

**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. 2024-02**

WHEREAS, 8001 Long Beach Blvd, LLC, has made an application to the Land Use Review Board of the Borough of Harvey Cedars for Site Plan approval with variances for Lots 1 and 16 in Block 80. The applicant proposes to expand the second-floor deck on the existing structure as well as construct a one-story addition underneath the expanded deck which shall contain two (2) wheelchair accessible bathrooms. The area created underneath the new second floor deck will be a concrete patio with seating with vinyl roll-down enclosure. Interior improvements will be made to the existing restaurant and a new staircase will be constructed adjacent to the residential lot on 80th Street to provide access to the apartment and patio.

WHEREAS, the site lies within the LC-Limited Commercial Zone where the proposed expanded restaurant use is permitted, however the existing apartment is not a permitted use and therefore a Special Reason/ "D" Variance is required. The proposed development also requires variances for Lot Area of 9,000 sq. ft. which is insufficient to meet the parking requirement; Lot width of 100 ft. is insufficient to meet the parking requirement; and existing impervious coverage of 100% where 75% is permitted, park stall size, loading zone size and parking in side yard.

WHEREAS, the Application has been deemed complete.

WHEREAS, proper notice was given in accordance with the requirements of the Municipal Land Use Laws and the Board has Jurisdiction.

WHEREAS, the Land Use Review Board considered this application at a public hearing on April 18, 2024.

WHEREAS, the applicant was represented by Duncan M. Prime, Esq.

WHEREAS, the Board received the report of its professional, Frank J. Little, Jr. P.E.,P.P., C.M.E. dated March 31, 2024 and revised April 10, 2024.

WHEREAS, the following exhibits were entered into evidence:

- A-1 Application.
- A-2 Preliminary and Final Major Site Plan prepared by Morgan Engineering dated 2/21/24 and revised 4/4/24.
- A-3 Survey of Property prepared by Moran Engineering dated 9/20/23 and revised

2/21/24

- A-4 Architectural Plans prepared by Jay Madden Architecture dated 2/13/24 and revised 4/2/24.
- A-5 Colorized Site Plan.
- A-6 Colorized Rendering Prepared by Jay Madden Architecture dated _____.
- B-1 Board Engineer Review Letter by Frank J. Little, P.E.,P.P.,C.M.E. dated 3/13/24 and revised 4/10/24.

WHEREAS, the Board heard the testimony and considered the application and evidence presented for minor site plan approval with variances.

WHEREAS, Anthony Marino was sworn and testified that he is the General Manager of the Applicant and is authorized to speak on behalf of the Applicant and to bind same. He testified that the business is open year-round with hours of operation of 3 p.m. to 7 p.m. seven days per week. There are between 6 to 8 employees. The prior eatery on site provided all day service and take out seven days per week. The Applicant is not proposing any outdoor music or take-out service. Trash is collected twice per week by a private hauler outside normal business hours.

WHEREAS, Donna M. Bullock, P.E. who was sworn and qualified as an expert in professional engineer testified as follows:

1. The existing development is on a 90 ft. by 100 ft. lot consisting of 9,000 sq. ft. There is an existing two-story structure with a restaurant on the ground floor and a residential apartment on the second floor.
2. The site was the subject of prior site plan approval.
3. There are seventeen parking spaces on site however only nine spaces are conforming. The Applicant seeks a variance for parking.
4. Wheel stops or bollards will be installed at all spaces except for the staked parking along Long Beach Boulevard.
5. An approximately 50 sq. ft. portion of asphalt will be removed and replaced with gravel, along the easterly property line which will reduce the non-conforming impervious coverage from 100% to 96%.
6. No new signage is proposed. Lighting on wall-mounted signs will be shielded to not shine on adjacent property and/or roadways.

7. The easterly property line to be landscaped in a three-foot strip to provide adequate shielding.
8. Applicant requests a waive for parking stall required size of nine feet by twenty feet where nine feet by eighteen feet is proposed.
9. A waiver for loading zone size is requested where nine feet by twenty-five feet is required and eight and a half feet by twenty-five feet is requested due to limitation imposed by the existing structure's proximity to the property line.
10. A waiver for a sidewalk is requested whereas none exists.
11. Compliance with the Ocean County Site Triangle is requested. Application has been submitted to Ocean County.
12. A three-foot landscaping strip is proposed along the easterly property line. No landscaping is proposed along the northerly property line.
13. A bike rack to accommodate eight bikes is proposed.
14. A six-foot fence to be installed along the northerly and easterly property lines.
15. The existing shed to be relocated and to comply with all setback requirements.

WHEREAS, Amanda Sapp, R.A. who was sworn and qualified as an expert in Architectural, design testified as follows:

1. Provided a colored rendering of the elevation which was marked as Exhibit A-6.
2. The exterior seating shall be under a solid roof with vinyl pull-down side panels.
3. Awning to be removed.
4. The space will be conditioned with heating and air conditioning.
5. Gutters to be installed. No new drainage is proposed.

WHEREAS, Creigh Rehenkamp, P.P. who was sworn and qualified as an expert in planning testified as follows:

1. Adopts the testimony of the prior witnesses.
2. There is no proposed intensification of use.
3. The addition of handicap bathrooms is an improvement.
4. The additional square footage requires a use variance not the use itself.
5. No new living space is proposed in the residential portion.
6. The bulk variances are pre-existing non-conformities which are not being expanded.

7. The proposed development is a substantial improvement which improves aesthetics and safety.
8. The proposed use is an efficient use of the land where dual use represents a more efficient use of limited space.
9. The proposed development represents a better planning alternative.
10. The proposed development is consistent with the Mater Plan whereas it promotes and retains a commercial business.
11. Reductions and/or limitation of pre-existing non-conformities are benefits. The relocation of the non-conforming shed to a conforming location is a benefit. Decrease in impervious coverage is a benefit.
12. The proposed development is consistent with the neighborhood scheme.
13. The proposed traffic circulation is sufficient and is working.
14. The proposed developments improve how the site works and represents an improvement of the existing conditions.

WHEREAS, the Board, after hearing the testimony of the Applicant and the Applicant's professionals, opened the matter to the Public. Nine interested parties were sworn and testified. Six interested parties testified in support of the Application and three interested parties spoke against the Application.

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. Anthony Marino is authorized to act on behalf of the LLC.
3. The applicant is the owner of the subject property which is located in the LC-Commercial Zone.
4. The proposed benefits of granting the relief requested outweigh any detriments to the Zone Plan, Master Plan and Ordinances of Harvey Cedars Borough. Specifically, the Board finds that relocating the pre-existing non-conforming shed brings the property more into compliance. Additionally, increasing the pervious coverage is an improvement.
5. Improvements in aesthetics and retention of commercial use are special

reasons supporting the granting of a Use Variance. Additionally, the property is uniquely suited for the proposed use.

6. The proposed use does not increase the intensity of use on the property.

NOW, THEREFORE BE IT RESOLVED, the Board discussed the application and articulated their opinions on the relief sought. The Board accepted the representations and testimony and agreed that the site proposal warrants the grant of a use variance as well as hardship variance relief and approval of the minor site plan with conditions imposed during the course of the hearing.

NOW, THEREFORE, BE IT FURTHER RESOLVED the conditions imposed by the Board are as follows:

1. Comply with the letter of the Board Engineer revised April 10, 2024.
2. Hours of operation shall be 3 p.m. to 10 p.m. seven days per week year-round.
3. There is to be:
 - a) No takeout service.
 - b) No outside music.
4. Wheel stops and lot stripping shall be provided with consultation with the Board Engineer.
5. Refuse to be collected twice per week by private hauler outside normal business hours.
6. Existing shed to be relocated and comply with applicable setbacks.
7. An eight bike, bike rack to be installed.
8. An approximately 50 sq. ft. portion of the asphalt along the easterly property line is to be removed and replaced with gravel.
9. Six-foot fencing to be installed along the northerly and easterly property lines. A three-foot landscaping strip shall be installed along the easterly property line.
10. Sight-triangle shall comply with Ocean County approval.
11. Employee and apartment parking to be marked on pavement.
12. One-way and no-outlet signage to be installed.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned to Applicant's compliance with all terms and conditions of the review letters of the Board Engineer,

Frank J. Little, Jr. P.E., P.P., and C.M.E., dated March 29, 2021 and May 13, 2021, as entered into evidence as Exhibit B-1 and B-2 as amended at the hearing.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon all construction at the property conforming to FEMA requirements and all buildings, 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, 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.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon Applicants' 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 all conditions and representations as set forth herein and as placed on the record at the public hearing conducted on April 18, 2024 when this matter was considered.

BE IT FURTHER RESOLVED that this approval is subject to and conditioned upon applicants complying with any and all technical revisions and submissions as the Borough or Board Engineers may require.


CHRISTINE LISIEWSKI SECRETARY

CERTIFICATION

I, **CHRISTINE LISIEWSKI**, 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 at the April 18, 2024 regular meeting and memorialized at a public meeting held on May 16, 2024.


CHRISTINE LISIEWSKI, SECRETARY

