

**Township of South Hackensack
BOARD OF ADJUSTMENT
September 27, 2010
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.

Member Present

Lou LoPiccolo Luis Perdomo
Bill Regan Brian Veprek
Angelo Marrella John Falato
Greg Padovano, Esq.
Kevin Tic hacek – Boswell Engineering

Members Absent

James Diraimondo
Victor Santos
Jamie DiPiazza

MINUTES:

Regan **motioned**; LoPiccolo **seconded** to approve the **Minutes** of the August 23, 2010 meetings. All in favor.

OLD BUSINESS

BOA 2010-01 - Memorialize Resolution – Denial of Variances

Marianinfa Zito
77 Calicooneck Road
Block: 7.05 Lot: 29
REVISED ARCHITECTURAL DRAWINGS - New two (2) dwelling units and variances

LoPiccolo **Motioned**; Veprek seconded to accept the Resolution denying variances for Zito, 77 Calicooneck Road.

Vote: 4 Yes Votes: Veprek; Regan; LoPiccolo; Marrella

Not Qualified to Vote: Falato; Perdomo

Absent: Diraimondo, Santos; DiPiazza

September 27, 2010

BOA 2010-04 - Memorialize Resolution

Dio Mas LLP

d/b/a Diosa Super Club

378 Route 46 West

Block: 1.02 Lot: 1.02

Appeal action of Zoning Officer; "D" use variance.

Padovano stated that the Resolution was not ready at this time and will be presented to the Board at next month's meeting on October 25, 2010.

NEW BUSINESS

Marianinfa Zito

77 Calicooneck Road

Block: 7.05 Lot: 29

New two (2) dwelling units and variances.

Padovano stated "RES JUDICATA"

1. Second application is substantially similar to the first.
2. The same parties or their privies are involved.
3. There must be no substantial change in the application itself or conditions surrounding the property.
4. There must have been an adjudication on the merits in the first case.
5. Both applications must involve the same cause of action.

Matthew DeMaria, Esq.

550 Boulevard

Elmwood Park, NJ

DeMaria stated that the architect has submitted new plans for the two dwelling unit with an attached garage and a detached garage.

Vassillos Coccoones

BCA

467 Sylvan Avenue

Englewood Cliffs, NJ

NJ Licensed Architect

Stated that the Gross Living Area has been reduced by 100 sq. ft. and are looking for only two variances: 1. Gross living area. 2. Width of driveway.

LoPiccolo **Motioned**; Veprek **seconded** to dismiss the application
Zito, 77 Calicooneck Road.

Vote: 6 Yes Votes: LoPiccolo; Perdomo; Falato; Regan; Veprek; Marrella

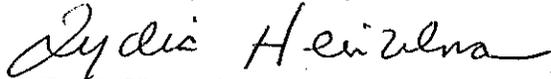
Absent: Diraimondo, Santos, DiPiazza

Meeting Open to the Public

There were no public comments at this time.

At 8:07 p.m. the meeting was **adjourned**. Veprek **motioned** to adjourn the meeting;
second by LoPiccolo, all in favor.

Respectfully Submitted,



Lydia Heinzelman

Planning/Zoning Board Secretary

September 27, 2010

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RESOLUTION

**TOWNSHIP OF SOUTH HACKENSACK
ZONING BOARD OF ADJUSTMENT**

**APPLICATION OF MARIANINFA ZITO
77 Calicooneck Road
Block 7.05, Lot 29**

Application No. 2010-01

WHEREAS, Marianinfa Zito (hereinafter referred to as the "Applicant"), 27 Paroubek Street, Little Ferry, New Jersey, applied to the Township of South Hackensack Zoning Board of Adjustment (the "Board") for variances in connection with the proposed construction of a two family dwelling with detached garage, as further described herein; and; and

WHEREAS, the property subject of the application is identified on the Tax Map of the Township of South Hackensack as Block 7.05, Lot 29 and is more commonly known as 77 Calicooneck Road, Hackensack, New Jersey (hereinafter the "Property"); and

WHEREAS, the Property is located in the A One and Two Family Residential Zone; and

WHEREAS, the Applicant initially sought the following variances as part of its application:

<u>SOUTH HACKENSACK ORDINANCE</u>	<u>PROPOSED</u>	<u>REQUIRED / PERMITTED</u>
Maximum Area of Entire Dwelling	5,336 s.f.	3,750 s.f.
Maximum Area – Second Unit	1,257 s.f.	900 s.f.
Maximum Driveway Width	56 ft.	40% of lot width (24.8 ft. for subject Property)
Maximum Coverage – Accessory Bldg.	936 s.f.	450 s.f.
Maximum Height – Accessory Bldg.	19 ft. 2 inches	15 ft.
Maximum Stairway Side yard Projection	4 ft.	3.5 ft.

WHEREAS, the Property is comprised of 15,190 s.f. and is currently vacant or unimproved; and

WHEREAS, the Applicant amended the application during the public hearings to eliminate several variances. Specifically, the Applicant amended the application several times during the August 23, 2010 hearing resulting in the reduction of size of the overall dwelling structure, reduction in the driveway width, reduction of asphalt coverage, elimination of gross area of second unit variance.

The Applicant maintained a variance requested from the maximum gross building area of the building and maximum driveway width. Specifically, the Applicant, under the final proposal, requested a variance to permit a maximum gross area square footage of 4,651 s.f. where a maximum of 3,750 is permitted. The Applicant, under the final amended proposal, also sought a variance to permit a driveway width of 31.67 feet where a maximum of 40% of the width of the lot or 24.8 feet for the Property is permitted; and

WHEREAS, the Applicant submitted architectural renderings prepared by V.C.A. Group, Vassilio Cocoros, AIA, 467 Sylvan Avenue, Englewood Cliffs, New Jersey, dated February 12, 2009 with last revision date of June 15, 2010 as part of the application; and

WHEREAS, after due notice and publication, the matter was called for a public hearing on May 24, 2010, June 28, 2010, July 26, 2010 and August 23, 2010, at which time the Applicant was represented by Matthew P. DeMaria, Esqs., 550 Boulevard, Elmwood Park, New Jersey; and

WHEREAS, the Board made a physical inspection of the Property during such times as the Board members may have indicated; and

WHEREAS, the Board has carefully considered the exhibits introduced into evidence and the testimony of the Applicant; and

WHEREAS, Vassilio Cocoros, 467 Sylvan Avenue, Englewood Cliffs, New Jersey, testified as an expert in the field of architecture on behalf of the Applicant; and

WHEREAS, Raymond DeRiso, South Hackensack Zoning Office, testified during the public hearing regarding this matter; and

WHEREAS, representatives of Boswell Engineering presented testimony as the professional engineers and planners of the Board during the public hearing and submitted review memoranda dated May 19, 2010 and June 14, 2010; and

A. Marianinfa Zito submitted the application before the Board and certified that she is the owner of the Property commonly known as 77 Calicooneck Road, South Hackensack, New Jersey which Property is also identified as Block 7.05, Lot 29 on the current Tax Map of the Township of South Hackensack. The Property is located within the A One and Two Family Residential Zone.

B. The Property is comprised of 15,190 square feet and is 62 feet wide and 245 feet deep. The existing Property is vacant and unimproved.

C. The Applicant testified that she proposed to construct a two family dwelling on the Property with detached garage located in the rear portion of the Property. The Applicant testified that she intended to occupy the primary dwelling unit on the Property.

D. The Applicant initially sought six variances as part of the application including variance for maximum gross building area, maximum living area second unit, maximum accessory building coverage, maximum accessory building height and maximum driveway width and maximum outside stairway side yard projection, as follows:

SOUTH HACKENSACK ORDINANCE	PROPOSED	REQUIRED/ PERMITTED
Maximum Area of Entire Dwelling	5,336 s.f.	3,750 s.f.
Maximum Area – Second Unit	1,257 s.f.	900 s.f.
Maximum Driveway Width	56 ft.	40% of lot width (24.8 ft. for subject Property)
Maximum Coverage – Accessory Bldg.	936 s.f.	450 s.f.
Maximum Height – Accessory Bldg.	19 ft. 2 inches	15 ft.
Maximum Stairway Side yard Projection	4 ft.	3.5 ft.

E. During the public hearing, the Applicant revised the plans and application several times resulting in the elimination of four variances requested and reduction of variance requested for total building gross area of 4,587 s.f. where a maximum of 3,750 s.f. is permitted and a variance for maximum driveway width of 31.67 feet where a maximum of 24.8 feet or 40% of the front property width is permitted.

F. The existing lot is comprised of 15,190 s.f. where the minimum permitted lot in the A Zone is 5,000 s.f. The Applicant's witness testified that due to the nature of the large site, the proposed two family building, albeit exceeding the maximum gross area permitted under the ordinance, was not excessive and is appropriate for the Property.

G. Several members of the public appeared during the public hearings and objected to the application including (i) Vincent Riotto, 70 Calicooneck Road, South Hackensack, (ii) Patricia Calibrese, 9 John Street, South Hackensack, (iii) Lorraine Ferraro, 23 John Street, South Hackensack and (iv) Sal DiMartino, Sievers Lane, South Hackensack, all of which opposed the development as initially proposed by the Applicant based upon various objections including the proposed size of the building and its inconsistency with the surrounding neighborhood.

Silvia Marini, 27 Jackson Avenue, South Hackensack and Rosa Zito (aunt of the Applicant), 35 Williams Avenue, South Hackensack, appeared and stated that they did not object to the development as proposed and as amended and that they believed that the property values of the surrounding area would be improved by the proposed development.

The Board listened to the comments of the interested parties and based its decision not upon the number of persons who advocated a particular position, but upon the merits of the comments.

H. The Applicant stipulated during the August 23, 2010 public hearing to a deed restriction stating that the building could only be utilized as a single or two-family building in accordance with the zoning ordinances of the Township of South Hackensack.

I. The Applicant agreed to comply with all comments and recommendations of the Township Engineer, Boswell Engineering, regarding the application, as amended, including removal of a portion of the rear driveway near the proposed detached garage.

J. The Applicant and witness did not provide any testimony or evidence regarding size or building gross area of dwelling within the surrounding neighborhood and did not provide sufficient evidence regarding the proposed development's impact upon the surrounding neighborhood during the public hearing.

K. The Applicant's request for variance under the amended application to permit total lot gross area of 4,587 s.f. where a maximum of 3,750 s.f. is permitted under the Township Ordinance cannot be granted without substantial detriment to the surrounding neighborhood especially since the dwelling resulting from the applications would greatly exceed the size of existing dwelling in the surrounding neighborhood. The proposed dwelling size is not consistent with the character of the surrounding neighborhood.

L. Although the Applicant eliminated several variances from the initial application by amending the application during the public hearings, the Applicant did not provide sufficient proof to justify granting a variance from the maximum gross building area under Section 208-4B and maximum driveway width under the Zoning Ordinance and did not satisfy the elements of proof required under N.J.S.A. 40:55D-70(c).

M. The Applicant did not provide sufficient proof regarding any benefit to the Zoning Ordinance or neighborhood by the proposed development resulting in variance from the maximum driveway width and maximum gross building area permitted under the Zoning

Ordinance. The proposed development, as shown on the amended plans submitted to the Board and as testified by the Applicant and witness, will result in additional obstruction of air flow to adjacent property owners and an overdevelopment of the Property by creating an excessively large dwelling which is not consistent with the character of the surrounding single and two family residential dwellings in the area.

N. Although the subject Property may exceed the minimum lot area permitted in the A-Zone, the lot width of the Property is 62 feet where a minimum lot width of 50 feet is required. Accordingly, the Property, albeit, containing 15,190 s.f. of total area is relatively narrow given the size of the proposed dwelling. Accordingly, the testimony of the Applicant and witness that the excessive gross area of the dwelling is justified given the overall lot size, is suspect since the dwelling will occupy a substantial part of the lot width along Calicoonek Road. In fact, the Applicant's last amendment of the application proposed on overall dwelling width of 45 feet where several lot width of several surrounding dwellings are 50 – 60 feet wide.

O. The proposed gross building area and driveway width variances, resulting from the proposed development will have a substantial negative impact on the Property and will result in an overdevelopment by creating a excessively large driveway area and excessively large dwelling.

P. The Applicant's request for a variance from maximum permitted gross dwelling area and driveway width under Zoning Ordinance cannot be granted without detriment to the Zone Plan and the Zoning Ordinance of the Township of South Hackensack. Said variances are detrimental to the public, as they represent an overdevelopment on the Property detrimental to the one and two family residential character of the surrounding neighborhood and will impeded the open flow of light and air to surrounding properties.

Q. No evidence was produced in connection with the burden required for approval of the application pursuant to N.J.S.A. 40:55D-70(c)(1) indicating a pre-existing hardship regarding the size, location or use of the Property which would justify the variances sought under the amended application. The existing lot is not irregularly shaped and does not contain an irregular topography or other physical conditions which hinder its use for uses permitted in the A Zone.

R. The detriments of the proposed variances sought substantially outweigh any benefit.

S. The Applicant did not provide sufficient proof regarding the advancement of the Municipal Land Use Law or proof that any benefit of the application would substantially outweigh the detriment of the variances sought.

T. Any benefit of the application as amended, if any, does not substantially outweigh the negative or detrimental effect of the application upon the adjacent properties and neighborhood.

U. The Applicant has not met the burden required for approval of the application pursuant to N.J.S.A. 40:55D-70(c) *et seq.* as the proposed variances will detrimentally impact the surrounding neighborhood and Master Plan and A-Zone Plan by resulting in an overdevelopment of the Property.

NOW THEREFORE, BE IT RESOLVED that the Application of Marianinfa Zito, for approval of a variance to permit excess gross building area of a two family dwelling and excess driveway width, as shown on the revised plans submitted to the Board and as further amended by the testimony of Applicant and witness during the public hearings, be and the same hereby is denied.

1. **Legal and Engineering Fees:** The Applicant shall be responsible for all legal and engineering fees of the Zoning Board of Adjustment.

2. **Other Fees:** All additional fees, if any, required by the Township Ordinances shall be paid.

3. **Appeal Period:** The Applicant has been advised that there is an appeal period for the relief denied herein for a period of forty-five (45) days from the date of publication of notice of the relief granted pursuant to this Resolution in a newspaper of general circulation approved by the Zoning Board of Adjustment.

A motion to approve the application, as amended, was proposed by the following vote at the meeting prior to adoption of the memorializing Resolution and having failed to receive the required number of affirmative votes pursuant to N.J.S.A. 40:55D-9(a) et seq. is therefore deemed denied:

Moved by: Luis Perdomo
 Seconded by: John Falato

	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>	<u>Not Qualified To Vote</u>
Brian Veprek, Chairperson		X			
Bill Regan, Vice Chairperson		X			
James Diramondo				X	
John Falato	X				
Jamie DiPiazza					X
Lou LoPiccolo		X			
Luis Perdomo	X				
Victor Santos, Alt. #1				X	
Michangelo Marrella, Alt. #2		X			

Dated: August 23, 2010

Said Resolution was memorialized at the meeting after the Resolution was adopted (as set forth above), by the following vote:

Moved by: L Lopiccio
 Seconded by: B Veprek

Not Qualified
 To Vote

For Against Abstain Absent

	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>	<u>Not Qualified To Vote</u>
Brian Veprek, Chairperson	X				
Bill Regan, Vice Chairperson	X				
James Diramondo X					X
John Falato					X
Jamie DiPiazza X					X
Lou LoPiccolo	X				
Luis Perdomo					X
Victor Santos, Alt. #1 X					X
Michangelo Marrella, Alt. #2	X				

Dated: September 27, 2010

SOUTH HACKENSACK ZONING BOARD

By: Brian Veprek
 Brian Veprek, Chairperson

CERTIFIED TO BE A TRUE COPY

By: Lydia Heinzelman
 Lydia Heinzelman
 Secretary to the Zoning Board of Adjustment

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: 2010/10/02

**SOUTH HACKENSACK BOARD OF ADJUSTMENT
PUBLIC NOTICE**

NOTICE is hereby given that the Board of Adjustment of the Township of South Hackensack, by resolution duly adopted on September 27, 2010 denial of variances; premises owned by MarianInfa Zito and designated as Block 7.05 Lot 29 and more commonly known as 77 Calicooneck Road, South Hackensack, New Jersey, for variances in connection with the proposed construction of a two family dwelling and a detached garage. 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 member of the public during the regular business hours of that office.

Lydia Heinzelman

Board of Adjustment Secretary

October 2, 2010-Fee:\$22.68(24) 2944162

Public Notice ID: