

**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. 2023-15**

WHEREAS, Timothy and Alexandra Levin have made application to the Land Use Review Board of the Borough of Harvey Cedars for variances to construct a new single-family dwelling on an existing vacant lot known and designated at Lot 19, Block 58, 64 W. 80th Street in the Borough of Harvey Cedars, County of Ocean and State of New Jersey. The following variances are required:

1. Existing Lot Area of 4,250 SF where 5000 SF is required*
2. Building Height of 36.3 ft. where 33 ft. is permitted.

*pre-existing non-conformity.

WHEREAS, the Land Use Review Board considered this application at public hearing on August 17, 2023. The applicant was represented by Richard Visotcky, Esq. The following Exhibits were marked and moved into evidence:

- A-1 Application dated 6/26/23.
- A-2 Variance Map prepared by Horn, Tyson and Yoder dated 8/16/23.
- A-3 Architectural Plans prepared by Phillip D. Kunz dated 5/30/23.
- A-4 Building Permit Plat Plan prepared by Horn, Tyson and Yoder, Inc. Dated 3/27/23 and revised 5/31/23.
- A-5 Color Photo showing existing conditions.
- A-6 Color Rendering for Squash Court.
- B-1 Board Engineer Review Letter dated 7/18/23

WHEREAS, James D. Brzozowski, P.E., P.P. was sworn and qualified as an expert in professional planning and professional engineering and testified as follows:

1. A single-family dwelling which was previously on the property was demolished. The property is currently vacant.
2. The demolished dwelling was below base flood elevation
3. The plan will be revised to shift the dwelling to the west for a 10 ft. setback to

provide an additional parking space.

4. The proposed dwelling will comply with all setbacks.
5. The applicants will comply with the required lot fill.
6. A variance for height is required where 36.3 ft. is proposed and 33 ft. is permitted.
7. The proposed dwelling will comply with applicable flood elevation requirements and current building codes which represents an improvement in safety.
8. The proposed dwelling is an aesthetic improvement and consistent with the neighborhood scheme.
9. The lot area is an existing non-conforming condition which is unchanged. There is no property available to bring the property into conformity with the requirement.
10. The proposed dwelling will not impair open air and light and is appropriately sized for the lot.
11. There is no substantial detriment to the zone plan and/or master plan of the borough.
12. Adequate parking is provided.

WHEREAS, Phillip D. Kunz, AIA who was sworn and qualified as an expert in architectural design testified as follows:

1. The proposed squash court is a stand alone construction enclosed within the shell of the home which prevents noise from emanating from the structure.
2. The court is not visible from the exterior of the dwelling.
3. Windows in the court area were provided to improve the exterior aesthetics of the dwelling.

WHEREAS, Timothy Levin was sworn and testified as follows:

1. He is the co-owner of the property with the co-applicant, his wife.
2. The previous structure was fire damaged and was demolished.
3. The proposed improvements are to be used as an annex to their primary residence located near by.
4. The court is for personal use only and not available to be rented.
5. The proposed court is the minimum requirements for a regulation squash court. It

is not practical to reduce the court size to remove the need for variance relief.

6. Any noise from the use of the court will be mitigated by the double wall construction.

WHEREAS, the meeting was open to the public and seven members of the public spoke against the relief requested. The comments raised concerns about noise, impairment of open air and light, diminished views and lack of aesthetic appeal keeping with the neighborhood.

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. The applicants are the owners of the property. The property is located in the R-A Single-Family Residential Zone.
3. The site is presently vacant, the prior dwelling having been demolished.
4. The undersized lot is a pre-existing non-conformity which cannot be removed or reduced by acquiring additional property whereas the adjacent properties are fully developed.
5. The applicants seek variance relief for building height where 33 ft. is permitted and 36.3 ft. is proposed.
6. The applicant seeks relief under C(1) and C(2).

WHEREAS, the Land Use Review Board of the Borough of Harvey Cedars has determined that the applicant has failed to satisfy the requirements for granting of variance relief under C(1) or C(2).

WHEREAS, the Board finds that the applicants have failed to establish a hardship under C(1) which prevents the applicant from complying with the height requirement. The hardship is unique and personal to the applicants and not due to unique conditions of the property. Additionally the applicants have failed to establish that the benefits of granting the variance outweigh any detriment to the granting of the variance. The benefit is solely to the applicant and not the public in general. Additionally the Board finds that impairments to open air and light, aesthetics and density are significant.

WHEREAS, the Board finds that the applicants have failed to establish the elements

necessary for relief under C(2). Specifically the Board finds that the granting of the variance relief requested would not advance the purposes of the MLUL in that the benefits do not outweigh the detriments. The granting of the variance would created a substantial detriment to the public good in reduction in open air and light to the surrounding properties. The proposed variance would substantially impair the intent and purpose of the zone plan and zoning ordinances wherein the proposed dwelling would impair open air and light and not be an aesthetic improvement. The Board finds no benefits to the granting of the requested relief other than to the applicants.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Review Board of the Borough of Harvey Cedars that the application of Timothy and Alexandra Levin for a variance for building height of 36.3 ft. where 33 ft. is permitted on premises identified as Lot 19, Block 58; 64 W. 80th Street, in the Borough of Harvey Cedars, County of Ocean and State of New Jersey is hereby **denied**.


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 approved at the August 17, 2023 meeting and memorialized at the meeting held on September 21, 2023.


Christine Lisiewski, Secretary