

RESOLUTION #2015-008

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

In the matter of:

**Daniel Melfi
84 Emerline Drive
Lot 7, Block 293.03
Hawthorne, New Jersey 07506**

WHEREAS, Daniel Melfi (“Applicant”) made application to the Borough of Hawthorne Board of Adjustment for variance approval in connection with the premises known as Lot 7, Block 293.03, commonly referred to as 84 Emerline Drive, Hawthorne, New Jersey (the “Property”), located in the R-1-Single Family Residential Zone; and

WHEREAS, as a result of the Application, Applicant seeks the following variance:

To park an 18 foot long trailer in the front of the Applicant’s house from March 15 to October 15 each year, contrary to Section 540-13 of the Board of Hawthorne Zoning Code.

WHEREAS, the Board reviewed this matter at its public hearing on April 20, 2015; 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 located at 84 Emerline Drive, known and identified as Lot 7, Block 293.03. The Property is located in the R-1 Single Family Residential 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 dated February 12, 2015, along with a survey prepared by Frank W. Koestner Associates, dated August 12, 1998, consisting of one (1) sheet and two photographs of Applicants trailer (used to store motorcycles and related items).

4. Section 540-13 reads: "Storage of vehicles: In R-1 and R-2 Residence Zone Districts, no trailer, semi-trailer, truck, van or other commercial vehicle bearing signs or advertisements or boat, boat trailer, camper or recreational vehicle or disabled, dismantled or unregistered vehicle or any vehicle not capable of automotive propulsion under its own power or any container, box, object or thing of a size in excess of 50 cubic feet shall be parked, stored or located in the front yard of any lot for a period in excess of 24 hours."

5. Applicant, Daniel Melfi was sworn and testified that he is looking for permission to store the proposed trailer as specified above for the time frames also specified above. He would need to keep it at his home during the weekdays (since he uses it to attend racing events on the weekends) and stores it off site in the winter. The trailer is 18 feet long, approximately 9 feet tall and approximately 8 feet wide. He testified that the trailer does not fit in his garage. He also testified that due to the grading of his property, which has an approximate 40 foot drop in grade from the rear of the property to the front of his house and also due to the location of

underground utilities, he does not have the ability to park the trailer on the side or rear of his home.

6. In order to demonstrate that a variance is warranted in this instance, Applicant would need to meet the criteria for the grant of either a c(1) Hardship Variance” or c(2) “Flexible C” Variance pursuant to N.J.S.A. 40:55D-70(c)(1) or (c)(2). The Applicant would also need to satisfy the so called negative criteria, namely that the proposal does not pose a substantial detriment to the public good and does not substantially impair the purpose and intent of the Borough of Hawthorne Zone Code or Plan.

7. The Board finds and concludes that the Applicant has failed to meet his burden to satisfy any of the above criteria. Although he advanced, as an undue hardship, that the property has a significant slope to it, the Board determines this is insufficient to justify a c(1) Variance, as measures could clearly be taken to construct a driveway or other parking platform to the right side of his house to store the trailer. No reasons were advanced to support the grant of a c(2) Variance. Likewise, no proofs were advanced to support satisfaction of the negative criteria. The Board specifically concludes that this proposal is in direct conflict with the clear language of Section 540-13 that no “. . . trailer, camper or recreational vehicle . . . or any vehicle not capable of automotive propulsion . . . shall be parked, stored or located in the front yard of any lot for a period in excess of 24 hours.”

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Borough of Hawthorne that the Application of Daniel Melfi with respect to the Property, requesting variance relief to allow for the parking of an 18 foot long trailer in the front of the house, 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 there is nothing peculiar or extraordinary about the property to justify a C1 variance. The only possible condition which could be argued as a hardship is based on the slope of the property. However, the Board does not find this condition to rise to the level of a hardship justifying the requested relief, since measures could be taken to park the vehicle on the right side of the home if regrading was accomplished.

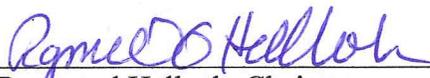
5. Also, in terms of analysis pursuant to N.J.S.A. 40:55D-70C(2) (the so-called "C2 variance"), the Board further finds that Applicant failed to prove that the granting of the requested relief will promote any of the purposes of zoning or represents a "better planning alternative". The Applicant's request 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.

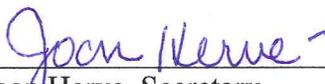
6. The Board finds that there would be no benefits derived from granting the variances requested by the Applicant. The Board finds that the approval of the requested

variance would substantially impair the intent and purpose of the zone plan and zoning ordinances of the Borough of Hawthorne. The language of the ordinance is very clear that the proposal is against the stated purpose of the ordinance.

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 May 18, 2015.


 Raymond Hallock, Chairman


 Joan Herve, Secretary

Name	Motion	Second	Yea	Nay	Abstain	Absent
Hallock			X			
Gallagher			X			
DeRitter	X		X			
Chamberlin		X	X			
Terraglia			X			
Schroter			X			
Duffy			X			
Melfi					X	
Agnello						X