

**BOROUGH OF HARVEY CEDARS
LAND USE BOARD**

Regular Meeting – Minutes
October 19, 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, Robert Romano, Mayor Jonathan Oldham, Kathy Sheplin, and Commissioner John Imperiale**

Members of the Board absent: **Mark Simmons, William Montag, and Anthony Aukstikalnis**

Alternate members of the Board present: **Mindy Berman**

Alternate members of the Board absent: **Richard Warren**

Others present: **Kevin Quinlan Esq., Frank Little P.E., and Cecilia Morillo Zoning Officer**

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**Application – 14 E. 81<sup>st</sup> Street – Pauline K. Herman Trust**

Prior to hearing the application, **Commissioner John Imperiale** recused himself from the application due to falling within 200ft of the property and exited the meeting.

**Kevin Quinlan Esq.** gave an overview of the previous appearances the applicant had before the land use board. The application was initially submitted in 2018 and board counsel determined that the board did not have jurisdiction to hear the case due to the property being situated over the building line. The applicant appealed the decision and the application was remanded back to the Harvey Cedars Land Use Board by **Hon. Marlene Lynch Ford** after it was determined that the board did have jurisdiction. The board heard docket 2019:08 and voted to deny.

**The following was entered in as evidence:**

**A1 – Application**

**A2 – Architectural drawings prepared by Jay Madden Architect**

**A3 – Existing architectural drawings prepared by Lawrence O. Reiner**

**A4 – Resolution of Memorialization 2019:08**

**A5** – Copy of final judgement OCNL 2441-19 from **Hon. Marlene Lynch Ford**  
**B1** – Engineer review letter prepared by **Frank Little P.E.**

**Harvey L. York** with **Novins, York, Jacobus, and Dooley** was sworn in. **Mr. York** explained that the applicants are proposing to demolish the older home and construct a new home in the same footprint. He argued that the dune line running through the home would create the need for a variance and is supplemented by the structure being non-conforming.

**James Brzowski** with **Horn, Tyson, and Yoder** was sworn in. **Mr. Brzowski** gave an overview of the location of the property. The oceanfront property is located at the easterly end of 81<sup>st</sup> street and situated in the RA single residential zone. The total lot area of the property is 30,000sqft and traversed by the oceanfront building line. The oceanfront building line occurs 22.66ft east of the westerly property line at the right of way of 81<sup>st</sup> street and 18.4ft on the southerly side creating an area between the westerly property line and the building line of 2053sqft. **Mr. Brzowski** added that the property is currently developed with a two-story single-family house and a portion of the existing structure is east of the oceanfront building line. The furthest projection over the building line is 20.2ft and has an area of 1035.5sqft.

**Harvey York** asked for confirmation on when the portion over the building line was constructed. **James Brzowski** confirmed that the structure pre-dated the building line and was conforming when constructed. **Mr. York** questioned the size of the home that would be conforming and permitted if the land was vacant. **Mr. Brzowski** explained that the home would be near impossible.

**The following was entered into evidence:**

**A6-** Plan of permitted zoning envelope prepared by Horn, Tyson, Yoder

**Mr. Brzowski** stated that the permitted building envelope would have a width of 12.02ft at the northerly end and taper to 8.83ft to the south. The envelope would be 75ft in length and contain an area of 781.9sqft. He shared that he does not see how it would be possible to fit rooms, hallways, and steps into a home of that size. He confirmed that a variance would be required to a suitable home.

**Harvey York** asked **Mr. Brzowski** to explain what the applicants are proposing.

**The following was entered into evidence:**

**A7** – Enhancement of existing variance map

The applicants are proposing to demolish the existing structure and construct a new single-family two-story house in the footprint of the existing house. The proposed home would maintain the 7.6ft westerly side yard setback where 10ft is required. **Mr. Brzowski** added that the proposed home will also encroach east of the oceanfront building line by 20.2ft with an area of 1029.7sqft. He confirmed that the distance of encroachment decreases into the north.

**Mayor Jonathan Oldham** asked for clarification on if the home would be partially a two-story home. **James Brzowski** explained that the home is one-story over the building line and the remainder of the home is two-story. He added that all instances that are slightly larger than the existing footprint will be on the westside of the building line and conform with setback requirements.

**Harvey York** requested information on the proposed parking plan. **James Brzowski** shared that two off street parking spaces would be provided to the north of the building and would be similar to the existing.

**James Brzowski** shared that in his opinion he believes that the variances requested for this property can be granted. He explained that there is an extreme hardship created by the oceanfront building line and they are not seeking to increase the encroachment over the building line.

**Harvey York** asked **James Brzowski** if a CAFRA permit had been obtained for this property. **Mr. Brzowski** confirmed that a CAFRA permit was obtained.

**Jay Madden** with **Jay Madden Architecture** was sworn in. Testimony began with an overview of the proposed home. The first floor would consist of a bedroom, bathroom, laundry room, powder room, small kitchen, and a living dining area. The second floor would include two bedrooms, two bathrooms, and an elongated sitting room. The proposed deck would be situated in the shadow of the existing deck. **Mr. Madden** shared that an outside staircase will be added to the south of the home that would grant access to all levels of the home.

**Harvey York** requested some further details on square footage. **Mr. Madden** stated that the existing heated space square footage is 1584sqft and the proposed is 1827sqft.

In regards to the neighborhood and similar homes, **Mr. York** questioned if the proposed home would fit the same aesthetic. **Jay Madden** shared that the home is demonstrably smaller than the typical oceanfront home. He added that most homes that are situated on the oceanfront is at least 3000sqft.

**Robert Romano** questioned home many bedrooms are located in the existing home. **Mr. Madden** explained that there are four bedrooms and two bathrooms.

**Mayor Jonathan Oldham** asked for clarification on the height of the existing structure. **Jay Madden** confirmed that the existing home was designed to be 28.4ft.

**Jay Madden** asked the board to review the two small “bump-outs” that are situated on a bedroom and a sitting room on the second floor. He explained that the area is outside of the existing footprint and if the board does not feel comfortable approving, they can be removed.

**Mr. Madden** brought to the board’s attention that a 2ft retaining wall along the westside of the property was proposed and approved during the CAFRA permitting process. **James Brzowski** added that the applicants are required to fill and then construct a retaining wall to force any water to the road.

**Mayor Jonathan Oldham** questioned if a fence would be constructed on the property. **Mr. Brozowski** shared that there is an existing fence on a neighbor's property but the homeowners have no plan to construct a fence.

**Kevin Quinlan Esq.** asked for more details on the bump-outs that **Jay Madden** discussed. **Mr. Madden** and **Mr. York** explained that they are included in the proposed plans and square footage.

**Mayor Oldham** requested some information on when the initial home was built and when the most recent additions were completed. **Jay Madden** shared that the home was originally constructed in 1950 and the additions were 1988.

Public portion was opened.

**Harry Yospin – 12 E. 81<sup>st</sup> Street** – was sworn in. **Mr. Yospin** is the neighboring property on the west. He explained that all of the proposed home besides 11.2ft is situated in a no build zone and they are not trying to correct a non-conforming use. **Mr. Yospin** added that the applicants are claiming to be utilizing the same footprint but they are going higher. With the height, stairs are proposed that **Mr. Yospin** believes will affect his light and air flow. He questioned why the board would entertain the idea of granting approval since this goes against borough ordinances and negatively impact the dunes. **Mr. Yospin** believes an approval for this application will set a precedence for future applications.

**Thomas Hierl – 9 E. 80<sup>th</sup> Street** – was sworn in. **Mr. Hierl** appreciates that the applicants have scaled down the proposed home from the first time the application came before the board. He shared that he believes this is going to be a never-ending cycle of tear down and build new since this home is over the building line.

**Marilyn Upton – 5 E. 81<sup>st</sup> Street** – was sworn in. She shared concerns over breaking the strict rules of going over the building line. **Ms. Upton** stated that she is getting nervous at the thought of all of the homes in Harvey Cedars getting larger and changing the community.

**Meryl Kauff – 8004 S. Anchor Street** – was sworn in. **Mrs. Kauff** shared that she lives in a non-conforming house and would love to have the ability to change it but she respects the reasons why she cannot. She explained that any infringement on the dunes is a safety concern for the community.

Public portion was closed.

**Frank Little P.E.** shared with everyone that the owners and home predate the installation of the oceanfront building line. **Mr. Little** reviewed the application and testimony that was given and explained that ultimately this is a modest request for a variance. He added that the new home would create a safer situation.

With concerns from the public that this would set a precedence for future applications, **Kevin Quinlan Esq.** explained that every application stands on its own.

**Mayor Jonathan Oldham** questioned why the board could grant this and how it would differ from another application along the building line. **Kevin Quinlan Esq.** explained that each application stands on its own and the board would need to weigh the positive and negatives of the application submitted.

**Harvey York** shared his experiences of past applications and explained how unique this case is. He believes this is a once in a lifetime application.

**Kevin Quinlan Esq.** agreed with **Mr. York** on the uniqueness of the application. He added that this home has a clear hardship and the conforming home that could be built would be an eyesore.

**Mindy Berman** requested to discuss the western side of the property. **Jay Madden** reviewed the existing architectural drawings (A3). He explained that the west wall of the existing house is two stories with a slightly pitched roof that includes a slight overhang. The existing home is 28.4ft and the proposed would be 30ft to the gabled sections of roof. **Mayor Oldham** questioned the overhang. **Mr. Madden** shared that the existing overhang was 2.8ft overhang and the proposed would be only a 1ft overhang.

**Jay Madden** asked the board if they would be receptive to the applicants meeting an 8ft setback. **Robert Romano** questioned why the property could not meet the 10ft setback. **Mr. Madden** used the proposed floor plan to visually show where the home would need to be minimized. He explained that the kitchen would be impacted the most. **Robert Romano** asked if anything could be shifted to be over the building line. **Jay Madden** added that the court case made it clear that there could not be any more encroachment over the building line. **Robert Romano** questioned if the board could allow them to encroach further over the line now that beaches and dunes are more fortified. **Mindy Berman** added that the dunes located at this property have vegetation throughout. **Mayor Oldham** does not agree with encroaching more into the dunes. He added that he would feel content with approving the proposed bump outs and granting the request for the 8ft setback.

**John Tilton** discussed what it would be like if the applicants were asked to replace piece by piece instead of constructing new. He shared personal experiences with the board. **Mr. Tilton** explained that the building line is an area that builders know as a no build zone but this property is unique. He believes that the applicants should be able to construct new, remove the old materials, and ultimately make the property better.

**Mayor Oldham** questioned the retaining wall on the property and the stairs that were mentioned during public discussion. **Jay Madden** stated that he intentionally added the stairs in the proposed location in order to break-up the wall and saw it as an enhancement. **James Brzowski** explained that the borough fill ordinance generates the need for the retaining wall. **Frank Little** suggested possibly waiving the need for lot fill. The board disagreed. After discussing multiple options, the board and professionals agreed to leave the proposed slab at 13.4ft and waive the grading requirement for the lot.

**Mindy Berman** requested further details on the dune encroachment that will occur during

construction. **Jay Madden** agreed that it is impossible to not encroach but explained that due to code the dunes must be protected and fixed after construction is complete. **Kevin Quinlan Esq.** explained to the board that the board does not have jurisdiction to decide on the dunes. **Mayor Oldham** questioned the CAFRA permit claiming that the property is not considered dune. **James Brzozowski** shared that their determinations are sometimes confusing but ultimately the property is flat compared to other oceanfront properties. He added that in order to ease disturbance of the dune, CAFRA requires a sand fence.

**Kathy Sheplin** asked if there were any plans for gutters on the pitched roof area. **Jay Madden** stated that the water will be managed and transferred into the proposed retention basins.

**Kevin Quinlan Esq.** reviewed the application with the board. The proposed home will now have an 8ft setback rather than the 7.6ft that was initially proposed. The applicant is also proposing to update the outside stairs have a solid railing at code height. *Revised plans will be required.*

Prior to the vote, **Mayor Oldham** shared his thoughts on the application. He stated that the application before the board is a modest request and it is important that we do not increase further over the building line.

**Mindy Berman** made a motion to approve the application, seconded by **John Tilton**. The following vote was recorded: **John Tilton, Robert Romano, Mayor Jonathan Oldham, Kathy Sheplin,** and **Mindy Berman** all voted **Yes** to approve the application.

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### **Minutes – Regular Meeting – September 21, 2023**

**Mindy Berman** made a motion to approve the minutes of the September 21, 2023 regular meeting, seconded by **Mayor Jonathan Oldham**. The following vote was recorded: **Robert Romano, Mayor Jonathan Oldham,** and **Mindy Berman** all voted **Yes** to approve.

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The board reviewed the meeting dates of 2024. Due to the board of commissioner reorganization meeting date falling late in January, the Harvey Cedars Land Use Board will meet on January 18<sup>th</sup> at 6:30pm for the annual reorganization meeting.

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At 8:50PM the meeting was adjourned.

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Christine Lisiewski, Secretary