

RESOLUTION #2015-004

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

In the matter of:

**233 Central LLC (the "Applicant")
Block 174, Lot 14 (the "Property" or the "Premises")
Hawthorne, New Jersey**

WHEREAS, Applicant has submitted a certain application to the Board dated February 18, 2014 for Use Variance, Variance, Preliminary and Final Site Plan and Waiver Approval (collectively, the "Application"); and

WHEREAS, Public Hearings were held on August 18, 2014, September, 2014, October 20, 2014, November 24, 2014, December 15, 2014 and February 23, 2015; and

WHEREAS, Applicant previously received Use Variance, Variance and Waiver approval as memorialized in the Board's Resolution #2015-001; and

WHEREAS, after receipt of said approval, Applicant revised its site plan, bearing a last revision date of December 30, 2014 ("Revised Plan"); and

WHEREAS, the Board's Engineer, Boswell McClave Engineering submitted its review letter, dated January 13, 2015 addressing certain changes made to the aforesaid Revised Plan; and

WHEREAS, the Board reviewed the Revised Plan and Testimony presented at the February 23, 2015 Public Hearing.

NOW THEREFORE, after due consideration the Zoning Board of Adjustment of the Borough of Hawthorne makes the following findings of fact, based upon the evidence presented

at its public hearings and the findings enumerated herein:

1. The Board hereby adopts, in its entirety, Resolution #2015-001, inclusive of all findings of fact, conclusions of law and conditions established therein as if set forth herein at length;

2. Applicant's Engineer, Matthew Clark, P.E. supplemented his prior testimony, commenting on the Revised Plan. He discussed the significant changes to the revised Plan, namely: a reduction in the number of residential units to 142 two bedroom units (previously shown as 150 units); the building referred to as the "Leasing Building" is now setback thirty feet, thereby eliminating a previously requested rear yard variance (previously proposed at 10 feet); and all buildings located along the southerly boundary have a minimum 15.6 foot setback (where the prior plan requested one building with a setback of 13 feet); the number of parking spaces is modified to 306.

3. Applicant's Architect, Stuart Lachs supplemented his previous testimony to advise the Board there are one hour fire separations between each apartment unit.

4. Applicant's attorney, Paul Kaufman, stipulated that all buildings will be fully sprinklered; and further, that Applicant stipulated it will abide by the Board Engineer's comments and requirements pertaining to stormwater management.

5. The Board determines that the Revised Plan is designed to and meets recognized, sound engineering principals, is safe and efficient.

THEREFORE, BE IT RESOLVED, that the Board hereby grants Applicant's request for preliminary and final site plan approval, subject to the following conditions:

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.

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 Property (to be delivered after all improvements are installed and approved).

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. 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.

17. All landscaping will be irrigated.

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

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

20. The Applicant will enter into a Developer's Agreement and post all requisite Bonds, Fees and Insurance.

21. Applicant will install fire sprinklers in all structures and units, as directed by the Hawthorne Fire Code Official and otherwise abide by the Fire Code Officials' letter dated November 17, 2014.

22. The Applicant shall comply with the Borough of Hawthorne's affordable housing obligations, if any, resulting from this approval.

23. In the event any change to the layout, number of units or change of a two bedroom unit to another type of unit that would expand the nature of the relief granted herein, the Applicant must make application to the Board.

24. The Applicant shall comply with all requisite development fee obligations, if any, resulting from this approval.

25. The Applicant shall satisfy and abide by all comments set forth in the Boswell McClave letter dated November 20, 2014.

26. A rail, in a type and material approved by the Board Engineer will be installed atop all retaining walls.

27. Buffers to be provided on-site will be a 6 foot high privacy fence along with a planted buffer.

28. The Board presumes that the Applicant's application, all exhibits, maps and other documents submitted and relied on by the Applicant, are true and accurate representations of the facts relating to the applicant's request for relief. In the event that it appears to the Board, on reasonable grounds, that such application, exhibits, maps and other documents submitted are not accurate, are materially misleading or are the result of mistake, and the same had been relied upon by the Board as they bear on facts which were essential in the granting of the relief sought by the Applicant, the Board may rescind its approval and rehear the application, either upon application of an interested party or on its own motion, when unusual circumstances so require, or where a rehearing is necessary and appropriate in the interests of justice.

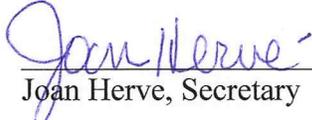
29. The "leasing office" shall only be used for leasing and administrative purposes and for a tenant only fitness room.

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 March 16, 2015.



John Gallagher, Acting Chairman



Joan Herve, Secretary

OFFERED BY: DeRitter
SECONDED BY: Agnello
VOTE: Ayes 4
Nays
Abstain - 1