

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

At 7:38 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

James Diraimondo
John Falato
Phil Iacono
John Kopec
Brian Vepek Sr
Luis Perdomo
Ray DeRiso –Zoning Officer
Evelyn Stefano-Secretary
Ralph Chandless- Attorney

Members Absent

Joseph D'Amico
Bill Regan
Blasé Coppola

MINUTES

Falato motioned; Diraimondo seconded to approve the Minutes of the January 26, 2009 meeting.

CORRESPONDENCE

OLD BUSINESS

Block 50 Lot 17.02
Clemente Bakery –
Central Bakery - Tenant
120 Leuning St.
ZB#2001-02

Zoning Officer - Ray DeRiso reported that after the conclusion of 1/27/09 resolution for use variance, he conducted an inspection. He noticed (2) two small dumpsters on the east side of the property when there they are licensed to have (1) one. He also notices that there are 2 additional loading doors. Mr. DeRiso informs them, that on their proposed plan, they only have (1) one listed on the east side of the structure, putting them in violation. Mr. DeRiso then consults with Construction Code Official James Riley to confirm that all proper permits were filed. Mr. Riley concludes that no permits were

issued for the construction of (2) two additional loading doors, nor do they have a certificate of occupancy for Central Bakery.

Attorney Ralph Chandless – asks if any action has been taken, Mr. DeRiso replies that the information was given to Construction Code Official James Riley to follow up on the construction violations. Mr. Chandless request to Mr. DeRiso that he be informed of the update that transpires in Mr. Riley’s inspections.

In conclusion, no restaurant permits will be granted until the violations have been cleared.

NEW BUSINESS

ZB #2009-01

Frank & Maria Colonnelli

Block 5.01 Lot 19.03 - 39 Milano Court

Appeal from the decision of the Zoning Officer with regard to the Township code.

Frank & Maria Colonnelli - The applicant is appealing Zoning Officer Ray DeRiso certificate of occupancy for no 3 family dwelling with regard to the South Hackensack Township code. Attorney Mr. Profita stated that Mr. Colonnelli requested a certificate of occupancy for their son Vincent Colonnelli to occupy the 1st floor apartment. The other (2) apartments above are currently being rented. The certificate of occupancy was denied, because the area is zoned to for (2) family, considering it a violation of a 3 family dwelling.

Attorney Mr. Profita cites the following definition from §208-1 of the Zoning Chapter of Township Code:

DWELLING, THREE FAMILY C 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, A immediate family@ shall be defined as a grandparent, parent, sibling, child or grandchild of the owner of the dwelling. An Aowner of the dwelling@ shall be defined a one who owns at least a 50% interest in the dwelling. [Added 6-10-2004 by Ord.2004-09]

Attorney Mr. Profita 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 be 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 C 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 - Resides at (30 Maple Ave, South Hackensack) 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.

Meeting Open to the Public

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.

BOARD DISCUSSION

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

Meeting Closed to the Public.

Iacono **motioned**: Kopec **seconded** a motion to deny (C.O) certificate of occupancy for Frank and Maria Collonnelli

6 Yes Votes: Diraimondo, Falato, Iacono, Perdomo, Veprek and Kopec

NEW BUSINESS

ZB #2009-03 – Sid & Jocelyn Bordadora

**Block 2.01 Lot 3.01 – 275 Phillips Avenue
Residential Addition**

Sid & Jocelyn Bordadora - The applicant wants to build an upstairs over their garage. They need a variance for their yard and side yard.

Attorney Ralph Chandless – asks what presently exists above the garage and what is to be produced. How will this affect their neighbors and neighborhood.

Mr. Sid Bordadora -- speaks. He states that it will improve the neighborhood by making his home look pleasantly appealing to the public, and it will give his family an additional bedroom, in which they need. He states that the addition, will coincide with what's currently there, same color paint, same style. The only change will be an additional room above the garage.

Contractor Timothy Bainbridge - Name of business and address “Dreambuilders” (110 Chestnut Grove, Montville, NJ) states that there will be no changes to the yard or side yard. The work will be done specifically above the existing garage space.

Grant variance to build upstairs

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

Iacono **motioned**; Kopec **seconded**: to grant variance to build upstairs above existing garage for Sid & Jocelyn Bordadora. 6 Yes Votes: Dirimundo, Falato, Iacono, Perdomo, Veprek and Kopec
This will be memorialized at the next meeting.

At 9:00 p.m. Phil Iacono **motioned**; Luis Perdomo **seconded** to adjourn.
All in favor.

Respectfully Submitted,

Evelyn Stefano
PB/ZB Secretary