

**HARDING TOWNSHIP BOARD OF ADJUSTMENT MINUTES
REGULAR MEETING
JULY 21, 2022
7:00 PM**

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Board Chair, Mr. Flanagan called the regular meeting of the Board of Adjustment to order at 7:00 and announced that adequate notice of the meeting had been made in accordance with the New Jersey State Open Public Meetings Act.

PLEDGE OF ALLEGIANCE

REGULAR MEETING

ROLL

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

Mr. Cammarata	Present	Mr. Newlin	Excused	Mr. Maselli	Excused
Mr. Addonizio	Excused	Ms. Sovolos	Present	Mr. Boyan	Excused
Mr. Rosenbaum	Excused	Mr. Symonds	Present	Mr. Flanagan	Present

Board Attorney, Mr. Hall, Board Engineer, Mr. Fox, and Ms. Taglairino were also present.

ADMINISTRATIVE

Mr. Flanagan announced the following scheduling & procedural matters:

<u>Application BOA #18-21</u>	529 Waterfront Properties, LLC 595 Van Beuren Road, B5/L8 Appeal of Tree Officer Decision (Adjourned to the August 18, 2022 meeting pending proper mail notice.)
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<u>Application BOA# 14-20</u>	Donald & Eliza Murphy 49 Meyersville Road, B55/L5 (Carried to the August 18, 2022 meeting).
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<u>Application BOA# 04-22</u>	Kunal Singh 95 Pleasantville Road, B15/L21.04, R-1 Zone (Carried to the August 18, 2022 meeting).
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MINUTES

June 16, 2022

Mr. Flanagan made a motion to approve the June 16, 2022 minutes as written. It was seconded by Mr. Symonds. On a voice vote all were in favor of approving the minutes.

RESOLUTIONS

Application BOA# 02-22

Daniel Cotter & Caren Khoo
566 Tempe Wick, B34/L8

Mr. Flanagan made a motion to adopt the resolution BOA# 02-22 Cotter/Khoo. The motion was seconded by Mr. Symonds. A roll call vote went as follows:

For: Cammarata, Flanagan, Symonds, and Sovolos
Against: None

Application BOA# 05-22

Grant & Meghan Wentworth
29 Sand Spring Lane, B 22/L3

Mr. Flanagan made a motion to adopt the resolution BOA# 05-22 Wentworth with an amendment. The motion was seconded by Ms. Sovolos. A roll call vote went as follows:

For: Sovolos, Flanagan, Symonds, and Cammarata
Against: None

Resolution BOA# 05-22

Retention of Steve Mlenak for Special Legal Counsel

Mr. Flanagan made a motion to adopt the resolution BOA# 05-22 Wentworth with an amendment. The motion was seconded by Ms. Sovolos. A roll call vote went as follows:

For: Sovolos, Flanagan, Symonds, and Cammarata
Against: None

Resolution BOA # 04-2022

Review of 2021 Annual Report and Resolution—Gary Hall

Mr. Flanagan made a motion to adopt the resolution BOA# 05-22 Wentworth with an amendment. The motion was seconded by Ms. Sovolos. A roll call vote went as follows:

For: Sovolos, Flanagan, Symonds, and Cammarata
Against: None

The resolutions are appended to the minutes.

OLD BUSINESS

Application BOA# 06-22

John & Joy Dalena
204 Blue Mill Road, B9/3.01
Applicant is requesting variance relief for a front setback, building coverage, lot coverage and existing non-conforming structure as per N.J.S.A.40:55D-70(c)

Presenting:
Joy Dalena, Owner
Carolyn Young, Architect

- Mr. Flanagan noted that there was a site inspection for this application.

Mr. Flanagan made a motion to approve the application as presented. The motion was seconded by Ms. Sovolos. A roll call vote went as follows:

For: Flanagan, Sovolos, Symonds and Cammarata

Against: None

NEW BUSINESS

Application BOA# 16-21

Ronald & Judith Preiss

110 Village Road, B15/L10.03, R-1 Zone

Applicant is requesting variance relief for a front setback of the principal dwelling, 7 setbacks for accessory structures, 2 variances for accessory structures in front of a principal dwelling, building coverage, and lot coverage as per N.J.S.A.40:55D-70(c). The applicant is also seeking a variance as per the Harding Township Code 225-116.Q(2) for driveway gates and pillars.

Presenting:

David Brady, Attorney

Judith and Ronald Preiss, Owners

- Mr. Brady opened the application.
- Mr. Flanagan requested no testimony since there were many Board Members absent.

A site inspection was scheduled for August 3, 2022 at 6:30 p.m.

OTHER BUSINESS

None

ADJOURNMENT

Mr. Flanagan adjourned the meeting at 7:28

Lori Taglairino

Respectfully submitted by Lori Taglairino, Board of Adjustment Secretary

HARDING TOWNSHIP BOARD OF ADJUSTMENT

RESOLUTION

Daniel Cotter & Caren Khoo - Application No. 02-22

566 Tempe Wick Road - Block 34, Lot 8

Adopted July 21, 2022

WHEREAS, Daniel Cotter and Caren Khoo applied to the Harding Township Board of Adjustment for conditional use and minor site plan approvals and a (d)(3) variance from the conditional use regulation governing accessory residences in Section 225-178(E) of the Land Use and Development Ordinance, which requires compliance with all setback regulations, and for (c) variances from Section 225-115(B), which prohibits the enlargement of nonconforming structures, and Section 225-122(F), which requires minimum setbacks of 100', to permit construction of a second floor addition above an existing detached garage for use as an accessory residence on property located in the RR Zone at 566 Tempe Wick Road and designated on the Township Tax Map as Block 34, Lot 8; and

WHEREAS, the Board of Adjustment conducted a public hearing on the application at a meetings on March 17, 2022, April 21, 2022 and June 16, 2022 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 publicly noticed site inspection of the applicants' property on April 2, 2022; and

WHEREAS, the development application was revised in response to concerns expressed at the initial hearing and site inspection to eliminate a proposed elevated deck that would have further reduced the nonconforming side setback; and

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

WHEREAS, at the meeting on June 16, 2022, the Board of Adjustment adopted an oral resolution approving the revised development application, subject to certain conditions and based on findings and conclusions as memorialized herein;

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 21st day of July 2022, that approval of the revised development application of Daniel Cotter and Caron Khoo is hereby memorialized as follows:

Findings of Fact and Statement of Reasons

1. The applicants' property is a flag lot located at 566 Tempe Wick Road in the RR Zone. It has a lot size of approximately 6.58 acres, plus an additional flag staff area of approximately 0.54 acres.

2. The property is improved with a single-family residence, swimming pool and detached garage, as shown on a variance plan prepared by Yannaccone Villa & Aldrich, LLC, initially dated August 30, 2021.

3. This property was the subject of Application No. 5-01 that was approved by the Board of Adjustment by resolution adopted on May 17, 2001 that granted variance relief to allow minimum east side setbacks of 70' for a new detached garage to replace a prior detached garage with an 80' side setback and 43' for a new swimming pool and pool patio.

4. This property was also the subject of Application No. 26-08 that was approved by the Board of Adjustment by resolution adopted on November 20, 2008 that authorized the prior owner to construct a second story addition above the detached garage with an elevated side deck in order to create an accessory residence. That variance approval was not acted upon and thus expired.

5. The current owners proposed a similar vertical enlargement of the nonconforming detached garage to provide a second floor accessory residence as shown on the variance plan and on architectural plans prepared by Patrick Burke, III, Architect, dated July 20, 2008 and revised and reissued May 5, 2021.

6. The proposed accessory residence requires conditional use and minor site plan approvals pursuant to Section 225-178 of the Ordinance.

7. As initially proposed, the enlarged accessory structure would reduce the minimum east side setback from 68.1' to 59.6' due to the elevated deck proposed for the eastern end of the detached garage. The revised proposal that eliminated the proposed deck would maintain the nonconforming side setback. By virtue of the continued deviation from the 100' minimum side setback requirement, the proposed accessory residence would continue to require a (d)(3) conditional use variance from the condition in Section 225-178(E) that requires compliance with all setback regulations

8. The proposed vertical enlargement of the existing detached garage also requires (c) variances from Section 105-115(B) to allow enlargement of a nonconforming structure and from the 100' setback requirement in Section 225-122(F).

9. The applicants were represented in proceedings before the Board of Adjustment by Nicole Magdziak, Esq., of Day Pitney, LLP.

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

11. The Township Health Department commented on the proposal in a letter dated October 14, 2021 that noted conditional approval for a proposed septic system alteration for a 5 bedroom dwelling and a separate 1 bedroom apartment.

12. The Township Historic Preservation Commission commented on the application in a memorandum dated March 3, 2022 that noted that the property is a non-contributing property in the Tempe Wick Historic District and indicated that the house structure is not historic and the proposal would have no effect on streetscape. The memorandum stated that the HPC had no comments on the application.

13. Board Planner McKinley Mertz issued a memorandum dated March 15, 2022 that discussed the proposal and necessary variance relief.

14. Township Engineer Paul Fox issued a memorandum dated April 20, 2022 that commented on the application.

15. Testimony in support of the application was provided by architect Patrick Burke, III, and engineer Candice Davis, who described the proposal.

16. Engineer Davis presented an aerial photograph showing the applicants' property and the surrounding area, which is largely wooded. The property is steeply sloped and at a much higher elevation toward the rear. The residence on the adjacent lot to the east side is not opposite the garage and is at a significantly lower elevation. The property to the rear is part of the Jockey Hollow National Historic Park.

17. Architect Burke testified that the accessory residence would have only 1 bedroom and the total living space would be less than the 1,200 square foot maximum in the Ordinance, consistent with conditions in Section 225-178. He stated that the elevated deck was proposed for the east side in order to be compatible with a proposed entrance and interior stairway on the east side and to provide an eastern exposure. Architect Burke also expressed the view that shifting the proposed elevated deck to the western end of the garage in order to avoid reduction of the east side setback would impair the design and impact on trees and a bocce court located in the adjacent area opposite the western end of the detached garage.

18. The proposal was revised in response to concerns as to the proposed further reduction of the nonconforming east side setback to eliminate the proposed elevated deck and substitute a small Juliet balcony, as shown on architectural plans revised May 1, 2022 and on the variance plan as last revised May 5, 2022.

19. Granting necessary conditional use variance relief for the revised proposed accessory residence is consistent with the special reasons requirement under N.J.S.A. 40:55D-70(d)(3) for the following reasons:

a. This proposal is consistent with the intent of the conditions in Section 225-178 of the Ordinance. The accessory residence will be subordinate in size and function in relation to the existing principal residence, the lot size exceeds the 6-acre minimum, it will be located to the rear of the principal residence, and the accessory residence will comply with the size limits as to living space and number of bedrooms.

b. The deviation from the conditional use requirement concerning compliance with all setback regulations is limited to the pre-existing nonconforming east side setback, which was affirmatively approved previously by Board of Adjustment. The second story addition will not alter the prior determination that there will be no impact on the adjacent property due to the unique topography and the location of the residence on that property.

20. Based on the particular circumstances of this property, including its unique topography and the existing nonconforming location of the garage, denial of (c) variance relief to allow vertical enlargement of the nonconforming garage would impose exceptional practical difficulties on the applicants by precluding the proposed improvements, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).

21. Based on the foregoing, all of the requested variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance of the Township of Harding.

22. The applicants' revised proposal meets the requirements for conditional use and minor site plan approvals for an accessory residence under Section 225-178 of the Ordinance.

Description of Approvals

1. A variance is hereby granted pursuant to N.J.S.A. 40:55D-70(d)(3) from the conditional use condition in Section 225-178(E) of the Land Use and Development Ordinance that requires compliance with all zoning setback regulations to permit the applicants to construct a second story addition to the existing detached garage for use as an accessory residence that will maintain the nonconforming minimum east side setback of 68.1', as shown on architectural plans prepared by Patrick Burke, III, Architect, dated July 20, 2008 and revised August 10, 2008, revised and reissued May 5, 2021 and further revised May 1, 2022, and on the variance plan prepared by Yannacone Villa & Aldrich, LLC, initially dated August 30, 2021 and last revised May 5, 2022.

2. Conditional use and minor site plan approvals are hereby granted pursuant to Section 225-178 of the Ordinance to permit creation of an accessory residence, as shown on the revised architectural and variance plans.

3. A variance is hereby granted from Section 225-115(B) of the Ordinance to allow enlargement of the nonconforming garage, as shown on the revised architectural and variance plans.

4. A variance is hereby granted from the 100' minimum setback requirement in Section 225-122(F) of the Ordinance to allow construction of a second story addition to the existing detached garage that will maintain the nonconforming minimum east side setback of 68.1', as shown on the revised architectural and variance plans.

Approval Conditions

These approvals are granted subject to the following conditions:

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

2. The applicants shall obtain a building permit and any other necessary approvals, including approval from the Health Department.

3. These variances and approvals are based on and authorize only the specific accessory residence and related improvements proposed by the applicants as set forth in the testimony, application and revised plans. New or amended approvals shall be required for any different or additional improvements.

4. Since the accessory residence will not be contained within a contributing historic structure, occupancy will be subject to the restriction in Section 225-178(G) of the Ordinance that limits occupancy to immediate family members, domestic employees and temporary guests.

5. These variances shall expire unless the authorized construction is commenced within one year from the date of this resolution and is subsequently pursued in a reasonably diligent manner.

Vote on Resolutions

For the Oral Resolution: Sovolos, Symonds, Flanagan, & Cammarata

Against the Oral Resolution: None.

For the Form of the Written Resolution: Sovolos, Symonds, Flanagan, Cammarata

Against the Form of the Written Resolution: None

HARDING TOWNSHIP BOARD OF ADJUSTMENT

RESOLUTION NO. 04-2022

ANNUAL REPORT RESOLUTION FOR 2021

Adopted July 21, 2022

WHEREAS, in accordance with N.J.S.A. 40:55D-70.1, the Harding Township Board of Adjustment conducted a review of its decisions on applications for variances during calendar year 2021 and discussed recommendations to the Township Committee and Planning Board concerning potential amendments to the Township Land Use and Development Ordinance;

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 21st day of July, 2022, as follows:

1. The Board of Adjustment hereby adopts as its annual report for calendar year 2021 the attached Memorandum prepared by Gary T. Hall, Esq., Board of Adjustment Attorney, dated March 4, 2022, and after due deliberation and discussion presents the recommendations articulated below.

2. The Board of Adjustment acknowledges the recent adoption of an ordinance amending the zoning regulations applicable to children's play equipment structure in response to a prior recommendation by the Board of Adjustment.

3. The Board of Adjustment recommends that consideration be given to the half story definition to clarify whether the percentage calculation should be based on the entire area of the floor below or only the portion of the floor area below the area subject to potential half story classification.

4. In connection with residential building height, although not the subject of recent variance applications, the Board of Adjustment notes that the zoning regulations do not address the potential for a flat roof contrary to some other municipalities that impose different maximum height standards.

5. The Board of Adjustment acknowledges that in response to a recommendation last year consideration was given to zoning regulations that would allow temporary retention and occupancy of a residence while a new residence is being constructed on the same property, which has been the subject of temporary use variance approvals. The Board of Adjustment recommends continued consideration of this subject.

6. The Board of Adjustment repeats its prior recommendation that consideration be given to review and potential update of the zoning regulations applicable to wireless telecommunications facilities to ensure that they are consistent with current technology and wireless telecommunications business practices.

7. The Board of Adjustment notes that conditional use variance applications continue to be submitted for accessory residences.

8. The Secretary of the Board of Adjustment is hereby directed to transmit copies of this Resolution, including the attached Memorandum, to the Township Committee and Planning Board.

For the Resolution: Sovolos, Flanagan, Cammarata & Symonds

Against the Resolution: None

**TOWNSHIP OF HARDING
BOARD OF ADJUSTMENT
RESOLUTION BOA # 05-2022 CONSENTING TO LEGAL REPRESENTATION OF THE HARDING TOWNSHIP
BOARD OF ADJUSTMENT
BY STEVEN MLENAK, ESQ. OF THE FIRM GREENBAUM, ROWE, SMITH & DAVIS, LLP IN THE MATTER
NEW YORK SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS V. THE TOWNSHIP OF HARDING,
NEW JERSEY AND THE BOARD OF ADJUSTMENT OF THE TOWNSHIP OF HARDING, NEW JERSEY
DOCKET NO. 2:22-CV-04531**

WHEREAS, the Township of Harding Board of Adjustment (the "Board") requires the services of legal representation in the matter, NEW YORK SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS V. THE TOWNSHIP OF HARDING, NEW JERSEY AND THE BOARD OF ADJUSTMENT OF THE TOWNSHIP OF HARDING, United States District Court of New Jersey, Docket No 2:22-cv-04531 (hereinafter the "Litigation"); and

WHEREAS, Steven Mlenak, Esq. of the firm Greenbaum, Rowe, Smith & Davis, LLP, is a licensed New Jersey Attorney, and is recognized as capable and available to undertake such work; and

WHEREAS, Steven Mlenak, Esq. was previously appointed by the Board of Adjustment to the Board it in connection with an application for a cell tower that was filed by the Plaintiff and decided by the Board of Adjustment and forms the basis for the Litigation; and

WHEREAS, the Board wishes to appoint Steven Mlenak, Esq. to represent it in connection with the Litigation and recommends that the Township Committee consent to Mr. Mlenak's representation of the Board in the Litigation and establish an initial budget amount not to exceed \$5,000.00.

NOW, THEREFORE, BE IT RESOLVED by Board of Adjustment of the Township Harding, County of Morris, State of New Jersey as follows:

1. The Harding Township Board of Adjustment hereby appoints Steven Mlenak, Esq. of the firm Greenbaum, Rowe, Smith & Davis, LLP to represent the Board in the matter, NEW YORK SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS V. THE TOWNSHIP OF HARDING, NEW JERSEY AND THE ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF HARDING, United States District Court of New Jersey, Docket No 2:22-cv-04531.

2. A contract for professional services is authorized to be entered into with Steven Mlenak, Esq. of the firm Greenbaum, Rowe, Smith & Davis, LLP, with in an amount not to exceed \$5,000.00.

3. The scope of work to be performed by Steven Mlenak, Esq. shall be: Representation of the Harding Township Board of Adjustment in the matter, NEW YORK SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS V. THE TOWNSHIP OF HARDING, NEW JERSEY AND THE ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF HARDING, United States District Court of New Jersey, Docket No 2:22-cv-04531.

4. The Board of Adjustment Secretary shall publish a statement of reasons for awarding of the contract, to wit: Representation of the Harding Township Board of Adjustment by Steven Mlenak, Esq. in the matter, NEW YORK SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS V. THE TOWNSHIP OF HARDING, NEW JERSEY AND THE BOARD OF ADJUSTMENT OF THE TOWNSHIP OF HARDING, United States District Court of New Jersey, Docket No 2:22-cv-04531.

I hereby certify this is a true copy of a Resolution approved by the Board of Adjustment of the Township of Harding at a meeting held on July 21, 2022.

Vote on Resolution:

For: Sovolos, Flanagan, Symonds, Cammarata

Against: None

**HARDING TOWNSHIP BOARD OF ADJUSTMENT
RESOLUTION**

**Grant & Meghan Wentworth - Application No. BOA 05-22
29 Sand Spring Lane - Block 22, Lot 3
Adopted July 21, 2022**

WHEREAS, Grant and Meghan Wentworth applied to the Harding Township Board of Adjustment for a variance from Section 225-122(D)(1) of the Land Use and Development Ordinance, which imposes a 35' height limit for principal structures, to permit construction of a new principal residence on a lot located in a RR Zone at 29 Sand Spring Lane and designated on the Township Tax Map as Block 22, Lot 3; and

WHEREAS, the Board of Adjustment conducted a public hearing on the application at a meeting on June 16, 2022, for which public notice and notice by applicants were given as required by law; and

WHEREAS, the Board of Adjustment determined that a site inspection of the applicants' property was not necessary based on the limited scope of requested variance relief and the particular characteristics of the property and proposal; and

WHEREAS, the Board of Adjustment considered the testimony and exhibits presented during the public hearing; and **WHEREAS**, at the meeting on June 16, 2022, the Board of Adjustment adopted an oral resolution approving the variance application, subject to certain conditions and based on findings and conclusions as memorialized herein;

NOW, THEREFORE, BE IT RESOLVED by the Harding Township Board of Adjustment, this 21st day of July 2022, that the oral resolution approving the variance application of Grant and Meghan Wentworth is hereby memorialized as follows:

Findings of Fact and Statement of Reasons

1. The applicants' property is a flag lot located in a RR Zone at 29 Sand Spring Lane. It has a lot size of 32.2511 acres, excluding the .3567 acre area of the flag staff.
2. The property was the subject of an amended subdivision and variance approval granted by the Planning Board as memorialized in a resolution adopted on June 23, 2013 on Application No. PB 1-13. That approval included variance relief to allow the lot to have no road frontage, since access to Sand Spring Lane is provided by recorded easement rights over a 7' wide strip of land owned by the Harding Land Trust located between the end of the flag staff and Sand Spring Lane. Similar easement rights are applicable to adjacent lots separated from Sand Spring Lane by the 7' wide strip of land owned by the HLT.
3. The property was previously improved with a large single-family residence that was the principal residence on the much larger Frelinghuysen property that has been subdivided over the years. That residence was recently demolished, and the property is now vacant. The applicants proposed to construct a larger replacement residence at the same general location on the property as the prior residence. The building footprint was shown on plans prepared by Gladstone Design, Inc., dated March 23, 2022 and revised May 3, 2022. The design and layout of the proposed new residence were shown on architectural plans prepared by Mitchell Studio, dated May 3, 2022.
4. The proposed new residence would have a maximum height of 37.35' as calculated based on the average existing grade measured 15' off the foundation (representing a lower average grade than the average proposed finished grade), requiring a (c) variance from the 35' height limit for principal structures in Section 225-122(D)(1) of the Land Use and Development Ordinance.
5. The applicants were represented in proceedings before the Board of Adjustment by Nicole Magdziak, Esq., of Day Pitney, LLP.
6. Testimony in support of the application was provided by the applicants, engineer Robert Moschello, P.E., and architect Sam Mitchell, who described the property and proposed improvements.
7. The Township Historic Preservation Commission commented on the application in a memorandum dated April 7, 2022, which noted that this property is a contributing property in the Silver Lake Historic District. The memorandum recommended approval of the variance application and also indicated that the proposed new residence would have only limited streetscape exposure on James Street.
8. The Township Health Administrator commented on the application in a memorandum dated June 10, 2022, which indicated the absence of any objections to the variance application, subject to submission to the Health Department of a complete application for prior approval before submission of a building permit application.
9. No neighbor or member of the public objected to the application.
10. Engineer Moschello noted that much of the property is subject to environmental constraints and conservation easements, as shown on a survey prepared by James P. Deady Surveyor, LLC, dated March 15, 2021 and last revised February 24, 2022. He testified that due to these constraints and the location of the proposed new residence there was no apparent potential for a future subdivision to create an additional building lot. The applicants nevertheless agreed to an approval condition prohibiting any future subdivision to create an additional building lot as long as the approved replacement residence is constructed and remains on the property. A deed notice including a copy of any approval resolution would be recorded to provide notice of this restriction.
11. Architect Mitchell testified that the calculated height of 37.35' in relation to existing average grade for the proposed new residence was attributable to the topography of the proposed building site, which would have to be re-graded for the residence. He also testified that shifting the proposed location of the residence footprint to reduce the calculation building height would move the area of proposed disturbance closer to nearby mature trees that would be adversely impacted.
12. Only a limited portion of the roof for the central portion of the replacement residence will exceed the calculated height limit of 35', as shown on the front building elevation included with the architectural plans. The actual elevation will not exceed

35' in relation to the finished grade in relation to the front of the residence. Altering the design to reduce the roof height would materially impair the appearance of the residence.

13. Visibility of the new residence from nearby streets will be limited. The new residence will have a minimum front setback of 231' with a flag staff length of more than 500', resulting a significant separation from Sand Spring Lane. Also, the proposed new residence will have only limited visibility across intervening properties from James Street.

14. Under these particular circumstances, the limited deviation from the height restriction will not be noticeable and the proposed new residence will not have the appearance of excessive height.

15. In the case of this specific property and its unusual topography, environmental constraints, tree protection concerns and the particular proposed design, strict application of the building height requirement would impose peculiar and exceptional practical difficulties on the applicants by precluding the specific proposed new residence, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).

16. In addition, in the case of this specific property, advancement of tree protection concerns and the particular proposed design represent benefits that would outweigh any detriment associated with the limited deviation from the building height requirement, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(2).

17. The variance requested by the applicants can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance of the Township of Harding.

Description of Variance

1. A variance is hereby granted from the principal building height limit of 35' in Section 225-122(D)(1) of the Land Use and Development Ordinance to authorize construction of a replacement residence with a calculated maximum height of 37.35' in relation to existing average grade, as shown on plans prepared by Gladstone Design, Inc., dated March 23, 2022 and revised May 3, 2022, and on architectural plans prepared by Mitchell Studio, dated May 3, 2022.

Variance Conditions

This variance is granted subject to the following conditions:

1. The applicants shall obtain Health Department approval, 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. This variance is based on and authorize only the specific proposed residence as set forth in the testimony and plans. New or amended variance approval may be required for any different or additional improvements.

4. Prior to issuance of a building permit, the applicants shall record a deed notice including a copy of this resolution, subject to review and approval by the Board Attorney.

5. In accordance with Section 225-35(C)(1) of the Ordinance, this variance shall expire unless the authorized construction is commenced within one year from the date of this resolution and is subsequently pursued in a reasonably diligent manner.

Vote on Resolutions

For the Oral Approval Resolution: Sovolos, Symonds, Addonizio, Flanagan, Cammarata & Boyen.

Against the Oral Approval Resolution: None.

For the Form of the Written Resolution: Sovolos, Symonds, Flanagan & Cammarata.

Against the Form of the Written Resolution: None.