

TOWNSHIP OF LOWER

2600 Bayshore Road
Villas, New Jersey 08253



Incorporated 1794

(609) 886-2003

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 OF ADJUSTMENT

A regularly scheduled meeting of the Zoning Board of Adjustment was held on October 3, 2024, at the Lower Township Municipal Building. The meeting was called to order at 6:00 P.M. by Chairman 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
Robert Basco, Sr.
David F. Brand, Jr.
George Doherty
Robert Sweeten
Ernest Utsch III
Joseph P. Baker
Geoffrey Bostard
Thomas Doherty

MEMBERS EXCUSED: Michael Kennedy

STAFF PRESENT: Anthony J. Harvatt, II, Board Solicitor
William J. Galestok, Board Secretary
Patrick Wood, Recording Secretary
William Cathcart, Board Engineer
Kathryn Steiger, Zoning Clerk

CORRESPONDENCE:

Handouts:

- List of Mott McDonald Vouchers, dated October 3, 2024
- List of Board Solicitor Vouchers, dated September 30, 2024
- List of Board Engineer Vouchers, dated September 12, 2024

Chairman Hanson read the agenda aloud for the benefit of the public. Chairman Hanson then reviewed the opening procedure to the public in attendance. This explains the process for how public comments are heard and conducted. He informed the public there would be a three-minute time limit to address the Board, to allow for all public comments.

At the request of the applicant, Chairman Hanson reported the following application has been withdrawn:

Hardship variance application for the construction of a new single-family dwelling (SFD) that would exceed principal lot coverage and encroach front & side yard setbacks on a lot that is deficient in width and depth, submitted by Layton Wilson, Jr., for the location known as Block 740, Lot 3, 3956 Bayshore Road

At the request of the applicants, Chairman Hanson reported the following applications are continued until the meeting of November 7, 2024:

Use variance application to construct and establish 10 townhome residential units and a marina to consist of 38 boat slips within the Marine Development II (MD-2) Zone, submitted by Cape May Inlet Marina, Inc. for the location known as Block 820, Lot 8.02, 1001 Ocean Drive

Use variance, hardship variance, preliminary and final site plan application for the creation of two twelve-unit garden apartment complexes that exceed height of a structure by over 10% of the zone maximum. Hardship variance relief requested for maximum number of stories and separation of the buildings. Submitted by H and H Construction Services NJ, LLC, for the location known as Block 409, Lot(s) 5.02,6+7, 301 Fulling Mill Road

Hardship variance application for the creation of an addition to an existing home that would exceed maximum lot coverage, submitted by George Nelson & Zofia Varholova, for the location known as Block 497.03, Lot(s) 5.01+7, 445 Sheridan Boulevard

Mr. Brand made a motion to approve minutes from the meeting of September 5, 2024, seconded by Mr. Sweeten. Motion carried.

Mr. Sweeten made a motion to approve the Board Engineers Vouchers, seconded by Mr. Brand. Motion carried.

Mr. Brand made a motion to approve Solicitor Vouchers, seconded by Mr. Utsch. Motion carried.

Mr. Brand made a motion to approve Mott McDonald Vouchers, seconded by Mr. Baker. Motion carried.

Mr. Brand made a motion to approve all other resolutions from the meeting of September 5, 2024, seconded by Mr. Sweeten. Motion carried.

1. Interpretation application for the determination that a detached garage with bedroom and bathrooms on the second floor does not constitute a dwelling unit, since it does not have cooking facilities which is required for one housekeeping unit under the definition of dwelling unit in the Lower Township Zoning Code. Submitted by Naum & Mary Zimick, for the location known as Block 746, Lot 14.04, 673 New England Road

Mr. Anthony P. Monzo, Esq., is representing the applicant.

Mr. Monzo addressed the Board, as follows:

- This application, presented at a previous meeting, was denied for a use variance
- Due to notice issues, the application was tabled to this meeting
- This is a narrow issue of interpretation
- Fact finding nor testimony is necessary
- The Board must decide if the detached garage, with the second floor containing sleeping, bathroom, and exercise facility, meet bulk requirements, or is considered a separate dwelling unit, triggering a use variance
- If it is determined as an accessory unit, this is permitted use
- It is irrelevant if a board member does or does not like the project and provided an explanation of a Zoning Board Member's responsibilities, where personal opinions are not applicable
- Questioned what would prevent this as living space above the garage, and if not a separate unit, conclude a use variance is not required
- Ordinance is in "plain" language and should be read as written
- Reviewed the definition of a dwelling unit, where a unit is clearly defined as rooms or series of rooms for permanent residency containing living, sleeping, cooking and sanitary facilities
- No kitchen is planned – living space only, therefore, this is not a dwelling unit, only an accessory unit
- Disagrees with Mr. Galestok's statement that the second sentence of the definition qualifies this as a second dwelling unit, as the planned space is not meant for permanent residency
- Read the definition of an accessory unit and cited Randolph vs Land Practice from 1988 from COX 38-2, with caretaker's space above a garage as a permitted use
- This detached garage meets all bulk standard with bedroom, exercise, and bathrooms, but lacks cooking facilities. Does it meet the definition of a dwelling unit?
- Asked the Board to interpret the ordinance that it is not a dwelling unit and does not need a use variance

Mr. Harvatt advised the board is unable to answer the question, as posed by Mr. Monzo, with each application standing on its own. The unit will have electric and plumbing, and although this is an exercise room now, a microwave could be added for a cooking facility and becomes part of its use. Mr. Harvatt stated he respects the legal argument, however, cannot make a blanket statement and would defer to Mr. Galestok.

Mr. Monzo restated the Board's responsibility and ability to interpret the Ordinance.

Mr. Harvatt opined the Board's responsibility is to interpret the ordinance and not cast votes based on a question shaped by Mr. Monzo's opinion. This is form over function. If a kitchen is not displayed, is further finding required? Space that is not described as a kitchen, but may fit one in the future, (e.g.: microwave, etc.), is considered. The Board votes on the plans submitted.

At the request of Mr. Monzo, Mr. Galestok, Lower Township Planning Director, was sworn in by Chairman Hanson.

Mr. Galestok stated, in his opinion, he did not see how it is mandatory to have cooking, living, and sleeping facilities, based on the applicant's testimony. Decisions are based on permitted units. There are detached dwelling units in the Single Family Residential (R-1) Zones, not two (2) families, which are clearly defined. Mr. Galestok cited the definition of Use Group R in 400:20G, and testified he does not see this not being a residential dwelling unit.

Mr. Monzo asked if Mr. Galestok was acknowledging this as a separate unit and residential use? Mr. Galestok replied yes, as it is not only his opinion, but of the Board and staff. Mr. Monzo then inquired if other decisions were interpreted as a dwelling unit without cooking facilities.

In response to the Board's question regarding whether the space was to be heated, Mr. Monzo confirmed it would have heat. The Board stated this would provide for year-round living, with a separate entrance. The County deemed it not large enough to facilitate two (2) additional bedrooms. Mr. Monzo replied the applicant is not renting the building.

The Board stated that just because the plan does now show a cooking facility, it does not mean it is not a dwelling unit. Although Counsel stated a microwave should not be considered, it should, since this happens. A garage with a small bathroom would not be an issue, and is permitted. Installing a whole bedroom and bathroom changes this to an accessory dwelling unit.

Mr. Monzo responded that inclusion of a bathroom, with a couch, microwave, etc., does not make it a dwelling unit. The fact the proposed dwelling is detached should not matter.

Mr. Harvatt then recited the following proposed question for the Board:

Does an application with a detached garage, that does not contain cooking facilities, exempt itself from Board decision of finding it as a dwelling unit?

This portion of the meeting was opened to the public.

Ms. Natalie R. Young, Esq., was sworn in by Chairman Hanson. Ms. Young is representing Douglass Cranstoun, neighbor of the applicant.

Ms. Young stated she understands there has been some change from the initial questions. Mr. Monzo is seeking if a variance is needed, along with the interpretation of the definition. Ms. Young continued that the Code does call for specific accessory uses, under 400-14, the decision is whether a private garage includes a dwelling space. The definition of accessory building (400-8) seems to assume a singular principal building existing from the structure. There is also a question whether the previously heard application is allowed.

This portion of the meeting was closed to the public.

Mr. Monzo concluded this case cited the residential use and a separate structure, but still part of the same use.

Mr. Harvatt explained if the Board votes “yes,” and determines it is not a dwelling unit, a variance is not needed. With the facts presented by Mr. Monzo, it allows for the exception. This would eliminate Board review for future applications with similar circumstances. If the Board votes “no,” the Board would have to review to determine such, and a use variance is needed.

Mr. Galestok inquired if it is appropriate to consider scale? Mr. Harvatt opined it is best to keep it as narrow as possible. Mr. Galestok replied that if this is a yes vote, two or three garages could come up with no cooking facilities but living space.

The Board clarified that a “yes” vote makes the property as exempt, and a “no” vote means it is under the Board’s decision and further review.

Mr. Brand made a motion to approve the interpretation, seconded by Mr. Utsch.

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

Motion was denied.

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

2. Use variance, hardship variance and minor site plan waiver application for the utilization of an accessory structure as a laundry and recreation & fitness facility for the principal structures. Hardship variance relief requested for encroaching into the front yard setback and the accessory encroaching into the side yard setback. Submitted by Kevin Owens for the location known as Block 235, Lot(s) 20+21, 220 Frances Avenue

Mr. Ronald J. Gelzunas, Jr., Esq., is representing the applicant.

Mr. Gelzunas submitted several exhibits into evidence, that included:

- Photos
- Building Permits
- Construction Plans

Mr. Gelzunas explained originally, a four-unit structure, in poor condition, existed on the property, and has now been renovated by the new owner. An accessory structure was demolished and rebuilt in the same footprint. All issues are due to permitting problems by the Township of Lower. Mr. Gelzunas reviewed the submitted and issued permits. On July 29, 2024, the contractor was advised to apply for a variance from the Board. The variance and site plan waiver were submitted by August 2024. On September 12, 2024, a “stop work order” was issued.

Mr. Vincent L. Orlando, L.L.A., P.E., P.P., C.M.E., was sworn in by Chairman Hanson, and provided credentials, which were accepted by the Board.

Mr. John Ryan, President of RYCO Construction Company, was sworn in by Chairman Hanson.

Mr. Brian DiMaio, Draftsman, Cape Shore Drafting Services, was sworn in by Chairman Hanson.

Mr. Kyle Loveland, Solutions Engineer, was sworn in by Chairman Hanson.

At the request of Mr. Gelzunas, who submitted a series of photos into evidence, Mr. Ryan provided an overview of his role, condition of the property, status, and overall project progress, as follows:

The existing garage was in very poor condition, with sagging beams, inoperable garage door, water accumulation, and falling apart. A decision was made to demolish and rebuild. When plans were delivered to the Lower Township Construction Office, he was advised a Zoning Permit application was necessary before proceeding. To satisfy questions, all documents were provided, including revised plans, showing heat and second floor. Standard lumber was used (2x6) to bring up to code. Grading of the lot for drainage was in progress, along with some exterior siding, rough plumbing and electric. All work was code compliant and almost completed. A “stop work order” was then issued.

At the request of Mr. Gelzunas, Mr. DiMaio provided an overview of his role, explanation of photos, condition of property, and proposed project:

Very familiar with the area, is a structural engineer, and drafted plans for the property. The original building of four (4) units consisted of two (2) back and (2) front units. New plans were drawn, since the building was in poor condition, including a new foundation, due to flooding. Four (4) units, somewhat smaller, were reconfigured as studio units in the exact same footprint, and allowing for a rear yard. One (1) additional parking space was added, increasing from four (4) to five (5). Due to the existing condition of the garage, where a washer/dryer hookup was located and drained into the ground, laundry equipment hookups were added in the new garage. The new accessory building also includes a fitness room on the second floor. Because of “ponding” on the property, regrading of the ground was necessary for proper drainage. New siding and landscaping are in progress. Kitchen nor bathroom facilities are in the new accessory building.

The Board inquired what triggered a Stop Work Order? Mr. Went, attorney for the opposing neighbor, stated he requested the Stop Work Order.

At the request of Mr. Gelzunas, Mr. Loveland, Solutions Engineer, provided an overview of his role, the original property, activity history, and plans for the newly renovated property:

Lives very near to the property and provides day/day oversight of the project, which will improve the neighborhood. This will be a seasonal rental property. Although there was some familiarity with the property, the extent of the overall damage was unknown. Gym equipment was scattered throughout and the washer drained into the ground. Reports obtained, via Open Records, show ongoing police activity at the property. The new building and rooftop garage are similar to other properties in the area. Renovations include extra insulation, windows that do not open, inside noise monitors for each unit and the rooftop garage, security cameras in public areas, smart locks for each unit, rooftop access between 10:00 A.M. to 8:00 P.M.

At the request of Mr. Gelzunas, Mr. Orlando cited his further credentials (e.g.: Township Engineer, Special Project Manager, numerous projects throughout New Jersey), followed by an overview of the project:

The application is somewhat limited, based on the expansion of a non-conforming use with an accessory structure that housed fitness equipment and a washer/dryer. The Zoning Office determined the accessory structure expanded to non-conforming use, as it was one and half stories and is now a two (2) story with an open rooftop deck. A small storage shed is also planned to house lawn equipment. The current renovation has aesthetically improved and enhanced the property and surrounding neighborhood and provided tremendous expansion of the property. The welfare of the community has been improved, since this was described as a “nuisance” property for many years. Safety has been considered with cameras, noise sensors, extra insulation, plus upgrades to plumbing, electric, etc. Per testimony from Mr. Ryan and Mr. DiMaio, the property appears well graded. In regard the ordinance, this project encourages use by promoting health and safety and proper drainage. The completed project provides an aesthetic improvement with an overall positive impact to the area. This is de minimis in nature and not out of place. Note that if this was a single-family dwelling, an accessory building would be permitted and if the four-unit building was removed, a large home could be constructed. There are no negatives or substantial detriments caused by this building. All upgrades enhance the neighborhood. The Zoning Office recognized the renovations were permitted and approved, but felt that a D(2) Variance was appropriate for the expansion of the accessory unit and made the determination that a variance was required. Testimony from neighbors is anticipated to support the expansion.

In response to the Board’s inquiry about the public access area, Mr. Orlando confirmed there are no bathroom facilities and it will be for the exclusive use of the tenants. Hours will be from 10:00 A.M. to 8:00 P.M.

At 7:47 P.M., the Board took a five (5) minute recess. At 7:54 P.M., the meeting was resumed.

At 7:54 P.M., Chairman Hanson announced to the public that, due to time constraints, the other applications scheduled for this evening’s meeting – i.e.: Hickey/Long/Hober - are being postponed to the meeting of November 7, 2024. No new noticing will be required.

This portion of the meeting was opened to the public.

Mr. John K. Zimmerman, resident at 215 Frances Avenue, was sworn in by Chairman Hanson.

Mr. Zimmerman expressed the following comments:

- Resident since 1948
- Very happy – project looks beautiful
- Drug house is gone
- Previous residents were continually fighting
- Improvements increase values and improves the town
- Previous history was pathetic
- Not year-round occupants

Mrs. Rosemarie Trombetta Daly, resident of 222 Frances Avenue, was sworn in by Chairman Hanson.

Mrs. Daly, who grew up in this area, expressed the following comments:

- Her property is located directly behind the applicant's property
- Fitness area overlooks her pool
- Villas has turned around
- Better community promotes better renters
- Beautiful property/great improvements
- Horrible situation previously, this has improved her value

Mr. Thomas Daly, resident of 222 Frances Avenue, was sworn in by Chairman Hanson.

Mr. Daly expressed the following comments:

- Property is an improvement
- Previous residents were drug users, trash, cars were broken into, property was a disaster
- Current owners have cleaned up and spent at least \$1.5M in improvements
- Want people here to retire
- His property was purchased under value, due to previous condition of 220 Frances
- Sad that the part time neighbor/resident is bringing attorney to dispute

Mr. Matt Giordano, was sworn in by Chairman Hanson.

Mr. Giordano expressed the following comments:

- Not a neighbor
- Has been a 41-year resident
- Seen many properties
- This has a positive impact

Mr. Daniel O. Shelton, resident at 13 W. Miami Avenue, was sworn in by Chairman Hanson.

Mr. Shelton expressed the following comments:

- The owners have a building background – this is first class project
- Great building and very impressive
- Here to offer support

This portion of the meeting was closed to the public.

Mr. Raymond J. Went, Jr., Esq., represents the owners of 304 Beach Avenue, Kenneth and Nancy Miller.

Mr. Went submitted photos and Complaint Letters into evidence, then addressed the Board, as follows:

- The Millers are the most affected by this construction
- Rooftop deck is right on top of the client's primary bedroom window
- The application was submitted to rebuild an existing garage; however, the height of the original structure was not noted on the form, only the new height
- A maximum of \$45K was noted for the improvements - now hearing the cost is in the half-million dollar range
- There has been deception from the beginning
- Notification was provided to the Township
- Requested the Township issue a Stop Work Order
- Mr. Gelzunas was provided copies of all correspondence

- Upon issuance of the Stop Work Order, the applicant did not cease construction
- As of 10/3/24, electric was being worked on
- It appears the applicant does not care and will ask for forgiveness afterwards
- Great idea to renovate; however, cannot do whatever they want
- The tool shed, a secondary accessory unit, which was referenced this evening is not on the original plans
- The applicant is not following rules
- Is misleading the Township about the garage
- This is an Airbnb, hotel/motel nature, with a party deck in a residential zone
- Most rooftop decks are on the primary structure, not the accessory building
- Original windows were porthole circular shape, now full size over client's primary bedroom and were not in the plans submitted and larger than expected
- Hence, Stop Order was issued

In response to Mr. Gelzunas' request for a copy of the Stop Work Order, Mr. Went stated he did not have a copy. Mr. Went referenced the photos submitted into evidence show the Stop Work Order sticker and workers on sight.

Mr. Went continued that a four (4) unit structure is acceptable, however, access is an issue with commercial use in a residential zone. The application tonight should be denied, based on the original application, due height and dimensions. He noted the grading referenced are slabs of concrete.

Mr. William Swiderski, PE, was sworn in by Chairman Hanson, and provided credentials, which were accepted by the Board.

Mr. Went submits zoning code sections under review into evidence.

At the request of Mr. Went, Mr. Swiderski submitted photos into evidence and provided his report on the project, as follows:

- Review of accessory unit in R-3 Zone and setbacks do not meet requirements
- Does not exceed coverage for a single-family dwelling at 10% in R-3, however, exceeds multifamily at 6% coverage
- Why a second accessory unit, when a two (2) story accessory building exists?
- Decreasing the aesthetics, due to concrete pads that have been added
- Original site was 28% impervious coverage, with the submitted application at 37.1%, for a calculated total of 58.7%. This increases the amount of runoff and hinders the drainage and impact the neighbors
- Cannot verify without a Grading Plan to the state of NJ that water is going to the street
- Increases negative criteria
- Original site had large tree, however, now there is no space for landscaping
- What is the control of the lighting, as nothing has been provided

Mr. Went submitted the overlay plan into evidence. He stated the applicants, Mr. and Mrs. Miller, who were unable to attend this evening, offered contact via Zoom or virtual call. Unfortunately, this could not be facilitated. Mr. Went again requested denial of the application.

The Board inquired what would satisfy the Miller's if the vote was in their favor. Mr. Went stated reducing the building to the appropriate height and dimension, a lighting plan, coverage issues, drainage, and grading plans. The most impactful issue is the Gym/Party Deck.

Mr. Gelzunas reviewed the accepted constructing plan, referenced as deceptive, and advised the Stop Work Order was being misrepresented. This was issued for rebuilding of the garage, not the main building. Additionally, the costs being cited are based on public comments.

Mr. Ryan testified that work was halted on the building. He contacted the Construction Official for guidance on what to do/not to do, and was permitted to seal/make the building weathertight. Multiple permits were issued – demo, asbestos, etc., with new washers/dryers, electric, HVAC. The Township approved having the garage rebuilt, with revised plans, per Construction Official's instructions. Plumbing was upgraded to accommodate the laundry sink. Mr. Ryan stated his company follows the rules and works with the Township regarding all aspects of the construction.

Mr. Gelzunas requested Mr. Swiderski respond to impervious coverage, landscaping, and general welfare of the neighbors for aesthetic improvements. Mr. Swiderski testified as follows, and, in his opinion, stated the following should be addressed:

- There is no impervious coverage
- No landscaping required
- General welfare for neighbors should be considered

Mr. Gelzunas proposed Mr. Orlando could provide a grading and drainage plan. He noted that, if a single-family dwelling (SFD), it would be acceptable and have no impact to the neighborhood. Mr. Went opined this should be a full site plan, and restated the application, as presented, should be declined and resubmitted with a site plan.

The Board asked Mr. Went if an acceptable solution would be to remove the deck roof. Mr. Went stated he would need to consult with his clients, however, that is a valid option plus changing the windows.

Mr. Gelzunas continued that grading, drainage, landscaping, and lighting plans should be submitted as conditions for approval. He summarized as follows:

- The application is for a use variance
- There is no prohibition as to the design of the accessory building
- Testimony of the public has been mostly favorably
- Special purposes of zoning have been advanced
- There are no substantial detriments to the zoning plan, ordinance, or public welfare

As a response to the Board's inquiry to remove the roof deck and replace the windows, and after consultation with his client, Mr. Gelzunas stated the deck will not be removed and agreed to treat the windows with a polarization film.

In response to the Board's question regarding rentals, Mr. Gelzunas confirmed the property is a seasonal rental, not year-round.

In response to Mr. Galestok's question on the site plan, Mr. Gelzunas stated on a condition of approval, grading, drainage, landscaping, and lighting plans will be submitted.

In response to the Board's question on orientation of the windows, Mr. Went was agreeable, so long as it is legal.

The Board acknowledged the enthusiastic comments by the neighbors, who stated it is a benefit, and one objector.

Mr. Harvatt noted that without a site plan, there is no way to review. Mr. Gelzunas stated that a condition of the approval, they will return with a site plan.

The Board inquired about the standing water showing in the submitted photos. Mr. Orlando will confirm that regrading has corrected these issues. Mr. Galestok advised the Township has been improving major drainage problems in that area and Mr. Ryan advised that a temporary pump was installed.

Mr. Brand made a motion to conditionally approve the use variance, seconded by Mr. Sweeten.

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

Motion was approved.

Mr. Orlando suggested the Board also vote on the zoning issue, cited by Mr. Swiderski, referencing a two-family, Mainland Residential (R-3) Zone, rather than a single-family dwelling, with rear yard and coverage percentages.

Mr. Basco made a motion to conditionally approve hardship variance, seconded by Mr. Brand.

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

Motion was approved.

Resolutions will be prepared by the Board Solicitor to review and approve at the next scheduled meeting.

At 9:18 P.M., Mr. Brand made a motion to adjourn the meeting, seconded by Mr. Bostard.

Motion carried.

Respectfully submitted,

Patrick L. Wood,
Recording Secretary

A verbatim recording of said meeting is on file in Township Hall.

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