

RESOLUTION #2019-002

**RESOLUTION OF THE BOARD OF ADJUSTMENT
OF THE BOROUGH OF HAWTHORNE**

In the matter of:

**Theresa Tontodonati & Miguel Perez, Jr. (“Applicant”)
175/177 Cedar Avenue
Lot 22, Block 104
Hawthorne, New Jersey 07506**

WHEREAS, The Applicant made application to the Borough of Hawthorne Board of Adjustment for bulk variance approval in connection with the premises known as Lot 22, Block 104, commonly referred to as 175/177 Cedar Avenue (the “Property”), located in the R-3 Residential Zone; and

WHEREAS, as a result of the Application, Applicant requests approval to allow construction of an attached garage and second floor addition, resulting in the following variance relief:

(a) the required minimum side yard setback is 10 feet. A setback of 7.8 feet is proposed;

(b) the required minimum combined side yard setback is 20 feet. A combined sideyard setback of 14.6 feet is proposed;

(c) the minimum required lot width is 50 feet. A lot width of 48.29 feet is an existing condition.

WHEREAS, the Board reviewed this matter at its public hearing on February 25, 2019; and

WHEREAS, after due consideration and deliberation at the aforementioned hearing, the Board did vote upon the Application and instruct the Board Attorney to prepare a Resolution memorializing the vote taken; and

WHEREAS, the Zoning Board of Adjustment of the Borough of Hawthorne makes the following findings of fact, based upon the evidence presented at its public hearing:

1. The Applicant is the owner of the Property. The Property is located in the R-3 Residential District.

2. The Applicant has submitted satisfactory evidence of having given statutory notice pursuant to N.J.S.A. 40:55D-12.

3. The Applicant submitted the requisite Application, dated September 30, 2018, along with plans prepared by Evans Architecture AIA, dated June 20, 2018. The Applicant's architect and planner, Matthew Evans, was sworn. Mr. Evans was accepted as an expert in architecture and planning. The Applicants were also sworn. The Board finds, based on their testimony and the plans presented that:

a) Applicant proposes to remove an existing detached garage and construct a new, attached garage which is proposed to have living space over the garage. The size of the proposed addition is 24 ft. 8 in. by 11 feet.

b) This is an odd shaped lot. The proposed addition has different setbacks because the easterly side yard is angled.

c) The rear of the proposed addition is conforming at 10 feet, but tapers to 6.8 feet.

d) The property's odd shape makes it impractical to provide for a conforming addition.

4. Relief exists pursuant to N.J.S.A. 40:55D-70(c)(1) which requires that the Applicant, in order to demonstrate hardship, must show that, due to an existing condition relating to a specific piece of property or the structures lawfully existing thereon, the strict application of the zoning ordinance in question would result in undue hardship upon the developer warranting a variance from the regulation in question. This is known as a hardship or "C1" variance.

5. In this instance, the Applicant has demonstrated that due to the existing condition of the property, namely the odd shape of the easterly side line results in practical difficulties and undue hardship upon the Applicant. The Board further finds that the requested variances do not pose a substantial detriment to the public good and do not substantially impair the purpose and intent of the Borough of Hawthorne Zone Code or Zone Plan.

6. In reviewing the Application, evidence and testimony, the Board further finds that the variances requested by the Applicant can be granted in this instance. The Applicant has demonstrated that the proposed structure will be consistent with the existing character of the neighborhood and will promote the purposes of zoning set forth at N.J.S.A. 40:55D-2. The Board in this instance finds that the benefits to be derived from the granting of the variance requested outweigh any possible detriment resulting from the approval of the variances.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Hawthorne that the Application of Theresa Tontodonati and Miguel Perez, Jr. with respect to the Property, requesting variance relief as set forth above, be and is APPROVED for the requested lot width, side yard and combined side yard setback variances enumerated above, subject to the terms and conditions hereinafter set forth:

1. The foregoing findings of fact and conclusions of law are incorporated herein as if set forth at length.

2. The Applicant shall obtain approval from all other governmental agencies having jurisdiction over the subject Application and development, if any.

3. The Applicant shall pay all fees due and owing to the Borough of Hawthorne, including the posting of any application fees, review fees, inspection fees and/or escrow fees which may be due, prior to the issuance of any building permits.

4. The Applicant shall comply with all applicable rules, regulations, ordinances and statutes of the Borough of Hawthorne, County of Passaic and State of New Jersey with regard to the application.

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 April 15, 2019.



John F. Gallagher, Vice Chairman



Joan Herve, Board Secretary

OFFERED BY: *Schroter*
SECONDED BY: *Duffy*
VOTE: Ayes: *4*
Nays: *0*