

RESOLUTION #2016-005

**RESOLUTION OF THE BOARD OF ADJUSTMENT
OF THE BOROUGH OF HAWTHORNE
(the "BOARD")**

In the matter of:

**Mattar 98 Corporation, d/b/a Macaluso's (the "Applicant")
161 Rea Avenue
Block 165, Lots 1, 2 and 3;
Block 166, Lot 1
Block 131, Lots 31, 32, 34 and 35
Hawthorne, New Jersey (the "Property" or the "Premises")**

WHEREAS, Applicant has submitted a certain application to the Board received on or about November 13, 2015 for Use Variance, Variance, Waiver and Preliminary and Final Major Site Plan approval and Soil Movement approval (the "Application"); and

WHEREAS, Applicant appeared before the Board on February 22, 2016 and March 21, 2016; 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, in support of the Application Applicant submitted the following exhibits:

A-1 Set of plans prepared by Rigg Associates, P.A., consisting of seven pages, all dated October 21, 2015, identified as follows:

Page 1 of 7 – Area Map
Page 2 of 7 – Exhibits Conditions & Demolition Plan
Page 3 of 7 – Site Layout
Page 4 of 7 - Grading & Utilities Plan
Page 5 of 7 – Landscape and Lighting Plan
Page 6 of 7 – Soil Erosion & Sediment Control Plan
Page 7 of 7 – Details

A-2 Plan prepared by Rigg Associates, P.A. entitled Topographic Survey of Property For Mattar 98, Corporation dated April 21, 2009, with a final revision date of April 29, 2014.

A-3 Vehicle Access Plan prepared by Rigg Associates, P.A. dated February 22, 2016.

A-4 Plan prepared by Wilson Horticultural Group entitled Planting Plan dated September 28, 2015.

A-5 Plans prepared by JR Frank Design, LLC, consisting of four pages, all dated October 3, 2015 identified as follows:

- A-1 First Floor Plan
- A-2 Basement Plan Elevation
- A-3 1/8" Plan
- A-4 Sections

A-6 Colored Rendering prepared by JR Frank Design, LLC.

A-7 Colored Rendering prepared by JR Frank Design, LLC.

A-8 Truck Turning Template dated February 22, 2016, last revised March 14, 2016.

WHEREAS, Applicant also submitted the following:

1. Borough of Hawthorne Zoning Board of Adjustment Application for Variance, received November 13, 2015, and including Addendum to Application for Variance and memorialized resolutions dated December 21, 2009 and August 18, 1997 (attached hereto as Exhibits A and B and incorporated herein).

2. Plans (seven (7) sheets) entitled "Preliminary & Final Site Plan, prepared for Macaluso's, Borough of Hawthorne, N.J., County of Passaic", prepared by Rigg Associates, P.A., dated October 15, 2015, and consisting of the following sheets:

<u>Sheet No.</u>	<u>Title</u>
1 of 7	Area Map
2 of 7	Existing Conditions & Demolition Plan
3 of 7	Site Layout
4 of 7	Grading & Utilities Plan

5 of 7	Landscape & Lighting Plan
6 of 7	Soil Erosion & Sediment Control Plan
7 of 7	Details

3. “Topographic Survey of Property For Mattar 98, A Corporation, Borough Hawthorne, N.J., County of Passaic”, prepared by Rigg Associates, P.A., dated April 21, 2009, last revised April 29, 2014.

4. “Planting Plan, Macaluso’s Restaurant, 161 Rea Ave., Hawthorne, N.J.”; prepared by Wilson Horticultural Group, dated September 28, 2015.

5. Architectural drawings (four (4) sheets) entitled “Macaluso’s Restaurant, Alteration & Addition, 161 Rea Avenue, Hawthorne, NJ.”, prepared by J.R. Frank Design LLC, dated October 3, 2015, and consisting of the following Drawings:

<u>Drawing No.</u>	<u>Title</u>
A-1	First Floor Plan
A-2	Basement Plan/Elevation
A-3	1/8” Plan
A-4	Sections

6. Soil Movement Permit Application dated February 10, 2016.

WHEREAS, Applicant has made application to the Board for permission to expand its existing restaurant/banquet facility with a new parking structure, a new ceremony room and an outdoor event/ceremony area with a gazebo and gardens; and

WHEREAS, the following was submitted by Borough representatives:

1. Boswell McClave Engineering report dated February 12, 2016;
2. Burgis Associates Memorandum dated February 18, 2016;
3. Hawthorne Police Department report dated February 10, 2016;
4. Hawthorne Volunteer Fire Department dated February 10, 2016.

WHEREAS, as a result of these requests, Applicant must obtain the following variances:

(a) Permitted Use: Section 540-176 of the Borough Code indicates that the proposed use is not permitted in the I-1 Zone. A “D” Variance is required.

(b) Minimum Required Parking Space Size: Section 540-132 – parking space size of 10 feet x 20 feet. Applicant proposes parking spaces of 9 feet x 18 feet and 9 feet x 19 feet, respectively.

(c) Minimum Front Yard Setback: The Schedule of Bulk and Coverage Controls of the Borough Code indicates a minimum front yard setback of 25 feet. Applicant proposes a front yard setback to the proposed gazebo of 17.5 feet and to the proposed parking deck and enclosed stairwell of 2.5 feet.

(d) Required Minimum Side Yard Setback of 10 feet where there is a setback of 0.2 feet to the existing building and same is proposed for the addition.

(e) Required Minimum Rear Yard Setback of 25 feet where 0.8 feet exists.

(f) Building Coverage of 57.6% where 50% is permitted (it is noted the building coverage calculation includes the parking structure).

WHEREAS Applicant has requested a waiver for 200 Foot Utility Information – Checklist requires topographic information and survey of existing utilities within 200 feet to be provided.

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.

2. Applicant has applied for permission to expand the Premises which has operated as a restaurant and banquet facility for decades and has received prior approvals from this Board.

3. The Premises is located in the Borough's I-1 District which prohibits the existing use as a banquet facility. It is both a pre-existing non-conforming use and a use also granted by variance.

4. As a result of Applicant's proposal, it seeks relief as set forth in the preamble recitals of this resolution.

5. Joseph Mattar was sworn. He is the Applicant's principal. Applicant has owned the Property since 1998. Macaluso's is a banquet facility. At most, three events can occur at one time, with a maximum of up to 350 guests. There are 20 employees, maximum, at a given time. Applicant proposes alterations, namely, additional space for ceremonies, which also includes an outdoor garden area with gazebo. These additions are needed to stay current in the industry.

In addition, the proposed parking deck has sufficient capacity for the much needed parking spaces to support the number of guests. Parking is valeted most of the time. The new entry location makes for better access resulting in less traffic back-up in the vicinity.

6. Bruce Rigg was sworn and accepted as an expert in the field of Civil Engineering. He prepared the site plan and related engineering documents and drawings. The site is surrounded by industrial, commercial and manufacturing uses and by the railroad. There are very few residences in the vicinity.

The proposed parking deck will result in Applicant meeting (exceeding) its parking demand of 108 parking spaces (up to 162 vehicles can be parked if valeted; 117 can be parked without valet). The proposed parking deck results in a front yard setback of 2.5 feet. This is necessitated by the slope of the property. The gazebo front yard setback is 17.5 feet,

behind a screen wall and not visible from offsite. The side yard setback exists at .2 feet. The proposal results in extending that non-conformity. The existing rear yard setback is .8 feet. 5.9 feet is now proposed. The parking stall sizes are smaller than required but, from an engineering perspective will function well. These sizes have been previously approved by this Board in its prior approvals attached hereto.

Extensive landscaping is proposed along the front with shade trees and decorative trees behind. There is also a row of plantings in the rear and along the southerly border.

Regarding soil movement, 1,500 cubic yards will be exported and 600 cubic yard of fill will be imported.

There is a sewer easement running through the Property. Applicant stipulates the municipality is indemnified and held harmless from performing any repairs or restoration to the facilities located within the easement area inclusive of the sewer line. The Applicant stipulates that the parking structure must be designed to bear the load of a fire truck, subject to the approvals of the Hawthorne Volunteer Fire Department and Board Engineer.

7. J.R. Frank, Architect and Planner was sworn and accepted in both fields. The proposed changes are made to create a special experience, providing aesthetically pleasing and functional space for special occasions and ceremonies. This is a current and necessary trend with banquet facilities. The Property is oddly shaped, and has a steep grade, both of which represent hardships. The Board has ruled favorably on this use three times in the past. Aesthetics are improved; the proposed use provides a service to the community; it is a magnet for other local business and acts as a transition area. Four MLUL criteria are met (promoting the general welfare, providing adequate open space, enhanced visual environment and efficient use of land).

The application will not substantially impair the intent and purpose of the zone code or result in a substantial detriment for the community.

B. CONCLUSIONS

The primary consideration of this Board is the use variance request to allow the expansion of the banquet facility in the I-1 Zone along with the associated site plan, variances, and waiver requests, all other relief requested is subsumed into the use variance approval.

In considering the application, the Board adopts the testimony and reports of all of the witnesses set forth above and hereby reaches the conclusion that ample evidence has been presented to justify the grant of the d(1) and d(2) (expansion of nonconforming use) variance and all other corollary relief. Per the applicable law, the Applicant must demonstrate, with an enhanced quality of proof, “special reasons”, namely that the use is peculiarly fitted to the particular location for which the variance is sought.

Specifically, this Board determines that based on the evidence, there are ample special reasons as described above. The Property is best suited as proposed. It has been in business for decades and has been endorsed by this Board as deserving a use variance on prior occasions. It is harmonious with surrounding uses, especially since the Property has been used historically for restaurant and banquet and this so-called expansion will result in minimal, if any, increase in intensity of use and will provide sorely needed parking at the facility.

As set forth above, the Negative Criteria have been proven also. While some members of the public had questions, no substantive objections were raised by them except for a question pertaining to stormwater runoff which will be addressed by the Applicant. The Board concludes that this proposal will not result in any substantial negative impact on the neighboring properties

and also there is no substantial detriment to the public good and also no substantial detriment to the zone plan.

As borne out during the public hearing, the changes to off site traffic patterns are improved. Also, since all operations are adequately screened, there will be no substantial negative impacts to the nearby neighbors.

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 shall be binding upon the Applicant, the owner, and any successors and/or assigns of either.

2. The Applicant shall comply with all stipulations made during the hearing on this application, including: indemnifying and holding the Borough harmless for any repairs or replacement or other action related to the sewer equipment located in the sewer easement (Applicant will execute a formal indemnification agreement satisfactory to the Borough Attorney); constructing the parking structure to support the weight of a fire truck after receiving approval from the Hawthorne Volunteer Fire Department and the Board Engineer; reconfiguring the delivery area to provide AASHTO compliance for sight distance, subject to the Board engineer's review and approval; omit the curb installation on the main driveway (east side) to provide for better fire truck access and stripe the "gore" area adjacent; provide for adequate drainage facilities, subject to the Board engineer's approval, at the bottom of the main driveway, and investigate/resolve other stormwater flooding in coordination with the Board engineer.

3. The Applicant shall promptly pay any professional staff fees billed, in excess of the required application escrows.

4. 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. The Applicant is solely responsible for determining which governmental and/or public agencies, if any, such approvals are required of. The Applicant is further required to submit a copy to the Board's secretary of all approvals and/or denials received from such outside agencies, with a copy thereof to the Board's Solicitor, Engineer and Planner.

5. Any improvement(s) to be constructed as a result of this approval shall be constructed and operated in full compliance with the Code of the borough of Hawthorne, the Revised Statutes of the State of New Jersey and any other applicable county and/or federal law.

6. Prior to construction, Applicant shall (if not already done):

A. Submit five copies of a complete survey of the property (except for streets) to be dedicated, which survey shall be performed and certified by a licensed surveyor;

B. Submit a topographic survey showing contour intervals of two feet at a scale no larger than one inch equaling 100 feet;

C. Submit five copies of complete (as-built) plans of any improvements on the dedicated property.

7. The Applicant shall certify that all taxes and assessments have been paid up to the present time.

8. The Applicant shall submit to the Board Engineer for his review a sufficient number of complete sets of plans which shall incorporate all of the revisions that have been made conditions of this approval.

9. The Applicant shall construct all drainage basins or alternate drainage facilities upon the Premises, including inflow and outflow structures according to a construction schedule reviewed with and approved by the Hawthorne Borough Engineer.

10. 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.

11. 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.

12. 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.

13. The Applicant must obtain all other construction or other municipal permits required with respect to the relief as granted herein.

14. 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.

15. 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.

16. Subject to Boswell McClave Engineering's approval.

17. Applicant will provide the Borough with the right to require modifications and changes to the lighting for a period of up to 6 months after installation.

18. All landscaping will be irrigated.

19. Applicant will satisfactorily address any required NJDEP site cleanup requirements.

20. There will be no outdoor storage of materials.

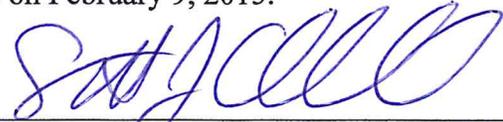
21. There will be no on-street parking or queuing of customer vehicles.

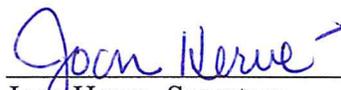
22. Applicant will submit to Title 39 Jurisdiction and shall send a letter to the Hawthorne Mayor and Council to that effect.

23. The Applicant will enter into a Developer's Agreement and post all requisite Bonds, Fees and Insurance, inclusive of all Affordable Housing Development Fees.

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 February 9, 2015.


 BOARD MEMBER, ~~Chairman~~


 Joan Herve, Secretary

Name	Motion	Second	Yea	Nay	Abstain	Absent
Hallock					X	
Gallagher					X	
DeRitter						X
Chamberlin		X	X			
Sasso			X			
Schroter						X
Duffy	X		X			
Leininger			X			
Agnello						X