

February 25<sup>th</sup>, 2019  
Hawthorne, NJ

The Regular Meeting of the Zoning Board of Adjustment of the Borough of Hawthorne was held on the above date at 6:50 p.m. in the Council Meeting Room of the Municipal Building, 445 Lafayette Avenue, Hawthorne, New Jersey, with the following present:

**FLAG SALUTE**

Vice Chair 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**

Vice Chair.....	John F. Gallagher
Board Member.....	David A. Schroter
Board Member .....	Kevin Duffy
Board Member.....	Jack B. De Ritter
Board Member (Alternate #1).....	Victor Cuttitta
Board Member (Alternate #2).....	Eleanor C. Wenzke

**Absent:**

Chair.....	Raymond Hallock
Board Member.....	Scott Chamberlin
Board Member.....	Annamarie Sasso

Also present was Board Attorney, James Delia, Board Engineer, Mike Kelly and Board Secretary Joan Herve.

**BILLS:**

Vice Chair Gallagher entertained a motion to approve the bill list and forward it to the Treasurer for payment, moved by De Ritter, seconded by a Wenzke. On a roll call vote, all voted yes. Motion carried.

Hawthorne Press for Legal Notices: \$34.32

**APPROVAL OF MINUTES**

Vice Chair Gallagher entertained a motion to approve the minutes of the Reorganization Meeting of January 28<sup>th</sup>, 2019 moved by De Ritter, seconded by Cuttitta. On a roll call vote, all voted yes. Motion Carried.

**MEMORIALIZED RESOLUTIONS**

**Mr. & Mrs. M. Tatora, 19 Hillcrest Avenue (block. 292 Lot 22)**

Vice Chair Gallagher entertained a motion to memorialize resolution for approved applicant who sought to construct (2) story addition in the R-1 Single Family Zone with a deed restriction to stay as a single family home moved by Schroter, seconded by Cuttitta. On a roll call vote, all voted yes. Motion Carried.

**OLD BUSINESS**

**Miguel A. Perez Jr. /Theresa Tontodonati, 175/177 Cedar Avenue (block104, Lot 22)**

After being sworn applicant Architect/Planner Matt Evans explained the applicant is proposing a first and second floor addition along with a new deck. The Site is located in the Apartments Medium Density (R-3) Zone and is bordered to the north and west by the R-3 Zone, to the east by the Central Business District (B-2) Zone and to the south by the One and Two Family (r-1) Zone. Variances being sought: Minimum Lot Width: Section 540-17.A and the Schedule of Bulk and Coverage controls require a minimum lot width of 50 feet to be provided. A pre-existing non-conforming lot width of 48.29 exists. Side Yard (One) Setback: Section 540-17.A and the Schedule of Bulk and Coverage Controls requires a side yard (one) of 10 feet. A pre-existing non-conforming side yard setback of 7.8 feet exists. Side Yard (Both) Setback: Section 540-11 and the Schedule of Bulk and Coverage Control require a combined side yard setback of 20 feet. Applicant proposes a combined side yard setback of 14.6 feet. Board Engineer explained to the applicant any new fencing must be on their property. Board Member Schroter asked if this will be the applicant’s primary residence. Applicant stated “yes”.

Vice Chair Gallagher opened the meeting to the public. He stated if anyone desired to be heard on this application, please raise your hand to be recognized, come forward to the microphone state your name and address.

Seeing none, Vice Chair Gallagher entertained a motion to approve application 175/177 Cedar Avenue to construct 2<sup>nd</sup> level addition, garage and new deck, moved by De Ritter, seconded by Schroter. On a roll call vote, all voted yes. Motion Carried.

**NEW BUSINESS**

**AFFORDABLE HOUSING**

Borough Attorney Michael Pasquale discussed and explained affordable house the ZBA Members. As you know, the New Jersey Supreme Court, in cases known as Mount Laurel I and Mount Laurel II, determined that every municipality in the State had an obligation to create, through zoning, the realistic opportunity for the creation of low and moderate income housing. In response, the Legislature adopted the Fair Housing Act, which created the Council on Affordable Housing. In 2015 the Supreme Court, citing the 16 years COAH had failed to adopt compliant Third Round Rules, returned oversight of affordable housing to the Courts. It afforded municipalities the option of filing a Complaint in the Superior Court seeking judicial approval of a Third Round Housing Element and Fair Share Plan.

Hawthorne has filed such an action. It has been challenged by the owner of 204 Wagaraw Road and Fair Share Housing Center. Statewide there have been two divergent opinions regarding the need that has arisen for Affordable Housing over the last 16 years and through 2025. Hawthorne and 200 plus communities hired Econsult, which concluded that Hawthorne’s obligation to construct new housing was zero. Fair Share and a number of private developers hired Dr. David Kinsey, who previously served as Special Master in Hawthorne. He concluded that Hawthorne need to build over 700 units to meet its obligation.

A month-long trial was held before Judge Jacobsen, the Mercer County Assignment Judge. With input from her own consultant, Richard Reading, Judge Jacobsen sifted through the testimony of the experts, siding more with Econsult than Dr. Kinsey, but ultimately reaching middle ground. While her methodology is not binding on other Courts in the State, it is sound. Applying it to Hawthorne, its Fair Share obligation for new construction, including the ”gap period” from 1998 to 2015, is roughly 290 units of housing.

Hawthorne has claimed credit for some projects developed after 1998 which have affordable components. These include 55 Westervelt (Gorga), Dello Buono (Washington and Royal Avenues), Christian Health Care and various group homes in town. A bone of contention is the Forest Avenue development approved by the Zoning Board three plus years ago. There are no affordable units in the development. The resolution of approval does not require a specific set-aside. In fairness, there were no adopted COAH rules at the time and everyone was left to guess at the obligation. In lieu of on-site housing, Hawthorne negotiated at \$280,000 payment to its housing trust. This can be used to rehabilitate substandard housing units or build new units, if so desired.

As Hawthorne lacks sufficient lands to meet anywhere near 290 affordable units, it will seek a Vacant Land Adjustment. Very little vacant land capable of creating any housing can be identified. The two largest vacant parcels are 204 Wagaraw Road and the Patriot site. Discussions are taking place as to each.

No matter the outcome, Hawthorne will have a large unmet need once a vacant land adjustment is granted. It will most assuredly adopt a town-wide overlay which will require the developer of 6 units or more of housing to include an affordable housing component. The Zoning Board will therefore, by Ordinance, need to consider this Ordinance whenever presented with an application of 6 units or more of residential housing.

The Zoning Board is typically considering “D” variances when presented with a housing development. The jurisdiction of the Board is usually based upon the use not being permitted in the zone or the density being greater than permitted. D variances are statutory. The criteria does not change though the enactment of a local ordinance. Providing affordable housing in and of itself is not grounds for the grant of such a variance.

There remains much to be done before enabling ordinances are enacted. We expect to do so before year’s end. In the interim, the Board will receive a draft Zoning Ordinance, completely replacing our existing Code, in the coming weeks. We look forward to your input.

Until all ordinances are in place, the Board needs to be aware of the pending affordable housing matter. Any development of 6 units of housing or more ought to be considered as if the affordable housing ordinance is in place.

#### **ADJOURNMENT**

At 7:48p.m. Chairman Hallock entertained a motion to adjourn the regular meeting, moved by Schroter, seconded by De Ritter. All in favor, “Aye”.

THE NEXT REGULAR MEETING OF THE ZONING BOARD OF ADJUSTMENT  
WILL BE ON  
**~MONDAY, MARCH 18<sup>th</sup>, 2019 ~**  
**WILL BEGIN AT 6:45P.M.**

Respectfully Submitted,  
*Joan Herve, Secretary*