

# TOWNSHIP OF LOWER

2600 Bayshore Road  
Villas, New Jersey 08251



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 May 3, 2018 at the Lower Township Municipal Building. The meeting was called to order at 7:00 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: Anthony J. Harvatt, II, Board Solicitor  
Scott MacPherson, Acting Board Engineer  
William J. Galestok, Board Secretary  
Lisa A. Schubert, Recording Secretary

STAFF EXCUSED: Shawn Carr, Board Engineer

CORRESPONDENCE:Handouts:

List of Board Solicitor vouchers dated May 1, 2018.

List of Board Engineer vouchers dated May 3, 2018.

The New Jersey Planner: March/April 2018 - Vol. 79, No. 2.

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

Mr. Sweeten made a motion to approve the minutes from the April 5, 2018 meeting. The motion was seconded by Mr. Kennedy. Motion carried.

Mr. Kennedy made a motion to approve the Board Engineer vouchers. The motion was seconded by Mr. Sweeten. 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 April 5, 2018 meeting. The motion was seconded by Mr. Sweeten. Motion carried.

1. Certification of non-conforming use to certify a property a duplex, submitted by Quintin Lilly & Catherine Hunt for the location known as Block 227, Lots 1-4, 103 Cardinal Avenue.

Mr. Quintin Lilly and Ms. Catherine Hunt, applicants were sworn in by Chairman Hanson.

Ms. Hunt explained the garage was converted in 1986. She explained they purchased the property in 2014 and her daughter lives in the garage. She explained there is no kitchen in the garage. She explained in 2005 it was assessed as two units. She explained there is a certification for the smoke detectors. When they purchased, it was listed as two units, explaining it was marketed as a detached cottage for summer use. It does not have its own electric meter or sewer.

Submitted into evidence as A-1 was the assessment sheet from the Lower Township Assessor. Marked as A-2 was a four-page tax assessment sheets. Marked as A-3 was a smoke detector compliance from 2014 from the Bureau of Fire Safety.

The Board asked if they would agree to not have this as a rental unit. That it would be for family use only. The applicant's agreed to this.

This portion of the hearing was opened to the public.

Mr. Anthony Bevivino was sworn in by Chairman Hanson.

Mr. Bevivino explained he purchased his home in 1987. He explained the previous owners used the garage as sleeping quarters for their children. He explained it was never a rental unit. He explained there were no cooking facilities in the garage and was used for family use only.

Mr. Angelo Tango was sworn in by Chairman Hanson.

Mr. Tango explained he purchased his home in 1989 and agreed with Mr. Bevivino. He explained the garage was used for family use only.

Mr. Alfred Muck was sworn in by Chairman Hanson.

Mr. Muck explained the garage has been used this way for a long time and he has no problem with it at all.

This portion of the hearing was closed to the public.

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

VOTE:	Mr. Kennedy	YES	Mr. Brand	YES
	Mr. Utsch	YES	Mr. Sweeten	YES
	Mr. Sweeten	YES	Mr. Doherty	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 32 enclosed front porch encroaching into the front yard setback, submitted by Glenn & Suzan Mimplitsch for the location known as Block 676, Lot 11, 721 Atlantic Avenue.

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

Mr. Glenn Mimlitsch, applicant was sworn in by Chairman Hanson.

Mr. Sandman explained his client has a corner property. He explained that they would like to construct a screened front porch. He explained they currently have a 25' front yard setback and could construct a 5' front porch, but that is not a convenient size when adding furniture. He explained the encroachment would not be on the Lincoln Blvd. side of the property.

The Board asked Mr. Mimlitsch if this area would be heated? Mr. Mimlitsch explained it would not be heating, but there would be electric for lighting and possibly a ceiling fan.

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.

There was a discussion that there is not a site triangle encroachment.

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

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. Interpretation and/or use variance applications to allow a horse barn on a lot without a principal structure, submitted by Glenn & Suzan Mimlitsch for the location known as Block 501, Lot 26, 764B Seashore Road.

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

Mr. Glenn Mimlitsch was previously sworn in.

Mr. Sandman explained to the Board his client's have two Clydesdale horses. He explained a farm is considered on five acres. He explained this property is just under five acres. He explained his clients would like to construct a barn to house the horses.

Marked into evidence as A-1 & A-2 were two photos of the proposed barn.

Mr. Sandman explained this is a good area to have the horses and barn. He explained this property is across from Cold Spring Village.

Mr. Sandman explained the Ordinance requires one acre for farm animals.

Mr. Sandman explained they are asking for an interpretation from the Board as to whether a variance is required because a house is not on the property, but in the alternative, they've applied for a use variance.

Mr. Mimlitsch explained he and his wife have no intention of putting a house on the property. He explained this location is a short distance from his house. He explained the horses are currently a couple hours away. He explained they have looked into boarding them local, but everyone is maxed out. He explained this property is a good location to house the horses. He explained the lot is wooded and overgrown. He explained he has already started to clear part of the lot.

The Board explained they have a concern that this will be a commercial use. Offering boarding and/or riding lessons. Mr. Mimlitsch explained they have no intentions of running a business here. He explained this is for personal use only.

The Board explained another concern is this is a flag lot in a residential zone with a shared driveway. There are no proposed parking area and no turn around for fire trucks. The Board explained again their concern that if not now, in the future someone will start a business there. Mr. Sandman explained that if in the future, someone wants a business there, they would have to come back to this Board for approval.

The Board explained there is limited access for fire protection and hay delivery. Mr. Mimlitsch explained only himself, his wife and his wife's friend would be going to this location. He explained he could put a driveway in.

Mr. Mimlitsch explained he had to deal with fire issues where he lived previously and can address those. He explained all he can tell the Board now is they have no intention of having a business here. He explained it is just to have their two horses here and not hours away. He explained the only other thing that will be at this location is his antique car.

The Board explained there doesn't appear to be restroom facilities provided.

Mr. Galestok explained the Board could ask for a deed restriction that there will be no boarding at this location. He explained the Board could request the applicant go to Bureau of Fire Safety to see what they may require.

The Board asked if there would be heat, electric and water in the barn? Mr. Mimlitsch explained there would be no heat in the barn, there would be electric and water. No living space area would be on the second floor.

The Board explained they would have liked to have seen more detail on the plan.

The Board explained there are people with less than five acres with a barn and house on the property. They asked why not put a house on this property? Mr. Mimplitsch explained his wife likes the house they are in now by the water and has no intention of moving.

This portion of the hearing is opened to the public.

Mr. Peter Munsick was sworn in by Chairman Hanson.

Mr. Munsick explained he has the same questions and concerns as the Board. He explained he also has concerns that the horses could be abandoned. Mr. Harvatt explained there are laws for abandonment of animals and different agencies would handle that.

Ms. Nancy Rubin was sworn in by Chairman Hanson.

Ms. Rubin explained she has no problem with the concept, but she hasn't seen a site plan for the ingress/egress of the property. Also, how fire access would be addressed. She explained she also has concerns that this could become a commercial use in the future.

This portion of the hearing was closed to the public.

Mr. Galestok explained that because this is a residential application a site plan is not required. He explained the MLUL prohibits site plan application on residential uses.

Mr. Sandman explained they relied on the survey. He explained Mr. Mimplitsch has provided testimony as to where the corrals would be located and there would be a well. He explained they would provide a site plan as a condition of approval.

The Board explained they have a problem with a barn on a flag lot.

Mr. Sandman explained there is enough lot area under the Ordinance to put the horses on this property without a shelter. He explained his client's do not want to do that.

Mr. Sandman explained they would like to continue this application until the June 7, 2018 meeting waiving time constraints. He explained they will submit to the Bureau of Fire Safety for their review and submit the site plan to the Planning Office 10 days prior to the meeting.

4. Hardship variance application to remove a portion of the garage to have a two (2) foot side yard setback and an accessory use taller than the principal structure, submitted by Michael Brenton for the location known as Block 495.04, Lot 7, 112 Charles Street.

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

Mr. Michael Brenton, applicant, was sworn in by Chairman Hanson.

Mr. Sandman explained his client previously came before the Board and was denied. He explained his client built the garage without a building permit and he measured from the neighbor's fence, which isn't on the property line. He explained his client is proposing to remove two feet off the corner of the garage leaving a two-foot side yard setback. He explained the garage is also within an easement. He explained they have pictures of other structures within the easement.

Marked into evidence were three photos of other structures within the easement.

Mr. Sandman explained the contour of the land is different from what it used to be.

Mr. Sandman explained Mr. Brenton will do what the Board would like him to do. Explaining if the Board wants a side yard setback of four feet, Mr. Brenton will remove more of the structure and have a four-foot side yard setback.

The Board asked who the easement was with? It was explained the easement is with the Township.

Marked into evidence was an email from Dave Lepor, from the Township Road Department, that they don't feel the encroachment will affect anything currently planned for the easement.

The Board explained that if it's a Township easement, they would like something from the Township Solicitor they are fine with the garage within the easement.

Mr. Brenton explained there will be no drainage onto the neighbor's property. He explained that he didn't know a permit was needed to construct the garage.

This portion of the hearing was opened to the public.

Ms. Jean Marcy was sworn in by Chairman Hanson.

Ms. Marcy explained she lives next door and her concern is if she moves her fence to the property line is if she sells, there wouldn't be a problem with the garage only two feet from the fence.

This portion of the hearing was closed to the public.

Mr. Brenton explained he has a flat roof on a portion of the house that he has the drainage going into a french drain. He explained that he can tie the run-off from the garage into the french drain.

The Board had a discussion they don't see the need to cut a foot of the building. There

was a discussion that at the last meeting, the neighbor's had concerns. There was a discussion that the Board denied the previous application and it would be res judicata if the Board approves what it previously denied.

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

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

- Hardship variance application to allow a six foot (6') fence to remain in the front yard on a street to street property, submitted by Tom & Dawn Dougherty for the location known as Block 78, Lot 1.02, 700 DeSoto Avenue.

Mr. Tom Dougherty and Mrs. Dawn Dougherty, applicants, were sworn in by Chairman Hanson.

Mrs. Dougherty explained she would like to keep the 6' fence. She explained her property is street to street and in the middle of the block. She explained they have a dog and an inground pool. She explained they work two jobs and for safety reasons, they would like to keep the fence.

This portion of the hearing is opened to the public.

Ms. Kim Mceneaney was sworn in by Chairman Hanson.

Ms. Mceneaney explained the fence provides safety for the pool and dog. She explained no one on the block raised any objection to the fence that she knows of.

Mr. Sam Jenson was sworn in by Chairman Hanson.

Mr. Jenson explained the fence is good for safety. He explained the front of the house faces DeSoto Avenue.

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.

- 6. Hardship variance application to construct an addition to an existing single family dwelling encroaching into the side yard setback, and an addition on a shed to the existing garage (no variances needed for shed addition), submitted by Bayshore Friends, LLC for the location known as Block 748, Lot 19, 4094 Bayshore Road.

Mr. Ron Gelzunas, Esq., represented the applicant.

Mr. Jamie Ingram, applicant and Mr. Vince Orlando, PE, were sworn in by Chairman Hanson.

Mr. Gelzunas asked Mr. Ingram who Bayshore Friends was? Mr. Ingram explained Bayshore Friends, LLC is his family and his wife's family. He explained each family has one week a month at the house and the fourth week is the entire family. He explained they would like to enlarge the house with a bump out for expanded living area and also with a screened porch and covered deck behind the screen porch. He explained the addition would be one story.

Mr. Orlando reviewed the variance plan with the Board. He explained the addition would encroach into the side yard setback. He explained any addition they would like to do would require a variance with the current location of the house. He explained what is proposed would not be detrimental to the public or public good, zone plan or zoning ordinance. He explained the proposed addition is behind the house and would maintain light, air and open space.

Mr. Gelzunas asked Mr. Orlando where the nearest neighbor was located? Mr. Orlando explained he didn't have the exact dimension, but it was quite far away.

Mr. Ingram explained the addition was positioned in such a way as to not interfere with the existing window in the kitchen.

Mr. Orlando explained a new septic system and well has already been installed.

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 conditionally approve this application. The motion was seconded by Mr. Sweeten.

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.

Chairman Hanson called for a short recess at 8:27 P.M. The meeting was called back to order at 8:30 P.M.

- 7. Hardship variance application to construct a single family dwelling on a lot deficient in lot frontage, submitted by Charles Hunt for the location known as Block 499.01, Lots 3 & 31, Off Fire Lane.

Mr. Charles Hunt, applicant, was sworn in by Chairman Hanson.

Mr. Hunt explained his property is five acres at the end of Mimosa Drive. He explained they are proposing to construct a single family dwelling with a driveway. He explained the proposed house would stay in from of the wetlands.

There was a discussion that this property had previously received a major subdivision approval. It was said the street is already cut out, but not installed.

This portion of the hearing was opened to the public.

Mr. Robin Fry was sworn in by Chairman Hanson.

Mr. Fry explained they have just recently purchased a small lot behind this lot and they have a concern that the proposed house would be built up against their property. It was explained to Mr. Fry the proposed house would meet the required setbacks. Mr. Fry explained he has no opposition to the application.

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. Sweeten.

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.

Mr. Kennedy made a motion to adjourn at 8:35 P.M. The motion was seconded by Mr. Utsch. 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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