

June 20<sup>th</sup>, 2022  
Hawthorne, NJ

The regular meeting of the Zoning Board of Adjustment of the Borough of Hawthorne was held on the above date at 6:45 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**

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

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

**APPROVAL OF MINUTES**

Chairman Gallagher entertained a motion to approve the minutes of the meeting of May 16, 2022. Moved by Hatch, seconded by DeMarco. On a roll call vote, Ayes: Cuttitta, DeMarco, Hatch, Lind, Ramirez, Totaro, Wenzke Schroter & Gallagher. Nays: none. Motion Carried.

**OLD BUSINESS**

**Gary and Celene Luscher, 103 Mountain Avenue (block274, lot 4)**

As per the applicant’s request, this will be tabled until the July 18, 2022 meeting.

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

As per the applicant’s request, this will be tabled until the July 18, 2022 meeting.

**MEMORIALIZE RESOLUTIONS**

**RESOLUTION # 2022-004**

**53 Braen Avenue, LLC, 10 Sotnick Street (block 287, Lot 8)**

*Note: Board Member Schroter recused himself from this application as he is employed by one of the LLC partners and Board Member Wenzke recused herself due to appearing on the applicant's 200' list; both left the dais and sat in the audience.*

*Alternate 1 Board Member Brian Lind & Alternate 2 Board Member Ramirez voted on this application.*

**WHEREAS**, the Applicant made previous application to the Board for, among other things, use variance approval so as to permit the construction of a two family home in an R-1 single Family Zoning District; and

**WHEREAS**, the Board (which was also comprised of Planning Board members pursuant to the "Rule of Necessity") denied the Application and memorialized its decision in the resolution of denial dated November 23, 2020, attached hereto as Exhibit "A"; and

**WHEREAS**, Applicant appealed the denial to the Superior Court of New Jersey; and

**WHEREAS**, as a result of certain alleged defects made by the Applicant and furthermore, as a result of certain stipulations (to be discussed below) that the Applicant has offered, the Board agreed to this remand, following the guidance of Whispering Woods at Bamm Hollow, Inc. v. Township of Middletown Planning Board, et al 220 N.J. Super 161 (Law Div., 1987); and

**WHEREAS**, the Applicant returned to the Board for public hearing on May 16, 2022, with its counsel, Bruce E. Whitaker, Esq. and its engineer, Bruce Rigg, P.E.; and

**WHEREAS**, the Board's planner, John Szabo, and Board Engineer, Michael Kelly were also in attendance; and

**WHEREAS**, the Board reviewed the original record of the proceeding, namely, Board minutes and recorded "virtual" hearings, as well as the testimony and evidence produced during the remand hearing; and

**WHEREAS**, adequate notice and publication of the meeting was made by the Applicant; and

**WHEREAS**, the Applicant continues to seek the following relief;

- a) Use Variance Approval Section 540-10A(1) – of the Borough of Hawthorne Zoning Code prohibits two family dwellings in the R-1 Zone. The Applicant requests a variance to construct one two-family dwelling on the existing unimproved lot.
- b) Variance/Location of Trees – Section 540-159(c)(2) of the Borough of Hawthorne Zoning Code requires the Applicant to depict trees greater than 8 inches on the plans. The Applicant has only depicted the trees within the area of disturbance for the proposed area of disturbance; and

**WHEREAS**, members of the public were provided an opportunity to present evidence and comments and also to question witnesses; and

**WHEREAS**, the Board has jurisdiction to hear this matter; and

**WHEREAS**, the findings of fact made and memorialized in the prior resolution of denial are adopted herein as if set forth at length and modified as hereinafter discussed; and

**NOW THEREFORE**, after due consideration, the Board renders the following findings, analysis and conclusions:

**FINDINGS**  
**BRUCE RIGG**

Applicant's engineer was re-sworn and re-qualified as an expert in the field of Civil Engineering. Mr. Rigg prepared the plans under review, namely, the plan entitled "Plot Plan for Property located at 10 Sotnick Street, Borough of Hawthorne, N.J., County of Passaic," dated June 29, 2020, bearing a last revision date of May 9, 2022. He testified as follows:

- The Premises is more than twice the size of the required lot area in the R-1 Zone;
- The project meets all dimensional/bulk requirements;
- The proposed home will be setback sixty (60) feet from the front yard line;
- The proposed home is similar to many other two family homes in the immediate vicinity;
- The Applicant, due to the large lot size, could build a larger home (single family, as of right) but has stipulated that it will build what is currently proposed;
- The Applicant will record a deed restriction, which will prohibit any further expansion of the home; which will prohibit any further subdivision of the Property; and which will prohibit any disturbance in the "no disturbance" area identified in the deed restriction attached hereto as Exhibit B. The "no disturbance" area

will be delineated with a split rail fence to remain and shall be maintained in perpetuity. All deed restrictions will run with the land in perpetuity;

-On the issue of drainage and stormwater management, there is no difference whether the home is single family or two family. In fact, if a larger, single family home was constructed, there could be a greater impact on the drainage issues.

**JOHN SZABO**

John Szabo, the Board’s professional planner, was sworn and accepted as an expert in the field of municipal planning. He testified that with all the other two family homes and townhouses in the immediate vicinity, it made “perfect sense” to permit a two family home as a transitional use between multi-family and single family homes.

**MEMBERS OF THE PUBLIC**

Several members of the public voiced their opposition to the application. All such objections centered on stormwater management issues. In some cases, significant property damage is alleged to have occurred.

**CONCLUSIONS**

First and foremost, the Board concludes that Applicant’s plans as they relate to stormwater management and control are properly designed and based on all applicable Borough and State of New Jersey standards. The implementation of all such drainage features shall be inspected by and must meet the approval of the Board Engineer. Additionally, this Board concludes that the nature of the home as a two family structure is irrelevant as it relates to drainage. The Applicant has proposed a home that meets all bulk parameters, and in fact could be built much larger than proposed as a conforming single family home. The Board determines that, with the stipulations made by the Applicant, namely, to record the deed restrictions set forth above, to enter into a developer’s agreement, post appropriate bonds, and to build the project to the board Engineer’s specifications, the Board cannot deny this application on the basis of the drainage concerns raised by the objecting public.

With respect to the elements needed to approve the use variance request, the Board specifically concludes that this Property, especially when considering the Applicant’s stipulations set forth above, meets the so-called “Positive Criteria” and is particularly well suited to be used as a two family home. This is a transition area where several homes in the immediate vicinity are two family homes. In addition, the Property abuts a large residential apartment complex.

With respect to the so-called “Negative Criteria” the Board concludes this two family home does not substantially impair the intent of the zone plan, especially due to the transitional nature of the Property. Furthermore, the Board concludes that there is no substantial detriment to the public good. The proposal is to build a home which meets every bulk parameter and drainage design requirement.

**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:

**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 Solicitor, Engineer and Planner.
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 Statutes, Rules and Regulations 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 an/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 shall enter into a Developer's Agreement, post appropriate bonds and 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 Statutes, Rules and Regulations of the State of New Jersey and any other applicable county, state and/or federal law and shall meet all reasonable requirements made by the Board Engineer, especially as it relates to stormwater management and drainage.
11. 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.
12. The Applicant shall not seek to expand the residential use of the Premises beyond this approval.
13. Applicant shall prepare and record one or more deed restrictions, as set forth above, so as to prohibit the enlargement of the house, prohibit further subdivision and provide for a "no disturbance zone" which will be delineated by a split rail fence to be maintained in perpetuity. All such deed restrictions shall be subject to the Board satisfaction.
14. The Applicant must maintain and control stormwater runoff during the development of the site.
15. The Applicant will be required to install a swale along the south side of the property to control stormwater runoff.
16. Applicant shall meet all Borough of Hawthorne Affordable Housing requirements, inclusive of the payment of any requisite 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 June 20, 2022.

Chairman Gallagher entertained a motion to Memorialize Resolution #2022-004. Moved by Lind, seconded by DeMarco. On a roll call vote, Ayes: Cuttitta, DeMarco, Hatch, Lind, Ramirez, Totaro, & Gallagher. Nays: none. Motion Carried.

**RESOLUTION # 2022-005**

**Mr. & Mrs. Mariella, 23 Sicomac Road (block 297.01 lot 4)**

**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 4, Block 297.01, commonly referred to as 23 Sicomac Road (the "Property"), located in the R-1-Single Family Residential Zone; and

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

(i) Minimum front yard Setback: Required front yard setback is 50 feet. Applicant proposes a front yard setback of 28.3 feet (with an existing, nonconforming setback of 33.6 feet);

(ii) Minimum Front Yard Setback from centerline of street: Minimum 75 feet is required. Applicant proposes 53.5 feet (with an existing, nonconforming setback of 58.5 feet);

(iii) Maximum dimensions for entry enclosure is 6ft x 8ft where 6'9" x 17'8" is proposed ; and

**WHEREAS**, the Board reviewed this matter at its public hearing on May 16, 2022; and

**WHEREAS**, the Applicant submitted an application for variance dated April 29, 2022, along with plans prepared by Edward Easse, AIA dated March 22, 2022 (4 sheets); 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. Applicant proposes a 1,284.4 square foot second floor addition to the home (with cantilevers in the front and back). It is noted the property is extremely undersized and narrow, and the house has numerous existing zoning conformities.

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 location of the existing structure along with the extremely undersized and narrow lot, 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 the requested variances do 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 from the Applicant and the public, the Board finds that the variances 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 variances 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 P. Mariella and A. Mariella with respect to the Property, requesting variance relief as set forth above, be and is APPROVED for the requested side yard and front yard setback variance 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.

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 June 20, 2022.

Chairman Gallagher entertained a motion to Memorialize Resolution #2022-005. Moved by Schroter, seconded by Wenzke. On a roll call vote, Ayes: Cuttitta, DeMarco, Hatch, Totaro, Wenzke, Schroter & Gallagher. Nays: none. Motion Carried.

**ADJOURNMENT**

At 6:55p.m. Chairman Gallagher entertained a motion to adjourn the regular meeting, moved by Hatch, seconded by Cuttitta. All in favor, “Aye”.

Respectfully Submitted,  
*Joan Herve, Secretary*