

# TOWNSHIP OF LOWER

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Incorporated 1798

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THESE MINUTES HAVE NOT BEEN FORMALLY APPROVED AND ARE SUBJECT TO CHANGE OR MODIFICATION BY THE PUBLIC BODY AT ITS NEXT MEETING. THIS BOARD WILL NOT BE RESPONSIBLE FOR ANY MIS-STATEMENTS, ERRORS OR OMISSIONS OF THESE MINUTES, AND CAUTIONS ANYONE REVIEWING THESE MINUTES TO RELY UPON THEM ONLY AT THEIR OWN RISK.

## LOWER TOWNSHIP ZONING BOARD

A regularly scheduled meeting of the Zoning Board of Adjustment was held on February 6, 2014 at the Lower Township Municipal Building. The meeting was called to order at 7:04 P.M. by Chairman James Hanson. The Recording Secretary stated that adequate notice of said meeting was given in compliance with the Open Public Meetings Act of 1975.

MEMBERS PRESENT: Chairman James Hanson  
John Armbruster  
Ernest Utsch III  
Robert Sweeten  
Michael DiStefano  
Stephen Komar

MEMBERS EXCUSED: David F. Brand, Jr.  
Bruce Waterman  
Dianne Kelly  
Erik Collins

STAFF PRESENT: Anthony J. Harvatt, II, Board Solicitor  
George A. Curvan, Board Engineer  
William J. Galestok, Board Secretary  
Lisa A. Schubert, Recording Secretary

CORRESPONDENCE:

Handouts:

List of Board Engineer voucher dated February 6, 2014.

List of Hatch Mott MacDonald voucher dated February 6, 2014.

The New Jersey Planner: November/December 2013, Vol. 74, No. 6.

Chairman Hanson read the agenda for the benefit of the public.

Mr. Utsch made a motion to approve the minutes from the January 9, 2014 meeting. The motion was seconded by Mr. DiStefano. Motion carried.

Mr. Armbruster made a motion to approve Board Engineer voucher. The motion was seconded by Mr. Utsch. Motion carried.

Mr. Armbruster made a motion to approve Hatch Mott MacDonald voucher. The motion was seconded by Mr. DiStefano. Motion carried.

1. Courtesy application for Eagle Scout project from Nathan Holloway. The project will consist of a deck/sitting area, a patio for barbequing and eating & play area for young children for Family Promise, Townbank Road, North Cape May.

Mr. Nathan Holloway was sworn in by Chairman Hanson.

Mr. Holloway explained to the Board that this is for his Eagle Scout project. He explained that he would like a 14 x 15 patio in the corner. He explained that it would be 8" high. He explained he would like to do a second patio for a barbeque and picnic table. He explained this would be done at the Family Promise on Townbank Road.

Mr. Galestok read the definition of patio, in which it states a patio 8" or less is exempt from setbacks.

This portion of the hearing was opened to the public. There were no public comments. This portion of the hearing was closed to the public.

The Board explained what Mr. Holloway is proposing is not a deterrent to anyone and it is a worthy project to do.

Mr. Utsch made a motion to approve the request. The motion was seconded by Mr. Sweeten. Motion carried.

3. Certificate of non-conforming use application to certify an existing structure as eight (8) units, submitted by Richard & Judy Maloney for the location known as Block 304, Lots 1-3, 300 Oak Avenue.

Mr. Peter Tourison, Esq., represented the applicants.

Mr. Tourison explained his clients are seeking a certificate of non-conforming use for an eight-unit apartment building. He explained the building was built in 1965. He explained his clients purchased the property in 1999.

Mr. Tourison submitted photographs of the site into evidence. He also submitted the certificate from the Department of Community Affairs that this is registered with them. Also all the mercantile licenses from 2000 on in which they have eight units. And a computer printout from the tax records that it was build in 1965.

Mr. Tourison explained he believes the structure predates zoning. There was a discussion about when the Ordinance was first established. Mr. Galestok explained he has tracked the Ordinance to 1974. Mr. Tourison explained he believes the MLUL was established in the mid 1970's.

The Board explained this is a well-documented property.

This portion of the hearing was opened to the public.

Mr. Bob Olivio was sworn in by Chairman Hanson.

Mr. Olivio explained he has lived across from this property for 38 years. He explained that a lot of his neighbors are seasonal and share the same concerns as his.

Mr. Olivio explained in the 1950's it was a four-unit motel used as fisherman cottage. He explained in 1959 the railway was added. He explained new owners took over the property from 1965-78 and that owner added six units upstairs and it became a ten-unit motel. He explained that he has been to the Township offices several times and was unable to find and records of approvals or permits. He explained new owners took over 1985-1999, but the property was abandoned in 1986 and 1987. He explained there were no cars or people. He explained in 1988 it was converted to eight year round apartments. He explained a building permit was issued to bring it up to code. He explained there was no Zoning or Planning Board approval. He explained his opinion is granting the certificate is granting a variance.

Mr. Olivio explained that the past couple of years have improved. He explained there used to be shootings, fires and drug deals. He explained he would hope this property would go away and something more fitting constructed. He explained if the Board approves this, it will be forever eight units.

Mr. Olivio explained he spoke with the buyers attorney and they buyers intend to use this as is. He explained the buyers live in Princeton and it seems they would just collect the cash and not be around.

Mr. Olivio read from section 400-37 and was sure this Ordinance was in place in 1988.

Mr. Olivio explained 12 years ago he was in front of this Board for approval for four units that he's never going to build.

Mr. Olivio explained this lot size is 86 x 152, the lot size for a single family dwelling only.

Mr. Tourison asked Mr. Olivio if he and his neighbors had talked about purchasing the property? Mr. Olivio explained they did not.

Mr. Mark. Mullelly was sworn in by Chairman Hanson.

Mr. Mullelly explained he lives two houses away. He explained that he has spoken with some neighbors' about purchasing this. He explained he has concerns with an absentee owner. He explained he would feel better if a management company was involved. He explained that it has been good here and he fears it will revert back to what it was.

Mr. Charles Shee was sworn in by Chairman Hanson.

Mr. Shee explained he lives across the street from the motel for 38+ years. He explained there have been shootings, fights and beating on cars. He explained it has been very good there for the past couple of years. He explained that if something starts happening, he'll call the cops.

This portion of the hearing was closed to the public.

Ms. Cathleen Bloch, buyer, was sworn in by Chairman Hanson.

Ms. Bloch explained she does live in Princeton, but she also has a home in Wildwood Crest. She explained she will be moving to Wildwood Crest permanently.

Ms. Bloch explained she has family that lives in the Villas. She explained her dad, brother and sister live here. She assured the neighbor's that she doesn't want any problems. She explained her and her husband have personally met the tenants and they are nice people.

Mr. Galestok explained the Board needs to determine if this was legally established and

was the use legal at the time of the Ordinance.

Mr. Tourison explained a permit was issued and inspected. He explained the Township has this property assessed and taxed as eight units.

Mr. Galestok explained there are no resolutions prior to 1975. He explained that things were different back then.

Mr. Armbruster made a motion to approve this application. The motion was seconded by Mr. Utsch.

VOTE:	Mr. Armbruster	YES	Mr. DiStefano	YES
	Mr. Utsch	YES	Mr. Sweeten	YES
	Mr. Komar	YES	Chairman Hanson	YES

Motion carried.

A memorializing resolution will be prepared by the Board Solicitor for the Board to review and approve at the next scheduled meeting.

- 4. Hardship variance application to construct a single family dwelling on a lot deficient in lot area, frontage & width, submitted by Fabio Pawlus for the location known as Block 329, Lots 47 & 48, 144 Tennessee Avenue.

Mr. Louis C. Dwyer, Jr., Esq., represented the applicant.

Mr. Fabio Pawlus, applicant, was sworn in by Chairman Hanson.

Mr. Dwyer explained this is an isolated undersized lot. He explained there are quite a few properties in the area the same size as this lot. He submitted into evidence a marked up tax map page.

Mr. Dwyer explained the proposed single family dwelling will meet all the requirements of the zone. He explained what is proposed would fit into the neighborhood and would be no deterrent.

The Board asked Mr. Pawlus if he is the owner of the property? Mr. Pawlus explained he was. He explained it is the last property on the street.

The Board asked about the two surveys that was submitted with the application. They explained one shows a vacant lot the other has the placement of the house. They explained they usually approve a building envelope. Mr. Pawlus explained the house location is fine with him. The Board explained if they approve that, he will not be able to deviate from that.

There was a discussion that the road is not paved all in front of this lot. Mr. Galestok asked read section 40:55D-35 & 36. He asked Mr. Pawlus if he went before Council for permission to build on an unimproved street? Mr. Pawlus explained he did. There was a discussion that this would be a condition of approval that the Resolution be provided.

This portion of the hearing was opened to the public.

Mr. Joseph Kelly was sworn in by Chairman Hanson.

Mr. Kelly explained he is opposed to this application. Mr. Kelly explained he didn't understand about the road. Mr. Pawlus explained there is only a portion of the paved road in front of this lot.

Mr. Kelly explained this is a low area. He explained he doesn't feel this lot was meant to be built upon. He explained there are three bogs in this area. He explained how the drainage in the area worked. He explained that Mr. Pawlus put a lot of fill on the property and removed a lot of the phragmites from the lot which helped with the drainage problem. He explained there are flooding issues now. He explained he understood Mr. Pawlus may be in trouble with EPA for filling and removing the phragmites. He explained this should be resolved before this Board takes action. The Board explained they couldn't do that. They explained that if approved, it would be conditioned upon the applicant receiving all other approval.

This portion of the hearing was closed to the public.

Mr. Pawlus explained a complaint was made and he met with the State at this property and no citations were issued. They said they didn't find any fault.

Mr. Dwyer explained no vacant land was available.

Mr. Armbruster made a motion to conditionally approve this application. The motion was seconded by Mr. Sweeten.

VOTE:	Mr. Armbruster	YES	Mr. DiStefano	YES
	Mr. Utsch	YES	Mr. Sweeten	YES
	Mr. Komar	YES	Chairman Hanson	YES

Motion carried.

A memorializing resolution will be prepared by the Board Solicitor for the Board to review and approve at the next scheduled meeting.

5. Hardship variance application to construct a single family dwelling on a lot deficient in lot area, frontage & width, submitted by GT Renovation, LLP, for the location known as Block 410.11, Lot 7, 209 East Drumbed Road.

Mr. Louis C. Dwyer, Jr., Esq., represented the applicant.

Mr. Dwyer explained to the Board that he would like a continuance of the application. He explained that he discovered something with the application tonight that he would like time to look into.

Mr. Dwyer agreed to waive time constraints.

Chairman Hanson explained the application would be continued until the March 6, 2014 meeting.

- 6. Extension of hardship variance approval, submitted by Marie Flood for the location known as Block 525, Lots 38-40, 19 Delair Road.

Mr. Peter Tourison, Esq., represented the applicant.

Mr. Tourison explained approval was given by the Board, but his client is having a hard time selling the lot.

There was a discussion about the amount of time for the extension. It was discussed an additional three years would be sufficient.

This portion of the hearing was opened to the public. There were no public comments. This portion of the hearing was closed to the public.

Mr. Armbruster made a motion to approve a three-year extension. The motion was seconded by Mr. Komar.

VOTE:	Mr. Armbruster	YES	Mr. DiStefano	YES
	Mr. Utsch	YES	Mr. Sweeten	YES
	Mr. Komar	YES	Chairman Hanson	YES

Motion carried.

A memorializing resolution will be prepared by the Board Solicitor for the Board to review and approve at the next scheduled meeting.

- 7. Certificate of non-conforming use application to certify an existing structure as three (3) units, submitted by Pasquale Madonna, Jr., for the location known as Block 123, Lots 19 & 20, 216 West Pacific Avenue.

Mr. Peter Tourison, Esq., represented the applicant.

Mr. Tourison explained his client purchased the property last year. He explained it was a five-unit building. He explained his client is seeking just three units.

Ms. Jennifer Lloyd, girlfriend of the applicant, was sworn in by Chairman Hanson.

Ms. Lloyd explained the previous owner had rented to fishing residents.

Mr. Tourison submitted two photos, deed, survey and plans of the existing conditions into evidence.

Ms. Lloyd explained the house is in need of a lot of work. She explained they would like to have one unit per floor. They would install a new shed, create off-street parking and stone for a driveway. She explained there would also be deck structure for each floor. She explained they would install a new roof, siding, windows and doors. She explained they would be living in one of the units.

Ms. Lloyd explained the first and second floor has eight rooms and the third floor has five rooms. She explained the first and second floor has four kitchens with one on the three floor.

Ms. Lloyd explained Mr. Madonna grew up here and has a lot of family in the area.

Mr. Tourison explained they are here tonight for the certification. He explained they were unable to discover any mercantile licenses for this property. Ms. Lloyd explained they don't get three sewer bills. She explained there is only one electric meter and two heating systems.

This portion of the hearing was opened to the public.

Mr. Edward Poznek was sworn in by Chairman Hanson.

Mr. Poznek explained he lives next door to this property since 1970. He explained he never remembers this being used as a fishing residence. He explained he doesn't remember this being rented.

Mr. Poznek explained he has had several conversations with the applicant and he never said anything about three units. He explained he is strongly opposed to having three units on this lot. He explained the lot isn't large enough for three families.

Mr. Tourison questioned Mr. Poznek. Mr. Poznek explained he has been in the house several times. He explained the owner couldn't afford to modernize the house. He explained he does remember the kitchens were there as a kid. He explained he never remembers it being a rental. He explained he can remember the owners boyfriend staying there and on occasion, another friend.

Mr. Robert D'Imperio was sworn in by Chairman Hanson.

Mr. D'Imperio read his own letter into the record. He explained he has concerns with traffic and parking. He explained when the house went up for sale, it was advertized and sold as a single family dwelling.

Mr. D'Imperio submitted photos into evidence.

Mr. Tourison had marked into evidence a property tax ID card from the Assessor's Office.

Mr. Harvatt explained to the public the only thing before the Board tonight is whether this is three unit or five units.

Mr. Bruce Hippel was sworn in by Chairman Hanson.

Mr. Hippel explained all his concerns have been voiced. He explained he purchased his home in 1988. He explained it is a peaceful neighborhood. He explained the entire time he has lived there, it hasn't been a rental.

Ms. Nancy Kerr was sworn in by Chairman Hanson.

Ms. Kerr explained she moved to the area last year. She explained she has concerns with parking and now they would like to add at least six more cars.

Mr. Mike Pierson was sworn in by Chairman Hanson.

Mr. Pierson explained there are quite a few multi-family dwelling in the area. He explained he always thought it was a side by side duplex. He explained he is against three units.

Ms. Marjorie Madonna was sworn in by Chairman Hanson.

Ms. Madonna explained she is the applicant sister. She explained that she lives in the Villas and this would not be the only multi-family dwelling in the area. She explained she has been through the structure and there are multiple kitchens throughout the structure. She explained there are toys on the top floor floor. She explained she is sure an elderly lady wouldn't have toys just laying around especially in the upstairs unit.

Mr. Poznek explained the house behind is a rental and he has called the police several times and will call for this property if need be. He explained the reason there were toys is because she liked to yard sale.

This portion of the hearing was closed to the public.

Ms. Lloyd explained she had discussions with Mr. Poznek who had suggested they rent to Coast Guard.

Submitted into evidence were two photos of a property a block away that's of similar lot size or smaller with four units.

Ms. Lloyd explained her and her boyfriend were willing to take the risk purchasing the property as is. She explained they want to improve the area.

Mr. Galestok explained there are two issues for the Board tonight. He explained the first would be whether this is a valid non-conforming use or is there abandonment. He read section 11-3 from the 2013 addition of COX.

The Board discussed there were separate doors so it was at least a duplex. They don't know when it was increased to five units. There is only one electric meter, but that's how it was done back then.

Chairman Hanson called for a short recess at 8:57 P.M. The meeting was called back to order at 9:03 P.M.

Mr. Tourison explained to the Board there are two front doors and a third set of steps in the rear. He explained he would urge the Board to have approve two units.

Mr. Harvatt explained the Board has the Assessors information that it is taxed as two units.

The Board discussed that they are more comfortable with a duplex as opposed to a triplex.

Mr. Armbruster made a motion to certify this property as a duplex. The motion was seconded by Mr. DiStefano.

VOTE:	Mr. Armbruster	YES	Mr. DiStefano	YES
	Mr. Utsch	NO	Mr. Sweeten	YES
	Mr. Komar	NO	Chairman Hanson	YES

Motion carried.

A memorializing resolution will be prepared by the Board Solicitor for the Board to review and approve at the next scheduled meeting.

2. Discussion of summary report for Amusement Partnership USA, 705 Route 9, Block 510, Lots 18 & 8.01, prepared by George Curvan, PE, Board Engineer.

Mr. Curvan explained to the Board he reviewed the previous resolution, site plan, 2013 aerial photograph and prior photographs of the site and prepared the report for the Board. He explained to the Board the site work that has yet to be completed.

The Board explained their other concerns were with multi-uses. Mr. Galestok explained Hawthorne-Davis construction office and vehicles were there prior to the application.

There was a discussion that there is quite a bit of site work that still needs to be completed. There was a discussion about the bond. Mr. Curvan explained the applicant knows what site work still needs to be completed. He explained there still is bond in place. There was a discussion that Township Council would have to take action to pull the bond and have the improvements installed. There was a discussion to first have Mr. Curvan contact them and try and work out a schedule when the improvements would be installed. If then the improvements are not installed, approach Township Council about the bond.

Mr. Armbruster made a motion to adjourn at 9:17 P.M. The motion was seconded by Mr. Komar. Motion carried.

Respectfully submitted,

Lisa A. Schubert,  
Recording Secretary

A verbatim recording of said meeting is on file in Township Hall.

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