

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 April 7, 2011 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
Kristine Trusiak
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:

The New Jersey Planner: February-March 2011 - Vol. 72, No. 1.

List of Board Solicitor vouchers dated April 5, 2011.

List of Board Engineer voucher dated April 7, 2011.

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

Mr. Utsch made a motion to approve the March 3, 2011 minutes. The motion was seconded by Mr. Waterman. Motion carried.

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

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

Chairman Hanson explained that he had some questions regarding the Amusement Partnership USA resolution and that resolution would be withdrawn at this time.

Mr. Waterman made a motion to approve the Resolutions from the March 3, 2011 meeting. The motion was seconded by Mr. Sweeten. Motion carried.

There was a discussion regarding the Amusement Partnership USA resolution. It was discussion that on the first page, it indicates the first extension in 2006 and the Board did not think it was the correct date. It was explained that the reason this extension was denied was because of the previous use variance approval for the solar farm and not having multiple use variances on one property.

Changes were made to the resolution and Mr. Harvatt read the resolution into the record.

Mr. Waterman made a motion to approve the Amusement Partnership USA Resolution. The motion was seconded by Mr. Utsch. Motion carried.

1. Discussion of request for second extension of hardship variance approval, submitted by Beverly Jordan for the location known as Block 494.49, Lot 10, 304 Baywood Drive.

Ms. Jordan explained that she was here for an extension of her hardship variance approval.

Mr. Galestok explained that this is a discussion only. He explained that it is up to the Board whether to entertain an extension or if a new application was needed.

Ms. Jordan explained that she would like the extension. She explained that she has received DEP approval and would like to sell the lot.

Mr. Galestok explained to the Board that Ms. Jordan received a hardship variance approval in 2002. Then in 2005 she received an extension. Also, in the 2005, she received another hardship variance approval. In 2008 she received an extension of approval. He explained that the Board must determine whether Ms. Jordan can apply for another extension.

Mr. Dwyer explained that he represented Ms. Jordan. He explained that they had to go through at least two appeals with the DEP, but have finally received their approval.

The Board asked Mr. Galestok about 'tolling of time'. Mr. Galestok explained 'tolling of time' is when the Board has approved an application, but the applicant has not yet received State approval. He explained that in that situation, the applicant can request an extension. He explained that they have received two approvals and two extensions.

There was a discussion regarding an extension versus a new application.

The Board asked Ms. Jordan if it was the same approval as originally approved by the Board? Ms. Jordan explained that it is the same.

The Board explained to Ms. Jordan they would be comfortable with an extension and she should make application for next month's meeting.

2. Hardship variance application to construct a sunroom above an existing deck encroaching into the rear yard setback and exceeding the allowed building coverage, submitted by Harold & Elizabeth Schiffbauer for the location known as Block 753.19, Lot 3, 8 Hatteras Drive.

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

Mr. Harold Schiffbauer and Mrs. Elizabeth Schiffbauer, applicants, and Mr. Michael DiPalantino, contractor, were sworn in by Chairman Hanson.

Mr. Dwyer explained to the Board that the property is located in the R-3 zoning district.

He explained there is an existing rear deck that his clients would like to construct a sunroom upon. He submitted into evidence photographs of the existing deck. He explained the sunroom would be the same size as the deck. He explained that this is the logical location on the property to construct the sunroom. He explained that what is proposed is not a deterrent to the neighbors.

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. Shiffbauer explained he had taken pictures of the surrounding area with similar setbacks. He explained that there will not be windows only screens.

Mr. Brand 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. Sweeten	YES
	Chairman Hanson	YES		

Motion carried.

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

- 4. Interpretation as to whether Lots 4 & 5.01 have merged, submitted by Adam George, Inc., for the location known as Block 451.01, Lots 4 & 5.01, 547 Seashore Road & 549 Seashore Road.

Ms. Dale Laster Lessne, State Deputy Attorney General, was present in opposition of this application. She explained that she understands that one of the Board members is being represented by Mr. Dwyer for an application and questioned whether he should step down from this application? Mr. Harvatt explained that he did not see a problem with the Board member in question sitting on this application.

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

Mr. Joseph Baals, applicant, and Mr. Joseph Maffei, PE, PP, were sworn in by Chairman Hanson.

Mr. Dwyer explained that his client has owned this property since 1986. He had submitted into evidence a survey of the property from 1986.

Mr. Baals explained that since he has owned the property, he receives two tax bills. Mr.

Dwyer explained that the assessment on Lot 5.01 has been reduced. He explained that the lots may not have one acre each, but most of the area is small lots. He explained that on Lot 4 there are four bungalows and a garage with a slight encroachment. He explained that the encroachment of the garage is a lean-to, which could easily be removed.

Mr. Dwyer explained that the DOT is condemning his client's lands for the extension of Breakwater Road. He explained that MV Engineering has said that the lots have merged. He explained that there is case law that the lots have not merged. He submitted into evidence the case law for McDowell vs. Township of Wall.

Mr. Dwyer asked Mr. Maffei if a letter was sent from his firm to Cape May County Health Department inquiring if there was septic availability on Lot 5.01? Mr. Maffei explained they did. Mr. Dwyer asked if a letter was received back from the County Health Department that septic is available for this lot? Mr. Maffei explained they did. Mr. Dwyer had a letter dated December 21, 2010 from EDA Engineering to the County Health Department and a letter dated December 22, 2010 from the County Health Department to EDA Engineering submitted into evidence.

Mr. Dwyer explained he is asking this Board to determine that Lot 4.01 has not merged with Lot 5.

Mr. Dwyer asked Mr. Baals if Lot 5.01 has been vacant since he purchased the property? Mr. Baals explained it has been. He explained there is no well or septic system on the property.

The Board asked if building #3 as indicated on the plan was a permanent structure? Mr. Baals explained the garage is permanent, but the lean-to can be taken down in 20 minutes. The Board explained that in the past, if a lot has been used as one lot, it's one lot. Mr. Baals explained that the encroachment is only a foot and it's the lean-to. Mr. Baals marked on a survey what part of the garage was concrete and what part was the actual lean-to. He explained that the garage itself does not encroach.

Ms. Lessne explained that she represents the State for taking of land. She explained the State took a good bit of Lot 5.01 for the Breakwater Road extension.

Ms. Lessne read section 400-33A(1), Nonconforming lots, structures and uses. She explained that the lots are contiguous and non-conforming. She explained that the owner purchased the lots at the same time and both are listed in the same deed. She had marked into evidence the deed for the property.

Ms. Lessne submitted into evidence a letter from MV Engineering to William Galestok and the response letter from William Galestok to MV Engineering. She read Mr. Galestok's letter into the record. She explained that the case law that was submitted by Mr. Dwyer is pertaining to a lot where a road goes through the lot.

Ms. Lessne asked Mr. Maffei if the survey of the lot question reflects the dimension of

both lots? Mr. Maffei explained it did. He explained that the plan shows a parcel of land with two individual lots.

Mrs. Cynthia Chemerys, PE, PP, for the State, was sworn in by Chairman Hanson.

Mrs. Chemerys explained that if the Lots were viewed separately, Lot 4 has 15 non-conformities. If merged with Lot 5.01, there would be five non-conformities.

Mrs. Chemerys had marked into evidence a plan of the existing conditions. She reviewed the plan with the Board. She explained that there is an encroachment, therefore it is one property.

The Board asked what the property was assessed? Ms. Lessne explained it didn't matter what the assessment was. She explained that they were here tonight regarding a merger of lots.

Chairman Hanson called for a short recess at 8:35 P.M. The meeting was called back to order at 8:42 P.M.

Chairman Hanson explained the Board does not take new testimony after 10:00 P.M. He explained that it is fair to assume that the last two applications on the agenda would not be heard tonight.

7. Hardship variance application to construct an addition encroaching into the side yard setback, submitted by Charles & Barbara Dick for the location known Block 752.01, Lot 36.01, 1057 Shunpike Road, South of Canal.
8. Hardship variance application to construct a porch encroaching into the front yard setback and exceeding allowed building coverage, submitted by George Doherty for the location known as Block 500.02, Lot 9, 552 Seashore Road.

Mr. Peter Tourison, Esq., representing Charles and Barbara Dick and George Doherty, agreed to waived time constraints for both applications until the May 5, 2011 meeting.

4. Interpretation as to whether Lots 4 & 5.01 have merged, submitted by Adam George, Inc., for the location known as Block 451.01, Lots 4 & 5.01, 547 Seashore Road & 549 Seashore Road.

Mrs. Chemerys explained both lots are non-conforming and according to the Ordinance would merge. She explained that she didn't feel the case law that was submitted applies in this case.

Marked into evidence was the first page of the State appraisal.

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.

Ms. Lessne explained she submitted a letter to Mr. Harvatt regarding this situation. She explained that the Ordinance speaks for itself. She explained that both lots are non-conforming. She explained that the lots were purchased together.

Mr. Dwyer explained lots are created by the map filing law. He explained that sometimes when lots were created, zoning was not in effect at that time. He explained that if lots are owned side by side, the owner has the option of coming before the Board for an interpretation or subdivision and variances. Mr. Dwyer explained his client chose to come before the Board for an interpretation because they do not feel the lots have merged. He explained his client purchased the lots and receives two tax bills. They do not feel the lots have merged.

The Board deliberated about all the testimony presented tonight by both sides.

Mr. Armbruster made a motion that Lots 4 and 5.01 have not merged. The motion was seconded by Mr. Brand.

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. Three year extension of use variance approval for Carroll Lippman & Martha Halbruner for the location known as Block 775, Lots 1-5 & 20-23, 908-936 Wissahickon Avenue.

No one was presented for this application.

There was a discussion that the Board has approved extensions before without the applicant being present.

Chairman Hanson explained that there was an informal discussion last month regarding this property.

The Board explained that they felt comfortable proceeding with this application.

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 approve a three-year extension. The motion was seconded by Mr. Utsch.

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

- 6. Use variance, preliminary & final site plan applications to construct 35 age restricted single family residences in a condominium regime, submitted by Bruce & Eliza Waterman for the location known as Block 495.01, Lot 13.01, 115 Breakwater Road.

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

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

Mr. Bruce Waterman, applicant, Mr. Joseph Maffei, PE, PP, and Ms. Christina Amey, Architect, were sworn in by Chairman Hanson.

Mr. Maffei explained to the Board that the property is located in the General Business zone. He explained the Waterman's are proposing a 35-unit senior housing development in a condo regime. He explained he doesn't feel there would be a detriment to the area if approved for residential use. He explained he feels a commercial use would be a detriment. He explained there have been similar uses approved in the general area with similar density as what is proposed.

Mr. Maffei explained the development would be single family units and have 12 foot separation between them. He explained the wetlands have been delineated. He explained they are proposing a landscape buffer along Breakwater Road. He explained that if the Board approves this application, they would proceed to CAFRA. He explained the site would be serviced by city water and sewer.

Mr. Galestok read Bureau of Fire Safety comments dated March 30, 2011.

Ms. Amey explained she reviewed the building codes. She explained that according to the fire code, if the separation is less than five feet, a one hour separation is needed. If more than five feet, no fire separation is needed. Submitted into evidence was the section of the building code pertaining to fire separations.

Marked into evidence were elevation drawings of the proposed units.

Mr. Galestok explained the side yard setbacks for the General Business zone are six feet each.

The Board explained that at last months informal discussion, they thought the structures would be one-story. Mr. Waterman explained they went and looked at another senior development in Middle Township. He explained that they were set up in a similar matter. The master bedroom on the first floor with everything else on the second floor.

Ms. Amey explained that what is reflected on the plan will not be box looking homes. She explained the plan reflects the maximum footprint of the homes.

The Board explained the plan does not indicate any amenities. Mr. Waterman explained they had looked at similar developments and there wasn't anyone using the amenities.

Mr. Waterman explained that the State Master Plan has this area as a high density area. He explained he feels single family dwellings are more appealing then townhouses. He explained that this development has to be a condominium development. He explained there will be a homeowner's association. He explained that the streets would be private as well as the drainage. Mr. Dwyer explained there would be a lawn service to maintain all the grounds.

The Board explained they had concerns with the density. Mr. Maffei explained they could do townhouse units, but what happens is the end unit's sell, but not the middle ones.

The Board explained they like the concept, but maybe the number of units could be reduced. Mr. Dwyer explained they would eliminate the corner unit. He explained that it is possible the County would require an easement for future road widening.

Mr. Sray summarized Engineer comments dated April 1, 2011.

Mr. Maffei explained the road would be 28 feet wide and there would be sidewalks.

There was a discussion about duplex units. Mr. Waterman explained he had brought an application for duplex units further down the road and the neighbors were against duplexes.

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 unit 10 would be reduced in size to meet a 20-foot setback. Mr. Waterman explained he would eliminate the corner unit and space the adjacent units equally.

There was a discussion regarding the distance between the units. The Board expressed that they would like more distance between the units. Mr. Waterman explained he would reduce the development by two units, but needs some feedback from the Board as to what distance they would like between the units.

Mr. Brand made a motion to conditionally approve the use variance application for 33 units. The motion was seconded by Mr. Utsch.

VOTE:	Mr. Armbruster	ABSTAIN	Mr. Brand	YES
	Mr. DiStefano	YES	Mr. Utsch	YES
	Mr. Sweeten	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.

Mr. Sweeten made a motion to adjourn at 10:08 P.M. The motion was seconded by Mr. Brand. 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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