

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.

DUE TO COVID-19 AND SOCIAL DISTANCING REQUIREMENTS, THE MEETING WAS CONDUCTED THRU THE GO TO MEETING FORMAT AND WAS VIDEO AND AUDIO

LOWER TOWNSHIP ZONING BOARD

A regularly scheduled meeting of the Zoning Board of Adjustment was held on December 3, 2020 at the Lower Township Municipal Building. The meeting was called to order at 6:06 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
David F. Brand, Jr.
Ernest Utsch III
Robert Sweeten
George Doherty
Robert Basco, Sr.

MEMBERS EXCUSED: Michael Kennedy
Bruce Waterman

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

CORRESPONDENCE:

Handouts:

List of Board Solicitor vouchers dated December 2, 2020.

List of Board Engineer vouchers dated December 3, 2020.

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

Mr. Brand made a motion to approve the minutes from the November 5, 2020 meeting. The motion was seconded by Mr. Utsch. Motion carried.

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

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

Mr. Utsch made a motion to approve the resolutions from the November 5, 2020 meeting. The motion was seconded by Mr. Brand. Motion carried.

1. Use & variance applications to construct a 60 x 27 addition to an existing clubhouse on a lot deficient in lot frontage, submitted by Bayshore Sportsman Club, Inc., for the location known as Block 410.01, Lots 67 & 65.04, 315 Arizona Avenue.

Chairman Hanson explained at least two Board members present tonight have to excuse themselves from this application because they are members of the club and there would be no quorum for this application.

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

Mr. Gelzunas explained he had sent information to Mr. Harvatt regarding this situation. Mr. Harvatt explained he reviewed the information Mr. Gelzunas sent and explained the Board could proceed with the full disclosure that they are members of the club and also as long as they were not officers with voting privileges. Mr. Harvatt asked the two Board members how long they were members and if they were officers.

Chairman Hanson explained he has been a member for a dozen years and does not hold any position with the club. Mr. Utsch explained he does not hold a position in the club.

Mr. Gelzunas explained the two Board members do not have voting privileges and they are not officers so he would like to proceed with the application.

Mr. Gelzunas explained the property is at the end of Arizona Avenue. He explained they have a very small building and they would like to construct an addition that would be ADA compliant with a bathroom and ramp. He explained the property is 39 acres with 95% being in the Industrial Zone. He explained a small section is in the R-3 Zone and that is where the clubhouse is.

Mr. Vince Orlando, PE, and Mr. Skip Loughlin, President of the Club, were sworn in by Chairman Hanson.

Mr. Orlando explained they would like to construct a 1,663 sq. ft. addition with ADA accessibility. He explained there is no road frontage. He explained the Sportsman Club has been at this location for many years. He explained this location is an appropriate use for this property. He explained what is proposed is not a detriment to the zone, zone plan or public good. He explained what is proposed is approximately 1,500' away from the closest residential use.

Mr. Loughlin explained they have quite a few active members. He explained the existing clubhouse has never been upgraded. He explained they have some elderly members and the existing facility cannot accommodate them. He explained what is proposed would have ADA accessibility. He explained they are not proposing anything more than what they currently do. They would just have a larger building.

Mr. Gelzunas asked Mr. Loughlin if this addition would allow the social distancing required due to Covid? Mr. Loughlin explained it would.

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

VOTE:	Mr. Brand	YES	Mr. Utsch	YES
	Mr. Sweeten	YES	Mr. Doherty	YES
	Mr. Basco	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.

2. Use variance & preliminary and final site plan applications to construct a 145' tall wireless communication monopole with a 5' lightning rod and an equipment compound and equipment, not meeting the height requirement, submitted by New Cingular Wireless PCS, LLC d/b/a AT & T Mobility for the location known as Block 410.01, Lot 36.01, Breakwater Road.

Mr. Warren Stilwell, Esq., represented the applicant.

Mr. Stilwell explained his client has a lease with the DRBA to construct a communication tower. He explained the property is in the Industrial Zone. He explained a public utility use is permitted as a conditional use. He explained they meet all the conditions except the height requirement.

Mr. Andrew Petersohn, PE, Mr. Michael Moore, PE and Mr. James Miller, PP, were sworn in by Chairman Hanson.

Mr. Petersohn explained there are areas within the Township that do not have coverage.

Marked into evidence as A-1 was an AT & T existing reliable coverage map.

Mr. Petersohn explained there are two other towers and a water tank that AT & T have antennas within the Township.

Marked into evidence as A-2 was a proposed AT & T reliable coverage area map. Mr. Petersohn reviewed the map with the Board.

Mr. Petersohn explained the towers would be evenly spaced as possible to provide for coverage. He explained the proposed height satisfies the need for coverage. He explained the height would not interfere or be a hazard to the airport. He explained the FAA required lighting will be provided.

The Board asked if they have received FAA approval for the tower? Mr. Harvatt explained they would have to comply and receive all other required approvals. He explained this will be in the resolution.

The Board asked what the distance between the water tower and the proposed tower would be? Mr. Petersohn explained it would be less than 500'.

The Board asked why antennas could not be placed on the water tower? Mr. Petersohn explained another person would be talking about that.

Mr. Moore shared screen. He reviewed the site plan. He explained the tower would be 145' with a 5' lightning rod. He reviewed the coverage area. He explained other carriers can co-locate on the tower. He explained AT & T did approach the Lower Township MUA but the deal fell through.

Marked into evidence at A-3 was the lease agreement with the DRBA.

Mr. Moore reviewed the proposed layout as per the agreement with the DRBA. He explained the driveway would be off of Intrepid Road and the proposed compound would be behind the trees. He explained there would be one to two visits a month, but it is usually monitored remotely from the main office. He explained the storage facility is the closest building to the tower. He explained the closest residences are across Breakwater Road. He explained the compound would be 50 x 50. He explained there would be no drainage issues with the proposal.

The Board asked if there would any structures within fall distance? Mr. Moore explained there are no structures within falling distance.

Mr. MacPherson summarized Engineer comments dated August 28, 2020.

It was explained the Cape May County Planning Board waived the application in a letter dated September 14, 2020.

Mr. Steven Wilcox was sworn in by Chairman Hanson.

Mr. Wilcox explained he works for Smart Link to search for properties for cell providers. He explained they approached the Lower Township MUA and could not come to an agreement with them. He explained the MUA does not own the land under the water tower. He explained that the lease agreement the MUA has with the DRBA is once the negotiations have stopped and begun with the DRBA, the MUA cannot begin negotiations again. He explained because they couldn't come to an agreement with the MUA, they approached the DRBA and worked out a deal.

Mr. Miller reviewed the positive and negative criteria with the Board. He explained what is proposed would advance the health, safety and welfare, provide adequate light, air and open space and provide adequate fencing for the compound and tower.

This portion of the hearing was opened to the public.

Mr. Mike Chapman, Executive Director of the MUA was sworn in by Chairman Hanson.

Mr. Chapman explained to the Board they did begin negotiations with AT & T. He explained they hired lease consultants to negotiation with AT & T. He explained he did contact Michelle from the DRBA and she said they could lease to AT & T. He explained they reached out to AT & T's attorney and did not get a response.

There was a discussion regarding what transpired.

Mr. Wilcox explained the last they heard from Mr. Chapman was June 2019.

Marked into evidence as A-4 was the lease between the DRBA and the MUA.

Mr. Wilcox explained they negotiated with the DRBA and the lease agreement is less than half of what the MUA wanted.

This portion of the hearing was closed to the public.

There was a discussion there is no FAA approval letter, but that would be a condition of approval. What is proposed does serve the public good. The water tower does have the height that would be needed for antennas.

Mr. Stilwell explained that he's not sure he would like to proceed with a vote tonight and maybe want to carry this application for a month. There was a discussion that there is a full Board. Mr. Harvatt explained the applicant has a lease with the DRBA. He explained the MUA is bounded by their lease with the DRBA. He explained that once negotiations began between the DRBA and AT & T, the MUA could not proceed with negotiations with AT & T.

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

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

Motion denied.

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

3. Use variance application to expand a duplex, submitted by Linda & Fenton Breithaupt for the location known as Block 227, Lots 15-17, 129 Cardinal Avenue.

Mr. Robert Fineberg, Esq., represented the applicant.

Mr. Fineberg explained the property is on the corner of Cardinal and Glenwood Avenues. He explained they purchased the property in 1993 as a duplex and they would like to construct a 22 x 27 addition to the side of the building for his client's daughter and family.

Ms. Kathleen Mandziuk was sworn in by Chairman Hanson.

Ms. Mandziuk explained to the Board the addition would be another bedroom explaining one bedroom and bathroom are existing. She explained there are two gas services and two sewer services to the property.

Ms. Mandziuk explained what is proposed is compatible to the street scape in the area. She explained what is proposed meets the allowed setbacks.

This portion of the hearing was opened to the public.

Mr. Jim Klotz was sworn in by Chairman Hanson.

Mr. Klotz explained he is in favor of this application.

Mr. Steve Grunwald was sworn in by Chairman Hanson.

Mr. Grunwald explained he was in favor of this application.

This portion of the hearing was closed to the public.

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

VOTE:	Mr. Brand	YES	Mr. Utsch	YES
	Mr. Sweeten	YES	Mr. Doherty	YES
	Mr. Basco	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 & preliminary & final site plan applications to construct an operate a wireless communication facility with a 147' tower and equipment area, submitted by New Cingular Wireless PCS, LLC d/b/a AT & T Mobility for the location known as Block 501, Lot 30, 780 Seashore Road.

Mr. Warren Stilwell, Esq., represented the applicant.

Mr. Stilwell requested this application be continued until the January 7, 2021 meeting agreeing to waive time constraints.

4. Use & hardship variances & minor subdivision applications for the creation of two (2) newly described lots. Use variance to allow residential in a GB-II zone and hardship variances needed for lot area & front yard encroachment, submitted by Cape Home Investments, LLC for the location known as Block 334.13, Lots 3 & 4, 2300 Bayshore Road.

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

Mr. Stagliano explained the property is 15,500 square feet in total lot area. He explained

the property is vacant expect for a garage. He explained the property is a split zone between the GB-II and R-3 Zoning Districts. He explained his client would like to create two lot and construct a single family dwelling on each lot. He explained a use variance is needed because residential in not a permitted use in the GB zone.

Mr. John Kornick, PE, was sworn in by Chairman Hanson.

Mr. Kornick explained to the Board approximately 31% of the property is located in the R-3 Zone with the balance of the lot in the GB zone. He explained they have researched the property back to the 1930's and have found there have been no structures on the property. He explained what they are proposing is consistent with the area. He explained there would be an 8' wide dedication to the County for future road widening. He explained both lots would have access from Texas Avenue.

Mr. Kornick explained they would like to apply the R-3 with sewer requirements to the lots. He explained both lots would have city water and sewer. What is proposed is a suitable location for single family dwellings. He explained there would be no detriment to the area, public good, Master Plan, zoning plan or zoning ordinance.

Mr. Marcello Mogavero, applicant, was sworn in by Chairman Hanson.

Mr. Mogavero explained everything Mr. Kornick testified to is true and accurate. He explained what is proposed is consistent with the area.

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

VOTE:	Mr. Brand	YES	Mr. Utsch	YES
	Mr. Sweeten	YES	Mr. Doherty	YES
	Mr. Basco	YES	Chairman Hanson	YES

Motion carried.

Mr. Brand made a motion to conditionally approve the minor subdivision and hardship variance applications. The motion was seconded by Mr. Basco.

VOTE:	Mr. Brand	YES	Mr. Utsch	YES
	Mr. Sweeten	YES	Mr. Doherty	YES
	Mr. Basco	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. Hardship variance application to construct a 30 x 36 detached garage larger and taller than the principal structure, submitted by Nicholas Emigholz for the location known as Block 393.13, Lot 2, 313 Townbank Road.

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

Mr. Nicholas Emigholz, applicant, was sworn in by Chairman Hanson.

Mr. Gelzunas explained his client would like to construct a 30 x 36 detached garage that would be larger and taller than the house. He explained they are proposing a 10' rear yard setback and a 12' side yard setback. He explained these setbacks are greater than what the zoning allows. He explained the house is small, but if it were larger, they would not be before the Board tonight.

Mr. Emigholz explained to the peak the garage would be 17'6". He explained the garage is for personal use only. He explained he has two historic cars and this garage would allow him to store the cars and work on them from time to time. He explained there would be a 2-tiered rack system for the cars.

The Board asked what the height of the house was? Mr. Emigholz explained it was 16' to the peak. Mr. Gelzunas explained that if someday they add a second story to the house, they would comply.

The Board explained the proposed garage is quite large and asked if any commercial use was proposed? Mr. Emigholz explained the garage was for personal use only.

This portion of the hearing was opened to the public.

Mr. Frank Wheeler was sworn in by Chairman Hanson.

Mr. Wheeler explained he has concerns with the size of the building. He asked if there was going to be a lift and/or compressor? Mr. Emigholz explained the building would be fully insulated and sheathed.

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. Brand.

VOTE:	Mr. Brand	YES	Mr. Utsch	YES
	Mr. Sweeten	YES	Mr. Doherty	YES
	Mr. Basco	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.

9. Extension of hardship variance approval, submitted by Fabio Pawlus for the location known as Block 86, Lots 5-7, Hudson Avenue.

Mr. Fabio Pawlus, applicant, was sworn in by Chairman Hanson.

Mr. Pawlus explained to the Board that he had received approval to construct a single family dwelling on an undersized lot. He explained that approval has expired. He explained he is seeking an extension.

There was a discussion regarding a three-year extension to expire April 6, 2023.

Mr. Brand made a motion to approve a three-year extension. The motion was seconded by Mr. Sweeten.

VOTE:	Mr. Brand	YES	Mr. Utsch	YES
	Mr. Sweeten	YES	Mr. Doherty	YES
	Mr. Basco	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 8:57 P.M. The motion was seconded by Mr. Basco. 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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