

Township of South Hackensack
BOARD OF ADJUSTMENT
January 24, 2011
MINUTES

At 7:32 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

Lou LoPiccolo	Bill Regan
Luis Perdomo	Brian Veprek Sr.
James Diraimondo	Angelo Marrella
John Falato	Victor Santos
John Schettino, Esq.	Kevin Tehasik, Boswell Engineering
Lydia Heinzelman	

Members Absent

Jamie DiPiazza

Oaths of Office

Gregg A. Padovano administered the Oaths of Office for:
Brian Veprek, Sr., 4 yr. term expires 12/31/2014
Victor Santos, Alt. No.1 , 2 yr. term expires 12/31/2012

Re-Organization

ZB Resolution No. 2011-01

Regan **motioned**; Veprek seconded to **appoint Lydia Heinzelman as Secretary** to the Board of Adjustment. **All in favor. 8 Yes Votes:** LoPiccolo, Perdomo, Diraimondo, Falato, Regan, Veprek, Santos & Marrella.

ZB Resolution No. 2011-02

Veprek **motioned**; LoPiccolo seconded to **appoint Gregg A. Padovano as legal counsel** for the Board of Adjustment and set compensation of a yearly retainer of \$2,500 and \$100 per hour for all professional services reasonably required to be rendered in connection with application to this Board and the defense of litigation instituted in relation to such application subject to the limits of the lawful appropriation made therefore and only upon the presentation and approval of a certified voucher for such

services. These funds are subject by way of adoption of the 2011 municipal budget. The provisions of said contract shall be in accordance with the dictates of the N.J. S.A. 19:44A-20.4 et. seq. for non fair and open contracts that will exceed \$17,500. **All in favor. 8 Yes Votes:** LoPiccolo, Perdomo, Diraimondo, Falato, Regan, Veprek, Santos & Marrella.

ZB Resolution No. 2011-03

Veprek **motioned**; Regan seconded to **appoint Boswell Engineering** as the **Professional Engineer** to the Board of Adjustment for a term to expire on December 31, 2011. **All in favor. 8 Yes Votes:** LoPiccolo, Perdomo, Diraimondo, Falato, Regan, Veprek, Santos & Marrella.

LoPiccolo **motioned**; Regan seconded to **appoint Brian Veprek as Chairman** to the Board of Adjustment. **All in favor. 8 Yes Votes:** LoPiccolo, Perdomo, Diraimondo, Falato, Regan, Veprek, Santos & Marrella.

Veprek **motioned**; LoPiccolo seconded to **appoint Bill Regan as Vice-Chairman** to the Board of Adjustment. **All in favor. 8 Yes Votes:** LoPiccolo, Perdomo, Diraimondo, Falato, Regan, Veprek, Santos & Marrella.

MINUTES:

There were no minutes for approval.

CORRESPONDENCE:

Veprek **motioned**; Perdomo **seconded** to accept the Correspondence listed and place them in the appropriate files. **All in favor.**

OLD BUSINESS

Memorialize Resolution

BOA 2010-8 – “C” Variance

77 Calicooneck Road

Block: 7.05 Lot: 29

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

Vote: 3 Yes Votes: Veprek; Regan; Falato.

Not Qualified to Vote: Diraimondo, DiPiazza, LoPiccolo, Perdomo, Santos, Marrella.

Absent: DiPiazza

BOA 2010-06 -“D” Use Variance – Live DJ – Withdrawal of this Application.

Dio Mas LLP

D/b/a Diosa Super Club

378 Route 46 West

Block: 1.02 Lot: 1.02

LoPiccolo **Motioned**; Falato **seconded** to accept the Resolution for Dio Mas, LLP, 378 Route 46 West.

Vote: 8 Yes Votes: Veprek; Regan; Diraimondo, Falato, LoPiccolo; Perdomo, Santos, Marrella.

Absent: DiPiazza

NEW BUSINESS

BOA 2011-01 – “D” Use Variance, Interpretation of Ordinance, Appeal of Action of Zoning Officer

30 Wesley Street, LLC

30 Wesley Street

Blocks: 40, 42 Lots: 1.01, 1.02, 1

Douglas Seiferling, 1 Garret Mountain Plaza, Woodland Park, NJ testified as a fact witness on behalf of North Jersey Media.

Mr. Dougherty, 15 Maple Avenue, Morristown, NJ testified as a fact-witness on behalf of the applicant regarding the existing site conditions and proposed use.

Donna Holmqvist, PP, AICP of Burgis Associates, 25 Westwood Avenue, Westwood, and NJ testified as an expert planner.

Ray DeRiso, Zoning Officer for the Township of South Hackensack, testified regarding the matter.

The property is approximately 392, 464 sq. ft and the existing building is utilized for warehouse/industrial uses. The property is located within the C-Industrial Zone. The applicant is requesting an interpretation of the Township Zoning Ordinance for a use variance to permit use of a portion of an existing building for distribution of newspapers and promotional materials for North Jersey Media; The Record Newspaper. The applicant is proposing to occupy 18,000 sq. ft in the southwest corner of the building.

The daily newspapers and associated materials will be delivered by box truck and be warehoused for a limited time. The newspapers would then be picking up by private couriers for distribution in the area. Couriers will pick up papers from 3:00 AM to 5 AM and they would be on site for a limited amount of time (approximately 10-15 minutes). The number of couriers would be approximately 30.

Seven to eight employees would be there on a daily basis during various shifts. There are approximately 72 parking spaces in the front of the building and 12 along Schriefer Street which would be adequate parking for the proposed use.

Veprek **Motioned**; Falato **seconded** in supporting Zoning Officer's Interpretation requiring a variance for 30 Wesley Street, LLC, 30 Wesley Street.
Vote: **7 Yes Votes**: Perdomo, Diraimondo, Falato, Regan, Veprek, Santos, Marrella
Recused: LoPiccolo; **Absent**: DiPiazza

Veprek **Motioned**; Falato **seconded** for a use variance for 30 Wesley Street, LLC, 30 Wesley Street.
Vote: **7 Yes Votes**: Perdomo, Diraimondo, Falato, Regan, Veprek, Santos, Marrella
Recused: LoPiccolo
Absent: DiPiazza

Meeting Open to the Public

Mrs. Anzalone, 261 Huyler Street, South Hackensack, NJ
Mrs. Anzalone inquired at to why her Zoning Approval for Use was denied. She stated that the property had always been a commercial property since construction of the building. Every occupant since then has been a commercial tenant.

DeRiso stated that the back is a commercial zone but the residential home is non-conforming. Mrs. Anzalone was requesting to rent the back yard of the property to an auto body for storage of vehicles. He stated that the storage of vehicles is a non-permitted use.

Mrs. Anzalone stated she understood that her denial was based on the non-permitted use of storage of vehicles and will look for another tenant.

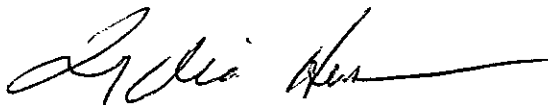
Closed to the Public.

Veprek **Motioned**; LoPiccolo **seconded** to move to closed session to discuss litigation.
All in Favor.

Veprek **Motioned**; Diraimondo **seconded** to move to open session. **All in Favor.**

At 9:05 p.m. Veprek **motioned**; Regan **seconded** to adjourn. **All in favor.**

Respectfully Submitted,



Lydia Heinzelman
Zoning Board Secretary

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF SOUTH HACKENSACK
BERGEN COUNTY, NEW JERSEY**

**RESOLUTION TO APPOINT
BOARD RECORDING / CORRESPONDING SECRETARY
Resolution No. 2011 - 01**

WHEREAS, the Municipal Land Use Act, specifically *N.J.S.A. 40:55D-71b*, authorizes the appointment of professionals, employees and experts; and

WHEREAS, the Zoning Board of Adjustment of the Township of South Hackensack (the "Board") has considered the qualifications of Lydia Heinzelman of 17 Sievers Lane, South Hackensack, New Jersey for recording / corresponding secretary of the Board and now desires to appoint her to that position; and

NOW, THEREFORE BE IT RESOLVED by the Zoning Board of Adjustment, Township of South Hackensack, County of Bergen, State of New Jersey on January 24, 2011 that Lydia Heinzelman is hereby appointed to the position of Secretary to the Planning Board retroactive to January 1, 2011 for a term to expire on December 31, 2011;

NOW, THEREFORE BE IT FURTHER RESOLVED that this appointment be made known to the Township of South Hackensack Governing Board with the recommendation that Lydia Heinzelman be engaged and compensated pursuant to the Salary Ordinance of the Township.

This resolution shall take effect immediately.

Moved by: *Regan*
 Seconded by: *Veprek*

For Against Abstain Absent Not Qualified To Vote

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

Dated: January 24, 2011

SOUTH HACKENSACK ZONING BOARD

By: *Brian P. Veprek*
 , Chairperson

CERTIFIED TO BE A TRUE COPY

By: *Judie Her...*
 Secretary to the Zoning Board of Adjustment

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF SOUTH HACKENSACK
BERGEN COUNTY, NEW JERSEY**

**RESOLUTION TO APPOINT
LEGAL COUNSEL
Resolution No. 2011 - 02**

WHEREAS, the Municipal Land Use Act, specifically *N.J.S.A. 40:55D-71b*, authorizes the appointment of an attorney and other professionals / experts; and

WHEREAS, the Zoning Board of Adjustment of the Township of South Hackensack (the "Board") has considered the qualifications of Gregg A. Padovano, Esq. for Board Attorney and desires to appoint him to that position; and

NOW, THEREFORE BE IT RESOLVED by the Zoning Board of Adjustment, Township of South Hackensack, County of Bergen, State of New Jersey on January 24, 2011 that Gregg A. Padovano, Esq., having his office at 50 Chestnut Ridge Road, Montvale, New Jersey, is hereby appointed to the position of Legal Counsel to the Planning Board retroactive to January 1, 2011 for a term to expire on December 31, 2011 in consideration of a yearly retainer of \$2,500.00 together with the payment of \$100.00 per hour rate for all professional services reasonably required to be rendered in connection with applications before the Board and the defense of litigation in relation to such applications subject to the limits of lawful appropriation made therefore and only upon the presentation and approval of certified voucher for such services, subject to any Professional Services Contract as may be required by the Township of South Hackensack Governing Body and by law;

This resolution shall take effect immediately.

Moved by: *veprek*
 Seconded by: *LoPiccolo*

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

Dated: January 24, 2011

SOUTH HACKENSACK ZONING BOARD

By: *Brian B Veprek*, Chairperson

CERTIFIED TO BE A TRUE COPY

By: *Lydia Kinzler*

Secretary to the Zoning Board of Adjustment

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF SOUTH HACKENSACK
BERGEN COUNTY, NEW JERSEY**

**RESOLUTION TO APPOINT
PROFESSIONAL ENGINEER
Resolution No. 2011 - 03**

WHEREAS, the Municipal Land Use Act, specifically *N.J.S.A. 40:55D-71b*, authorizes the appointment of an attorney and other professionals / experts; and

WHEREAS, the Zoning Board of Adjustment of the Township of South Hackensack (the "Board") has considered the qualifications of Boswell Engineering with offices at 330 Philips Avenue, South Hackensack, New Jersey and now desires to appoint said firm as professional engineering and planning consultant to the Board;

NOW, THEREFORE BE IT RESOLVED by the Board of the Township of South Hackensack, County of Bergen, State of New Jersey on January 24, 2011 that Boswell Engineering is hereby appointed to the position of Professional Engineer to the Zoning Board of Adjustment retroactive to January 1, 2011 for a term to expire on December 31, 2011 subject to any Professional Services Contract as may be required by the Township of South Hackensack Governing Body and by law;

This resolution shall take effect immediately.

Moved by: *VEPREK*
 Seconded by: *REGAN*

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

Dated: January 24, 2011

SOUTH HACKENSACK ZONING BOARD

By: *Brian A Veprek*, Chairperson

CERTIFIED TO BE A TRUE COPY

By: *Jydes Heitzelna*
 Secretary to the Zoning Board of Adjustment

RESOLUTION

TOWNSHIP OF SOUTH HACKENSACK
ZONING BOARD OF ADJUSTMENT

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

Application No. 2010-08

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

WHEREAS, the Applicant sought a variance from the maximum permitted gross building area of the building and maximum driveway width permitted under the Township Zoning Ordinance. Specifically, the Applicant sought a variance to permit construction of a two family dwelling with a total of 4,290 s.f. where a maximum gross building area of 3,750 is permitted. The Applicant also sought a variance to permit a driveway width of 31 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 November 3, 2010 as part of the application; and

WHEREAS, after due notice and publication, the matter was called for a public hearing on November 22, 2010 at which time the Applicant was represented by Matthew P. DeMaria, Esq., 550 Boulevard, Elmwood Park, New Jersey; and

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

WHEREAS, Ray DeRiso, South Hackensack Zoning Officer, testified during the public hearing regarding this matter; 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, the current matter represents a third application by the same Applicant concerning the same Property. Therefore, it is necessary for the Board to determine as a threshold or jurisdictional issue whether to even consider the current application and determine whether the application, on the merits, is precluded by the application of the doctrine of res judicata; and

WHEREAS, the Board has carefully reviewed the issue of res judicata as applied to the current/third application. In reviewing whether res judicata will bar the Board's ability to hear the application, the Board carefully considered the following five factors:

1. Whether the second application is substantially similar to the Prior Application;

2. Whether the same applicants or parties are involved in both the current application and Prior Application;
3. Whether there is a substantial change in the current application from the Prior Application itself or conditions surrounding the subject Property;
4. Whether there has been an adjudication on the merits in the Prior Application; and
5. Whether both the current application and Prior Application involve the same cause of action; and

WHEREAS, the Board takes notice that the New Jersey Supreme Court in Russell v. Tenafly Board of Adjustment, 31 N.J. 58 (1959) held that where the same property owner and the same parcel of property are involved in a subsequent application, the matter is not barred on the grounds of res judicata unless the second application is shown to be “substantially similar to the first, both as to the application itself and the circumstances of the property involved.” Russell, 31 N.J. at 65 (citation omitted) (emphasis supplied). The Court in Russell went on to hold that “[t]he question for the [Board] on a second application for a variance concerning the same property, is whether there has occurred a sufficient change in the application itself or the conditions surrounding the property to warrant entertainment of the application.” Russell, 31 N.J. at 66. (Citations omitted); and

WHEREAS, the Board also notes that the New Jersey Supreme Court's decision in Gruber v. Mayor and Township Committee of Rarriton Township, 39 N.J. 1, 12 (1962), held that although a subsequent application may be similar to the previous one, surrounding circumstances may have changed such that the prior denial would be an error. The Court also held that a zoning board possesses the discretion of whether to reject an application on the ground of res judicata and that exercise of discretion may not be overturned on appeal absence the showing of “unreasonableness.” Id.; and

WHEREAS, the Board notes that the New Jersey courts have held that res judicata does not bar the making of a new application for a variance or for modification or enlargement of one already granted or for lifting of conditions previously imposed in the connection with the grant of a variance, upon “a proper showing of a change of circumstance or other good cause warranting a reconsideration by the local authorities. . . . to hold differently would offend public policy by countenancing restraint upon the future exercise of municipal action in the absence of sound reason for such restraint.” [Springsteel v. Town of West Orange, 149 N.J. Super. 107, 113 (App. Div. 1977), cert. denied, 75 N.J. 10 (1977) (emphasis added)]; and

WHEREAS, the Applicant initially applied to the Board under calendar 2010-01 for a variance to construct a two-family home on the Property and sought variance approval to permit 5,336 gross s.f. of a dwelling structure and a driveway width of 56 feet. After several amendments to the application, the application was denied by resolution of the Board dated September 27, 2010 (the "First Application"); and

WHEREAS, the Applicant filed a second application under calendar number 2010-05 which was deemed to be substantially similar to the First Application and dismissed by the Board based upon the principal of res judicata. The dismissal was memorialized by resolution dated October 25, 2010 (the "Second Application"); and

WHEREAS, the Board has now carefully reviewed the issue of res judicata as applied to the current application as compared to the First Application. In reviewing whether res judicata should prevent the Board from hearing the current application, the Board carefully considered whether the current application is substantially similar to the Prior Application denied by the Board and hereby makes the following findings with regard to the issue of res judicata; and

A. Marianinfa Zito submitted the current application to 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 s.f. 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 sought two variances as part of the current application including variance for maximum gross building area and a variance to exceed the maximum permitted driveway width, as follows:

SOUTH HACKENSACK ORDINANCE PROVISION	PROPOSED	PERMITTED UNDER ZONING ORDINANCE
Maximum Gross Area of Entire Dwelling	4,290 s.f.	3,750 s.f.
Maximum Driveway Width	31 ft.	40% of lot width (24.8 ft. for subject Property)

E. The following is a comparison of the variance sought under the current application and First Application, as filed:

SOUTH HACKENSACK ORDINANCE PROVISION	PROPOSED (Initial Application)	PROPOSED (Current Application)	Difference From First Application
Maximum Gross Area of Entire Dwelling	5,316 s.f.	4,387 s.f.	(929 s.f.)
Maximum Driveway Width	56 ft.	31 ft.	(25 ft.)

F. The Board makes the following findings regarding the issue of res judicata:

- (1) The current application is similar to the First Application submitted under Application No. 2010-01 in that the current application involves the same Applicant, same piece of parcel of property and same proposal of development.

Although the Applicant under the current application is seeking the same two variances as under the First Application, the amount of deviation sought in the current application is substantially less than sought in the total application.

In fact, based upon the testimony from the Applicant's witness, the Applicant is seeking 929 +/- s.f. less of gross building area than was sought under the First Application. The Applicant is also seeking approximately 25 +/- feet of less of driveway width than was denied under the Initial Application.

- (2) Marianinfa Zito was the applicant under the First Application and is the Applicant under the current application.
- (3) There has been a substantial change in the application. Specifically, the proposed dwelling was substantially reduced in total size and the proposed driveway with variance was reduced by over 50%.
- (4) The First Application was heard by this Board during the course of three public hearings and a formal decision was rendered by this Board on August 23, 2010, which decision of the Board was memorialized by a written resolution adopted by the Board on September 27, 2010.
- (5) Based on the factual facts identified within the Resolution of the

First Application, it is clear that both the First Application and current application involve the same cause of action, and applicant, however, the amount of variance sought under the current application is substantially different from the amount initially sought under the First Application.

G No member of the public or interested party appeared or spoke regarding the issue of res judicata.

H. Based upon the facts presented under the current application, the Board finds that the Applicant is seeking substantially less variance and therefore has presented an application which is different from the First Application, as filed, and is not barred by the principle of res judicata.

I. The Board, having made the determination that the current application is not barred based on the grounds of res judicata, the need not proceed further to hear additional testimony from the Applicant or her witnesses regarding the current application.

NOW THEREFORE, BE IT RESOLVED that the current Application of Marianinfa Zito under Calendar 2010-8 which seeks variance approval to construct a two family dwelling with a total excess gross building area 4,290 s.f. and driveway width of 31 ft., as shown on the Plans submitted to the Board, and as testified by Applicant and witness during the public hearing, be and the same is hereby determined not to be barred by the application of res judicata. This determination does not constitute a decision on the merits of the current application.

A motion was made to proceed with the public hearing on the current matter based upon the determination that the applicant was not barred by the doctrine of res judicata was adopted by the following vote at the meeting prior to adoption of the memorializing Resolution:

Moved by: Brian Veprek
 Seconded by: Lou LoPiccolo

	<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: November 22, 2010

WHEREAS, after considering the issue of res judicata, the Board proceeded with the public hearing in this application; and

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

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

WHEREAS, the Board, after considering the testimony of the Applicant hereby makes the following findings of fact with regard to the current application:

A. Marianinfa Zito submitted the current application to 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 s.f. 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 and rent the second unit to a tenant.

D. The Board is familiar with the facts and evidence of the prior applications for this Property as filed by the Applicant and as adjudicated by the Board, which have been memorialized by Resolutions dated September 27, 2010 (Application No. 2010-01) and October 25, 2010 (Application No. 2010-05).

E. The Applicant sought two variances as part of the current application including variance for maximum gross building area and a variance to exceed the maximum permitted driveway width, as follows:

SOUTH HACKENSACK ORDINANCE PROVISION	PROPOSED	PERMITTED UNDER ZONING ORDINANCE
Maximum Gross Area of Entire Dwelling	4,290 s.f.	3,750 s.f.
Maximum Driveway Width	31 ft.	40% of lot width (24.8 ft. for subject Property)

F. The Applicant has proposed a driveway width of 31 feet. The maximum driveway width permitted under the Zoning Ordinance is 40% of the lot width (the Property lot is 62 feet wide. $62 \times 40\% = 24.8$ feet). Therefore, a variance is necessary to permit a driveway width of 31 feet where 24.8 feet is permitted under the Zoning Ordinance.

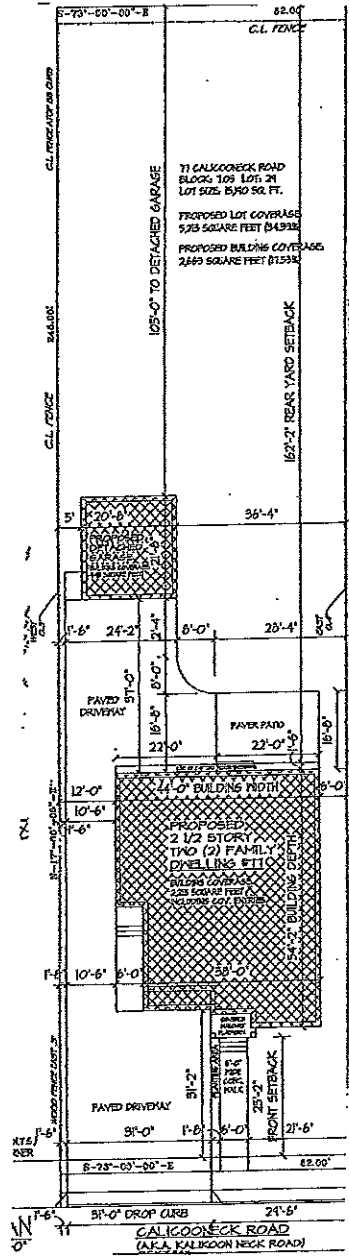
G. The Applicant has proposed a total gross area of the residential dwelling of 4,298 s.f. where a maximum of 3,750 s.f. are permitted under the Zoning Ordinance.

Therefore, a variance is necessary.

H. The Applicant is proposed to construct a 2 ½ story two-family dwelling on the Property approximately 44 feet wide by 54 feet 2 inches long, as show on the Plans submitted to the Board. The Applicant specifically proposes to maintain a second dwelling unit comprised of 891 s.f. within the building's proposed structure, as shown on the Plans submitted to the Board.

The Applicant also proposes to construct a single car detached garage approximately 21 feet 8 inches deep by 20 feet 8 inches wide, 14.67 feet in height within the rear yard of the Property, as shown on the Plans submitted to the Board and as testified by the Applicant and witness.

I. The proposed improvements to the Property, inclusive of the proposed two-family dwelling, detached garage and driveway area are further shown on the following portion of the Plans submitted to the Board as part of the current application:



J. Aside from the variance sought for maximum gross building area and driveway width, the Application complies with all other use and bulk requirements of the Applicant One and Two Family Zone.

K. The Board has reviewed the comments and testimony of presented on behalf of the Board's engineering consultant, Boswell Engineering, in particular the review memorandum dated November 11, 2010. The Applicant stipulated during the public hearing to comply with all requirements and conditions as may be required by Boswell Engineering, including, but not limited to, its November 11, 2010 memorandum.

L. The Applicant and witnesses testified that the proposed dwelling would be utilized in accordance with the permitted uses of the A One and Two-Family Residential Zone and that no more than two separate dwelling units would be utilized on the Property at any time. The Applicant and witnesses further testified that the proposed detached garage would be utilized only by a resident of the Property in connection with its primary residential use and the garage would not be occupied for living purposes or for any commercial purposes.

M. The Applicant stipulated during the public hearing that she would execute a deed restriction limiting the use of the Property to no more than two residential dwelling units, as currently permitted in the A Zone.

N. Ms. Lorraine Ferraro, 23 John Street, South Hackensack, New Jersey, appeared and expressed concern about potential water drainage and runoff which may result from the proposed development. No other property owners or members of the public appeared or testified regarding the application.

O. The subject Property is significantly larger than the minimum lot size permitted in the A Zone and is comprised of more than three times the minimum lot area required. Accordingly, although the Applicant's proposed dwelling exceeds the maximum gross

s.f. permitted in the A Zone, it will not appear to result in an overbuilding on the Property which is itself significantly oversized. Furthermore, the style and character of the proposed dwelling is consistent with the surrounding neighborhood and will not detrimentally impact the zone plan or surrounding residential area.

P. The benefits of the requested variances outweigh any detriment. The variances sought herein are not detrimental to the public, provided there is compliance with the conditions of this Resolution. The Applicant has satisfied the criteria required to permit the requested variances N.J.S.A 40:55 D-70(c)(2) as further referenced herein and as discussed during the public hearing.

Q. The Applicant's request for variance to permit construct of a two-family dwelling unit comprised of a gross area of 4,298 s.f. where a maximum of 3,750 s.f. is permitted and maximum driveway width of 31 feet where a maximum of 24.8 feet is permitted under the Zoning Ordinance, can be granted without detriment the Zone Plan or Zoning Ordinance of the Township of South Hackensack given the large size of the subject lot, and character of the proposed dwelling which is consistent with the surrounding neighborhood.

R. The proposed variances will result in the utilization of the Property as a two-family residential use, as permitted in the A Zone and will not detrimentally impact the surrounding residential neighborhood.

NOW THEREFORE, BE IT RESOLVED that the Application of Marianinfa Zito, to construct a two and on-half story dwelling (to be utilized as a two-family residential dwelling), detached garage and driveway area, as shown on the Plans submitted to the Board and as testified by the Applicant and witness, be in the same herein is approved as follows:

1. **Location and Type:** The proposed two and one-half story dwelling, detached garage, driveway area shall be constructed and located as testified by the Applicant and witness during the public hearing and as shown on the architectural plans prepared by VCA Group dated February 2, 2009 with the last revision date of November 3, 2010 submitted to the Board under the current application. The proposed two and one-half story two-family dwelling unit shall be comprised of a maximum of 4,298 s.f. of gross area, as shown on the Plans submitted to the Board and as testified by the Applicant and witness. The second dwelling unit within the residential building shall be comprised of a maximum of 891 s.f., as shown on the Plans submitted to the Board and as testified by the Applicant and witness.

The Applicant shall be permitted to install a driveway 31 feet in maximum width along the southwesterly portion of the Property, as shown on the Plans submitted to the Board and as testified by the Applicant and witness.

The Applicant shall be further permitted to construct a single car detached garage 21 feet 8 inches deep by 20 feet 8 inches wide with a maximum height of 14.67 feet, as shown on the Plans submitted to the Board and as testified by the Applicant witness. The proposed detached garage shall be located approximately 122+ feet from the front yard lot line of the Property, and of approximately 105 feet to the rear yard lot line of the Property, as shown on the Plans submitted to the Board and as testified by the Applicant and witness.

The Applicant shall be permitted to utilize the detached garage as accessory use to the primary two-family dwelling unit. In no event shall the detached garage be used as a dwelling unit or for any commercial purposes. The proposed detached garage shall be utilized only as accessory for the residents of the Property.

The Applicant shall be permitted to construct the proposed two and one-half story two-family dwelling approximately 54 feet 2 inches deep by 44 feet wide located a minimum 6 feet from the easterly side yard lot line of the Property and a minimum of 10 feet 6 inches from the westerly side yard lot line of the Property, as shown on the Plans submitted to the Board. The Applicant shall maintain a minimum front yard setback of 25 feet 2 inches from the proposed two and one-half story two-family dwelling unit and then maintain a minimum rear yard setback of approximately 162 feet 2 inches, as shown on the Plans submitted to the Board and as testified by Applicant and witness.

With the exception of the variances granted herein to permit a driveway width of 31 feet where a maximum of 24.8 feet is permitted and total gross area of the dwelling of 4,298 s.f. where a maximum of 3,750 s.f. is permitted, the Applicant shall comply with all other bulk standards for residential dwellings and accessory structures as permitted under the current Zoning Ordinance of the Township of South Hackensack.

The Applicant shall be permitted to utilize the proposed two and one-half story dwelling unit as a one or two-family dwelling unit in accordance with uses permitted under the A One and Two Family Zone of the Township of South Hackensack. In no event shall the Property be utilized for any use not specifically permitted under the current Zoning Ordinance.

2. **Restriction in Confirmatory Deed:** Pursuant to existing New Jersey law as set forth in Aldrich v. Schwartz, 258 N.J. Super 300 (App. Div. 1992), the Board specifically grants its approval, subject to the prohibition of utilization of any portion of the dwelling to be constructed on the Property for any residential use other than a single or two family residential use or other use currently permitted within the A Zone of the Township of South Hackensack. The approval is specifically granted upon the finding that in no event will the Property be utilized as a multi family use (beyond one or two family use) at any point and that no person(s) shall be permitted to reside within the detached garage on the Property.

The Applicant shall provide evidence of the recorded confirmatory deed to the South Hackensack Zoning Board of Adjustment and/or South Hackensack Building Department.

3. **Compliance with Engineering Comments:** The Applicant shall comply with all comments and recommendations of the engineering as noted in the testimony of the Board's engineering consultant during the public hearings and as noted in the engineering report(s) prepared by Boswell Engineering including, but not limited, its review letter dated November 11, 2010, to the extent not done so on the Plans submitted to the Board and as to the extent not addressed by the Applicant, witnesses or Board during a public hearing or addressed herein.

4. **Legal and Engineering Fees:** The Applicant shall be responsible for all legal and engineering fees of the Zoning Board of Adjustment associated with this application.

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

6. **Reliance by Board on Testimony and Application:** The approval granted herein is specifically granted based upon the testimony of the Applicant, the exhibits, the application, and any amendments to same, and as shown on the plans submitted to the Zoning Board of Adjustment, all of which have been relied upon by the Board herein.

7. **Compliance with Ordinance:** Except for the variance approval granted herein, the Applicant shall comply with all other provisions of the Zoning Code of the Township of South Hackensack.

8. **Compliance with Laws:** The Applicant shall comply with all Township Ordinances, and any and all State and Federal laws and applicable regulations.

9. **Non-Severability of Conditions:** The relief granted to the Applicant is specifically made subject to the conditions referred to herein. In the event any condition is held to be invalid, unenforceable, or unlawful, the variance approval granted herein shall be unenforceable. It is the intent of the Board that the variance approval not be approved if any condition is invalid, and that the conditions are not severable from any variances or relief granted herein.

10. **Appeal Period:** The Applicant has been advised that there is an appeal period for the relief granted 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. Accordingly, any work or construction done prior to the expiration of the appeal period is accomplished at the sole risk of the Applicant.

Said Resolution was adopted by the following vote at the meeting prior to adoption of the memorializing Resolution:

Moved by: Lou LoPiccolo
 Seconded by: Brian Veprek

	<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: November 22, 2010

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

Moved by: *Veprek*
 Seconded by: *Regan*

For Against Abstain Absent Not Qualified To Vote

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

Dated: January 24, 2011

SOUTH HACKENSACK ZONING BOARD

By: *Brian P Veprek*
 , Chairperson

CERTIFIED TO BE A TRUE COPY

By: *Rydie Hernandez*
 Secretary to the Zoning Board of Adjustment

...the newspaper or other source, make public notice from such printed page...
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: 2011/01/27

**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 January 24, 2011, for the reasons set forth in its resolution of that date, granted variances for application No. 2010-08; premises owned by Marlaninfa 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
January 27, 2011-fee:\$23.63 (25) 3012762

Public Notice ID:

RESOLUTION

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

**APPLICATION OF DIO MAS LLP
d/b/a DIOS SUPER CLUB**

Application No. 2010-06

WHEREAS, Dio Mas, LLP d/b/a Diosa Super Club, 115 Union Avenue, Little Ferry, New Jersey (hereinafter the "Applicant") applied for a use variance pursuant to N.J.S.A. 40:55D-70(d) to permit use of the subject property for disc jockey entertainment and patron dancing; and

WHEREAS, the property subject of the application is designated on the Tax Map of the Township of South Hackensack as Block 1.02, Lot 1.02 and is more commonly known as 378 Route 46 West, South Hackensack, New Jersey (the "Property"); and

WHEREAS, the Property is owned by Mr. Ramesh Thota, 370 Route 46 West, South Hackensack, New Jersey, who consented to the application; and

WHEREAS, the Property is comprised of 77,536.8 s.f. (1.78 acres) and is located within the M-Mixed Use Zone; and

WHEREAS, the application was called for public hearing on November 22, 2010 and December 27, 2010 and the Applicant having been represented by legal counsel; and

WHEREAS, the Applicant's counsel, Thomas Quirico, Esq., 74 Central Avenue, Hackensack, New Jersey, submitted a letter dated January 20, 2011 requesting that the application be withdrawn; and

NOW THEREFORE, BE IT RESOLVED that upon the request of the Applicant and for other good cause shown, the Applicant is permitted to withdraw the Application subject to the following conditions:

1. Legal and Engineering Fees : The Applicant shall be responsible for all legal, planning and engineering fees and expenses of the Zoning Board of Adjustment associated with the application.
2. Other Fees : All additional fees, if any, required by the Township Ordinance shall be paid by the Applicant in accordance with the application and the withdrawal of the application.

Said Resolution was approved and memorialized by the following vote:

Moved by: *LoPiccolo*

Seconded by: *FAIA to*

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

Dated: January 24, 2011

SOUTH HACKENSACK ZONING BOARD

CERTIFIED TO BE A TRUE COPY

By: *Brian P Veprek*
 , Chairperson

By: *Ydell A*
 Sec. 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: 2011/01/27

**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 January 24, 2011 for the reasons set forth in its resolution of that date, accepted the withdrawal of the application No. 2010-06, of Dio Mas, LLP d/b/a Diosa Super Club, as to premises owned by Ramesh Thota, and designated as Block 1.02 Lot 1.02 and more commonly known as 378 Route 46 West, South Hackensack, New Jersey, for a use variance seeking to permit subject property for disc jockey entertainment and patron dancing. 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

January 27, 2011-fee:\$25.52 (27) 3012771

Public Notice ID: