

RESOLUTION OF THE PLANNING BOARD OF THE BOROUGH OF HAWTHORNE

WHEREAS, an application was previously made to and approved by the Planning Board of the Borough of Hawthorne for preliminary and final site plan approval together with waivers by the applicant, 204 Wagaraw Road, LLC ("Applicant"), for property known as Block 12, Lot 8, located at 204 Wagaraw Road; and

WHEREAS, subsequent to the grant of approval, execution of a Developer's Agreement with the Borough of Hawthorne and commencement of construction on the site, it was determined by the developer that it was advantageous to expand the gym to be constructed on the site by adding a mezzanine, which was not part of the original site plan approval; and

WHEREAS, the Planning Board conducted a public hearing regarding the application for amended site plan approval on August 17, 2021 and received both expert and lay testimony in support of the application including testimony from Gerard Fitamant, P.E., the project engineer, as well as Gerald Bedrin, the Managing Member of the applicant; and

WHEREAS, the Board received documents submitted by the applicant, specifically an email from CubeSmart, the operator of a proposed public storage building on the site, marked as A-1 in evidence, as well as a revised Site Plan, prepared by Mr. Fitamant

of Langan Engineering, consisting of 3 sheets, and most specifically a revised Sheet CS 101, dated April 17, 2020, revised to July 14, 2021, and further revised to July 30, 2021, the said revised plan sheets received into evidence as A-2 and A-3 respectively; and

WHEREAS, the Board also received reports and heard comments from the Board Engineer concerning the application; and

WHEREAS, the Board, having considered the documentary evidence, plans and reports submitted as well as testimony adduced during the public hearing in this matter makes the following findings of fact and conclusions of law:

1. The application involves an amendment to a site plan approval previously granted by the Board permitting a mixed-use development at the site. The original approval permitted the construction of a public storage facility, a building containing a gym and retail store(s), and a building containing residential units. The grant of site plan approval was based upon a Settlement Agreement reached between the Borough of Hawthorne and the Applicant regarding the Borough's obligation to create the realistic opportunity for the development of affordable housing and the creation of an ordinance governing development at the site.

2. Subsequent to the grant of site plan approval, the proposed gym tenant, Planet Fitness, advised the landlord that it

would only occupy the site, and submitted a lease to such effect, if there was included in the approved plan for construction a 3,000 square-foot mezzanine. While the footprint and height of the previously approved building will not change, and the height of the building, with a mezzanine, would not exceed the height limitations of the ordinance, a variance is created as there is not sufficient parking on-site to accommodate the mezzanine addition. As parking for such use is by ordinance set at one space for every 250 square feet of space, the Applicant is required to provide an additional 12 parking stalls on the site to account for the mezzanine floor space.

3. Gerard Fitamant, a Professional Engineer with Langan Engineering, testified on behalf of the Applicant. He noted that the site, as it is, meets the parking requirements of the ordinance however there appears to be excessive parking for the public storage use. He testified that adding additional impervious material would be problematic in that there is little space available not impacted by wetlands restrictions. If more impervious area is added, it would trigger a submission to the DEP for further approvals.

4. Based upon these concerns, he initially provided a plan showing spaces with narrow striping and stalls having an 8 x 18 dimension, (108), and stalls having 9 x 18 dimension, (138). In

addition, tandem parking was included to meet the 12 space shortfall. Based upon concerns expressed by the Borough Engineer, the plan was reconsidered and now includes the addition of three new spaces near the public storage building and seven tandem spaces. A variance is therefore sought for the deficient parking and use of tandem spaces.

5. Mr. Bedrin, the Managing Member of the Applicant, testified that the lease with the gym, which included a mezzanine, came as a surprise. He did not realize such was the case, despite submission of plans to the Building Department quite clearly showing a mezzanine. He did concede, on questioning by the Board, that there are garage spaces for rent in the public storage building that will be offered to residents of the development. But the Applicant nevertheless sought a variance to accommodate the newly proposed mezzanine.

6. The Board, following colloquy with the Applicant, its Engineer and Attorney, concluded that 8 x 18 stalls were inappropriate and contrary to the ordinance. It concurred that new spaces should be added where possible and DEP approval should be sought immediately. The net result was an agreement that five parking stalls would be added to the site, with three on the westerly side near the public storage area, and two closer to the entry to the development. A plan depicting such was to be submitted

by Mr. Fitamant. In addition, it was agreed that seven tandem spaces would be added to the plan but "banked" with the understanding that the matter would be revisited one year following issuance of a Certificate of Occupancy for the site. If at that time it was determined by the Board that the tandem spaces should be constructed, the Applicant would be obligated to do so.

7. Based upon the foregoing, the Board grants, conditionally, as set forth below, an amended Preliminary and Final Site Plan so as to permit the mezzanine. The Board also grants variance(s) strictly relating to the number of parking spaces required for the site and not for the mezzanine itself. The Applicant shall install five new parking stalls as indicated during the hearing, subject to DEP approval of the same. The applicant shall immediately make application for such approval to the DEP. Upon approval by the DEP, the Applicant shall promptly install the five new spaces.

8. In the event the DEP fails to grant such approval or if, one year from the date of the issuance of a Certificate of Occupancy for the site the Board concludes that additional parking is required for the site, 7 tandem spaces will be added. Until such time the spaces shall be "banked" and not constructed. If the five spaces are added and the tandem spaces constructed, no further variance is required. If, on the other hand, the DEP fails to

approve the five spaces or it is determined that the tandem spaces are not needed, the Board grants a variance so as to permit the mezzanine and the amended site plan approval.

9. The approval to allow the mezzanine with variance for parking shall not be predicated upon the grant of any DEP approval. Nothing shall preclude the issuance of a Certificate of Occupancy if the parking has not been approved by the DEP and/or constructed by the time such is requested by the Applicant.

10. The Board finds that the amended site plan can be approved as amended above. The addition of a mezzanine is not inconsistent with the ordinance and but for the parking implications is in fact permitted. As to the parking, the Board notes that there will be spaces available inside the public storage building and added to the site if the DEP so permits. With the additional banked tandem parking, the Board finds that there may be no variance at all.

11. As to the variance, if such is part of the approval, the Board finds that it may grant the same. The Board notes that in many ways the site will regulate itself. Insufficient parking will affect gym membership and require the owner to consider other means of addressing the issue. This may be accomplished through use of spaces in the public storage building, installation of the tandem spaces proposed by the applicant and the diligent pursuit of

DEP approvals. Other alternatives may also be considered. The site itself is significantly impacted by environmental features limiting developable area. As such, there is basis for the grant of variance based upon C-1 criteria as there is established hardship and no evidence that there would be undue impact on surrounding properties or the zone scheme.

WHEREAS, at its Regular Meeting of August 17, 2021, the Board approved the application for amended preliminary and final site plan pursuant to NJSA 40:55D-46 subject to the preparation of a memorializing resolution;

NOW THEREFORE, BE IT RESOLVED, by the Planning Board of the Borough of Hawthorne, for the reasons set forth on the record and herein, that the Board does hereby grant amended Preliminary and Final site plan approval and variance(s) as set forth herein.

The grant of approval hereunder is subject to the following terms and conditions:

1. Compliance with all terms and conditions of this resolution and the prior resolution of this Board, incorporated herein by reference.

2. Approval of such governmental agencies as may have jurisdiction over any aspect of the application including specifically the DEP.

3. Submission by the Applicant of a revised plan depicting


the improvements outlined in this resolution.

4. Diligent pursuit of approval for the installation of five parking stalls from the DEP.

5. For a period of one year following the issuance of a Certificate of Occupancy for the site, the Applicant may be required, at the discretion of the Planning Board, and based upon recommendation of the Borough Engineer, to install the banked tandem parking stalls described herein.

6. Nothing herein shall preclude the issuance of a building permit and final certificate of occupancy by the Borough even to the extent that no new parking stalls have been installed at the time application for issuance of such permit or certificate is made. Upon issuance of an approval to undertake the installation of new parking stalls by the DEP, the applicant shall immediately make such installation. To the extent that such installation is not completed or the DEP has failed to act at the time a request is made for the release of any performance bond is made, adequate provision shall be made to ensure completion of such work.

The undersigned, Chairman of the Hawthorne Planning Board, does hereby certify the within to be a true copy of a Resolution adopted by the Planning Board on October 5, 2021.


WALTER GARNER, Chairman