

**BOROUGH OF HARVEY CEDARS
LAND USE BOARD**

**Regular Meeting – Minutes
June 18, 2020**

A regular meeting of the Land Use Board of the Borough of Harvey Cedars was held via Zoom in the Borough Hall, 7606 Long Beach Blvd., Harvey Cedars, New Jersey on the above date.

The meeting was called to order by **Chairman Bob Romano** at 07:05 PM.

Chairman Romano made the following announcement: “This is a 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.”

Members of the Board present: **Chairman Romano, Daina Dale, Terry Kulinski, Tony Aukstikalnis, Mayor Jonathan Oldham, and Commissioner John Imperiale**

Members of the Board absent: **Mark Simmons, John Tilton**

Alternate members of the Board present: **Kathy Sheplin**

Alternate members of the Board absent: **Sandy Marti**

Also present were the following: **Stuart Snyder, Esq., Kevin Quinlan, Esq., Frank Little, PE and Anna Grimste, Zoning Officer**

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Before beginning applications, **Stuart Snyder, Esq.** and **Chairman Bob Romano** discussed the possibility of moving back to in-person meetings in July. With COVID-19 restrictions, a larger meeting place would be required. The board discussed utilizing the High Point Firehouse if in-person meetings resume.

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Resolution – 2020:03 – 6305E. Long Beach Blvd. – Edward & Kathryn Marceski

Stuart Snyder, Esq. reviewed the Resolution of Memorialization with the board.

Tony Aukstikalnis made a motion to approve the resolution, seconded by **Terry Kulinski**. The following vote was recorded **Daina Dale, Chairman Romano, Terry Kulinski, Mayor Oldham, Commissioner Imperiale, Tony Aukstikalnis, and Kathy Sheplin** all voted **Yes** to approve.

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Prior to the application, **Richard Visotcky** with Kelly & Visotcky, explained a publishing issue that occurred with applications 2020:06 and 2020:07 that he is representing. The request to

publish was submitted on a timely matter but the notice was not published on time. Both applications were pushed to the July 16, 2020. **Mr. Visotcky** requested the board decide quickly on the meeting place of the next meeting, so that notices can be sent on time.

**Application – 2020:05 – 2 E. 70<sup>th</sup> Street – Walters-Design Build LLC**

**Richard Visotcky** with **Kelly & Visotcky LLC** was sworn in. **Mr. Visotcky** explained that the home was recently completed and the applicant is proposing an inground pool on the side of the property. With the layout of the home, there is no room to the rear of the property and an adequately sized side yard. The property is located at the corner of Long Beach Boulevard and 70<sup>th</sup> street. Due to the lots position, the property has two front yards. The proposed pool would be placed in the front yard that borders Long Beach Boulevard. **Richard Visotcky** explained that a front yard setback for a pool is 25ft. The setback on the boulevard side of the property is only 10ft. The applicants are seeking a variance for a front yard setback and the distance from the main house to the pool. The required distance between the pool and the home is 8ft, where 4ft is being proposed. **Mr. Visotcky** added that all other zoning requirements have been met.

**The following was entered into evidence:**

**A1 – Application**

**A2 – Najarian Associates Variance Plan**

**A3 – Photos of Property**

**B1 – Engineer Review Letter**

**John Freeman** with **Najarian Associates** was sworn in. **Mr. Freemans** office was responsible for preparing the variance plan for the application. He confirmed the dimensions of the in-ground pool being 12ft by 26ft. **Mr. Freeman** added that the pool would be buffered by the home and a fence. In response to the engineer review letter prepared by **Frank Little, PE**, a proper site triangle was added to the proposed plans. The letter also requested more information on the location of the pool equipment. **John Freeman** stated that the pool equipment was initially going to be placed underneath the chimney, but it will be moved to the southeast corner of the property underneath the air conditioning platform. **Richard Visotcky** asked **Mr. Freeman** if there was anything running alongside the house that an individual could jump off of into the pool. **Mr. Freeman** confirmed there was nothing alongside the home.

**Richard Visotcky** asked for any board questions or comments.

**Chairman Bob Romano** questioned the vinyl fence alongside the boulevard. **Mr. Freeman** added that the fence alongside the boulevard is existing and that there is a proposed section of fence that will continue into a driveway area. He added that the fence would be 4ft high.

**Commissioner John Imperiale** commented that his hope with these applications is that they will do a lot for the overall public good of the town. He added that he hopes it will elevate the type of homes that are built in Harvey Cedars. **Commissioner Imperiale** believes that the pool will make the home much more desirable and add to the value of the town overall. In conclusion,

he asked **John Freeman** to explain what the proposed changes could mean to the town. **Mr. Freeman** explained that the pool would be a great addition and it would do great things for the town.

**Chairman Romano** requested any details on proposed landscaping. **John Freeman** stated that at this time there is nothing proposed.

**Mayor Jonathan Oldham** asked for confirmation on the elevation of the air conditioning unit and pool equipment. **Mr. Freeman** explained that the air conditioning unit will be 13.2ft, which is above base flood.

**Arnold Boyle** with **Walters Architecture** was sworn in. **Mr. Boyle** is responsible for designing the home that is currently on the property. In response to the concern of safety, **Richard Visotcky** asked **Mr. Boyle** to describe any possible hazards. He explained that the proposed position of the pool is safe. The windows on both the first and second floor would not allow for someone to jump into the pool. He further described a small deck on the second story that has a spiral staircase. The spiral staircase would block anyone from jumping.

**Richard Visotcky** asked for any board questions or comments.

**Daina Dale** questioned the timing of the pool design since the home was recently completed. **Arnold Boyle** stated that it was not part of the initial design.

**Edward Walters Jr.** with **Walters Design-Build LLC** was sworn in.

In response to **Daina Dale's** questions, **Edward Walters** explained the timing of the proposed pool. **Mr. Walters** purchased and developed properties in Harvey Cedars. While doing market research, he realized that individuals were looking for homes with a pool. In the future, **Walters Design-Build LLC** will consider putting pools in on all projects.

In concert with his earlier question, **Commissioner Imperiale** asked **Edward Walters** to explain what overall good the proposed pool would bring to the town. **Mr. Walters** explained that there would be no adverse effect. He believes the pool would add value to the home and the town.

**Tony Aukstikalnis** asked the applicants to explain what the hardship is. **Ed Walters** explained that the lot configuration, including two front yard setbacks and the depth lot, did not allow for a large home. With no rear yard, **Mr. Walters** added that there was really no place for the pool. **Mr. Aukstikalnis** does not believe that what the applicants are requesting qualifies as a hardship. He explained that the applicants should have presented the application before the board prior to building the home. At that time, the positioning of the home could have been changed and the pool would not be as big an issue. **Tony Aukstikalnis** added that overall, there are two issues with this application. Those issues being that the applicant is pushing the envelope with the variance request and that the applicant has a history of completing a project and asking for a variance later.

**Terry Kulinski** requested further details on any decking around the pool. **Arnold Boyle** shared that there will be pavers surrounding the pool with a distance of 6ft from the house.

**John McDonough**, a self-employed professional planner, was sworn in. **Mr. McDonough** explained that he believes this is a textbook hardship case under the C1A provision of the statute where the relief relates to the function of the land, not the pool itself. The land is triggering the variance. He believes that this application also meets the C2 variance definition. **Mr. McDonough** believes that the statutory criteria for relief are met.

**Commissioner Imperiale** thanked and applauded **Mr. McDonough** for his testimony. He added that he is not sure if there are any detriments that could come out of this application and sees many more benefits. **Mr. McDonough** stated that the detriments are minimal. He shared that it is not uncommon to see pools along the boulevard on corner lots in Harvey Cedars and that the applicant has done a good job tucking the pool in away from neighboring properties.

**Frank Little** agreed that the pool on the boulevard side is a better location in terms of a buffer.

#### **Public Portion was opened.**

**Jill Frost**, 4 E. 70<sup>th</sup> Street, was sworn in. **Mrs. Frost** does not understand where the hardship in this application is. She shared that living on 70<sup>th</sup> street is the absolute opposite of a hardship. No houses on 70<sup>th</sup> street have backyards, due to the design of the street. **Mrs. Frost** said that Walters-Design Build LLC knew of the property configuration prior to purchasing. She added that she saw an advertisement for the home that included the sketch of the house and description of the pool. The home is listed at 3000 square feet and she does not understand why the applicants are making it seem like the house is small. **Mrs. Frost** further described her neighborhood. She explained it is quiet and does not see why a pool would be needed to sell a property. With safety being a major issue for the board, **Jill Frost** brought up that there is a deck attached to the house near the pool that had not been brought up in any testimony. Her biggest concern for the pool initially was the noise, but during the meeting it was mentioned that the pool equipment would be moved next to her property. The noise from the pool equipment would be on the side of her home where her bedrooms are located. She explained that she does not understand how there is no detriments or how this would be a great addition to the town if this is not a public pool. **Mrs. Frost** would like the applicants to consider moving the pool equipment. Ending her discussion, she mentioned talks of the applicant and Kline Brothers that believed the pool was a done deal. **Jill Frost** hopes that the board takes the homeowners into consideration and not side with the builders.

**James Loudon**, 8 E. 83<sup>rd</sup> Street, was sworn in. **Mr. Loudon** explained that he initially came to the meeting for application 2020:06, which is also a Walters property. He stated that he was not going to come to the meeting but found it suspect and curious that one developer was asking for a variance on two properties for the same thing.

#### **Public Portion was closed.**

**Kathy Sheplin** requested clarification on if the pool was on grade. **Chairman Romano**

confirmed that the pool is on grade.

**Commissioner John Imperiale** complimented **Jill Frost** and **James Loudon** on their testimony. He stated that his main sense is what is best overall for the town and that **Mr. McDonough** made a very good case. **Commissioner Imperiale** shared that he was moved and persuaded by the great case that **John McDonough** put together.

**Chairman Romano** asked **Richard Visotcky** if there were any additional comments to answer the concerns that were brought up during the public portion.

**Richard Visotcky** had additional comments regarding the points **Jill Frost** mentioned. There was mention that the property was overdeveloped, but the property is at 29% lot coverage. He also confirmed that **Mr. McDonough** accurately explained the reason for the variance.

**Frank Little** asked for confirmation on the location of the pool equipment and if it could be moved. **Edward Walters** stated that he would have no problem moving the equipment near the boulevard.

**Chairman Romano** questioned if the pool equipment could go on the underside of the building. **Ed Walters** explained that it is a covered patio area under the house but he would rather have the equipment near the rear of the lot covered.

**Tony Aukstikalnis** complimented **Jill Frost** and **James Loudon** on their testimony. He added that **Mr. Loudon** had very similar ideas to his own. **Mr. Aukstikalnis** explained that Walters-Design Build LLC is an experienced builder and this is not his first project. He believes that if the applicant would have come before the board early in the building process, the board would have worked with them. In closing, he finds it difficult to believe that the idea of the pool just appeared.

**Mayor Jonathan Oldham** expressed his understanding that individuals are looking to purchase homes with a pool on Long Beach Island. He suggested that the applicant potentially reduce the width of the pool to 10ft wide. That would allow requirements to be met, except in the area where the fireplace is.

**Chairman Romano** asked for further details on the second-floor deck. **Arnold Boyle** explained that it is a three-foot walkway that wraps around the exterior. The deck would be three-feet from the edge of the pool. **Chairman Romano** explained that the deck is very faintly shown on the plans.

**Chairman Romano** requested the board's opinion on the safety issue that arises from the deck being close to the pool. **Tony Aukstikalnis** and **Terry Kulinski** both found the deck to be an issue. The chairman explained that with a deck being so close to the pool, it could be tempting for individuals to jump.

With no other board discussion, **Ed Walters** began discussing options of moving the proposed pool. **Arnold Boyle** described the possibility of adjusting the pools location to the rear of the

property. **Frank Little** added that the idea of the home buffering the pool will now be obsolete with new proposed pool location. **Arnold Boyle** and **Rich Visotcky** confirmed that the pool would be moved to the south property line, where the edge of the pool would be even with the structure. With the changes being proposed, the pool would still be located in the front yard.

**Chairman Romano** asked for board input on the changes.

**Commissioner Imperiale** approved of the new plans.

With proposed changes, **Chairman Romano** re-opened the meeting to the public.

**Jill Frost** does not believe there is a fair chance for the neighbors to accurately judge the impact of the proposed changes since they are not able to view plans or drawings. **Mrs. Frost** asked for new plans to be prepared so neighbors could view the documents prior to the boards vote. She shared that she is still opposed to the plans and does not see the hardship for this application. **Mrs. Frost** added that if the board chose to accept the application, landscaping should be added to their approval to help with the buffering of noise.

**Chairman Romano** agreed with **Jill Frost** that it is difficult to vote on something with no proposed plans to view. He added that the public is at a disadvantage and suggested the applicant potentially come back when the board meets in person rather than Zoom.

**Edward Walters** expressed his disappointment in comments that were made in regards to Walters Design-Build LLC being in cahoots with the town. He explained that they are good neighbors and that nothing was underhanded in this application. **Mr. Walters** stated that buffer trees would be planted in the backyard and that the pool being adjusted will put the pool out of view of **Mrs. Frost's** home. With public concern, **Ed Walters** agreed to carrying the application to the next public meeting.

**Commissioner John Imperiale** complimented **Jill Frost** on her commentary. **Commissioner Imperiale** requested **John McDonough** to explain the understanding of the term hardship. He continued explaining that the hardship is not that they don't have a pool, it's that the lot is not properly sized. **Mr. McDonough** did not respond. **Kevin Quinlan** requested that the discussion of the hardship be halted until the new plans are presented.

**Richard Visotcky** formally requested that application 2020:05 be carried to the next regularly scheduled meeting of the Harvey Cedars Land Use Board with no additional notice requirements.

**Tony Aukstikalnis** requested clarification on why there was no additional notice required for an entirely new plan. **Kevin Quinlan** explained that notice was made for this meeting and anyone that had interest in this meeting would have been present during the current meeting. With no additional variances requested, no additional notices will be needed. **Mr. Aukstikalnis** shared his disagreement with the decision due to other neighbors now being affected.

**Mayor Oldham** requested copies of changes so an appropriate engineer review letter be prepared by **Frank Little**.

**Daina Dale** expressed that even with the proposed changes, her thoughts on the application would not change. In her opinion, there is no hardship for this application. She does not believe the application should be carried and asked for the possibility of denying the motion to carry.

**Kevin Quinlan** explained that on an application the board can force a vote on what is presented however, the board should favorably consider the request for additional information so the board has everything before them to decide. A continuance should be granted unless there is prejudice, and the prejudice here would be to the applicant not to the public.

A motion was made by **Commissioner Imperiale** to carry the application for 2020:05 Walters Design-Build LLC, seconded by **Terry Kulinski**. The following vote was recorded **Daina Dale** voted **No** to carry the application. **Chairman Romano, Terry Kulinski, Commissioner Imperiale, Tony Aukstikalnis, Mayor Oldham, and Kathy Sheplin** all voted **Yes** to carry the applications to the July 16<sup>th</sup> regular meeting of the Harvey Cedars Land Use Board.

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**Minutes – Regular Meeting – 05/21/2020**

**Tony Aukstikalnis** made a motion to approve the minutes of the regular meeting on May 21, 2020, seconded by **Commissioner Imperiale**. The following vote was recorded **Daina Dale, Chairman Romano, Terry Kulinski, Tony Aukstikalnis, Mayor Oldham, Commissioner Imperiale, and Kathy Sheplin** all voted **Yes** to approve.

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At 8:49PM the meeting was adjourned.

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Respectfully submitted,

Christine Lisiewski, Secretary