

**RESOLUTION OF MEMORIALIZATION LAND USE REVIEW BOARD  
BOROUGH OF HARVEY CEDARS, OCEAN COUNTY NEW JERSEY  
13 E 77<sup>TH</sup> STREET; ROBERT M. BUDLOW, APPLICANT  
DOCKET NO. 2022-04**

**WHEREAS, ROBERT M. BUDLOW** has applied to the Land Use Review Board of the Borough of Harvey Cedars for variance relief for the premises located at 13 E 77<sup>TH</sup> STREET, Lot 7 in Block 56, Harvey Cedars, NJ. The Applicant proposes to demolish the existing single family dwelling and construct a new, two story single family dwelling 6.7 feet from the westerly lot line where 10 feet is required and at a height of 21.7 feet where the maximum permitted roof height is 21 feet. 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 the dwelling 6.7 feet from the westerly lot line contrary to the provisions of Borough Ordinance 13-9.4(b) and to construct the dwelling with a roof height of 21.7 feet contrary to the provisions of Borough Ordinance 13- 7.2c and 13-8.1c(2) .

**WHEREAS,** the Land Use Review Board considered this Application at the public hearing held on April 21, 2022. The Applicant was represented by James S. Raban, Esquire. The Application and its attachments filed on March 31, 2022, was marked into evidence as Exhibit A-1. The Variance Plan entitled Variance Map Lot 56 Block 7 (sic) Tax Map Sheet #6 dated March 30, 2022 prepared by Horn Tyson and Yoder was marked into evidence as Exhibit A-2. The Architectural plan titled "Budlow Residence Lot 7 Block 56 Borough of Harvey Cedars, Ocean County, New Jersey dated March 18, 2022 was marked into evidence as Exhibit A-3. A diagram prepared by Horn Tyson and Yoder depicting the difference in the calculation of height for Ocean-front and non Ocean-front lots was marked into Evidence as Exhibit A-4. Eleven photographs provided by and identified by the Applicant's environmental expert were marked into evidence as Exhibit A-5; The Review Letter from Owen, Little & Associates, Inc., dated April 5, 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. In addition, Sarah D, Jennings A.I. A., of the office of Craig W. Brearley AIA, and Junetta Dix, Environmental Consultant were sworn and duly qualified as an experts. In addition, the applicant, Robert M. Budlow, was duly sworn and testified. Members of the public appeared in support of 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 all Witnesses and the arguments of Counsel, has made the following factual findings:

1. All Jurisdictional requirements have been met.
2. The Applicant is the contract purchaser of the the property which is owned by Reginald M. Smith Jr and Barbara S. Smith and has standing to make this application.
3. The property is in located in the R-A District.
4. The Board specifically incorporates herein by reference the information set forth in the Application marked A-1 in evidence Variance Map marked A-2 and the Architectural Plan marked A-3 in evidence as if said information is set forth at length herein.
5. The Board incorporates herein by reference the contents of the April 5, 2022 Review letter received from Frank J. Little, Jr., which was marked into evidence as Exhibit B-1, as if set forth herein at length.
6. The Board finds that the lot which is the subject of this application, is a conforming lot having a total area of 5,000 square feet.
7. The Engineer and the Environmental Consultant both testified that CAFRA would not permit the applicant to construct a dwelling located further east from where the current structure on the lot is located; and therefore; the proposed structure must maintain an easterly side yard of 13.3 feet even though the Harvey Cedars Zoning Ordinance only requires an easterly side yard setback 10 feet.
8. The Board notes that if the Applicant was permitted to relocate the structure 3.3 feet in an easterly direction the westerly side yard would become conforming. The Applicant is not permitted to move the proposed dwelling 3.3 feet in an easterly direction due to Environmental issues raised by CAFRA

9. The proposed dwelling will be a modest two-story dwelling having a total living space of 2,449 square feet and is consistent with the other homes in the neighborhood.

10. The location of the proposed dwelling 6.7 feet from the westerly lot line will not prevent or impede access of emergency personnel to the rear or westerly side of the proposed dwelling.

11. 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 in that due to environmental conditions as determined by CAFRA, which would prevent the relocation of the structure further to the east, the Applicant would suffer exceptional practical difficulties and exceptional and undue hardship if bulk variances are not granted.

12. The Board notes that the maximum permitted roof height is 21 feet. The height proposed by the Applicant is 21.7 feet which is 0.7 feet above the maximum height permitted under the facts of this application.

13. The Board finds that the deviation of 0.7 feet is de minimis under the facts of this application and will have no adverse affects on the surrounding neighborhood. .

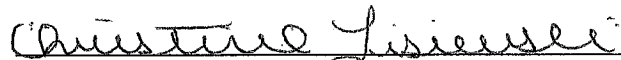
14. The need for the height variance is the Applicants inability to comply with the side yard requirements and the fact that an Ocean-front lot requires that the height of new structures on the ocean-front not exceed 23 feet above the first floor elevation.

15. The Board specifically finds that the Applicant has established the positive criteria of N.J.S.A. 40: 55D-70c2 by clear and convincing proof that the goals of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment

16. 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 for the reasons set forth herein. The benefits of granting the relief outweigh any detriment.

**BE IT FURTHER RESOLVED** that this approval is subject to and conditioned upon Applicants complying with all requirements set forth in the Borough Engineer letter of April 5, 2022 and the Applicant submit revised plans consistent with this approval.

This Resolution is intended to memorialize the action taken by the Harvey Cedars Land Use Board of April 21, 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 a Resolution adopted by the Land Use Review Board of the Borough of Harvey Cedars at a public meeting held on May 19, 2022.

  
Christine Lisiewski, Secretary