

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 March 4, 2010 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
Dianne Kelly
Kristine Trusiak
Stephen Komar

MEMBERS EXCUSED: David F. Brand, Jr.
Bruce Waterman
Christopher Kobik

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

CORRESPONDENCE:

Handout:

List of Board Engineer vouchers dated March 3, 2010.

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

Mr. Sweeten made a motion to approve the February 2, 2010 minutes. The motion was seconded by Mr. Armbruster. Motion carried.

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

2. Use & hardship variance and minor subdivision applications for the creation of three newly described lots. Use variance needed single family dwellings. Hardship variances needed for frontage, width, side & rear yard setbacks, submitted by Steven & Mary Ewing, Irene Ewing & Jersey Cape Motel, Inc. for the location known as Block 510, Lots 13.01, 13.02 & 34, 769-711-733 Route 109.

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

Mr. William Sweeney, Licensed Land Surveyor, was sworn in by Chairman Hanson.

Mr. Dwyer explained to the Board that there is currently two lots in the MH Zone. He explained in 1988 a use variance and minor subdivision was approved for two lots. One for the motel and the other for the single family dwelling. Then several years ago, a use variance was granted to a single family dwelling on the motel lot. He explained that they are now applying for a three-lot subdivision. Each single family dwelling would be on its own lot and the motel would be on its own lot. He explained that the total acreage is over 11 acres.

Mr. Sweeney explained they are proposing a 25-foot flag lot. He explained that the single family dwelling is close to the proposed lot line. He explained that the pole portion would be used as a shared driveway for both single family dwelling lots. He explained that both lots would have the required acre.

Mr. Dwyer explained that they do not feel they are increasing the non-conforming use. He explained that there is case law supporting the granting of the use variance.

The Board asked when the first subdivision was? Mr. Dwyer explained the first subdivision was 1988 for Mr. Ewing's house. He explained that four years ago a use variance

was granted for the other single family dwelling. He explained that the bulk of the land would remain for the motel.

The Board had concerns about a possible future subdivision with the land behind proposed Lot 13.02. Mr. Dwyer explained that the land is mostly wetlands so there probably wouldn't be a subdivision. It was explained that if the land was subdivided, it would have to come back before the Board for approval.

Mr. Galestok and Mr. Dwyer discussed that the shared driveway would have a cross easement. Mr. Galestok explained he had reservations with the cross easement. He explained that the properties may be sold in the future and this could cause problems.

Mr. Galestok explained that the typical width of the pole portion of the lot is 40 feet and 25 feet is proposed. He explained that in this case, he would be happy with 20 feet. He explained that this would give a 20-foot setback to the deck. Mr. Dwyer explained that he was happy with that.

Mr. Galestok read Bureau of Fire Safety comments in which they found this application acceptable.

Mr. Galestok read Cape May County Planning Board comments in which they waived this application.

Mr. Galestok explained that if the pole portion was reduced to 20 feet, it should be reviewed again by the Bureau of Fire Safety for their approval.

Mr. Sray summarized Engineer comments dated February 25, 2010.

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

VOTE:	Mr. Armbruster	YES	Mr. DiStefano	YES
	Mr. Utsch	YES	Mr. Sweeten	YES
	Mrs. Kelly	YES	Mrs. Trusiak	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 screen porch encroaching into the rear yard setback, submitted by Ralph E.J. Boerner for the location known as Block 512.22, Lot 5, 3304 Bybrook Drive.

Mr. Ralph Boerner, applicant, was sworn in by Chairman Hanson.

Mr. Boerner explained to the Board that he purchased this house for his retirement house. He explained that there is an existing 8 x 13 concrete deck on the rear of the house. He explained that he would like to cover the concrete with wood decking and continue out another eight feet and screen the entire area in. He explained that this would encroach into the rear yard setback. He explained that there are six foot fences on both side of the property and Ponderlodge to the rear of his property with a ten-foot chain link fence.

The Board asked Mr. Boerner if there would be a knee wall? Mr. Boerner explained that there would be floor to ceiling screening.

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. Utsch.

VOTE:	Mr. Armbruster	YES	Mr. DiStefano	YES
	Mr. Utsch	YES	Mr. Sweeten	YES
	Mrs. Kelly	YES	Mrs. Trusiak	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. Use & hardship variances, preliminary & final site plan applications to enlarge an existing restaurant (Marie Nicole's) to increase the size of the kitchen, enclose the porch dining area, relocate the walk-in freezer and loading zone and add a paver entrance, hardship variances needed for front yard setback & buffer encroachment, submitted by 9510 Associates, Inc., for the location known as Block 697, Lots 3-7, 9510 Pacific Avenue.

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

Mr. James Barnabei, applicant, and Mr. Vincent Orlando, PE, PP, were sworn in by Chairman Hanson.

Mr. Dwyer submitted architectural drawing into evidence.

Mr. Dwyer explained that existing bar/restaurant is located both in the GB and R-4 zones. He explained that most of the parking is located in the R-4 zone. Most of the structure is located in the commercial zone with a small portion located in the residential zone. He explained that the last approval was for 111 seats. He explained that there aren't 111 seats, but currently has 95 seats.

Mr. Orlando reviewed a colorized site plan with the Board. He explained that they are proposing an addition to expand the kitchen. He explained that the walk-in freezer would be relocated and in line with the proposed addition. He explained that there are currently two storage buildings that will be removed. He explained that three parking spaces would be added. He explained there are currently 24 spaces and it would be increased to 27 spaces. Mr. Dwyer explained that there were more spaces, but the County did not want back out parking into Pacific Avenue.

Mr. Dwyer submitted into evidence two photographs of the site.

Mr. Orlando explained that there is a lot of landscaping. He explained the Mr. Barnabei keeps the site clean. He explained that they are also proposing decorative pavers.

Mr. Orlando explained that at a previous approval, the County requested depressed curbs for handicap ramps at the sidewalks. He explained that this was installed, but because the roads do not have the proper grade, this area floods. He explained that he doesn't think there is a good solution for this problem, but feels Richmond Avenue should be reconstructed with the proper grade.

Mr. Orlando explained that there is a 2 x 2 stone drainage trench that will be extending a little bit and perforated pipe will be installed.

Mr. Orlando explained that one additional handicap parking space will be needed. He explained that the ideal location would be on Pacific Avenue, but if the Board wants the space on site, he would reconfigure the parking.

Mr. Galestok explained that the Bureau of Fire Safety does not want any obstruction on the side of the structure which includes fencing and landscaping. Mr. Dwyer explained that the landscaping was a requirement by the Board at a previous approval. Mr. Orlando explained that a gate could be added and the trees could be pruned up to eight feet.

Mr. Dwyer explained that they don't have a problem with a hold harmless agreement for the parking on Richmond Avenue.

Mr. Galestok explained that he likes the idea of having the handicap parking space on Pacific Avenue. Mr. Orlando explained he doesn't know if the County will allow this. Mr. Dwyer explained they would put the handicap spaces on site unless the County allows them to

have one on Pacific Avenue. The Board asked what time frame this would be done? Mr. Orlando explained that construction wouldn't be starting until fall of this year.

Mr. Galestok asked if the architect drawings that were submitted would be what was built? Mr. Dwyer explained it would.

There was a discussion regarding the Fire Safety comments. Mr. Orlando explained that there is five feet between the edge of the cooler to the trees. He explained that he feels this is enough room for fire personnel. There was a discussion that the Bureau of Fire Safety would have to be satisfied with the trees remaining and being pruned to eight feet instead of the neighbor's losing some buffering even though there is a fence. There was a discussion that Mr. Dwyer, Mr. Orlando Mr. Barnabei and Mr. Perry, from Fire Safety should meet on site.

Mr. Sray read Engineer comments dated February 25, 2010.

Mr. Sray explained that he feels the ponding problem could be fixed. He explained that the stone trench was supposed to go to the drive aisle and was not installed. He explained that he understands the elevation is a bit higher toward the drive aisle. He explained that it is not a good idea to have the overflow going over the sidewalk. Mr. Dwyer suggested that Mr. Sray and Mr. Orlando meet on-site.

Mr. Dwyer explained that he doesn't have a problem with an encroachment agreement for the Richmond Avenue parking.

The Board had concerns with the location of the freezer and the compressor units. Mr. Barnabei explained that compressors could be placed anywhere. He explained the units could be placed on top of the freezer or to the Richmond Avenue side of the freezer.

This portion of the hearing was opened to the public.

Mr. James Pomponi was sworn in by Chairman Hanson.

Mr. Pomponi asked how the number of parking spaces is determined? The Board explained that one parking space is needed for every three seats.

Mr. Pomponi explained that he lives on Richmond Avenue. He explained that Richmond Avenue is not a wide street, especially when there's parking on both sides. He explained that the employees do not park on premises, but on Richmond Avenue. He explained that they are parked there for up to eight hours. He explained that he understands that Richmond Avenue is a public road, but it is hard to have company over and to park in front of your own home.

Mr. Pomponi explained that in a hard rain, there are at least four parking spaces on-site that are lost due to flooding. He explained that he feels this problem could be fixed.

Mr. Pomponi explained that his main concern is parking.

Mr. John Amechi was sworn in by Chairman Hanson.

Mr. Amechi explained his concerns are with puddling and drainage. He explained that he would like if the compressor unit for the freezer could be placed on the roof or to the Richmond Avenue side.

This portion of the hearing was closed to the public.

There was a discussion regarding the drainage.

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
	Mrs. Kelly	YES	Mrs. Trusiak	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 8:15 P.M. The meeting was called back to order at 8:27 P.M.

- 5. Minor site plan application to modify Resolution #08-25-ZBA, install landscaping along rear property line, install no parking signs, have a permanent bar on outside patio and relocate shed, submitted by Bayshore Holdings I, LLC for the location known as Block 499.02, Lot 33.16, 3729 Bayshore Road.

Chairman Hanson excused himself from this application due to a conflict of interest.

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

Mr. James Hanson was sworn in by Vice-Chairman Armbruster.

Mr. Tourison explained that minor site plan approval was granted May 2008. He explained that when the applicants approached Township Council to renew their liquor license, some issues were brought up. He explained that there were issues with the bar/waiting area, the relocation of a shed, 'no parking' signs to be installed, landscaping along the rear property line, no food service in the waiting area, only 12 tables were allowed and there be no live music or advertising in or outside the waiting area.

Mr. Hanson explained that he came before the Board last month for an informal discussion. He explained that they are here tonight for approval to install trees along the rear property line, no parking signs by the basin and the relocation of a small shed.

The Board explained that they remembered from last months meeting a discussion regarding the types of trees and if Township Council was okay with the type of plantings. Mr. Tourison explained that they met with the Township Manager and Township Solicitor and they were okay with the types of trees proposed.

Mr. Hanson read Bureau of Fire Safety comments in which they found this application acceptable.

Mr. Hanson explained that the shed was along the rear property line. He explained that they shed was moved and is 40 feet from the rear property line.

This portion of the hearing was opened to the public.

Ms. Carol Paget was sworn in by Vice-Chairman Armbruster.

Ms. Paget explained that she had no problem with the application. She wanted to confirm that there wasn't going to be loud music and bands. Mr. Tourison read a portion of Council Resolution pertaining to noise. He explained that it would be violation of the Resolution if they did.

Ms. Paget explained that she didn't have any problems with stools' at the bar. Mr. Hanson explained that the stools were taken away.

This portion of the hearing was closed to the public.

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

VOTE:	Mr. DiStefano	YES	Mr. Utsch	YES
	Mr. Sweeten	YES	Mrs. Kelly	YES
	Mrs. Trusiak	YES	Mr. Komar	YES
	Vice-Chairman Armbruster	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. Utsch made a motion to adjourn at 8:35 P.M. The motion was seconded by Mr. Sweeten. 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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