

RESOLUTION # 2015-002

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

In the matter of:

██████████
**96 Parmalee Avenue
Lot 13, Block 143
Hawthorne, New Jersey 07506**

WHEREAS, ██████████ (“Applicant”) made application to the Borough of Hawthorne Board of Adjustment for variance approval in connection with the premises known as Lot 13, Block 143, commonly referred to as 96 Parmalee Avenue, Hawthorne, New Jersey (the “Property”), located in the R-1 Zone; and

WHEREAS, Applicant proposes to construct a two and one half story addition, add a level over an existing sunroom, construct a porch enclosure and construct a detached garage, thus requiring the following variances:

- Front yard setback: 33.2 feet proposed; 50 feet is required
- Side yard setback (one): 8.26 feet proposed; 15 feet is required
- Side yard setback (both): 13.64 feet proposed; 40 feet is required
- Maximum lot coverage: originally shown as 70% proposed, but testimony suggests the proposal is 52%, where 25% is allowed

WHEREAS, the Board reviewed this matter at its public hearings on November 24, 2014 and December 15, 2014; 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 and conclusions, based upon the evidence presented at its public hearing:

1. The Applicant is the owner of the Property located at 96 Parmalee Avenue, known and identified as Lot 13, Block 143. The Property is located in the R-1 Residence District which is designed for single family residential use.

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 along with plans prepared by Jacob Solomon Architect, LLC dated August 4, 2014, last revised December 2, 2014, consisting of four sheets, for review by the Board in connection with the request for bulk variance approval.

4. Applicant ██████████ testified the reason for the proposal is twofold: His family is growing and the family needs more living area. Also is a New Jersey State Trooper. He drives a state owned vehicle and is looking to provide a garage to store it.

5. He could not offer any legitimate land use reason to permit the variance approval. The board determines ██████████ did not set forth any factual basis for a hardship variance. The property is relatively flat and regularly shaped. Although the lot is undersized, the rear yard contains a swimming pool, concrete deck and two metal sheds all of which occupy a substantial portion of the rear yard.

6. ██████████ also did not demonstrate this application would advance the purposes of the MLUL or any goals set forth in the Borough of Hawthorne Master Plan or Zoning Code.

7. Applicant's architect, Jacob Solomon, was sworn and qualified as an expert in the field of architecture. He described the overall proposal which includes an addition and expansion to the home, along with interior renovations and garage construction. He testified that the proposed coverage is 52% and that the original plan, showing 70% is a mistake. He also failed to present any evidence in support of either a hardship variance or a "C2" variance.

8. Two neighbors, Elaine Samuelson and Tim Maggiore, testified that the existing side yard setback is so deficient that Applicant must encroach their property in order to use his driveway.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Hawthorne that the Application of [REDACTED] with respect to the Property, requesting variance relief to allow for the proposed construction, be and is hereby DENIED.

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

2. The Board has not been satisfied by the Applicant that the statutory criteria for the granting of variance approval has been met.

3. The Applicant seeks variance relief pursuant to N.J.S.A. 40:55D-70(c) 1 and 2, which requires that the Applicant show that either due to a 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, or that the purposes of the Municipal Land Use Law will be advanced.

4. In this instance the Board finds that the existing property is not irregular in shape and there is nothing peculiar or extraordinary about the property to justify a C1 variance. It is

simply overburdened at present and any further construction will exacerbate an already significantly non conforming property.

5. Also, in terms of analysis pursuant to N.J.S.A. 40:55D-70C(2) (the so-called “C2 variance”), the Board further finds that Applicant failed to prove that the granting of the requested relief will promote any of the purposes of zoning or represents a “better planning alternative”. The Applicant’s request does not serve to promote the purposes of either the Municipal Land Use Law or Borough Zoning Code. The Board concludes only the Applicant would benefit by their proposal to expand his home or construct the proposed garage.

6. The Board finds that there would be no benefits derived from granting the variances requested by the Applicant. The proposed construction of the home and garage is over-building of the Property. This would be a substantial detriment to the neighborhood. Further, the Board finds that the approval of the requested variance would substantially impair the intent and purpose of the zone plan and zoning ordinances of the Borough of Hawthorne.

7. For all of the foregoing reasons, the Application is denied.

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 19, 2015.

Raymond Hallock, Chairman

Joan Herve, Secretary

OFFERED BY:
SECONDED BY:
VOTE: Ayes:
Nays: