

TOWNSHIP OF LOWER

2600 Bayshore Road
Villas, New Jersey 08257



Incorporated 1794

(609) 856-2005

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 OF ADJUSTMENT

A regularly scheduled meeting of the Zoning Board of Adjustment was held on September 5, 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 David F. Brand, Jr. George Doherty Michael Kennedy Robert Sweeten Ernest Utsch III Joseph P. Baker Geoffrey Bostard
MEMBERS EXCUSED:	Robert Basco, Sr.
STAFF PRESENT:	Anthony J. Harvatt, II, Board Solicitor William J. Galestok, Board Secretary Patrick Wood, Recording Secretary William Cathcart, Board Engineer
STAFF EXCUSED:	Kathryn Steiger, Zoning Clerk

CORRESPONDENCE:

Handouts:

- List of Mott McDonald Vouchers, dated September 4, 2024
- List of Board Solicitor Vouchers, dated August 27, 2024
- List of Board Engineer Vouchers, dated September 4, 2024

Chairman Hanson read the agenda aloud for the benefit of the public. Chairman Hanson advised the status of the following applications:

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

ADJOURNED TO THE OCTOBER 3RD MEETING DUE TO FAILURE TO NOTICE

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

CONTINUED TO THE OCTOBER 3RD MEETING AS PER APPLICANT'S REQUEST

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

CONTINUED TO THE OCTOBER 3RD MEETING PER APPLICANT'S REQUEST

Mr. Sweeten made a motion to approve minutes from the meeting of August 1, 2024, seconded by Mr. Utsch. Motion carried.

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

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

Mr. Utsch made a motion to approve Mott McDonald Vouchers, seconded by Mr. Kennedy. Motion carried.

Mr. Brand made a motion to approve all other resolutions from the meeting of August 1, 2024, seconded by Mr. Sweeten. Motion carried.

At 6:04 P.M., Mr. Doherty joined the meeting.

1. Hardship variance application for the creation of a duplex that would encroach into the rear yard setback on a lot that is deficient in area, submitted by Joseph W. Spratt for the location known as Block 548, Lot(s) 5-9, 105 Clubhouse Drive

Chairman Hanson read the letter aloud that was submitted by the applicant, requesting denial without prejudice, and no new fees.

Mr. Sweeten made a motion to approve the variance application, seconded by Mr. Kennedy.

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

Motion was approved.

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

2. Use variance application for the construction of a detached garage with a second dwelling unit, 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. Naum Zimick, applicant, was sworn in by Chairman Hanson.

Mr. Matthew J. Hender, P.E., was sworn in by Chairman, and provided credentials, which were accepted by the Board.

Mr. Monzo submitted additional exhibits into evidence. He reminded the Board that

- 1) Lyndsy Newcomb, Esq., previously represented Mr. Zimick, and
- 2) Mr. Hender's original testimony dealt with several variance issues.

Regarding concerns with garage apartments, it is typical this space is used for family and not for rental purposes. Modifications to the original plan consist of eliminating the kitchen and replacing it with an exercise room.

Mr. Monzo stated that one (1) bedroom and one (1) bath do not constitute a dwelling unit. He cited Section 26 in the Cox. The Boards of Adjustment have always had to interpret the meanings and definitions of applications for relief.

Mr. Monzo then asked if the Board can say whether a use variance is required, based on the definition of a dwelling unit in the Lower Township Code, specifically a unit for "housekeeping" purposes.

In response, the Board stated their responsibility for this meeting is to hear a use variance application, not an interpretation.

Mr. Harvatt offered clarification that although this is part of the case, it is not part of the formal interpretation.

Mr. Monzo continued that the Board previously approved a living space above a garage. Further, the exhibits submitted include three (3) of the properties Ms. Newcomb referenced in her prior presentation that were granted variance relief for similar use, with a condition that they would be limited to family only. All were based on the fact that other properties in the vicinity had the same situation. If the project was simply an attached garage, this application would not be required, however, this is a better option, aesthetically. The additional space allows for the older people to remain in their home, while the younger family members can visit and stay.

Mr. Monzo pointed out that a separate accessory structure, with living space, is nowhere prohibited in the code. An accessory building that is not attached to the main building, and is subordinate to the main building, Cox Section 38-1 cites cases involving accessory use structure, not a separate principal use, but as an accessory structure.

Mr. Harvatt advised the Board will vote on the variance, as that was what was applied for.

Mr. Galestok inquired where and how occupants of the accessory unit will prepare food. In response, Mr. Monzo said the main unit. Mr. Galestok advised housekeeping units are not permitted to share utilities and facilities, therefore, it does not meet the definition of a dwelling unit.

He continued that in the end, Zoning Permit is issued and designate the accessory building for storage.

Mr. Harvatt then advised:

- A modification should not be made in the middle of a hearing
- NO cooking facilities and bathroom have been removed from this application
- The Board does have the power of interpretation

The Board stated that if the applicant is looking for additional facilities and a garage, why not add onto the principal dwelling?

The Board inquired how to approve this apartment without bathrooms and living space? Mr. Monzo stated that two (2) bathrooms remain and advised the Board has previously approved this type of application request.

Mr. Galestok inquired if plumbing will be retrofitted for a kitchen, since this is a common practice.

Mr. Monzo stated it is condition, and not be called a kitchen, which then would require Code Enforcement. The permits and plans will be applied and submitted for proper work to be performed. Mr. Monzo advised many others, beside the three (3) properties identified by Ms. Newcomb, have had this use granted.

Mr. Galestok recalled that the applicant previously testified that children would live in the house and the applicant would live in the garage. In response, Mr. Zimick stated he made that statement in jest. Mr. Zimick continued that Mrs. Zimick is relieved there will not be a kitchen, as it is once less thing to deal with. He emphasized there is no way to rent an apartment without a kitchen. He also agreed to move the garage to fit with the required setbacks of 30 feet.

Mr. Galestok asked if the plans have been modified to show those setbacks. Mr. Monzo stated they can do that.

The Board inquired about the septic system. Mr. Zimick advised a separate system would be installed in the front, as this was not planned when building the structure was originally developed. Mr. Zimick stated he was not happy with the original design. Mr. Harvatt advised the septic is a County issue. Chairman Hanson advised a condition of approval would be that this structure is self-sufficient with septic and well, as well as all other government approvals required by the County.

Mr. Monzo advised his client is glad to remove the kitchen, move the structure within the required setbacks, and obtain a newly engineered septic system design.

Chairman Hanson stated each case is based on its own merit. In reference to previously approved applications, e.g.: Hanover, he pointed out that application was different, due to preexisting structures, rather than a newly constructed building.

Mr. Monzo replied that 681 New England Road was approved as new construction and not a conversion back in 2007. Mr. Galestok stated that one had an elevator for elderly parents. Mr. Monzo offered to add a deed restriction for family and guest use only.

The Board inquired if anyone would be permanently living in the space, or, will this be occupied for visitations only. Mr. Zimick stated the space is for immediate family only, which now number over 20.

The Board asked for clarification on the difference between building a new structure in 2007 versus 2024?

Mr. Brand stated one (1) acre zone was in effect, due to septic systems and wells. Lower Township's intent was to keep larger areas for county living, healthy conditions, and lot coverage. Mr. Utsch stated with only one (1) acre, this would be dense for the area. South of the canal is where the Planning Board had regulated to prevent major development to keep the "country living style." One of the previous approvals was to convert the second story of the garage as a place to live while rebuilding the main house.

In response, Mr. Monzo advised he understands the concerns. Yes, the applicant could add onto his existing dwelling, which would not require Zoning Board approval. The options are a monstrously sized home or do what is applied for and fit more into character with the neighborhood. He continued that this is not a hardship variance, but a use variance that deals with efficient use of the land and density. Septic is strictly a County and Department of Health issue.

Mr. Harvatt posed a question to Mr. Galestok of what is a dwelling unit?

Mr. Galestok cited the definition of a dwelling unit and housekeeping unit and that “no shared facilities can be shared between the units,” which would mean the principal dwelling. When obtaining a Zoning Permit, the process includes that the building be marked as storage, with a signed affidavit the space will not be occupied for living or commercial use. Duplexes are defined as a shared wall that is unpierced. Additional units must be open, otherwise, it falls under the duplex definition.

Mr. Monzo advised the definition is very confusing.

In reply, Mr. Galestok stated the Board has always looked at the living aspect for dwelling units. Mr. Harvatt stated if it is a living unit, it does not fit that of the ordinance. Mr. Galestok stated that is correct, due to the shared facilities and not exclusive to any of the three (3) aspects of sleeping, sanitary, and cooking facilities.

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 referred to the previous testimony of the applicant regarding change and modified structure. Ms. Young inquired about the 30 feet be between the applicant’s and Cranstoun’s property? Mr. Zimick confirmed the 30 feet would be from each side of the property line.

Ms. Young made the following inquiries:

- Who currently lives in the property?
 - Mr. Zimick replied he and wife reside at the property.
- Of the proposed changes, will it be adjacent to the driveway?
 - Mr. Zimick advised there is no new driveway, but it will be closer to the existing.
- Are you full time residents?
 - Mr. Zimick confirmed yes

Mr. Hender then submitted a final, “as built,” survey, showing amended garage location into evidence.

Ms. Young inquired whether the opening would face the driveway or Bayshore Road? Mr. Hender stated the garage doors will face the house and not the street.

Mr. John Douglass Cranstoun, resident of 3957 Bayshore Road, was sworn in by Chairman Hanson.

Mr. Cranstoun advised he is the neighbor of the applicant. The Board has addressed every one of his concerns, including septic and aesthetics. He stated the house resembles a hotel. Mr. Cranstoun has moved from country to country, and enjoys the rural lands. He was aware of the one (1) acre requirement for the area. Mr. Cranstoun stated he had an extension built on his garage and had to sign the affidavit, stating it would not have living quarter, despite having a son who wanted to move into the space. This action occurred in 2019.

Ms. Young submitted Mr. Cranstoun's Zoning Permit into evidence.

Mr. Cranstoun advised the signed affidavit is attached to the Zoning Permit. He stated that if his neighbor is successful, he has plans to construct a large cottage in the rear.

Ms. Young read the Affidavit aloud for the Board.

Mr. Cranstoun stated he agrees with the concerns expressed by the Board, including one unit, septic, and well.

Mr. Monzo asked Mr. Cranstoun about the addition to the existing garage. Mr. Cranstoun replied it was 23x24. Mr. Monzo asked if it was ground level, to which Mr. Cranstoun advised it was not, although his son wanted it to be. Mr. Monzo asked Mr. Cranstoun that if living space could have been added, would he have done that? Mr. Cranstoun said he might have. Mr. Monzo then asked if the garage space was not an apartment, but instead storage, would you have a problem with it? Mr. Cranstoun stated no.

Patricia Gariano, resident of 3958 Bayshore Road, was sworn in by Chairman Hanson.

Ms. Gariano stated that she agrees with the same comments as Mr. Cranstoun's. Aesthetics and septic requirements, she is concerned for pollution and well water. Ms. Gariano stated she does not want to police her neighbors and must call Code Enforcement whenever suspicious activity arises.

Mr. Monzo inquired if :

- The main concern is aesthetics?
 - Ms. Gariano stated yes.
- If the construction of the garage with storage is the same aesthetic, would that be a problem?
 - Ms. Gariano replied that she is not a fan, but can live with it.
- Did she object to Mr. Cranstoun's addition?
 - Ms. Gariano said no, since the house is far back and not an issue.

Ms. Young stated Lower Township's code has enumerated multiple uses for primary and accessory use. Under Use Group R, sleeping accommodation with, or without dining facilities, are classified under the residential code.

This portion of the meeting was closed to the public.

Mr. Monzo summarized that:

The objections are not relevant to the use variance brought before the Board. The concerns have been heard about aesthetics; however, the same building could be used for storage. The use can be built onto the main building and, again, would not have required Zoning Board review. The lot is one (1) acre and can handle what is being proposed. All well and septic are county concerns and are required to adhere to their restrictions. Accessory apartments are typically granted under use variances. In conclusion, there are always going to be cheaters, but the best to do is accept the testimony and rely on Code Enforcement to deal with issues, as they arise.

Mr. Kennedy discussed what happens if they ask for the garage, then come back before the Board in three (3) years? Do not really see the difference whether the garage was built or not built.

Chairman Hanson acknowledged the opposition expressed tonight. Referencing the application that was granted had no such objection.

Mr. Utsch stated each application stands on its own merit. The public stated it looked like a hotel. This is in one of the few areas of Lower Township where zoning retains its original plan. He stated he is not comfortable with the application.

Mr. Brand stated he grew up working on farms south of the canal. The whole point of open space and country living is what south of the canal is. He stated he is also not comfortable with the application.

Mr. Sweeten stated Mr. Zimick is following the correct process by coming before the Zoning Board, requesting a variance, rather than building the garage and secreting the apartment. He is also concerned about setting a precedent, as more of these requests are being made.

Mr. Baker stated he was not around for the previous approvals. Although the applicant has stated it makes more sense, he disagrees.

Chairman Hanson stated that the opposition had many developed points, with more of a focus on aesthetics. As mentioned, it all depends on the use. This could be a “not in my back yard.” Valid points were made by Board Members, including Mr. Monzo’s regarding adding it to the house.

Mr. Doherty stated the biggest concern is garage apartment, due to carbon monoxide and other dangers.

Mr. Kennedy made a motion to approve the variance application, with the condition that it is for family only, no kitchen, with all setbacks to conform, seconded by Mr. Sweeten.

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

At 7:36 P.M., the Board took a five (5) minute recess. At 7:41 P.M., the meeting was resumed.

3. Hardship variance application for the construction of a new single-family dwelling that would exceed principal lot coverage on a lot that is deficient in lot area, frontage, and width, submitted by Lionel Sellers for the location known as Block 512.10, Lot 2921, 503 Hollywood Road

Mr. John P. Amenhauser, Esq., is representing the applicant.

Mr. Amenhauser stated that the applicant is seeking to construct a new single-family dwelling (SFD) where the existing building currently exists. This now requires relief for minimum lot coverage, frontage, width, and maximum coverage.

Mr. Arthur SanFilippo, Architect, was sworn in by Chairman Hanson, and provided credentials, which were accepted by the Board.

Mr. Lionel Sellers, applicant, was sworn in by Chairman Hanson.

Mr. SanFilippo explained that the existing property is 1300-1400 square feet on a 5000 square foot lot. In response to Mr. Amenhauser's question regarding lot size, Mr. SanFilippo stated that many surrounding lots are actually developed, making it impossible to expand the lot size by purchasing from an adjacent owner. This project will only exceed by 4.3%.

He continued and stated the purpose of Zoning is advanced with this application. Enhancing the life safety of the building by removing an existing structure that is not up to code and replacing it with one that is code compliant. Current building is within the setbacks, which are being slightly reduced. This will enhance open air, light, and space. It is appropriate population density and promotes an aesthetically pleasing structure.

Mr. SanFilippo stated there are no negative detriments to the public good, and if the lot size was conforming, no variance for coverage would be required.

Mr. Amenhauser confirmed to the Board an existing dwelling on the property.

This portion of the meeting was opened to the public

Ms. Carol Hawkins, resident of 505 Forest Road, was sworn in by Chairman Hanson.

Ms. Hawkins stated that over a year ago, two (2) new houses were built on Fern Road, where 30% of coverage is acceptable and 31% was granted. The concern is larger building are being constructed. Her property has a six (6) foot fence and in a nice neighborhood, but is turning into Avalon/Stone Harbor, with houses on top of each other. There is no privacy in the area. Could trees be put up along the rear line of the property? In response, Mr. Sellers stated there are no windows on the rear of the second floor and trees would be planted. They had an issue that Homeowner's Insurance would not be renewed, due to the trees.

Mr. SanFilippo stated the required setback is 20 feet, and the proposal is 23 feet. If they do want to plant trees, it would screen the first (1st) floor, and not worry about the second (2nd) floor. The renderings can be updated to show proposed shrubs that grow six (6) to (8) feet.

This portion of the meeting was closed to the public.

Mr. Amenhauser acknowledged exceeding the coverage and will comply planting the shrubbery.

The Board inquired a reason why the coverage does not comply. Mr. SanFilippo replied it is due to the covered porch.

Mr. Galestok stated the lot size is two-thirds of the 7500 square foot requirement. Percentage changes with the lot size. This is not too large of a house. Just the requirement is a third smaller than allowed.

Mr. Kennedy made a motion to conditionally approve the hardship variance application, including the condition of a shrubbery screen, seconded by Mr. Brand.

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

Motion was approved.

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

4. Hardship variance application for the construction of an addition to an existing garage that would exceed maximum accessory lot coverage, minimum distance between structures, and encroach into both rear and side yard setbacks, submitted by William C. Whitman for the location known as Block 155, Lot(s) 13+14, 221 W New York Avenue

Mr. William Whitman, applicant, was sworn in by Chairman Hanson.

Mr. Whitman explained to the Board the purpose of the application is to add a shed to the side of the existing garage. The addition will be utilized as a craft room for his spouse, who is unable to navigate steps due to health reasons. The new space is incorporated into the existing garage, which places it two (2) feet from the property line. The ordinance requires four (4) feet. Mr. Whitman further explained the existing dwelling does not have the space for an addition, as their bedroom is located on the first floor.

This portion of the meeting was opened to the public. No comments were made from the public. This portion of the meeting was closed to the public.

Mr. Brand made a motion to conditionally approve the hardship variance application, seconded by Mr. Kennedy.

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

Motion was approved.

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

5. Hardship variance application for the construction of a second floor to an existing garage which would make the structure taller than the principal home, submitted by Louis & Sharon Nociti for the location known as Block 666, Lot(s) 1+16.01, 802 Washington Boulevard

Mr. & Mrs. Louis & Sharon Nociti, applicants, were sworn in by Chairman Hanson.

Mr. Nociti explained the property consists of a one (1) story, single family dwelling, with a one (1) story garage. The intent is to add a second floor onto the garage for storage only. The second-floor garage addition will not have plumbing, kitchen facilities, nor designed for residential use.

This new addition will raise the height of the garage to 24 feet, where the house is 14 feet. Future plans are to build a second floor onto the existing principal dwelling.

This portion of the meeting was opened to the public. No comments were made from the public. This portion of the meeting was closed to the public.

Mr. Kennedy made a motion to conditionally approve the hardship variance application, seconded by Mr. Utsch.

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

Motion was approved.

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

At 8:04 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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