

**MINUTES OF THE HARDYSTON TOWNSHIP JOINT LAND USE BOARD MEETING HELD MARCH 28, 2023**

**CALL THE MEETING TO ORDER:** Acting Chairman Homa called the meeting to order at 7:00 p.m., read the *Statement of Compliance* inserted below, and led the Flag Salute.

**STATEMENT OF COMPLIANCE:** Pursuant to the Open Public Meetings Act, Chapter 231, P.L. 1975, adequate notice as defined in section 3D of Chapter 21 P.L. 1975, has been made to the New Jersey Herald and is also posted on the bulletin board at the Hardyston Township Municipal Building.

Richard Briigliodoro, Esq., administered the Oath of Allegiance to Savas Savadis.

**ROLL CALL:**

Brian Kaminski – Absent  
Carl Miller – Absent  
Jim Homa – Present  
Sally Goodson – Present  
Tony Alfano – Present  
Doug Grayson – Absent

Scott Lobban – Present  
William Hickerson – Absent  
Vally Cicerale – Present  
Ed Zinck – Present  
James Caiazzo – Present  
Savas Savadis – Present

**APPROVAL OF MINUTES:** A motion to approve the *Minutes of the Hardyston Township Joint Land Use Board Organization Meeting Held January 24, 2023* and was made by James Caiazzo and seconded by Vally Cicerale. A motion to approve the *Minutes of the Hardyston Township Joint Land Use Board Meeting Held January 24, 2023* was made by Sally Goodson and seconded by Vally Cicerale. It was noted that the meetings were held the same evening and there was no discussion or comments on either set of minutes. Roll Call for both sets of minutes: Jim Homa – yes, Sally Goodson – yes, Tony Alfano – yes, Scott Lobban – yes, Vally Cicerale – yes, Ed Zinck – yes, James Caiazzo – yes. The motion carried.

A motion to approve *Minutes of the Hardyston Township Joint Land Use Board Meeting Held February 13, 2023* was made by Sally Goodson and seconded by Scott Lobban. There was no discussion. Roll Call: Jim Homa – yes, Sally Goodson – yes, Scott Lobban – yes, Vally Cicerale – yes, James Caiazzo – yes. The motion carried.

**RESOLUTION:** There were no resolutions scheduled.

**HEARINGS:** LB-2-23-1, Aandrei J. Investors, LLC, “C” Variance, Block 68 Lot 16.09. Board members reviewed completeness. Conflict Engineer Thomas G. Knutelsky, P.E., P.P., was sworn. He presented his March 13, 2023 report that was submitted to the Board and noted that the Applicant did not submit “alternatives considered” as required by the Township’s “C” Variance Checklist. He recommended a waiver of this checklist item for completeness purposes only. Richard Briigliodoro, Esq., confirmed notice was satisfactory and Secretary Wilhelm confirmed administrative requirements were satisfied. There was no discussion.

A motion to deem the application complete was made by Ed Zinck and seconded by Sally Goodson. All were in favor. The motion carried.

Francis J. McGovern, Esq., appeared on behalf of the Applicant. He described the subject property as a 1.37-acre parcel located at 6 Anthony Court, a dead-end that ends at a cul-de-sac. Mr. McGovern presented the lot is part of a planned development approved in 2004. He noted two other houses are located along the street at present.

Mr. McGovern stated the matter comes to the Board “due to a combination of oversights along the way in terms of construction.” He noted the house was supposed to be 35' off of Anthony Court but during construction, ledge was discovered across a substantial portion of the property. He stated the builder was unaware that a third of the house was outside of the building envelope until the location survey revealed the error. Mr. McGovern stated a *Stop Work Order* was issued by the Township in October when the error was discovered. He presented the building is 99% complete, and there is a buyer of the building awaiting closing.

Mr. David Hook, Jr. was sworn. He stated he is a managing member of Aandrei J. Investors along with his father. Mr. Hook, Jr., confirmed he managed the construction and improvements on the property. The Applicant submitted a plan titled *Plot Plan and Soil Erosion & Sediment Control Plan, Block 68, Lot 16.09, 6 Anthony Lane, Hardyston Township, Sussex County, New Jersey, Sheet 1 of 1 dated 1/6/22* prepared by Daniel Davies, P.E., C.M.E., and identified as Exhibit A-1. Mr. Hook, Jr., stated he used the plan as a guide to locate the home. He confirmed that the home is complete and the Township inspected the structure. He stated he was not aware the building was located out of the envelope until it was already built. Mr. Hook, Jr., explained he thought he was in the building envelope during construction, and the survey was done after the building was set. He stated he staked the building out, and the building was not staked out using a licensed surveyor. He confirmed the building was located using a survey to determine the property lines. He acknowledged it was his responsibility to keep the house inside of the building envelope. He stated he was not aware of issues with the road. He stated he believes the application for a variance is the best option. It was noted the Applicant did not have their engineer present.

Mr. Knutelsky presented Hardyston Township Code bulk requirements noting the front setback from the building to the street right-of-way is 35', 50' to the adjoining property line, and 25' to the tract boundary. Mr. Knutelsky also explained that at the time of the original subdivision, the code might have required the planting of shade trees along the street system in a ten-foot easement outside of the right-of-way. He noted the subdivision plan shows the shade tree easement. He confirmed the 35' setback line is measured from the right-of-way and the 10' easement is in addition to that. He stated the building's encroachment is within the street tree easement.

The Applicant submitted a location survey titled *Location Survey for Lot 16.09 Block 68 in the Township of Hardyston, Sussex County, New Jersey*, prepared by Gary L. Worley, LS, dated 11/1/22, and revised 2/2/23. Mr. Hook, Jr., stated he used the road as a benchmark and measured the location of the house from the pavement. He stated he could not locate the home on a different portion of the property because the current location was the only place on the property to dig. He noted that even in the building's current location, there is a lot of ledge.

Mr. Knutelsky noted that the limits of the ledge were not provided on the plan.

Mr. Hook, Jr., confirmed this was not the first home he built in the development, and he was aware of similar ledge conditions in other areas of the development. He stated blasting was done on other properties in the development. He stated blasting was not an option on the subject property due to ongoing litigation with a neighbor. Mr. McGovern stated the consent of neighbors living within 150' was required by the blaster. Mr. Hook, Jr., stated ten days were spent excavating and looking for a suitable location for the home. He noted the design of the home has a full basement with nine-foot ceilings. He stated he could not reconfigure the home due to the basement. He confirmed he did not consider building the house on a slab as the existing design with the basement was chosen by the homeowner.

Mr. Hook, Jr., also noted the septic was relocated to accommodate the selected location. He confirmed the Health Department had not inspected the septic system, and the septic design engineer's certification of the system is pending.

Mr. Justin O'Connell was sworn. He stated he was the site excavator and has eight years of construction experience. He stated he has worked on hundreds of jobs. He presented he has never testified before a Board. He confirmed he is an unlicensed subcontractor. He testified he hit ledge immediately on the subject property and tested several areas. The Applicant submitted Exhibit A-3, described as a portion of a marked-up survey identifying eight locations on the property where excavation took place and ledge was found. The Applicant submitted Exhibit A-4, a location survey prepared by Gary L. Worley, L.S., dated 11/1/22, presenting it was the document copied for Exhibit A-3.

The Applicant submitted a series of photographs marked as Exhibits A-5 through A-13, with A-5 showing an excavation for the leach field, and A-6 –A-13 depicting on-site conditions found during excavations. Mr. O'Connell confirmed the photographs were taken on 4/15/22, and he took the photos as a matter of practice. Board members discussed the photographs. Mr. Knutelsky advised on techniques for siting septic systems. He noted the Board did not have information about the septic installation. The Applicant was asked about testing in the vicinity of the leach field and toward the rear of the property. Mr. O'Connell confirmed the septic system was installed after his excavation efforts. He also noted the leach field is a lot smaller than the size of the house where the house would encroach on the other sections of ledge. He stated at the time of locating the home, he

was under the impression the house was in the building envelope. He confirmed that excavation for the house began in April, and excavation for the septic and well began in August.

Mr. O'Connell identified ledge to the east and north sides of the house. He stated the placement of a portion of the house required an excavation using a cutter. Mr. O'Connell confirmed that a hammer was utilized in addition to the excavator. He stated the excavating machine belongs to the developer, and a bucket on the excavating machine cracked during the job. He stated he believed you could not get through the ledge without blasting. Upon inquiry, he opined that several months and multiple machines might have done the job. He stated he believed the ledge is granite. Mr. Knutelsky noted sometimes it can get to a point where there is nothing to rip out.

Mr. O'Connell stated the well had not been installed during his excavations, and he confirmed the site was a virgin lot when he began the job. He stated he could have dug anywhere. The Applicant submitted Exhibit A-14, identified as a letter dated 3/23/23 from well driller Fred Batalli. The letter enclosed well logs that were identified as Exhibit A-15. Board members reviewed the documents. Mr. O'Connell confirmed that he also excavated after the well was installed to allow placement of the waterline from the well to the house. He noted the excavation was not very deep for the line and able to be done with his machinery.

Board members discussed options and the potential of an adjustment of the cul-de-sac to offset the encroachment. Mr. Knutelsky stated that in order to move it away from his property, the cul-de-sac could be reconfigured. He stated the impact to the property lines would need to be reviewed. The Applicant confirmed three of four lots on the cul-de-sac are owned by the Applicant. One lot is not owned by the Applicant. Mr. Knutelsky noted moving the pavement away from the building is possible. He opined that whatever is done to the cul-de-sac would not totally remove the encroachment. Various options such as filing an amended subdivision were discussed.

The Board recessed at 8:50 p.m. The meeting was called to order at 9:05 p.m.

Gary L. Worley, L.S., was sworn, qualified, and accepted as an expert. He submitted Exhibit A-16, identified as *General Area Plan of Lot 16.09 Block 68*, prepared by Gary L. Worley, and dated January 12, 2023. Referencing the plan, he provided an overview of the lot and surrounding lots. He stated he did not know if drainage or infrastructure was installed under Anthony Court. He stated he began work after the house was built and in response to a request from the prior surveyor. He stated he established survey control. He opined that modification of the right-of-way line and/or alignment of the cul-de-sac bulb as described would keep the pavement further away from the home. He stated there is about 26' from the corner of the home to the existing pavement and 5.5' from the actual boundary. Potential modifications to Anthony Court were discussed.

The Applicant submitted Exhibits A-17 through A-26, a series of photographs taken by Mr. Worley on 3/27/23 and identified as follows:

Exhibit A-17: Mr. Worley stated the photo shows the home taken from the northeast corner of the home looking at the street. He noted a piece of ledge that he believed may have been move there sitting on a ledge outcropping.

Exhibit A-18: Mr. Worley stated the photo shows the view of the road from the southeast of the home.

Exhibit A-19: Mr. Worley stated the photo shows the view looking north at the ledge and away from the road.

Exhibit A-20: Mr. Worley stated the photo shows the front of the home taken from the road.

Exhibit A-21: Mr. Worley stated the photo is a picture of the house taken from the road showing a drainage structure.

Exhibit A-22: Mr. Worley stated the photo was taken showing the house from the end of the cul-de-sac.

Exhibit A-23: Mr. Worley stated the photo was taken looking at the house and house on the adjoining lot from Anthony Court.

Exhibit A-24: Mr. Worley stated the photo was taken looking southwest at the ridge on the south side of Anthony Court.

Exhibit A-25: Mr. Worley stated the photo was taken standing at the garage corner of the subject dwelling looking at the house on the Lot 6.11

The Applicant submitted Exhibit A-26, a plan set titled *Preliminary Major Subdivision "Brecia Farms" Lot 16 Block 68 – Hardyston Township & Lot 1 Block 11-Wantage Township, Sussex County, New Jersey* dated December 21, 2003. Mr. McGovern noted the plan set included the location of test holes on the west side of subject property. Mr. Worley provided information regarding results of the tests and confirmed the existing leach field is in the general area of the test holes.

The Applicant submitted Exhibit A-27, a Sussex County Division of health document dated 1-12-22, titled *Application for Permit to Construct/Alter/Repair an Individual Subsurface Sewage Disposal System*, and signed by Daniel S. Davies, P.E. Mr. Worley stated Mr. Davies did two test holes in January of 2022. He presented the results noting that they hit rock at about 100".

The Applicant submitted Exhibit A-28, titled *Sketch Showing Limit of Disturbance*, prepared by Mr. Worley. He stated he identified the limits of disturbance by observing where grading had stopped. He presented that 25,067 sf had been disturbed. Mr. Knutelsky the disturbance design standards for the zone mandate 30,000 sf or 50% of the lot area – whichever is less. He stated on the filed plat, all the lot areas are set at 20,000 sf. He noted the current ordinance limits permissible disturbance to 30,000 sf.

Jessica Caldwell, P.P., was sworn, qualified, and accepted as an expert witness. She provided an overview of the cluster developments layout and confirmed the property is located in the MIDD IV Zone. Exhibit A-29 was submitted and identified as a two-sided document showing the 200' radius from the property line on an aerial map on one side and the zoning designation on the other.

Ms. Caldwell stated the zone promotes cluster development and there is minimal impact. She opined the Applicant meets the positive C1 variance criteria as the lot has ledge rock that creates a hardship and affects where the residence needs to be. She presented that moving the house back would create more disturbance with a longer driveway and impervious coverage, possibly creating the need for additional variance relief. She opined that moving the house forward is a better planning alternative and promotes the zone plan. She stated there is no detriment to the public good as there is 26' to the road and the house is not any closer to any residents. She stated the cul-de-sac also creates additional space. She stated there would still be light, air, open space, and distance between houses. She said the location minimizes the impact to the environment and there is no negative impact on the zone plan. She noted the Applicant presented that a note could be added to the deed indicating the portion of the home located in the easement and trees could still be planted along the frontage of the property. She stated this is a unique piece of property and unique situation. Mr. Knutelsky noted that a correction to the bulb design could potentially move the edge of the garage closer to the roadway at 17'. Ms. Caldwell stated she did not believe this would be problematic as there would still be light, air, and open space between the homes.

Mrs. Francis McAllister and Mr. Lawrence McAllister, contract purchasers of the home, were sworn. Mrs. McAllister confirmed the couple contracted to buy the home in early 2022 and were hoping to close 7/21/22. She stated this is a big disappointment and she wants to move into the home. She stated the home and land are beautiful. Mr. McAllister presented they put a lot of money into the home and when they go to closing, they will only have about \$10,000 due. He stated he did not like hearing about knocking the house down or something because they have a lot of money in it.

Board members discussed the condition of the home in October. Mr. Hook, Jr., stated that the home was near completion in October. He confirmed that he continued to work despite the issuance of a STOP WORK order in October by pouring a floor in January. Mr. Hook, Jr., stated there was a misunderstanding with the Township Construction Department. He confirmed he believed that the variance as a solution was his best hope. He stated the buyers picked the model with a basement. Mr. McAllister confirmed that he asked for a basement and paid extra for a higher ceiling in the basement. He stated he had no discussions with the builder regarding changes of the architecture to address problems. He also confirmed another lot was offered in the beginning but he wanted the flat lot.

Joseph Butto, Hardyston Township Construction Official, was sworn. Mr. Butto explained UCC requirements and stated the location survey was not provided until October 2022. He presented the schedule of inspections conducted to date. He noted that no penalty was issued for the STOP

WORK ORDER violation, and he has tried to work with the Applicant. He stated no inspections and no required final inspections have been done since October. He stated he could issue a Temporary *Certificate of Occupancy* for up to 180 days and there is flexibility around that date. Mr. Butto stated the Construction Department is not an impediment to the completion of the project.

Acting Chairman Homa opened the meeting to the public. Mr. Bohdan Senyszyn appeared. Mr. McGovern requested that Mr. Bohdan Senyszyn not be permitted to testify as result of a court order. He submitted Exhibit A-30, a document titled ORDER AND FINAL JUDGEMENT, SUPERIOR COURT OF NEW JERSEY SUSSEX COUNTY: LAW DIVISION DOCKET NO.: SSX-L-296-04 filed November 5, 2021, Hon. Stephan C. Hansbury J.S.C. ret., t/a on recall Morris County. Mr. McGovern read the following from the order: It is further ordered that Defendants be and hereby are directed to comply with the March 2006 Settlement Agreement between the parties and shall immediately cease all interference with Plaintiff's development or sale of the properties located at 45-77 Grumm Road, Hardyston, New Jersey (Block 68, Lots 16, 16 QFARM and 16.02 through 16.21, Hardyston, New Jersey and Block 11, Lot 1, Wantage, New Jersey) more commonly known as the Brecia Farms Subdivision and shall comply with all court orders previously entered." Mr. McGovern submitted Exhibit A-31, a document titled ORDER, SUPERIOR COURT OF NEW JERSEY SUSSEX COUNTY: LAW DIVISION DOCKET NO.: SSX-L-296-04 filed July 22, 2022, Hon. Stephan C. Hansbury J.S.C. ret., t/a on recall Morris County. Mr. McGovern read from this order stating, "Mr. Senyszyn is not the owner of 2 Devon Lane, Hamburg, part of the Brecia Farms Subdivision, and he is interfering with its development. Subsequent attempts to interfere will result in financial penalty." Board Attorney Briigliodoro explained the MLUL relative to the member of the public addressing the Board on the matter.

Mr. Senyszyn presented the orders do not apply and stated he has every right to appear. He presented he has a claim on 50% of the property in an arbitration case as well. He provided information regarding his role in the original subdivision matter. Mr. McGovern objected. He stated this is a violation of the order. The Applicant was not permitted to speak further.

Mr. John Burger was sworn. Mr. Burger stated his property is 90' from the subject property. He stated he has been a resident of Brecia Court for seven years and it has been a nightmare. He questioned notice and stated he received his notice letter five days before the hearing. He stated he did not think it was fair. Mr. Briigliodoro explained the statutory requirements. Mr. Burger noted he had received a *Cease and Desist Order* prohibiting communication with the McAllisters.

Mr. Burger stated the Applicant owns 14 acres behind the subject lot and questioned why they could not move the house back. He opined that if you make a problem of your own choosing you should be denied a variance. He stated this is a self-created hardship, and the home's location degrades the neighborhood. He noted that his lot was excavated using blasting, and he did not see a lot of rocks and boulders coming out during the excavation of the subject property. Mr. Burger stated the history of the development should be considered. He presented his view that the development's roads are atrocious, the cul-de-sac is crumbling, and the bond was pulled by the Township. He stated there are two sinkholes and a pile of garbage that has not been moved. He stated he could not understand why the house could not be moved back. He stated houses are moved every day. Mr. Burger informed the Board that the bond was pulled two years ago and the Township told him the road would be paved. He noted Mr. Butto visits the site with a police escort.

No other members of the public addressed the Board, and the meeting was closed to the public.

Mr. McGovern summarized the matter and presented that severe mistakes were made at the beginning of the project. He stated some of the hardship is self-created. He noted the ledge was there from the beginning. He noted the neighbor did not complain about the aesthetics of the house. Mr. McGovern opined the house is beautiful. He stated the buyers are waiting to move in. He asked the Board to consider the impact of a denial and noted it would be devastating to many.

Board members discussed the matter. The credibility of the testimony was questioned and concern about working in violation of a STOP WORK ORDER was voiced. Board members agreed that the purchasers of the home would face a hardship. Board members agreed that there are solutions that could be reviewed in a separate action and acknowledged the decision is about the variance relief requested. Mr. Briigliodoro summarized the matter.

A motion to deny the request for variance relief was made by Tony Alfano and seconded by James Caiazzo. There was no further discussion. Roll Call: Tony Alfano – yes, Sally Goodson – no,

James Caiazzo – yes, Ed Zinck – yes, Vally Cicerale – yes, Scott Lobban – yes, Jim Homa – yes, Savas Savadis – yes. The motion carried.

**BILLS:** Jim Homa reviewed the bills and recommended an approval to pay them. A motion to pay the bills was made by Vally Cicerale and seconded by Tony Alfano. Jim Homa – yes, Sally Goodson – yes, Tony Alfano – yes, Scott Lobban – yes, Vally Cicerale – yes, Ed Zinck – yes, James Caiazzo – yes, Savas Savadis – yes. The motion carried.

**ADJOURNMENT:** Having no further business, a motion to adjourn was made by Jim Homa and seconded by Sally Goodson. All were in favor. The meeting was adjourned at 11:35 p.m.

Respectfully submitted by,

*Anne-Marie Wilhelm*

Anne-Marie Wilhelm  
Land Use Administrator