool, pool house, and pool patio that are nonconforming due to location in front of the principal residence, as shown on minor subdivision plans prepared by H2M Associates, Inc., initially dated April 15, 2020.
3. The applicant requested minor subdivision approval to create a remainder flag lot containing the existing residential improvements, a new flag lot, and a new developable lot fronting on Van Beuren Road. All 3 lots would share use of the existing driveway for access to Van Beuren Road pursuant to a shared driveway easement agreement.
4. The applicant initially requested variance relief from the 100' minimum setback requirement in Section 225-122(F), which applies in the RR Zone, for the setbacks from the new lot line for proposed Lot 5.01 of 79', 46' and 29' for the existing pool, pool house and pool patio proposed to be retained, as shown on the initial plans.

5. The applicant also requested variance relief from Section 225-116(D)(1) to permit retention of the pool, pool house, and pool patio improvements at locations in front of the principal residence on remainder Lot 5.

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

7. The Morris County Planning Board issued an Exemption Notice dated May 15, 2020.

8. The Township Health Department commented on the application in a memorandum dated June 19, 2020, which indicated that each proposed new lot is suitable for installation of an individual subsurface sewage disposal system. This determination was expressly subject to the caveats that the ultimate location of each system may be different from the location that has been tested, the high seasonal water table may change or may later be found to be different than observed or estimated by the applicant's engineer, or regulations may change that could affect suitability of the lots for installation of subsurface sewage disposal systems.

9. Testimony in support of the application was provided by engineer Richard Schommer, P.E., who prepared the minor subdivision plans. He explained the existing and proposed improvements.

10. Board Planner McKinley Mertz commented on the application in a memorandum dated July 17, 2020, which described the application and requested variance relief and provided various comments. She attended the site inspection and provided oral comments at the hearings on July 27, 2020 and August 24, 2020. The applicant's representatives did not indicate disagreement with any of the comments or recommendations. At the hearing on August 24, 2020, Ms. Mertz expressed disagreement with the opinion expressed by planner Robert White, as noted below.

11. Township Engineer Paul Fox commented on the application in a memorandum dated July 17, 2020. He also attended the site inspection and provided oral comments at the hearings on July 27, 2020 and August 24, 2020. The applicant's representatives did not indicate disagreement with any of his comments or recommendations.

12. During the course of the public hearing, concerns were expressed as to the proposed setbacks for which variance relief was requested for the proposed retention of the pool, pool house and pool patio. The applicant was encouraged to explore alternatives to eliminate, reduce and/or mitigate the setback variances.

13. The Township Historic Preservation Commission commented on the application in a memorandum dated August 21, 2020, which stated that the property is in the Silver Lake Historic District and noted that the pool house for which variance relief was requested to permit it to be retained was not historic, but it nevertheless contributed to the overall estate setting and should be retained. The memorandum did not express any objection to the proposed creation of two potential building lots in front of the historic mansion.

14. The concept plan presented at the final hearing on August 24, 2020 by engineer Schommer provided a bowed lot line that eliminated the need for setback variance relief in order to retain the pool, pool house and pool patio, while continuing to comply with the 5 acre minimum lot size requirement. Variance relief would still be required to retain these accessory structures at their existing location in front of the principal structure.

15. The concept plan was discussed by the Board, resulting in the conclusion that the bowed lot line was acceptable and represented a reasonable response to the concerns as to the requested setback variance relief. The Board also determined that retention of the pool and related structures would not appreciably impair or otherwise negatively impact on future development and residential use of proposed Lot 5.01.

16. Concern was expressed at the outset that the parallel flag staffs for the two proposed flag lots would be adjacent to the flag staff for existing Lot 6.01, which is also owned by the applicant. Absent a restriction, this would be contrary to Section 225-153(B)(3), which prohibits multiple adjacent flag lots unless served by a single shared driveway. In response, the applicant agreed that the flag staff of Lot 6.01 would never be improved and used for access and instead any development on Lot 6.01 would use the shared access drive serving the lots to be created by the subdivision, unless access were available using the driveway in the flag staff for Lot 8 that abuts the opposite side of Lot 6.01.

17. The applicant also agree that proposed Lot 5.02 would not have direct driveway access to Van Beuren Road notwithstanding conforming lot frontage, but would instead use the shared driveway for access.

18. The testimony indicated that the existing driveway complies with the Ordinance criteria for shared driveways serving up to 4 lots and would not require any significant modification. The proposed subdivision would create 3 lots required to use the shared driveway for access, and an easement would permit adjacent Lot 6.01 to also use the shared driveway. The only change to the existing driveway would be installation of a fire cistern adjacent to the driveway, with a widened access area that would also serve as a passing area as required under the Ordinance. Township Engineer Fox stated that the fire cistern location would be changed from the location shown the plans in response to Fire Department comments. The applicant's representatives agreed that the final location and plan details will be subject to review and approval by Township Engineer Fox.

19. The Board acknowledged the existence of an undeveloped private road lot, Lot 6.03, on the opposite side of the undeveloped flag staff for Lot 6.01. Testimony indicated that this private road lot was created to satisfy the minimum lot frontage requirement when Lot 6.02 was created. At that time the area of current Lot 6.02 was improved with a residence and this area was part of Lot 6, which contained a residence in the front of the property along Van Beuren Road. Thus, the prior subdivision created separate lots for each of the two existing residences. The residence on what became Lot 6.02 has continued to use the driveway in the flag staff of abutting Lot 8 for access to and from Van Beuren Road. The Planning Board approval resolution adopted at that time (July 28, 2003) on Application 6-03 granted an exception from the Ordinance requirement for improvement of the private road lot, but future improvement and use of the private road lot was not prohibited.

20. Objections to the subdivision application were raised by attorney Frank Vitolo on behalf of the Gargiulos, who own and reside on adjacent Lot 8, which is a flag lot with a driveway in the flag staff that serves their residence and also the residence on Lot 6.02. Mr. Vitolo questioned engineer Schommer and presented testimony by Robert White, PP.

21. There is pending litigation between the applicant and the Gargiulos over access rights applicable to the flag staff for Lot 8. The outcome of that litigation will not have any apparent impact on the subdivision. As indicated above, the applicant agreed that Lot 6.01 will use the shared driveway that will serve this subdivision in the event that it is determined that the driveway in the flag staff of Lot 8 cannot be used for access to Lot 6.01.

22. In response to questioning by attorney Vitolo, it was acknowledged that the subject property is a contributing property in the Silver Lake Historic District. Questions were raised as to the potential adverse impact of the creation of 2 potential building lots in the area in front of the historic mansion. As noted above, the Township Historic Preservation Commission provided comments in a memorandum dated August 21, 2020 that did not indicate opposition to the proposed subdivision. Regardless, comments by the HPC are advisory only under the Harding Township Ordinance.

23. Attorney Vitolo presented testimony by professional planner Robert White, who presented his opinion that further analysis was warranted as to potential adverse impacts on views of the historic mansion and the streetscape. He did not identify any provision of the Township Ordinance that would allegedly be violated or would justify the recommended action by the Planning Board. In fact, he did not even testify that he had reviewed the Harding Township Ordinance. Planner White's criticism of the Planning Board was expressly disputed and rejected by Township Planner Mertz.

24. Several neighbor and/or members of the public expressed the view that the proposed subdivision would impair the streetscape, but they did not identify any provision of the ordinance that would be violated or would justify denial of the subdivision application by the Planning Board.

25. The Planning Board concludes that the proposed flag lot subdivision, including the agreement by the applicant to provide an access easement for adjacent Lot 6.01 as shown on the plans, as required to be revised, is permitted under Section 225-153.

26. Based on the unique character of this property and proposal, granting the requested variance relief for retention of the pool improvements at their current location in front of the mansion will result in planning and zoning benefits because these existing pool improvements will continue to complement the historic residence and these benefits will outweigh any detriment, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(2).

27. The single variance associated with the revised proposal 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.

28. Subject to compliance with all conditions in this resolution, the revised proposed subdivision complies with all requirements for minor subdivision approval.

#### **Description of Approvals**

1. The amended application of 529 Waterfront Properties, LLC for minor subdivision approval is hereby granted in accordance with minor subdivision plans prepared by H2M Associates, Inc., initially dated April 15, 2020, as required to be revised to be consistent with the concept plan presented and discussed at the final hearing and revised to comply with all conditions set forth below.

2. Variance relief is hereby granted from the restriction against the location of accessory structures in front of the principal residence in Section 225-116(D)(1) of the Land Use and Development Ordinance to allow an existing swimming pool, pool house and pool patio to remain at their current locations in front of the residence on Lot 5.

#### **Approval Conditions**

1. The minor subdivision approval is expressly subject to the limitations and restrictions concerning future approvability of an on-site sanitary septic system as set forth in a memorandum from the Township Health Administrator, dated June 19, 2020, that:

- a. The ultimate location of the system may be different from the location that has been tested.
- b. The high seasonal water table may change or may later be found to be different from that observed or estimated by the applicant's engineer.
- c. Regulations may change that could affect suitability of the site for the installation of a subsurface disposal system.

2. To the extent not already addressed, all plan sheets of the minor subdivision plans shall be revised, subject to review and approval by the Township Engineer, as follows:

- a. Revise all plan sheets to be consistent with the concept plan presented by engineer Schommer at the final hearing on August 24, 2020.
- b. Show the modified location of the fire cistern as approved by the Fire Department and the related improved access/passing area.
- c. Add a plan note indicating that Lot 5.02 shall not have direct driveway access to Van Beuren Road, with access limited to the shared driveway.
- d. Include a landscape plan providing specific information as to buffering to be installed between the pool area on remainder Lot 5 and Lot 5.01 and at any other location on the property.
- e. Make any other changes necessary to comply with written and oral recommendations by the Township Engineer and Township Planner.

3. The applicant shall provide an executed shared driveway agreement applicable to Lots 5, 5.01, 5.02 and 6.02, as shown on the plans as required to be revised that shall be in a form satisfactory to the Planning Board Attorney and shall include

metes and bounds descriptions approved by the Township Engineer. This agreement shall include responsibility for the fire cistern and related improvements that will be included in the easement area.

4. The applicant shall provide signed minor subdivision deeds and other instruments that shall be in a form satisfactory to the Planning Board Attorney and shall include metes and bounds descriptions approved by the Township Engineer.

5. The minor subdivision deed for new Lot 5.02 shall include a permanent deed restriction precluding direct driveway access Van Beuren Road.

6. The applicant shall pay any outstanding property taxes and fees.

7. The applicant shall submit a digital copy of the final revised minor subdivision plans.

8. Satisfaction of all of the preceding conditions shall be confirmed by the Planning Board Attorney prior to signing of the plat or minor subdivision deeds by the Chairman and Secretary of the Planning Board.

9. In accordance with N.J.S.A. 40:55D-47, a plat or minor subdivision deeds shall be recorded within 190 days of the date of this resolution, unless the time period is extended consistent with applicable legal requirements.

10. The required easements and other instruments shall be recorded contemporaneously with recording of the minor subdivision deeds or plat, and copies of all recorded instruments shall be promptly filed with the Planning Board Secretary.

**Vote on Resolution**

For the Oral Approval Resolution: Chipperson, Clew, Dietz, Edgar, Jones, Newlin, Saulnier & Claytor.

Against the Oral Approval Resolution: None.

For the Form of the Written Resolution: Chipperson, Clew, Dietz, Edgar, Jones, Newlin,  
Saulnier & Claytor.

Against the Form of the Written Resolution: None.

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