

**TOWNSHIP OF MAHWAH  
BOARD OF ADJUSTMENT**

**MINUTES**

**MAY 4, 2011**

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ, beginning at 8:06 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. Whiteman  
Mr. Savino Mr. Kezmarsky  
Mr. DeSilva Mr. Laforet  
Mr. Dator (out at 8:15 pm)

Mr. Joseph Burgis, PP

**ABSENT:** Mr. Cimis Mr. Larson

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

**I. APPROVAL OF BILLS:**

4/6/11; 4/20/11	\$400.00	Ben R. Cascio, Esq. – Attendance Two meetings
Period –April 2011	\$337.50	Ben R. Cascio, Esq. – Services Rendered Dkt.#1314-11 (Brendan Meehan)
	\$270.00	Dkt.#1262-08 (Pilot Litigation)

A motion to approve was made by Mr. Dator, seconded by Mr. Kezmarsky. A roll call vote revealed 7 aye votes by Mr. Rabolli, Mr. Savino, Mr. DeSilva, Mr. Dator, Mr. Whiteman, Mr. Kezmarsky and Mr. Laforet.

**II. APPROVAL OF MINUTES:**

**A. MINUTES OF APRIL 6, 2011**

The minutes were approved with two revisions noted by Mr. Cimis (Page 3, last paragraph change 'appeasing' to 'appealing' and removing the word 'of' on Page 4 within the

sentence beginning with 'Mr. Savino questioned . . .'). A motion to approve, with revisions, was made by Mr. Laforet, seconded by Mr. Savino. All eligible members voted in favor.

**III. MEMORIALIZING RESOLUTIONS:**

**A. DKT.#1314-11 – BRENDAN MEEHAN  
135 CHURCH STREET, BLOCK 54, LOT 5**

Resolution granting a C Variance for third-floor renovation (attic).

A motion to approve was made by Mr. Laforet, seconded by Mr. DeSilva. A roll call vote revealed 5 aye votes by Mr. Rabolli, Mr. Savino, Mr. DeSilva, Mr. Dator, and Mr. Laforet.

**B. DKT.#1315-11 – ROBERT POWLEY  
86 W. CRESCENT AVENUE, BLOCK 152, LOT 12**

Resolution granting a C Variance to construct a 2 ½ story front-yard addition.

A motion to approve was made by Mr. Laforet, seconded by Mr. Dator. A roll call vote revealed 5 aye votes by Mr. Rabolli, Mr. Savino, Mr. DeSilva, Mr. Dator, and Mr. Laforet.

**IV. OPEN TO THE PUBLIC:**

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

Mr. Dator recused himself from the Chai Lifeline hearing at 8:15 pm. The published agenda indicated an 8:30 pm start time for the Public Hearings. Mr. Rabolli called a break at 8:16 pm.

The meeting reconvened at 8:32 pm.

**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 March 16, 2011.

Attorneys 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

Mr. Joseph Burgis, Professional Planner, was also present.

A certification was received for Mr. DeSilva for the March 16, 2011 meeting. Mr. Savino did not listen to the March 16, 2011 CD, but it was confirmed with Mr. Leibman that this meeting did not contain anything of substance. A certification was also received for Mr. DeSilva for the April 6, 2011 meeting. There are six Board members eligible to vote on the Chai Lifeline application.

Mr. Rabolli gave an overview of the use variance request and the issue of an inherently beneficial use. The hearing started with Mr. Leibman cross examining Mr. Kauker questioning his familiarity with New Jersey Statute 40:55D-2. Mr. Kauker read 'section a' of the statute. Mr. Leibman questioned Mr. Kauker on his report regarding the Smart vs. Fair Lawn case and the three-part test he documented. Mr. Leibman believes the three prongs within the report are not in the Smart case. Mr. Kauker indicated he may have misstated the actual case. Questions continued regarding the Smart case. Mr. Kauker indicated that an associate of his also had input in his report.

The neighborhood houses were discussed. Similarities and differences between the houses were referenced and the relativity to this application. Mr. Leibman questioned Mr. Kauker on families in crisis and the benefits received by these families. Mr. Leibman referred to "The New Illustrated Book of Development Definitions" by Harvy Moskowitz and asked Mr. Kauker if he uses this book as a professional planner. Mr. Kauker has a copy of this book, and he uses it as a professional planner. Mr. Leibman asked if Mr. Kauker looked up the definitions of hotel, motel and bed & breakfast before writing his report. Mr. Kauker indicated he did not. There was a short discussion on the definitions.

Mr. Leibman questioned the Carmel Retreat home in the area, with 70 guests, and the existing non-conforming use at the retreat. Mr. Leibman questioned Mr. Kauker regarding his opinion that the use at Chai Lifeline will cause substantial detriment to the zoning ordinance. Due to the location of the Chai Lifeline retreat, it is Mr. Kauker's opinion that there will be a detriment. Mr. Kauker does not have an opinion on any detriments from the Carmel Retreat as he has not studied that location.

Mr. Leibman continued questioning Mr. Kauker on sections of his report. Elevations of the properties and the view of the river were discussed. Mr. Leibman referred to the list of reasons the site is ill-suited for the proposed use on Page 4 of Mr. Kauker's report and questioned him on several. Mr. Leibman had no further questions for Mr. Kauker.

Mr. Smith began his re-direct line of questioning. The inherently beneficial use was questioned. Mr. Smith questioned profitable vs. non profitable when a site is being considered for a particular use. Mr. Smith referred to Mr. Kauker's misquote in his report in regards to the three-prong test. The citing may not be accurate but that does not change Mr. Kauker's conclusions. Mr. Smith had no further questions for Mr. Kauker.

Mr. Leibman referred to Mr. Kauker's final paragraph on Page 6 of his report. Similar uses were discussed a length. Mr. Leibman noted that Mr. Kauker is not familiar with the application as he has attended only one meeting and has not listened to any of the prior meeting's CD recordings. Mr. Kauker has not reviewed prior transcripts of any hearings for Chai Lifeline; however, he has reviewed prior correspondence. Arguments began

regarding Mr. Kauker's knowledge of the testimony from the inception of this application. The documents Mr. Kauker reviewed were not listed in his report. Mr. Leibman questioned Mr. Kauker's statement on Page 1 of his report noting that history of the application has been reviewed. Per Mr. Kauker, the documents reviewed were:

- Letter dated 8/12/10 - Various correspondence between Mr. Smith and his clients
- Letter dated 7/16/10 from Sun Valley Farm to Mr. Cascio
- Letter dated 5/5/10 from Valley Association to the Board of Adjustment
- 1058 Ramapo Valley Road log of events August 2007 to date

Mr. Leibman asked Mr. Kauker if he ever obtained or reviewed any documents from the Board's secretary. Mr. Kauker did not. Mr. Leibman entered a motion to strike Mr. Kauker's report and his testimony as a net report.

At Mr. Smith's questioning, Mr. Kauker indicated he reviewed Mr. Burgis' report, Mr. Jakobowski's report, a brief prepared by Mr. Leibman dated August 19, 2009 and a brief prepared by Mr. Smith. These documents gave Mr. Kauker full understanding and facts for this application.

Mr. Leibman questioned Mr. Kauker's statement that he reviewed Mr. Burgis's report before he prepared his. The dates received and reviewed were questioned. Mr. Smith interjected and noted that Mr. Kauker reviewed Mr. Burgis' report prior to tonight's hearing, not necessarily before his report was written. Mr. Rabolli also questioned Mr. Kauker's statements. There were no further questions for Mr. Kauker.

Mr. Rabolli called a break at 9:34 pm.

The meeting reconvened at 9:47 pm.

Mr. Burgis began questioning Mr. Kauker on negative criteria listed in his report on Page 5 in regards to the unnecessary degree of uncertainty. Mr. Kauker replied that he meant uninvited, unusual or atypical degrees of uncertainty.

Mr. Edward Slade, 1068 Ramapo Valley Road, approached. Mr. Slade asked Mr. Kauker to expand on his testimony of what is meant by the unnecessary degrees of uncertainty. Mr. Kauker indicated that there are an unusual number of people. He noted that residential zoning is intended to create a level of stability and continuity. When there is a use that is not permitted, the zone plan is negatively impacted.

There were no further questions from the Public for Mr. Kauker.

Mr. Joseph Burgis, Professional Planner of Burgis Associates was sworn in by Mr. Rabolli. Mr. Burgis stated his intentions and noted he would give comments on both Mr. Jakobowski and Mr. Kauker's reports. Mr. Burgis stated that an application with special reasons can be argued in two ways. An application can be argued as an inherently beneficial use or it can be argued the site is particularly suited for the use. Depending on which is used, different case law applies. The Applicant's planner touched on both

arguments. He argued that the use is an inherently beneficial use, therefore the Sica test would apply. Mr. Burgis described the four prongs of the Sica test as written in his report. Mr. Burgis noted that Mr. Jakubowski argued there are certain social benefits derived from this application and these benefits rise to the level of an inherently beneficial use. The proposed use addresses the needs of families dealing with illness and the needs of groups of widows.

Mr. Burgis continued going through his report. He discussed in detail his review of the Applicant's planning report with regards to the Special Reasons/Inherently Beneficial Use and the Sica Balancing Test. He noted the reasonable conditions that the Board should consider as listed in his report on Page 4. He continued with commenting on Mr. Jakubowski's testimony that the site was suited for the use as it is unique with the river frontage as compared to the other properties located on this private road. The occupancy and single family use was also discussed. Mr. Burgis noted that Mr. Kauker took a different view. Mr. Burgis reminded the Board of the definition of inherently beneficial use and explained in detail the use. He mentioned the broad interpretation and that the concept of what is universally acceptable is constantly evolving. Mr. Burgis referred to Mr. Kauker's report commenting on the three-prong test listed on Page 2. He also went through the list of reasons documented on Page 4 suggesting the site is ill-suited for the proposed use. Mr. Burgis completed his comments.

Mr. Whiteman asked if the analysis would change in any way if there were a full-time caretaker that lived at the property. The families would be guests visiting the property. Would this make the home a two family home? Mr. Burgis replied that it can be argued that the building would now be occupied by a single family with a lot of guests.

There were no more questions from the Board.

Mr. Smith questioned Mr. Burgis on his relationship with Mr. Leibman and Mr. Leibman's firm. Mr. Burgis indicated they have mutual clients but he has not been retained. Mr. Smith requested that Mr. Burgis' testimony be stricken due to a conflict of interest.

Mr. Rabolli called a break at 10:21 pm.

The meeting reconvened at 10:23 pm.

A discussion ensued on the relationship between Mr. Burgis and Mr. Leibman. Mr. Smith would like to know all instances in which Mr. Burgis and Mr. Leibman had worked together. He would also like to know of any direct dealings with the Applicant's planner outside of the actual hearing. Mr. Rabolli commented that professionals of the Board are permitted to speak to counsel or counsel's experts. Mr. Smith does not believe that Mr. Burgis should be allowed to speak to Mr. Leibman or the planner outside of the hearing. Mr. Burgis indicated that he spoke to both Mr. Jakubowski as well as Mr. Kauker. He wanted to make sure he had his facts correct before putting his report together.

Mr. Smith continued that any facts received should be presented during the hearing for all to hear. Mr. Cascio commented that professionals and experts routinely work together to

ensure facts are correct. Mr. Smith continued asking Mr. Burgis about the past relationships. He asked Mr. Burgis and Mr. Leibman to document all their dealings as well as any of their associate's dealings over the past five years. Mr. Leibman objected. Mr. Leibman asked why Mr. Smith didn't raise this issue prior to this evening's hearing. Mr. Smith noted this was the first time he thought about raising this issue. Arguments ensued and Mr. Rabolli interjected. Mr. Cascio stated that there are a limited number of experts in Bergen County and utilizing experts in a professional manner does not necessarily constitute a conflict. This issue continued to be argued. Mr. Whiteman asked Mr. Burgis if any of his relationships with Mr. Leibman's firm in any way influenced the report presented. Mr. Leibman replied "absolutely not."

Mr. Smith continued questioning Mr. Burgis regarding transient use. Mr. Burgis noted the building is occupied as a single family occupancy with constant turnover. Mr. Smith questioned Mr. Burgis on the definition of transient. Arguments began. Mr. Burgis indicated the use of the building is not transient, but the constant change of the families is transient. Mr. Smith and Mr. Burgis argued about the negative criteria prong. Mr. Smith remarked that Mr. Burgis' testimony was recommendations, to which Mr. Burgis and Mr. Cascio stated the report and his testimony was to give information to the Board, not recommendations. Mr. Smith questioned how Mahwah can ever ensure the activities at the site are what are proposed and the people that stay there are in distress. Mr. Burgis indicated that the Zoning Officer can have the site shut down. Mr. Smith continued driving this issue on how can Mahwah control what goes on at the site. Mr. Leibman indicated the Applicant would be willing to offer a developer's agreement or a deed restriction to address the issue. Mr. Smith stated this would be unenforceable.

Mr. Rabolli called a break at 10:59 pm.

The meeting reconvened at 11:01 pm.

Mr. Smith continued questioning Mr. Burgis on what is meant by one family. Arguments ensued regarding the definition of one family. Mr. Burgis read the definition as written in the ordinance. Arguments continued regarding family and the word 'permanent.' Mr. Burgis noted the relationship is permanent, not the dwelling unit. Mr. Burgis read the ordinance definition again. Mr. Rabolli interjected to deter the arguments.

Mr. Smith questioned Mr. Burgis on his recommendation/condition that the widows meet only once a month. More arguments ensued regarding the legislative response to Sica. Mr. Leibman noted his objection. Mr. Rabolli interjected and Mr. Smith restated his question asking Mr. Burgis if he is familiar with Sica and the change that the legislature made to the statute after Sica. Mr. Burgis replied yes. The change was discussed that one cannot use an inherently beneficial use argument to bolster a C Variance argument. This was not the change Mr. Smith was referring to. He read into the record the change he was referring to which included the substantial detriment to the zoning ordinance. Mr. Burgis and Mr. Smith continued to disagree.

Ms. Lethia Hartz, 1046 Ramapo Valley Road, approached. Ms. Hartz commented on recognizing mental health; however, there will not be any mental health professionals at the

site. Mr. Burgis noted that testimony indicated the provision of the facility serves the purpose.

Mr. Jim Ribaldo, 1050 Ramapo Valley Road, approached. Mr. Ribaldo questioned the size of the property and how much is actual usable land (not in the water or mountain). Mr. Burgis replied it is his understanding there are 4 acres of land area, with some possibly in a flood plane. There was a discussion on where the proposed use would be allowed, such as on large pieces of properties only. The issue of one family being there at a time for a few days was also discussed as well as this site not being their permanent home. Mr. Ribaldo produced a plan which was marked as Exhibit OR-1. This showed a survey with a portion of the land in the river.

Mr. Edward Slade, 1068 Ramapo Valley Road, approached. Mr. Slade asked Mr. Burgis how will it be known that the families visiting are permanent in nature. Mr. Burgis could not offer anything specific from a planning perspective. He indicated the question may be more appropriate for the Zoning Officer. Differentiations of the area sites were discussed. Mr. Burgis noted that the site needs to show that it is particularly suited for the use and there may be more than one site that meets this test.

Mr. Whiteman questioned the number of families, if any, from New Jersey that utilized the site. Mr. Leibman did not have this information readily available.

There were no further questions for Mr. Burgis. There were no further witnesses to testify. There were no further questions or testimony from the Public.

Mr. Rabolli noted the late time. The schedule was discussed and May 18, 2011 was agreed to for the next meeting. All testimony is completed. There will be closing statements and attorney summations at the next meeting. It was requested that Mr. Burgis provide a letter documenting his and any member of his firm's relationships with Mr. Leibman or any member of his firm.

A motion to carry the Public Hearing to May 18, 2011 was made by Mr. DeSilva, seconded by Mr. Whiteman 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 11:42 pm by Mr. DeSilva, seconded by Mr. Whiteman.

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

**RESOLUTION  
ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF MAHWAH**

**DOCKET NO. 1314-11**

**BRENDAN MEEHAN**

**Variance for Third Floor Renovation**

**WHEREAS**, Brendan Meehan, residing at 135 Church Street, Mahwah, New Jersey, has filed an application to finish the existing attic at the above-captioned premises also known as Block 54, Lot 5, on the Tax Assessment Map of the Township of Mahwah; and

**WHEREAS**, the applicant has submitted a plan entitled "Meehan, 135 Church Street" identified as Exhibit A-1 at the Board of Adjustment meeting of April 20, 2011; and

**WHEREAS**, a public hearing was held on April 20, 2011, at which time the Zoning Board of Adjustment of the Township of Mahwah heard testimony by the applicant and considered all individuals desiring to be heard, and after deliberation did hereby find and determine that:

- 1) All property owners within 200 feet of the subject premises have been properly notified and the real estate taxes have been paid.
- 2) The subject property located at 135 Church Street, Mahwah, New Jersey, also known as Block 54, Lot 5, on the Tax Assessment Map of the Township of Mahwah is owned by the applicant, Brendan Meehan, who resides therein.
- 3) The property contains a two-story framed dwelling on a 7,500 square foot lot located in the R-5 Zone. The applicant has requested permission to finish the existing attic which is currently accessed by an open stairway from the second floor. The applicant



proposes to install sheetrock and insulation over the bare walls in order to utilize the attic for storage purposes and a playroom since the basement cannot be used because of recent flooding.

- 4) Under the provisions of Mahwah Zoning Ordinance 24-5.2 (height regulations) and the Zoning Schedule of Area Bulk and Yard Requirements, no building may have a greater number of stories than permitted in the district where such building is located. In the R-5 Residential Zone, the maximum building height is 2 ½ stories. The residence currently contains 2 ½ stories with the unfinished attic. However, if the attic is finished with side walls greater than 4 feet in height, then it will be considered a third story and be in contravention of the ordinance. The applicant therefore requires a variance from the provisions of Ordinance 24-5.2.

**WHEREAS**, the Zoning Board of Adjustment of the Township of Mahwah has determined that the benefits derived by the granting of this variance would outweigh any detriments the same would have on the Zone Plan and Zoning Ordinance and that the variance may be granted without substantial detriment to the public good nor would it substantially impair the intent and purpose of the Zone Plan.

**NOW, THEREFORE**, be it resolved by the Zoning Board of Adjustment of the Township of Mahwah that the applicant's request for a variance to finish the existing attic in accordance with the plans herein submitted and above referenced is hereby granted subject to the following terms and conditions:

**CONDITIONS**

1. The applicant shall install a portable escape ladder in the dormer window.

2. Renovation shall be completed strictly in accordance with the plans submitted and above-referenced.
3. The applicant shall comply with all federal, state, county and municipal codes, rules and regulations.
4. 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.
5. 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**, this approval shall not constitute a recommendation or approval of any application or variance not specifically delineated herein.

**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: April 20, 2011

MOVED BY: Mr. Cimis

SECONDED BY: Mr. DeSilva

AFFIRMATIVE VOTES (7) NEGATIVE VOTES (0) ABSTENTIONS (0)

- 1) Mr. Cimis
- 2) Mr. Rabolli
- 3) Mr. DeSilva
- 4) Mr. Dator
- 5) Mr. Laforet
- 6) Mr. Larson
- 7) Mr. Savino

TOTAL VOTES: (7)

APPROVAL BY RESOLUTION

MOVED BY: Mr. Laforet


SECONDED BY: Mr. DeSilva

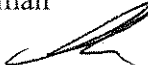
AFFIRMATIVE VOTES (5) NEGATIVE VOTES (0) ABSTENTIONS (0)

- 1) Mr. Rabolli
- 2) Mr. Savino
- 3) Mr. DeSilva
- 4) Mr. Dator
- 5) Mr. Laforet

Dated: May 4, 2011

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

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



Prepared by: Ben R. Cascio, Esq.

**RESOLUTION  
ZONING BOARD OF ADJUSTMENT  
TOWNSHIP OF MAHWAH**

**DOCKET NO. 1315-11  
ROBERT AND ANNE POWLEY**

**Front Yard Variance for Addition**

**WHEREAS**, Robert and Anne Powley, residing at 86 W. Crescent Avenue, Mahwah, New Jersey, have applied to the Zoning Board of Adjustment of the Township of Mahwah for a front yard variance to construct a 2 ½ story addition which will require a front yard variance for the above-captioned premises also known as Block 152, Lot 12, on the Tax Assessment Map of the Township of Mahwah; and

**WHEREAS**, the applicants have submitted plans entitled “Alterations and Additions Powley Residence, 86 W. Crescent Avenue, Mahwah, NJ” prepared by Robert A. Kruse, AIA, dated February 9, 2011, consisting of four sheets; and

**WHEREAS**, a public hearing was held on April 20, 2011, at which time the Zoning Board of Adjustment of the Township of Mahwah heard testimony by the applicant and considered all individuals desiring to be heard, and after deliberation did hereby find and determine that:

- 1) The premises known as 86 W. Crescent Avenue, Mahwah, New Jersey, also known as Block 152, Lot 12, on the Tax Assessment Map of the Township of Mahwah is owned by the applicants, Robert and Anne Powley, who reside therein.
- 2) The property is located on W. Crescent Avenue near its intersection with Furman Court, in the R-40 Residential Zone, which requires a front yard setback of 40 feet, whereas the premises presently has a setback of 19.6 feet.

- 3) The applicants propose to construct a 2 ½ story addition to the existing residence in order to expand their den into a family room and expand the second floor dressing room and bathroom. Although it could not be determined when the residence was originally constructed, it was estimated that it predated the current 40 foot setback requirement, resulting in the existing non-conforming front yard of 19.6 feet. The proposed addition will result in a front yard setback of 19.2 feet, and will therefore encroach .4 feet further into the existing front yard setback.
- 4) The Zoning Board of Adjustment has considered the application with reference to the objectives set forth in the applicable Zoning Ordinances and New Jersey State Statutes. Specifically, N.J.S.A. 40:55D-70(c) under which the applicant has applied, states:

"Where (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, (b) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property or (c) by reason of an extraordinary and exceptional situation uniquely effecting a specific piece of property or the structures lawfully existing thereon the strict application of any regulation pursuant to Article 8 of this Act would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship; (2) wherein an application or appeal relating to a specific piece of property the purposes of this Act would be advanced by a deviation from the Zoning Ordinance requirements and the benefits of the deviation from the Zoning Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to Article 8 of this Act."

- 5) The Zoning Board of Adjustment of the Township of Mahwah has determined that the applicant has presented adequate testimony to satisfy the statutory criteria for the grant of the variance requested. The applicant has shown peculiar and exceptional practical difficulties and has satisfied the criteria for the flexible "C" variance by demonstrating that the purpose of the Municipal Land Use Law would be advanced by a deviation from the ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.
- 6) The Board has further determined that the proposed addition cannot otherwise be located in order to avoid the necessity for the variance requested, nor will it have a negative aesthetic impact on the area. The Board further finds that the requested variance is diminimus.

**WHEREAS**, the Zoning Board of Adjustment of the Township of Mahwah has determined that the benefits derived by the granting of this variance would outweigh any detriments the same would have on the Zone Plan and Zoning Ordinance and that the variance may be granted without substantial detriment to the public good nor would it substantially impair the intent and purpose of the Zone Plan.

**NOW, THEREFORE**, be it resolved by the Zoning Board of Adjustment of the Township of Mahwah that the applicants' request to construct a 2 ½ story addition measuring 7.5 feet by 22.9 feet to the south side the existing residence resulting in a front yard setback of 19.2 feet where 40 feet is required is hereby granted subject to the following terms and conditions:

**CONDITIONS**

1. All construction will be performed in strict conformance with the plans submitted and above-referenced.

2. The applicant shall comply with all federal, state, county and municipal codes, rules and regulations.
3. 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.

**BE IT FURTHER RESOLVED**, this approval shall not constitute a recommendation or approval of any application or variance not specifically delineated herein.

**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: April 20, 2011

MOVED BY: Mr. Dator

SECONDED BY: Mr. LaForet

AFFIRMATIVE VOTES (7)      NEGATIVE VOTES (0)      ABSTENTIONS (0)

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

TOTAL VOTES: (7)

APPROVAL BY RESOLUTION

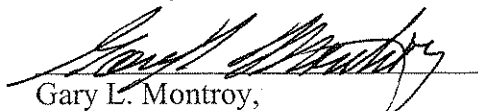
MOVED BY: Mr. Laforet

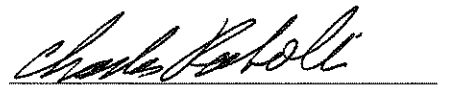

SECONDED BY: Mr. Dator

AFFIRMATIVE VOTES (5)      NEGATIVE VOTES ( )      ABSTENTIONS ( )

- 1) Mr. Rabolli
- 2) Mr. Savino
- 3) Mr. DeSilva
- 4) Mr. Dator
- 5) Mr. Laforet

Dated: May 4, 2011

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

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

Prepared by: Ben R. Cascio, Esq.