

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.

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 March 4, 2021 at the Lower Township Municipal Building. The meeting was called to order at 6:02 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
Michael Kennedy
David F. Brand, Jr.
Ernest Utsch III
Robert Sweeten
George Doherty
Robert Basco, Sr.

MEMBERS EXCUSED: Bruce Waterman

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

CORRESPONDENCE:

Letter:

TO: William Galestok, Planning Director & Board Secretary
FROM: Michelle Warner, Counsel & Chief Ethics Officer
DATE: January 28, 2021

Handouts:

List of Board Solicitor vouchers dated February 23, 2021.

List of Mott MacDonald vouchers dated March 4, 2021.

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

Mr. Utsch made a motion to approve the February 4, 2021 minutes. The motion was seconded by Mr. Brand. Motion carried.

Mr. Brand made a motion to approve Mott MacDonald vouchers. The motion was seconded by Mr. Sweeten. Motion carried.

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

Mr. Kennedy made a motion to approve the resolutions from the February 4, 2021 meeting. The motion was seconded by Mr. Sweeten. Motion carried.

1. Rehearing and reconsideration of New Cingular Wireless PCS, LLC d/b/a AT & T Mobility; Block 410.01, Lot 36.01, Breakwater Road, Airport; ZBA 3487 Denied December 3, 2020, to re-visit testimony that was discovered to be a misrepresentation or mistake, subsequent to the date of the original Zoning Board of Adjustment hearing. Formal action may be taken.

Mr. Harvatt explained that at the previous meeting held in December, it was explained that a lease had been secured with the DRBA. He explained there was testimony that AT & T

had negotiated with the Lower Township MUA and then those negotiations ceased and AT & T begun negotiations with the DRBA. In the MUA's lease, which was submitted as evidence, once negotiations ceased with the MUA and began with the DRBA, the MUA had no authority to continue negotiations or could they sublease.

Mr. Harvatt explained that under the Municipal Law Use Law, a rehearing/reconsideration by the Board can be done if it is found that there was a misrepresentation or mistake.

Mr. Stilwell, Esq., represented the applicant. He was not yet present for the hearing.

5. Extension of hardship variance approval, submitted by Joan Birsh Revocable Living Trust for the location known as Block 494.02, Lots 2.01 & 2.11, 2697 Bay Drive.

Mr. Chris Gillin-Schwartz, Esq., represented the applicant.

Mr. Gillin-Schwartz explained to the Board this is a very large vacant lot with approximately one acre of lot area. He explained his client's did received approval for frontage & width. He explained there is no change from the previous approval. He explained the owners realize CAFRA approval is still required.

Mr. Galestok explained he has no issues with the extension. He explained this lot was part of subdivision in the 1970's when 50' frontage was required.

There was a discussion the original approval was in 2003. The Board expressed concern that the original approval was in 2003. Mr. Gillin-Schwartz explained the original approval was in 2003, but the permit extension act has brought that approval up current.

The Board explained that it seems 17 years between the original approval and this extension request seems like a lot of time. Mr. Galestok explained this is an isolated undersized lot and the Board would have to approve if brought back in for a variance or the Township would have to buy. He explained the zoning requires 75 x 100 for a single family dwelling and this property is over an acre.

Mr. Kennedy made a motion to approve a three-year extension from this date. The motion was seconded by Mr. Utsch.

VOTE:	Mr. Kennedy	YES	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.

1. Rehearing and reconsideration of New Cingular Wireless PCS, LLC d/b/a AT & T Mobility; Block 410.01, Lot 36.01, Breakwater Road, Airport; ZBA 3487 Denied December 3, 2020, to re-visit testimony that was discovered to be a misrepresentation or mistake, subsequent to the date of the original Zoning Board of Adjustment hearing. Formal action may be taken.

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

Mr. Stilwell explained he is before the Board for a reconsideration. He explained the application was noticed. He explained the law allows for a reconsideration if it is determined there was a mistake or a misrepresentation. He explained there could have been a mistake or misunderstanding regarding the lease the MUA has with the DRBA. He explained that in the lease between the MUA and the DRBA, it states that once the DRBA starts negotiations, the MUA could no longer negotiate with AT & T.

Ms. Michelle Warner, Council & Chief Ethics Officer for the DRBA was sworn in by Chairman Hanson.

Ms. Warner explained she sent a letter to the Board members dated January 28, 2021 which outlined the lease and negotiation process. She explained the lease the MUA has with the DRBA was entered into evidence and section 8 of that lease is once negotiations with the DRBA begin, they can no longer negotiate.

The Board questioned the concerns they have with the height of the tower and possible hazard with airplanes. Mr. Stilwell explained they do have FAA approval for the height and location of the tower. He explained he did not have that approval at hand, but can provide that as a condition.

Mr. Michael Moore, PE and Mr. Shaun Paul, were sworn in by Chairman Hanson.

Mr. Moore explained the FAA approval document is in the AT & T database. He explained he does not have access to that at this time. Mr. Stilwell explained it will be sent to Mr. Harvatt.

The Board explained there was a residential subdivision application that was proposed across the street from the airport that the DRBA came out in opposition. Ms. Warner explained she is not familiar with this subdivision, but it could have been located in the runway clear zone.

Mr. Stilwell explained the proposed cell tower is not in the flight path.

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. Stilwell explained the tower is a beneficial use. He explained this will provide coverage to an area that is in need.

Mr. Kennedy made a motion to conditionally approve the application. The motion was seconded by Mr. Brand.

VOTE:	Mr. Kennedy	YES	Mr. Brand	YES
	Mr. Utsch	NO	Mr. Sweeten	YES
	Mr. Doherty	YES	Mr. Basco	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.

2. Use variance & preliminary & final site plan applications to construct and 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 explained that he requests the application be carried indefinitely. He explained there are some issues that need to be straightened out. He explained once addressed, they would proceed.

Mr. Galestok explained the Board may consider dismissing the application without prejudice. Explaining there could be an issue with time. When the applicant is ready to proceed, they would send a letter requesting to be placed on the agenda.

3. Hardship variance application to construct an 8 x 44 front porch encroaching into the front yard setback, submitted by Erminio Savelloni for the location known as Block 512.23, Lot 3, 421 Sandalwood Road.

Mr. Charles Sandman, Esq., represented the applicant.

Mr. Erminio Savelloni, applicant, was sworn in by Chairman Hanson.

Mr. Sandman explained to the Board there is a small uncovered deck now. He explained his client would like to construct an 8 x 44 covered front porch. He explained what is proposed

would not be enclosed, but be open air with a roof.

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. Sandman explained the requested encroachment is a diminimus request.

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

VOTE:	Mr. Kennedy	YES	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.

4. Certificate on non-conforming use application to certify a duplex, submitted by David DeTorre, et.al, for the location known as Block 739, Lot 23, 804 Seashore Road.

Mr. Anthony Monzo, Esq., represented the applicant.

Mr. David DeTorre, applicant, was sworn in by Chairman Hanson.

Mr. Monzo explained his client purchased the property last year. Marked into evidence was: A-1 - photos of the rear building. A-2 - aerial photo from 1970. A-3 - aerial photo from 2002. A-4 - mercantile license from 2008. A-5 - mercantile license from 2015. A-6 - Bureau of Fire Safety inspection dated September 20, 2020.

Mr. DeTorre explained he lives across the street from the lot in question. He explained he along with his sister and brother-in-law have entered into a partnership and purchased this property. He explained they have cleaned the property up and continue to rent the front building. He explained he is a general contractor and the rear structure has galvanized piping and the wiring looks to be from the 1960's-1970's.

Mr. Monzo explained they have searched, but cannot find a date that the rear building was converted to living.

The Board asked if there were separate utilities? Mr. DeTorre explained there is a separate electric meter. He explained there is one well and septic system, but the septic system was sized for both units.

Mr. Galestok explained that duplexes prior to 1973-1974 are believed to be legally established.

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 approve this application. The motion was seconded by Mr. Kennedy.

VOTE:	Mr. Kennedy	YES	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 available meeting.

6. Use & hardship variance and minor subdivision applications for the creation of three (3) newly described lots. Use variance to allow residential in a General Business zone. Variances needed for lot area, frontage & width, submitted by Lawrence & Barbara Wind for the location known as Block 27, Lot 27, 401 Bayshore Road.

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

Mr. Gelzunas explained in 2020, an application for a self-storage facility was presented to the Board and denied. He explained at that meeting, there were 16 objectors. He explained the general consensus was self-storage was not a good use at this location, but residential was. He explained they are before the Board tonight for a three-lot subdivision for residential use. He explained two lots would front on Florida Avenue and one on Bayshore Road.

Mr. Lawrence Wind, applicant, and Mr. Vince Orlando, PE, PP, were sworn in by Chairman Hanson.

Mr. Orlando shared screen with the Board. He reviewed an aerial photo of the area. He explained the majority of the area is residential with various lots sizes. He explained the lot sizes range from 5,800 to 8,000-square feet.

Mr. Orlando explained the two proposed lots that front on Florida Avenue are 75 x 100 each. He explained the lot that fronts on Bayshore Road is 60 x 133.

Mr. Orlando explained the lots on Florida Avenue will have the driveway as far from Bayshore Road as possible. He explained the lot on Bayshore Road will have a driveway that

would be configured as such that there will be no backing out onto Bayshore Road.

Mr. Orlando explained variances are requested for lot area, frontage & width and from buffer requirements. He explained he feels these are reasonable requests.

Mr. Orlando explained what is proposed enhances the general welfare of the area, provides for light, air and open space, promotes a pleasing environment and is a suitable use for the property.

Mr. Orlando explained they take no exceptions to the Engineer comments.

Bureau of Fire Safety comments dated February 11, 2021 were read and they found the application acceptable.

Mr. Gelzunas explained there are no Cape May County comments yet.

Mr. Cathcart summarized Engineer's comments dated February 26, 2021.

The Board explained there are commercial uses in the area and maybe there should be deed restrictions making the future buyers aware of these uses. Mr. Gelzunas explained they had no problem with the deed restrictions.

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. Doherty.

VOTE:	Mr. Kennedy	YES	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 approve the variance & minor subdivision applications. The motion was seconded by Mr. Kennedy.

VOTE:	Mr. Kennedy	YES	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. Galestok explained he is working on bringing the Board back to Township Hall and still having virtual meetings for the public.

There was a discussion that now that marijuana is legal, the Township really has to do something. It should be looked into if and where the Township may want this. It was discussed that maybe at the airport and in an industrial zone.

Mr. Brand made a motion to adjourn at 7:53 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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