

**HARDING TOWNSHIP PLANNING BOARD  
MEETING MINUTES  
OCTOBER 23, 2023**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE—Mr. Clew**

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Mr. Clew announced the meeting of the Harding Township Planning Board was given as follows: Notice was sent to the *DAILY RECORD* and the *OBSERVER TRIBUNE*, posted on the Township Bulletin Board, and filed with the Clerk's Office, located in the Township Hall located at 21 Blue Mill Road, New Vernon, NJ. Notice indicated that formal action may be taken.

**ROLL CALL**

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The roll was called. The following were present:

Mr. Edgar	Mr. Clew	Mr. Chipperson	Mr. Yates
Ms. Claytor	Ms. Walters	Mr. Rosato	

Mr. Loughlin, the Board Attorney, Mr. Fox, the Board Engineer, Ms. and Lori Taglairino, the Board Secretary, were also present.

**REGULAR MEETING**

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MINUTES

A motion was made by Mr. Edgar to approve the September 25, 2023 minutes. The motion was seconded by Ms. Walters. On a voice vote all eligible members voted to approve the minutes.

RESOLUTIONS

PB Application #05-23 Jeff Gelband

Mr. Yates made a motion to adopt Resolution PB #05-23 Gelband. The motion was seconded by Mr. Edgar. A roll call vote went as follows:

For: Walters, Edgar, Yates, Chipperson, Clew, and Claytor  
Against: None.

PB Application #06-23 Francis Grather

Ms. Walters made a motion to adopt Resolution PB #06-23 Grather. The motion was seconded by Mr. Yates. A roll call vote went as follows:

For: Walters, Edgar, Yates, Chipperson, Clew, and Claytor  
Against: None.

PB Application #01-23 GHK II & III, LLC

Mr. Chipperson made a motion to adopt Resolution PB #01-23 GHK II & III, LLC. The motion was seconded by Ms. Claytor. A roll call vote went as follows:

For: Walters, Edgar, Yates, Chipperson, Clew, and Claytor  
Against: None.

## **ADJOURNMENT**

The meeting was adjourned at 7:20

Respectfully Submitted by

*Lori Taglairino*

Lori Taglairino, Planning Board Secretary

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### **HARDING TOWNSHIP PLANNING BOARD RESOLUTION**

**Application PB-06-23**

**Minor Subdivision**

**Francis Grather**

**10 Millbrook Road**

**Harding Township, Block 17, Lot 2**

**Adopted: October 23, 2023**

WHEREAS, Francis Grather, as owner and applicant for the property listed above, having applied to the Harding Township Planning Board for minor subdivision approval to subdivide the property into two lots. The subdivision plan shows proposed Lot 2 will be 18,847 square feet and consist of the existing single-family dwelling on the property which will remain. Proposed Lot 2.01 will be 19,193 square feet to be vacant and includes a conceptual primary disposal bed for a four bedroom dwelling and a conceptual reserve disposal bed for a four bedroom dwelling in the rear of the lot. The swimming pool, frame shed (used as a garage), and small shed currently existing on the proposed Lot 2.01 to be removed from the property. In addition a portion of the property measuring 17.53 feet by 129.87 feet within the Millbrook Road right-of-way is to be dedicated to the Township of Harding for roadway purposes by the applicant as part of the subdivision submitted; and

WHEREAS, the subject property is split zoned between the R-1 Residence Zone (to the rear of the property) and the R-4 Residence Zone (along Millbrook Road frontage). The 38,040 square foot lot is currently developed with a two-story single-family frame dwelling with a wood deck, a 450 square foot frame shed (used as a garage), small shed, inground pool, disposal bed, and other various improvements including a driveway and walkways.

WHEREAS, the applicant having submitted to the Board with this application one sheet drawing entitled "Proposed Minor Subdivision, Tax Lot 2, Block 17, Township of Harding, Morris County, New Jersey," dated September 13, 2019, revised May 4 and September 15, 2023, and prepared by Gerald G. Degroat, LS. Also included as prepared by Gerald G. Degroat, LC, dated September 13, 2019 was a one-sheet aerial photograph of the site. In addition the Board and the applicant acknowledged receipt of review memos and reports as dated August 19 and September 22, 2023 from Paul D. Fox, PE, CME, as the Planning Board Engineer, and August 24, 2023 from M. McKinley Mertz, PP, AICP, Leed Green Associate, as the Planning Consultant to the Board; and

WHEREAS, at its meeting of August 28, 2023 the Planning Board determined that this application was complete with the tree conservation area to be added to the plan for the further consideration of the Board. Further on September 16, 2023 the Board conducted a site inspection of the property as previously scheduled at the time of the completeness hearing referred to herein; and

WHEREAS, at its meeting of September 25, 2023 the Planning Board approved the application subject to the preparation of a further resolution from the Planning Board setting forth its findings, conclusions, conditions, and requirements in accordance with the evidence and testimony and stipulation of the applicant at the time of hearing to be set forth in the Board's resolution;

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Planning Board, on the 23<sup>rd</sup> day of October 2023, that the approval of the Board for the applicant's minor subdivision to create two conforming single-family lots to be known as Lot 2 and Lot 2.01, in accordance with the plans, evidence and testimony in this case is hereby memorialized as follows:

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

1. At the time of hearing of this case Joseph W. Grather, Esq. of McKirdy, Riskin, Olson & DellaPelle, Attorneys, of Morris Plains, New Jersey appeared to present this case for the applicant. The applicant's attorney advised the Board that following the completeness hearing in August, the applicant had now revised the minor subdivision plan which was dated September 15, 2023. Mr. Grather further stated that the revised plan now shows the tree conservation area which was discussed at the August meeting with the Board. He further stated, "Both lots now conform to the requirements of the R-4 Zone, and the applicant agrees to remove the garage (frame shed), swimming pool, and small shed on proposed Lot 2.01 before perfection of the subdivision."

2. Testimony in support of the applicant was then provided by the project engineer, Mr. Richard Schommer. The engineer reviewed with the Board the proposed minor subdivision plan and stated, "Although the property is split zoned, no variances are needed for either of the lots. The existing single-family house on Lot 2 will remain. The access to the subdivision will be arranged through a shared driveway between the lots, and this will also allow us to avoid a new curb cut. The trees on the property would stay."

3. The Board Engineer, Mr. Fox, then questioned Mr. Schommer as to when a new dwelling with improvements were completed on new Lot 2.01, will it meet all of the zone requirements? Mr. Schommer responded, "Yes, I have also gone to the Board of Health with a sketch of the house, the drywell, and all the improvements, and we will be meeting all of the requirements for the Town." Following this discussion the applicant's attorney asked Mr. Schommer as to whether the applicant would be filing a subdivision plat showing the shared driveway. This was confirmed by Mr. Schommer for the Board.

4. There were no public questions, comments, or statements made to the Board regarding this application.

5. The Board discussed with the applicant, the applicant's engineer, and the Board professionals a series of conditions and requirements that would apply to the approval of the Board in this case. On the final subdivision plat, the shared and joint driveway was to be included, and a note requiring the removal of the frame shed (garage), swimming pool, and small shed now located on proposed Lot 2.01 would be listed requiring them to be removed before perfecting the subdivision. All of these conditions were acceptable to and approved on behalf of the applicant.

6. The Board finds and concludes from the evidence and testimony presented to the Board for this minor subdivision which does not require variance relief as a conforming subdivision with reasonable conditions and requirements of the applicant as stated herein, can now properly be approved by the Board. The conditions and further requirements of the applicant in accordance with the Board's discussion with the applicant's representatives and the Board professionals which apply to the subdivision and which must be satisfied before the subdivision is perfected as agreed by the applicant, will in the reasonable judgment of the Board result in two lots for single-family dwellings that can be properly accommodated on these properties consistent with the conditions in this area and the requirements of the Land Development Ordinance. The Board also concludes that this subdivision will not result in any undesirable overuse of the property, and that the final subdivision to be undertaken subject to the conditions of this resolution is thereby being undertaken consistent with principles of good planning and design.

#### **Description of Minor Subdivision Approval**

1. The approval of this application for minor subdivision approval is in accordance with subdivision plan entitled "Proposed Minor Subdivision, Tax Lot 2, Block 17, Township of Harding, Morris County, New Jersey," dated September 13, 2019, revised May 4, 2023, and September 13, 2023 prepared by Gerald G. Degroat, LS. This minor subdivision plan is to be further amended in accordance with the requirements of this resolution and a minor subdivision plat containing all of the requirements of the resolution is required by the Board for the perfection of this subdivision.

#### **Approval Conditions**

1. The applicant shall obtain any and all other required outside agency approvals or permits required for this minor subdivision and/or for any construction of any improvements or other work at the property in accordance with this resolution of approval from the Planning Board; and

2. The applicant shall continue to comply-address any outstanding comments from the review memos and reports dated August 19 and September 22, 2023 from Paul D. Fox as the Planning Board Engineer; and

3. The subdivision plan and plat shall be amended and/or prepared which will include the location (to be provided by the Township) of the septic disposal field and/or the well serving the Tunis-Elicks house on Lot 1 in Block 17, the lot adjoining proposed Lot 2.01 in this subdivision. A note shall also be added to the minor subdivision plan and plat to be filed stating that any new construction on Lot 2.01 must comply with the Township's requirements for drywells. The subdivision plan and plat shall also locate and designate the shared or common driveway for both lots as presented to the Board in this hearing. A notation shall also be added to the subdivision plat indicating that the lot owners agree that at no time shall there be any parking permitted by either lot owner in the stem area of the common driveway. The applicant shall also prepare a separate written reciprocal easement for the shared driveway and its use for the two lot owners. The form and content of the reciprocal or shared driveway agreement and easement shall be subject to the further review, requirements, and approval of the Board professionals and the Board attorney. The proposed final subdivision plat shall be approved by the Board Engineer. All costs and expense of the Board professionals regarding this further work shall be paid by the applicant. Also the reciprocal easement and shared driveway agreement shall be approved by the Board professionals prior to the applicant presenting the final subdivision plat for signing by the appropriate officers and representatives of the Board. Following approval, the separate reciprocal driveway easement-shared use agreement shall also be filed by the applicant simultaneously with the recording of the minor subdivision plat. Both the filed subdivision plat and the recorded driveway easement-shared use agreement following recording shall be supplied by the applicant to the Tax Assessor for the Township of Harding and the Secretary of this Planning Board; and

4. As specifically discussed by the Board with the applicant's representatives and the applicant during this hearing and upon which condition and stipulation the Board relies in now issuing this minor subdivision approval to the applicant, prior to the perfection of this subdivision by the applicant, the applicant shall first, pursuant to any and all necessary municipal permits, remove the swimming pool, frame shed (used as a garage), and small shed from proposed Lot 2.01. Further there is to be no construction of any further structure or improvement on proposed Lot 2.01 prior to the perfection of this subdivision as now allowed by the Board; and

5. The applicant shall pay any and all outstanding application, technical review, professional fees, and/or any other fee, charge, payment, or deposit related to this subdivision, demolition work required on the property, and/or related to the new dwelling to be constructed on proposed Lot 2.01 in accordance with the Township ordinances. These payments to include but not be limited to any development review fee and/or any and all Affordable Housing fees, charges, deposits, escrows, or other expense applicable to this subdivision and the further work to be undertaken at the property as described herein. The applicant shall also pay any and all further fees, charges, deposits, escrows, or inspection fees, and any and all professional billings received for this

application, the final subdivision plat, the driveway easement and the shared usage of the driveway agreement, and for any and all other related work by the Board professionals associated with this application in accordance with the ordinances and regulations for the Township; and

6. The applicant shall pay any and all outstanding property taxes and all other fees and charges of the Township prior to the signing of the final subdivision plat by the appropriate officers of this Board; and

7. As to be noted on the minor subdivision plat to be filed to perfect this subdivision, the applicant's shared driveway easement-shared driveway agreement shall include a provision that neither lot owner shall park or permit any party to park in the stem of the shared driveway. Further the reciprocal driveway easement-shared use agreement shall provide that it may not be modified, amended, nor discharged without a further written agreement entered into permitting same in recordable form entered into by the Planning Board and/or the Mayor and Council for the Township of Harding. Further any deed of conveyance for either of the lots in the subdivision shall specifically include a reference to the recorded driveway easement-shared use agreement and confirm that the conveyance of the property is being undertaken subject to this easement; and

8. The applicant shall enter into any and all agreements and consents required by the Township of Harding for the dedication-conveyance of the additional right-of-way within the Millbrook Road right-of-way to be dedicated to the Township for roadway purposes; and

9. The applicant shall perfect the minor subdivision approval of the Board by filing the final subdivision plat with the time period provided in N.J.S.A. 40:55D-47; and

10. Prior to the signing of the final subdivision plat in accordance with this resolution, the Board Engineer shall first provide a written confirmation to the Secretary of the Planning Board that the applicant has complied with all terms, conditions, and requirements of this resolution.

#### **Vote on Resolution**

For the Oral Resolution: Walters, Edgar, Jones, Yates, Chipperson, Clew, Burns, Newlin and Claytor.

Against the Oral Resolution: None

For the Written Resolution: Walters, Edgar, Yates, Chipperson, Clew, and Claytor.

Against the Written Resolution: None

The within resolution was duly adopted by the Planning Board for the Township of Harding at its meeting of October 23, 2023.

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### **HARDING TOWNSHIP PLANNING BOARD RESOLUTION**

#### **Application PB-01-23**

#### **Preliminary & Final Subdivision with Variances**

#### **GHK Realty II/III LLC**

#### **665 & 655 Spring Valley Road**

#### **Harding Township, Block 4, Lots 21 & 21.01**

#### **Adopted: October 23, 2023**

**WHEREAS**, GHK Realty II/III LLC, as owner and applicant, having applied to the Harding Township Planning Board for preliminary and final subdivision approval with variances to subdivide these two properties totaling 29.95 acres into five lots measuring between 5.0047 acres and 7.1439 acres. These properties are located within the RR Rural Residential Zone. Lot 21 has a lot area of 16.47 acres, and Lot 21.01 consists of 13.48 acres, for a total of 29.95 acres across both properties. The existing lots are developed with residential improvements. Lot 21 consists of a principal dwelling, an accessory residence, a two-family dwelling, a swimming pool, and various related improvements. Lot 21.01 contains a principal dwelling, a barn with an accessory residence, a greenhouse, and other related improvements. In 2012 the Harding Township Planning Board approved a conforming five-lot subdivision of the subject property with bulk variances to allow for the existing pool and cabana on Lot 21 to remain in front of the principal residence. This subdivision was never perfected; and

**WHEREAS**, the applicant is now proposing in this subdivision to subdivide the two properties into five conforming lots similar to the 2012 proposal-approval. Two of the proposed lots will have frontages on Spring Valley Road, and the remaining three would be flag lots permitted in the RR Zone under Ordinance Section 225-153. The proposed lots would consist of the following: proposed Lot 21, 6.951 acres (7.14 acres with flagstaff); (previously 16.47 acres); proposed Lot 21.01, 6 acres (previously 13.48 acres); proposed Lot 21.04 as a new building lot, 5 acres (5.2 acres with flagstaff); proposed Lot 21.05 new building lot, 5 acres; and proposed Lot 21.06 new building lot, 6.2 acres (6.6 acres with flagstaff). As part of the application submitted, a tree conservation area is to be placed around the perimeter of each property, in addition, conservations easements are also being proposed together with a proposed emergency access easement. Variances are required as part of the subdivision application submitted for the existing pool and pool house on existing/proposed Lot 21 which are situated in front of the principal dwelling, contrary to Ordinance Section 225-116.D(1) which provides that accessory structures shall not be located in front of the front façade of the principal dwelling located on the same lot; and Ordinance Section 225-122.D(2) restricting the height of accessory structures in the RR Zone provides that they shall not exceed 25 feet in height, whereas the existing barn on existing/proposed Lot 21.01 is approximately 35 feet in height. During the hearing of this application, the application was amended for a variance to be granted from the setback/buffering requirements for the stone garage on existing Lot 21 which does not comply with the 8-foot setback requirement of the ordinance; and

**WHEREAS**, the applicant having submitted to the Board with this application nine drawings entitled "Preliminary Major Subdivision Plans for Block 4, Lots 21 & 21.01, 665 Spring Valley Road (Lot 21) and 655 Spring Valley Road (Lot 21.01), Township of Harding, Morris County, New Jersey," dated October 17, 2022 and prepared by H2M Associates, Inc. Also submitted was one drawing entitled "Final Plat Major Subdivision, Tax Lots 21 & 21.01 – Block 4, Township of Harding, Morris County,

New Jersey,” dated October 17, 2022, prepared by James P. Deady Surveyor LLC. In addition the Board and the applicant acknowledged receipt of review memos and reports as dated February 7, 2023 from M. McKinley Mertz, PP, AICP, Leed Green Associate as the Board Planning Consultant, and February 17 and April 21, 2023 from Paul D. Fox, PE, CME as the Planning Board Engineer. Also received was a Historic Preservation Commission report and a memo from the HPC dated June 5, 2023; and

**WHEREAS**, at its meeting of February 27, 2023 the Planning Board accepted this application as a complete application subject to the submission of additional materials requested by the Board Engineer which the applicant stipulated would be provided ten days prior to the next meeting of the Board for this case to continue, and the Board then conducted a site visit and inspection of the premises on April 15, 2023; and

**WHEREAS**, the Board having considered this application at its regularly scheduled meetings of March 27, April 24, and September 25, 2023, and at the Board’s meeting of September 25 the Planning Board approved the application subject to the preparation of a further resolution from the Planning Board setting forth its findings, conclusions, conditions, and requirements in accordance with the evidence, testimony, and stipulations of the applicant at the time of these hearings to be set forth in the Board’s resolution;

**NOW, THEREFORE, BE IT RESOLVED** by the Harding Township Planning Board, on the 23<sup>rd</sup> day of October 2023, that the approval of the Board for the applicant’s major subdivision to create five single-family lots with variance relief, in accordance with the plans, evidence and testimony in this case is hereby memorialized as follows:

**Findings of Fact and Statement of Reasons**

7. At the March 27, 2023 meeting of the Board, Gregory J. Coffey, Esq. of Morristown, New Jersey appeared to present this case for the applicant. The attorney confirmed for the Board that this was a five-lot subdivision that was the same number of lots previously approved by the Planning Board in its 2012 resolution for this property, with the subdivision approval of the Board previously granted never being perfected by the applicant-owner.

8. Further testimony explaining the details of the subdivision was then provided by the applicant’s engineer, Mr. Richard B. Schommer of H2M Associates Inc. as the firm preparing the subdivision plans. The engineer advised the Board that the applicant had now obtained and recorded DEP permits for the proposed subdivision. He then provided what he described as an “overview” of the existing property and discussed the current application in relationship to the 2012 subdivision of the property that was approved by the Board. The subdivision engineer also stated that the existing buildings and conditions on the property for the better understanding of the Board would benefit from a site visit-inspection by the Board. The project engineer also stated that the adjoining adjacent property which is currently vacant “is owned by a different LLC and is not involved in this application.”

9. Mr. Schommer testified, “There are two lots now, and we are going to reconfigure these lots with three additional new lots for single-family use. The new Lot 21 which we refer to as the ‘mansion house’ will continue to have the residence and the other structures now located there with the driveway off Spring Valley Road and to then become a smaller lot of 7 acres. Lot 21.01 which is the lot in the front of the property on Spring Valley Road will have 6 acres. The new lots which will be known as Lot 21.04 will be a flag lot with the ‘staff’ of the driveway to Spring Valley Road, Lot 21.05 will be the front lot of 5 acres, and Lot 21.06 will be the back flag lot and have 6.22 acres. We will have a driveway easement to go into the stem of the flag lot for access to the adjoining lot. We will also be keeping the one accessory residence which meets the ordinance requirements. For Lot 21.01 we will be removing the garage and keeping the house, the barn, and the greenhouse. The driveway access to this lot will remain. At the present time we propose to remove any structures on this lot to avoid variances for setbacks and the height of the barn.” Following discussion as to the variances that would be needed if these structures were to remain, the Board questioned the engineer as to the status of these accessory structures as far as a review by the HPC. Mr. Schommer responded, “These structures are not listed with the HPC as being historic.” Following this statement by Mr. Schommer, an adjoining neighbor urged the applicant’s representatives and the Board to consider the importance of historic preservation of these “historic type” improvements on the property. The application was then continued for further hearing before the Board.

10. At the April 24, 2023 meeting of the Board this case was continued. The subdivision engineer, Mr. Schommer, then reviewed and discussed with the Board the April 21, 2023 memo from the Board Engineer, Mr. Fox. He also reviewed with the Board an aerial exhibit which was marked into evidence and discussed present access to the subdivision premises and the applicant’s proposed access arrangement for the subdivision. Utilizing a page of his subdivision plans, the project engineer reviewed with the Board the existing structures on the subdivision premises which were depicted in yellow and reviewed with the Board those structures which were proposed to remain and what he stated were “the separate two-family structure we are showing in red which is to be removed and the stone garage to also be removed.” Describing proposed new Lot 21.01, Mr. Schommer located and discussed the barn and the accessory residence located there, and it was confirmed in discussion with the Board that this would remain a residential use. Following this, Mr. Schommer reviewed with the Board the proposed access to the entire subdivision premises and the five lots proposed. He then reviewed and discussed the structures and improvements to be maintained and continued on “the mansion lot.” Mr. Schommer also located and described “the new shared driveway for Lots 21 and 21.06.” He further testified, “For Lot 21.01 we will be keeping the residence and the barn with an accessory residence and greenhouse, for Lot 21 the main house and the accessory residence will be maintained.” In follow up to the advice from Mr. Schommer that the accessory residence would be maintained on Lot 21, he then reviewed with the Board the seven conditions for the conditional accessory residential use to be maintained and summed up by stating, “This accessory residential use on Lot 21 meets all of the conditions and requirements of the ordinance. Also for Lots 21 and 21.01 we meet all of the conditions for accessory uses on both of these lots. In addition by eliminating the other two-family usage on Lot 21, we will be making this lot more conforming. For Lot 21.01 the existing driveway will remain, and for Lot 21.05 we will be keeping the current access from Spring Valley Road – this is the 665 Spring Valley Road access. For Lot 21.04 access will be through Lot 21.02 to the flag lot behind this lot. This access was created from a subdivision of the property originally undertaken in 1982. We would also like the Board to consider an option for us to keep the existing driveway from 655 Spring Valley Road and also to have the option in the future to connect this to a shared driveway and then close off existing access to this property.” The Board advised that no options for roadway locations could be allowed by the Board. In response to a question from the Board as to would there be any wetlands conditions or encroachments

that would be involved with the driveway proposed, Mr. Schommer responded, "No." He then continued to describe access and the driveways the applicant was proposing by stating, "For Lot 21.05 we will be retaining the driveway coming off 665," and then went on to locate and explain conservation easements for wetlands and transition areas required on the property.

11. Following his testimony the project engineer was questioned by a neighboring property owner as to whether there would be an association formed of the lot owners for necessary conservation, tree preservation, wetlands areas on the property. Utilizing an exhibit from the plan set for the subdivision Mr. Schommer then located all of these areas on the subdivision property and confirmed that appropriate easements for these areas and conditions would be required and would be part of the subdivision approval from the Board.

12. The subdivision engineer then gave a description of the variances required for Lot 21 for the stone garage, the pump house, the pool and cabana. He then discussed the height variance required for the barn. In support of the variance requests he stated that all of these structures had been constructed prior to 1945. Mr. Schommer then introduced a series of aerial photographs marked as exhibits to show improvements on the property in 1930, 1940, and 1980 to confirm his testimony regarding the age of these improvements. Mr. Schommer then described the C2 variances that were being requested which applied to these improvements which he also discussed in relationship to the goals and purposes of preservation of historic structures in the Master Plan for the Township and under the Municipal Land Use Law. Following this testimony the Board discussed with the engineer the location of the house on proposed Lot 21.04 in relationship to the neighboring property owner and the shared easement access and usage being proposed. The applicant's engineer was asked to advise the Board as to whether there had been discussions with the neighboring property owner, Mr. Spinelli, present at the meeting and whose attorney, Mr. Nish, had written a letter to the Board as to the usage of the driveway easement area that was proposed to be used for this lot. The history of this easement was then reviewed by the applicant's attorney and the project engineer with the Board. Mr. Coffey advised the Board that the applicant would further consult with Mr. Spinelli on this.

13. Following this discussion, Mr. Nick Platt as a neighboring owner in the Hartley Farms development then spoke to the applicant and the Board in support of the shared driveway on the northerly end of the property and the overall application now before the Board. He also expressed to the Board his concern that the mansion garage and related improvements all be kept on the property and further maintained by the applicant. He offered his suggestion that a homeowners' association be considered for this development as part of the best means of preserving these historic type improvements. He further expressed his objection to the subdivision plan to date and suggested that the applicant consider redesigning this subdivision-development without the use of shared easements. Following this discussion the Board suggested to the applicant's attorney and engineer that the applicant consider revising the lot lines of the subdivision to increase the setback for the garage on Lot 21 now located a distance from 8 feet from the adjoining proposed lot. The applicant's attorney stated that the applicant would prefer to eliminate the garage from the property to avoid the necessity for variance relief, and that the applicant would withdraw the variance request for this structure because it would, as Mr. Coffey expressed it to the Board, interfere with the usage and available space for the adjoining new lot being proposed. The Board further discussed with the applicant's engineer and attorney possible revisions to the plans to again attempt to preserve the stone garage, and for Lot 21.04 to connect the driveway for this lot into the main subdivision. Further the Board asked the applicant's engineer to consider the submission of a new sketch regarding the access to the subdivision and the internal roadway-driveways for each of the lots to minimize site disturbance and possibly allow one curb cut to service four of the lots in the subdivision. The application was then continued.

14. At the September 25, 2023 meeting of the Board this application was continued. Mr. Coffey advised the Board that the applicant had resolved with the adjoining owner, Mr. Spinelli, who had appeared at the last meeting the shared access for proposed Lot 21.04 which would be via an existing driveway located on the 50 foot wide flagstaff with adjacent Lot 21.02. A letter from Mr. Spinelli confirming the acceptability of this arrangement was then marked as an exhibit into the records of the Board. Mr. Schommer in continuing his testimony described the two driveways for Lots 21 and 21.01 which he described as "the mansion lot" and "the farm lot," and then stated that the overall subdivision for these five lots proposed as to the bulk requirements of the ordinance were fully conforming.

15. In continuing his testimony about the subdivision, Mr. Schommer stated, "Lot 21, which is the main house, is 6.95 acres and will still have access to Spring Valley Road. Lot 21.01, which is 'the farm lot,' will continue to have the house, greenhouse, and barn and stay at 6 acres. Lot 21.04, which is the northerly lot and a flag lot, will then have access thru the existing easement thru Lot 21.02 and will be 5 acres. Lot 21.05, which is the front lot, will have 5 acres and will utilize the existing driveway serving the mansion. Lot 21.06, which is the back lot flag lot, will have a size of 6.22 acres. The net lot size is calculated excluding the staff of the road."

16. Mr. Schommer then gave further testimony about the shared driveway for the two lots and located the conservation easements around the wetlands for Lots 21.01 and 21.06. He further testified, "We will be keeping the majority of the existing structures on the overall subdivision, and we will be removing the two-family dwelling behind the mansion. The courtyard area of this lot has two garages there which will also be removed. The accessory building on Lot 21 will stay, and the pool and the pool house in front of the mansion for which variance relief was previously granted will also be maintained." The project engineer then continued his testimony regarding the stone barn on the north side of Lot 21. The Board continued to discuss moving the lot line for the mansion lot to preserve the stone garage. Mr. Coffey again stated to the Board, "The applicant would rather take down this garage and remove the two-family to be variance free." The applicant's representatives and the Board then discussed further the HPC memo and report regarding this property and again reviewed the shared access drive and site circulation for all of the lots being proposed.

17. The Board in further discussion with the applicant's attorney and engineer asked that the applicant consider maintaining the stone garage on the property due to the historic nature of the structure and its good condition and aesthetics. Also that "the mansion lot" with this garage was a desirable feature and was a possible marketing benefit for a buyer of the mansion to maintain the character of the property which the Board stated could be accomplished through variance relief from the Board. After discussion between the applicant's engineer and attorney and the Board at which time the buffering of the garage from the adjoining

proposed new lot was discussed, it was then agreed by the applicant that they would request a variance for this structure and be agreeable to supply additional buffering in accordance to a further detailed plan for this landscaping subject to the approval of the Board Engineer. Mr. Nicholas Platt who had spoken earlier regarding this application commended the applicant and the Board for efforts to “keep this historic garage” and again reviewed the historic nature of this property. He urged the Board to allow the variance needed for this to be accomplished. The Board, after further discussion by the Board, determined that the Board members felt that a variance for the stone garage to be maintained would be appropriate based upon the HPC’s report as to the historic nature of the structure and all of the other testimony that had been heard regarding this garage and also based upon the Board’s prior site visit and inspection of the property at which time the aesthetics and physical condition of the garage were noted as being a desirable condition on the property.

18. The Board, in reviewing the variance needed for the stone garage to be maintained, also reviewed the variances needed to keep the pump house building, the two-story barn on Lot 21.01 and the height required for same, and the continued maintenance of the pool and the pool house encroachment in front of the mansion property. The Board also noted that the revised subdivision plan now presented would have one new driveway cut, and the two existing driveway exits from the subdivision premises would be maintained. The Board also reviewed the Board Engineer’s memo and discussed with the applicant’s representatives the existing bridle path area on the property. It was discussed by the Board with the applicant’s representatives that the applicant with the assistance of the Board professionals would enter into a license agreement with the Township association for the use of the bridle paths to be located on the property pursuant to the final subdivision plat for the future usage of same.

19. The Board then discussed with the applicant’s representatives conditions and requirements for approval of the subdivision. These included the specific variances needed for the stone garage on Lot 21 as to the 8 foot setback proposed, the pump house to be maintained on Lot 21.01, the existing barn with a height of approximately 35 feet, the pool house and the pool to remain in front of the mansion lot, for the new driveway access to Spring Valley Road, and for screening on Lot 21.04, to be arranged subject to plans and details for same subject to the approval of the Board Engineer.

20. The Board, following its review and consideration of all of the evidence and testimony offered to the Board during these hearings and based upon the redesign of certain elements of the subdivision and the stipulations of the applicant regarding the further usage of the five lots being proposed, concludes that the variances needed for the subdivision to go forward related to the maintenance of historic type structures and other improvements on the property that the Board believes to be appropriate, can be approved under the C2 standard for variance relief in the Municipal Land Use Law. The Board concludes that the continued maintenance of these improvements on the property which are largely historic in nature and for which the Historic Preservation Commission of the Township has previously indicated should be encouraged and allowed, will clearly benefit the overall usage of the subdivision premises and its aesthetic appeal and historic appearance which the Board wishes and the applicant agrees to preserve in the future. This positive benefit to the subdivision overall the Board finds can be accomplished without any significant detriment or negative impact whatsoever in the reasonable judgment of the Board. Further the Board notes that the variances requested in this case for the structures involved are relatively minor in nature considering the overall size of the subdivision and the five lots now being created. The Board notes most importantly in permitting these variances to be granted in connection with the overall subdivision do not impact the lot sizes or bulk requirements of the ordinance for the five lots involved in this case which are otherwise conforming to the requirements of the Land Development Ordinance. The Board also believes that the applicant’s agreement to comply with the stipulations and requirements and other conditions of this resolution as discussed with the applicant provide additional basis and support for the approval of this application by the Board. The Board as a result of the evidence and testimony in this case and the Board’s inspection of the premises concludes that the revised subdivision plan/plat in this case can appropriately be approved consistent with principles of good planning and design.

#### **Description of Preliminary & Final Subdivision Approval with Variances**

2. The approval of this application for preliminary and final major subdivision with variances is in accordance with nine drawings entitled “Preliminary Major Subdivision Plans for Block 4, Lots 21 & 21.01, 665 Spring Valley Road (Lot 21) and 655 Spring Valley Road (Lot 21.01), Township of Harding, Morris County, New Jersey,” dated October 17, 2022 and prepared by H2M Associates, Inc.; and one drawing entitled “Final Plat Major Subdivision, Tax Lots 21 & 21.01 – Block 4, Township of Harding, Morris County, New Jersey,” dated October 17, 2022, prepared by James P. Deady Surveyor LLC; with both of these plans as further amended subject to the terms of this resolution and as further approved by the Board Engineer. Also variances from Ordinance Section 225-116.D(1) location of accessory structures for stone garage on Lot 21, pool house and pool to remain in front of the dwelling on this lot. For Lot 21.01 a variance for the location of the existing pump house and the height of the existing barn on the property at approximately 35 feet contrary to the requirements of Ordinance Section 225-122.D(2).

#### **Approval Conditions**

11. The applicant shall obtain any and all other required outside agency approvals or permits required for this major subdivision and/or for the construction of any improvements or other work at the property in accordance with this resolution of approval from the Planning Board; and

12. The applicant shall comply with the review memorandum and report dated April 21, 2023 from Paul D. Fox, the Planning Board Engineer; and

13. The applicant shall prepare a landscaping plan for the 25 foot wide flagstaff driveway for the proposed Lot 21.04 and a landscaping buffer plan for the stone garage to remain on proposed Lot 21 for the reasonable review, requirements, and approval of the Planning Board Engineer; and

14. The applicant, pursuant to proper permits in accordance with the Township ordinances, shall remove the two-family dwelling behind the mansion. This removal is to be undertaken prior the perfection of the subdivision now approved by the Board; and

15. The applicant shall prepare and present for the review and approval of the Board Engineer required easements for tree, conservation easements, joint or shared driveway easements, and proposed emergency access easement on proposed Lot 21.

The form and content of the easements shall be subject to the reasonable review, requirements, and approval of the Board Engineer. The easements, once approved, shall be filed simultaneously with the subdivision plat required in this resolution; and

16. The applicant shall amend the final subdivision plat in accordance with a plan for the reasonable review, requirements, and approval of the Board Engineer locating easements on the subdivision premises and the areas for bridle paths. Further, the applicant shall present for the reasonable review, requirements, and approval of the Board Engineer a proposed agreement between the applicant and the bridle path association of the Township granting a license to use these paths/areas. This agreement is to be entered into between the parties prior to perfection of the subdivision. The right to use the bridle trail would be terminable upon violation of the agreement or other law or regulation, absent corrective action following notice and a reasonable opportunity to cure, or at the time of any property conveyance at the sole discretion of the property owner; and

17. The applicant shall pay any and all outstanding application, technical review, professional fees, and/or any other fee, charge, payment, or deposit related to this subdivision, demolition work required on the property, and/or in any other way related to the construction of any new dwelling or the construction on any of the lots in this subdivision in accordance with the Township ordinances. These payments to include but not be limited to any development review fee and/or any and all Affordable Housing fees, assessments, charges, deposits, payments, or any other expense applicable to this subdivision and the further work to be undertaken at any portion of the property in accordance with the subdivision approval of the Board. The applicant shall also pay any and all other fees, charges, deposits, escrows, or inspection fees, and any and all professional billings received for this application, the final subdivision plat, any and all easements or other related work required of the Board professionals and/or related to the subdivision and approval of the Board and resolution compliance regarding same, and for any and all other related work by the Board professionals associated with this application in accordance with the ordinances and regulations for the Township; and

18. The applicant shall pay any and all outstanding property taxes and any and all other fees and charges of the Township prior to the signing of the final subdivision plat by the appropriate officers of this Board; and

19. As noted previously, all of the easement areas and requirements of the conditions of approval for this subdivision shall be noted on the final subdivision plat which again is subject to the final review, approval, and requirements of the Board Engineer. Further any deed of conveyance for any of the lots in the subdivision shall specifically include a reference to the terms, conditions, and requirements of the final subdivision plat, and any easement required and recorded which apply to the lot; and

20. The applicant shall perfect this subdivision by filing the final approved subdivision plat within the time permitted in the Municipal Land Use Law; and

21. Prior to the signing of the final subdivision plat in accordance with this resolution, the Board Engineer shall first provide a written confirmation to the Secretary of the Planning Board that the applicant has complied with all terms, conditions, and requirements of this resolution.

#### **Vote on Resolution**

For the Oral Resolution: Walters, Edgar, Jones, Yates, Chipperson, Clew, Burns, Newlin and Claytor.

Against the Oral Resolution: None

For the Written Resolution: Walters, Edgar, Yates, Chipperson, Clew, and Claytor.

Against the Written Resolution: None

The within resolution was duly adopted by the Planning Board for the Township of Harding at its meeting of October 23, 2023.

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### **HARDING TOWNSHIP PLANNING BOARD RESOLUTION**

#### **Application PB-05-23**

#### **Minor Site Plan Approval for a Conditional Accessory Residential Use**

**Jeff Gelband**

**26 Long Hill Road**

**Harding Township, Block 50, Lot 8**

WHEREAS, Jeff Gelband, as owner and applicant for the property listed above, having applied to the Harding Township Planning Board for approval to construct a two-story, 1,013 square foot accessory residence to consist of one bedroom, one full bathroom, one half bathroom, and a living area plus kitchen. This structure is proposed to be constructed to the rear of the principal dwelling on the property which is a single-family dwelling. This property is located in the RR Zone, and an accessory residential use is a permitted conditional use in the zone subject to the minor site plan approval of the Planning Board that confirms that the residence as now proposed conforms to the conditional use requirements and standards of the ordinance; and

WHEREAS, the applicant having submitted to the Board with this application nine drawings entitled "Gelband Property, Lot Grading, Septic Design & Conditional Use Plans, Lot 8, Block 50, Township of Harding, Morris County, New Jersey," prepared by Yannacone, Villa & Aldrich LLC, dated May 12, 2023 with revisions thru June 6, 2023; and three-sheet set of architectural plans prepared by Jay Michael Petrillo, AIA, dated May 17, 2023. In addition the Board and the applicant acknowledged receipt of review memos and reports as dated August 24, 2023 from Paul D. Fox, PE, CME, the Planning Board Engineer; and August 24, 2023 from M. McKinley Mertz, PP, AICP, Leed Green Associate, as the Planning Consultant to the Board; and

WHEREAS, at its meeting of September 25, 2023 the Planning Board approved the application subject to the preparation of a further resolution from the Planning Board setting forth its findings, conclusions, conditions, and requirements in accordance with the evidence and testimony and stipulation of the applicant at the time of hearing to be set forth in the Board's resolution;



NOW, THEREFORE, BE IT RESOLVED by the Harding Township Planning Board, on the 23<sup>rd</sup> day of October 2023, that the approval of the Board for the applicant's minor site plan application for a conditional accessory residential use to permit the applicant to construct a two-story, 1,013 square foot accessory residence in accordance with the plans, evidence and testimony in this case is hereby memorialized as follows:

**Findings of Fact and Statement of Reasons**

21. At the time of hearing of this case Nicole M. Magdziak, Esq. of Day Pitney, LLP, of Parsippany, New Jersey appeared to present this case for the applicant. She stated for the Board that this application was for a minor site plan approval of an accessory residence as a permitted conditional use under the requirements of the ordinance. Ms. Magdziak then recited the seven conditions set forth in the ordinance for this application as a conditional accessory residential use to be approved. She then gave the specifications and details from the applicant's plan submission that conformed to all of these requirements.

22. The applicant's project engineer, Mr. Ryan Smith of Yannaccone, Villa & Aldrich then reviewed with the Board the plans submitted and referred to the section of his plan showing the existing conditions on the property. He discussed with the Board the construction work now underway on the property and gave detailed testimony as to the accessory dwelling which he described as "the cottage." After covering the seven requirements in the ordinance for an accessory use to be approved as a conditional use, he then testified, "The square footage of the cottage will 918 square feet of living space and a total of 1,013 square feet of coverage. The setbacks and bulk requirements of the ordinance are also conforming. It will be located behind the principal residence on the property, and the usage and occupancy of this dwelling will conform to the ordinance requirements." In response to a question from the Board, the engineer also located for the Board the pool on the property which he stated "is also located behind the principal dwelling." The Board, noting that the maximum coverage requirements for the property overall permitted by the ordinance were "now close to maximum" with the swimming pool and a separate "sports building," requested that the applicant's representatives advise as to whether any additional construction was being anticipated in the future. The applicant's attorney responded, "In this particular case, Mr. Newlin, we did discuss in much detail the sort of overall development plan for the whole lot, which is what is shown to you in the (plan) set...we are not expecting that the applicant will be requesting relief for lot coverage."

23. The project architect, Mr. Jay Petrillo, then provided testimony to the Board as to his plans and elevations for the new accessory residence. After discussing the details of all of this work, Mr. Petrillo confirmed, "There will be 918 square feet of living space and 1,013 square foot total coverage for this dwelling." In response to questions from the applicant's attorney, Mr. Petrillo also stated that the cottage would be "less than two bedrooms, yes, there will be one." He then further described the configuration and use of the interior space of this dwelling. In response to a follow up question from the Board as to a Bilco door being shown on the plan and whether any usage was being proposed for the basement, Mr. Petrillo testified, "There will be no living space in the basement, the basement is for mechanicals."

24. The Board Planning Consultant, Ms. Mertz, then had questions on follow up for the project architect and the applicant. The Board Planner asked the architect and the owner to confirm that it was not the intention of the applicant to utilize this building as a separate rental or dwelling unit that would not be in conformance with the conditional use requirements of the ordinance. The Board Planning Consultant stated as was set forth on page 5 of her review memo that the Board should consider requiring a deed restriction for the property for this new dwelling to ensure that any future purchaser of the property would have a clear understanding of the terms of this approval and what the ordinance requirements are for the usage of this dwelling. The applicant's attorney agreed to this condition and requirement with language in the deed restriction confirming the requirements of this resolution and that future occupancy and usage of the dwelling be in accordance with the ordinance requirements for a conditional accessory residential use.

25. There were no public questions, statements, or comments offered to the Board regarding this application.

26. The Board finds and concludes from the evidence and testimony presented to the Board for this minor site plan approval of a conditional accessory residential use confirms that the accessory dwelling proposed meets all of the conditions and requirements in the ordinance which apply to same in the RR Residential Zone as set forth in Section 225-178.A thru G of the ordinance. The Board, in addition to confirming that the conditional use requirements for this accessory residence are being satisfied by the applicant in this case, also notes that the location and details of this residence are appropriate and can be properly accommodated on the property even though the Board believes that building coverage on the property has "maxed out." The Board makes this last finding based upon the applicant's statement that no further construction on the property is anticipated. As a result of the applicant's conformance to the requirements of the ordinance for this usage and with the applicant's further stipulation and agreement with the Board during this hearing to the condition proposed by the Board Planning Consultant that a deed restriction regarding this accessory dwelling will be entered into by the applicant in accordance with this resolution, which will ensure that the applicant and any future owner will use this dwelling only in accordance with the requirements for a conditional residential accessory use that then apply in the Land Development Ordinance for the Township of Harding. All of which thereby makes it appropriate for the Board to allow and issue to the applicant approval of this minor site plan for a conditional accessory residential use as now requested.

**Description of Minor Site Plan Approval for Conditional Accessory Residential Use**

3. The approval of this application for minor site plan approval for a conditional accessory residential use is in accordance with drawings entitled "Gelband Property, Lot Grading, Septic Design & Conditional Use Plans, Lot 8, Block 50, Township of Harding, Morris Township, New Jersey" prepared by Yannaccone, Villa & Aldrich LLC, dated May 12, 2023 with revisions thru June 6, 2023, and three-sheet set of architectural plans prepared by Jay Michael Petrillo, AIA, dated May 17, 2023.

**Approval Conditions**

22. The applicant shall obtain any and all other required outside agency approvals or permits required for this minor site plan and the construction of this conditional accessory dwelling on the property in accordance with this resolution of approval from the Planning Board; and

23. The applicant shall further address-satisfy any outstanding comments and requirements in the review memo and report dated August 24, 2023 from Paul D. Fox, PE, the Board Engineer; and

24. The construction and usage of this accessory residential dwelling shall be strictly in accordance with the plans, evidence, and testimony before the Board in this case; and

25. Prior to any work on this dwelling as now approved, the applicant shall obtain required building and/or other permits required for this construction in accordance with the ordinances for the Township of Harding; and

26. The applicant shall pay any and all outstanding application, technical review, professional fees, and/or any other fee, charge, payment, or deposit for this new dwelling to be constructed in accordance with the Township ordinances, including but not limited to any development review fee and/or any and all Affordable Housing fees, assessments, or other charges. Also to pay any and all further fees, charges, deposits, escrows, or inspection fees, and any and all professional billings received for this application, the deed restriction, and the construction of this dwelling in accordance with the ordinances and regulations for the Township; and

27. The applicant shall pay any and all outstanding property taxes prior to obtaining building permit for this new dwelling; and

28. The applicant shall enter into a deed restriction which will include as an attachment this resolution and shall further recite that it is prohibited that this accessory dwelling and all accessory buildings on the property are not to be utilized at any time as a rental unit. Further this accessory residence now allowed in this resolution shall not at any time be utilized in any other way that contradicts the conditions for the usage as found at present in ordinance Section 225-178 of the Township of Harding or as may be amended in the future by another section of the ordinance for a conditional residential accessory use. The deed restriction as prepared by the attorney for the applicant shall also include a provision that it shall remain in effect and be binding upon the applicant, his heirs, successors, and/or assigns, until a further discharge of same be entered into by the Planning Board and/or the Mayor and Council for the Township of Harding. The deed restriction shall be subject to the review, requirements, and approvals of the Board professionals and Board Attorney. Following their approval the applicant's attorney shall promptly file the deed restriction and supply a copy of the recorded deed to the Secretary of the Planning Board. The recording of the deed and the supplying of a filed copy of same by the applicant to the Secretary of the Planning Board without charge to be a requirement of this resolution prior to the issuance of a certificate of occupancy for the new accessory residential dwelling on the property; and

29. There shall be no change in the details and plans for this construction and/or usage of this accessory dwelling at any time in the future unless it is in accordance with the ordinances for the Township of Harding, and/or otherwise it must be first submitted for approval to the appropriate land use board for the Township of Harding.

#### **Vote on Resolution**

For the Oral Resolution: Walters, Edgar, Jones, Yates, Chipperson, Clew, Burns, Newlin and Claytor.

Against the Oral Resolution: None

For the Written Resolution: Walters, Edgar, Yates, Chipperson, Clew, and Claytor.

Against the Written Resolution: None

The within resolution was duly adopted by the Planning Board for the Township of Harding at its meeting of October 23, 2023.