

**RESOLUTION #2019-003**

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

**In the matter of:**

**Amedeo and Jahaida Moino (“Applicant”)  
10 Lee Avenue  
Lot 25, Block 229  
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 25, Block 229, commonly referred to as 10 Lee Avenue (the “Property”), located in the R-1-Single Family Residential Zone; and

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

(a) minimum lot area: Section 540-11.A and the Schedule of Bulk and Coverage Controls requires minimum lot area of 18,750 square feet. The Applicant has indicated a lot area of 9,863 square feet. It should be noted that this is an existing condition;

(b) minimum width: Section 540-11A and the Schedule of Bulk and Coverage Controls requires minimum width of 125 feet. The Applicant has indicated a lot width of 65 feet. It should be noted that this is an existing condition;

(c) side yard setback: Section 540-11.A and the Schedule of Bulk and Coverage Controls requires a single side yard setback of 15 feet and an aggregate side setback of 40 feet. The Applicant has noted a single side yard setback of 7.31 feet on the east side where 15 feet is required. It should be noted that this is an existing condition. The Applicant proposes a combined side yard setback of 14.61 feet where 40 feet is required. It should be noted that the existing combined side yard setback is 14.89 feet, which is non-conforming; and

**WHEREAS**, the Board reviewed this matter at its public hearing on April 15, 2019; 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, dated December 7, 2018, along with plans prepared by Frank E. Hall Architects dated August 7, 2019 (last revised November 11, 2018). The Applicant's architect, Frank Hall, was sworn and accepted as an expert in architecture. The Applicant, Amedeo Maino, was also sworn. The Board finds, based on their testimony and the plans presented that:
  - a) Applicant proposes to build a two-story addition with an attached deck at the rear of the home;
  - b) The proposed addition will not encroach any further into the side yard setback than currently exists;
  - c) The dimensions of the addition are 25 feet by 16 feet;
  - d) The existing east side yard setback is 7.31 feet, where 15 feet is required. The existing aggregate side yard is 14.89 feet, where 40 feet is required;
  - e) The Lot width is extremely narrow at 65 feet, where 125 feet is required. The Board specifically finds this condition to be a hardship since it is difficult and impractical to construct an addition on the property without side yard setback deficiencies;

f) The addition will be built within the confines of the existing side yard setbacks; and

g) The Board also concludes that Applicant has provided satisfactory evidence that Applicant processes certain easement rights of access along the side and rear side of the west of the Property, allowing entry from the rear of the property.

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, namely that the Property is extraordinarily narrow, and will in practical difficulties and undue hardship upon the Applicant. 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 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 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 Amedeo and Jahaida Moino with respect to the Property, requesting variance relief as set forth above, be and is APPROVED for the requested front 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.

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 15, 2019.

  
Raymond Hallock, Chairman

  
Joan Herve, Board Secretary

OFFERED BY: Chamberlin  
SECONDED BY: Schroter  
VOTE: Ayes: 5  
Nays: 0