

**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. 2022-01**

WHEREAS, the **MARBACH PRESSLER LIVING TRUST** has applied to the Land Use Review Board of the Borough of Harvey Cedars for variance relief for the premises located at 1 E 68th Street, Lot 1 in Block 42.01, Harvey Cedars, NJ. The Applicant proposes to construct an in-ground pool in the front yard of the premises, 10 feet from Long Beach Boulevard and to relocate the access stairway in a southerly direction, 23.4 feet from Long Beach Boulevard. The Applicant is seeking bulk Variances pursuant to N.J.S.A 40:55D-70 c1 and N.J.S.A 40:55D-70 c2 to permit the location of a pool in the front yard of the property 10 feet from Long Beach Boulevard contrary to the provisions of Borough Ordinance 13-7.7b and 13-17.5c and to relocate the access stairway from its current location in a southerly direction 23.4 feet from Long Beach Boulevard contrary to the provisions of Borough Ordinance 13- 13-10.3b1.

WHEREAS, the Land Use Review Board considered this Application at the public hearing held on January 20, 2022. The Applicant was represented by Richard P. Visotcky, Esquire. The Variance Plan entitled Variance Map Lot 1 Block 42.01 Tax Map Sheet #5 dated June 14, 2021 prepared by Horn Tyson and Yoder was marked into evidence as Exhibit A-1. The Application and its attachments dated December 8, 2021, received by the Board on January 3, 2022, was marked into evidence as Exhibit A-2. Three (3) photographs provided by the Applicant and described by the Applicant's Engineer was marked into evidence as Exhibit A-3; The Review Letter from Owen, Little & Associates, Inc., dated January 12, 2022 was marked into evidence as Exhibit B-1. James Brozowski, P.E., P.P. of Horn Tyson and Yoder, Inc., was sworn and qualified as an expert and John Marbach, Co- Trustee of the Applicant was duly sworn and testified on behalf of the Applicant. No members of the public appeared or objected to the relief requested.

WHEREAS, the Land Use Board after considering the Application, photographs, Variance Map, and all Exhibits entered into evidence, in addition to the testimony of the Witnesses and argument of Counsel, has made the following factual findings:

1. All Jurisdictional requirements have been met.
2. The Applicant is owner of the property and has standing to make this application.
3. The Applicant, MARBACH PRESSLER LIVING TRUST, has two (2) Members, John Marbach and Sherry L. Pressler each holding a fifty (50%) percent interest.
4. The property is in the R-AA District.
5. The Board specifically incorporates herein by reference the information set forth in the Variance Map marked A-I in evidence and the Application marked A-2 in evidence as if said information is set forth at length herein.
6. The Board incorporates herein by reference the contents of the January 12, 2022, letter from Frank J. Little, Jr., which was entered into Evidence as Exhibit B-1, as if set forth herein at length.
7. The Board finds that the lot which is the subject of this application is an undersized lot having the dimensions of 65 feet by 85 feet and a total lot area of 5,525 square feet where a total lot area of 7,500 square feet is required.
8. The Board finds that the lot which is the subject of this application is a corner lot located at the northeast intersection of Long Beach Boulevard and 68th Street and as such, it is burdened by having two (2) front yards and the requirement that structures be set back 25 feet from the street.
9. The property is improved by a modest one-story dwelling which has a northerly setback of 15.5 feet an easterly setback of 4.4 feet a southerly setback to 68th street of 25.4 feet and a westerly setback to Long Beach Boulevard 26.8 feet.
10. The Applicant wants to construct a 12 foot by 20 foot in-ground pool in the westerly front yard 10 feet from Long Beach Boulevard.
11. The Board finds that, since the lot is undersized and burdened by having two (2) front yards and is improved by a single story dwelling 15.5 feet from the northerly lot line and 10.1 feet from the easterly lot line, there is no other location on the lot where the pool can be located other than the front yard abutting Long Beach Boulevard.

12. The Board finds that the proposed in-ground pool is a common amenity in Borough and denying the Applicant's request to construct the pool would deprive it of a reasonable use of its property without any corresponding benefit to the public good.

13. The Board specifically finds that the Applicant has established the positive criteria of N.J.S.A. 40: 55D-70c1 by clear and convincing proof that due to undue hardship the Applicant is entitled to Bulk Variances to construct an in-ground pool in the front yard for the reasons set forth herein.

14. The Applicant proposes to relocate the existing stairway in a southerly direction outside of the proposed pool enclosure a distance of 23.4 feet from Long Beach Boulevard.

15. The relocation of the stairway 23.4 feet where 25 feet is required is a minor encroachment into the front yard setback.

16. The proposed pool will not adversely affect the free flow of light and air in the area and is not in an area subject to heavy pedestrian traffic.

17. The Board finds the Variances requested can be granted without substantial detriment to the public good and without impairing the intent and purpose of the zone plan and zoning Ordinances of the Borough of Harvey Cedars. The benefits of granting the relief outweigh any detriment.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Review Board of the Borough of Harvey Cedars that the relief requested by the MARBACH PRESSLER LIVING TRUST for Bulk Variances to permit the construction of a 12 foot by 20 foot in-ground pool in the front yard 10 feet from Long Beach Boulevard and relocate the access stairway in a southerly direction 23.4 feet from Long Beach Boulevard, can be granted without substantial detriment to the public good and without impairing the intent and purpose of the zone plan and zoning ordinances of the Borough of Harvey Cedars. The benefits of granting the relief outweigh any detriment.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon the 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 May 12, 2020, as entered into evidence as Exhibit B-2.

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 statutes and ordinances effecting this development and proposed use.

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, if any.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon the veracity and reliance by the Board of the testimony offered at the hearing by Applicant.

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. Applicant shall also pay and post all inspection fees, performance guarantees and maintenance bonds as may be required, in amounts established by the Borough Engineer, and in such form as required by the Borough Solicitor.

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 the following conditions:

1. The overhead utility line shall be relocated and converted to an underground service.
2. The fence be constructed so as to comply with ordinance requirements for properties fronting on Long Beach Boulevard and shall be set 2 feet from the property line. The fence shall completely enclose the pool area.
3. The Applicants shall plant Arborvitae (eight-foot center) to provide a screen The plants shall be located inside the fenced area.
4. The deck shall be cut back so that it maintains a distance of 8 feet from the proposed pool to the primary structure.

5. In the event the dwelling is totally demolished the Applicants shall reconstruct the dwelling so as to comply with the 25 foot front yard setback.
6. The Applicant submit revised plans consistent with this approval.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon Applicants complying with all technical revisions and submissions as the Borough Engineer may require.

This Resolution is intended to memorialize the action taken by the Borough of Harvey Cedars Land Use Board on January 20, 2022


Christine Lisiewski, Secretary

CERTIFICATION

I, **Christine Lisiewski**, the 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 Resolution of Memorialization adopted by the Land Use Review Board of the Borough of Harvey Cedars at a virtual public meeting held on February 17, 2022.


Christine Lisiewski, Secretary

