

IN THE MATTER OF  
APPLICATION NO: ZB02-6041B  
OF JENNIFER KORABIAK-BAJAR  
BLOCK 172, LOT 45

RESOLUTION GRANTING  
AMENDED SITE  
PLAN APPROVAL WITH  
VARIANCE RELIEF

A-19

WHEREAS, JENNIFER KORABIAK-BAJAR, hereinafter the "Applicant", has proposed the development of property located at 282 Tennent Road, Morganville, in the Township of Marlboro, County of Monmouth, State of New Jersey and designated as Block 172, Lot 45 on the Tax Map of the Township of Marlboro; and

WHEREAS, the Applicant previously applied for and received use variance approval by Resolution for Application ZB02-6041 dated August 14, 2002 granting use variance approval to retain an existing residential use and to construct a two story mixed use warehouse and retail/office building on the same parcel; and

WHEREAS, the Applicant has previously applied for and received site plan approval for the property pursuant to application ZB02-6041A by Resolution dated November 12, 2003; and

WHEREAS, the Applicant having received an extension of approvals pursuant to Resolution of the Zoning Board dated September 5, 2006 extending the aforesaid approvals to October 13, 2007; and

WHEREAS, the Applicant has now applied to the Zoning Board of Adjustment of the Township of Marlboro to amend the prior approvals to permit the expansion and relocation of the proposed addition to the residential component of the site which addition will approximately double the size of the existing structure and

will accommodate a two car garage, a new den, foyer and breakfast nook on the first floor, three new bedrooms, new bath and new terrace on the second floor with a new porch and front façade that will meet and extend the existing porch which will reduce the previously approved front yard setback of 19.6 ft. where 80 ft. are required, to 16.42 ft. where 80 ft. are required (Section 84-29D(7)) and further to confirm the grant of three (3) additional variances granted by implication in the prior approvals but not expressly set forth in the Resolutions, including Section 84-29D(2) lot area of 1.57 acres where 5 acres are required and 1.63 acres was previously approved, Section 84-54.1J(5) providing no landscape buffer where 50 ft. buffer is required along lot lines abutting a residential zone or use and Section 84-62A (3) for a sign located 5 ft. from a property line where 10 ft. are required, contrary to the provisions of Chapter 84, Article III, Sections 84-29, 84-54.1 and 84-62 of the Land Use Development Regulations of the Township of Marlboro; and

**WHEREAS**, the subject property is located in the IOR Industrial Office-Research Zone District and mixed uses with a residential component are not permitted but the subject use has been expressly permitted by variance approval and therefore this application is to be considered pursuant to the provisions of N.J.S.A. 40:55D-76.b. as part of a subsequent application for site plan approval for this mixed use which requires a demonstration by the Applicant that the approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the Zone Plan and Zoning Ordinance. Furthermore the number of votes of Board members required to grant such approval is the number as required for the grant of site plan approval (a majority of

quorum) with the special vote pursuant to N.J.S.A. 40:55D-70.d. not being required; and

**WHEREAS**, the Applicant appeared before the Board of Adjustment of the Township of Marlboro on August 7, 2007 and September 4, 2007, due notice of said meetings having been given in accordance with New Jersey Statutes, the Open Public Meetings Act, and the Municipal Land Use Law and a quorum of the Board of Adjustment being present the Application was heard; and

**WHEREAS**, the Applicant's witnesses having been sworn and the Board of Adjustment having heard the testimony of the Applicant's witnesses and having examined the exhibits submitted by the Applicant and having considered all of the evidence presented in favor of or in opposition to the Application, the Board of Adjustment has made the following findings of fact:

1. The Board of Adjustment has received and reviewed the following documents, exhibits and reports:

- 1.1. Application Petition on Appeal of Applicant, marked as Exhibit A-1 in evidence.
- 1.2 Indemnification and Hold Harmless Agreement, marked as Exhibit A-2 in evidence.
- 1.3 Owner's Affidavit of Authorization and Consent marked as Exhibit A-3 in evidence.
- 1.4 Plans and elevations from Architectural Group, LLC dated June 1, 2006, prepared by Gianni Intilli, marked as Exhibit A-4 in evidence.
- 1.5 IRS W-9 Statement of Applicant, marked as Exhibit A-5 in evidence.

- 1.6 Tax Collector's Certification of Taxes Paid, marked as Exhibit A-6 in evidence.
- 1.7 Disclosure statement of Applicant, marked as Exhibit A-7 in evidence.
- 1.8 Notice of Hearing to adjoining property owners, marked as Exhibit A-8 in evidence.
- 1.9 Certified property owner list, marked as Exhibit A-9 in evidence.
- 1.10 Certified mailing receipts, marked as Exhibit A-10 in evidence.
- 1.11 Affidavit of Service of Notice of Hearing, marked as Exhibit A-11 in evidence.
- 1.12 Application of publication of Notice of Hearing, marked as Exhibit A-12 in evidence.
- 1.13 Application Affidavit of Completeness, marked as Exhibit A-13 in evidence.
- 1.14 Conflict and Contribution Disclosure statement of Applicant, marked as Exhibit A-14 in evidence.
- 1.15 Amended site plan from Parker Engineering & Surveying, P.C., dated July 2, 2007, prepared by Stephen E. Parker, P.E., marked as Exhibit A-15 in evidence.
- 1.16 Copy of Resolution for variance application #ZB02-6041, marked as Exhibit A-16 in evidence.
- 1.17 Copy of Resolution granting one (1) year extension of time of use variance and preliminary final site plan approval, marked as Exhibit A-17 in evidence.
- 1.18 Copy of Resolution for variance application #ZB02-6041A, marked as Exhibit A-18 in evidence.

1.19 Copy of Resolution granting an extension of time for use variance and site plan approval for application #ZB02-6041A, marked as Exhibit A-19 in evidence.

1.20 Engineering report from Gravatt Consulting Group, dated July 16, 2007 prepared by David A. Thesing, P.E., marked as Exhibit A-20 in evidence.

1.21 Amended site plan (received August 22, 2007) from Parker Engineering & Surveying, P.C. dated July 2, 2007 prepared by Stephen E. Parker, P.E., marked as Exhibit A-21 in evidence.

1.22 Correspondence via facsimile to Danielle Cipriani from Board Attorney, dated August 29, 2007, prepared by Michael B. Steib, P.A., marked as Exhibit A-22 in evidence.

1.23 Planning report from Birdsall Engineering, Inc., dated August 31, 2007 prepared by Jennifer Beahm, P.P., marked as Exhibit A-23 in evidence.

1.24 Engineering Report, (second review) from Gravatt Consulting Group, prepared by David A. Thesing, P.E., marked as Exhibit A-24 in evidence.

1.25 Preliminary and final site plan prepared GTS Consultants, Inc. dated April 30, 2002 revised to September 22, 2003, marked as Exhibit A-25 in evidence.

2. The premises in question are located at 282 Tennent Road, Morganville, in the Township of Marlboro, County of Monmouth and State of New Jersey which property is further known and designated as Block 172, Lot 45 on the Tax Map of the Township of Marlboro.

3. The subject property is located in the IOR Industrial Office-Research Zone District which does not permit mixed use or residential use of property. The subject property previously received use variance approval by Resolution ZB02-6041 memorialized August 14, 2002 granting approval to retain the existing residential use of the property mixed with the use of the property for the Applicants' pool business including a warehouse and retail/office use. Thus the present use is a permitted use by variance. Thereafter the Applicant obtained site plan approval with associated bulk variance relief by Resolution ZB02-6041A memorialized on November 14, 2003, thereafter the Applicant received bulk variance relief for inadvertently omitted variances by Resolution ZB02-6041A memorialized May 11, 2005. The Applicant further received an extension of the aforesaid approvals through October 2007 by resolution ZB02-6041A memorialized on September 6, 2006.

4. The Applicant is now requesting amended site plan approval to reconfigure a proposed addition to the existing residential dwelling that was previously approved. The Applicant provided testimony that the redesign of the addition which results in additional variance relief, was principally the result of the Applicants professionals locating the prior addition in a manner that it could not be attached to the existing residence due to its present interior configuration. Thus the Applicant has now presented an amended site plan request to permit the re-configured two story addition that approximately doubles the existing structure in size and will accommodate a two car garage, a new den, a foyer and breakfast nook on the first floor along with three new bedrooms, a new

bath and a new terrace on the second floor with an extension of the existing front porch along the front façade of the property. The Applicant has also requested confirmation in this application that three additional variances which were previously granted by inference but not expressly set forth in the resolutions be granted including a lot area of 1.57 acres where 5 acres are required, and 1.63 acres were previously approved(Section 85-29D(2)). The lack of a 50 ft. buffer area adjacent to a residential zone or use (Section 84-54.1J(5)) and the location of a sign 5 ft. from the property line where 10 ft. are required (Section 84-62A(3)). The proposed new residence will result in a new variance for front yard setback of 16.42 ft. where 80 ft. are required and 19.6 ft. were previously granted for the existing structure with an 11 ft. setback to the proposed front porch and 8 ft. to the proposed steps.

5. The subject property has approximate dimensions of 175.70 ft. x 94.24 ft. x 304.58 ft. x 270.00 ft. x 367.38 ft. and is somewhat rectangular in shape with the property increasing in width as it recedes in a westerly direction from Tennent Road. The subject property has an approximate lot area of 1.57 acres and is presently developed with an existing 2.5 story frame dwelling with an open porch and associated driveway area.

6. The Applicant previously received use variance to permit the pre-existing non-conforming residential structure to remain on the property and to be increased in size along with a mixed use which would permit the Applicant to operate her pool business including the retention of an existing garage structure

and construction of a new structure for storage and retail/office space along with associated site improvements. Thereafter the Applicant secured site plan approval as set forth previously herein.

7. The Applicant now requests an amendment to site plan approval. The reason for the request is that the addition to the single family residential home previously approved was later found to be incompatible with the existing residence and could not be properly attached to the existing residence without major interior structural renovations. The Applicant now proposes an amendment to the previously granted site plan to allow the location of the addition to the single family residence closer to Tennent Road than previously approved and slightly larger than that previously approved. This would bring the new building within 16.42 ft. of the front property line, the new porch within 11 ft. of the front property line and the new steps to within 8 ft. of the front property line.

8. The Applicant presented testimony as to the reasons for requested relief including the inability to connect the approved addition to the existing residence. This resulted from a mistake of her prior professional consultants along with her desire for a slightly larger addition in order to accommodate her family by providing for one additional bedroom to that which was previously approved. After lengthy discussion and colloquy with the Board of Adjustment, it was determined that the Applicant could redesign the proposed addition in a manner that would provide the desired additional floor area while retaining the same setbacks as the existing structure such that the proposed addition to the house can maintain the same 19.6 ft. setback



from the front property line as the existing house. Also, the proposed porch can maintain the same 12.5 ft. setback as the existing porch and the new steps can maintain the same 10.0 ft. setback from the front property line as the existing porch. The Board of Adjustment finds that under the circumstances this is an appropriate solution to the Applicants problems and that the Applicant has satisfied the positive and negative criteria for the grant of this variance relief.

9. The Board of Adjustment finds that the Applicant has satisfied the positive criteria for the grant of the requested variance relief. The Board of Adjustment finds that the subject property exhibits an extraordinary and exceptional situation insofar as it has an existing residential dwelling which is located 19.6 ft. from the front property line. This residence is relatively small by current standards, and the Board of Adjustment previously found that a substantial addition to the structure was appropriate under the circumstances. It has now been determined that the addition previously approved cannot practically be placed on the existing structure due to its interior layout and the massive structural changes which would be required. Consequently, it is appropriate to relocate the proposed addition. The Board of Adjustment finds that locating the addition and maintaining the same setbacks for the house, porch and steps as are currently provided on the existing residence will maintain a continuity and character of the residence. This is appropriate under the circumstances since the residence is already maintaining this distance from the streetscape. There is a hardship imposed upon the Applicant to place an addition to the structure other than the area located to the southwest of the existing structure. In order to properly

connect the addition to that structure it must be in closer proximity to the front property line than that which was previously approved.

10. The Board of Adjustment further finds that the Applicant has satisfied the negative criteria for the grant of the requested variance relief. The Board of Adjustment finds that there will be no substantial detriment to the public good from the grant of this variance relief. The subject property is located in the IOR Zone District and there are a variety of commercial uses in the vicinity which this addition to a residential structure will not adversely impact. Furthermore the Board of Adjustment finds from the architectural renderings provided that the proposed additions to the structure will provide a pleasing aesthetic appearance to the residence and will result in a residence of reasonable size consistent with other homes in the vicinity. The Board of Adjustment finds that by maintaining the same setbacks as the existing house, porch and steps there will be continuity to the proposed addition which will provide for an appropriate view from the streetscape and a pleasing aesthetic environment if the construction is substantially in accordance with the architectural renderings presented by the Applicant. As a result of the foregoing the Board of Adjustment finds that there will be no substantial detriment to the public good as the proposed addition will present a pleasing view from the streetscape, a pleasing aesthetic environment and will maintain the continuity of the existing setbacks from Tennent Road.

11. The Board of Adjustment further finds that the grant of the requested variance relief will not result in any

substantial impairment to the Zone Plan or Zoning Ordinance. The Board of Adjustment finds that the existing residence has set the character of this area as it has existed for a substantial period of time in its present location. The Board of Adjustment finds that, notwithstanding the deviation from the Ordinance requirements, the grant of the requested variance relief will permit this structure to be enhanced to a size which is consistent with other contemporary homes in the vicinity of the subject parcel and will improve the aesthetic appearance of the structure. Insofar as the structure already exists it can be added to without having any substantial detrimental impact to the Zone Plan or Zoning Ordinance as the neighborhood scheme has already been set. Thus the reasons for which the setback Ordinance provisions were adopted are not offended by this addition to an existing single family home.

12. The Board of Adjustment notes that the proposed addition will result in a .18 floor area ratio as per the plans submitted by Parker Engineering and Surveying, P.C. dated July 2, 2007. The Board of Adjustment further notes that the Applicant agreed to comply with the technical requirements set forth in the Board Engineers report dated August 29, 2007 under Subsection D and that compliance with those requirements shall be made a condition of this approval.

13. The Board of Adjustment agrees that it should confirm its previous intent by inference to grant variances to permit lot area of 1.57 acres where 5 acres are required, permit the absence of a buffer from a residential zone due to the fact that the property along the streetscape will be residential in

character and to permit the existing sign to remain 5 ft. from the property line where 10 ft. are required.

14. The Board of Adjustment further notes that three (3) waivers are required in connection with this application including a waiver of Section 84-94A(4) requiring a Wetlands Presence or Absence determination, a waiver of Section 84-95D(2)a to provide specifics of size, height, location and arrangement of existing and proposed buildings, structures and signs and Section 84-119D(2) providing curbing in off-street parking areas. The Board of Adjustment finds that the Applicant should provide the wetland presence or absence statement and should be granted waivers for the other items.

15. The Board of Adjustment also notes that the Applicants extension of approvals will conclude in October of 2007. Consequently it is appropriate at this time to grant an extension of these approvals for an additional one (1) year period to permit the Applicant sufficient time to finalize the plans in accordance with Resolution compliance and to secure necessary financing, permit approvals and the like in order to commence construction.

16. As a result of all of the foregoing, the Board of Adjustment finds that the Applicant has satisfied the positive and negative criteria for the grant of the requested variance relief. The Board of Adjustment further finds that the proposed changes with respect to the site plan are di minimus in nature and that the Applicant has submitted a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for site plan

approval have been met. The Board of Adjustment further finds that the Applicant has provided detailed drawings, specifications and estimates of the Application in conformance with the standards for final approval. The Board of Adjustment finds that the proposed changes to the residential addition have virtually no impacts upon the previously granted site plan approval and that the amended site plan can be approved at this time.

17. The Board of Adjustment further finds that all property owners within 200 ft. of the premises in question were given proper notice of the Hearing of this application and were provided with an opportunity to present testimony in support of, or in opposition to the Appeal.

**NOW THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Township of Marlboro on this 18th day of September, 2007 that the Application of **JENNIFER KORABIAK-BAHAR**, be and is hereby approved subject to the following terms and conditions:

**GENERAL CONDITIONS -**

1) This approval is subject to the accuracy and completeness of the submissions, statements, exhibits and other testimony filed with, or offered to, the Board in connection with this application, all of which are incorporated herein by reference and specifically relied upon by the Board in granting this approval. This condition shall be a continuing condition subsequent which shall be deemed satisfied

unless and until the Board determines (on Notice to the Applicant) that a breach hereof has occurred.

2) In the event that any documents require execution in connection with the within approval, such documents will not be released until all of the conditions of this approval have been satisfied unless otherwise expressly noted.

3) No taxes or assessments for local improvements shall be due or delinquent on the subject property.

4) The Applicant shall pay to the municipality any and all sums outstanding for fees incurred by the municipality for services rendered by the municipality's professionals for review of the application for development, review and preparation of documents, inspections of improvement and other purposes authorized by the Municipal Land Use Law. The Applicant shall provide such further escrow deposits with the municipality as are necessary to fund anticipated continuing municipal expenses for such professional services, if any, in connection with the Application for Development as may be authorized by the Municipal Land Use Law.

5) The Applicant shall furnish such Performance Guarantees and/or Maintenance Guarantees as may be required pursuant to the Municipal Land Use Law and the Ordinances of the Township of Marlboro for the

purpose of assuring the installation and maintenance of on-tract/off-tract improvements.

6) No site work shall be commenced or plans signed or released or any work performed with respect to this approval until such time as all conditions of the approval have been satisfied or otherwise waived by the Board of Adjustment.

7) Any and all notes, drawings or other information contained on any approved plans shall be conditions of this approval.

8) Nothing herein shall excuse compliance by the Applicant with any and all other requirements of this municipality or any other governmental entity.

9) In the event any di minimis exception has been granted from the Residential Site Improvement Standards Regulations in connection with this application, a copy of this resolution shall be sent to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Board Street, CN 802, Trenton, New Jersey 08625-0802 within thirty (30) days of the date hereof. Said copy of this resolution shall be clearly marked on its face with the words "SITE IMPROVEMENT EXCEPTIONS".

10) In the event that the Applicant and the approving authority have agreed that exceeding a standard of the Residential Site Improvement Standards is desirable

under the specific circumstances of the proposed development, such Agreement to Exceed RSIS Standards shall be placed, in writing, by the developer and transmitted forthwith to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Broad Street, CN 802, Trenton, New Jersey 08625-0802.

11) The Applicant shall comply with the contribution requirements of the Township Affordable Housing fund as applicable to this application.

12) In the event that this application involves a subdivision or site plan, such subdivision or site plan shall expire at the conclusion of the period of protection from zoning changes provided for in N.J.S.A. 40:55D-52.a and in no event shall extend beyond the third anniversary of the date of adoption of this resolution in the case of preliminary approval or the second anniversary of the date of adoption of this resolution in the case of a final approval.

13) All general and special conditions set forth in this Resolution shall be placed as notes on the approved plans as a Resolution compliance requirement.

**SPECIAL CONDITIONS -**

1. Except as otherwise modified herein, the Applicant shall comply with all conditions of all



prior Resolutions adopted in connection with this matter.

2. The following variances not previously expressly granted are hereby confirmed as having been granted by inference in the prior approvals:

a. Section 84-29D(2) - lot area of 1.57 acres where 5 acres are required.

b. Section 84-54.1J(5) - no buffer provided where a 50 ft. buffer is required along a lot line abutting a residential zone or use.

c. Section 84-62A(3) - location of sign 5 ft. from property line where 10 ft. are required. (the Board of Adjustment has advised the Applicant that in all other respects the signage must comply with the Ordinances of Marlboro Township).

3. The following new variance relief is granted:

a. Section 84-29D(7) - permitting a front yard setback for the addition to the single family residence of 19.6 ft. where 80 ft. are required, a front yard setback of the porch of the proposed addition of 12.5 ft. where 80 ft. are required and a front yard setback for the steps of the proposed addition of 10.0 ft. where 80 ft. are required.

4. The Applicant is granted the following waivers:

a. Section 84-95D(2)a - from providing size, height, location and arrangement of all existing and proposed buildings structures and signs.

b. Section 84-119D(2) - providing curbing in off-street parking areas.

5. The Applicant shall provide a Presence/Absence determination with respect to wetlands associated with the subject property.

6. The total floor area for the site shall be limited to .18 as set forth on the plans submitted by Parker Engineering and Surveying, P.C. dated July 2, 2007, marked as Exhibit A-21 in evidence.

7. The Applicant shall comply with the technical comments set forth in the Board Engineers report dated August 29, 2007 set forth in Subparagraph D.

8. The architectural appearance of the addition to the single family residential home shall be substantially consistent with the elevation drawings presented by the Applicant at the Hearing.

9. The Applicant is granted a one (1) year extension of approvals commencing on October 13, 2007 and expiring on October 12, 2008.

**BE IT FURTHER RESOLVED** that nothing herein shall

excuse compliance by the Applicant with any and all other requirements of this Municipality or any other governmental entity.

**BE IT FURTHER RESOLVED** that a written copy of this Resolution certified by the Secretary of the Zoning Board of Adjustment to be a true copy be forwarded to the Applicant, the Code Enforcement Official of the Township of Marlboro and the Construction Code Official of the Township of Marlboro.

**BE IT FURTHER RESOLVED** that a proper notice of this decision be published once in the official newspaper of the Municipality or in a newspaper in general circulation within the Township.

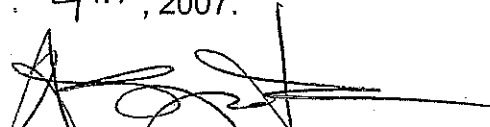
The foregoing Resolution was:

Moved by: *Adrienne Spota*

Seconded by: *Robert Knight*

ROLL CALL	YES	NO	ABSTAIN	ABSENT
MR. MICHAEL FISHMAN ( <i>Recused</i> )	( )	( )	( )	( )
MR. GLENN MALYSZ	( )	( )	( )	( )
MS. ADRIANNE SPOTA	( )	( )	( )	( )
MS. CINDY SARNA	( )	( )	( )	( )
MR. LEWIS WILDMAN	( )	( )	( )	( )
MR. JOSEPH CASTELLUCCI	( )	( )	( )	( )
MR. ROBERT KNIGHT	( )	( )	( )	( )
MR. JOSEPH SPARACIO	( )	( )	( )	( )
MR. MATTHEW WEILHEIMER	( )	( )	( )	( )

I HEREBY CERTIFY THAT THE FOREGOING RESOLUTION IS A TRUE COPY OF A RESOLUTION PASSED AT A REGULAR MEETING OF THE MARLBORO TOWNSHIP BOARD OF ADJUSTMENT HEARD ON *Sept. 4th*, 2007.

  
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SECRETARY OF MARLBORO TOWNSHIP  
ZONING BOARD OF ADJUSTMENT

The foregoing Resolution was:

Moved by: *Adrienne Spota*

Seconded by: *Lewis Wildman*

ROLL CALL	YES	NO	ABSTAIN	ABSENT
MR. MICHAEL FISHMAN	( )	( )	( )	( )
MR. GLENN MALYSZ	( )	( )	( )	( )
MS. ADRIANNE SPOTA	(✓)	( )	( )	( )
MS. CINDY SARNA	( )	( )	( )	( )
MR. LEWIS WILDMAN	(✓)	( )	( )	( )
MR. JOSEPH CASTELLUCCI	( )	( )	( )	( )
MR. ROBERT KNIGHT	(✓)	( )	( )	( )
MR. JOSEPH SPARACIO	( )	( )	( )	(✓)
MR. MATTHEW WEILHEIMER	( )	( )	( )	( )

I HEREBY CERTIFY THAT THE FOREGOING RESOLUTION IS A TRUE COPY OF A RESOLUTION PASSED AT A REGULAR MEETING OF THE MARLBORO TOWNSHIP BOARD OF ADJUSTMENT HEARD ON *Sept. 18<sup>th</sup>*, 2007.

  
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SECRETARY OF MARLBORO TOWNSHIP  
ZONING BOARD OF ADJUSTMENT

I HEREBY CERTIFY THAT THE ABOVE IS A TRUE AND EXACT COPY OF A RESOLUTION ADOPTED AT THE MARLBORO TOWNSHIP ZONING BOARD OF ADJUSTMENT AT A MEETING HELD ON *Sept. 18<sup>th</sup>*, 2007.

  
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ADMINISTRATIVE OFFICER