

RESOLUTION #2017-002

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

In the matter of:

**Biagio and Catherine Modugno (the "Applicant")
200 Lafayette Avenue
Block 39, Lot 11
Hawthorne, New Jersey (the "Property" or the "Premises")**

WHEREAS, Applicant has submitted a certain application to the Board dated July 27, 2016 (received December, 2016) for Use Variance (the "Application"); and

WHEREAS, Applicant appeared before the Board on January 23, 2017; 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, in support of the Application, Applicant submitted the following exhibit:

1. Exhibit A – Property Survey dated June 6, 2016, prepared by Rigg Associates

WHEREAS, Applicant also submitted the following:

1. Borough of Hawthorne Zoning Board of Adjustment Application for Use Variance.

WHEREAS, Applicant has made application to the Board for permission to convert their existing first floor dental use into a residential apartment use, which violates Borough Zoning Code Section 540-106. That provision requires all R-2 type residential uses in the B-1 District to be located on the second floor with the first floor used for commercial purposes; and

WHEREAS, Applicant has submitted overwhelming proofs that commercial use of the first floor is not viable and essentially “zoned into inutility” in this instance. Applicant has made several efforts to rent the first floor without success. The Board views this as a substantial hardship connected to the size of the first floor space. It is not suitable for commercial use, but its size and layout are ideal for an apartment use. Also this proposal fits well as there are other first floor residential uses in the immediate vicinity.

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. All of the preamble recitals set forth above are hereby adopted as factual findings.
2. Applicant has applied for permission to use the first floor of the Premises for residential use.
3. The Premises is located in the Borough’s B-1 District which prohibits first floor residential uses as described above.

B. CONCLUSIONS

In considering this application, the Board adopts the testimony and reports presented and hereby reaches the conclusion that ample evidence has been presented to justify the grant of the use variance. Per the applicable law, the Applicant must demonstrate, with an enhanced quality of proof, “special reasons”, namely that the use is peculiarly fitted to the particular location for which the variance is sought or that there is a substantial hardship associated with the physical condition of the Property.

Specifically, this Board determines that based on the evidence, the existing first floor unit is devoid of any reasonably potential commercial use as it is simply too small.

The Board also concludes that Applicant has satisfied the negative criteria, namely that this proposal will not result in substantial detriment on the neighboring properties and also there is no substantial detriment to the public good and no substantial impairment to the zone plan.

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 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 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 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.

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 February 27, 2017.


Raymond Hallock, Chairman


Joan Herve, Secretary

OFFERED BY: DeRitter
SECONDED BY: Sasso
VOTE: Ayes 7
Nays 0