

RESOLUTION #2021-003

**RESOLUTION OF THE BOARD OF ADJUSTMENT
OF THE BOROUGH OF HAWTHORNE
(the “BOARD”)**

In the matter of:

**293 Lafayette, LLC (the “Applicant”)
293 Lafayette Avenue
Block 105, Lots 12 & 13
Hawthorne, New Jersey (the “Property” or the “Premises”)**

WHEREAS, Applicant has submitted a certain application to the Board, for Use Variance, amended site plan and fence height variance (the “Application”); and

WHEREAS, Applicant appeared before the Board on March 24, 2021; 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, Applicant submitted the following in support of its application:

1. Borough of Hawthorne Zoning Board of Adjustment Application for Variance;
2. A site plan prepared by Rigg Associates, P.A. consisting of 5 sheets, dated June 21, 2016 and last revised November 11, 2020;
3. Architectural Plans consisting of 4 sheets prepared by Edward A. Easse dated October 9, 2020, last revised November 25, 2020.

WHEREAS, Applicant has made application to the Board for permission to convert the second floor portion of previously approved commercial space into 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, the R-2 zoning regulations allow up to a two family density; and

WHEREAS, the Applicant proposes a total of five (5) residential units, thus exceeding the permitted density; and

WHEREAS, Applicant also seeks variance relief for fence height along the southern boundary line as discussed below; and

WHEREAS, Applicant also proposes to install a generator on site.

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

Applicant 293 Lafayette, LLC proposes to convert the second floor of an existing two-story commercial building located at the Property from a permitted commercial use to five (5) residential units. Pursuant to an Easement with EMS Realty Associates, LLC, owners of lot 12, the Applicant has access to Lots 12 and 13 in perpetuity. The two lots total 28,259 SF. The physical aspects and measurements of the Property have already received approval by the Planning Board pursuant to a Site Plan Application the Applicant previously pursued. Per the approved Site Plan, the second-floor use was initially proposed to be commercial. The owner now intends to re-design the second floor of the building for residential use, which will house five separate units that gain entry to the second floor separately from the commercial units on the first floor.

The Property is located in the B-2 Central Business Zone which permits all B-1 Neighborhood Commercial Zone uses including R-2 Uses in the same manner permitted in the B-1 Neighborhood Commercial Zone (see Section 540-108). Per Section 540-103 of the Zoning Ordinance, in the B-1 Neighborhood Commercial Zone, all R-2 Residential Uses are permitted, subject to restrictions applicable to the R-2 Residential Zone. Pursuant to Section 540-10, the R-2 Residential Zone permits single-family detached, single-family semiattached, and two-family uses.

Under Section 540-106 “Concurrent R-2 Zone Uses” in the B-1 Neighborhood Commercial Zone, R-2 Residential uses may be permitted in the same building as a B-1 Use, provided that the entire first floor of the building is devoted to such B-1 use and the entire second floor is devoted to residential use, with a separate entrance way for access to such second floor.

Accordingly, given that the B-2 Central Business Zone permits all B-1 Neighborhood Commercial Zone uses, residential use over the commercial use pursuant to Section 540-106 is permitted in the B-2 Central Business Zone. However, the permitted residential use is limited to up to two units, per Section 540-10 of the Zoning Ordinance (permitted in the R-2 Residential Zone). Therefore, as the Applicant proposes five (5) units on the second floor where only two (2) are permitted on the second floor, the Applicant is seeking a variance for an increase in density pursuant to N.J.S.A. 40:55D-70d(5).

The Applicant called three (3) witnesses to testify at the hearing for this Application: the Applicant, Gabe Juliano, on behalf of 293 Lafayette, LLC; Edward Easse, the Applicant’s professional architect and planner; and Bruce Rigg, the Applicant’s professional engineer. All were sworn. Mr. Rigg was qualified as an expert in the field of Civil engineering, Mr. Easse was qualified in the fields of Architecture and Planning.

N.J.S.A. 40:55D-70d Variance (“d Variance”) Required

Increased Density – d(5)

In order to obtain a variance pursuant to N.J.S.A. 40:55D-70d(5), an applicant must demonstrate that the site will accommodate the problems associated with an increase in density by showing that the project nonetheless serves one or more of the purposes of N.J.S. 40:55D-2 (the Municipal Land Use Law “MLUL”) without negative impact on the surrounding neighborhood. See *Coventry Square v. Westwood Zoning Bd. Of Adj.*, 138 N.J. 285 (1994); see also *Grubbs v. Slothower*, 389 N.J. Super. 377, 386-391 (App. Div. 2007). For the purposes of this application, the following sections of N.J.S. 40:55D-2 are applicable:

a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;

e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;

g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens; and

i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement.

Further, though it is not recognized in MLUL, the preservation of the character of a neighborhood or property values in that neighborhood have also been recognized as legitimate purposes of zoning. Home Buildings League of S. Jersey, Inc. v. Twp. Of Berlin, 81 N.J. 127, 145 (1979).

Here, Applicant seeks variance approval for five (5) residential units on the second floor where only two (2) units are permitted. The property abuts both commercial uses to the north and west and a residential multi-family development to the south. The residential use on the second floor would provide additional living space in the center of town, allowing future residents easy access to local business and transportation hubs.

While the Applicant seeks to increase the density of a permitted use in excess of the two-family units allowed in the B-2 Central Business Zone, the increase in density is off-set by the size of the two lots consisting of the project site. Pursuant to the Schedule of Bulk Coverage Controls, Two-Family Structures in the R-2 Residential Zone requires lot area of at least 6,500 SF, or 3,250 per unit. For five units, a total of 16,520 SF is needed based on the above calculations, where 28,359 SF is proposed with both lots. The use of both lots provides the residential and commercial occupants with sufficient

space for their needs and uses and also provides abundant parking for both the residential and commercial space.

The overall design of the existing building cleanly and efficiently fits commercial and residential use under one roof while allowing the residential units to be separate from the commercial spaces. A separate entranceway allows the residential occupants to enter the building without the need to enter or access the commercial space. Further the design is a contemporary and updated look, helping to create a desirable visual environment in the downtown area.

The addition of three extra units (five units proposed where two are permitted on the second floor) will have no substantial detriment to the public good or the surrounding properties. Given the Applicant's use of both Lots 12 and 13, the added demand of parking spaces for the additional three (3) units is easily addressed, while still leaving an abundance of parking available for the commercial uses. Though the density proposed is greater than that permitted in the B-2 Central Business Zone, given the overall size of the Lots and the fact that the maximum density is low at 2 units per lot in the commercial zone, the additional three units will not impose a great detriment to the neighborhood. This minimal increase in density pales in comparison to the number of residential units in the multi-family structure immediately south of Lot 12. Further, the addition of new residential units in the B-2 Central Business Zone not only increases the value of surrounding residential properties but also increases the value of neighboring commercial space given the increase of residents who may frequent such commercial uses.

Accordingly, the proposed increase in density promotes the Municipal Land Use Law without causing substantial detriment to the public good and not substantially impairing the intent and purpose of the B-2 Central Business Zone and the Hawthorne Zoning Ordinance.

Applicant also seeks variance relief to install a fence which, at its tallest point, is 8.5 feet from grade and shall be no taller than five feet from the top of the existing retaining wall. The fence shall be level and horizontal with one consistent top grade. The Board finds that this fence promotes health,

safety and welfare and also provides an adequate barrier to the neighboring multi-family property. The proposed generator requires no variance relief. The Board finds its location suitable.

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.

3. The Applicant shall promptly pay any professional staff fees billed, in excess of the required application escrows.

4. 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.

5. 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.

6. The Applicant shall certify that all taxes and assessments have been paid up to the present time.

7. 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.

8. 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.

9. 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.

10. The Applicant must obtain all other construction or other municipal permits required with respect to the relief as granted herein.

11. 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.

12. 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.

13. The Applicant shall not seek to expand the residential use of the Premises beyond this approved five units.

14. A chain link fence shall be installed with slats along the length of the southern property line on the top of the retaining wall which, at its tallest point, is 8.5 feet from grade and shall be no taller than five feet from the. The top of the existing retaining wall. The fence shall be level and horizontal with one consistent top grade.

15. Appropriate signage shall be installed on both sides of that fence, for the length of the fencing, stating that theater and patient/customer parking is prohibited in the Lafayette Park Apartment complex; and

16. Screening with the same type of fencing/screening around the generator shall be installed.

17. Subject to meeting all conditions or comments set forth in the Boswell Engineering letter dated March 30, 2021 (last revised April 1, 2021) inclusive of having a six month probationary period for lighting after installation.

18. Applicant shall meet all Borough of Hawthorne Affordable Housing requirements and shall dedicate one dwelling unit as an Affordable unit in compliance with all requisite laws and regulations.

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 May 17, 2021.

Raymond Hallock, Chairman

Joan Herve, Secretary

OFFERED BY: Gallagher

SECONDED BY: Cuttitta

VOTE: Ayes – 6 (Hallock, Gallagher, Schroter, Chamberlin, Sasso, Cuttitta)

Nays – 0

Absent - De Ritter