

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 October 7, 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
David F. Brand, Jr.
Ernest Utsch III
Bruce Waterman
Michael DiStefano
Christopher Kobik
Kristine Trusiak

MEMBERS EXCUSED: Robert Sweeten
Dianne Kelly

MEMBERS ABSENT: Stephen Komar

STAFF PRESENT: Anthony J. Harvatt, II, Board Solicitor
Thomas Thornton, Acting Board Engineer
William J. Galestok, Board Secretary
Lisa A. Schubert, Recording Secretary

STAFF EXCUSED: Mark Sray, Board Engineer

CORRESPONDENCE:

Handouts:

List of Board Solicitor vouchers dated October 6, 2010.

List of Board Engineer vouchers dated October 7, 2010.

The New Jersey Planner: September-October 2010: Vol. 71, No. 4.

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

Mr. Utsch made a motion to approve the September 2, 2010 minutes. The motion was seconded by Mr. Waterman. Motion carried.

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

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

Mr. Armbruster made a motion to approve the resolution for the September 2, 2010 meeting. The motion was seconded by Mr. Waterman. Motion carried.

1. Discussion of change to Victoria Commons (Conifer, Inc.) site improvement, 'stone walking path-durable asphalt surface'; Mark Sray, PE.

Mr. Thornton explained that they would like to substitute asphalt for the stone dust walkway. He explained that he does agree with this change especially for handicap purposes. The Board asked if this would affect the drainage? Mr. Thornton explained that drainage would not be affect.

Mr. Galestok explained they were asking the Boards permission to address this administratively. The Board explained that they did not have a problem with this.

- 2. Final site plan application to expand the existing custom automobile repair shop and to create a self-storage facility, submitted by James Hemingway for the location known as Block 334.01, Lot 3, 2010 Bayshore Road.

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

Mr. Dwyer explained that his client received use variance and preliminary site plan approval. He explained that they are not ready to proceed with final site plan. He explained that he would like to have this application removed from the agenda and will send a letter when they are ready to proceed.

Mr. Harvatt explained that by doing this, it makes it hard to track the application. There was a discussion regarding denying the application without prejudice. When the applicant is ready to proceed, no fees or notices would be required.

Mr. Armbruster made a motion to deny the application without prejudice. The motion was seconded by Mr. Waterman.

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

Motion carried.

- 8. Use & variance & preliminary & final site plan applications to construct a 'solar farm'. Variance needed for size of signage, submitted by Amusement Partnership USA for the location known as Block 510, Lots 18 & 8.01, 705 Route 9.

Mr. Galestok and Mr. Kobik excused themselves from this application due to a conflict of interest.

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

Ms. Elizabeth Terenik, PP, AICP, and Mr. Anthony Catanose, applicant, were sworn in by Chairman Hanson.

Mr. Dwyer explained that the site was previously approved for townhouses. He explained that they are no longer interested in townhouses and now proposing a solar farm. He explained that there is a commercial building on-site to remain. He explained that the construction materials and such would be removed from the site. He explained that the solar farm should provide enough power to service the schools and possibly the campground. He explained that what is proposed has been recognized by the Courts as a beneficial use.

Ms. Terenick explained the panels would cover most the property with the except of the rear where there are wetlands. She explained that this would be a 1.72 mega watt facility. She explained the panels would be ground mounted and approximately 13 feet in height. She explained that no noise would be audible at the property line. She explained that setbacks would be met. She explained that there would be no issue with glare. She explained that the school would be the primary user. She explained that the parking lot and building would remain. She explained new landscaping and fencing around the panels are proposed. She reviewed the variance report with the Board.

Ms. Terenick explained that this is an ideal location for what's proposed. She explained that there would not be a deterrent to the zone or zone plan if approved.

Mr. Dwyer explained that they intended to have a six-foot fence to keep people out, but they have discovered that a variance would be needed for a six-foot fence in the front yard. He explained that they would like to have the six-foot fence, but would agree to four feet if the Board so chooses.

Ms. Terenick explained they are proposing a 32 sq. ft. sign. She explained that there are similar sized signs in the area.

The Board asked what the function of the office was? Ms. Terenick explained the office is currently being used for Amusement Steel Pier and will continue as such. She explained that the sign would be to identify the solar facility.

The Board asked what the time frame for placing the panels would be? They explained that there could be a lot of noise generated during construction and with the school next door, it could interfere. Mr. Terenick explained there wouldn't be any major ground grading. Mr. Dwyer explained there would be some demolish of existing buildings.

Mr. Kevin Kura, contractor for the installation of the panels, was sworn in by Chairman Hanson.

Mr. Kura explained the foundations for the panels would be 3' x 12". He explained there would be four footings per array. He explained that it would be three to four months from start to finish for construction. He explained that there wouldn't be a lot of machinery and they use their own mixers for concrete. He explained that there isn't a fire hazard. Explaining no heat is generated from this.

Ms. Terenick explained they were proposing a chainlink fence and a more decorative fence in the front of the property. Mr. Dwyer explained that there is a natural buffer and the fence probably wouldn't be seen. Ms. Terenick explained that a good portion of the property has trees. She explained that some of the vegetation would have to be removed. She explained they would like a wrought iron fence in front. She explained that the equipment is not checked on a daily basis, but monitored electronically.

Mr. Thornton read Engineer comments dated October 1, 2010.

Mr. Dwyer explained that under a previous site plan, Mr. Orlando had provided the number of parking spaces. Mr. Catanose explained there is only one full time employee in the winter and two employees in the summer. He explained they plan to use the existing concrete on site and if needed, repair the concrete that is damaged. Mr. Dwyer explained that CAFRA was applied for September 14, 2010. He explained that he is not sure if an application was made to DOT yet. He explained that there would be an underground trench to the school. He explained they would provide the location at a later date.

Mr. Frank Onorato, Administrative Board Secretary, was sworn in by Chairman Hanson.

Mr. Onorato read his letter into the record. He explained that the school board has been in discussion with the property owner. He explained that enough power would be generated to supply one school.

The Board asked if there would be a drainage issue with the proposal? Mr. Thornton explained that property sloped back toward the wetlands. He explained that he doesn't see an issue.

Mr. Dwyer explained that they would submit a security lighting plan to the Engineer.

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 the use variance application. The motion was seconded by Mr. Waterman.

VOTE:	Mr. Armbruster	YES	Mr. Brand	YES
	Mr. DiStefano	YES	Mr. Utsch	YES
	Mr. Waterman	YES	Mrs. Trusiak	YES
	Chairman Hanson	YES		

Motion carried.

Mr. Brand made a motion to conditionally approve the variance for the sign. The motion was seconded by Mr. Waterman.

VOTE:	Mr. Armbruster	YES	Mr. Brand	YES
	Mr. DiStefano	YES	Mr. Utsch	YES
	Mr. Waterman	YES	Mrs. Trusiak	YES
	Chairman Hanson	YES		

Motion carried.

Mr. Waterman made a motion to approve the variance for the six feet wrought iron fence in the front yard. The motion was seconded by Mr. Brand.

VOTE:	Mr. Armbruster	YES	Mr. Brand	YES
	Mr. DiStefano	YES	Mr. Utsch	YES
	Mr. Waterman	YES	Mrs. Trusiak	YES
	Chairman Hanson	YES		

Motion carried.

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

VOTE:	Mr. Armbruster	YES	Mr. Brand	YES
	Mr. DiStefano	YES	Mr. Utsch	YES
	Mr. Waterman	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. Hardship variance application to construct a 10 x 20 addition in place of the existing deck (same size) exceeding allowed building coverage, submitted by James & Eileen Waters for the location known as Block 375, Lots 35 & 37, 206 Village Road.

Mr. James Waters, applicant, was sworn in by Chairman Hanson.

Mr. Waters explained that they would like to construct a sunroom over the existing rear deck. He explained the building coverage would be exceeded by 3.9%. He explained that the room would have baseboard heat.

There was a discussion that all the setbacks would be met.

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.

VOTE:	Mr. Armbruster	YES	Mr. Brand	YES
	Mr. DiStefano	YES	Mr. Utsch	YES
	Mr. Waterman	YES	Mr. Kobik	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. Extension of filing time for minor subdivision, 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. Dwyer explained to the Board that his clients received subdivision approval, but have been unable to receive DOT approval. He explained that they cannot file the subdivision without this approval. He asked the Board for a six-month extension of filing time. The Board explained that it could take longer than six months and asked if a 12-month extension would be better? Mr. Dwyer explained that he hoped it wouldn't take 12 months to get the approval, but agreed to the 12 months.

Mr. Waterman made a motion to approve a 12-month extension. The motion was seconded by Mr. Brand.

VOTE:	Mr. Armbruster	YES	Mr. Brand	YES
	Mr. DiStefano	YES	Mr. Utsch	YES
	Mr. Waterman	YES	Mr. Kobik	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 single family dwelling on a lot deficient in lot area, frontage & width, submitted by Christian Jurvic for the location known as Block 517, Lots 37 & 38, 2 Pinewood Road.

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

Mr. Christian Jurvic, applicant, and Mr. William Sweeney, Licensed Land Surveyor, were sworn in by Chairman Hanson.

Mr. Dwyer explained Mr. Sweeney did an analysis of the properties around the subject property. Mr. Dwyer had this report marked into evidence. Mr. Sweeney reviewed the report with the Board indicating the number of conforming and non-conforming properties in the area.

Mr. Dwyer explained that the proposed single family dwelling would meet all setbacks and building coverage. Mr. Sweeney explained that there wouldn't be a negative impact to the area if approved.

This portion of the hearing was opened to the public.

Mr. Robert Franklin was sworn in by Chairman Hanson.

Mr. Franklin explained that he has concerns with increased traffic. He feels that it is a safety hazard adding another driveway. He explained that he feels quality of life to the area would diminish.

Mr. Michael McGinnis was sworn in by Chairman Hanson.

Mr. McGinnis explained that his concern is with the wells in the area. He feels an another well could impact the area.

Mrs. Cynthia Henry was sworn in by Chairman Hanson.

Mrs. Henry explained the 75' frontage requirement should be adhered too. She explained there isn't a benefit to the Township or neighborhood to approve this application.

Mr. Robert Lambert was sworn in by Chairman Hanson.

Mr. Lambert explained that he has concerns with increased density and safety. He explained that he also has concerns with another well in the area.

Mrs. Joan McGinnis was sworn in by Chairman Hanson.

Mrs. McGinnis explained that she is asking the Board to look at the lot before they act on this application. She explained that she feels this lot is too small.

This portion of the hearing was closed to the public.

The Board explained that they are not clear about the plan. Mr. Dwyer explained that Mr. Jurvic also owns the property on Shore Drive which is developed. He explained that a subdivision is not needed because the lot is "L" shaped.

Mr. Galestok explained that prior to this application, he had sent the survey to the Planning Board Solicitor for a determination whether a subdivision was needed. The reason he sent it to the Planning Board Solicitor is because there was a shed on the property. The Solicitor determined that a subdivision was not needed and it was a separate parcel.

The Board explained that no one likes undersized lots, but this is undersized. Mr. Galestok explained the NJDEP handles water issues.

The Board explained that they were not creating an undersized lot. This lot already exists. If the Board were to deny the application, it would be inverse condemnation and the Township would have to purchase the lot.

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

VOTE:	Mr. Armbruster	YES	Mr. Brand	YES
	Mr. DiStefano	YES	Mr. Utsch	YES
	Mr. Waterman	YES	Mr. Kobik	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.

- 7. Use variance & minor subdivision applications for the creation of three newly described lots, submitted by Bernard Dera for the location known as Block 410.01, Lot 71.03, 42 East Greenwood Avenue.

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

Mr. Dwyer explained that he would like to continue this application until next months meeting agreeing to waive all time constraints.

Chairman Hanson called for a short recess at 8:15 P.M. The meeting was called back to order at 8:20 P.M.

- 3. Use & hardship variance, preliminary & final site plan & waiver applications to reestablish an automobile repair facility. Use variance needed for not having residential use. Hardship variance needed for sign area, submitted by Louis H. Altobelli, Jr., for the location known as Block 500.01, Lot 20.03, 600 Seashore Road.

Mr. Galestok excused himself from this application due to a conflict of interest.

There was a discussion that the six Board members present last month were present tonight. There are two additional Board member's presents tonight that did not listen to the recording from last month. Therefore, they will not be able to vote tonight. However, they could participate in the meeting tonight.

Mr. Harvatt read into the record the Board members that were present last month. He

also explained that at closing of last months meeting, the public portion of the hearing was still open. He explained that generally the Board would deliberate after all public is heard and proceed to vote. Mr. Sandman explained that he does have some rebuttal witnesses to present tonight. Mr. Harvatt explained to the Board they may want to let Mr. Sandman present his witnesses and then proceed with the public portion.

Mr. Christopher Baylinson, Esq., representing Scott and Eileen Nusser, explained that he did not have a problem with Mr. Sandman's witnesses as long as they were rebuttal witnesses and not presenting new evidence.

Mr. Sandman explained that they were originally proceeding with the site plan application, but he will set that application aside and just proceed with the use variance application.

Mr. Joe Roop was sworn in by Chairman Hanson.

Mr. Roop explained that his father had an auto repair shop at this location in 1957 until 1962 when it closed. He explained that in 1977 that building was rented for auto repair only for a few months. He explained after that Mr. LePor used it for repair of his commercial vehicles.

Mr. Baylinson asked Mr. Roop when his father sold the property? Mr. Roop explained that he believes it was in 1963. He explained that from around 1962 to 1977 Mr. LePor used the building for his private use. He explained that in 1977, he opened to the public for repairs for only a couple months. He explained that during these couple months, he was the sole person working there. He explained after he closed the business in 1977, to his knowledge, it hasn't been opened to the public.

Mr. Baylinson had marked into evidence a survey done by Mr. Lewis Conley from 1983 for Blocks 500.01, Lots 20.01, 20.02 and 20.03.

Mr. Baylinson asked Mr. Roop if the survey showed what his father owned? Mr. Roop explained that his fathers house was there along with a shop on the south side of the property back in the 1940's.

Mr. Sandman asked Mr. Roop when the property was subdivided? Mr. Roop explained he wasn't sure, but the building was used as a repair shop after the subdivision.

Mr. Peter Matthews was sworn in by Chairman Hanson.

Mr. Matthews explained that he worked as a mechanic with Mr. Roop until 1971. He explained that he lived across the street and remembers this building being built.

Mr. Sandman explained that he would like to have Mr. Ernest Long sworn and testify. A Board member explained that at last months meeting, it was discussion that the letter was from his wife's uncle. It was decided that there wouldn't be an objection if the letter was read into the

record, and the Board member could continue to hear the application. The Board member explained that if Mr. Long was going to testify, he would have to step down from the application. Mr. Harvatt explained that if that happens, there would only be five voting members tonight. He explained that two Board members present tonight have not listened to the tapes from last months meeting. He explained that if Mr. Sandman decided to proceed, he could proceed with the five voting members. Or he would have to wait until the two Board members had the opportunity to listen to last months testimony and vote at a future meeting.

Mr. Baylinson explained that if Mr. Long was going to present new testimony he would object. Explaining that Mr. Long's letter was read into the record at last months meeting.

Mr. Sandman asked Mr. Matthews when the last time he was in the building? Mr. Matthews explained that he was in the building several weeks ago. He explained that there was a dumpster inside and they were cleaning out all the old repair equipment.

This portion of the hearing was opened to the public.

Mr. Richard Matthews was sworn in by Chairman Hanson.

Mr. Matthews explained that he had about 13 pages of comments that he would like to submit. Mr. Harvatt explained that he could not submit the comments. He explained to Mr. Matthews that he could read them into the record.

Mr. Matthews explained that he understands that a certificate of non-conforming use would have had to been obtained prior to 1981. He explained that there wasn't an auto repair facility there in 1981. He explained that this then becomes an issue of abandonment.

Mr. Matthews explained that there are six auto repair facilities within a one mile radius of this property. He explained that there isn't a need for another.

Mr. Matthews explained that the burden of proof is on the applicant that this is a suitable use for the location. He explained that with all the variances needed it's not.

Mr. Abdelkrim Fadel was sworn in by Chairman Hanson.

Mr. Fadel explained that when he was in the process of purchasing his property, he had asked the real estate agent if this was a working garage. He explained that he is against this application.

Mr. John De La Cretaz was sworn in by Chairman Hanson.

Mr. De La Cretaz explained that he has never seen a bay door open at this location. He explained that his opinion is the use was abandoned.

Mr. Paul Mirabile was sworn in by Chairman Hanson.

Mr. Mirabile explained that this is a non-conforming use for the area.

Mrs. Deborah De La Cretaz was sworn in by Chairman Hanson.

Mrs. De La Cretaz explained that she has concerns that Weeks Landing Road is very narrow. She explained that she is concerned with the safety of the children on the street. She explained that fire protection is also a concern.

Ms. Frances Garretson was sworn in by Chairman Hanson.

Ms. Garretson explained that she has concerns about the children in the area. She explained that what is proposed would increase the traffic to the area.

Ms. Judy Holland was sworn in by Chairman Hanson.

Ms. Holland explained that in 1975, she sold a pick-up truck to Mr. LePor. She explained that no repair work was being done at that time. She explained that she also has concerns with emergency access to Weeks Landing Road.

Mrs. Donna Hansen was sworn in by Chairman Hanson.

Mrs. Hansen explained Weeks Landing Road is very narrow. She explained that it is nearly impossible for two cars to pass on the street. She explained that this is a very dangerous street because of the size of the road.

Ms. Joni Roth was sworn in by Chairman Hanson.

Ms. Roth explained she moved to Weeks Landing Road five years ago and the realtor at the time told her that this could never be a repair garage. She explained that she has concerns if this is approved with the property values decreasing and the safety of the children on the street.

Ms. Patricia Gallagher was sworn in by Chairman Hanson.

Ms. Gallagher explained she has two children and concerned with their safety. She explained that Weeks Landing Road is a very narrow street. She explained that she is against this application.

Mr. Ed McCandless was sworn in by Chairman Hanson.

Mr. McCandless explained no one wants to live next to a repair garage. He explained that this would be a bad use in with the neighborhood.

Ms. Marilyn Matthews was sworn in by Chairman Hanson.

Ms. Matthews explained that she has lived in the area for 55 years. She explained that

Weeks Landing Road was always considered a fire road. She explained that she thinks this garage is a bad idea for the area.

This portion of the hearing was closed to the public.

The Board explained they feel abandonment is the issue. Mr. Sandman submitted a tax bill from 1991 that indicated a garage and service station.

Mr. Sandman explained that his client could have purchased the property and applied for a mercantile license. He explained that it would have gone to the Solicitor for a recommendation. He explained that there is case law, NJSA 40:55D68, which he read into the record. He explained that the Ordinance does not distinguish between open to the public or working on ones own commercial trucks. Mr. Sandman also read the definition of 'automotive centers' from the Ordinance.

Mr. Sandman explained that case law says that if there was substantial change a use would be abandon. He explained that with this property, there was no intent to abandon. He explained that the building has not changed in appearance from when it was built. He explained to look at the building, it is obvious there was no intent to abandon.

Mr. Baylinson explained that Mr. Roop sold the property to Mr. LePor and the public use of the property was closed. He explained that the property was used more like a contractor's yard then an auto repair building. He explained when the Ordinance changed in 1981 the building was used for private use. Not opened to the public. So therefore a certificate of non-conforming use does not apply.

Mr. Baylinson explained that there has been no testimony for positive or negative criteria to grant a use variance.

Mr. Harvatt explained to the Board that they have two issues. The first being the non-conforming use and the issue of abandonment. He explained that the burden was on the applicant to prove. He explained the question was to whether the burden was met and was the structure a garage to repair cars. He read a section from COX 'Borough of Saddle River v. Bobinski'.

Mr. Harvatt explained that first the Board must determine if the use was legal at the inception of the Ordinance. After much discussion from the Board, it was determined that the use was legal at the inception of the Ordinance.

There was a discussion pertaining to whether the use was abandoned. It was discussed that if the property was used as an automobile facility, why wasn't there updated equipment? Is storage of antique cars a continuing use? Or is working on cars a hobby?

Mr. Waterman made a motion that the existing non-conforming use was conforming at the inception of the Ordinance. The motion was seconded by Mr. Armbruster.

VOTE:	Mr. Armbruster	YES	Mr. DiStefano	YES
	Mr. Utsch	YES	Mr. Waterman	YES
	Mr. Kobik	YES	Chairman Hanson	YES

Motion carried.

Mr. Kobik made a motion that the applicant has established that the owner has not abandoned the previous non-conforming use. The motion was seconded by Mr. Armbruster.

VOTE:	Mr. Armbruster	NO	Mr. DiStefano	NO
	Mr. Utsch	NO	Mr. Waterman	NO
	Mr. Kobik	NO	Chairman Hanson	NO

Motion denied.

Mr. Sandman explained that he would like to withdraw without prejudice the use variance application.

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

VOTE:	Mr. Armbruster	YES	Mr. DiStefano	YES
	Mr. Utsch	YES	Mr. Waterman	YES
	Mr. Kobik	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.

Mr. Waterman made a motion to adjourn at 10:52 P.M. The motion was seconded by Mr. Armbruster. 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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