

October 16<sup>th</sup>, 2017  
Hawthorne, NJ

The Regular Meeting of the Zoning Board of Adjustment of the Borough of Hawthorne was held on the above date at 6:50 p.m. in the Board of Education Meeting Room on the Second floor of the of the Municipal Building, 445 Lafayette Avenue, Hawthorne, New Jersey, with the following present:

Vice Chair.....	John F. Gallagher
Board Member.....	Jack B. De Ritter
Board Member.....	David A. Schroter
Board Member.....	Kevin Duffy
Board Member.....	Scott Chamberlin
Board Member .....	AnnaMarie Sasso
Temporary Board Member.....	Walt Garner
Board Member (Alternate #1).....	Victor Cuttitta
Board Member (Alternate #2).....	Eleanor C. Wenzke
Zoning Board Attorney.....	James Delia. Esq.
Zoning Board Secretary.....	Joan Hervé
Board Planner – Burgis Associates....	Thomas Behrens
Board Engineer.....	Mike Kelly
<b><u>ABSENT:</u></b>	
Chair.....	Raymond Hallock

### **FLAG SALUTE**

Vice 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.

### **BILLS:**

Vice Chairman Gallagher entertained a motion to approve the bill list and forward it to the Treasurer for payment, moved by De Ritter, seconded by a Chamberlin. On roll call, all present voted yes. Motion carried.

Hawthorne Press for Legal Notices: \$47.58

### **APPROVAL OF MINUTES**

Vice Chairman Gallagher entertained a motion to approve the minutes of the Regular Meeting of September 18<sup>th</sup>, 2017, moved by Chamberlin, seconded by De Ritter. On roll call, all voted yes, with the exception of Gallagher and Sasso who abstained on anything containing to Royal Avenue. Motion carried.

### **MEMORIALIZED RESOLUTIONS**

Abby & Wesley Dekkers, 128 Pasadena Place, (Block 270, lot 14)

Vice Chairman Gallagher entertained a motion to adopt Memorialize Resolution approved applicant for a removal an existing garage and construct a (2) car garage. Moved by De Ritter, seconded by Schroter, on roll call vote, all voted yes. Motion Carried.

Arthur Klawinowski, 81 Parmelee Avenue, (Block 140, Lot 3)

Vice Chairman Gallagher entertained a motion to adopt Memorialize Resolution approved applicant to install a modestly sized 10 foot by 14-foot deck on the rear of the existing structure, the deck will replace an existing ground level patio and be similarly sized. Moved by De Ritter, seconded by Chamberlin, on roll call vote, all voted yes. Motion Carried.

**NEW BUSINESS** - None

Vice Chairman Gallagher explained for the next applicant Royal Avenue a few board members need to recuse themselves from hearing the application. Board Member Sasso who has business dealings with the applicant and Board Members Hallock & Gallagher who are both involved in a civic organization with the applicant.

Meeting was turned over to Acting Chairman Mr. Schroter.

**Old Business**

Royal Avenue LLC, (Block 29 lots 4, 5, 6 &7)

Attorney Delia explained Thomas Stearns the Civil Engineer for the applicant testified at the last meeting and is ready for cross examination from Susan Rubright, attorney representing “Concerned Citizens of Hawthorne”. Attorney Delia continued, stating, Ms. Rubright sent a letter on September 28<sup>th</sup>, 2017 to his attention. There were two items brought up in the letter, first item was he asked for a briefing on the issue of whether the excess bedrooms were a “C” variance or a “D” and she has taken the position that it is premature to give the board a legal argument on that. The second item is allegations were made where Mr. Garner made comments at the last meeting which rise to the level which he should have a recusal. He heard the comments and he feels it did not rise to the level that requires recusal as there was no prejudice attached to this application as of right now. With that said the letter dated September 28, 2017 was marked as exhibit O1.

Susan Rubright started with her cross examination for the Civil Engineer, with regards to sheet 7 of your plans, the existing conditions map you refer to the drainage ditch, is that a regulated feature? Mr. Stearns, “no”, it not regulated. You mentioned with the existing conditions to the proposed conditions this application would be going from 4 driveways down to 2, what is the width of those. Mr. Stearns, one is 14feet the other one approximately 12feet. Where are the of A/C units going to be located. Mr. Stearns referred Ms. Rubright to the site plan 1 of 7. Ms. Rubright asked with the decimal level was of those A/C units. Mr. Stearns stated there was no study done. Regarding to the seepage pit for the drainage, did you remember in your comments you stated there would be no run-off into the adjacent property. Mr. Stearns – I stated basically the footprint of the building would be contained and directed toward the seepage pit system and then we have inlets in the center corridor that will directed toward the seepage pit system as well as swelling the sides of the property. Ms. Rubright - based on that according to your testimony there would be no run-off to the adjacent property. Mr. Stearns – that is correct. You also talked about building mounting lights in the front, did you provide photometric. Mr. Stearns – “yes”, Mr. Dello Bono did have a lighting manufacture do another lighting layout with photometric which we will submitted to Mr. Kelly, Board Engineer and the Board for their review. Ms. Rubright

asked to be provided with a copy. Board Member Schroter added if you look at Boswell report there is an agreement that if there is an issue with the lighting there is a year the borough has to correct. Ms. Rubright asked if the applicant submitted a landscaping plan. Mr. Stearns – “yes”, sheet number 3 of 7. You mentioned the 24-foot width is standard in parking lots, is that the aisle. Mr. Stearns – “yes” RSIS standard is 18-foot parking space with a 24-foot aisle for two-way traffic. Ms. Rubright – did you talk to the Fire Department or any emergency services. Zoning Board Secretary stated she reached out the Fire Chief who will have something by next meeting has he had emergency surgery and could not get it in time for this meeting. Ms. Rubright asked to be provided with that report as well. Ms. Rubright continued, according to Mr. Kelly’s September 8, 2017 report item #32 the Lighting Characteristics must be provided (section E) (a computer generated composite lighting contour analysis – extend area at least 30” outside property lines) has this been done. Mr. Stearns – he believes it has and that criteria was submitted to the lighting company; however, he did not prepare. Ms. Rubright – on page 4 of Boswell’s report - screening and buffering letter “e”, “Section 540-22 requires any side and rear lot lines to be provided with a visual screen not less than four (4) feet in height within 10 feet of the property line and shall be spaced so as to eliminate any glare from or into adjoining properties”. The applicant requested variances to provide partial screening. Mr. Stearns - the partial screening is the 6-foot-high fence which runs from front to back of the building on the southern side. On the northern side we have wood fence about 50 ft. This is in lieu of landscaping. Ms. Rubright asked is it accurate that 100 % of the slopes that are between 15 to 19.99% are being disturbed and under the ordinance allows for only 40% is permitted to be disturbed. Mr. Stearns – that is correct. Ms. Rubright – 20% is permitted to be disturbed and this is proposing 98.9%. Mr. Stearns – “Yes”, a variance is needed. Ms. Rubright – the slopes that are 25% the highest percent and 96.3% of those slopes are being disturbed, when only 10% is permitted. Mr. Stearns – That is correct. Ms. Rubright – if you reduce the size of the footprint the intruding be less into slopes. Mr. Stearns – “no” even if you cut the building in half it would still intrude into the slopes. Ms. Rubright questioned the retaining walls in the back. Mr. Stearns stated he will submit stability calculations upon approval. Ms. Rubright - is there going to be designated visitor parking. Mr. Stearns – there are 64 spaces and has Mr. Della Bono testified as he obtains tenants he allots spaces and visitor spaces. Ms. Rubright – did you get a will serve letter from the sewer company. Mr. Stearns – we submitted sewer calculations. Mr. Kelly added the borough can provide serve letter from both the Water Company and Sewer Company. They typically do that once was this is approved, it can a condition of approval. Ms. Rubright questioned the drainage system. Mr. Stearns explained what happens with the drainage system, currently we have 4 dwellings and they have been there a long time and have no drainage structures, they sheet flow onto the ground via gutters in to the road. In the plan they are taking the entire building footprint and running into the rear of the property. Therefore, we are reducing the flow into the Borough System. Ms. Rubright finished her cross examination. Mr. Kelly, Boswell Engineer asked follow up questions/comments to Mr. Stearns– the ditch that is located to the east, he recommends the applicant gets a presences absence LOI for the ditch to determine if you need any approvals. Is it your testimony that you will provide a board on board fence along the north property line? Mr. Stearns – “no” we have one on the south, there is the existing chain link fence on the north side. Mr. Kelly continued stating to Mr. Stearns any submission you make, sure you make send it directly to the Zoning Department not directly to his office. Also in an email that was sent for the soil calculations, you indicated that you would have an export of about 4000 cubic yards and an import of 1000 cubic yards of stone. Mr. Stearns – “that is correct”. Thomas Behrens from Burgis office also had comments/questions – other than the chain link fence is there any other form of screening. Mr. Stearns – “no”. Mr. Behrens - Where and how is the location/access of the garbage facilities? Mr. Stearns - the garbage truck is going to pull up to the front

of the building, the northerly driveway as that is where the access is to the refuse location. It will be wheeled out from the refuse room into the roadway. Mr. Behrens asked Mr. Stearns to explain the need for the retaining wall in the front. Mr. Stearns – it's because the driveway slopes, it's under a 2-foot wall.

Mr. Vogel called his next witness – Eric Hough, Traffic Engineer from Bergen Engineering who was sworn in. Mr. Hough stated at the request of the applicant he did an impact study on the traffic that would be generated by this proposed project. (Traffic Study Report was marked as Exhibit A1). He described the factors he was confronted and the conclusion he reached, which included an inventory of the existing roads & traffic controls, traffic counts at Royal Avenue & Diamond Bridge Avenue intersection to determine the existing traffic in the area. The estimate of the traffic that will be generated by the project and the analysis of the impact this traffic on local traffic.

The amount of traffic generated by the proposed development has been determined by data gathered by the trip generation 9<sup>th</sup> edition published by the Institute of Transportation of Engineers ITE. The low-rise apartment land use 221 was used for the proposed trip generation. It is anticipated that the proposed development will generate a total 22 trips in the AM peak hour and a total of 25 trips in the PM peak hour. The intersection at Royal Avenue & Diamond Bridge Avenue during existing and proposed conditions of all level of services remains unchanged with the addition of the site generated traffic. The most effected approach to the intersection is the north bound approach on Royal Avenue which experienced a delay increase of 1.2 seconds in the PM peak hour. It was also found the level of service will be acceptable upon completion of the project at both site driveways. In conclusion the proposed development will not have a substantial negative impact on the area traffic.

Engineer Mike Kelly wanted to enter into the record the existing and proposed level of services based on the number of seconds delay at the intersections by letter Diamond Bridge east/west bound & Royal Avenue north/south bound. Mr. Hough – both the east/west bound approach on Diamond Bridge Avenue existing runs at a level service “A” and will remain a level “A”. The north/south bound approach on Royal Avenue existing level of service is a “C” and will remain a “C”. These are for both morning and afternoon peak hours.

Acting Chairman Schroter asked if anyone from the public would like to be heard pertaining to Mr. Hough testimony.

Paul Savaria, 67 Washington Avenue

Resident asked how come a study was no done on Royal & Washington. Mr. Hough responded the proposed development does not generate enough trips to warrant analysis at that intersection.

Ms. Susan Rubright, attorney representing Concerned Citizens of Hawthorne.

Ms. Rubright asked what traffic is generated from a single-family home. Mr. Hough – it would be one or two trips per driveway or residence at a peak hour. Ms. Rubright – you testified to traffic counts when and at what times were these counts done. Mr. Hough - at first, they were done during the summer hours (July 2016) and then they went back to confirm those numbers in September 2016. A totally of 4 hours were studied in July and 4 hours in September. Ms. Rubright asked what is the RSIS standard for size of a parking space. Mr. Hough – 9x18.

Mr. Vogel called his next witness John McDonough, planner for the applicant, who was sworn in. At the request of the applicant he did an analysis on this application and describes the issues he was

confronted, the analysis he undertook and the conclusion that he reached. The proposed building fits very nicely in regards to use, coverage, setback and parking, the intensity of use controls is all met. The applicant does need some relief from zoning requirements in the R3 apartment medium density zone, where multi-develop is a permitted use. One "D" variance which relates to the height of the building, which proposed a peak roof instead of a flat roof. There are also several "C" variances. There is also a question of whether there is a density variance related to the bedroom mix. The applicant is proposing 32 dwelling units, calculating the net density requirements including the sideway surfaces would be 31.3. Assemble of 4 lots, 32 Multi-family developments, 3-stories, a 1.3-acre site, 4 one- bedroom units and 28 two-bedroom units.

He started with the first relief the "D6 height variance, the calculation in the plans is 47.86 ft where the cap is 35ft under the ordinance. This measurement was taken at the peak of the roof. The height is going with the pitch roof instead of a flat roof. From an architect and planner standpoint this type of roof is preferred. Additional the project as a whole promotes the public good, which is strongest residential market sector. Project benefits the public with new housing, in that regard we see the advancement of purpose with "A" under the land use law (the promotion of the general welfare) and purpose "I" (the promotion of a desirable visual environment). The negative criteria from a planning stand point with this additional height, his planning is relief can be grant without substantially detriment to the public good. With respect to the "C" variances they can all be bundled in term of the flexible "C" balancing test, where by the benefits of the application as a whole out-weigh the deterrents. In terms of the density relief, modest relief we are at 32 units per acre, whereas 31.3 would be allowed. This is justifiable under the statutory grub's test. Lastly, there was a question whether a "D5" variance was needed with the number of two-bedrooms on the property. He offered that is a "C" variance not a "D" variance.

#### Board questions for McDonough

Board Member Chamberlin questioned the height use, you testified the new building is going to be 47 feet to the ridge, but it is going to be 33 to the ceiling line on the 2<sup>nd</sup> floor. Mr. McDonough stated that is correct, the neighbors to the north are not going to be looking at a wall that is higher then what the ordinance allows. Mr. Chamberlin added the property line is a lot higher than it would be if it was a single-family home, you are creating a tall skinny alley, I can't think that would be optimal as far as what you would want. Mr. McDonough reiterated it does comply with the ordinance. Mr. Chamberlin concern is the percentage of two-bedrooms, there is an ordinance that allows only 10%, and wouldn't reason tell you to make it reasonable.

Board Member Kevin Duffy argued that with the parking on the ground level the project is three and a half stories. Mr. Vogel said the roof doesn't count as a story. The application is for a three-story building. It's a function of the flat roof being a peaked roof. Board Engineer recommends when we have the architect provide testimony have him detail how he came up with the 3 stories.

Acting Board Member Schroter asked Mr. Vogel whether the applicant had an alternate plan to consider that wasn't 47.8 feet high. Mr. Vogel – "Not that I know of".

Acting Chairman Schroter asked if anyone from the public would like to be heard pertaining to Mr. McDonough testimony.

Ms. Susan Rubright, attorney representing Concerned Citizens of Hawthorne.

Ms. Rubright asked the planner is it his testimony that there is a "C" variance for the number of bedrooms. Mr. McDonough – "yes". Ms. Rubright asked if analysis was done whether a height variance would be required if their applicant conformed to the bedroom mix. Mr. McDonough – "no". Ms. Rubright – in planning does the number of bedrooms used at any time an indicator of density. Mr. McDonough – yes, he has seen ordinances where the numbers of bedrooms are used as an intensity of use control. Ms. Rubright – Why is density regulated. Mr. McDonough – to protect the public health, safety and welfare, it's related to all the things the applicant has addressed; traffic generation, parking generation, zoning controls. The mass of the building complies with ordinance. Ms. Rubright – part of the reason density is regulated is to manage building height & slope disturbance, allow buffers in between properties and landscaping. Mr. McDonough – "yes".

Ms. Rubright drilled down on the close proximity of the new development to Diamond Brook Hollow on the adjacent site. Ms. Rubright questioned what will the property owners in Diamond Brook Hollow see when they look at the window. Mr. McDonough said they will see a façade, "a massing that marries up very well with their neighbors. It's what residents in the one-family homes have seen from their development for years. Ms. Rubright asked again what the townhouse residents would see from the first and second floor units. Mr. McDonough - They will see a building mass in accordance with the ordinance; what the ordinance says if OK. They will see a peak that rises away. Mr. Rubright asked whether having two long building side by side was acceptable from a planning standpoint. Mr. McDonough – The Royal Realty north all at 35 feet high will extend 190 feet from front to back. (For the record the color rendering of the building as viewed from Royal Avenue was marked as exhibit A2). The proposed structure's wall will not extend as long. Diamond Brook Hollow's south wall extends over 300 feet. Ms. Rubright – One of the goals in the borough's Master Plan is "to encourage and provide buffer zones." questioning if there was appropriate open space buffer width between both developments. Mr. McDonough – The operative word is incompatible uses. This is a multi-family next to multi-family. Royal Realty's density complies with the ordinance so the magnitude of deviation is lessened by the use.

Ms. Rubright - if I was to tell you the 2011 master plan re-examination in looking at one of the goals and objectives that was set-forth previous and she quoted "to encourage the development of a variety housing types of increased densities because of the decreasing supply of developable vacant land. And the comment in the 2011 plan is; this no longer remains an on-going objective of the borough since 1968. The borough has experience the development of a variety of housing types and with-in that context has also addressed its affordable housing obligations. Consequently, the borough takes the position it does not have to activity encourage increased densities to balance housing needs due to limit availability of vacant developable land". She asked as the planner if he remembers reading that in the Master Plan. Mr. McDonough – "yes". Ms. Rubright – Also to you remember reading "to provide various types of apartments in order that the elder residents as well as other age groups will be given other choice of housing". And the comment to that is: "In 1998 the borough created and adopted a new R7 assistant living zone for elder residents which substantially addressed the situation. Mr. McDonough – "yes". He stated he reviewed all the plans going back to 1968. Ms. Rubright continued stated as a professional planner when you look at and are questioned about goals and objectives in a plan that you reviewed, you take that in the context of the overall plan. Mr. McDonough – "yes". Ms. Rubright discussed goal two (goals & Policies) and quoted. "The Master Plan residential & non-residential goals and planning policies" are as follows: goal #2 – "to provide a variety of housing type's densities and balance housing supply in appropriate locations to serve the borough". The policy states "Borough contains a broad & vary housing stock, consisting of detached dwelling, townhouses and multi-family units. This plan is designed to acknowledge the variety of housing types in a community and only accommodate any more

change where it is recommended in this plan". She asked as a professional planner, when a zoning ordinance is implemented which provides that a certain percentage of one-bedroom & two-bedroom units are permitted would not this goal indicate that there would have to be unusual circumstances to permit that deviation. McDonough – he stated he looked at that and if this project triggered a number of other variances related to that bedroom mix, and then he would say intent of that regulation is not being met here. This is not a substantially departure from zone scheme. With Ms. Rubright asked on final questions to the planner – Is it your opinion that structure parking with residential uses on top is a permitted use. Mr. McDonough – I have not heard any to the contrary, he has not studied whether that is or is not permitted.

Thomas Behrens – Board Planner (Burgis Associates) – with regards to the affordable housing requirements what is the application proposing. – McDonough – (5) dwelling units. Mr. Behrens recommends as a condition the board put a time frame and formal plan in terms of addressing any units that can't be met on site in regards to the affordable housing requirements. Mr. Behrens continued asking the planner if this site is in the borough's current housing plan and/or affordable housing efforts. Or is the applicant an intervener in the current affordable housing project. Attorney Vogel responded we are not". Mr. Behrens wanted to hear again or reiterate the justification for the increase of two-bedroom units. As he understood the public benefit was catering to market demand, that there is a need for more two-bedroom units as opposed to one-bedroom units. Mr. McDonough – "yes", he fell back on the fact that there was substantial zoning compliance in the other interrelated intensity of use controls. Mr. Behrens asked if he thinks the building would benefit with regards to the depth, width with some articulation or designs elements other than what is being proposed. Mr. McDonough responded he will let the rendering speak for itself. Mr. Behrens asked if this site is in close proximity to public transportation. Mr. McDonough – Yes, the train station is nearby.

Acting Chairman Schroter entertained a motion to carry the above applicant to the November 20<sup>th</sup> meeting. Moved by De Ritter, seconded by Chamberlin, on a roll call vote all voted yes. Motion Carried.

#### **ADJOURNMENT**

At 10:04p.m. Acting Chairman Schroter entertained a motion to adjourn the regular meeting, moved by De Ritter, seconded by Chamberlin. All in favor, "Aye".

**THE NEXT REGULAR MEETING OF THE ZONING BOARD OF ADJUSTMENT  
WILL BE ON  
~MONDAY, NOVEMBER 20<sup>TH</sup>, 2017 ~  
THE WORK SESSION WILL BEGIN AT 6:45P.M. WITH THE REGULAR  
MEETING IMMEDIATELY FOLLOWING**

Respectfully Submitted,  
*Joan Herve, Secretary*