

# 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 June 7, 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  
Bruce Waterman  
Robert Sweeten  
George Doherty  
Robert Basco, Sr.

### STAFF PRESENT:

Anthony J. Harvatt, II, Board Solicitor  
Shawn Carr, Board Engineer  
William J. Galestok, Board Secretary  
Lisa A. Schubert, Recording Secretary

CORRESPONDENCE:Handouts:

List of Board Solicitor vouchers dated May 29, 2018.

List of Board Engineer vouchers dated June 7, 2018.

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

Mr. Utsch made a motion to approve the minutes from the May 3, 2018 meeting. The motion was seconded by Mr. Brand. Motion carried.

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

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

Mr. Kennedy made a motion to approve the resolution from the May 3, 2018 meeting. The motion was seconded by Mr. Brand. Motion carried.

7. Hardship variance application to construct a single family dwelling on a lot deficient in lot area, frontage & width, submitted by AGR Builders, LLC for the location known as Block 494.19, Lot 18, 202 Linda Anne Avenue.

Mr. Harvatt explained this application has a deficient notice and the Board does not have jurisdiction to hear the application.

Mr. Brand made a motion to deny the application without prejudice. The motion was seconded by Mr. Kennedy.

VOTE:	Mr. Kennedy	YES	Mr. Brand	YES
	Mr. Utsch	YES	Mr. Waterman	YES
	Mr. Basco	YES	Chairman Hanson	YES

Motion carried.

1. Discussion of a temporary truck (a/k/a cellsite on wheels) in the same location of the permanent tower previously approved by the Board at the February 1, 2018 meeting, for the location known as Block 793, Lot 11.01, 791 Route 109.

Ms. Claire DiNardo, Civil Engineer, explained to the Board they were before the Board and received approval for a cell tower. She explained there was some mis-communication when ordering the steel. She explained they would like to have cell service in this area provided for the summer season, but will not have the correct steel and the tower would not be installed in time. She explained they would like to have an antenna on wheels in the same location the tower was approved. She explained after the season, the truck would be removed and the tower would be installed. She explained they would like to obtain a permit for the electric so when the temporary truck is removed, the electric can be transferred to the tower. She explained no generator would be needed.

Mr. Galestok explained he had them come in to explain this to the Board because it was a use variance.

Mr. Carr asked if the area would be fenced? Ms. DiNardo explained it would be fenced. She explained there would be a temporary stone driveway and it would be above base flood elevation.

The Board explained this is a discussion and not a formal application and it appears they are asking for something that was not approved. Mr. Harvatt explained he thinks they are just saying this is what is going there temporarily.

The Board suggested using temporary fencing to secure the site, making it easier when the permanent is being constructed.

The Board asked when the truck would be removed? Ms. DiNardo explained it would be gone by September 15, 2018. There was a discussion regarding this date. The time was extended for removal of the truck to October 1, 2018.

The Board asked what the height of the temporary antenna would be? Ms. DiNardo explained the height would be 44' in height.

2. 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 applicants.

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

Mr. Sandman explained his client would like to construct a barn for his two Clydesdale

horses and possibly a Belgian horse that is in pretty bad shape. He explained the barn would have five stalls with a center section for feed and the other portion would be for his antique cars.

Mr. Sandman explained the interpretation is for farm use. He explained one acre is required for farm animals, but five acres is needed to be considered a farm. He explained this property is a little less than five acres and doesn't understand why under five acres is any less than a farm.

Mr. Sandman explained there would be no commercial use on this property. He explained there would be no riding lessons and no leasing of stalls.

Mr. Sandman explained they have applied for a use variance if the Board interprets this is not a farm. He explained at the last meeting there were questions regarding access, parking and emergency vehicle access. He explained that even though a site plan was not needed, they had one drawn up. He explained they also submitted to Bureau of Fire Safety for their input. He explained they have provided for a turn around. He explained his client has no problem complying with the fire comments.

Mr. Sandman explained another concern was this being a flag lot. He explained they cannot control the fact this a flag lot. He explained having horses on a flag lot is a good thing. He explained the horses would be to the rear of the lot. He explained this helps preventing people from stopping and also from feeding the horses. He explained people stopping could cause accidents and feeding could be hazardous to the horses.

Mr. Mimlitsch explained he has no intentions of having a business at this location. He explained he will not have riding lessons or boarding of horses. He explained he has a couple of antique vehicles that he would like to house in the other half of the barn. He explained he does not store hay on-site. He explained hay is stored off-site and when needed, he goes and gets it and brings it back.

Mr. Mimlitsch explained the barn would be one story. He explained he has no problems making the driveway 22' wide for emergency access. He explained emergency vehicles will be able to circle the site safely. He explained his horses do not get ridden.

The Board explained a 40 x 80 barn is quite big. A Board member explained they visited another barn of similar size and measured the inside. The stalls were 12 x 12, there was a tack room, feed room, wash stall and bathroom. Mr. Mimlitsch explained the proposed interior layout of his barn. He explained what the proposed stall size would be. Explaining he has Clydesdales and they are big horses. He explained the interior layout for this barn.

Mr. Sandman explained if there was one more acre on this lot, they would not have to be before the Board.

Mr. Mimlitsch explained what antique vehicles he has. He explained the vehicles are limitedly driven.

Mr. Mimlitsch explained the manure will be hauled away and not kept on site.

The Board asked if there would be full access around the building? Mr. Mimlitsch explained there would be a stone drive around the building.

This portion of the hearing was opened to the public.

Ms. Nancy Rubin was sworn in by Chairman Hanson.

Ms. Rubin explained where she lives and asked where the proposed barn would be located. Mr. Sandman reviewed the plans with Ms. Rubin. She explained she has no problem with what is proposed.

This portion of the hearing was closed to the public.

Mr. Sandman explained he cannot think of a better use for the property. He explained growing up, he had 10 horses in the same sized barn. He explained the horses they had were smaller than Mr. Mimlitsch's. He explained there is more than enough land for the horses. He explained the horses can be brought to this property now and it would be allowed. He explained they are asking for shelter for them.

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

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

Motion denied.

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

4. Use & hardship variance & minor site plan applications to reconstruct an outdoor tiki bar, relocate the 6' fence, replace the existing 4' fence, enclose the existing trash enclosure, a new open-air building for an outdoor bar. Use variance needed for expansion of a non-conforming use. Variances needed for front yard setback, fence height in front yard and possible parking, submitted by Harpoons on the Bay for the location known as Block 571, Lots 1-6 & 9-14, 91 Beach Drive.

Mr. Christopher Gillin-Schwartz, Esq., represented the applicant.

Mr. Jeff Raiczuk and Mr. Brady Schoenrock, owners, Mr. Vincent Orlando, PE, and Mr.

James McAfee, Architect, were sworn in by Chairman Hanson.

Mr. Raiczuk explained he lives on Emerson Avenue since 2008. He explained an opportunity came up to purchase Harpoons on the Bay in 2016 and he took it. He explained they have made improvements to the property and they want to make it more desirable.

Mr. Gillin-Schwartz explained they would like to remove and rebuild the tiki bar a bit bigger. He explained they would like to replace the fencing and add an open air bar.

Marked into evidence was a three-page rendering of the project.

Mr. McAfee reviewed the drawings with the Board. He explained they are proposing a 34 x 32 open air structure. He explained there would be a solid wall on the Scott Avenue side. He explained there would be a restroom in this building. He explained there would be tables and also a standing bar.

Mr. Orlando explained new landscaping will be proposed along the front of the building on Beach Avenue. He explained there currently are 51 parking spaces and no additional spaces are proposed. He explained there will be no changes to the parking or drive aisles. He explained there are 150 seats and with what is proposed there would still be 150 seats.

Mr. Orlando explained they are proposing a Phased plan. He explained the tiki bar is Phase 1 for this season. He explained the open air bar will be Phase 2 at the end of this season.

Mr. Orlando explained they are proposing to enclose the trash enclosure, but they are not moving the enclosure.

Mr. Orlando explained they will be re-striping and redoing the ADA parking spaces.

Mr. Orlando explained this is an appropriate location for this use. He explained there is no detriment to the public, public good, zone or zone plan. He explained this property has been this type of business for over 40 years.

Mr. Carr summarized Engineer comments dated May 31, 2018.

Mr. Schoenrock explained there would be new water and sewer connections from Scott Avenue.

Mr. Galestok read Bureau of Fire Safety comments dated June 7, 2018 in which they found this application acceptable.

Mr. Galestok read Cape May County Planning Board comments dated May 25, 2018.

The Board explained they did not understand how the number of seats could not increase with what is being proposed. Mr. Raiczuk explained there used to be a liquor room upstairs. He

explained they did away with the upstairs liquor room and built a new liquor room downstairs that they had to remove tables for. He explained they removed some of the tables from the back bar and outside. He explained the tiki bar and open air bar will have the same amount of tables that they lost.

The Board explained they didn't think the dumpster on-site are adequate. Mr. Schoenrock explained they have daily trash removal.

This portion of the hearing was opened to the public.

Ms. Anne Polvino was sworn in by Chairman Hanson.

Ms. Polvino explained she lives on the corner of Browning and Beach Avenues. She explained they currently have two bars inside and one outside and they want to add another outside bar. She explained there is no parking now for what they have. She explained delivery trucks block her driveway and when asked to move, they don't. She explained the trash trucks come at 7:30 in the morning and idle and they are there every day. She explained they sometimes have two bands a day and night. She explained the workers dump the bottles at midnight or after. She explained she doesn't mind the improvement of the property, but no more bars.

Mr. Logan was sworn in by Chairman Hanson.

Mr. Logan explained the building does need improvement but to have four bars is too much for this area. He explained he lives on Emerson Avenue, which is a couple blocks away and sometimes the noise is too much. He explained he would like to see this as more of a family restaurant. He explained he recommends there be a time limit for closing. He explained he can hear the trash trucks picking up the recycles.

The Board asked about the hours of the outside bars and the bands? Mr. Raiczuk explained the bands are only inside now. He explained they had the band Animal House five nights a week last year. He explained they are limiting them this year. He explained the tiki bar closes around 10 or 11 at night and the beach bar would close at 10:00 P.M.

Mr. Matthew Merzig was sworn in by Chairman Hanson.

Mr. Merzig explained he is here tonight on behalf of his mother who lives at 101 Beach Drive. He explained there is a lot of noise which is brutal to hear seven days a week. He suggested a precast concrete sound wall along Scott Avenue. There was a discussion regarding this. It was explained the beach bar will have a solid wall along Scott Avenue and a fence is proposed.

Mr. Merzig explained there is a parking problem.

Mr. Schoenrock explained they have rearranged the music. He explained they will not

have bands a night. He explained they will have a single or two people playing guitars at night time. He explained their intention is to spread people out.

Mrs. Donna Logan was sworn in by Chairman Hanson.

Mrs. Logan explained there isn't enough parking and this should be taken into consideration.

Ms. Polvino explained if a wall is put up on the Scott Avenue side, more sound may be bounced her way.

Mr. Orlando explained they are asking for a 6' fence on the Scott Avenue side. He explained if the Board wants to go to an 8' fence, they could and would work with the neighbor. He explained the fence is proposed in Phase 1 portion.

Mr. Carr explained you cannot construct or design a concrete wall without an acoustic sound study. Mr. Galestok explained one can be requested. Mr. Carr explained it should be done on the weekend.

The Board asked about Ms. Polvino's driveway being blocked by delivery trucks. It was explained the deliveries are made in the morning and they will be told to park in the lot to make deliveries.

This portion of the hearing was closed to the public.

There was a discussion as a condition of approval, a sound study would be preformed twice in the season.

Mr. Waterman made a motion to conditionally approve the use variance application. The motion was seconded by Mr. Kennedy.

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

Motion carried.

Mr. Waterman made a motion to conditionally approve the variance application. The motion was seconded by Mr. Kennedy.



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

Motion carried.

Mr. Waterman made a motion to conditionally approve the fence height variance. The motion was seconded by Mr. Kennedy.

VOTE:	Mr. Kennedy	YES	Mr. Brand	YES
	Mr. Utsch	YES	Mr. Waterman	YES
	Mr. Sweeten	YES	Mr. Doherty	YES
	Chairman Hanson	YES		

Motion carried.

Mr. Waterman made a motion to conditionally approve the minor site plan application. The motion was seconded by Mr. Kennedy.

VOTE:	Mr. Kennedy	YES	Mr. Brand	YES
	Mr. Utsch	YES	Mr. Waterman	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.

5. Use variance application to convert an existing commercial building to a single family dwelling, submitted by John McKeon for the location known as Block 132, Lot 18.02, 1203 Bayshore Road.

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

Mr. Scott Brown, PE, and Mr. John McKeon, applicant, were sworn in by Chairman Hanson.

Mr. Gelzunas explained to the Board that about a year or two ago there was a subdivision of the property to separate the house and building on the lot. He explained his client was going to do a small business, but now he would like to convert the building into a cottage.

Mr. Brown explained the lot is on the corner of Bayshore Road and Atlantic Avenue. He

explained no expansion is proposed. He explained at the subdivision & site plan portion of the previous application, two parking spaces were approved off of Atlantic Avenue and they will not change. Mr. Brown reviewed a plan of the commercial, residential and mixed uses in the area. He explained the grass area will remain. He explained there are not a lot of commercial uses that could be done in this size building. He explained a residential unit is permitted as long as it's associated with a commercial use. He explained what is proposed would have no detriment to the zone, zone plan or public good if approved.

Mr. McKeon explained he purchased the property in 2015. He explained his original plan was to live in the house that used to be on this property before the subdivision and have an interior design business in the small structure. He explained that he no longer will be doing the interior design business and he can't find anyone to use the building for commercial. He explained that due to his health, this would allow him better access because everything is ground level. He explained he would do new windows and a gable end on the building. He explained he would landscape the yard, change the chainlink fence to a picket fence and remove the concrete in front and add landscaping. He explained there is a vacant gym across the street and a vacant building next door that used to be Ameri-Gas.

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 will be no parking in the front of the building.

Mr. Waterman 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. Waterman	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.

6. Hardship variance application to construct a detached garage higher than the principal structure, submitted by Chet & Joanne Rietheimer for the location known as Block 516, Lots 4-6, 111 Pinewood Road.

Mr. Chet Rietheimer and Mrs. Joanne Rietheimer, applicants were sworn in by Chairman Hanson.

Mr. Rietheimer explained he would like to construct a garage that would be taller than the

house. He explained the house is 12'6" tall and the garage would be 20' tall. He explained they just need storage. He explained there would be interior stairs. He explained they would not have plumbing in the garage, but they would have electric.

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. Sweeten.

VOTE:	Mr. Kennedy	YES	Mr. Brand	YES
	Mr. Utsch	YES	Mr. Waterman	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.

Mr. Brand made a motion to adjourn at 9:29 P.M. The motion was seconded by Mr. Waterman. 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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