

**BOROUGH OF HARVEY CEDARS
LAND USE BOARD**

Regular Meeting – Minutes
August 17, 2023

The regular meeting of the Land Use Board of the Borough of Harvey Cedars was held in the meeting room of Borough Hall on the above date.

The meeting was called to order by **Chairman Robert Romano** at 07:00 PM.

Chairman Robert Romano made the following announcement: “This is the regular meeting of the Harvey Cedars Land Use Board, notice of which was duly posted on the Bulletin Board in the Municipal Clerk’s office, advertised in the Beach Haven Times and Asbury Park Press, and filed with the Municipal Clerk as required by the Open Public Meeting Act. This meeting is a judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the board may legally consider in reaching a decision and decorum appropriate to a judicial hearing must be maintained at all times.”

Members of the Board present: **John Tilton, William Montag IV, Robert Romano, Anthony Aukstikalnis, and Commissioner John Imperiale**

Members of the Board absent: **Mark Simmons, Mayor Jonathan Oldham, Kathy Sheplin**

Alternate members of the Board present: **Mindy Berman & Richard Warren**

Alternate members of the Board absent: **None**

Also present: **Kevin Quinlan Esq., Frank Little PE, Zoning Officer Cecilia Morillo**

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Due to technical difficulties, the start of the meeting was delayed until 7:06PM.

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Application – 2023:05 – 64 W. 80th Street – Alexandra & Timothy Levin

The following was entered into evidence:

A1 – Application

A2 – Variance Map prepared by Horn, Tyson, & Yoder

A3 – Architectural Plans prepared by Phillip D. Kunz

A4 – Building Permit Plan prepared by Horn, Tyson, & Yoder

B1 – Engineer Review Letter prepared by Frank Little PE

Richard Visotcky, with **Kelly & Visotcky LLC**, was sworn in. **Mr. Visotcky** represented the applicants **Alexandra** and **Timothy Levin**. Testimony began with an overview of the previous home that was on the property. The previous home was demolished and the lot is now vacant. **Richard Visotcky** shared that the applicants were informed that the **Borough of Harvey Cedars**

would not issue a certificate of occupancy for the previous home forcing them to demolish and build new. The proposed new home would consist of a one bedroom living quarters on the top level of the home, a two-story squash court beginning at the base level and extending to the first floor, a first-floor observation room for the court, and a home office. **Mr. Visotcky** explained that in order to keep the squash court regulation sized, the applicants will need to seek a height variance for 3.3ft where 33ft is permitted. He added that the lot is undersized and there is no additional land that can be acquired to make the lot conforming.

James Brzozowski with **Horn, Tyson, and Yoder** was sworn in. **Mr. Brzozowski's** testimony began with an overview of the property. He stated that the applicants are proposing to develop the property with a three-story single-family home that will comply with set-back requirements, base flood level requirements, and lot fill requirements. **James Brzozowski** shared that he believes the proposed home would enhance the aesthetics, cause no issue with neighboring views, and would not cause a detriment to light, air, and open space. He added that with only one bedroom proposed, it is reducing the density and lowering the intensity of the use of the property.

The following was entered into evidence:

A5 – Color photo showing existing conditions

Richard Visotcky asked **Mr. Brzozowski** to confirm the reduction of density and parking. **James Brzozowski** confirmed that with one bedroom the applicants would be reducing the density and are proposing ample parking with three available spaces.

Robert Romano questioned the width of the roadway on the southside of the building. **James Brzozowski** confirmed that the roadway is 13ft and that cars would be able to maneuver. **Frank Little** added that he does not believe any of the sight conditions would pose an issue to parking.

Phillip D. Kunz was sworn in. **Mr. Kunz** prepared the architectural drawings for the proposed project. Testimony began with an overview of the unique plans. **Mr. Kunz** explained that the squash court would be within the homes structure. He added that the shell of the proposed home would need to be constructed and then the court manufacturer would construct the court within.

Richard Visotcky questioned the visibility of the court from the outside of the home. **Mr. Kunz** explained that you would not be able to see the court from the outside. A three-dimensional architectural drawing of the home was presented to the board.

Richard Warren asked if there was any way the applicants could change the slightly sloped proposed roof to a flat roof. **Phillip Kunz** stated that if the roof was permitted to be flat, it would only save ten inches. **Richard Visotcky** added that if a flat roof was proposed, the maximum height of the property would decrease per borough ordinance causing the need for a use variance.

Timothy Levin was sworn in. **Mr. Levin** is the spouse of **Alexandra Levin**, the property owner. **Mr. Levin** detailed the dilapidated home that was previously on the lot prior to demolition. He confirmed that the prior owners added a condition to the contract that the home would need to be

demolished in order to eventually obtain a certificate of occupancy.

Moving on from the details of previous home, **Richard Visotcky** asked his client to describe the proposed new home. **Mr. Levin** shared that his family also owns 76 Maiden Lane, one home away from where the proposed home is located. He explained that the home at 76 Maiden Lane is not ideal for guests or working remotely since it is an original 1920's cottage. The squash court that is proposed in the home would be utilized by his family. **Mr. Levin** stated that both of his daughters play squash competitively and have spent most of their summer on a court. This court would allow his family to play and would only be for personal use. He added that the proposal may seem odd since it is only a one-bedroom home, but his family looks at this property as an "annex" to their primary Harvey Cedars residence.

The following was entered into evidence:

A6 – Color rendering of a single squash court

Mr. Levin explained that the rendering would be the style of court they would be seeking to put in the home.

Tony Aukstikalnis asked **Mr. Levin** if there would be any issue with the noise the court would produce. **Mr. Levin** confirmed that the home and court are insulated. He added that the small rubber ball that is used would not produce an abundance of noise. **Mr. Aukstikalnis** questioned the ball hitting the west wall. **Phillip Kunz** explained that since the court is within a structure, the double insulation would keep the noise contained within unless a window is opened above the court.

Frank Little questioned if the applicants would be able to lower the out of bounds area to bring the proposed structure closer to compliance. **Timothy Levin** explained that they would not be able to lower the height due to the rules of play.

Commissioner John Imperiale stated that the height is the major issue in the application. **Commissioner Imperiale** recognized **Phillip D. Kunz** for being one of the great Harvey Cedars residents and applauded his work throughout the years.

Public portion was opened.

Davis Jones – 48 Maiden Lane – was sworn in. **Mr. Jones** asked what size a new home could be if they followed the zoning regulations. **Phillip Kunz** confirmed that the home would be able to be slightly larger than the home proposed. **Davis Jones** questioned whether Harvey Cedars was in the business of building recreational facilities in neighborhoods and if this court would be considered one. **Commissioner Imperiale** confirmed that the borough is not and this would not be considered a recreational facility. He added that the height is the ultimate issue with the application.

Bill Lunsford – 60 W. 80th Street – was sworn in. **Mr. Lunsford** shared that he is a fan of squash but the location of the proposed court is inappropriate. With the request for the height

variance, **Mr. Lunsford** does not agree with what may come of this approval for future development in Harvey Cedars. In response to testimony claiming views would not be impacted, **Mr. Lunsford** stated that he would be directly impacted.

Donald Rogers – 42 Maiden Lane – was sworn in. **Mr. Rogers** shared that he is a handball player and there are similarities between the two sports. He disagreed with earlier testimony that there would not be noise produced. **Mr. Rogers** questioned what the neighbors would need to do if the court was producing excess noise. **Frank Little** advised that the police department would need to be notified.

Astrid Ottey – 68 Maiden Lane – was sworn in. **Ms. Ottey's** full time residence is located directly across the street from the applicant's property. She added that the neighborhood in that area of Harvey Cedars is quaint and charming. She shared an experience with rebuilding her older home and being forced to remove the original garage due to zoning regulations. **Ms. Ottey** believes this is approval would be a "slippery slope".

Janice Ottey – 68 Maiden Lane – was sworn in. **Ms. Ottey** shared that her father and mother live at 68 Maiden Lane full time and would be directly impacted by the new structure. She explained that her father enjoys spending time gardening and the new home would block their light. **Mindy Berman** questioned the location of her property. **Ms. Ottey** shared that they are the neighbors to the south.

Bill Healy – 68 W. 80th Street – was sworn in. **Mr. Healy** requested some confirmation on the testimony claiming that the house would be shifted. **Phillip D. Kunz** confirmed that the house would not be shifted. He added that the drawing depicted the 10ft side yard setback to a projection window rather than the structure. The testimony clarified the side yard should be measured to the structure.

Ryan Scott – 8001 Bay Terrace – was sworn in. **Mr. Scott** disagreed with the professional testimony. He believes the requested height variance will be a detriment to all surrounding neighbors. **Mr. Scott** is afraid of what will come if the height variance is approved. He added that zoning codes exist for a reason. In conclusion, **Mr. Scott** requested confirmation on why this application is considered a hardship.

Robert Romano questioned **Richard Visotcky** on what type of variance the applicants are requesting. **Mr. Visotcky** confirmed that the applicants are seeking a variance under the C2 and hardship guidelines. He added that the home that was there prior to demolition was below flood elevation so the applicants are proposing to make it safer. **Robert Romano** asked the applicant and attorney to focus on the current state of the property, rather than the home that was demolished. **Mr. Visotcky** stated that it should be discussed due to the borough demanding the home be demolished. **Commissioner John Imperiale** confirmed that the borough did not condemn the home and demand that it should be demolished.

Ryan Scott questioned if the applicants would be willing to sacrifice the upstairs living quarter to make the height conforming. **Robert Romano** explained that they will need to build a residence not just a squash court.

Public portion was closed.

Mindy Berman questioned if there is any difference between a practice squash court and a regulation court. The applicant did not have any information on the difference. **Mr. Levin** explained that most individuals seek to only install regulation courts.

Timothy Levin asked the board if lowering the floor of the squash court would make a more palatable variance. **Frank Little PE** explained that the squash court would have finished walls and would need to be above base flood.

Robert Romano questioned the future use of the space if the squash court was not utilized. **Phillip D. Kunz** shared that he believes the homeowners could lower the ceiling of the squash court and create standard rooms but they would need to meet square footage requirements.

Frank Little brought the boards attention back to the height variance that was being proposed.

Commissioner John Imperiale expressed that he does not believe that the height variance proposed is a hardship and made a motion to deny.

Prior to moving to a vote, **Robert Romano** asked the board to voice their opinions on the application presented.

John Tilton shared that he lives in close proximity to a recreational facility and noise is produced. He does not feel the structure and court fit the section of the borough it is being proposed in. **Mr. Tilton** added that the plans indicate a slightly sloped roof, however from a distance it does appear flat.

Mindy Berman lives in the neighborhood where the structure is proposed. She is not close enough to be affected but believes the rhythmic thumping from the court would become an issue. Ultimately, she believes the height is the biggest issue.

Bill Montag echoed the thoughts of **John Tilton** and **Mindy Berman**. He believes that the biggest issue with this application is the height.

Tony Aukstikalnis stated that the borough has ordinances for a reason and does not see any justification for changing the ordinance for this application.

Richard Warren shared that as a new board member he has been a part of approving certain tricky variances but does not believe the board will move to approve a height variance.

Robert Romano does not agree with the imposing aesthetics and does not match the neighborhood.

Commissioner John Imperiale made a motion to deny, seconded by **Bill Montag**. The following vote was recorded: **John Tilton, Bill Montag, Robert Romano, Tony Aukstikalnis,**

Commissioner John Imperiale, Mindy Berman, and Richard Warren all voted **Yes** to deny the application.

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Minutes – Regular Meeting – July 20, 2023

Commissioner John Imperiale made a motion to approve the minutes of the July 20, 2023 regular meeting, seconded by **Bill Montag**. The following vote was recorded: **Commissioner Imperiale, John Tilton, Bill Montag, Robert Romano, Mindy Berman and Richard Warren** all voted **Yes** to approve.

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At 8:11PM the meeting was adjourned.

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Christine Lisiewski, Secretary