

April 17th, 2023

Hawthorne, NJ

The regular Meeting of the Zoning Board of Adjustment of the Borough of Hawthorne was held on the above date at 6:57 p.m. in the Council Meeting Room of the Municipal Building, 445 Lafayette Avenue, Hawthorne, New Jersey, with the following present:

FLAG SALUTE

Chairman Gallagher invited all present to join him in the Pledge of Allegiance.

“Adequate Notice of this meeting has been posted on the Municipal Bulletin Board, published in the legal newspaper of the Borough and a schedule, including date and time, provided to all persons entitled by law to same. “

ROLL CALL

Board Member.....	John F. Gallagher
Board Member.....	David A. Schroter
Board Member.....	Victor Cuttitta, Jr.
Board Member.....	Eleanor C. Wenzke
Board Member	Lyle Hatch
Board Member.....	Jodi DeMarco
Board Member.....	Marco Totaro - absent
Board Member (Alternate #1)	Brian J. Lind
Board Member (Alternate #2)	Danilo Ramirez

Also present was Board Attorney, Zoning Officer Gene DeAugustines and Board Secretary Joan Herve.

APPROVAL OF MINUTES

Chairman Gallagher entertained a motion to approve the minutes of the Reorganization Meeting of February 27, 2023 moved by DeMarco, seconded by Hatch. On a roll call vote, all present voted yes (Cuttitta, DeMarco, Hatch, Lind, Wenzke, Schroter, Gallagher). Motion Carried.

MEMORIALIZED RESOLUTION

RESOLUTION #2023-004

**In the matter of:
(the “Applicant”)**

**46 Kingston Avenue (the “Property”), Lot 3, Block 111
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 Property, located in the R-2 Residential Zone; and

WHEREAS, as a result of the Application, Applicant seeks to obtain approval for minimum rear yard variance (10 feet required and 6.2 feet existing and proposed) and minimum front yard variance (20 feet required and 12.6 feet existing and proposed) and coverage variance (35% allowed, 50.6% existing and 48.2 proposed...a reduction of impervious cover);

WHEREAS, the Board reviewed this matter at its public hearing on February 27, 2023; 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-2 One and Two Family 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 February 6, 2023, along with the following:
 - A. A plan entitled Proposed Alteration: Mr. & Mrs. Lind, 46 Kingston Avenue, Hawthorne, prepared by Edward A. Easse Architect, Planner, dated January 13, 2023 consisting of four pages.
 4. Applicant's Architect/Planner Ed Easse gave a brief overview of the application. The applicant proposes to remove a portion of the existing second floor to a one family dwelling and construct a two-story rear yard addition of 270 square feet in area (11'0" x 24'-5") per floor (total living area addition for both floors 540 square feet) to the structure. The proposed addition will align on one side of the existing dwelling and will also add a one story wooden deck. Additional work includes the removal of an existing pool and removal of an existing concrete patio/walkway.
 5. 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.
 6. In this instance, the Applicant has demonstrated that due to the existing location of the home, and the existing non-conformities (including the excess coverage which is being reduced by virtue of this proposal). It is also noted that the proposed addition does not encroach any further than the existing setbacks of the house. Therefore, the strict application of the particular regulations of the Borough of Hawthorne Zoning Ordinance would be an undue hardship upon the Applicant. The Board further finds that 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.
 7. In reviewing the Application, evidence and testimony, the Board finds that the variance 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 Brian and Dina Lind with respect to the Property, requesting variance relief as set forth above, be and is APPROVED for the requested variances, 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, inclusive of Mr. Easse's testimony that drainage concerns will be addressed in accordance with the Borough of Hawthorne Construction and Engineering Department approval(s).
 5. Subject to all information, stipulations, testimony and evidence presented by Applicant during the hearing.
- 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 , 2023.

Chairman Gallagher entertained a motion to Memorialize Resolution #2023-004, moved by Cuttitta, seconded by Schroter. On a roll call vote.

Ayes: Cuttitta, DeMarco, Hatch, Wenzke, Schroter, Gallagher

Abstain: Lind

Absent: Totaro

Nays: None

Motion carried

RESOLUTION #2023-005

In the matter of:

("Applicant")

185 Bamford Avenue

Lot 8, Block 142

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 8, Block 142, commonly referred to as 185 Bamford Avenue (the “Property”), located in the R-1-Single Family Residential Zone; and

WHEREAS, as a result of the Application, Applicant requests variance approval to allow construction of single story additions in the rear of the home totaling 226 square feet. The variance relief sought is as follows :

(a) minimum side yard setback: 15 feet required/ A 3 foot setback to the deck and 3 foot setback to the edge of stairs is proposed;

(b) minimum side yard setback: (aggregate) 40 feet required/14.26 feet existing and 18.3 feet proposed.

WHEREAS, the Board reviewed this matter at its public hearing on February 27, 2023; 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-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, along with a plan prepared by Edward A. Easse, Architect, Planner, dated December 28, 2022. Applicant’s Architect/Planner Edward Easse gave a brief overview of the application. Applicant proposes to construct (2) rear yard (one story) additions (5’x10’ or 50 square feet 11’x16’ or 176 square feet for a total building addition area of 226 square feet). Work will include removing an existing shed structure and removal of existing paver blocks. A new deck 8’x10’ will be constructed in the rear of the dwelling. The lot coverage on-site will be reduced by 53 square feet.

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 conditions of the Property, an undue hardship upon the Applicant exists. The Board further finds that requested variance 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 Zone Plan.

6. In reviewing the Application, evidence and testimony, the Board further finds that the variance 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 Daniel and Debra Ryan with respect to the Property, requesting variance relief as set forth above, be and is APPROVED for the requested setback and rear 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, inclusive of Mr. Easse’s testimony that drainage concerns will be addressed in accordance with the Borough of Hawthorne Construction and Engineering Department approval(s).

5. Subject to all information, stipulations, testimony and evidence presented by Applicant during the hearing.

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 17, 2023.

Chairman Gallagher entertained a motion to Memorialize Resolution #2023-005, moved by Cuttitta, seconded by DeMarco. On a roll call vote.

Ayes: Cuttitta, DeMarco, Hatch, Lind, Wenzke, Schroter, Gallagher

Abstain: None

Absent: Totaro

Nays: None

Motion carried

RESOLUTION #2023-006

In the matter of:

(the “Applicant”)

1060 Goffle Road

Block 281.03, Lots 36 & 38

Hawthorne, New Jersey (the “Property” or the “Premises”)

WHEREAS, Applicant has submitted a certain application to the Board dated December 1, 2022 for Use Variance, Preliminary and Final Major Site Plan Approval (the “Application”); and

WHEREAS, Applicant appeared before the Board on February 27, 2023; 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, Applicant submitted the following in support of its application:

- a. Borough of Hawthorne Zoning Board of Adjustment Application for Variance, dated December 1, 2022.
- b. Borough of Hawthorne Application Checklist for Required Submissions to the Zoning Board of Adjustment, dated December 1, 2022.
- c. Plot Plan (2 sheets) entitled, “Plot Plan for Property at J.V.C. Land, LLC, Lot 36, Block 281.03, 1052 Goffle Road, Borough of Hawthorne, NJ, County of Passaic,” prepared by Rigg Associates, P.A., dated November 15, 2022 and consisting of the following sheets:

<u>Sheet No.</u>	<u>Description</u>
1 of 2	Area Map
2 of 2	Zoning Plan

- d. “ALTA/ACSM Land Title Survey, 1052 & 1060 Goffle Road, Borough of Hawthorne, NJ, County of Passaic,” prepared by Rigg Associates, P.A., dated August 17, 2012, last revised November 16, 2020.
- e. Architectural Plans (4 sheets) entitled “Car Dealership for: JVC Motors, 1060 Goffle Road (A.K.A. 1052 Goffle Road), Hawthorne, NJ” prepared by Edward A. Easse, Architect, Planner, dated September 7, 2022 and consisting of the following sheets:

<u>Sheet No.</u>	<u>Description</u>
A-01	Existing Front and Left Side Elevations
A-02	Existing Rear and Right Side Elevations
A-03	Existing First Floor Plan
A-04	Existing Second Floor and Mezzanine Plans

- f. “Borough of Hawthorne Parcel Offset List, Target Parcel(s), Block-Lot: 281.03-36, Nissan of Hawthorne Realty, LLC, 1052 Goffle Road,” printed August 17, 2022.
- g. “Borough of Hawthorne Parcel Offset List, Target Parcel(s), Block-Lot: 281.03-38, Nissan of Hawthorne Realty, LLC, 1060 Goffle Road,” printed August 17, 2022.
- h. “Borough of Hawthorne, Tax Collection Information, 1060 and 1064 Goffle Road, Block 281.03, Lot 36 and 38,” dated September 13, 2022.
- i. “Corporate Disclosure Statement for J.V.C. Land, LLC,” dated December 1, 2022.
- j. “Draft Public Notice,” prepared by Mitchell W. Abrahams, Esq.
- k. “Borough of Hawthorne Planning Board Resolution, Nissan of Hawthorne Realty, LLC,” adopted February 4, 2014.

WHEREAS, the Applicant has requested the following variance:

1. Use Variance: The primary sale of pre-owned motor vehicles is prohibited.

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. The Property consists of Lot 36 in Block 281.03 with a total area of 32,775 s.f. The site is located on the north side of Goffle Road, east of New Jersey State Highway (N.J.S.H.) Route 208, at the northbound entrance/exit ramp for N.J.S.H. Route 208.
2. The site is located in the Retail/Commercial (B-3) Zone and is bordered to the north, east and west by the B-3 Zone, and to the south by the Retail/Commercial (B-3A) Zone.
3. The lot is currently developed with the following improvements (all to remain):
 - A one (1) story masonry building with a mezzanine and second story portion
 - Driveway and parking lot areas
 - Easement for culvert, headwall and subsurface drain
4. The existing use is a new car showroom. The Applicant proposes to use the lot and facility for used (pre-owned) car sales.
5. Within the Zone, Ordinance 540-111.2.A(2) of the Borough Code (Code) permits a new car dealership and related services, as well as, used car sales, but only in conjunction with a new car dealership.
6. The Applicant seeks permission to sell only pre-owned (used) motor vehicles. In addition, the Applicant seeks to use the property located at 1064 Goffle Road for ancillary parking only.
7. The site is in a location not conducive to typical retail operations, with no direct access to Goffle Road.
8. The location and difficulties with access to the Property make this site particularly suited for automobile dealerships. In fact, a Nissan new car dealership operated at the Property for many years.
9. Applicant seeks to sell pre-owned vehicles only. All vehicle preparation is performed off site. As such, there will be storage and display only of the vehicles for sale. There will be approximately 35 vehicles stored on site. There will be 5-10 employees on site at any given time. Days and hours of operation are Monday to Saturday, 9 a.m. to 7 p.m.
10. No materials site changes are being made. All accessible parking spaces will be brought up to code.
11. The nature of the used car industry has changed significantly over time. As such, there will be no trappings of the used car dealerships, such as highway dealerships festooned with signage, balloons and other items intended to advertise. Additionally, the pre-owned vehicles of today are put through a multi-point check system to assure the vehicle's good condition. In today's age, it is difficult if not impossible to distinguish a new car dealership from a pre-owned car dealership.

B. CONCLUSIONS

The Board adopts all of the recitals and findings described above. The Board concludes that the primary reason for the prohibition against the sale of pre-owned vehicles in this instance is outdated. The Applicant has provided evidence that the Premises will operate in a first class manner, with none of the trappings associated with used car dealerships and that the pre-owned vehicle dealership is indistinguishable from a new car dealership.

The Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-70d(1), requires the Applicant to prove the positive criteria of "special reasons" in order to obtain a use variance for a use or structure otherwise not permitted in the zoning district. In *Burbridge v. Mine Hill Tp.*, 117 N.J. 376, 386-387 (1990), the Court instructed that the term "special reasons" takes its definition from the purposes of zoning listed in the MLUL, N.J.S.A. 40:55D-2. The specific use variance requested in this case, a Use Variance to allow the sale of pre-owned vehicles carries out several purposes of zoning, such as adaptive re-use of Property. Also, the Property and proposed use are particularly well-suited to each other.

The MLUL, N.J.S.A. 40:55D-70, also requires that the Applicant prove the negative criteria that the variance can be granted without substantial detriment to the public good and that it will not substantially impair the intent and the purpose of the zoning plan and ordinances. The Board finds that the use variance for the pre-owned vehicle dealership use can be granted without substantial detriment to the public good. Further, the Board finds the grant of the use variance will not substantially impair the intent of the zone plan and zoning ordinance. The reasons supporting the positive criteria, without repeating them, also support this prong of negative criteria.

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

3. 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 Engineer.
4. 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.
5. The Applicant shall certify that all taxes and assessments have been paid up to the present time.
6. 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.
7. 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.
8. 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.
9. The Applicant must obtain all other construction or other municipal permits required with respect to the relief as granted herein.
10. 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.
11. The Applicant shall comply with the Americans with Disabilities Act (ADA).
12. There shall be no outdoor storage or sale of items, except pre-owned motor vehicles.
13. Applicant must receive Passaic County Planning Board exemption or waiver.
14. The Board, on behalf of the Borough reserves the right to require modifications and changes in the lighting for a period of six (6) months.
15. All facades will be color matched.

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 April 17, 2023.

Chairman Gallagher entertained a motion to Memorialize Resolution #2023-006, moved by Cuttitta, seconded by Hatch. On a roll call vote.

Ayes: Cuttitta, DeMarco, Hatch, Lind, Wenzke, Schroter, Gallagher

Abstain: None

Absent: Totaro

Nays: None

Motion carried

OLD BUSINESS

Diamond Brook Hollow Condominium Association, 45 Royal Avenue (block 29, Lot 10)

Hearing tabled to the May 17, 2023 meeting

Chairman Gallagher entertained a motion to table the above application to the May 15, 2023 meeting, moved by Hatch, seconded by Cuttitta. on a roll call vote, all voted yes, Ayes: Cuttitta, DeMarco, Hatch, Lind, Wenzke, Gallagher, Nays: Schroter. Motion carried

NEW BUSINESS

ADJOURNMENT

At 7:00p.m. Chairman Gallagher entertained a motion to adjourn the regular meeting, moved by DeMarco, seconded by Cuttitta. All in favor, “Aye”.

THE NEXT REGULAR MEETING OF THE ZONING BOARD OF ADJUSTMENT WILL BE ON

~MONDAY, MAY 15th, 2023 ~

**THE WORK SESSION WILL BEGIN AT 6:45P.M. WITH THE REGULAR MEETING IMMEDIATELY
FOLLOWING**

Respectfully Submitted,

Joan Herve, Secretary