

November 20th, 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:

Chairman Hallock.....	Ray Hallock
Vice Chair.....	John F. Gallagher
Board Member.....	Jack B. De Ritter
Board Member.....	David A. Schroter
Board Member.....	Kevin Duffy @ 7:35
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....	David Novak
Board Engineer.....	Mike Kelly

FLAG SALUTE

Chairman Hallock 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:

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

Hawthorne Press for Legal Notices: \$36.66

APPROVAL OF MINUTES

Chairman Hallock entertained a motion to approve the minutes of the Regular Meeting of October 16th, 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 & Hallock who abstained. Motion carried.

2018 ZBA Meeting

Chairman Hallock entertained a motion to approve the 2018 ZBA meeting schedule, with a change to the September 17th meeting to September 24th and the June meeting TBD, moved by Chamberlin, seconded by Sasso. On roll call, all voted yes. Motion carried.

New Business

Donald & Pamela Spinelli, 260 Lafayette Avenue (Block 103, Lot 16)

Applicant Attorney Teschon explained the applicant is before the board for a use variance, the building is in a B1 zone. The building is currently being used on the 2nd floor residential apartment and the first floor was previously used as a Dental Office and has been vacant for 1 ½ years. The owner explained he made many efforts to try to lease the first floor or purchase the property with no success; therefore he proposing to convert the first floor from commercial use to a three-bedroom apartment as he feels this would be the best use for this space. Applicant Architect Edward Easse explained the plans dated October 31, 2017 and the benefits to convert this property to a two-family dwelling which would have less of an impact on Lafayette during peak hours. (Plans were marked as evidence exhibit A1, photos marked as exhibit A2 and zoning data marked as exhibit A3) He feels there would be no negative criteria.

Chairman Hallock entertained a motion to approve converting the first floor from a commercial use to a three-bedroom apartment, moved by De Ritter, seconded by Gallagher. On roll call, all voted yes. Motion carried.

Chairman Hallock 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)

Board Attorney Delia read parts of the MLUL to the members, specifically the definition of density as “the permitted number of dwelling units per gross area o the land that is the subject of an application.”

When use variances were required for the application, a minimum of five votes was needed to approved this application Three of the board’s online member had to recuse themselves and Planning Board Member Garner had been brought in to bring the board membership to seven. Recently the applicant’s attorney Mr. Vogel submitted a letter to the board withdrawing those aspects which no longer triggers a “D’ variance. The questions remains whether the deviation from the bedroom count is a “C’ variance or a “D’ variances. An interpretation does not require a super majority vote, it only requires a simple majority vote. Therefore, Mr. Garner was release from hearing this case.

The density issue was resolved by the interpretation of the board whether the number of two bedroom units has any impact on density. Susan Rubright, attorney for the objectors, Concerned Citizens of Hawthorne, argued that the number of two-bedroom units exceed 10% maximum permitted in the borough ordinances. She presented as a witness, Professional planner Anthony Gallerano, who maintained that the governing body put the 10% restriction in the ordinance under the subhead of density. According to Gallerano, exceeding the number of allowable bedrooms is equivalent to more

units; hence the plans exceed the density. Ms. Rubright presented a decision know as Rumson vs. fair Haven which allows a municipality to limit density by floor area. Borough's Professional Planner David Novak of Burgis Associates said "we don't believe bedroom count is akin to a variance", the Royal Realty plan does not exceed 24 units per acre, the maximum allowable density in the medium density apartment zone. Mr. Vogel added if you look at and read the statue it leads to only one conclusion, the ordinance talks of number of units on the average basis the same as the Municipal Land Use Law. He also stated when this application was before the planning board, their attorney William Monaghan, agreed with this interpretation.

Board Member De Ritter made a comment – "In my 20 years on the board, we've never had a case where we based density on the number of bedrooms. The guidance that the borough had given us is to calculate the number of units per acre to determine density. They are still within the 24 units per acre that's allowed."

Acting Chairman Schroter asked if anyone from the public would like to be heard.

Seeing none, Acting Chairman Schroter entertained a motion that exceeding the number of two-bedrooms is a "C" variance not a "D" variance according to the Cox book and the Hawthorne zoning code. Moved by Chamberlin, seconded by De Ritter, on a roll call vote all voted yes. Motion Carried by a 5-0 vote. Board Member Devin Duffy could not vote because he arrived late and missed part of the argument.

ADJOURNMENT

At 8:15p.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, DECEMBER 18TH, 2017 ~
THE WORK SESSION WILL BEGIN AT 6:45P.M. WITH THE REGULAR
MEETING IMMEDIATELY FOLLOWING

Respectfully Submitted,
Joan Herve, Secretary