

TOWNSHIP OF LOWER

2600 Bayshore Road
Villas, New Jersey 08251



Incorporated 1798

(609) 886-2005

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 7, 2019 at the Lower Township Municipal Building. The meeting was called to order at 7:01 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
Michael Kennedy
David F. Brand, Jr.
Ernest Utsch III
Robert Sweeten
George Doherty
Robert Basco, Sr.

MEMBERS EXCUSED: Bruce Waterman

STAFF PRESENT: Thomas Keywood, Acting Board Solicitor
Shawn Carr, Board Engineer
William J. Galestok, Board Secretary
Lisa A. Schubert, Recording Secretary

STAFF EXCUSED: Anthony J. Harvatt, II, Board Solicitor

CORRESPONDENCE:

Handouts:

List of Board Solicitor vouchers dated January 31, 2019.

List of Board Engineer vouchers dated February 7, 2019.

The New Jersey Planner: November/December 2018; Vol. 79, No. 6.

Chairman Hanson read a statement that this is a quasi-judicial meeting. He explained generally how the meeting would proceed. He explained that everyone would be afforded an opportunity to speak for or against an application. He explained they ask that no redundant testimony be given.

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

Mr. Brand made a motion to approve the minutes from the January 3, 2019 meeting. The motion was seconded by Mr. Kennedy. Motion carried.

Mr. Utsch made a motion to approve the Board Engineer vouchers. The motion was seconded by Mr. Brand. Motion carried.

Mr. Kennedy made a motion to approve the Board Solicitor vouchers. The motion was seconded by Mr. Sweeten. Motion carried.

Mr. Kennedy made a motion to approve the resolutions from the January 3, 2019 meeting. The motion was seconded by Mr. Brand. Motion carried.

4. Extension of site plan approval, submitted by David & Donna Burkhardt for the location known as Block 496.01, Lot 11.04, 252 Fishing Creek Road.

Mr. David Burkhardt, applicant, was sworn in by Chairman Hanson.

Mr. Burkhardt explained that he was requesting an extension for his revised site plan application. He explained the extension request is for Phase II of the project explaining Phase I

was already done.

Mr. Galestok explained under MLU 40:55D.52A site plan approvals are good for two (2) years then the applicant can be granted three (3) one (1) year extensions.

It was explained the original approval was April 6, 2017.

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. Brand made a motion to approve a three (3) year extension. The motion was seconded by Mr. Utsch.

VOTE:	Mr. Kennedy	YES	Mr. Brand	YES
	Mr. Utsch	YES	Mr. Sweeten	YES
	Mr. Doherty	YES	Mr. Basco	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.

- Hardship variance application to construct a 10 x 16 addition to the house encroaching into the front yard setback, a 4 x 7 house addition and allow an 8 x 10 shed in the front yard and encroaching into the front yard setback, submitted by Tom & Judy Meier for the location known as Block 592, Lot 7, 1400 Washington Blvd.

Mr. Tom Meier, applicant, and Mr. Richard Brown, contractor, were sworn in by Chairman Hanson.

Mr. Meier explained they were before the Board in 2011 and granted a variance for front yard setback. He explained finances at the time didn't allow them to build the addition they were approved for, but they did build a portion of it. He explained the property is triangularly shaped.

Mr. Galestok explained the last application was for a front addition. He explained there was a shed on the property that was indicated to be removed. He explained it was removed, but was replaced with a new shed in the front yard and the encroaching into the front yard setback. He explained the contractor came in for a zoning permit which was denied because of the shed. He explained the shed has been moved and is now behind the house and meets the side yard setback.

There was a discussion to clarify the size of the addition. It was explained the application indicates the addition would be a 10 x 16 addition. Mr. Brown explained they would like to

maximize the side yard setback and maintain the six-foot setback. There was a discussion there would be a condition that the maximum size addition would be 11 x 16.

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. Kennedy made a motion to conditionally approve this application. The motion was seconded by Mr. Brand.

VOTE:	Mr. Kennedy	YES	Mr. Brand	YES
	Mr. Utsch	YES	Mr. Sweeten	YES
	Mr. Doherty	YES	Mr. Basco	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.

- 3. Use variance application to operate a small linen cleaning business within the residence, submitted by Irene Hober for the location known as Block 505, Lot 18.03, 837 Seashore Road.

Mr. Charles Sandman, Esq., represented the applicant.

Mr. Sandman explained his client is seeking approval to have a linen cleaning business at this location. He explained a lot of the rentals in Cape May require tenants to supply their own bed linens, so they make arrangements with his client to supply the linens. He explained all supplies are purchased by his client. He explained no customers will be at this location. He explained his client delivers linens to her customers. He explained the way the property looks now, it wouldn't look any different with this.

Ms. Irene Hober, applicant, was sworn in by Chairman Hanson.

Ms. Hober explained she rents sheets and towels to tenants. She explained this is mostly a seasonal business. She explained she would have two employees in the summer. She explained no sign or new buildings are proposed and no general public would be coming there. She explained she uses front load Kenmore washers and dryers. She explained she would have five (5) washers and six (6) dryers. She explained it would not be commercial equipment. She explained what is proposed would not general traffic. It was explained what is proposed would generate the same amount of traffic as a house would. She explained she was the contract purchaser.

The Board asked where she is currently running the business? Ms. Hober explained she

has a rental property in Cape May.

Mr. Sandman explained what is proposed would have no impact to the character of the neighborhood.

There was a discussion there are a number of businesses along Seashore Road and what is proposed would have the least traffic impact then the other businesses. It was explained there used to be a luncheonette at this location.

This portion of the hearing was opened to the public.

Mrs. Carol Venet was sworn in by Chairman Hanson.

Mrs. Venet explained she lives in the development behind the proposed. She explained she is surprised that either the owner or applicant has not reached out to the neighbors about this. She explained they did receive an anonymous mailing with a copy of the applicant's web page and services. She explained also in the mailing was information about water contamination. She explained the area is septic and she has concerns about the added ground water this will cause. She explained she has concerns with two driveways and also this area is a bus stop. She explained she has concerns with a business in the area and concerns with traffic and that the children of the development ride bikes in this area. She asked what the volume of laundry would be and questioned what happens if the business grows and expands? It was explained if the business expands another use variance would be needed.

Mrs. Venet had read her statement into the record and submitted into evidence as O-1.

Mr. Sandman explained if the use variance is approved, they will be coming back with the site plan application which would address a lot of Mrs. Venet's concerns. He explained they are just asking the Board for approval to allow his client to do this. He explained if his client expands the business, she would have to come back to the Board for approval. He explained they are just asking for approval for a small laundry business. He explained he can't see a burden on the property if approved. He explained the character of the neighborhood would not change.

The Board asked how the wastewater would be disposed of? Mr. Sandman explained the tank would be increased and another system of good size would be installed.

Mr. Martin LoSasso was sworn in by Chairman Hanson.

Mr. LoSasso explained he has concerns with wastewater, the grade school right across the street and that there are wetlands near by and the ground is already wet.

Mrs. Karen LoSasso was sworn in by Chairman Hanson.

Mrs. LoSasso explained she has concerns with contaminates from the washers. She explained the ground is already soggy. She explained she has concerns with an additional

driveway.

Mr. John Van Splinter was sworn in by Chairman Hanson.

Mr. Van Splinter explained he is the owner of the property. He explained he had all his building permits to renovate the house. He explained the additional driveway was approved. He explained the ground is dry.

Ms. Leann Shaw was sworn in by Chairman Hanson.

Ms. Shaw explained she lives on Seashore Road and supports this applicant. She explained she believes this would be a great addition to the community and encourages small businesses.

This portion of the hearing was closed to the public.

Mr. Sandman explained it's mostly a seasonal business when schools are closed. He explained the cottage would be eliminated.

The Board asked if hotels/motels use this service? Ms. Hober explained no hotels/motels use this service. She explained the service is used for when houses are rented in Cape May or the surrounding areas.

Mr. Galestok asked again the number of washers and dryers there will be? He also asked what type of vehicles were used to deliver the linens? Ms. Hober explained she would have five washers and six dryers. She explained she uses a suburban truck and a pick-up truck.

The Board asked if sewer was available? Ms. Hober explained sewer was not available.

The Board asked Ms. Hober if she would be living at this location? Ms. Hober explained she would be living there.

There was a discussion that conditions should be the owner must occupy the site, limited to two (2) employees, no signs advertising the business and no customers permitted at location.

Mr. Brand made a motion to conditionally approve this application. The motion was seconded by Mr. Kennedy.

VOTE:	Mr. Kennedy	YES	Mr. Brand	YES
	Mr. Utsch	YES	Mr. Sweeten	YES
	Mr. Doherty	YES	Mr. Basco	YES
	Chairman Hanson	NO		

Motion carried.

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

Chairman Hanson called for a short recess at 7:51 P.M. The meeting was called back to order at 8:01 P.M.

2. Use variance application to allow 21 single family dwellings in the Conservation and R-3 Zone, submitted by Marcello Mogavero for the location known as Block 494.01, Lot 28, 10 Shawmount Avenue.

Mr. Jeffrey Barnes, Esq., represented the applicant.

Mr. Barnes explained his client is the contract purchaser of the property. He explained the property is in a split zone being a R-3 residential zone and a Conservation Zone. He explained his client is proposing 21 single family dwelling lots. He explained this application is not for subdivision and the plan before the Board is a conceptual drawing. He explained that on March 1, 2012, use variance approval was giving to another applicant for 21 residential lots. He explained the current owner has owned the property since 2002 and they received the property due to debt owed to him. He explained in 2010 this property along with the Ponder Lodge property was rezoned to Conservation during a re-examination of the Master Plan. He explained he believes at the time of the rezoning, it was believed all of this was owned by Ponder Lodge. He explained the current owner's proposal met all the RSIS standards and the Board made a determination they had a right to develop the parcel and it was conditioned on sewer availability. He explained Lower Township's Ordinance has a sunset clause that if an approval is not acted upon with three years, the approval is null.

Mr. John Kornick, PE and Ms. Tiffany Morrissey, PP was sworn in by Chairman Hanson.

Mr. Kornick explained the plan of survey was done by his office. He explained some of the property is in the R-3 Zone which is along Shawmount Avenue. He explained the bulk of the property is in the Conservation Zone. He explained Ponder Lodge is owned by the State and the property in question is privately owned. He explained the current owner did receive approval for 22 lots, 21 of which were for residential and the 22nd for the stormwater basin. He explained sewer for this area was approved in 2013.

Marked into evidence as A-1 was the future wastewater service area map that was adopted November 2013.

Marked into evidence as A-2 was an enlargement of the same map from the NJDEP GeoWeb Service site which was printed from the site January 3, 2018.

Mr. Kornick explained he spoke with Michael Chapman from the MUA in January and he indicated sewer was available with a capacity of 6,300 gallons per day. He explained the MUA does have the capacity to handle this load and public water is available. He explained

water and sewer can be brought in through Fourth Avenue.

Marked into evidence as A-3 was a site layout plan dated November 17, 2018.

Mr. Kornick reviewed the plan with the Board and explained the proposed would be for 21 residential lots with an additional for lot stormwater management. He explained the majority of the lots would be accessed from Fourth Avenue in Bayside Village. He explained this is better suited for traffic control because there is a street light on Village and Bayshore Roads. He explained two lots would be on Shawmount Avenue and Shawmount Avenue is not a controlled intersection.

Mr. Kornick explained they did identify wetlands and would require DEP approval. He explained they have an application that is ready to be submitted. He explained they would have to have approval from CPB, DEP, MUA and the soil district.

Mr. Kornick explained some of the houses are close to the rear property along Edna Avenue and this was the product of a subdivision in 1979. He explained there are several sheds and pool decks on the property in question, so they have made this area the lot for the stormwater basin. He explained they will try and design around the encroachments and there are well-established trees in this area they will try to preserve.

Mr. Kornick explained a neighbor has requested an access to Ponder Lodge and if the Board approves the application they would incorporate a 20' wide pedestrian access easement within the subdivision.

Mr. Kornick explained he feels the traffic of this development would be negligible. Open space is provided. The stormwater basin would be the responsibility of the Homeowners Association. The proposed road would be a Township Street. And utilities are available.

Mr. Justin Turner, Esq., for objectors, was present for this application.

Mr. Turner asked Mr. Kornick approximately what percentage of the property was in the Conservation District? Mr. Kornick explained approximately 98% is zoned Conservation. Mr. Turner asked if single family dwellings are a permitted use in the zone? Mr. Kornick explained this was not a permitted use.

Ms. Morrissey explained 98% of the property is in the Conservation Zone and read the permitted uses for the zone. She explained this is privately owned property and should not have been zoned this because it renders the property unusable. She explained she has reviewed the Lower Township Master Plan and the re-examinations. She explained in 1978, the property was zoned R-3 then it was zoned R-1 and lastly zoned to Conservation. She explained she feels this property should use the R-3 Zoning standards. She explained granting the application would promote the general welfare and appropriate population density. She explained every property has the right to be developed. She explained there was a prior approval. She explained there would be a range of density for this property and they would not be asking for full density of the

R-3 zoning requirements. She explained the lots adjacent this property would be smaller than what would be proposed. She explained there would be no detriment to the public or public good if approved. She explained this site can accommodate development.

Mr. Turner questioned Ms. Morrissey if she read the 2007 re-examination of the Master Plan that states; 'the Planning Board recommends that Lower Township Council re-zone an environmental corridor from the terminus of Cox Hall Creek ®-3) north thru the R-1 (Ponder Lodge) between the Cape May County Airport and the developed R-3 Zone (Villas) to the Conservation Zone adjacent to the Cape May County Park South'? She explained she did and there was discussion.

Ms. Ellen Seward, client to Mr. Turner, was sworn in by Chairman Hanson.

Mr. Turner explained the application before the Board is for a use variance for 21 residential lots. He explained there have been two re-examinations of the Master Plan since the zoning was changed. He explained the opportunity was there to change the zoning to a residential zone.

Ms. Seward explained conservation land and open space is very valuable. She explained she was a RN and also has a BA in biology. She explained she is also an environmental steward and did a paper on Cox Hall Creek. She explained she would like to see this land preserved and not developed.

Mr. John Halbruner, Licensed Architect & PE, was sworn in by Chairman Hanson.

Mr. Halbruner explained the property is well suited for its current use. He explained in 2012 a use variance was granted. He explained there was a re-examination of the Master Plan in 2014 and the Planning Board didn't make a recommendation to change the zoning. He explained he feels it was the intent to maintain this area as low density. He explained he doesn't feel what is proposed is appealing to the area. He explained sewer is not at this site. He explained he doesn't feel the zone is being enhanced. He explained this area is also ranked four for endangered species.

Marked into evidence as O-1 was a NJDEP Landscaping map that was obtained on the same website as A-2.

Mr. Halbruner explained he doesn't feel the applicant has met the burden of proof needed to approve this application.

Mr. Barnes questioned Mr. Halbruner. Mr. Halbruner explained there are suspected wetlands on this site. He explained he has visited this site, but he is not qualified to do a delineation.

Mr. Galestok explained it was found out later that the current owner of the proposed obtained this property through bankruptcy court. He explained when the discussion started about

changing the zone, he had checked with the assessor regarding the ownership of the lands and the records indicated Ponder Lodge as the owner. Mr. Barnes asked Mr. Galestok if the information was correct, would the zoning of this lot been changed? Mr. Galestok explained it would not have been rezoned.

Mr. Frank Rappa was sworn in by Chairman Hanson.

Mr. Rappa explained he is the Regional Manager of the New Jersey Conservation Foundation. He explained he feels this lot is zoned properly.

Mr. Emile DeBito was sworn in by Chairman Hanson.

Mr. DeBito explained he has a PhD in Ecology. He explained the property is incredibly valuable to the environment. He explained there have been sightings of the southern gray tree frog on this lot. He explained there are numerous ponds in this location. He explained Ponder Lodge is a prime breeding ground for certain species. He explained this property is listed as a habitat for migratory raptors. He explained this is connected to the Cox Hall Creek habitat. He explained what is proposed would have a negative impact to the area and to the rare species that use this land.

Mr. Brett Ewald, Project Director at the Cape May Bird Observatory, was sworn in by Chairman Hanson.

Mr. Ewald explained this area is used for education of wildlife in Cape May County. He explained it is a migration corridor. He explained this property has mature trees. He explained this area has a lot of value and if the lot is cleared the Township would lose an immense ecological value.

Ms. Morrissey explained zoning this property a Conservation Zone is an economic inutility. She explained there are special reasons for granting the variance and it's an undue hardship on the applicant if denied.

Chairman Hanson explained at this point, the application would be continued until the March 7, 2019 meeting at which time the meeting would be opened for public comments.

Mr. Barnes agreed to waive time constraints.

Mr. Brand made a motion to adjourn at 10:08 P.M. The motion was seconded by Mr. Kennedy. 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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