

**Township of South Hackensack
BOARD OF ADJUSTMENT
November 23, 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 Vice-Chairman led the flag salute.
The Secretary called the roll.

Members Present

Joseph D'Amico
Phil Iacono
Blasé Coppola
James Diraimondo
Luis Perdomo

Others

Ray DeRiso- Zoning Officer
Ralph Chandless - Attorney

Members Absent

John Falato
Bill Regan
Brian Vepek
Jerry D'Amico

MINUTES

Joe D'Amico motioned; Perdomo seconded to approve the minutes of October 26, 2009.
All in favor.

OLD BUSINESS

ZB App. No. 2009-05

Spadavecchia – 35 Calicooneck Road

Diraimondo motioned; Coppola seconded to authorize the name change on the resolution for Spadavecchia at 35 Calicooneck Road. All in favor. The resolution listed Pat & Maria and the amended will read Pat & Katherine.

ZB App. No. 2009-08

Mas Partners LLC – 388 Rt. 46 West – Caribe Restaurant

Joseph D'Amico motioned; Iacono seconded to memorialize the application for Mas Partners. 5 Yes: Coppola Joe D'Amico, Diraimondo, Iacono, and Perdomo.

NEW BUSINESS

ZB App. No. 2009-10

GM 360 LLC – 370 Rt. 46 West – Athena Restaurant

Joe D'Amico motioned; Iacono seconded that the application for Athena was incomplete and that the hearing be continued to the December 28th meeting. All in favor.

Iacono inquired where the applicant was going to get his additional parking spaces and if these space were to be at another location, a use variance would be necessary. The owner of the motel would also have to show their required parking spaces on site.

There were no public comments.

At 7:50 p.m. Joe D'Amico motioned; Perdomo seconded to adjourn the meeting. All in favor.

Respectfully Submitted,


Mary Terraccino
Minutes Secretary

RESOLUTION NO. 2009-

BOARD OF ADJUSTMENT OF THE TOWNSHIP OF SOUTH HACKENSACK

DATED: October 26 , 2009

MEMORIALIZATION OF THE APPROVAL
OF THE APPLICATION FOR A VARIANCE

APPLICATION OF: Spadavecchia, Pat & Maria APPLICANTS *Katherine*

ADDRESS: 35 Calicooneck Road
APPLICANT'S South Hackensack, New Jersey 07606

APPLICANT'S
ATTORNEY: Pro Se

PREMISES: Lot 24 in Block 7.01
35 Calicooneck Road

OWNER OF PREMISES: Applicant

DATE OF SUBMISSION: August 3, 2009

DATE DETERMINED COMPLETE: September 22, 2009

DATE OF PRESENTATION: September 28, 2009

SITE AND/OR SUBDIVISION: None

ARCHITECTURAL PLANS: Sketch attached to application marked, "ZB# 2009-05

PLANNING REPORTS: None

APPLICATION: 1. Variance from the strict application of the required parking of
6 spaces (Sects. 208-4 B and 208-14.3 F of Township Code) to allow 2
parking spaces

DECISION: Granted subject to compliance with the conditions contained herein

Amended

RESOLUTION NO. 2009-
BOARD OF ADJUSTMENT OF THE TOWNSHIP OF SOUTH HACKENSACK
DATED: NOVEMBER 23, 2009

MEMORIALIZATION OF THE APPROVAL
OF THE APPLICATION FOR USE VARIANCE

APPLICATION OF: MAS Partners, LLP
d/b/a Caribe Restaurant

APPLICANT' ADDRESS: 115 Union Avenue
Little Ferry, New Jersey 07643

**APPLICANT'S
ATTORNEY:** Frank L. Migliorino, Esq.
384 Liberty Street
Little Ferry, New Jersey 07643
201-807-0990

PREMISES: Lot 2 in Block 1.02
388 Route 46 West
Route 46 at Phillips Avenue

OWNER OF PREMISES: Paul Schmidt
222 Grand Avenue
Englewood, New Jersey

DATE OF SUBMISSION: October 13, 2009

DATE DETERMINED COMPLETE: October 26, 2009

DATE OF PRESENTATION: October 26, 2009

SITE AND/OR SUBDIVISION: None

ARCHITECTURAL PLANS: None

PLANNING REPORTS: None

APPLICATION: Use variance from the strict application of **§208-8C(6)** to allow the provision of entertainment in the form of music provided electronically by one operator to which dancing by the patrons of the premises which is to be principally used as a restaurant.

DECISION: Granted subject to compliance with all of the conditions contained herein

WHEREAS, this matter came before this Board for public hearing on October 26, 2009, upon the aforesaid application after the Zoning Officer had properly denied a permit to the applicant for the proposed use, and

WHEREAS, by the time of the hearing, 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, Frank L. Migliorino, Esq., appeared on behalf of the applicant and presented this application, and

WHEREAS, this Board heard the matter, as follows:

Applicant's attorney began by first representing that the premises, formerly Sakura, a Japanese restaurant, would continue to be operated principally as a restaurant. He represented that it would not be operated as a nightclub or cabaret in which entertainment is the primary use and that there would be no entertainment other than electronically provided music controlled by a single operator. There will be no paid dancers or live entertainers. None of the entertainment will be "adult entertainment" as defined by the ordinances in respect thereto. The applicant merely seeks to

enhance the family atmosphere and encourage patrons to have dinner and enjoy some music as they dine.

Angelos Karlos of 115 Union Ave, Little Ferry, New Jersey, was duly sworn and testified that he is the managing officer of the applicant, MAS Partners LLP. He stated that the former business conducted on the premises, Sakura, an oriental restaurant, closed in November of 2008. The applicant has leased the premises and invested approximately \$400,000.00 in its renovation to make it a high caliber establishment. Kitchen renovations alone cost approximately \$70,000.00. Currently he has a maximum of 8 employees and 15 parking places. There are three exit doors, one in the kitchen, one in the rear on the left side of the building and one in the front entrance with handicapped accessibility onto Route 46. The restaurant is opened on Mondays, Tuesdays and Wednesdays from 11:00 A.M. until midnight, on Thursdays from 11:00 A.M. until 2:00 A.M., on Fridays and Saturdays from 11:00 A.M. until 3:00 A.M. and on Sundays from 11:00 A.M. until 11:00 P.M.

Zoning Enforcement Officer Raymond DeRiso read a letter from the Fire Subcode Official dated September 24, 2009, regarding the ramifications of the proposed change in use such as the required fire lane for emergency vehicles. Mr. Karlos agreed to comply with the requirements of the official. Mr. Karlos also agreed to advertise the business as a "restaurant and lounge" and not as a night club or disco. He stated that the dance floor will be only 16 feet by 15 feet achieved by relocating four dining tables.

Board Member Falato interjected that he wanted the record to reflect that he disapproved of a suggestive advertising postcard that had been circulated. Mr. Karlos testified that the applicant had not approved of this promotional mailer and that it does not represent the restaurant.

Mr. DeRiso raised security issues. Mr. Karlos stated that he currently has to two employed security officers to verify patrons' identity and ages.

WHEREAS, a lengthy discussion ensued among the members of the Board, the attorney for the applicant and Mr. Karlos resulting in the applicant representing as follows:

1. That the premises would be operated primarily as a restaurant with entertainment only as an accessory thereto: it will not be operating as a nightclub or cabaret as those terms are commonly construed.
2. That the entertainment to be provided to the patrons will only be music and that there will be no paid dancers or paid live entertainment other than the single person who operates the electronic devices necessary to operate the music.
3. The music shall be only that to which patrons of a restaurant would ordinarily dance.
4. That such entertainment will be provided only after the hours of 6 P.M. on Thursdays through Sundays and on holidays.
5. That none of the entertainment shall be "adult entertainment" as the same is defined in the ordinances of the Township of South Hackensack.
6. That the applicant shall preserve the existing 15 parking places on the premises; the configuration of the on-site parking shall be approved by the Zoning Enforcement Officer, the Building Inspector and the Fire Subcode Official.
7. That the applicant shall have three persons on duty to provide valet parking off premises at all times during which entertainment is provided.
8. That there shall be provided at least 30 parking places off premises after 6 P.M. during all

days of operation of the restaurant at 384 Liberty Street, Little Ferry, New Jersey, under a five-year lease which lease shall give the applicant an option to extend for an additional five years; the terms of such lease shall be subject to the approval of the attorney for this Board and the adequacy of such premises to provide such parking shall be subject to approval by the Zoning Enforcement Officer.

9. That the said valet parking shall be provided by 6 P.M. on all days during which the restaurant is open and providing entertainment and until all patrons having used the services of the said valets have departed the premises.

10. That the area to be provided as a "dance floor" shall not exceed 16 feet by 15 feet.

11. That the applicant shall engage the services of a security officer whose duty it shall be to verify the identity and age of all patrons during all periods when entertainment is provided.

12. That the occupancy of the premises shall be limited to 103 persons or such number as the Fire Subcode Official determines, whichever may be fewer; the applicant shall submit current sealed architectural plans of the premises in sufficient form to allow the Fire Subcode Official to make such a determination.

13. That all motor vehicles returned to the premises by way of the above referred to valet services shall be delivered to their respective operators along the Phillips Avenue frontage of the premises.

14. That the applicant's operation of the premises shall be advertised as only a restaurant or lounge and may reflect that the aforesaid entertainment is provided as an accessory only; the business shall not be advertised as a nightclub, cabaret or discotheque.

15. The rights granted by virtue of this variance from the strict application of Section 208-

8C(6) shall extend only as long as this applicant uses this premises and shall not extend to a successor unless any such successor makes all of the same stipulations in writing to the Township of South Hackensack.

WHEREAS, no comment was heard upon opening the hearing to public, and

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

1. No detriment will result from the proposed use variance and, instead a substantial benefit to the neighborhood, the general welfare, and the zoning plan will result from a use that is less intensive than many of the permitted uses;

2. Except for the nonconformity in respect to parking, the proposed use appears to conform to applicable standards of good planning;

3. By reason of the exceptional situation of the structure lawfully existing on this property, the strict application of the parking requirement would result in exceptional and undue hardship upon this applicant and the relief sought from that requirement can be granted without detriment to the public good and without impairing the intent of zone plan and zoning ordinance.

WHEREAS, at the conclusion of the hearing, Chairman D'Amico suggested that the application could be granted subject to all of the stipulations of the applicant and subject to the usual conditions, and

WHEREAS, a motion was duly made by Mr. D'Amico and seconded by Mr. Coppola to conditionally approve the said application subject to the conditions to which the applicant stipulated and further subject to the usual conditions and to direct the preparation and presentation of this Resolution memorializing that decision which includes the usual applicable conditions, and

WHEREAS, upon a role call on that motion, the Chairman and members Iacono, Diraimondo, Jerry D'Amico and Perdomo voted in the affirmative and Mr. Falato voted in the negative;

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 memorialized subject to and conditioned upon each and all of the following:

1. Full and complete compliance with P.L.2008, Chapter 46 commonly known as the Statewide Non-residential Development Fee Act, by the filing of form N-RDF (rev. 9/12/08) entitled STATE OF NEW JERSEY NON-RESIDENTIAL DEVELOPMENT FEE CERTIFICATION/EXEMPTION" (appearing on the NJ DCA website as <http://nj.gov/dca/affiliates/coah/regulations/nrdf/formnrdf.pdf>.) Said submission shall be used to impose and collect a 2.5% fee, if any, on new and/or improved non-residential development. No temporary or permanent certificate of occupancy or approval shall issue unless there is full compliance herewith.

2. Full and complete compliance with all applicable Zoning Ordinances unless a variance therefrom has been specifically granted.

3. Full and complete compliance with all of the Applicant's stipulation, to wit:

(1.) That the premises would be operated primarily as a restaurant with entertainment only as an accessory thereto: it will not be operating as a nightclub or cabaret as those terms are commonly construed.

(2.) That the entertainment to be provided to the patrons will only be music and that there will be no paid dancers or paid live entertainment other than the single person who operates the electronic devices necessary to operate the music.

(3.) The music shall be only that to which patrons of a restaurant would

ordinarily dance.

(4.) That such entertainment will be provided only after the hours of 6 P.M. on Thursdays through Sundays and on holidays.

(5.) That none of the entertainment shall be "adult entertainment" as the same is defined in the ordinances of the Township of South Hackensack.

(6.) That the applicant shall preserve the existing 15 parking places on the premises: the configuration of the on-site parking shall be approved by the Zoning Enforcement Officer, the Building Inspector and the Fire Subcode Official.

(7.) That the applicant shall have three persons on duty to provide valet parking off premises at all times during which entertainment is provided.

(8.) That there shall be provided at least 30 parking places off premises after 6 P.M. during all days of operation of the restaurant at 384 Liberty Street, Little Ferry, New Jersey, under a five-year lease which lease shall give the applicant an option to extend for an additional five years; the terms of such lease shall be subject to the approval of the attorney for this Board and the adequacy of such premises to provide such parking shall be subject to approval by the Zoning Enforcement Officer.

(9.) That the said valet parking shall be provided no later than 6 P.M. on all days during which the restaurant is open and providing entertainment and until all patrons having used the services of the said valets have departed the premises.

(10.) That the area to be provided as a "dance floor" shall not exceed 16 feet by 15 feet.

(11.) That the applicant shall engage the services of a security officer whose duty it shall be to verify the identity and age of all patrons during all periods when entertainment is provided.

(12.) That the occupancy of the premises shall be limited to 103 persons or such number as the Fire Subcode Official determines, whichever may be fewer; the applicant shall submit current sealed architectural plans of the premises in sufficient form to allow the Fire Subcode Official to make such a determination.

(13.) That all motor vehicles returned to the premises by way of the above referred to valet services shall be delivered to their respective operators along the Phillips Avenue frontage of the premises.

14. That the applicant's operation of the premises shall be advertised as only

a restaurant or lounge and may reflect that the aforesaid entertainment is provided as an accessory only; the business shall not be advertised as a nightclub, cabaret or discotheque.

(15.) The rights granted by virtue of this variance from the strict application of Section 208-8C(6) shall extend only as long as this applicant uses this premises and shall not extend to a successor unless any such successor makes all of the same stipulations in writing to the Township of South Hackensack.

4. Full and complete compliance with all applicable provisions of the Construction Codes and all applicable provisions of its various Sub-Codes.

5. 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, before any local permits shall be issued.

6. 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.

7. Full and complete compliance with the approved plans without any material deviation whatsoever except as specifically provided herein; 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.

8. 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.

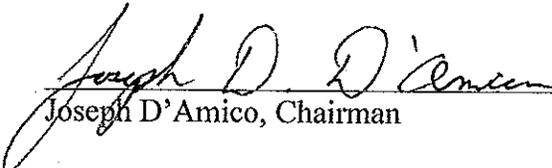
9. Acknowledgment by the applicant that it shall continue to maintain with the Township of South Hackensack an escrow sufficient to abide all of the current and reasonably anticipated future charges incurred by the Township in connection with this application and in connection with the development of 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: Joseph Di Amico
SECONDED: Phil Facons

Roll Call on the Motion:

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

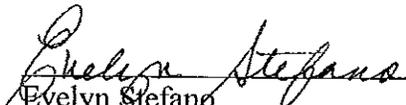
Date: November 23, 2009


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 November 23, 2009.

Date: November 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: 2009/10/15

RECEIVED
OCT 15 2009
SOUTH HACKENSACK
MUNICIPAL CLERK
C. E. B.

PUBLIC NOTICE
TOWNSHIP OF SOUTH HACKENSACK
ZONING BOARD OF ADJUSTMENT

PLEASE TAKE NOTICE that on the 26th day of October, 2009, at 7:30 PM a hearing will be held at the Municipal Complex located at 227 Phillips Avenue, South Hackensack, New Jersey before the Township of South Hackensack Zoning Board of Adjustment on the application of the undersigned for a use variance or other relief so as to permit:

USE VARIANCE - the use of the property as an entertainment or amusement establishment which is not permitted under the Commercial Zone provision to Article 208-8C(6). and any other variances necessary that may come before the board for premises located at 338 Route 46, South Hackensack, New Jersey and designated as Block 1.02 Lot 2 on the Tax Assessment Map of the Township of South Hackensack.

All pertinent applications and maps with reference to the above named application are on file in the office of the Municipal Clerk and are available for inspection during regular business hours.

Any interested party may appear at said hearing and participate therein in accordance with the rules of the Zoning Board of Adjustment.

Wendy Depena
For MAS Partners, LLP

115 Union Ave.
Little Ferry, NJ 07645
October 15, 2009-Fee:\$39.69(42) 2710755

Public Notice ID: