

**RESOLUTION OF MEMORIALIZATION OF THE
LAND USE REVIEW BOARD OF THE BOROUGH OF HARVEY CEDARS
COUNTY OF OCEAN AND STATE OF NEW JERSEY
DOCKET NO. 2019:05**

WHEREAS, William C. Sheffield has made an application to the Land Use Board of the Borough of Harvey Cedars for variance relief to demolish the existing two (2) family home and construct a new single family home at property known and designated as Lot 9 and 10 Block 24 located at 12 East Burlington Avenue, in the Borough of Harvey Cedars, County of Ocean and State of New Jersey; and

WHEREAS, applicant previously filed an appeal from the zoning officer's determination and request for interpretation of the Boroughs' Zoning Ordinances under Docket 2019-04, which matter was considered at a public hearing on June 20, 2019; whereupon the Board affirmed the action and interpretation of the Borough Zoning Officer as Memorialized by Resolution of Memorialization Docket 2019-04 adopted by the Board on July 19, 2019; and

WHEREAS, this application was filed in a timely manner for public hearing on August 15, 2019; at which time the Board did not have a quorum whereupon the hearing was carried until September 19, 2019; when the matter was carried, with consent of the Chair, applicant was provided an extension of thirty six (36) days to file an appeal of the Boards decision under Docket 2019-04; with the understanding, that if required, a consent order confirming the extension would be executed; and

WHEREAS, the application was considered by the Land Use Board at a public hearing conducted on September 19, 2019. The applicant appeared pro se. The application dated July 24, 2019 together with the documents in support of the application, Attachment A- Brief in Support of Application; Attachment B- Sketch in Support of Application; Attachment C- CAFRA Permit 1509 18-0011.0 Approved Plan; Attachment D- an aerial photographs of the property; Attachment E-Certification of Payment of Harvey Cedars Taxes; Attachment F. Form of Notice for mailing; and

Attachment G- Form of Notice for Publication; and Attachment H- affidavit of ownership, was entered into evidence as Exhibit A-1. The review letter from Owen, Little & Associates, Inc., under signature of Frank J. Little, Jr., dated August 9, 2019 was entered into evidence as Exhibit B-1. Testimony was offered by William C. Sheffield, the applicant. Robert J. McGowan, Esq. appeared on behalf of Toni Esposito the adjacent property owner to the west, Lot 11 Block 24, 10 East Burlington Avenue, Harvey Cedars, NJ; public comment was offered by James Hindle the owner of 8 E. Burlington Avenue, Harvey Cedars, NJ; Nicholas Pappas the owner of 11 E. Passaic Avenue the adjacent property owner to the south; Patrick Greber the owner of 5 E. 80th Street, Harvey Cedars, New Jersey; and

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

1. All jurisdictional requirements have been met.
2. Applicant William C. Sheffield and Amy G. Sheffield are the owners of the property. Applicants purchased Lot 10 Block 24, 12 East Burlington Avenue, a lot with dimensions of 50 x 120 feet improved with a two family home in November 2014. They purchased Lot 9 Block 24, a vacant lot known as 14 East Burlington Avenue, an undevelopable lot, being located within the Beach Dune Area, having dimensions of 60 x 100 feet; in September 2015. The properties are merged and treated as a single lot that is "L" Shape, whereupon a portion of the lot extends into the Beach Dune area.
3. Applicant in conjunction with the interpretation of the Board under Resolution Docket 2019-04 is seeking variance relief to develop the property; currently an L shaped lot, as a result of the consolidation of Lot 9 Block 24, with Lot 10 Block 24; to maintain a conforming 20 foot front yard from Burlington Avenue; two (2) side yard setbacks, each 10 feet; one side yard setback being located where the property abuts the adjoining property to the west, Lot 11 Block 24, 10 East Burlington Avenue; and the other at the easterly boundary of Lot 9, within the restricted beach dune area. A rear yard setback of 10 feet is proposed to the property at the south, Lot 5 Block 24 11 East Passaic Avenue.

4. Applicant does not propose any setback from that portion of the property that abuts Lot 8 Block 24, a vacant lot with dimensions of 60 x 100 feet predominantly in the beach dune area, and but for a strip of property at the westerly terminus with dimensions of 10 x 60 feet, is not developable as it lies eastwardly of the Oceanfront Building line.

5. Counsel for the adjoining property owner challenged the jurisdiction of the Board to proceed due to there not being a separate survey map, variance plat or architectural plans. The Board accepted jurisdiction to hear the application, based upon the submission of Attachment B, Sketch in Support of Application, as that plan provides a color coded delineation of the property, to scale, setting forth the proposed building area, and the proposed setbacks.

6. The Board adopts the contents of the letter from Frank J. Little, Jr. dated August 9, 2019 entered into evidence as Exhibit B-1, as if set forth herein at length.

7. Applicant is seeking variance relief from maintaining setbacks from the property where it abuts Lot 8 Block 24, requesting a variance to maintain two (2) zero (0) foot setbacks, and permission to construct a home at those property lines.

8. Applicant testified that he intends to limit any future construction upon the property to a single family home; eliminating the existing nonconforming two (2) family uses.

9 Applicant further testified that he was unsure of whether or not he would construct a new house upon the property, or if the property would be sold to a developer or other third party to develop the property. He indicated that a building footprint and architectural plans would be submitted to the construction office prior to the issuance of any permits. The only variance relief requested under this application is from the setback requirements along the common boundaries with Lot 8 Block 24.

10. The Board finds that there has not been any justification or adequate testimony or proofs to permit a zero foot setback at any of the property boundaries.

11. There is not a specific plan before the Board for the development of the property, which the Board finds leaves this application open to speculation; and does not provide the Board with sufficient information to grant the relief requested. Not providing any setbacks along the property boundaries without due reason, or accommodation for access to those areas, during or after the construction of a building is not acceptable; and

WHEREAS the Land Use Board of the Borough of Harvey Cedars has determined that the relief requested by the applicant William C. Sheffield for variances from providing setbacks upon the future development of his property with a single family house, located at 12 East Burlington Avenue, Lots 9 and 10 Block 24, in the Borough of Harvey Cedars, Ocean County, New Jersey, where the subject property abuts Lot 8 Block 24, the adjoining property to the east and south, cannot 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, as applicant has not demonstrated any hardship, as the property may be fully developed in conformity with required setbacks; nor has applicant provided any justification to permit a zero setback from a building, either during construction or after construction. Applicant has not satisfied his burden under NJSA 40:55D-70 c (1) or NJSA 40:55-70 c (2).

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Borough of Harvey Cedars that the application of William C. Sheffield. to demolish the existing two (2) family home and construct a new single family home at property known and designated as Lot 9 and 10 Block 24 located at 12 East Burlington Avenue, in the Borough of Harvey Cedars, County of Ocean and State of New Jersey with zero setbacks where the property abuts Lot 8 Block 24 to the south and east; be and hereby is denied.

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 17, 2019.

MARY PAT BREARLEY, SECRETARY