

**SUPERCEDING AND AMENDED RESOLUTION OF MEMORIALIZATION OF  
THE  
LAND USE BOARD OF THE BOROUGH OF HARVEY CEDARS  
COUNTY OF OCEAN AND STATE OF NEW JERSEY  
DOCKET NO. 2017:01V**

**WHEREAS**, Richard Franko and Leslie Franko have made application to the Land Use Board of the Borough of Harvey Cedars for variances to permit the demolition of the existing two story single family home, and for the construction of a new two story elevated single family home at their property located in the R-A Single Family Residential Zone located at 3 West Bergen Avenue, Lot 4 Block 2, 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 January 19, 2017. The applicant was represented by Richard P Visotcky, Esq. The application dated December, 2016 was entered into evidence as Exhibit A-1; the plan prepared by Horn, Tyson & Yoder, Inc., titled "Variance Map Lot 4, Block 2 Tax Map Sheet # 2 Borough of Harvey Cedars, Ocean County, New Jersey" dated October 26, 2017, under signatures and seals of James D. Brzozowski, P.E., P.P. and Hayes A. Hewitt, P.L.S. was entered into evidence as Exhibit A-2; architectural plans prepared by Craig W. Brearley AIA titled "Franko Residence Lot: 4 Block 2 Borough of Harvey Cedars, Ocean County, New Jersey" dated December 20, 2016, containing two (2) sheets, signed and sealed by Craig W. Brearley, AIA, was entered into evidence as Exhibit A-3; a photograph of the front of the property was entered into evidence as Exhibit A-4; two photographs of the property, one of the front of the property showing the adjoining property to the west, and the other showing the area between the subject property and the property to the west was entered into evidence as Exhibit A-5. The review letter of Owen, Little and Associates, Inc. dated January 17, 2017, was entered into evidence as Exhibit B-1. Testimony was offered by James D. Brzozowski, PE, PP applicant's engineer and planner; Craig W. Brearley, applicant's architect; and by Leslie Franko, the applicant. Public comment was offered by Salvatore Lauro the owner of 1 W. Bergen Avenue, the adjacent property to the east; and James Frank the owner of 7 W. Bergen Avenue; and

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

1. All jurisdictional requirements have been met.
2. The applicants are the owners of the property. The property is located in the R-A Single Family Residential Zone. The property consists of a nonconforming lot with dimensions of 40 x 103.75 feet, containing 4,150 square feet improved with a two story single family home. There is not any vacant land surrounding the property which could be acquired to bring the lot area and lot width into conformity.
3. Applicants acquired the property in 1999; at that time the use of the property was two families, with a small apartment on the second story. Applicants' made improvements to the property when they acquired it, and eliminated the two family uses, and removed the apartment from the second floor.
4. The single family use is permitted in the zone.
5. The current two story dwelling was constructed in the 1950's or 1960's; the side yard setback to the west is 3.2 feet. The first floor elevation does not meet the current BFE requirements.
6. Applicants propose to demolish the existing home and construct a new two story raised single family home upon the premises. They are requesting variance relief to permit a six (6') foot westerly side yard setback where a ten (10') foot side yard setback is required. But for the preexisting lot area and lot width, all other bulk requirements will be adhered to.
7. Predicated upon the forty (40') foot lot width, a conforming home could be constructed upon the site, however to maintain the required ten (10') foot side yard setbacks; the width of the new home would be limited to twenty (20') feet. The Board finds that the twenty four (24') foot wide house proposed is more suitable to the neighborhood; and is limited to 60% of the lot width; which is the same scale that a house on a

conforming 50 foot lot would maintain with two 10 foot side yard setbacks.

8. The design of the house comports to the neighborhood; is aesthetically pleasing; and will conform to the requirements of the Borough height ordinance. The lot will be elevated according to ordinance requirements; **however the proposed building height of 31' feet is not permitted by Ordinance; the permitted height at this location is 30' feet.** . Applicant **requires a variance for the 31' foot height and testified that they shall not exceed a building height of 31 feet. The Board initially considered the application with a 31 foot building height; and there was not any objection; and found the plan conformed to the neighborhood.**
9. The Board discussed a modification to the proposed side yard setbacks; wither two setbacks of 8 feet each; or a 7 foot and 9 foot side yard setback. The design presented by applicants requires only one exception from the zoning ordinances; the ten foot setback will enable additional off street parking and vehicular access to the rear of the property.
10. The Board finds that the variance to enable a 6 foot westerly side yard variance may be granted for this project.
11. The development as proposed will accommodate two exterior off street parking spaces; applicants shall amend their plans to locate the second off street parking space. The garage door is set off from the house to provide a setback of 20 feet; which will accommodate one parking space as shown on the plan.
12. The development requires the construction of a retaining wall which will be either block or 6 x 6 foot timbers; to contain the additional fill to be placed upon the lot. The drainage will be designed at the site not to impact any adjoining properties.
13. The air conditioning platform will be constructed at the cut out next to the elevator on the west side of the house; it will not encroach into the 6 foot side yard setback.

14. According to the neighbors who testified they believe that the proposed development will benefit their neighborhood, and prefer the design proposed in lieu of a conforming twenty foot wide house; and

**WHEREAS**, the Land Use Board of the Borough of Harvey Cedars has determined that the relief requested by the applicants, Richard Franko and Leslie Franko for variances to permit the demolition of the existing two story single family home, and for the construction of a new two story elevated single family home at their property located in the R-A Single Family Residential Zone located at 3 West Bergen Avenue, Lot 4 Block 2, in the Borough of Harvey Cedars, County of Ocean and State of New Jersey; a lot with dimensions of 40 x 103.75 feet, with a westerly side yard setback of six (6') feet 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, as the new home will be suited for the site; the existing nonconforming westerly setback will be increased from 3.2 feet to 6 feet; the lot size and lot width are preexisting conditions that are unable to be brought into conformity. The new house is aesthetically pleasing and comports to the design of the neighborhood. The new construction will comply with all current building codes and FEMA requirements; whereupon the Borough will benefit from the house being constructed at a higher elevation to meet current and anticipated FEMA requirements; **and the building height of 31 feet shall not impede or negatively impact the adjoining or neighboring properties.** The use is permitted; applicant has demonstrated the criteria for a Hardship Variance pursuant to NJSA 40:55D-70 (c) 2; the house will be constructed to scale; it is suited for the site; the height requirements will be met; applicants shall meet all current fire, and safety codes; and the new home will be constructed to comply with the requirements of the Advisory Flood Zone where the property is located.

**NOW, THEREFORE, BE IT RESOLVED** by the Land Use Board of the Borough of Harvey Cedars that the application of Richard Franko and Leslie Franko for variances to permit the demolition of the existing two story single family home, and for the construction of a new two story elevated single family home at their property located in the R-A Single Family Residential Zone located at 3 West Bergen Avenue, Lot 4

Block 2, in the Borough of Harvey Cedars, County of Ocean and State of New Jersey; a lot with dimensions of 40 x 103.75 feet, with a westerly side yard setback of six (6') feet, **at a height of 31' feet**, 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 January 19, 2017, and 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 proposed FEMA requirements, as set forth in the Advisory Maps, if the final Maps have not been adopted at the time of construction; and all building, 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 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 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 made by applicants and their witnesses and as placed on the record at the public hearing conducted on January 19, 2017 when this matter was considered.

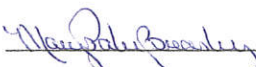
**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon Applicant complying with all technical revisions and any other requirements as set by the Borough Engineer.

**BE IT FURTHER RESOLVED** that applicant is granted variances for preexisting conditions; and applicants are granted a variance to permit a westerly side yard setback of six (6') feet **and to maintain a building height of 31' feet.**

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon applicant submitting revised plans designating two (2) exterior off street parking spaces;

**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 Council.

**BE IT FURTHER RESOLVED** that this Resolution replaces, amends and supersedes the Resolution of Memorialization adopted on February 16, 2017 and is effective nunc pro tunc to that date.



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**MARY PAT BREARLEY, SECRETARY**