

**RESOLUTION OF MEMORIALIZATION OF THE LAND USE  
BOARD OF THE BOROUGH OF HARVEY CEDARS COUNTY OF  
OCEAN AND STATE OF NEW JERSEY  
DOCKET NO. 2018-03**

**WHEREAS,** Sand and Surf Properties L.P. has made application to the Land Use Board of the Borough of Harvey Cedars for variances to permit the installation of a fire pit within a front yard setback at 10.00 feet; and an in ground swimming pool within a front yard setback of 16.5 feet to Barnegat Avenue and 8.5 feet from unimproved Cox Avenue; at property known and designated as Lot 1 Block 29, 25 Barnegat Avenue in the Borough of Harvey Cedars, County of Ocean and State of New Jersey; and

**WHEREAS,** the Land Use Board considered this application at a public hearing on October 18, 2018. The applicant was represented by James S. Raban, Esq. The application dated September 27, 2018 was entered into evidence as Exhibit A-1; the variance plan prepared by Nelke/Tyszka Land Surveyors LLC titled “Variance Plan Tax Map Lot 1 – Block 29 Tax Map Sheet #4 Borough of Harvey Cedars, Ocean County, New Jersey” dated September 11, 2018, under signature and seal of Leon J. Tyszka, P.L.S. was entered into evidence as Exhibit A-2; an aerial map of the site, prior to construction, Google Maps dated 2018, was entered into evidence as Exhibit A-3. The review letter from Owen, Little & Associates, Inc., under signature of Frank J. Little, Jr. P.E., P.P., and C.M.E., dated October 16, 2018 was entered into evidence as Exhibit B-1. Testimony was offered by Michael Walsh, a 50% partner of applicant. There was not any public comment offered; and

**WHEREAS,** the Land Use Board after considering the Application, documentation entered into evidence, testimony of the witnesses and public comment has made the following factual findings:

1. All jurisdictional requirements have been met.
2. The property is located in the RA Single Family Residential Zone; and consists of an irregularly shaped lot with dimensions of 56.78 feet x 51.59 feet x 85.00 feet x 57.70 feet x 63.55 feet, fronting on Barnegat Avenue, and Cox Avenue, a portion of which is fronting on an unimproved part of

Cox Avenue. There is one side yard that abuts adjoining Lot 2; the remaining four boundaries maintain street frontage.

3. Applicant is constructing a two (2) story single family home upon the property. In conjunction with the development he is proposing to install an in ground swimming pool and fire pit upon the property; the fire pit being elevated more than 12 inches above the ground, is required to maintain all setback requirements.
4. The fire pit is proposed to be located on the northerly side of the property maintaining a conforming side yard setback of 10.2 feet and a non-conforming set back to the improved portion of Cox Avenue of 10.00 feet; where a minimum front yard setback of 20.00 feet is required. Variance relief is requested from Ordinance Section 13-17.5 setback requirements of 20.00 feet.
5. The swimming pool is proposed to be located in the southwesterly portion of the property, it is designated as kidney shaped; and fronts on the unimproved portion of Cox Avenue with an 8.5 foot setback; it also fronting on Barnegat Avenue at a 15.5 foot setback. Variance relief is requested from Ordinance Section 13-17.5 front yard setback requirements of 20.00 feet.
6. Ordinance Section 13-17.5(c) prohibits swimming pools to be located between a primary structure and any street or easement. Applicant is requesting variance relief as the property fronts on streets on four (4) of its; five (5) sides.
7. The Board adopts the contents of the October 16, 2018 letter from Owen, Little & Associates, Inc., entered into evidence as Exhibit B-1, as if set forth herein at length.
8. Notwithstanding the requirement for three (3) site triangles, Applicant's development does not encroach upon the vision clearance standards set forth in Ordinance Section 13-15.3.
9. Applicant proposes to install fencing around the swimming pool in compliance with safety standards. All fencing, as required under Borough

Ordinances and State codes for a swimming pool use will be adhered to by applicant.

10. The Board finds that applicant may be able to provide a swimming pool at the property, and comply, at the minimum with side yard setback requirements, reducing the extent of the proposed nonconformities, and

**WHEREAS**, applicant has requested the Board carry the application to the November 15, 2018 regular Board meeting to enable applicant an opportunity to reconsider its' proposal and to revise the plans to address concerns raised by the Board. Counsel waived the statutory time constraints on his client's behalf. The adjournment request was granted without any further publication or notice being required; and

**WHEREAS**, the public hearing was continued on November 15, 2018. James S. Raban, Esq. appeared on behalf of applicant. The plan prepared by Nelke/Tyszka Land Surveyors LLC titled "Variance Plan Tax Map Lot 1 – Block 29 Tax Map Sheet #4 Borough of Harvey Cedars, Ocean County, New Jersey" dated September 11, 2018, under signature and seal of Leon J. Tyszka, P.L.S., with a final revision date of November 2, 2018 under signature and seal of Leon J Tyszka, P.L.S. was entered into evidence as Exhibit A-4. Testimony was offered by Leon Tyszka, applicant's professional licensed surveyor and by Michael Walsh, the 50% member of applicant. There was not any public comment; and

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

11. Applicant modified the plan to reduce the size of the proposed swimming pool and changed the shape from a kidney shape to a rectangular swimming pool with dimensions of 8.5 x 20 feet.

12. As a result of the reconfiguration of the swimming pool, the proposed setback to the unimproved portion of Cox Avenue is ten (10') feet; the proposed setback to Barnegat Avenue is 16.5 feet.
13. Applicant further will relocate the swimming pool equipment to conform to Ordinance requirements; and

**WHEREAS**, the Land Use Board of the Borough of Harvey Cedars has determined that the relief requested by the applicant Sand and Surf Properties, LP for variances to permit the installation of a fire pit within a front yard setback at 10.00 feet; and an in ground swimming pool with a front yard setback of 16.5 feet to Barnegat Avenue and an 10.00 foot front yard setback from the adjoining unimproved portion of Cox Avenue; at property known and designated as Lot 1 Block 29, 25 Barnegat Avenue in the Borough of Harvey Cedars, County of Ocean and State of New Jersey can be granted without substantial detriment to the public good and without impairing the intent and purposes of the zone plan and zoning ordinances of the Borough of Harvey Cedars; and applicant has demonstrated sufficient criteria for a hardship under NJSA 40:55D-70 (c) 1 as the property is irregularly shaped, with four (4) front yard setbacks. The swimming pool is located in an area that abuts an unimproved street; there will be adequate fencing in accordance with Borough Ordinances and State Statutes regarding the maintenance and use of swimming pools; and the development will not have any negative impact upon the adjoining properties. The fenced area will be landscaped; and there will not be any visual encroachments into the site triangles. There will not be any negative impact upon the light and air of adjoining properties; and

**NOW, THEREFORE, BE IT RESOLVED** by the Land Use Board of the Borough of Harvey Cedars that the application of Sand and Surf Properties, LP for variances to permit the installation of a fire pit within a front yard setback at 10.00 feet; and an in ground swimming pool with a front yard setback of 16.5 feet to Barnegat Avenue and a ten (10') foot front yard setback from unimproved Cox Avenue; at property known and designated as Lot 1 Block 29, 25 Barnegat Avenue in the Borough of Harvey Cedars, County of Ocean and State of New Jersey, in accordance with the plan entered into

evidence as Exhibit A-4 on November 15, 2018, be and hereby is, conditionally approved.

**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., and C.M.E., dated October 16, 2018, as entered into evidence as Exhibit B-1.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon all construction at the property conforming to FEMA requirements and all building, fire and safety Codes. Applicants shall bring the building into FEMA compliance.

**BE IT FURTHER RESOLVED** that this approval is subject to all conditions as contained herein and as placed on the record at the public hearings conducted on October 18, 2018 and November 15, 2018.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon applicants compliance with the terms and conditions of all ordinances regarding fencing and swimming pools. Applicant is granted variance relief to maintain 10.00 foot setbacks from Cox Avenue for the placement of a fire pit; and to construct a swimming pool between a street and the primary structure; and for setbacks of 10.00 feet from the swimming pool to the unimproved portion of Cox Avenue; and 16.5 feet from the swimming pool to Barnegat Avenue. Applicant shall also provide landscaping, to be approved by the Board engineer in front of the fencing to be installed, as set forth in the record of the proceedings.

**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 obtaining all outside agency approvals from all agencies having jurisdiction over this development.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon Applicant's payment of all taxes and all other applicable assessments, and Applicant satisfying all fees and escrow fees as may be required.

**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 Zoning Board with respect to Borough Ordinances, including the Zoning Ordinances.

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**MARY PAT BREARLEY, SECRETARY**

**-CERTIFICATION-**

I, Mary Pat Brearley, Secretary of the Land Use 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 Board of the Borough of Harvey Cedars at a public meeting held on December 20, 2018.

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**MARY PAT BREARLEY, SECRETARY**