

**HARDING TOWNSHIP BOARD OF ADJUSTMENT MINUTES
REGULAR MEETING
APRIL 20, 2023
7:30 PM**

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Board Chair, Mr. Flanagan, called the meeting of the Board of Adjustment to order at 7:30 and announced that adequate notice of the meeting had been made in accordance with the New Jersey State Open Public Meetings Act.

PLEDGE OF ALLEGIANCE

REGULAR MEETING

ROLL

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

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

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

Mr. John Barree filled in as Planner for Ms. Mertz.

ADMINISTRATIVE

Mr. Flanagan announced that the Board will adjourn into Executive Session at the end of the regular meeting at 9:30 pm.

EXTENSION

BOA# 05-22 Grant & Meghan Wentworth
29 Sand Spring Lane, B22/L3

Mr. Flanagan made a motion to grant the extension of application BOA# 05-22 Grant & Meghan Wentworth. Mr. Symonds seconded the motion. On a voice vote all were in favor of granting the extension.

MINUTES

March 16, 2023 Minutes

Mr. Flanagan made a motion to approve the March 16, 2023 minutes. Mr. Symonds seconded the motion. On a voice vote, all eligible members approved the minutes.

RESOLUTIONS

Resolution BOA# 16-21

Ronald & Judith Preiss
110 Village Road, B15/L10.03, R-1 Zone

Mr. Flanagan made a motion to adopt the resolution for BOA# 16-21 Ronald & Judith Preiss. Ms. Sovolos seconded the motion. A roll call vote went as follows:

For: Flanagan, Boyan, Addonizio, Sovolos and Symonds.

Resolution BOA #04-23

Peter McCrae

15 Fox Hunt Road, B51.01/L16

Mr. Flanagan made a motion to adopt the resolution for BOA# 04-23 McCrae. Mr. Addonizio seconded the motion. A roll call vote went as follows:

For: Flanagan, Boyan, Addonizio, Sovolos and Symonds.

Ms. Taglairino announce that the BOA 2022 Annual Report will be reviewed at the May meeting.

OLD BUSINESS

Application BOA# 01-23

Paul Coates

50 Kitchell Road, B1/L8

Applicant is seeking a variance for height as per N.J.S.A.40:55D-70(d6) and a variance for lot coverage per N.J.S.A.40:55D-70(c).

Presenting:

Nicole Magdziak, Attorney

John Ferrante, Engineer

Jon Van Lenten, Architect.

- Ms. Magdziak reviewed the proposed reduction in lot coverage.
- Ms. Magdziak noted the existing deeded driveway easement.
- Mr. Fox noted that the average grade meets the 2-story criteria.
- Mr. Maselli voiced concerns over the massing and lot coverage.
- There was a lengthy discussion regarding the lot coverage.
- Mr. Flanagan requested that this structure be well screened to the rear of the property.

Mr. Flanagan made a motion to approve this application subject to landscape screening being included at the rear. Mr. Addonizio seconded the motion. A roll call vote went as follows:

For: Flanagan, Sovolos, Newlin, Addonizio, Symonds, and Rosenbaum

Against: Maselli

NEW BUSINESS

Application BOA# 06-23

Hunter 34, LLC

34 Hunter Dr. B48/L8.01

Applicant is requesting an amendment to a prior variance condition as per N.J.S.A.40:55D-70(c).

Presenting:
John Sullivan, Attorney
Rob Moschello, Engineer

Mr. Moschello was sworn in.
Mr. Nelson was sworn in.

- Mr. Sullivan noted that the applicant is seeking an amendment to a condition to the variance plan.
- Mr. Sullivan noted that additional trees had been removed that were not in accordance with the prior approval.
- Mr. Moschello presented the prior landscape plan.
- Mr. Fox noted the trees removed without a permit.
- The Board requested to see a plan comparison of what was removed, approved and what will be replanted.

Mr. Nelson of 33 Hunter Drive noted that there are other items being constructed that may not be as according to the prior approval.

A site inspection was scheduled for May 9, 2023 at 6:00 pm at the property.

Application BOA #05-23

Jason Doctor

546 Van Beuren Rd. B6/L11

Applicant is requesting variance relief for an accessory structure front of a principal dwelling as per N.J.S.A.40:55D-70(c).

Presenting:
Nicole Magdziak, Attorney
Ryan Smith, Engineer
Andrew Korzan, Landscape Architect

Mr. Smith and Mr. Korzan were sworn in.

- Ms. Magdziak presented plans for a swimming pool in front of the principal dwelling.
- Ms. Magdziak noted there was a prior approval for a pool in front of the dwelling in 2005 that was never constructed.
- Ms. Magdziak noted that the pool is in the rear of the house but faces Van Beuren Road with a 173 foot setback.
- There was a discussion about an existing easement that runs through the property.
- Mr. Korzan presented plans for landscape buffering surrounding the pool.

Mr. Healey from Crestley Drive had concerns about the location and visibility of the pool.

The Board scheduled a site inspection for May 9, 2023 at 5:30 pm.

Application BOA# 03-23

Christopher & Lucy DeStefano

6 Deer Ridge Dr. B33/L11.01

Applicant is requesting variance relief for building and lot coverage as per N.J.S.A.40:55D-70(c).

Presenting:

Jack Kelly, Architect

Christopher DeStefano, Owner

Mr. Kelly and Mr. DeStefano were sworn in.

- Mr. Kelly presented proposed plans for a 228 square foot kitchen addition and a covered pavilion for a patio.
- Mr. Kelly noted there is a private road easement that runs through the property, adding to the lot coverage.
- Mr. Kelly presented Exhibit A-1, a series of photographs depicting the existing conditions on the lot and showing where the proposed kitchen bump out would be situated.
- An additional variance for an accessory structure in front of the principal structure was flagged.
- The Board requested that there be removal of lot coverage to create a net 0 increase in lot coverage. The revised plans are to be submitted to the Board Engineer for approval.

Mr. Flanagan made a motion to approve the application with the additional variance and the reduction in lot coverage. Mr. Newlin seconded the motion. A roll call vote went as follows:

For: Flanagan, Sovolos, Newlin, Addonizio, Symonds, Rosenbaum and Maselli

RESOLUTION TO ADJOURN INTO EXECUTIVE SESSION—Mr. Flanagan

BOA# 08-2023 Resolution to Adjourn into Executive Session

Mr. Flanagan read the resolution into the record.

Mr. Flanagan made a motion to adjourn into executive session. Mr. Rosenbaum seconded the motion. On a voice vote all members were in favor of adjourning into executive session.

The meeting adjourned at 9:36.

Lori Taglairino

Respectfully submitted by Lori Taglairino, Board of Adjustment Secretary

**HARDING TOWNSHIP BOARD OF ADJUSTMENT
RESOLUTION**

**Peter McRae - Application No. BOA 04-23
15 Fox Hunt Road - Block 51.01, Lot 16
Adopted April 20, 2023**

WHEREAS, Peter McRae applied to the Harding Township Board of Adjustment for variances from Section 225-115(B) of the Land Use and Development Ordinance, which prohibits the enlargement of certain nonconforming structures, and from Section 225-122(F), which imposes a 100' minimum setback requirement, to permit construction of an open and partly covered deck to replace an existing open deck on property located in a RR Zone at 15 Fox Hunt Drive and designated on the Township Tax Map as Block 51.01, Lot 16; and

WHEREAS, the Board of Adjustment conducted a public hearing on the application at a meeting on March 16, 2023 for which public notice was given by the applicant as required by law; and

WHEREAS, the Board of Adjustment determined that a site inspection was not necessary based on the characteristics of this particular proposal and the requested variance relief in relation to the existing improvements on the property; and

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

WHEREAS, at the meeting on March 16, 2023, 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 20th day of April 2023, that the oral approval of the variance application of Peter McRae is hereby memorialized as follows:

Findings of Fact and Statement of Reasons

1. The applicant's property is a 5.01-acre lot (including the area of the private street right-of-way) located in a RR Zone at 15 Fox Hunt Road.

2. The property is improved with a single-family residence, in-ground swimming pool, pergola (mis-designated as a shed on the initial plans) and related residential improvements, as shown on plans prepared by AHM Architects LLC, dated July 21, 2022 and last revised March 3, 2023.

3. The residence is a nonconforming structure due to a minimum right side setback of 92.8' versus the minimum requirement of 100', and the pergola has a minimum nonconforming right side of about 50' (estimated). The swimming pool patio has a minimum nonconforming right side of about 60' (estimated). The improvements on the property conform with the building area and lot coverage ratio requirements.

4. The applicant proposed to construct a replacement side deck, the front portion of which would be covered as shown on the plans.

5. The proposed replacement deck requires variance relief from the 100' minimum front setback requirement in Section 225-122(F) to permit the nonconforming minimum right side setback of 92.8' to be maintained.

6. This proposal also requires variance relief from Section 225-115(B) of the Ordinance to permit enlargement of the nonconforming residence.

7. In response to discussion at the hearing, the application was amended to request variance relief to allow the pergola to remain on the property with a minimum left side setback of 50'.

8. Testimony in support of the application was provided by the applicant's architect Steven Hockstein, who explained the proposed replacement deck improvements.

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

10. The need for setback variance relief is attributable to the nonconforming right side setback for the current open deck that will not be reduced by the proposed replacement deck. This setback of 92.8' represents a limited deviation from the 100' minimum.

11. The proposed roof over a portion of the deck will not appreciably alter any visual impact on the abutting property, thus representing only a technical enlargement of the nonconforming residence. Therefore, variance relief from Section 225-115(B) is appropriate.

12. Approval of a minimum left side setback of 60' for the pergola will not have any adverse impact. It is a modest structure that apparently has been on the property for a number of years without objection or complaint.

13. Under the circumstances, the proposed enlargement of the nonconforming residence by construction of the partly covered replacement rear deck will not result in any adverse impacts on adjacent properties.

14. The proposed improvements to the residence will result in functional and aesthetic benefits.

15. In the case of this specific property, the nonconforming side setbacks and the location and characteristics of the existing and proposed improvements, strict application of the zoning requirements would impose peculiar and exceptional practical difficulties on the applicant by precluding the proposed replacement deck addition to the residence and retention of the pergola, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).

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

Description of Variances

1. A variance is hereby granted from Section 225-115(B) of the Land Use and Development Ordinance to allow expansion of the applicant's nonconforming residence by construction of a partly covered replacement rear deck as shown on plans prepared by AHM Architects LLC, dated July 21, 2022 and last revised March 3, 2023.

2. Variance relief is hereby granted from the 100' minimum setback requirement in Section 225-122(F) of the Ordinance to allow construction of a partly covered replacement deck that will maintain the minimum right side setback of 92.8', as shown on the plans.

3. Variance relief is hereby granted from the 100' minimum setback requirement in Section 225-122(F) of the Ordinance to allow retention of the existing pergola at an adjusted location with a minimum left side setback of 60', as shown on

the plans.

Variance Conditions

These variances are granted subject to the following conditions:

1. The applicant shall obtain final Health Department approval, a building permit and any other necessary approvals.
2. Any outstanding technical review fees shall be paid prior to issuance of a building permit and certificate of occupancy.
3. These variances are based on and authorize only the specific improvements proposed by the applicant as set forth in the testimony, application and plans. New or amended variance approval may be required for any materially different improvements.
4. These variances are granted subject to the express condition that prior to issuance of a building permit the applicant shall submit revised plans showing side setbacks for the pool patio and pergola and a corrected zoning table.
5. These variances shall expire unless the authorized construction is commenced within one year from the date of this resolution.

Vote on Resolutions

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

Against the Oral Resolution: None.

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

Against the Form of the Written Resolution: None.

**HARDING TOWNSHIP BOARD OF ADJUSTMENT
RESOLUTION**

Ronald & Judy Preiss - Application No. BOA 16-21

110 Village Road - Block 15, Lot 19.03

Adopted April 20, 2023

WHEREAS, Ronald and Judy Preiss applied to the Harding Township Board of Adjustment for variances from Section 225-122(F) of the Land Use and Development Ordinance, which requires minimum setbacks of 100', Section 225-122(C), which permits a maximum building area ratio of 3%, Section 225-122(H), which permits a maximum lot coverage ratio of 10%, and Section 225-116(D), which prohibits accessory structures in front of a principal residence, to authorize various existing improvements installed without necessary prior zoning approvals on property located at 110 Village Road in a R-1 Zone that is designated on the Township Tax Map as Block 15, Lot 19.03; and

WHEREAS, the Board of Adjustment conducted an initial public hearing on the application at a meeting on July 21, 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 noticed site inspection of the property on August 3, 2022; and

WHEREAS, the Board of Adjustment conducted a continued public hearing on the application at meetings on October 20, 2022, November 17, 2022 and March 16, 2023 at the Harding Township Municipal Building, for which public notice was given as required by law; and

WHEREAS, the application was revised several times during the course of the public hearing process in response to comments and concerns to provide for elimination of some existing improvements in order to reduce the extent of requested variance relief as set forth in several revised plans filed with the Board of Adjustment; and

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

WHEREAS, at the meeting on March 16, 2023, the Board of Adjustment adopted an oral resolution approving the final revised 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 20th day of April 2023, that approval of the revised variance application of Ronald and Judy Preiss is hereby memorialized as follows:

Findings of Fact and Statement of Reasons

1. The subject property is a flag lot located at 110 Village Road in the R-1 Zone. The flag staff connected is unimproved to Pleasantville Road, and access to the main area of the lot is provided from Village Road pursuant to private driveway easement rights. The property has a lot size of 4.026 acres (excluding the .372 acre flag staff) that conforms with the applicable minimum for the R-1 Zone.

2. The property is improved with a single-family residence, detached garage, shed, accessory building, swimming pool, patios, walkways and various other improvements, as shown on a copy of a partial topographic survey prepared by James Deady, Surveyor, LLC, dated May 8, 2021, and on Lot Development Plans, prepared by Page-Mueller Engineering Consultants, PC, initially dated July 20, 2021.

3. The applicants acknowledged that various improvements were constructed without necessary zoning approvals that are now being requested by the present application.

4. The application was revised several times during the course of the public hearing proceedings to provide for removal of some improvements to eliminate several variance requests, as follows:

- a. Section 225-122(F) – 100' minimum setback: the current deficient setback for the pool patio of 88.71' would be eliminated by partial patio removal to provide a conforming 121' setback.
- b. Section 225-122(F) – 100' minimum setback: the deficient current setback for the shed of 96.29' would be eliminated by proposed removal of the shed.

5. The changes to the plans to provide for removal of some improvements reduced the extent of several requested variances as follows:

- a. Section 225-122(C) – 3% maximum building area ratio: the current non-compliant ratio of 3.89% would be reduced to 3.20% by removal of the shed and accessory structure.

- b. Section 225-122(H) – 10% maximum lot coverage ratio: the current non-compliant ratio of 13.59% would be reduced to 10.86% by removal of the shed, accessory structure and various paved areas as shown on the revised plans.
6. Variances required for the initial proposal that were not altered by the final amended proposal were as follows:
 - a. Section 225-122(F) – 100' minimum setback: the current front setback of 97.73' for the residence steps would not be altered and would continue to require variance relief.
 - b. Section 225-122(F) – 100' minimum setback: the current setbacks of 90.52' and 86.31' for the detached garage would not be altered and would continue to require variance relief.
 - c. Section 225-122(F) - 100' minimum setback: the current setback for the generator of 71.01' would not be altered and would continue to require variance relief.
 - d. Section 225-122(F) - 100' minimum setback: the current setback of 31.23' for the fireplace would not be altered and would continue to require variance relief.
 - e. Section 225-116(D)(1) – accessory structures not permitted in front of a principal structure: the existing generator and detached garage are technically located in front of the residence front façade depending on the front yard determination, thus requiring variance relief.
 - f. Section 225-116(Q)(2) – minimum gate pillar separation of 20': existing pillar separations of 15.7' and 15.8' would not be altered and would continue to require variance relief, though it probably is not applicable based on the representation that the pillars were installed prior to adoption of Section 225-116(Q) in 2015.
7. The applicants were represented in proceedings before the Board of Adjustment by attorney David Brady, Esq., of Brady & Correale, L.L.P.
8. Testimony in support of the application was provided by the applicants, architect Peter Dorne, Engineer Catherine Mueller and professional planner Michael Tobia. They described the improvements on the property for which variance relief was requested. Planner Tobia presented his professional opinion as a planner that variance relief was appropriate.
9. No neighbor or member of the public commented on or objected to the application.
10. Comments on the final proposal were provided in a memorandum dated March 13, 2023 issued by Board Planner McKinley Mertz, who attended the public hearing session on March 16, 2023.
11. Significant concerns were expressed as to the initial proposal to retain the accessory structure that had been used as an accessory residence. The applicants proposed to retain the plumbing facilities and use the structure for other purposes. The applicants eventually proposed to remove the accessory structure. Aside from eliminating concerns as to potential non-permitted use, the proposed removal of the structure reduced the non-compliant building area and lot coverage ratios.
12. Significant concerns also were expressed as to initial proposal to retain the non-compliant lot coverage ratio of 13.59%. In response, the applicants eventually agreed to remove the accessory structure, shed and various patio and driveway areas, as shown on revised plans.
13. The foregoing changes also eliminated setback variance requests as to the shed and pool patio.
14. At the final hearing, there was a discussion of the continued proposed retention of the fireplace area notwithstanding setback and lot coverage issues. Testimony on behalf of the applicant emphasized the significant screening provided by existing vegetation and the relatively isolated location of the applicants' flag lot relative to surrounding residential properties. The applicants' testimony also focused on the important outdoor activity function served by the fireplace area and the resulting enhancement of residential use.
15. Testimony concerning the proposed retention of the attached garage indicated that it was appropriately sited in relation to the residence and driveway, with only limited deviations from the 100' setback requirement of 86.3' and 90.23' for corners the garage. As a result, most of the structure is within the building envelope. The garage has an attractive design and does not have the appearance of being in front of the residence notwithstanding the lesser setback from the front corner of the property, and it has a lower profile relative to the side lot lines due to the site topography.
16. The applicants proposed to mitigate any possible adverse impact of retention of the detached garage by installation of 6 white pines at an initial height of 7' to 8' opposite the adjacent lot line, as shown on the revised plans. The applicants also proposed to divert the garage roof runoff to a new drywell, as shown on the revised plans.
17. The applicants acknowledged that any variance approval for the garage would only address zoning regulations and would continue to be subject to all requirements of the Construction Official.
18. Correspondence from the Township Fire Chief indicated the absence of any concerns that the pillars adjacent to the driveway might obstruct access by fire safety vehicles, thus not contravening the purposes of Section 225-116(Q)(2).
19. Based on the unusual circumstances of the applicants' flag lot and the location and characteristics of the existing improvements, denial of the requested variances would impose peculiar and exceptional practical difficulties on the applicants by requiring removal of the detached garage and other existing improvements, thus making variance relief appropriate pursuant to N.J.S.A. 40:55D-70(c)(1).
20. Subject to compliance with all approval conditions, all of the variance relief requested by the applicants can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Master Plan and Zoning Ordinance of the Township of Harding.

Description of Variances

1. A variance is hereby granted from the 100' minimum front setback requirement in Section 225-122(F) of the Land Use and Development Ordinance to authorize the existing front setback for the residence stairs of 97.73', as shown on Lot Development Plans, prepared by Page-Mueller Engineering Consultants, PC, initially dated July 20, 2021 and last revised February 9, 2023.
2. Variances are hereby granted from the 100' minimum setback requirement in Section 225-122(F) of the Ordinance to authorize the existing side and rear setback for the detached garage of 90.52' and 86.31', as shown on the revised Lot

Development Plans.

3. A variance is hereby granted from the 100' minimum setback requirement in Section 225-122(F) of the Ordinance to authorize the existing rear setback for the fireplace structure of 31.23', as shown on the revised Lot Development Plans.

4. A variance is hereby granted from the 100' minimum setback requirement in Section 225-122(F) of the Ordinance to authorize the existing front setback for the generator of 71.01', as shown on the revised Lot Development Plans.

5. A variance is hereby granted from the 10% maximum lot coverage ratio requirement in Section 225-122(H) of the Ordinance to authorize existing improvements that after removal of improvements shown on the revised Lot Development Plans will reduce the ratio from 13.59% to 10.86%.

6. A variance is hereby granted from the 3% maximum building area ratio requirement in Section 225-122(C) of the Ordinance to authorize existing improvements that after removal of improvements shown on the revised Lot Development Plans will reduce the ratio from 3.89% to 3.20%.

7. A variance is hereby granted from the restriction against accessory structures in front of the principal structure in Section 225-116(D) of the Ordinance to authorize the current locations of a generator and detached garage, as shown on the revised Lot Development Plans.

8. A variance is hereby granted from the minimum pillar separation requirement of 20' in Section 225-116(D) of the Ordinance to authorize the current location of pillars adjacent to the driveway, as shown on the revised Lot Development Plans if deemed to be necessary, which does not appear to be the case based on the representation that the pillars were installed prior to adoption of Section 225-116(Q) in 2015.

Variance Conditions

These variances are granted subject to the following conditions:

1. These variances are based on and authorize only the specific improvements proposed by the applicants as set forth in the testimony, application and plans. New or amended variance approval may be required for any materially different improvements.

2. These variance shall not be effective until there has been compliance with all approval conditions as set for in this resolution as follows:

- a. Any outstanding property taxes, application fees and technical review fees shall be paid.
- b. The applicants shall obtain any necessary approval from the Construction Official and comply with any requirements of the Construction Official.
- c. The applicants shall obtain any other necessary approval.
- d. All structures and lot coverage designated for removal on the revised Lot Development Plans shall be removed and the areas shall be stabilized and appropriately seeded.
- e. The applicants shall install the 6 proposed trees as shown on the revised Lot Development Plans.
- f. The applicants shall install the drywell and roof leader modification for the detached garage, subject to prior review and approval by the Township Engineer.

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

Vote on Resolutions

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

Against the Oral Resolution: None.

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

Against the Form of the Written Resolution: None.