

**TOWNSHIP OF MAHWAH  
BOARD OF ADJUSTMENT**

**MINUTES**

**FEBRUARY 16, 2011**

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ, beginning at 8:04 pm was called to order by Mr. Rabolli, Chairman with the reading of the opening statement followed by the flag salute.

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. Rabolli    Mr. Kezmarsky  
   Mr. Whiteman (out at 8:30 pm)                      Mr. Laforet  
   Mr. Cimis

**ABSENT:**                      Mr. Savino    Mr. DeSilva  
   Mr. Dator    Mr. Larson

**ATTORNEY:**                      Mr. Ben R. Cascio, Esq.

**I. APPROVAL OF BILLS:**

12/15/10	\$200.00	Ben R. Cascio, Esq. – Attendance One meeting
Period –December 2010	\$732.00	Ben R. Cascio, Esq. – Services Rendered
	\$175.50	Dkt.#1262-08 (Pilot Litigation)
		Dkt.#1269-08 (Filippone Litigation)

A motion to approve was made by Mr. Whiteman, seconded by Mr. Kezmarsky. A roll call vote revealed 4 aye votes by Mr. Rabolli, Mr. Whiteman, Mr. Kezmarsky and Mr. Laforet with Mr. Cimis abstaining.

**II. APPROVAL OF MINUTES:**

**A. MINUTES OF DECEMBER 15, 2010**

A motion to approve was made by Mr. Kezmarsky, seconded by Mr. Rabolli. All eligible members voted in favor.

**B. MINUTES OF JANUARY 19, 2011**

A motion to approve was made by Mr. Rabolli. Minutes were approved by Mr. Rabolli.

### III. MEMORIALIZING RESOLUTIONS:

#### A. DKT.#1192-06 – ADPP ENTERPRISES, INC. 200 ROUTE 17 SOUTH, BLOCK 55, LOTS 1, 2, 3 & 4

Resolution approving Second Amended Site Plan Approval.

Mr. Rabolli commented on the resolution and the revisions that have been made to it. Mr. Cimis noted he had some questions regarding the changes to the resolution and on the escrow account funds. Mr. Cimis had a discussion with Mr. Gary Montroy regarding the payment of inspections by professionals. Mr. Cimis researched the land use code and presented the Board members with a copy of the section under "Site Plan Review" titled '22-3.4 Fees'. He pointed out several sections regarding fees.

Mr. Rabolli will contact Mr. Montroy regarding the fees, and this issue may need to be revisited. Mr. Cascio commented on the coverable expenses. There was a discussion on the normal engineering inspections as compared to monthly inspections until the work is completed. Mr. Cimis continued questioning indicating this has been a difficult application and would like the Applicant to know that there may be an associated cost for prolonging the work that is required to be done as part of the resolution.

Mr. Cimis referred to Paragraph 13 on Page 9-10 of the resolution. The latest version of the resolution (2/11/11) was discussed, and it was agreed upon to add the word 'periodic' to the sentence starting on Page 9 as follows, "Related fees shall include, but no be limited to, the costs of the Township Engineer's periodic visits, as may reasonably be required..."

Note: Mr. Whiteman out at 8:30 pm.

A motion to approve with one revision was made by Mr. Laforet, seconded by Mr. Rabolli. A roll call vote revealed 2 aye votes by Mr. Rabolli and Mr. Laforet.

### IV. OPEN TO THE PUBLIC:

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

### V. PUBLIC HEARINGS:

There were no Applications presented for Public Hearing.

### VI. WORK SESSION:

There were no items for the Work Session portion of the meeting.

Mr. Cimis referred to the documents that were received in the Board member's packets; one being a letter from Judge Joseph S. Conte regarding the Filippone application and the other being a letter from Boswell McClave Engineering regarding Pilot. There were short conversations acknowledging both letters.

Mr. Cimis indicated that he spoke to Mr. Savino recently. Mr. Savino would like to maintain his eligibility regarding the Chai Lifeline application; however, he is currently in Florida and will not be at the March 16, 2011 scheduled hearing. There was a short discussion on obtaining an actual transcript of the hearing or providing the CD recording to Mr. Savino. Ms. Entrup will inquire the Municipal Courts about obtaining transcripts.

There are no applications scheduled for the March 2, 2011. Mr. Rabolli cancelled the March 2, 2011 Board of Adjustment meeting on the record. The next meeting will be March 16, 2011, in which the continuation of Chai Lifeline is scheduled to be heard.

Mr. Rabolli indicated he received a certification dated 12/15/10 in reference to the Chai Lifeline application from Mr. Whiteman.

#### **VII. ADJOURNMENT:**

The meeting was adjourned at 8:50 pm by Mr. Kezmarsky, seconded by Mr. Cimis.

**RESOLUTION  
TOWNSHIP OF MAHWAH  
BOARD OF ADJUSTMENT**

**DOCKET NO. 1192-06 ASP-2**

**ADPP ENTERPRISES, INC.**

**SECOND AMENDED SITE PLAN APPROVAL**

**WHEREAS**, ADPP Enterprises, Inc., located 200 Route 17 South, Suite 215, Mahwah, New Jersey, has applied to the Zoning Board of Adjustment of the Township of Mahwah for Amended Preliminary and Final Site Plan Approval for property located at 193 Route 17 North, also known as Block 55, Lots 1, 2, 3 and 4, on the Tax Assessment Map of the Township of Mahwah; and

**WHEREAS**, the Applicant previously received Conditional Use Variance, Bulk Variances, Waivers, Site Plan and Soil Movement Approval under Docket No.1192-06 by Resolution adopted on April 4, 2007; and Amended Preliminary and Final Site Plan Approval under Docket No. 1192-06 ASP by Resolution adopted June 18, 2008; and

**WHEREAS**, under the terms of the above-referenced Resolutions, the Applicant, in consultation with the Township Engineer and Board of Adjustment was to design a buffer system and sound barrier sufficient to reasonably block all noise and light from the property so as to favorably affect the adjacent residences, which design was to be reviewed and approved by the Board of Adjustment, before any permits would issue; and

**WHEREAS**, the Applicant continued to confer with the Township Engineer and the adjoining neighbors in an effort to reach a design which would meet the concerns of the neighbors relative to the noise and light emanating from the property; and

**WHEREAS**, the Applicant has submitted plans entitled "Site Plan ADPP Enterprises, Inc., Block 55, Lots 1, 2, 3 and 4, 193 Route 17 North, Mahwah, Bergen County, New Jersey", prepared by Bertin Engineering Associates, Inc., dated February 22, 2007, with latest revision date of October 4, 2010, consisting of one sheet identified as drawing No. "C2.2" entered as A-1 in evidence at the meeting of November 3, 2010; and

**WHEREAS**, the Applicant has submitted proof that it has notified all property owners within 200 feet of the extreme limits of the property in question, and in accordance with the provisions of the Zoning Ordinance of the Township of Mahwah, and the Land Use Statutes of the State of New Jersey, as amended and supplemented; and

**WHEREAS**, all property taxes have been paid; and

**WHEREAS**, a public hearing was held on November 3, 2010, at which time the Zoning Board of Adjustment of the Township of Mahwah heard testimony by the Applicant and their witnesses and gave due consideration to all individuals desiring to be heard, and after deliberation did hereby find and determine that:

1. The Applicant, ADPP Enterprises, Inc., located at 200 Route 17 South, Suite 215, Mahwah, New Jersey, is the owner of the premises known as Block 55, Lots 1, 2, 3 and 4 located at 193 Route 17 North near its intersection with Island Road in the Township of Mahwah.
2. The site is located in the B-40 Business Zone wherein gasoline service stations are a Permitted Conditional Use and wherein retail sales are also otherwise permitted. The property presently contains an existing gasoline service station consisting of a one-story masonry building, fuel pumps and

canopy on Lots 1, 2 and 3. The two-story frame dwelling and garage have been removed from Lot 4. The Applicant proposed to demolish the existing convenience store and the two-story frame dwelling and garage on Lot 4 and construct a new 3,675 square-foot convenience store. The Applicant also proposed to reconfigure the parking lot, add additional parking spaces, a new traffic island, new signage, new landscaping, new fencing, a landscaped and terraced berm with retaining walls, a new trash and recycling enclosure, new striping, minor renovations to the two rows of pump islands closest to Route 17, and the removal of the existing shed.

3. The Applicant received Conditional Use, Bulk Variances, Waivers, Site Plan and Soil Movement Approval by Resolution adopted on April 4, 2007. Under the terms of the above-referenced Resolution, the Applicant, in consultation with the Township Engineer, was to design a buffer system and sound barrier sufficient to reasonably block all noise and light emanating from the property, so as to favorably affect the adjacent residences, which design was to be reviewed and approved by the Board of Adjustment before any permits would issue.
4. The Applicant also filed an application under Docket No. 1192-06 ASP for Amended Preliminary and Final Site Approval providing for the design and construction of the buffer wall, in order to provide a noise and lighting buffer to the adjoining residential properties from the site. In accordance with the plans submitted, the Applicant proposed to construct a six (6') foot high concrete block wall on top of a retaining wall system, 75 feet long from the

north corner of the store, and 180 feet long from the south corner of the store, both to be constructed on top of the retaining wall system, all as delineated on the plans above-referenced.

5. The Applicant also proposed to provide landscaping and plantings on both sides of the barrier wall and plant and maintain Arborvitae at a minimum height of 6 feet to be placed 3 feet on center along the base of the wall and English Ivy on the wall from the sound barrier along the base.
6. As a result of the continuing concerns of the neighbors, the Applicant continued to meet with the Township Engineer and representatives of the surrounding property owners and has now presented the above-referenced plan for the Board's consideration as outlined and summarized in the communications between the Applicant's engineer (Bertin Engineering Associates, Inc.) dated October 4, 2010, and the Township Engineer (Boswell McClave Engineering) dated October 27, 2010 (copies attached hereto and made a part hereof).

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Township of Mahwah that the Applicant's request for Second Amended Site Plan Approval is hereby Granted, subject to the following conditions:

1. All of the conditions of the previous Resolutions of Approval dated April 4, 2007, and June 18, 2008 are hereby incorporated as if fully set forth herein, except as modified hereby.
2. **FLOOD LIGHTS LOCATED ON THE UTILITY POLE ALONG ROUTE 17.** The neighbors had concerns with respect to

the two flood lights located on the utility pole within the Route 17 right-of-way to the south of the north driveway which shine towards Block 55, Lot 10 owned by Steve and Debra Matson, which were not indicated on the original lighting plan. These two flood lights will be removed within sixty (60) days. No additional outdoor lighting of any kind, or any off-site lighting under the applicant's control, shall be added either on or off site without the approval of the Board of Adjustment.

3. **INSTALLATION OF FENCE AT TERMINUS OF AVENUE**

**A.** There was a concern with the unimpeded access to the rear of the convenience store from the parking lot through an area in the vicinity of Avenue A, and people accessing the rear of the convenience store from Avenue A, as well as vehicular traffic from Avenue A to the site and to Route 17. Fences were originally located in the vicinity of the Avenue A terminus and tied into the area of boulders which prevented thru access in this area, but were removed during construction. The Applicant proposes to construct a 12 foot high PVC privacy fence ("New Fence") to match and overlap the recently installed sound barrier wall ("Wall") north of the convenience store to the existing 4 foot high chain link fence located on the adjoining property known as Block 53, Lot 19, which is owned by Erwin Eivert ("Adjoining Property") and install 6 foot high Arborvites placed 4 feet on center to the north of the



New Fence. The Applicant testified that the neighbor, Ewin Eivert, has given permission to come onto the Adjoining Property to install and maintain the New Fence, as well as the planting and maintenance of 6 foot high Arborvites placed 4 feet on center on the Adjoining Property, which shall be accomplished within six (6) months. The applicant shall provide the Board with an easement agreement within sixty (60) days, to be executed by the Adjoining Property owner, in a form satisfactory to the Board attorney, which agreement shall be recorded. A six (6) foot high gate will be installed between the New Fence and the existing AB wall as shown on the plans, except that the gate will tie in directly to the Wall so that there is no gap. The fence will be non-white color, preferably beige or grey. The New Fence and Gate will remain locked at all times, except when access is required by the property owner.

4. **WALL PACK LIGHT FIXTURES AT THE REAR OF THE CONVENIENCE STORE.** All light fixtures located along the rear of the building access shall be connected to the exit door hardware so that they will turn on only when the emergency door is operated. The exterior door handle will be removed. The emergency wall pack lights will maintain a minimum light level of one (1) footcandle. The Applicant must receive approval from the Mahwah Building Department. This shall be accomplished within

six (6) months.

5. **PAVED ACCESS WAY AT REAR OF BUILDING.** Subject to approval from the Mahwah Building Department, a 54 foot section of the paved access way along the rear of the building will be removed.

6. **CANOPY LIGHTS VISIBLE THROUGH GAP BETWEEN SOUND/LIGHT BARRIER AND THE ROOF OVERHANG OF THE CONVENIENCE STORE.** The neighbors are concerned with the canopy lights being visible through a gap between the sound/light barrier and the roof overhang of the convenience store. The area in question is approximately 2 feet by 2 feet. The Applicant proposes to utilize the vinyl privacy fence material to block the area in question, and shall do so within thirty (30) days.

7. **HOLIDAY LIGHTS ON CONVENIENCE STORE ROOF.** The holiday lights will remain off, and shall be removed within eighty (80) days.

8. **LANDSCAPE AND AIR PUMP ISLANDS.** The landscape and air pump islands were not constructed in accordance with the approved plans in order to stop truck drivers from accessing and entering the east automobile area. a). The Applicant has agreed to install and maintain in good condition 12 inch diameter, 3 foot high concrete filled pipe bollards, which are shown on the plans

above-referenced. Notwithstanding, the location of the three bollards located on the south side of the landscape island will be amended to provide for as narrow an opening to the parking area as possible, which locations shall be determined by the Board engineer. b). In addition, the Applicant will install a ten (10) foot high arch between the landscape island and pump island in order to stop truck traffic. It is the intent that the height of the arch be as low as possible to deter trucks from entering but high enough to allow access for emergency vehicles. The arch shall be constructed in such a manner as to be sturdy enough to withstand damage from trucks and the design shall be subject to the approval of the Board engineer. c). The Applicant shall also install two signs indicating that only cars are permitted in the parking area to the east beyond the islands. d). The Applicant shall construct no truck parking or idling signs in in the landscape area and on the building, which signs shall reference that New Jersey Statute. e). The Applicant shall communicate in writing with the Township Council, with a copy to the Zoning Board, and grant permission to the Mahwah Police Department in order to permit the police to come upon the property in order to enforce any parking and/or idling regulations by ticketing or towing vehicles. All to be completed within one hundred and eighty (180) days, or request an extension for good cause.

9. **FENCE AT THE SOUTH SIDE OF THE PROPERTY.** The Applicant will extend the visual barrier utilizing a 10 foot high PVC privacy fence similar to the fence to be installed at Avenue A (10 feet high and extend 20 feet out to the southeast perpendicular to the curb line and will also contain a 6 foot high vinyl gate to provide access on the south side which shall remain locked at all times except when access is required by the property owner). This shall be completed within ninety (90) days.
10. **LIGHT AT EXIT DRIVEWAY AT THE NORTH SIDE OF THE PROPERTY.** The Applicant agreed to the Board's request to rotate the light fixture at the exit driveway to the north so it is not directed at a 45 degree angle and is directed down to the pavement, within thirty (30) days.
11. Any additional use (i.e. Subway franchise) or future site changes or modifications to the property shall require Board of Adjustment review and approval, with notice to property owners.
12. All construction will be performed with proper building permits, and shall comply with all federal, state, county and municipal codes, rules and regulations.
13. This approval is specifically conditioned upon the applicant paying all required application fees, escrow fees and related fees required by this municipality and this Resolution of Approval. Related fees shall include, but not be limited to, the costs of the

Township Engineer's periodic visits, as may reasonably be required, to the site and preparation of written Progress Reports to the Zoning Board of Adjustment concerning compliance with the actions and timetables delineated in this Resolution. Engineer Inspections and Reports will continue and be paid for by the Applicant until such time as all required work is completed and a C.O. is issued. The zoning official or his designee shall make periodic, but no less than monthly, inspections of the site during the pendency of the modifications set forth in this resolution and shall inspect thereafter from time to time to confirm continued compliance.

14. The applicant shall also be bound by all of the terms, conditions and testimony placed upon the record at the public hearings held in this matter as if fully set forth herein. The omission of any specific condition in this Resolution shall not constitute a waiver or intentional omission of such condition or obligation, but shall have the same force and effect as if fully set forth herein.

**BE IT FURTHER RESOLVED**, that the Applicant is hereby granted Conditional Use and Bulk Variances to exceed the 4 foot high fence limit in the front yard and 6 foot height limit in the side and rear yards where applicable in order to construct the fences hereby approved.

**BE IT FURTHER RESOLVED**, that a copy of this Resolution shall be provided to the Applicant, the Construction Code Officer of the Township of Mahwah, and a

notice of this decision of the Board of Adjustment shall be published in the official newspaper of the municipality within ten (10) days of the date hereof and thereafter be published according to law.

**MOTION TO TAKE ACTION**

DATE: November 3, 2010

MOVED BY: Mr. DeSilva

SECONDED BY: Mr. La Foret

AFFIRMATIVE VOTES (6)      NEGATIVE VOTES (0)      ABSTENTIONS (0)

- 1) Mr. Rabolli
- 2) Mr. Savino
- 3) Mr. DeSilva
- 4) Mr. Dator
- 5) Mr. LaForet
- 6) Mr. Larson

TOTAL VOTES: (6)

**APPROVAL BY RESOLUTION**

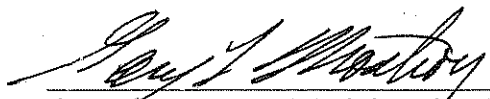
MOVED BY: Mr. LaForet

SECONDED BY: Mr. Rabolli

AFFIRMATIVE VOTES (2)      NEGATIVE VOTES (0)      ABSTENTIONS (0)

- 1) Mr. Rabolli
- 2) Mr. LaForet

Dated: February 16, 2011

  
\_\_\_\_\_  
Gary L. Montroy, Administrative Officer

  
\_\_\_\_\_  
Charles Rabolli, Chairman

Prepared by: Ben R. Cascio, Esq.