

January 23rd, 2023
Hawthorne, NJ

The Reorganization Meeting of the Zoning Board of Adjustment of the Borough of Hawthorne was held on the above date at 6:57 p.m. in the Council Meeting Room of the Municipal Building, 445 Lafayette Avenue, Hawthorne, New Jersey, with the following present:

FLAG SALUTE

Chairman Gallagher invited all present to join him in the Pledge of Allegiance.

“Adequate Notice of this meeting has been posted on the Municipal Bulletin Board, published in the legal newspaper of the Borough and a schedule, including date and time, provided to all persons entitled by law to same. “

ROLL CALL

Board Member.....	John F. Gallagher
Board Member.....	David A. Schroter
Board Member.....	Victor Cuttitta, Jr.
Board Member.....	Eleanor C. Wenzke
Board Member	Lyle Hatch – arrived @ 7:15
Board Member.....	Jodi DeMarco
Board Member.....	Marco Totaro
Board Member (Alternate #1)	Brian J. Lind
Board Member (Alternate #2)	Danilo Ramirez

Also present was Board Attorney, James Delia, Board Engineer Pete TenKate, Zoning Officer Gene DeAugustines and Board Secretary Joan Herve.

REORGANIZATION

Meeting is turned over to Secretary to accept nominations for office:

Board Secretary asked for nominations for Chairman. Motion by Schroter to nominated Mr. Gallagher as Chairman, seconded by Cuttitta, on a roll call vote, all voted yes, with the except of Gallagher who abstained. Motion Carried.

Board Secretary asked for nominations for Vice Chairman. Motion by Gallagher to nominated Mr. Schroter as Vice Chairman, seconded by Totaro, on a roll call vote, all voted yes, with the exception of Schroter who abstained. Motion Carried.

Meeting is turned over to Chairman Gallagher who calls for nominations for Secretary.

Chairman Gallagher entertained a motion to appoint Joan Herve as Board Secretary; Moved by Schroter seconded by Wenzke, on a roll call vote, all voted yes. Motion Carried.

Chairman Gallagher entertained a motion to appoint Jim Delia as Board Attorney; Moved by Cuttitta, seconded by DeMarco, on a roll call vote, all voted yes. Motion Carried.

The following members re-appointed by Mayor Lane:

- Lyle Hatch – for a 4-year term 12/31/2026
- Danilo Ramirez (alt. #2) – for a 2-year term 12/31/24

CORRESPONDENCES

a) ZBA Annual Report

Chairman Gallagher entertained a motion to adopt the 2022 Annual ZBA Report. moved by Wenzke, Seconded by Totaro On a roll call vote, all present voted yes (Cuttitta, DeMarco, Lind, Totaro Wenzke, Schroter, Gallaher). Motion Carried.

APPROVAL OF MINUTES

Chairman Gallagher entertained a motion to approve the minutes as amended of the Regular Meeting of December 21, 2022 moved by DeMarco, seconded by Cuttitta. On a roll call vote, all present voted yes (Cuttitta, DeMarco, Lind, Totaro, Wenzke, Gallagher), with the exception of Schroter who abstained. Motion Carried.

MEMORIALIZED RESOLUTION

RESOLUTION #2023-001

Mitat Kokonozi (the “Applicant”)

89 8th Avenue

Block 213, Lots 1 and 13

Hawthorne, New Jersey (the “Property” or the “Premises”)

WHEREAS, Applicant has submitted a certain application to the Board for Expansion of a Nonconforming Use Variance, Bulk Variance and affirmation of certain existing non-conforming conditions (the “Application”); and

WHEREAS, Applicant appeared before the Board on November 21, 2022 and December 19, 2022; and

WHEREAS, the Board concludes that the requisite legal public notice was provided by Applicant; and

WHEREAS, the Board further concludes that it has jurisdiction to consider the application; and

WHEREAS, Applicant submitted the following in support of its application:

1. Borough of Hawthorne Zoning Board of Adjustment Application for Variance;
2. Architectural Plans (3 sheets) entitled “Kokonozi Two Family Residence, 89 8th Avenue...” prepared by Mitat Kokonozi, dated October 13, 2022;
3. Survey dated September 11, 2021, prepared by Morgan Engineering and Surveying;

WHEREAS, Applicant has made application to the Board for permission to erect dormers (front and back) on the existing second floor, built over the existing footprint of the home; and

WHEREAS, the use of the Property as a two family use is nonconforming since the R-1 zone only allows for single family use. This application thus requires relief for expansion of a nonconforming use. Furthermore, there are existing non-conforming conditions (and the Board so finds) as follows:

- a. **Minimum Lot Area:** Article 540 Attachment 1 Borough of Hawthorne Schedule of Bulk and Coverage Controls requires a minimum lot area of 6,500 square feet. The existing lot area is 6,200 square feet. This is a pre-existing non-conformity.
- b. **Minimum Lot Width:** Article 540 Attachment 1 Borough of Hawthorne Schedule of Bulk and Coverage Controls requires a Minimum Lot Width of 65 feet. The existing lot width is 61.78 feet. This is a pre-existing non-conformity.
- c. **Minimum Front Yard:** Article 540 Attachment 1 Borough of Hawthorne Schedule of Bulk and Coverage Controls requires a minimum front yard of 20 feet. The existing front yard is 13.2 feet. This is a pre-existing non-conformity.
- d. **Minimum Side Yard (One):** Article 540 Attachment 1 Borough of Hawthorne Schedule of Bulk and Coverage Controls requires a minimum side yard of 10 feet. The existing side yard is 2.6 feet. This is a pre-existing non-conformity.

- e. Minimum Rear Yard: Article 540 Attachment 1 Borough of Hawthorne Schedule of Bulk and Coverage Controls requires a minimum rear yard of 25 feet. The existing rear yard is 2.9 feet. This is a pre-existing non-conformity.

WHEREAS, based on the testimony of the Applicant, the Board finds as follows:

- 1) The proposed expansion is modest and extends no further than the existing footprint of the home;
- 2) There are several two family homes in the vicinity;
- 3) The purpose of the addition is to provide additional space to the second floor existing apartment unit which will not result in any significant intensification of the two family use;
- 4) There is ample parking and the increase in parking demand, if any, will be negligible;
- 5) Applicant adequately addressed both the Positive and Negative Criteria required to grant this approval. At least two goals of the Municipal Land Use Law are achieved (“A” and “E”) and the proposal is consistent with the Borough’s re-examination plan which encourages a variety of uses and densities. No harm to the neighborhood or Borough Zoning scheme are substantially impacted since this proposal is fairly small in scope and not noticeable to the public.

NOW THEREFORE, after due consideration the Zoning Board of Adjustment of the Borough of Hawthorne makes the following findings of fact and conclusions, based upon the evidence presented at its public hearing and the findings enumerated herein:

A. FINDINGS

1. All of the preamble recitals set forth above are hereby adopted as factual findings.

B. CONCLUSIONS

In considering this application, the Board adopts the testimony presented and hereby reaches the conclusion that ample evidence has been presented to justify the grant of the use variance. Per the applicable law, the Applicant has demonstrated, with an enhanced quality of proof that “special reasons” exist, namely that the use is peculiarly fitted to the particular location.

The Board also concludes that Applicant has satisfied the negative criteria, namely that this proposal will not result in substantial detriment on the neighboring properties and also there is no substantial detriment to the public good and no substantial impairment to the zone plan.

THEREFORE, BE IT RESOLVED, that the Board determines the Applicant has met its burden of proof for the requested relief and hereby **APPROVES** such application subject to the following conditions:

C. CONDITIONS OF APPROVAL

1. These Conditions of Approval along with all stipulations and testimony presented shall be binding upon the Applicant, the owner, and any successors and/or assigns of either.
2. The Applicant shall promptly pay any professional staff fees billed, in excess of the required application escrows.
3. The Applicant must obtain approvals from any and all other governmental and/or public agencies as required, whether federal, state, county or local, over which the Board has no control but which are necessary in order to finalize and/or implement the relief being granted herein, as well as any construction that may be a part of said relief.
4. The Applicant shall certify that all taxes and assessments have been paid up to the present time.
5. The Applicant shall correct and make safe any dangerous or unsafe condition caused by the Applicant or those acting for and/or on its behalf affecting public safety or general welfare if any such condition develops.
6. The relief as granted herein is subject to the discovery of any and all deed restrictions upon the Premises which had not been known or had not been disclosed to the Board, but which would have had a materially negative impact upon the Board’s decision in this matter had they been so known, or so disclosed.
7. The Applicant must maintain an escrow account with the Borough and pay the costs of all professional review and other fees required to act on the Application, pursuant to the applicable sections of the Borough’s land development ordinances, zone codes and any other applicable municipal codes, and the New Jersey Municipal Land Use Law. The Applicant’s escrow account must be current prior to any permits being issued, or construction or other activity commencing on the approved project.

8. The Applicant must obtain all other construction or other municipal permits required with respect to the relief as granted herein.
9. Any improvement(s) to be constructed as a result of the Board approving this application shall be constructed and operated in full compliance with the Uniform Construction Code, Code of the Borough of Hawthorne, the Revised Statutes of the State of New Jersey and any other applicable county, state and/or federal law, inclusive of installing a concrete sidewalk.
10. The Applicants/owners are hereby advised that this application and plan have not been reviewed for conformance with the Americans with Disabilities Act (ADA). It is the responsibility of the Applicants/owners to conform to said legislation, if applicable.

BE IT FURTHER RESOLVED, that the Borough of Hawthorne is hereby directed to mail a copy of this Resolution to the Applicant and/or the Applicant’s attorney and to file copies of this Resolution with the Borough Clerk, Borough Construction Official, Borough Tax Assessor and Borough Zoning Officer and to cause notice of these determinations of the Zoning Board to be published in the official newspaper of the Borough of Hawthorne within ten (10) days of the date hereof and thereafter published accordingly to law.

The undersigned certifies that the within Resolution was adopted by the Board and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on January 23, 2023.

Chairman Gallagher entertained a motion to Memorialize Resolution #2023-001, moved by Totaro, seconded by DeMarco. On a roll call vote.

Ayes: Cuttitta, DeMarco, Lind, Totaro, Wenzke, Gallagher

Abstain: Schroter

Nays: None

Motion carried

RESOLUTION #2023-002

Rosanna Bianco (the “Applicant”)

18 Buena Vista Avenue

Block 100, Lot 20

Hawthorne, New Jersey (the “Property” or the “Premises”)

WHEREAS, Applicant has submitted a certain application to the Board for Use Variance and related “C” Variances(the “Application”); and

WHEREAS, Applicant appeared before the Board on December 19, 2022; and

WHEREAS, the Board concludes that the requisite legal public notice was provided by Applicant; and

WHEREAS, the Board further concludes that it has jurisdiction to consider the application; and

WHEREAS, Applicant submitted the following in support of its application:

4. Borough of Hawthorne Zoning Board of Adjustment Application for Variance;
5. Survey (1 sheet) entitled, “Location Survey of Property Situation in the Borough of Hawthorne, Passaic County, New Jersey, Tax Map Lot 20, Block 100,” prepared by William Held Associates, Inc., dated January 28, 1980, and a Plan Set (6 sheets) entitled, “Proposed Addition and Renovation for the Cianni Residence, Santino Cianni, 18 Buena Vista Avenue, Hawthorne, New Jersey,” prepared by Pantheon Construction, dated December 22, 2021.

WHEREAS, Applicant has made application to the Board for permission to rebuild a fire damaged home (with the cost to repair valued at more than 60% of the home’s fair market value) upon the existing footprint/foundation of the home; and

WHEREAS, the use of the Property as a two family use is nonconforming since the R-1 zone only allows for single family use. This application thus requires relief for Use Variance and the following “C” Variances:

- a) **Minimum Lot Area**: Article 540 Attachment 1 Borough of Hawthorne Schedule of Bulk and Coverage Controls requires a minimum Lot Area of 18,750 square feet. A Minimum Lot Area of 7,498 square feet is proposed. The Applicant has requested a variance. This is a pre-existing non-conformity.

- b) Minimum Lot Width: Article 540 Attachment 1 Borough of Hawthorne Schedule of Bulk and Coverage Controls requires a Minimum Lot Width of 125 feet. A lot width of 50 feet is proposed. The Applicant has requested a variance. This is a pre-existing non-conformity.
- c) Minimum Front Yard: Article 540 Attachment 1 Borough of Hawthorne Schedule of Bulk and Coverage Controls requires a minimum front yard of 50 feet. A front yard of 24.6 feet is proposed. A variance is required. This is a pre-existing non-conformity.
- d) Minimum Side Yard (One): Article 540 Attachment 1 Borough of Hawthorne Schedule of Bulk and Coverage Controls requires a minimum side yard of 15 feet. A side yard of 6.05 feet is proposed. A variance is required. This is a pre-existing non-conformity.
- e) Minimum Side Yard (Both): Article 540 Attachment 1 Borough of Hawthorne Schedule of Bulk and Coverage Controls requires a combined side yard of 40 feet. A combined side yard of 22.85 feet is proposed. A variance is required. This is a pre-existing non-conformity.
- f) Maximum Impervious Coverage: Article 540-8R of the Borough of Hawthorne Code permits a maximum impervious coverage of 50%. Impervious coverage of 55.68% is proposed. A variance is required.
- g) Maximum Lot Coverage: Article 540-8R of the Borough of Hawthorne Code permits a maximum impervious coverage of 25%. Maximum Lot Coverage of 25.95 is proposed. A variance is required.
- h) Floodplains and Freshwater Wetlands Delineation: Per Checklist Item A(9), the delineation of the plans of all floodplains or freshwater wetlands including a letter of interpretation from NJDEP verifying such delineation. If none, certification by a licensed engineer or other proof satisfactory to the Board and its professionals that no wetlands or floodplains exist on the site. The Applicant has requested a waiver for this item.

WHEREAS, based on the testimony of the Applicant and evidence produced by Applicant, the Board finds as follows:

- 6) The proposed rebuilding of the home will be in the exact location of the current house and will not create any new, objectionable site conditions;
- 7) There are several two family homes in the vicinity;
- 8) The purpose of the addition is to repair/replace a fire damaged home;
- 9) There is ample parking and the increase in parking, if any, will be negligible;
- 10) Applicant adequately addressed both the Positive and Negative Criteria required to grant this approval. At least two goals of the Municipal Land Use Law are achieved (“A” and “E”) and the proposal is consistent with the Borough’s re-examination plan which encourages a variety of uses and densities. No harm to the neighborhood or Borough Zoning scheme are substantially impacted since this proposal is fairly small in scope and not noticeable to the public. By virtue of granting the proposed use variance, all other relief is deemed subsumed with such approval.

NOW THEREFORE, after due consideration the Zoning Board of Adjustment of the Borough of Hawthorne makes the following findings of fact and conclusions, based upon the evidence presented at its public hearing and the findings enumerated herein:

A. FINDINGS

- 1. All of the preamble recitals set forth above are hereby adopted as factual findings.

B. CONCLUSIONS

In considering this application, the Board adopts the testimony presented and hereby reaches the conclusion that ample evidence has been presented to justify the grant of the use variance and all other requested relief. Per the applicable law, the Applicant has demonstrated, with an enhanced quality of proof that “special reasons” exist, namely that the use is peculiarly fitted to the particular location.

The Board also concludes that Applicant has satisfied the negative criteria, namely that this proposal will not result in substantial detriment on the neighboring properties and also there is no substantial detriment to the public good and no substantial impairment to the zone plan.

THEREFORE, BE IT RESOLVED, that the Board determines the Applicant has met its burden of proof for the requested relief and hereby **APPROVES** such application subject to the following conditions:

C. CONDITIONS OF APPROVAL

1. These Conditions of Approval, along with all stipulations and testimony presented shall be binding upon the Applicant, the owner, and any successors and/or assigns of either.
2. The Applicant shall promptly pay any professional staff fees billed, in excess of the required application escrows.
3. The Applicant must obtain approvals from any and all other governmental and/or public agencies as required, whether federal, state, county or local, over which the Board has no control but which are necessary in order to finalize and/or implement the relief being granted herein, as well as any construction that may be a part of said relief.
4. The Applicant shall certify that all taxes and assessments have been paid up to the present time.
5. The Applicant shall correct and make safe any dangerous or unsafe condition caused by the Applicant or those acting for and/or on its behalf affecting public safety or general welfare if any such condition develops.
6. The relief as granted herein is subject to the discovery of any and all deed restrictions upon the Premises which had not been known or had not been disclosed to the Board, but which would have had a materially negative impact upon the Board's decision in this matter had they been so known, or so disclosed.
7. The Applicant must maintain an escrow account with the Borough and pay the costs of all professional review and other fees required to act on the Application, pursuant to the applicable sections of the Borough's land development ordinances, zone codes and any other applicable municipal codes, and the New Jersey Municipal Land Use Law. The Applicant's escrow account must be current prior to any permits being issued, or construction or other activity commencing on the approved project.
8. The Applicant must obtain all other construction or other municipal permits required with respect to the relief as granted herein.
9. Any improvement(s) to be constructed as a result of the Board approving this application shall be constructed and operated in full compliance with the Uniform Construction Code, Code of the Borough of Hawthorne, the Revised Statutes of the State of New Jersey and any other applicable county, state and/or federal law.
10. The Applicants/owners are hereby advised that this application and plan have not been reviewed for conformance with the Americans with Disabilities Act (ADA). It is the responsibility of the Applicants/owners to conform to said legislation, if applicable.
11. In the event that Applicant's interior stairwell to the second floor is permitted by the requisite construction and ADA codes, then Applicant withdraws its request to construct an exterior stairwell for that purpose.

BE IT FURTHER RESOLVED, that the Borough of Hawthorne is hereby directed to mail a copy of this Resolution to the Applicant and/or the Applicant's attorney and to file copies of this Resolution with the Borough Clerk, Borough Construction Official, Borough Tax Assessor and Borough Zoning Officer and to cause notice of these determinations of the Zoning Board to be published in the official newspaper of the Borough of Hawthorne within ten (10) days of the date hereof and thereafter published accordingly to law.

The undersigned certifies that the within Resolution was adopted by the Board and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on January 23, 2023.

Chairman Gallagher entertained a motion to Memorialize Resolution #2023-002, moved by DeMarco, seconded by Wenzke. On a roll call vote.

Ayes: DeMarco, Lind, Totaro, Wenzke, Gallagher

Abstain: Cuttitta, Schroter

Nays: None

Motion carried

OLD BUSINESS

Diamond Brook Hollow Condominium Association, 45 Royal Avenue (block 29, Lot 10)

Applicant requested, via email to table this hearing until the February 27, 2023 meeting.

Chairman Gallagher entertained a motion to table the above application to the February 27, 2023 meeting, moved by Cuttitta, seconded by Totaro. on a roll call vote, all voted yes, Ayes: Cuttitta, DeMarco, Lind, Totaro, Wenzke, Schroter, Gallagher

Motion carried

****SHOULD BE NOTED BOARD MEMBER LYLE HATCH ARRIVED AT 7:15. SINCE THE HEARING FOR THE 50 SIXTH AVENUE APPLICATION WAS ALREADY IN PROGRESS, BRIAN LIND. ALT. 1 BOARD MEMBER SAT IN ON THIS APPLICATION.*

Carol Pitaccio, 50 Sixth Avenue (block 198, lot 16)

Located R-2 Zone (One & Two Family Residential)

Applicant's Attorney Robert Garibaldi, Jr. explained they were here before back in November however the board requested an updated Certified copy of the applicant's Survey as the one previously submitted did not show calculations and failed to show stairs leading from house to the deck, they have now submitted the updated survey to the Board.

Attorney Garibaldi stated they are here tonight as the Applicant is seeking a C1 Variance (hardship) – Pursuant to NJSA 40-55D-701(c)(1) due to prior owner construction of deck by licensed NJ contractor retained to also obtain required building permit. Deck constructed in or about June 2005. Prior owner, during the sale of the Property, was informed that permits were not secured and the deck as constructed did not meet zoning requirements of the Borough.. Applicant is also seeking a "Minimum Side Yard (One)" and minimum Side Yard (both).

Attorney called his first witness owner of 50 Sixth Avenue, Carol Pitaccio testified she purchased the house in 2021. During the process she was informed that permits were not secured for the construction of the deck as variances were required. A provision was made that allowed her to close title, which now bring her before this board to secure those variances that are required. Ms. Pitaccio also addressed items 6, 7, & 8 in Boswell's Engineering Report. Applicant testified herself, husband and two children currently reside in the home. The revised survey has been provided with the lot coverage calculations to demonstrate compliance with Article 540 Attachment 1 which limits maximum building lot coverage and Section 540-8R of the Code which limits other coverages and she made the Board aware that the property is also known as 52 Sixth Avenue.

Chairman Gallagher opened up the meeting to the public asking if anyone had any questions for this witness. Seeing none, closed the public portion.

Attorney Garibaldi called his next witness, prior owner of the property Sean Hamlin, 382 Rock Road, Glen Rock. Mr. Hamlin stated he was the owner of said property from 1998 to 2021. While he was the owner they constructed a rear dormer & second floor (which all permits were pulled), however during time of construction they decided to add a deck at which time the contractor stated they would take care of the required permits. It was not until the time close to closing that he found out that permits for this deck did not exist. Therefore, him and the current owner had provision set up which allowed them to close and move forward with this application. If application is denied, other contingencies have been provided to the current owner.

Chairman Gallagher opened up the meeting to the public asking if anyone had any questions for this witness. Seeing none, closed the public portion.

Chairman Gallagher entertained a motion to approve the above application, moved by Lind, seconded by Totaro. on a roll call vote, all voted yes, Ayes: Cuttitta, DeMarco, Lind, Totaro, Wenzke, Schroter, Gallagher
Motion carried

BY-LAWS

Vice Chairman discussed the possibilities to amend the by-laws which would limit how many times an applicant can table an application. Board Attorney Delia & Board Member DeMarco will write something for the board at the next ZBA Meeting.

ADJOURNMENT

At 7:35p.m. Chairman Gallagher entertained a motion to adjourn the regular meeting, moved by Totaro, seconded by Cuttitta. All in favor, “Aye”.

THE NEXT REGULAR MEETING OF THE ZONING BOARD OF ADJUSTMENT WILL BE ON

~MONDAY, FEBRUARY 27th, 2023 ~

THE WORK SESSION WILL BEGIN AT 6:45P.M. WITH THE REGULAR MEETING IMMEDIATELY FOLLOWING

Respectfully Submitted,

Joan Herve, Secretary