

Township of South Hackensack
BOARD OF ADJUSTMENT
March 23, 2009
MINUTES

At 7:30 p.m. the meeting was Called to Order. Pursuant to the Open Public Meetings Act, adequate notice of this meeting was advertised in The Record and the Herald News and by posting a copy of the meeting notice on the bulletin board in the clerk's office where notices are customarily posted.

The Vice-Chairman led the flag salute.
The Secretary called the roll.

Members Present

Joe D'Amico
Phil Iacono
Blasé Coppola
Jim Diraimondo
John Falato
Evely Stefano - Secretary
Ralph Chandless – Attorney

Members Absent

Bill Regan
Brian Veprek Sr.
Luis Perdomo
John Kopec

MINUTES

CORRESPONDENCE

D'Amico motioned; Diraimondo seconded to accept the Correspondence listed and to file them in the appropriate files. The board recommended that the town forward the annual report and zoning recommendations to the Township Committee.

OLD BUSINESS

ZB #2009-01 – Frank & Maria Colonnelli
Block 5.01 Lot 19.03 – 39 Milano Court

Memorialize the Denial of the Appeal from a decision of the Construction Official denying a Certificate of Occupancy for a third apartment in a two-family dwelling Iacono **motioned**; Diraimondo seconded to **memorialize the resolution for Frank & Maria Colonnelli**. 3 Yes: Iacono, Diraimondo, and Falato 2 Abstain: D'Amico & Coppola

Memorialize Resolution

ZB #2009-02 -- Sid & Jocelyn Bordadora
Block 2.01 Lot 3.01 – 275 Phillips Avenue

Falato **motioned**; Diraimondo seconded to **memorialize the resolution for Sid & Jocelyn Bordadora**. 3 Yes: Iacono, Diraimondo, & Falato 2 Abstain: D'Amico & Coppola

NEW BUSINESS

ZB #2009-02 – ES Classic Cars

Block 47 Lot 10 – 20 Worth Street

Emil Cuccio's letter dated March 9, 2009 requested that this matter be carried to the April 27, 2009 regular meeting and upon this request they will waive the automatic approval provisions.

The meeting was Open to the public.
Since there were no comments;
The meeting was Closed to the public.

At 7:42 p.m. Diraimondo **motioned**; D'Amico seconded to **adjourn**. All in favor.

Respectfully Submitted,



Mary Terraccino
Minutes Secretary

March 23, 2009

RESOLUTION NO. 2009 -

BOARD OF ADJUSTMENT OF THE TOWNSHIP OF SOUTH HACKENSACK

DATED: March 23, 2009

**MEMORIALIZATION OF THE DENIAL
OF THE APPEAL FROM A DECISION OF THE CONSTRUCTION
OFFICIAL DENYING A CERTIFICATE OF OCCUPANCY
FOR A THIRD APARTMENT IN A TWO-FAMILY DWELLING**

APPEAL OF: Colonnelli, Frank and Maria, his wife

APPELLANT'S ADDRESS: 39 Milano Court
South Hackensack, New Jersey 07606

**APPELLANT'S
ATTORNEY:** John Profita, Esq.
106 Grand Avenue
Englewood, New Jersey 07631
201-227-1114

PREMISES: Lot 19.03 in Block 5.01
39 Milano Court

OWNER OF PREMISES: Applicant

DATE OF SUBMISSION: April 11, 2008

DATE DETERMINED COMPLETE: January 30, 2009

DATE OF PRESENTATION: February 23, 2009

SITE AND/OR SUBDIVISION: None

ARCHITECTURAL PLANS: None

PLANNING REPORTS: None

APPEAL: Appeal from the denial of an application for a Residential Rental Property Certificate of Occupancy for a third apartment in a two-family house to be occupied by the son of the property owners

DECISION: Denied

WHEREAS, this matter came before the Board for a public hearing on February 23, 2009, upon the letter of appellants' attorney, John Profita, Esq., alleging as follows:

It is clear that under the definition set forth in the Code, a unit shall not be considered a third unit if it is occupied by an immediate family member of the owner of such dwelling. As such, the Code as written permits an immediate family member to occupy a dwelling containing two units, in addition to the unit occupied by the family member. As a result of this interpretation, we respectfully request you reconsider the Colonnelli's application and issue a Certificate of Occupancy permitting their son, Vincent Colonnelli, to occupy the premises.

WHEREAS, appellants' attorney cites the following definition from §208-1 of the Zoning Chapter of Township Code:

DWELLING, THREE FAMILY — A dwelling on a single lot containing three separate dwelling units. A third unit shall be defined as any unit which contains sleeping and sanitary facilities, is used or occupied by any person other than the owner and/or his or her immediate family and lacks approval from the Zoning Official and/or Land Use Board of appropriate jurisdiction for use as a separate dwelling unit. For purposes of this section, "immediate family" shall be defined as a grandparent, parent, sibling, child or grandchild of the owner of the dwelling. An "owner of the dwelling" shall be defined as one who owns at least a 50% interest in the dwelling. [Added 6-10-2004 by Ord. No. 2004-09]

WHEREAS, the Appellants' attorney appeared and presented this appeal, and

WHEREAS, this Board heard the matter, as follows:

The Appellants' attorney urged, as in his letter of appeal, that a third apartment is not to be considered prohibited under §208-4 of Township Code, which otherwise effectively limits dwellings in the A District to one or two family dwellings, as long as the third apartment is to be occupied by a member of the immediate family of the owner as is the circumstance in the instant case.

To the contrary, the Zoning Enforcement Officer, Raymond DeRiso, urged that the definition of a dwelling unit contained in §208-1 of Township Code controls the interpretation of §208-4. That section provides as follows:

DWELLING UNIT — One or more rooms designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

Mr. Profita acknowledged that the third apartment in this case was a "dwelling unit" as so defined. To this, Mr. DeRiso countered that the change in the definition did not change the terms of §208-4 and the denial of the certificate was based on that section only. The Board Attorney then interjected that, as the Zoning Enforcement Officer knows, a valid zoning ordinance can be based only on the features of the property and its use and never on the nature of the personal relationship of the occupants or users. Therefore, the number of separate dwelling units is an appropriate and lawful measure to be applied and the relationship of the occupants is not.

Frank Colonnelli, having been duly sworn upon his oath, testified that he is one of the property owners. He further testified that he intended the third apartment to be used by his son and, in good faith, believed he could do so under the definition cited by his attorney.

WHEREAS, the Vice-Chairman, Phil Iacono, who presided in the absence of the

Chairman, opened the meeting to the public, and

WHEREAS, Anthony Ruta came forward and, having been duly sworn on his oath, testified that he owns a two family house at 213 Phillips Avenue. He further testified that he sought a permit to add a third apartment for the use of his son based upon the same definition cited by Mr. Colonnelli's attorney but was denied the same. He told the Board that he accepted the denial and Mr. Colonnelli should do so as well, and

WHEREAS, a general discussion was conducted among the members during which a consensus was reached that the definition cited by the appellant's attorney should not apply and should perhaps be repealed and therefore concluded that the denial of the Certificate was warranted, and

WHEREAS, at the conclusion of the hearing, a motion was duly made, seconded and adopted, all members present voting in the affirmative therefor, to deny the appeal and affirm the denial of the Residential Rental Property Certificate of Occupancy as to the subject third dwelling unit,

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of South Hackensack that the aforesaid denial of the appeal and affirmance of the denial of the Certificate be and is hereby memorialized.

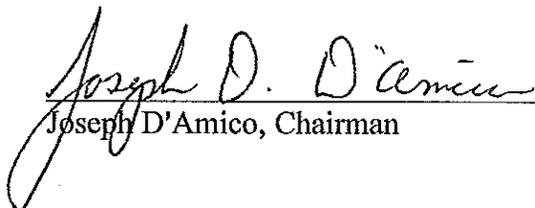
MOVED: Phil Jacobs

SECONDED: James DeRamundo

Roll Call on the Motion:

Blase' Coppola	<i>abstained</i>
Joseph D'Amico, Chairman	<i>abstained</i>
James Diraimondo	<i>yes</i>
John Falato	<i>yes</i>
Phil Iacono; Vice Chairman	<i>yes</i>
Bill Regan	
Brian Veprek, Sr.	
Luis Perdomo, 1 st Alt.	
JohnKopec 2 nd Alt.	

Date: March 23, 2009



Joseph D'Amico, Chairman

CERTIFICATION

I hereby certify that the foregoing is a true copy of the Resolution of the South Hackensack Board of Adjustment duly adopted in this matter on March 23, 2009.

Date: March 23, 2009



Evelyn Stefano
Board of Adjustment Secretary

The newspapers of **New Jersey** make public notices from their printed pages available electronically in a single database for the benefit of the public. This enhances the legislative intent of public notice - keeping a free and independent public informed about activities of their government and business activities that may affect them. Importantly, Public Notices now are in one place on the web (www.PublicNoticeAds.com), not scattered among thousands of government web pages.

County: Bergen

Printed In: The Record, Hackensack

Printed On: 2009/04/01

BOARD OF ADJUSTMENT TOWNSHIP OF SOUTH HACKENSACK
PUBLIC NOTICE

NOTICE is hereby given that the Board of Adjustment of the Township of South Hackensack, by resolution duly adopted on March 23, 2009, for the reasons set forth in its resolution of that date, denied the appeal of Frank and Marie Colonnelli seeking to reverse the denial of a Residential Rental Property Certificate of Occupancy for a third apartment on premises designated as Lot 19.03 in Block 5.01 and more commonly known as 39 Milano Court, South Hackensack, New Jersey. The Board affirmed the denial of that certificate. A copy of that resolution is on file in the office of the Township Clerk, 227 Phillips Avenue, South Hackensack, New Jersey, and is available for inspection by members of the public during the regular business hours of that office.

Dated: March 23, 2009 BOARD OF ADJUSTMENT OF THE
TOWNSHIP OF SOUTH HACKENSACK

By: Evelyn Stefano
Secretary

April 1, 2009-fee:\$25.52 (27) 2565283

Public Notice ID:

RESOLUTION NO. 2009- .

BOARD OF ADJUSTMENT OF THE TOWNSHIP OF SOUTH HACKENSACK

DATED: March 23, 2009

**MEMORIALIZATION OF THE APPROVAL
OF THE APPLICATION FOR VARIANCES**

APPLICATION OF: Bordadora, Sid & Jocelyn, his wife

**APPLICANT'S
ADDRESS:** 275 Phillips Avenue
South Hackensack, New Jersey 07606

**APPLICANT'S
ATTORNEY:** Pro Se
201-440-2372

PREMISES: Lot 3.01 in Block 2.01
275 Phillips Avenue

OWNER OF PREMISES: Applicants

DATE OF SUBMISSION: February 9, 2009

DATE DETERMINED COMPLETE: February 23, 2009

DATE OF PRESENTATION: February 23, 2009

SURVEY: Stephen P. Eid, N.J.P.E&L.S.
DATED: April 23, 1999

ARCHITECTURAL PLANS: John J. Gilchrist, Architect
DATED: "issue"
REV'D TO: February 9, 2009

PLANNING REPORTS: None

APPLICATION:

1. Variance from the strict application of the side yard requirement of 5 feet as to one side (**§208-4 B of the Township Code**) to allow a side yard of only 4.75 on one side and only in respect to the eave of the roof.
2. Variance from the strict application of the side yard requirement of 12.5 feet as to both sides (**§208-4 B of the Township Code**) to allow a total of two side yards of only 9.65.
3. Variance from the strict application of the required front yard of 25 feet (**§208-4 B of Township Code**) to permit the extension to the front of the house resulting in a front yard of only 24.65 feet at one point.
4. Variance from the strict application of the required distance between dwelling structures of 10 feet (**§208-4 B of the Township Code**) to allow only 9.5 feet.

DECISION:

Granted subject to compliance with the conditions contained herein.

WHEREAS, this matter came before this Board for public hearing on February 23, 2009, upon the aforesaid application after it had been correctly determined that the applicants would be denied a permit to the Applicants for the expansion of the subject dwelling structure located in an "A District," the one- and two-family residential district, by a proposed two bedroom, one bathroom addition over the existing attached 1½ story garage, and

WHEREAS, the Applicants appeared pro se and presented this application, and

WHEREAS, by the time of the hearing, the Secretary to this Board had determined that all of the requirements in respect to the submission of such an application had been met and that the application was complete and therefore was ready for full and complete presentation upon a public

hearing, and

WHEREAS, this Board heard the matter, as follows:

Timothy Bainbridge, having been duly sworn upon his oath, testified that he is a principal of Dream Builders of 110 Chestnut Ridge Road, Montvale, New Jersey, the applicants' contractor. He testified that he is fully familiar with the above referred to architectural plans. He further testified that all of the variances sought do not result from the proposed addition itself except for the new encroachment of the side yard created by the new roof eave extending into the southerly side yard. Instead, the need for the other variances results from the expansion of a dwelling structure that is already non-conforming in those respects.

WHEREAS, Mr. DeRiso, the Township's Zoning Enforcement Officer, stated that he was involved in the composition of the particular area restriction and that its original intention was to prevent three family dwellings by requiring review of the construction of all dwellings having a floor area of more than 3,750 square feet and the grant of this variance would not contradict that intention. However, Mr. DeRiso recommended conditions forbidding the conversion of the garage to living area, limiting the use of the dwelling to a two-family residence and prohibiting any further expansion of the habitable area of the house. He added that, in all other respects, the subject structure fully conforms with all of the other bulk requirements of the Zoning Chapter, and

WHEREAS, Board Member John Falato commented that he was thoroughly familiar with the subject property and the surrounding neighborhood and, based on that knowledge, he could not conceive of any way in which the proposed expansion upwards would bear negatively on the subject premises or the neighbors, and

WHEREAS, there was heard no comment from the public, and

WHEREAS, Board Member Phil Iacono added that he agreed with Mr. Falato's comments and that the area of the structure even after the proposed expansion appears to be well under the area limit of the Zoning Chapter, and

WHEREAS, based upon all of the foregoing, this Board has concluded as follows:

1. The peculiarity inherent in the subject premises is its otherwise lawfully existing non-conformity that prevents its expansion without variance relief even though the proposed expansion itself requires no variances except with respect to the encroaching roof eave;

2. The hardship that would be imposed by the strict application of the restriction from which the Applicant seeks a variance is that this dwelling structure could not be expanded in any way despite the fact that no other restrictions would be violated except the encroachment of the roof eaves;

3. The strict application of the restrictions from which variances are sought would result in an undue hardship on the applicants;

4. The grant of these requested variances will not result in a detriment to the general welfare or impair the intent and purpose of the Township's zone plan and zoning ordinances; and

WHEREAS, at the conclusion of the hearing, a motion was duly made by Mr. Iacono, seconded by Mr. Falato and adopted by this Board, all members present voting in the affirmative therefor, to conditionally approve the said application and to direct the preparation and presentation of this Resolution memorializing that decision,

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of

South Hackensack that the approval granted to the aforesaid variance application be and is hereby granted subject to and conditioned upon each and all of the following:

1. Full and complete compliance with all the other applicable Zoning Ordinances.
2. Full and complete compliance with all applicable provisions of the Construction Codes and all applicable provisions of its various Sub-Codes.
3. Submission to the Fire Safety Official of the Township of South Hackensack and receipt of written certification that the application complies with all of the applicable provisions of the New Jersey Uniform Fire Safety Act, all as provided in the Code of the Township of South Hackensack.
4. Substantial completeness of the entire development within one (1) year of the date hereof, it being deemed that the conditions under which this application is approved may have changed by the expiration of that period.
5. Full and complete compliance with the approved plans without any material deviation whatsoever; in the event that there is required any deviation from the approved plans which the Zoning Officer deems to be a material deviation, the Applicant must seek approval from this Board for such deviation upon a written application therefor and upon public notice of such application as is required of all other development applications and, for such purposes, this Board retains jurisdiction of this matter.
6. The acknowledgment by the Applicant that it is responsible for having determined the nature and extent of this application and its further acknowledgment that, if it may be hereafter determined that the application herein approved was in any way deficient and that any relief or approvals required by the Applicant for the development of the premises and conduct of the use for

which approval was sought requires further applications or relief, the Township of South Hackensack shall not be deemed by this approval to have waived its rights to require such further applications or relief.

7. Acknowledgment by the Applicant that it shall continue to maintain with the Township of South Hackensack an escrow sufficient to abide all of the current and reasonably anticipated future charges incurred by the Township in connection with this application and in connection with the development of the premises as approved herein at least until the grant of a final Certificate of Occupancy for the proposed development; such escrow shall be held under the same terms and conditions as the current escrow and shall be promptly supplemented upon notice to the Applicant from the Attorney for this Board or the office of the Township Treasurer when and if the need to so supplement the same is reasonably anticipated.

MOVED: John Falato

SECONDED: James Diramundo

Roll Call on the Motion:

Blase Coppola	<u>abstained</u>
Joseph D'Amico, Chairman	<u>abstained</u>
James Diraimondo	<u>yes</u>
John Falato	<u>yes</u>
Phil Iacono, Vice Chairman	<u>yes</u>
Bill Regan	_____
Brian Veprek, Sr.	_____
Luis Perdomo, 1 st Alt.	_____
John Kopec 2 nd Alt.	_____

Date: March 23, 2009

Joseph D. D'Amico
Joseph D'Amico, Chairman

CERTIFICATION

I hereby certify that the foregoing is a true copy of the Resolution of the South Hackensack Board of Adjustment duly adopted in this matter on March 23, 2009.

Date: March 23, 2009



Evelyn Stefano
Board of Adjustment Secretary

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County: Bergen

Printed In: The Record, Hackensack

Printed On: 2009/04/01

**BOARD OF ADJUSTMENT TOWNSHIP OF SOUGHT HACKENSACK
PUBLIC NOTICE**

NOTICE is hereby given that the Board of Adjustment of the Township of South Hackensack, by resolution duly adopted on March 23, 2009, for the reasons set forth in its resolution of that date, conditionally granted approval to the application of Sid and Jocelyn Bordadora as to premises designated as Lot 3.01 in Block 2.01 and more commonly known as 275 Phillips Avenue, South Hackensack, New Jersey, for variances from the strict application of the front and side yard restrictions and the limitation and the limitation on the distance between dwelling structures, all of which presently exist, to enable the applicants to construct an otherwise conforming addition above the existing attached garage. Said approval was made expressly conditionally upon the satisfaction of all of the terms and conditionals contained in that resolution. A copy of that resolution is on file in the office of the Township Clerk, 227 Phillips Avenue, South Hackensack, New Jersey, and is available for inspection by members of the public during the regular business hours of that office.

Dated: March 23, 2009 BOARD OF ADJUSTMENT OF THE
TOWNSHIP OF SOUTH HACKENSACK

By: Evelyn Stefano

Secretary

April 1, 2009-fee:\$32.13 (34) 2565267

Public Notice ID:

**Township of South Hackensack
BOARD OF ADJUSTMENT
April 27, 2009
MINUTES**

At 7:37 P.M. the meeting was Called to Order. Pursuant to the Open Public Meetings Act, adequate notice of this meeting was advertised in The Record and the Herald News and by posting a copy of the meeting notice on the bulletin board in the clerk's office where notices are customarily posted.

The Chairman led the flag salute.
The Secretary called the roll.

Members Present

James Diraimondo
John Falato
Phil Iacono
John Kopec
Brian Veprek Sr
Joseph D'Amico
Bill Regan
Blasé Coppola
Evelyn Stefano-Secretary
Ralph Chandless -Attorney
Barbara Nemchek -Boswell Engineering

Members Absent

Luis Perdomo

MINUTES

CORRESPONDENCE

OLD BUSINESS

No old business.

NEW BUSINESS

ZB # 2009-02 – ES Classis Cars
Block 47 Lot 10 – 20 Worth Street
Use Variance

Boswell's letter dated March 6, 2009 deemed the application complete.

Affidavit of service and proof of mailing were in order.

Steven Lazarus, A.I.A and Mr. Cuccio, Esq. presented testimony for the applicant.

Mr. Cuccio stated that the use variance would permit the applicant to sell motor vehicles that were being stored within the existing warehouse that is presently operating there. The new door on the site plan is required for the storage of the vehicle hauler that will be necessary in connection with this use. The proposed use will be limited to antique, classic, specialty cars and motorcycles and not your typical car sale operation.

April 27, 2009