

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

AUGUST 19, 2009

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ, beginning at 8:06 pm was called to order by Mr. Cimis, Chairman.

These minutes are a synopsis of the meeting. A verbatim audio tape recording is on file with the Board Secretary at the Board of Adjustment Office, 475 Corporate Drive, Mahwah, NJ. Copies of the tapes may be purchased for a fee.

PRESENT: Mr. Cimis Mr. Dator (out at 8:17 pm)
 Ms. Neumann Mr. Whiteman
 Mr. Savino Mr. Kezmarsky
 Mr. Rabolli Mr. DeSilva

ABSENT: Mr. Slot

ATTORNEY: Mr. J. Cerami, Esq.

I. APPROVAL OF BILLS:

None to present.

II. APPROVAL OF MINUTES:

None to present.

III. MEMORIALIZING RESOLUTIONS:

**A. DKT. #1288-09 – KEVIN DUFFY, BLOCK 143, LOT 12
286 CAMPGAW ROAD, MAHWAH**

Resolution granting a front yard variance to erect a six-foot fence. A motion to approve was made by Ms. Neumann, seconded by Mr. Kezmarsky. A roll call vote of members eligible revealed 6 aye votes by Mr. Cimis, Ms. Neumann, Mr. Savino, Mr. Rabolli, Mr. Whiteman and Mr. Kezmarsky.

- B. DKT. #1215-07 – JUDITH PECK, BLOCK 78, LOT 37
57 THUNDERHEAD PLACE, MAHWAH
Board action date: February 7, 2007
Resolution memorialized: March 21, 2007**

Resolution granting the Request for Extension of side yard variance for an additional one (1) year period until March 21, 2010. A motion to approve was made by Ms. Neumann, seconded by Mr. Whiteman. A roll call vote of members eligible revealed 6 aye votes by Mr. Cimis, Ms. Neumann, Mr. Savino, Mr. Rabolli, Mr. Whiteman and Mr. Kezmarsky.

- C. DKT #1249-02-RA – EMIL EKROTH (EMIL’S GARAGE)
BLOCK 173, LOT 123, 45 EDISON ROAD, MAHWAH**

Resolution granting the Amended Use Variance and Site Plan to retain the one (1) permanent storage shed on the site. A motion to approve was made by Ms. Neumann, seconded by Mr. Rabolli. A roll call vote of members eligible revealed 3 aye votes by Mr. Cimis, Ms. Neumann, and Mr. Rabolli.

IV. OPEN TO THE PUBLIC:

Mr. Cimis opened the meeting to the Public for general questions or statements. None were received.

Mr. Dator asked to poll the Board to ensure there will be a quorum for the August 26, 2009 special meeting to be held. Mr. Cimis polled the Board and there will indeed be a quorum.

V. PUBLIC HEARINGS:

- A. DKT.#1284-09 – CHAI LIFELINE, INC., 1058 RAMAPO VALLEY ROAD,
BLOCK 25, LOT 28**

This is a continuation of the Public Hearing from June 17, 2009.

Attorney present:

Marc E. Leibman, Attorney for the Applicant, Chai Lifeline, Inc.

William T. Smith, Attorney for the Objectors, William and Mary Grob, 1064 Ramapo Valley Road, Mahwah, New Jersey 07430

Joseph Burgis, PP, Burgis Associates, Inc.

Mr. Leibman approached stating he intends to present two witnesses and hopes to conclude at a subsequent hearing.

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Mr. Dator recused himself at 8:17 pm.

Mr. Cimis referenced a letter from Ms. Jane DeWan regarding an escrow account.
Mr. Leibman indicated his client sent in the required escrow.

Mr. Leibman called Mr. Craig Goldman, former owner of 1058 Ramapo Valley Road until he donated the property in 2007. Mr. Cimis swore in Mr. Goldman. Mr. Goldman described the property when he purchased it in 1997. There is an old grist mill and a small house down by the river, which is not occupied. Mr. Goldman described the improvements he made when he owned the property. The pool was redone, landscaping was added, a new kitchen, an office was built, and the master bedroom suite was redone. All contractors applied and obtained appropriate permits. Mr. Leibman retained the entire file from the Township for this property after being asked several questions from the Public at a prior hearing. The entire package was marked as:

Exhibit A-3 Mahwah Township Building Department's file for the property at
1058 Ramapo Valley Road, Mahwah

At Mr. Cimis' request, Mr. Leibman will list what is in the file and send it to the Board.

Also marked was:

Exhibit A-4 Septic survey and permit copy obtained from Mr. Dan Maas, Mahwah
Board of Health

Mr. Leibman handed copies of Exhibit A-4 to the Board. Answering a question made by a Public member at a prior hearing, Mr. Leibman described the septic system as being a 750 gallon tank with a 500 gallon back-up tank.

Mr. Leibman questioned Mr. Goldman about prior parties and the number of guests that attended these parties. Mr. Goldman stated his guests sometimes numbered 50-60 guests, with overnight guests sometimes reaching 10-15 people. He never had a problem with the septic system, water supply, heat, electric or air conditioning. Mr. Goldman stated there is a dual heating system and two air conditioning systems. General maintenance has been performed on these systems. Mr. Leibman concluded his questioning of Mr. Goldman.

Mr. Cimis asked Mr. Goldman about septic maintenance. Mr. Goldman replied that Ridex was used monthly. Mr. Savino asked about the 750 gallon tank being emptied. Mr. Goldman indicated that the tank has been emptied in the past, but not because it was failing. Mr. Cimis asked to Mr. Goldman to mark the existing septic tanks with a wooden stake or a marker since he knows where the tanks are located. After questioning from Mr. Cimis, Mr. Goldman stated there are four bedrooms.

The following was marked:

Exhibit A-5 Letter dated July 23, 2009 from Mr. Leibman including the property
record card as an attachment

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Mr. Goldman described the dwelling, which includes a dining room, kitchen, laundry area, bathrooms, and bedrooms. There was discussion on the downstairs / basement being designated as a bedroom or a family room. Mr. Goldman used this area as a family room.

There were no further questions from the Board.

Mr. Cimis opened the meeting to the Public for questions.

Ms. Margaret Bost, 121 Deerhaven Road, approached. Ms. Bost asked Mr. Goldman if he noticed if any of the lighting has been changed. Mr. Goldman replied no. Ms. Bost indicated she has noticed changes in the lighting that affects her home. Ms. Bost questioned Mr. Goldman if he knew of any changes to the drain by the river. She stated she observed people with wheel barrows at the drain last summer and believes the drain may have been filled with concrete. Mr. Goldman stated the entrance under the grist mill was cleaned out and then a heavy metal mesh was put at the opening to block debris from entering. Ms. Bost is concerned with the damn and its delicacy. To Mr. Goldman's knowledge, nothing was filled in the drains. Mr. Leibman stated he could make arrangements for Ms. Bost to inspect the damn.

Mr. Cimis addressed Mr. Goldman with additional questions from a prior hearing. The property is served by a well. The pump has been replaced (within the last 5-8 years), but it is the same well in the same location. There is information on the well located in the utility room as to its capacity. Mr. Cimis asked that this information be obtained and brought to the next meeting as well as when the pump was replaced. The water has been tested in the past and is safe. Mr. Cimis questioned the nearest fire hydrant. Mr. Goldman indicated when the fire department came to the site, they noted they could utilize the pool or the Ramapo River.

Mr. Cimis continued questioning Mr. Goldman. It was confirmed the driveway, plus an area between trees, was used for parking for the large parties. There are two furnaces that use oil fuel. There is one oil tank for two furnace systems. There is propane for gas heating in the kitchen. When Mr. Goldman donated the home, there were smoke and carbon monoxide detectors as well as fire extinguishers.

Ms. Evelyn Amarante, 1066 Ramapo Valley Road, approached. Ms. Amarante commented on grieving people coming into a hostile neighborhood and continued explaining the area past her home to this property. There is a no trespassing/private property sign. There are red/orange cones and more no trespassing signs. Mr. Goldman explained there is a common driveway. He indicated that the neighbor, Mr. Slade, put up the signs. Mr. Cimis interjected to clarify that the signs / cones were not put up by the Applicant or Mr. Goldman. Mr. Goldman stated he had objected to the signs, but could not stop the neighbor from installing them.

Ms. Bost approached again. She questioned the safety of children coming from the city being by the river as well as the pool. Mr. Goldman stated good parents should be watching their children. Mr. Cimis remarked this is a reasonable concern. He asked

Mr. Leibman if he would be willing to stipulate, on behalf of his client, putting in the household procedures references to the hazards of the pool and the river and ensuring there are both adult and child size life jackets available. Mr. Leibman indicated life jackets will be put in the grist mill, with an instruction sheet, as well as information included in the materials the families receive. Ms. Neumann also suggested a throw tube be placed at the grist mill with a line. Mr. Leibman concurred.

Ms. Barbara Shanley, 314 Franklin Turnpike, approached. Ms. Shanley is on the Historic Preservation Commission. She asked Mr. Goldman about the grist mill house. Mr. Goldman stated renovations were being done by the prior owner, but were never completed. The grist mill house is locked.

Mr. Gus Vasiliadis, 1040 Ramapo Valley Road, approached. Mr. Vasiliadis is a neighbor of Chai Lifeline. He supports Ms. Amarante's testimony regarding the cones and the signs. He has lived in the area for over 30 years. Mr. Vasiliadis gave some history of the grist mill and stated it should be a historic site. He continued describing the property and giving history of the Carmel Retreat. He has photographs prior to houses being in the area that will be submitted to the Historical Society.

Ms. Bost approached asking about one family or more than one family being at the property. Mr. Cimis asked that statements be held and questions of Mr. Goldman be asked at this time.

There were no further questions from the Board or the Public.

Mr. Leibman called Mr. Matthew Jakubowski. Mr. Cimis swore in Mr. Jakubowski. Mr. Jakubowski gave his qualifications and educational background. He was offered as an expert in professional planning without any objections.

Mr. Leibman asked Mr. Jakubowski if he visited the site. Mr. Jakubowski has visited the site. In respect to the interpretation being sought, Mr. Jakubowski listed what he has reviewed including the former Zoning Officer's letter, the application materials, the Burgis Associates' letter and the Township's Zoning Ordinance and Master Plan. Mr. Jakubowski gave his opinion that the site operates as a single-family use, which is in the R-80 single-family residential zone. Mr. Jakubowski explained the R-80 zone. He continued stating there would be no expansions to the site and there is enough parking. There would be one family at a time occupying the site with typical family activities, with the exception that they would be there for a few days at a time as compared to being there permanently.

Mr. Jakubowski indicated he reviewed the zoning ordinance and there is no restriction of time in which a one-family dwelling could be occupied, whom it can be used by or that the dwelling must only be used by the property owner, or someone who has entered into a lease. He described the three definitions within the ordinance as (1) one-family dwelling, (2) family, and (3) household and read the corresponding definitions. Mr. Jakubowski elaborated on definition #2, family, and clarified transient housing (recovering drug addicts and alcoholics), compared to transitional housing (battered women/homeless people

transitioning into stable housing). He believes because the families are in a non-permanent situation at the retreat, this is where there is an issue.

Mr. Jakubowski summarized his interpretation of the zoning ordinance stating the occupants of Chai Lifeline meet the definition of a permanent single housekeeping unit and are occupying the house as a single family would. He also noted that its use is less intense than others. Mr. Jakubowski continued stating because Chai Lifeline has agreed to restrict the use to one family at a time, they are actually placing a restriction that is more prohibitive than a typical single-family situation, where you may have friends or relatives staying for a few days.

Mr. Savino questioned the definition of permanent. Mr. Jakubowski gave his interpretation of the definition as that which is a permanent, stable and domestic relationship.

Mr. Jakubowski mentioned permanent is referring to the relationship. Mr. Savino continued to question. Mr. Leibman referenced college students living together in a fraternity house as not being a permanent relationship.

Mr. Burgis asked when COAH adopted the definition of transitional housing.

Mr. Jakubowski referenced the second round of rules from 1987 – 1999 where transitional housing was not specifically defined. It was in the third round of rules where transitional housing was specifically defined. Mr. Burgis commented on the statute and the definition of family. A discussion ensued on transient vs. transitional and how it relates to family.

Mr. Burgis questioned the interpretation of family with regards to clubs and associations.

Mr. Jakubowski noted he wasn't aware of where a club or association would house people within the club or association.

Mr. Burgis questioned the terms of patient and client used by Ms. Kwestel in prior testimony and how do we relate these terms to the interpretation of family.

Mr. Jakubowski's interpretation is that from a planning perspective, the same people would be viewed as residents, as they would be residing at the home for a period of time. The way the zoning ordinance views the activities that are occurring are as if they were residents. Mr. Burgis asked if he was staying at the Sheraton, would he be a resident of the hotel. Mr. Burgis asked for clarification of distinctions as to guest or resident. From a planning perspective, Mr. Jakubowski views this as a single-family use and there are probably a number of ways to view the occupants of the retreat.

Mr. Rabolli questioned the use of the widows as not being viewed as a family.

Mr. Leibman interjected that the grief counsel proposed use was added after the letter from Ms. Winokur was issued. For their request for interpretation, they are not asking on a ruling for grief counseling for the widows. The request for interpretation is limited to one family using the facility at a time.

Mr. Rabolli remarked that there are two issues before the Board. One is for a single-family use on a rotation basis, and the other for an occasional 10 person, unrelated, grief counseling. Mr. Leibman commented on the two issues and there are different sets of proofs for each. He noted that if the Board first rules in favor of the interpretation, they

will proceed with the request for the use for the widows. He believes the two issues can be separated.

Mr. Whiteman asked if there was a definition anywhere of transient or where transient housing is permitted. Mr. Burgis remarked that the ordinance does not define transient housing nor does it identify it as a permitted use in any zone in the Municipality. Mr. Cimis questioned the use of the word of stable. Mr. Jakubowski remarked that the word stable would not be specifically defined in a zoning ordinance. Mr. Leibman believes the ordinance is drafted for the purpose of stopping a fraternity or sorority from invading a residential neighborhood.

Mr. Whiteman compared having a different set of friends visit a home he owns each week as guests, but to the neighbors, it would look like he is running a hotel, even though there is no exchange of money. Mr. Leibman commented if a homeowner would like to permit one family at a time to occupy their home, it should be permitted. It is a stable and permanent family, not the length of time in the home.

A discussion ensued on case law on condominium or townhouse associations being excluded. Mr. Cerami commented on associations discouraging turnovers.

Mr. Leibman concluded his questioning of Mr. Jakubowski.

Mr. Savino commented that the code was written before the college was built.

There were no further questions from the Board or the Public.

Mr. Leibman referenced his meeting with Mr. Maas of the Mahwah Health Department commenting that when Mr. Maas inspected the waterway under the grist mill, it was clogged. The waterway was cleaned periodically by Mr. Goldman as well as by Chai Lifeline. Shortly after Mr. Maas' observation, the waterway was cleaned.

Mr. William Smith, on behalf of Mary Grob, questioned Mr. Jakubowski on transient housing. Mr. Jakubowski explained transient housing and the non-permanency of the occupants. Mr. Smith asked several times if this house is transient. Mr. Jakubowski replied yes. Questions and answers continued regarding transient and transitional housing and the interpretations of each. Mr. Smith asked if the use is more like a hotel or more like transitional housing referenced in COAH. Mr. Jakubowski replied that the use is not transitional housing and it is totally different than a hotel. The only similarity is people staying at either for a few days at a time.

Mr. Smith asked Mr. Jakubowski if he thought that the governing body of Mahwah contemplated the proposed use when adopting the zoning ordinance for single-family residential use. Mr. Jakubowski stands by his testimony that the use will be by a single family. Mr. Smith continued by questioning the intensity noting that people moving in and out would create more activity than a single family. Mr. Leibman commented his client agreed to stipulate that it would allow no more than one family to stay at the retreat per week. Mr. Whiteman asked if it was a fair assumption that the people coming would have

whatever fits in their car/van, not tractor trailer moving trucks coming and going. Mr. Leibman replied yes. There were arguments with Mr. Smith commenting there is room for 20 cars to park and again, mentioning all of the people moving in and out. He believes there will be much more activity at the retreat than what is contemplated in a single-family zone. He remarked the retreat is a hotel for a single family. Mr. Jakubowski testified again that he believes the use will be less intense than a typical single-family setting. Arguments continued between Mr. Smith and Mr. Jakubowski regarding the intensity of the site.

Mr. Smith concluded his questioning of Mr. Jakubowski.

Mr. DeSilva questioned if any one explored what the responsibility of the school district would be if this home is accepted as a single-family use and what the impact would be. Mr. Leibman replied the children would not be attending school. Mr. DeSilva's concern is in the future as this opens up the doors to possible liability.

Mr. Cimis commented the potential for a landlord/tenant situation. Mr. Leibman indicated there is no money being charged and the occupants would be considered guests. Mr. Cimis suggested a use and occupancy agreement be created. Mr. Leibman stated he will draft an agreement to be reviewed and approved by the Board's attorney.

Mr. Whiteman remarked there are no zones where transient is permitted and it is explicitly excluded in the R-80 zone. He asked if there are any zones where transient is not explicitly excluded. Mr. Burgis indicated that the term transient is only found in the definition of family. Mr. Burgis commented the definition of family is documented in his May 1, 2009 letter. Mr. Jakubowski read the definition of family as:

"A group of persons functioning as a single housekeeping unit and whose relationship is of a permanent, stable and domestic character, as distinguished from non-familial institutional uses, such as boarding homes, fraternities, sororities, clubs, associations, transient housing or other similar forms of housing."

Mr. Smith asked Mr. Jakubowski several more questions regarding the use as a single-family home. The neighborhood is a quiet neighborhood. Mr. Jakubowski continued to comment he does not believe there will be more intensity with the retreat than any other single-family home.

Mr. Cimis interjected indicating that Chai Lifeline will have one family a week. A discussion ensued regarding any other home proposing something similar to Chai Lifeline, but standards might be entirely different. Mr. Jakubowski commented that Boards have the ability to provide conditions. Mr. Cimis made several comments regarding the neighborhood and knowing your neighbors but in this case, it would be not knowing your neighbor. Mr. Smith continued with commenting on the impact on Mahwah.

Mr. Robert Amarante, 1066 Ramapo Valley Road, approached. He asked Mr. Jakubowski if he was aware of the licensing agreement and stated their group is known as common road residents. The licensing agreement says permanent resident. The licensing agreement is attached to deeds to all homes with a common road. Mr. Jakubowski could not comment

as he is unfamiliar with this document. Mr. Leibman would like to see the document so he is prepared for any testimony given in the future. The licensing agreement was recorded on December 19, 1979 and is attached to all of the deeds for these homes. Mr. Goldman was aware of this agreement as part of the title search when he purchased the property. There was a long discussion on the licensing agreement. Mr. Smith will provide a copy of the licensing agreement to Mr. Leibman. Mr. Cimis asked Mr. Leibman to research his client's obligation under the licensing agreement. Questions regarding the licensing agreement were deferred to the next meeting.

Mr. Leibman indicated he had a copy of the licensing agreement believing it was provided at the last meeting but was not testified to. Mr. Leibman stated it's a private license agreement and there is nothing in it that restricts his client's use of the property. Mr. Smith will review the licensing agreement before the next meeting.

Mr. DeSilva questioned sexual offenders and what would prevent someone from having a group of sexual offenders meet somewhere in town. Mr. Leibman indicated what they are suggesting in their request for interpretation, as long as the house is being used by one family at a time, it is a single-family use in a single-family residential zone and it needs to be interpreted as permitted.

The following was marked:

Exhibit A-6 August 19, 2009 letter from Mr. Leibman hand delivered to the Board

Ms. Melanie Kwestel approached to clarify her prior testimony believing she was misunderstood in regards to the confidentiality of the families. Mr. Cimis commented that at the prior hearing, the confidentiality of the family occupying the house was underscored and testimony was given if there was a problem with a neighbor, to contact the police. Ms. Kwestel indicated that there is no legal obligation to announce / introduce oneself. But good neighbors might come over to new neighbors for introductions.

After a brief discussion, the next meeting will be on October 21, 2009. Mr. Leibman asked that if at all possible, this be completed by year end. His concern was end-of-year Board member changes. Mr. Cimis explained the Board year starts July 1. Mr. Kezmarsky is new to the Board and has agreed to listen to the prior hearing's CD before the next meeting.

A motion to carry the Public Hearing to October 21, 2009 was made by Mr. Whiteman, seconded by Mr. Savino, with all voting in favor.

VI. WORK SESSION:

There were no issues raised by the Board for the Work Session portion of the meeting

VII. ADJOURNMENT:

The meeting was adjourned at 11:01 pm by Mr. Kezmarsky, seconded by Ms. Neumann.

These minutes were prepared by Geri Entrup, Board of Adjustment Recording Secretary.