

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 September 6, 2012 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
John Armbruster
David F. Brand, Jr.
Ernest Utsch III
Bruce Waterman
Robert Sweeten
Michael DiStefano
Christopher Kobik
Dianne Kelly

MEMBERS EXCUSED: Kristine Trusiak

MEMBERS ABSENT: Stephen Komar

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

CORRESPONDENCE:

Handouts:

List of Board Solicitor vouchers dated August 30, 2012.

List of Board Engineer vouchers dated September 6, 2012.

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

Mr. Waterman made a motion to approve the minutes from the August 2, 2012 meeting. The motion was seconded by Mr. Utsch. Motion carried.

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

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

Mr. Armbruster made a motion to approve the Resolutions from the August 2, 2012 meeting. The motion was seconded by Mr. Waterman. Motion carried.

1. Hardship variance application to construct a front porch encroaching into the front yard setback, submitted by Andrew Hawthorne for the location known as Block 51, Lot 5, 308 East St. Johns Avenue.

Mr. Andrew Hawthorne, applicant, was sworn in by Chairman Hanson.

Mr. Hawthorne explained a storm in 2010 damaged the portico roof that was above the front steps. He explained the front steps were damaged too. He explained that before the steps were repaired, he fell and broke some bones. He explained that he changed the steps. He explained he went to the Construction Office and spoke with the building inspector. He explained that he got ahead of himself and started to rebuild without permits. He explained the Construction Office put a stop work order on the work.

The Board asked if there was a roof before the storm damage? Mr. Hawthorne explained there wasn't, but there was a portico roof. He explained that he had expanded the roof some. He explained the proposed is 4 x 8 feet, with a knee wall, but not enclosed.

Mr. Hawthorne submitted into evidence photographs of the existing rear of the house. He explained the front would look like that. Also, submitted were side view, front view and substructure photographs.

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

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|-------|-----------------|-----|-------------|-----|
| VOTE: | Mr. Armbruster | YES | Mr. Brand | YES |
| | Mr. DiStefano | YES | Mr. Utsch | YES |
| | Mr. Waterman | YES | Mr. Sweeten | 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 single family dwelling on a lot deficient in lot area, frontage & width, submitted by Bernard Dera for the location known as Block 538, Lots 26 & 27, 34 Adelpia Road.

Mr. Bernard Dera, applicant, was sworn in by Chairman Hanson.

Mr. Dera explained this is an isolated undersized lot. He explained a variance is needed for lot area, frontage & width. He explained the setbacks, coverage and height would be met.

Mr. Dera explained no adjacent vacant land is available.

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

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|-------|-----------------|-----|-------------|-----|
| VOTE: | Mr. Armbruster | YES | Mr. Brand | YES |
| | Mr. DiStefano | YES | Mr. Utsch | YES |
| | Mr. Waterman | YES | Mr. Sweeten | 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. Hardship variance application to construct a roof over a portion of a second floor deck encroaching into the front yard setback, submitted by Michael & Christine Coughlin for the location known as Block 566, Lot 4, 1605 Browning Avenue.

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

Mr. Coughlin explained to the Board that he would like to construct an 'A' roof over a portion of a proposed second floor deck that would encroach into the front yard setback. He explained that the house was built close to the front property line.

The Board asked if the deck could be constructed on the rear of the house? Mr. Coughlin explained there is a garage that is close to the house. He also explained there is an existing florida room that is constructed on a slab. He explained they are proposing a second floor over the main part of the dwelling. He explained they are they are proposing a bump out to the rear that would be supported by pillars.

Mr. Galestok asked Mr. Coughlin how the deck would be constructed? Meaning, would water be able to permeate through? Mr. Coughlin explained water would permeate.

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. Galestok explained to the Board that the picture of the house that was submitted with the application is not the applicant's house. He had taken a picture of the applicant's house which was submitted into evidence.

The Board asked Mr. Coughlin if he objected to a condition that the porch wouldn't be enclosed? Mr. Coughlin explained he didn't object.

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

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|-------|-----------------|-----|-------------|-----|
| VOTE: | Mr. Armbruster | YES | Mr. Brand | YES |
| | Mr. DiStefano | YES | Mr. Utsch | YES |
| | Mr. Waterman | YES | Mr. Sweeten | 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. Certificate of non-conforming use for the continued use of the existing two residential units on the property, submitted by Russell & Ursel Yeager for the location known as Block 238, Lot 6, 19 Rose Lane.

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

Mr. Tourison explained to the Board that in the 1970's the garage was converted to an apartment. He explained the property receives two sewer and water bills. He explained there are rental mercantile licenses on the property. He explained that when his client purchased the property, the agent at the time, Bob Riper, former Zoning Board Chairman, listed the property as a duplex. He explained that he has an appraisal that lists this property as a duplex. He submitted into evidence the supporting documentation.

Mr. Gregory Loch was sworn in by Chairman Hanson.

Mr. Loch explained he has lived in the apartment of 12 years. He explained that he has lived in the neighborhood for 25 years and the mid 70's, the then owner took the garage door off and construct a wall and windows.

Mr. Tourison explained there are two electric meters.

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 asked Mr. Tourison is he knew how the Township Assessor had the property assessed? Mr. Tourison explained they have it listed as one unit.

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

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|-------|-----------------|-----|-------------|-----|
| VOTE: | Mr. Armbruster | YES | Mr. Brand | YES |
| | Mr. DiStefano | YES | Mr. Utsch | YES |
| | Mr. Waterman | YES | Mr. Sweeten | 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 7:28 P.M. The meeting was called back to order at 7:37 P.M.

4. Use & hardship variances & minor site plan applications for a restaurant/coffee shop café/ ice cream parlor & retail space in an existing commercial space. Variances needed for number of uses, signs & parking, submitted by Thomas W. Groomett for the location known as Block 700.01, Lot 3, 9601 Atlantic Avenue.

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

Mr. Gelzunas explained his client is the contract purchaser of the retail space within The Grand. He explained it is approximately 1,600 square feet. He explained they are not planning on any alterations or additions to the unit. He explained when the original application for The Grand was before the Board, they approved a restaurant and spa area that was proposed on the beach side of the property. He explained when they went to the State level for the CAFRA permit, the applicant had to scale back the project. So they did away with the restaurant and spa area. He explained they had proposed a retail use that is in the current location. He explained the space is currently vacant. He explained that what is proposed is not a full blow restaurant. He explained that parking variance was granted under the original proposal. He explained they are proposing minor signage.

Mr. Thomas Groomett, applicant, was sworn in by Chairman Hanson.

Mr. Groomett explained to the Board what he is proposing is like a Starbuck's. He explained they are not going to have any fryers. He explained they would be serving muffins, flatbread, wraps, smoothie's and coffee on one side. On the other side, they would like to have an ice cream parlor. And maybe in the future have a small retail section for toiletries, suntan lotions, etc.

Mrs. Jamie Groomett was sworn in by Chairman Hanson.

Mrs. Groomett explained there would be minium preparation of food. She explained there would be a ventless oven. She explained they would serve bagels, scones, muffins with some baking on site. She explained that for lunches there would be salads and sandwiches. More on the healthy side. She explained they would have a waffle iron in the ice cream parlor.

Mrs. Groomett explained the oven would be similar to the oven used by Starbuck's. She explained there would be no grill cooking, no frying and no table service. She explained there would be seating and bar seating.

Mrs. Groomett explained they would serve more of an upscale coffee and ice drinks.

Mr. Groomett explained that the homeowner's association was concerned with parking. He explained that he got the impression they liked the idea. He explained there would probably be seating for approximately 20 to 25 people.

Mr. Gelzunas explained that everyone on the property owners list was noticed and the notice was published. The Board asked if the homeowner's association was noticed? Mr.

Gelzunas explained they were noticed.

There was a discussion regarding the hours of operation. Mr. Grookett explained they don't have set hours as of yet, but he thinks maybe 7:00 A.M. to 10:00 P.M. Mr. Grookett explained that for now, the operation would be seasonal only. Mrs. Grookett explained they would like to start in April and close in October. She explained that after that, they may be a year round operation. She explained there may be ten employees. Mr. Gelzunas explained the application will be scrutinized by the homeowner's association. He explained the notice of the application was also posted on the Associations website.

The Board asked if the café and ice cream parlor would be open at the same time? Mr. Grookett explained the café portion would be open in the morning and afternoon. The ice cream parlor would be open at night time and the café would be closed.

Mr. Vincent Orlando, PE, PP, was sworn in by Chairman Hanson.

Mr. Orlando submitted small scale drawings of what was originally approved. He explained that when the original application was approved, the space in question was approved as a retail use. He explained that with the approval, eight parking spaces were associated with the retail use. He explained there is a maximum of 39 seats that would require 13 parking spaces. He explained he feels 99.9% of people will walk to this business. He explained that in his opinion, it is highly unlikely that the eight spaces will be used. It is in his opinion, the parking variance is diminimus. He explained what is proposed would have no deterrent to the zone, zone plan or public good. The Board explained the application states there are 48 seats. Mr. Orlando explained the application is incorrect. There will be 39 seats.

Mr. Orlando explained two of the signs are 2 x 6 that will be over the entrances. He submitted into evidence photos of the sign. He explained they are proposing a 24 square foot sign off the front of the building. He explained it would be ten feet off grade.

There was a discussion there are no residential uses on the first floor that would be impacted by what is proposed.

Mr. Galestok explained that when he was first approached, he discussed with Mr. Harvatt and a determination was made that what is proposed is not the same as what was originally approved. He explained that the use variance is very specific.

The Board discussed that a restaurant was approved with the original submission. Mr. Gelzunas explained there are no commercial sales of any nature currently on site.

There was a discussion as to whether a use variance was indeed needed. It was determined after much discussion that a use variance was needed.

Submitted into evidence was the original variance report prepared by Mr. Orlando.

Mr. Orlando explained what is proposed would advance the purposes of zoning, would be a benefit to the site and public and there would be no negative impact to the zone or zone plan.

Mr. Sray read Engineer comment's dated August 28, 2012.

There was a discussion if there would be parking signage.

Ms. Barbara Casey, Esq., for the Diamond Beach, LP.

Ms. Casey explained that the parking spaces are numbered for the commercial use.

Mr. Orlando explained there are 12 parking spaces and eight are for the commercial use.

Mr. Galestok read Bureau of Fire Safety comments dated August 20, 2012 in which they found this application acceptable.

Mr. Galestok read Cape May County Planning Board comments dated August 21, 2012.

This portion of the hearing was opened to the public.

Mr. Barry Weiner was sworn in by Chairman Hanson.

Mr. Weiner explained he was the Treasurer of the Association. He explained there are only six (6) parking spaces for this use. He submitted a site plan of where the retail space and parking are location. He also submitted photographs. He explained the residents are really not in favor of what is proposed. He explained that they would like to do a traffic study before the Board acts on this application.

There was a discussion about whether notice of the application was proper. Mr. Weiner submitted in evidence a copy of 40:55D-12. Mr. Gelzunas explained that he sent notice to everyone who appeared on the certified property owner list. He explained that the Association was listed and notice was sent. The Board asked Mr. Weiner if the Association Board knew he present at tonight's meeting? Mr. Weiner explained they did know.

Mr. Seth Davis was sworn in by Chairman Hanson.

Mr. Davis explained he was a non-voting board member of the Association. He explained that he doesn't agree that the notice was bad. He explained that when the Association received the notice, he encouraged them to send an email to the residents, but that idea was rejected.

Mr. Davis explained he is in favor of this application and feels what is proposed would be good for the building.

Mr. Harvatt read into the record section 40:55D-12. He explained he is satisfied the

applicant complied and notice is good.

This portion of the hearing was closed to the public.

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

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| VOTE: | Mr. Armbruster | YES | Mr. Brand | YES |
| | Mr. DiStefano | YES | Mr. Utsch | YES |
| | Mr. Waterman | YES | Mr. Sweeten | YES |
| | Chairman Hanson | YES | | |

Motion carried.

Mr. Armbruster made a motion to approve the parking and signage variance. The motion was seconded by Mr. Waterman.

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|-------|-----------------|-----|-------------|-----|
| VOTE: | Mr. Armbruster | YES | Mr. Brand | YES |
| | Mr. DiStefano | YES | Mr. Utsch | YES |
| | Mr. Waterman | YES | Mr. Sweeten | YES |
| | Chairman Hanson | YES | | |

Motion carried.

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

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|-------|-----------------|-----|-------------|-----|
| VOTE: | Mr. Armbruster | YES | Mr. Brand | YES |
| | Mr. DiStefano | YES | Mr. Utsch | YES |
| | Mr. Waterman | YES | Mr. Sweeten | YES |
| | Chairman Hanson | YES | | |

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

Mr. Kobik made a motion to adjourn at 9:17 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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