

**JUNE 15, 2017 AMENDMENT TO RESOLUTION OF MEMORIALIZATION OF
THE LAND USE REVIEW BOARD OF THE BOROUGH OF HARVEY CEDARS
COUNTY OF OCEAN AND STATE OF NEW JERSEY PERMITTING
ADMINISTRATIVE FIELD CHANGE
DOCKET NO. 2016:05**

WHEREAS, Ziman Development, Inc. has made application to the Land Use Board of the Borough of Harvey Cedars for interpretation of the zoning ordinances effecting the property and alternatively for variance relief to demolish the existing single family home and construct a new single family home together with an in deck swimming pool at property known and designated as 9A E. Bergen Avenue, Lot 8 Block 6, Harvey Cedars, New Jersey; and

WHEREAS, the Land Use Board considered this application at a public hearing on September 16, 2016. The applicant was represented by Howard Butensky, Esq. The application dated August 25, 2016 was entered into evidence as Exhibit A-1; the plan prepared by Horn, Tyson & Yoder, , Inc. entitled "Variance Map Lot 8 Block 6 Tax Map Sheet #2 Borough of Harvey Cedars, Ocean County New Jersey dated July 18, 2016 with a revision date of August 16, 2016 under signature and seal of James Brzozowski, PE,PP. and Hayes A. Hewitt, PLS was entered into evidence as Exhibit A-2; a set of four photographs of the driveway access to the property was entered into evidence as Exhibit A-3; a set of four photographs showing the garage doors of the house on Lot 7; the north side yard of Lot 7; a view northerly from Bergen Avenue toward Lot 5; and a view northerly from Bergen Avenue toward Lot 4, was entered into evidence as Exhibit A-4; a set of four photographs with a southwesterly view of Lot 4 from the northerly end of the driveway; a westerly view of the driveway access to Lot 9; and a westerly view along the beach access path from the top of the dune; and an easterly view along the easement that provides access to the properties to the north was entered into evidence as Exhibit A-5; an unsigned plan of the property delineating the location of the proposed house; and location of adjoining buildings, and the proposed parking, prepared by Horn, Tyson & Yoder, Inc. was entered into evidence as Exhibit A-6. The review letter from Owen, Little & Associates, Inc., under signature of Frank J. Little, Jr., dated September 9, 2016 was entered into evidence as Exhibit B-1. Testimony was offered by James D.

Brzozowski, applicant's engineer and planner. Public comment was offered by Gary Chasen, the owner of Lot 9, 9B Bergen Avenue; directly to the west of the subject property; Carolyn Fleisher the owner of 5409D Long Beach Boulevard, located on the adjoining tract; Marilyn Bennett owner of 5409 E Long Beach Boulevard, Joe Fleischer owner of 5409D Long Beach Boulevard, located on the adjoining tract, who introduced 13 photographs entered into evidence as OF-1; Paul Boeringer 11 East Bergen Avenue, the property to the south on the Oceanfront; Mark Avakian 5403 Long Beach Boulevard; Edward Bennett 5409 E Long Beach Boulevard; the ocean front to the north; and Jane Chasen owner of 9 B Bergen Avenue; and

WHEREAS, the Land Use Board after considering the Application, documentation entered into evidence, testimony of the witness' and argument of counsel has made the following factual findings:

1. All jurisdictional requirements have been met.
2. The property is owned by the Andrew F. Ferguson Trust, applicant is a contract purchaser; with written authority to bring this application.
3. The property is located in the RA Single Family Residential Zone and consists of an oceanfront lot with dimensions of 10' x 140' (driveway/subject to easement rights of adjoining properties) and 67.50 x 180' (the area westward of the building line is 67.50' x 96.70').
4. Applicant proposes to acquire the property and demolish the existing house, constructing a new house upon the site.
5. The property is accessible by a 10' foot easement; where current ordinances require 25' feet.
6. The Board adopts the contents of the review letter of Owen Little, & Associates, Inc. dated September 9.2016 as entered into evidence as Exhibit B-1.
7. Applicant has requested the Board determine whether or not the property is grandfathered as a Nonconforming lot of record pursuant to Ordinance 13-5.4; applicant offered testimony and argument that the property is a separate lot of record, in separate ownership, and not of contiguous

frontage with other lots in the same ownership; and the development as proposed will conform to other zoning requirements.

8. Applicant has also requested an interpretation regarding the setback requirements from easements as set forth in Ordinance 13-7.4; the property is encumbered by a 4' foot pedestrian access easement to the north. Applicant proposes a setback of 6' feet from that easement; requesting finding of the Board that a pedestrian access easement is not subject to an 8' foot setback as set forth in Ordinance 13-7.4.
9. The Board finds that the 8' foot setback requirement in Ordinance 13-7.4 mandates an 8' foot setback from both vehicular and pedestrian easements.
10. The Board further finds that the property is grandfathered as aforementioned, and in accordance with Ordinance 13.7.4B may front on the Atlantic Ocean.
11. Applicant has also requested relief from providing a minimum slab elevation of 12.4' feet and proposes 8'.
12. The neighbors are concerned with drainage at the site, and additional runoff that will be generated by the proposed development.
13. The Board finds that the house shall be constructed at the required slab elevation, as required under ordinance 12-8.11, but agrees that a transitional area may be developed at the remainder of the property, subject to a drainage plan to be approved by the Borough Engineer. Notwithstanding, any retaining wall to be constructed shall be built on the southerly side of the 4' foot access easement; the design and location to be approved by the Board Engineer.

WHEREAS, the Land Use Board of the Borough of Harvey Cedars has determined that the property as exists meets the criteria as a Nonconforming lot of record pursuant to Ordinance 13-5.4; and further that the front yard of the house to be the easterly (Ocean) side of the property. The Board has further determined that Ordinance 13-7.4 requires an 8' foot setback from both vehicular and pedestrian access easements. The Board has further determined that the minimum slab elevation shall be filled to eight inches above

grade at the area where the house is being constructed; however taking into account the surrounding areas, and concern for runoff, the Board finds that applicant may utilize the remainder of the lot to transition to the higher grade, subject to the submission and approval of a drainage plan by the Borough Engineer; and further subject to any retaining wall, if required, be constructed on the south side of the four foot pedestrian easement. Applicant has also agreed to maintain a westerly setback of not less than 10' feet.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Harvey Cedars that the application of Ziman Development, Inc. for interpretation of the zoning ordinances effecting the property and alternatively for variance relief to demolish the existing single family home and construct a new single family home together with an in deck swimming pool at property known and designated as Lot 8 Block 6, Harvey Cedars, New Jersey is adjudicated as follows: the property is a nonconforming lot of record and may be developed without variance relief from the easement width requirements, subject to all other bulk requirements being met, except as hereinafter set forth; an eight foot setback is required from the pedestrian easement; applicant has withdrawn its request for a six foot setback and shall comply with the 8 foot setback; the new home may front on the Ocean; and the minimum slab grade, pursuant to Ordinance 12-8.11 shall be maintained at the house, with variance relief being granted to provide a transition area at the property, subject to the submission and approval of a drainage plan; with the proviso that if there is a retaining wall constructed it will be located on the south side of the pedestrian easement.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon applicant submitting revised plans providing for the conditions contained herein, providing the required parking spaces, and a westerly set back of not less than 10' feet; and mandating that if a retaining wall is constructed it shall be constructed on the south side of the pedestrian easement. Said plan shall also provide for an 8 foot setback from the pedestrian easement.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon Applicant's compliance with all terms and conditions of the letter of the Board Engineer, Frank J. Little, Jr., P.E., P.P., C.M.E., dated September 9, 2016; except as modified herein.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon any future development at the site conforming to FEMA requirements and all building, zoning; fire and safety Codes.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon Applicant obtaining all requisite permits and Applicant complying with all Federal, State and Local rules regulations and statutes and ordinances effecting this development.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon Applicant providing a drainage plan to avoid drainage on adjoining properties.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon Applicant's payment of all taxes and all other applicable assessments.

BE IT FURTHER RESOLVED that the Applicant is required to comply with all ordinances of the Borough of Harvey Cedars, and failure to specify compliance herein shall not be deemed a waiver or recommendation by the Land Use Board with respect to Borough Ordinances, including the Zoning Ordinances.

BE IT FURTHER RESOLVED that this approval is subject to all conditions as set forth herein and as placed on the record at the public hearing conducted on September 15, 2016 when this matter was considered.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon Applicants' compliance with the Ordinances of the Borough of Harvey Cedars, as applicable, with respect to bonding, guarantees, inspection costs and payment of such fees as may be related thereto, including escrow fees as to this application and as may be

required by the Board Engineer/Planner and/or Construction Official and/or Secretary to the Board and/or Clerk of the Borough. Any guarantees shall be subject to the written review and approval of the Board Engineer/Planner, the Borough Attorney's office and the Mayor and Commissioners.

MARY PAT BREARLEY, SECRETARY

-CERTIFICATION-

I, MARY PAT BREARLEY, Secretary of the Land Use Review Board of the Borough of Harvey Cedars, County of Ocean and State of New Jersey, do certify that the foregoing is a true copy of a Resolution adopted by the Land Use Review Board of The Borough of Harvey Cedars at a public meeting held on October 20, 2016.

MARY PAT BREARLEY, SECRETARY

WHEREAS, upon notice by publications, as directed by the Board, applicant has requested an administrative field change to address a condition that has arose during the course of the development of the property that affects the traffic circulation of the adjoining properties; and

WHEREAS, Howard Butensky, Esq appeared for applicant at the May 18, 2017 meeting of the Board informing the Board that as a result of the filling of applicants property, pursuant to Borough Ordinances and the above approval from the Board; the grades of the property interfered with the access to a portion of the Paul and Donna Boehringer property located at 11 East Bergen Avenue, Lot 7 Block 6, south of the subject property; to improve upon that situation, an easement from the owners of 9B East Bergen Avenue, Lot 9 Block 6, Gary H. Chasen and Jane B. Chasen, over a small portion on the easterly side of their property, approximately 10 x 20 feet; 200 square feet; to applicant is required. In consideration for the easement, the owners of Lot 9 Block 6, Gary H. Chasen and Jane E. Chasen; located to the west of the subject property;

have requested that the pedestrian easement to the Atlantic Ocean be increased to a width of five (5') feet; four (4) feet is provided; with the retaining wall being constructed on the south side of the pedestrian easement; and

WHEREAS, the increase in the width of the pedestrian easement to five (5) feet; will reduce the setback from the building from eight (8) feet as required, to seven (7) feet; which would render the setback nonconforming; and

WHEREAS, James S. Raban, Esq. attorney for the owners of Lot 9 Block 6, Gary H. Chasen and Jane B. Chasen appeared at the meeting, confirming the representation made by counsel for the applicant; and

WHEREAS, the Board Engineer visited the site and confirmed that the situation that exists was unforeseen at the time of the hearing and deliberations of the above application; and confirms that the easement from Gary H. Chasen and Jane B Chasen. to Applicant will improve the situation that exists at the site, as aforementioned; and recommends the granting of the aforementioned administrative field change; with the proviso that the change not be granted without the easement being granted; and furthermore that the area adjoining the new building will remain open and unobstructed, as there will not be any construction upon the pedestrian easement.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Harvey Cedars that applicant, Ziman Development, Inc. be and hereby is granted an administrative field change, modifying and amending the Resolution as above stated adopted by the Board on October 20, 2016, to permit the widening of the pedestrian access easement to a width of five (5) feet; with the resultant setback to the Building being reduced to seven (7) feet.

BE IT FURTHER RESOLVED that this field change is granted subject to an easement being made by the owners of Lot 9 Block 6, Gary H. Chasen and Jane B. Chasen, to applicant, for an approximate area of 200 feet over a portion of the eastern side of the property, as represented to the Board at a public hearing on May 18, 2017. If

said easement is not granted within a ninety (90) day period, this field change shall not take effect and is void ab initio.

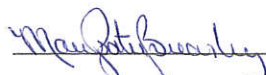
BE IT FURTHER RESOLVED that all terms and conditions of the original Resolution of Memorialization adopted on October 20, 2016 as set forth above, but for amendment to permit the five (5) foot pedestrian easement and the seven (7) foot setback to the building; shall remain in full force and effect and are not affected hereby.



MARY PAT BREARLEY, SECRETARY

-CERTIFICATION-

I, MARY PAT BREARLEY, Secretary of the Land Use Review Board of the Borough of Harvey Cedars, County of Ocean and State of New Jersey, do certify that the foregoing is a true copy of an AMENDMENT TO Resolution adopted by the Land Use Review Board of The Borough of Harvey Cedars at a public meeting held on June 15, 2017.



MARY PAT BREARLEY, SECRETARY