

## **RESOLUTION**

**BOARD OF ADJUSTMENT  
BOROUGH OF HAWTHORNE  
COUNTY OF PASSAIC, STATE OF NEW JERSEY**

**WILMAN SIMBRON**

**Variances for Lot Area, Lot Area Per Dwelling,  
Lot Width, Front Yard Setback,  
Combined Side Yard Setback, & Lot Coverage**

**WHEREAS**, WILMAN SIMBRON (“Applicant”), having an address of 294 Central Avenue, Hawthorne, New Jersey, 07506 has made application to the Board of Adjustment of the Borough of Hawthorne (“Board”) seeking variance relief, hereinafter more fully described, from provisions of the Hawthorne Borough Ordinances, for property located at 294 Central Avenue, Hawthorne, New Jersey, 07506 (“Property”) also known as Block 177, Lot 8.01 on the Tax Assessment Map of the Borough of Hawthorne; and

**WHEREAS**, public hearing(s) were held upon the application on March 24, 2025, and the Applicant having shown, to the satisfaction of this Board, that proper notice was served upon all interested parties as required by Statute; and

**WHEREAS**, the Board having considered its own local knowledge and having inspected the property and the surrounding neighborhood, and having had opportunity to receive testimony from and question the Applicant, and opportunity was provided for any interested parties and the general public to be heard, and having carefully considered the application together with all testimony and evidence presented, and any reports, comments and recommendations provided by any applicable Borough and County departments and/or other agencies, hereby makes the following findings of fact and conclusions of law:

### **I. PRELIMINARY INFORMATION**

1. The subject Property is an interior lot, located in the R-2 Zone of the Borough of Hawthorne (“Borough”). The Lot is currently developed with a two-story two-family dwelling with accompanying macadam driveway, and rear detached two-bay garage in the southern portion of the Lot.
2. The Applicant proposes to construct a two-story addition along the eastern edge of the existing dwelling, and a two-story addition on the southwest corner of the existing dwelling. The Applicant also proposes removal and replacement of existing masonry stairs, and removal of a stone wall on the west side of the Lot.

3. In the R-2 Zone, Section 540-149 and Chapter 540, Attachment 1 of the Borough Code dictate the Borough zoning requirements.
4. In support of the application, the Applicant has submitted the following items, each of which is expressly made a part of the application and is the basis of any Board decision unless otherwise specifically excepted herein:
  - a. Borough of Hawthorne Zoning Board of Adjustment, Application for Variance, dated January 24, 2025.
  - b. Borough Checklist for Required Submissions, to the Planning Board or the Zoning Board of Adjustment, undated.
  - c. Architectural Plans (4 sheets) entitled, "Proposed Alterations For: Simbron, 294 (132) Central Ave, Hawthorne, N.J.", prepared by Edward A. Easse, AIA, dated June 22, 2023, revised through January 2, 2025

## **II. VARIANCE(S)/RELIEF SOUGHT**

5. The Applicant's proposal requires, and the Applicant is requesting, relief from the Borough of Hawthorne Zoning Code by way of the following variances:
  - a. Chapter 540, Attachment 1: Lot Area. The required minimum lot area in the R-2 Zone for two-family dwellings is 6,500 sf. The existing and proposed lot area is 5,381 sf; therefore, the Applicant requires and requests a variance in this regard.
  - b. Chapter 540, Attachment 1: Lot Area Per Dwelling. The required minimum lot area per dwelling in the R-2 Zone for two-family dwellings is 3250 sf. The existing and proposed lot area per dwelling is 2,690.5 sf; therefore, the Applicant requires and requests a variance in this regard.
  - c. Chapter 540, Attachment 1: Lot Width. The required minimum lot width in the R-2 Zone for two-family dwellings is 65 ft. The existing and proposed lot width is 50 ft; therefore, the Applicant requires and requests a variance in this regard.
  - d. Chapter 540, Attachment 1: Front Yard Setback. The required minimum front yard setback in the R-2 Zone for two-family dwellings is 20 ft. The existing and proposed front yard setback is 6.9 ft.; therefore, the Applicant requires and requests a variance in this regard.
  - e. Chapter 540, Attachment 1: Combined Side Yard Setbacks. The required minimum combined side yard setback in the R-2 Zone for two-family dwellings is 25 ft. The existing combined side yard setback is 27.3 ft, and the proposed combined side yard setback is 23.3 ft.; therefore, the Applicant requires and requests a variance in this regard.
  - f. Chapter 540, Attachment 1: Lot Coverage. The maximum permitted lot coverage in the R-2 Zone for two-family dwellings is 35%. The existing lot coverage is 51.9% and proposed lot coverage is 44.9%; therefore, the Applicant requires and requests a variance in this regard.

### III. FINDINGS OF FACT

6. Edward A. Easse, AIA, PP, licensed architect and professional planner, appeared and offered testimony of behalf of the Applicant.
7. Mr. Easse described the existing conditions on the Lot and of the two-family dwelling on the Property and indicated that the proposed construction would consist of adding a two-story addition on the left of the existing two-family dwelling (i.e. east side of the Lot). The proposal also includes removal of hardscape in favor of a grass surface to improve aesthetic conditions and mitigate the nonconformity as to Lot Coverage. In fact, Mr. Easse testified, the proposal reduces the preexisting nonconforming Lot Coverage by 7%.
8. In further detailing the variances proposed, Mr. Easse emphasized that of the six variances, only one (combined side yard setback) is a newly created nonconformity by virtue of the proposal. The remaining five variances are preexisting nonconformities which will not be exacerbated whatsoever and, in fact, one will be reduced (Lot Coverage).
9. Mr. Easse described the interior improvements of the two-family dwelling and, of note, indicated the impracticality of the existing interior stairway, which significantly cuts into the living space is actuality "taking up 1/3 of the livable space on the first floor." The design Mr. Easse proposes, relocates said stairway to provide a more open and usable living space and a reasonable flow to the living space. Mr. Easse further testified that the proposal will bring the entirety of the dwelling into compliance with Code, where, due to the age and condition of the dwelling, it is otherwise noncompliant and degrading (specifically as to the ceiling height, foundation, and existing stairway).
10. Irrespective of the interior proposed changes, with the exception of the proposed new 4 ft wide expansion along the length of the left side of the dwelling (where the proposed newly relocated stairway will be), and the 6' x 6' addition filling the open corner on the rear right side of the dwelling, the footprint of the dwelling will not be expanded whatsoever.
11. Mr. Easse testified that the undersized nature of the Lot, the exceptional narrowness of the Lot, and the placement of the lawfully existing dwelling on the Lot make it impossible to comply with the zoning ordinances at issue. The Applicant testified that no additional changes are proposed and no further encroachments would result from the proposed construction.
12. Mr. Easse testified that the variance can be granted without any detriment to the public good as there will be no potential impact to the neighboring Property owners.

Mr. Easse further testified that the benefits outweigh any imagined detriment and that there is no detriment to the Zone plan.

13. At the conclusion of the hearing, the Board voted to approve the application.

#### **IV. LEGAL DISCUSSION, CONCLUSIONS OF LAW**

14. The Board has considered the application with reference to the objectives set forth in the applicable Zoning Ordinances and New Jersey State Statutes. Specifically, N.J.S.A. 40:55D-70(c), under which the Applicant has applied, states that the Board shall have the power to:

(1) Where: (a) by reason of exceptional narrowness, shallowness or shape of a specific piece of Property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of Property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of Property or the structures lawfully existing thereon, the strict application of any regulation pursuant to article 8 of this act [40:55D-62 et seq.] would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such Property, grant, upon an application or an appeal relating to such Property, a variance from such strict application of such regulation so as to relieve such difficulties or hardship; (2) where in an application or appeal relating to a specific piece of Property the purposes of this act... would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment, grant a variance to allow departure from regulations pursuant to article 8 of this act [40:55D-62 et seq.].

15. In addition to the statutory requirements above, which are also known as the "positive criteria," the Applicant must also satisfy the "negative criteria" to warrant a grant of the variance. Namely, the Applicant must show that the variance "can be granted without substantial detriment to the public good" and that it "will not substantially impair the intent and purpose of the zone plan and zoning ordinance." (N.J.S.A. 40:55D-70).

16. The Board has considered the application and testimony and all related evidence presented, and after deliberation has found and determined that the Applicant has demonstrated and satisfied the positive and negative criteria required under statute; the Board has determined that the Applicant has presented adequate

testimony and evidence to satisfy the statutory criteria for the grant of the variances requested.

17. The Board finds that strict application of the relevant ordinance(s) would result in peculiar and exceptional practical difficulties to, and/or exceptional and undue hardship upon the Applicant, due to the undersized nature of the Lot, the exceptional narrowness of the Lot, and the placement of the lawfully existing dwelling on the Lot. Therefore, the Board finds that a grant of variance(s) from such strict application of the relevant ordinance, so as to relieve such difficulties or hardship, is appropriate.
18. The Board finds that the Applicant's proposal does not otherwise affect, encumber, or otherwise violate any other bulk requirement under the zoning ordinance. The Board finds that there is no detriment to any neighboring properties and/or the public good, and finds that all other bulk aspects of the Property and lot, among other facts noted, to also be compelling in reaching this conclusion.
19. The Board finds and concludes that the Applicant's proposal is not ambitious and/or out-of-character with the neighborhood and will not over-stress the Property and that the result will be in conformity with current community standards.
20. The Board further finds that the purposes of the Municipal Land Use Law would be advanced by a deviation from the ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.
21. The Board further finds and concludes that the relief granted herein can be granted without causing substantial detriment to the public good and that such granting will not substantially impair the intent and the purpose of the zoning plan and/or of the municipal zoning ordinance.

**WHEREAS**, the Board of Adjustment of the Borough of Hawthorne has considered the application and plans submitted with reference to the objectives, requirements and restrictions set forth in the Zoning Ordinance of the Borough of Hawthorne and Land Use Statutes of the State of New Jersey.

**NOW THEREFORE, BE IT RESOLVED** that the Board of Adjustment of the Borough of Hawthorne, for good cause shown and by reason of the findings and conclusions as set forth herein and/or otherwise on the record at aforementioned public hearing(s), hereby **grants and approves** the Applicant's request variance relief, as delineated above, specifically:

- a. Chapter 540, Attachment 1: Lot Area. To allow a lot area of 5,381 sf, where the required minimum lot area in the R-2 Zone for two-family dwellings is 6,500 sf.

- b. Chapter 540, Attachment 1: Lot Area Per Dwelling. To allow a lot area per dwelling of 2690.5 sf, where the required minimum lot area per dwelling in the R-2 Zone for two-family dwellings is 3250 sf.
- c. Chapter 540, Attachment 1: Lot Width. To allow a lot width of 50 ft., where the required minimum lot width in the R-2 Zone for two-family dwellings is 65 ft.
- d. Chapter 540, Attachment 1: Front Yard Setback. To allow a front yard setback of 6.9 ft., where the required minimum front yard setback in the R-2 Zone for two-family dwellings is 20 ft.
- e. Chapter 540, Attachment 1: Combined Side Yard Setbacks. To allow a combined side yard setback of 23.3 ft., where the required combined side yard setback in the R-2 Zone for two-family dwellings is 25 ft.
- f. Chapter 540, Attachment 1: Lot Coverage. To allow a lot coverage of 44.9%, where the maximum permitted lot coverage in the R-2 Zone for two-family dwellings is 35%.

Such relief is granted in accordance with the plans, exhibits, and reports submitted and above referenced, subject to the following **terms and conditions**:

- a. Any HVAC equipment shall be placed in a lawful and permissible location on the Property and shall not create any new nonconformity or exacerbate any existing nonconforming setback.
- b. As-built foundation with offsets must be submitted to the building department and to the Board engineer for his review and approval.
- c. Detailed drawings of proposed retaining walls shall be submitted to the Board engineer for his review and approval prior to construction of same.
- d. There shall be a strict prohibition on onsite construction unless and until all appropriate permits are obtained by the Applicant.
- e. There shall be no adverse drainage directed to any neighboring properties during construction or upon completion of construction. Any runoff from the leaders will be directed onto macadam driveway or grass.
- f. The Property shall be kept in a clean and tidy condition during the course of construction.
- g. The Applicant shall comply with all self-imposed terms, conditions and limitations that are a part of the Applicant's application, including, but not limited to any modifications and/or supplements at public hearing.

- h. The Applicant shall comply with all applicable ordinances of the Borough of Hawthorne, and all applicable federal, state and county laws, rules, and requirements.
- i. This Resolution is specifically conditioned upon the Applicant paying all required application fees, escrow fees, Borough professional fees, and related fees required by this municipality and this Resolution of Approval.
- j. The Board and this Resolution incorporate by reference, as if recited verbatim, the content of the Board's transcript and minutes of the Applicant's Board hearing(s). Omission herein of any condition and/or stipulation which was otherwise stated on the record of hearing(s), does not constitute waiver and shall be fully enforceable.

**BE IT FURTHER RESOLVED** that this approval shall not constitute a recommendation or approval of any application or variance not specifically delineated herein.

**BE IT FURTHER RESOLVED** that the Administrative Officer shall forward a copy of this Resolution to the Borough Engineer, Construction Official and the Applicant.

**MOTION** was made at hearing of **March 24, 2025** to request and authorize the Board's attorney, Sophy Sedarat, Esq., to draft an appropriate Resolution reflecting the Board's determination as aforesaid.

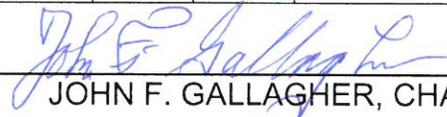
**ROLL CALL VOTE UPON MOTION**

Name	Motion	Second	Yes	No	Abstain	Absent
John F. Gallagher			X			
David A. Schroter			X			
Victor Cuttitta, Jr.			X			
Jodi DeMarco			X			
Lyle Hatch			X			
Marco A. Totaro	X		X			
Eleanor Conley Wenzke		X	X			
ALTERNATES	----	----	----	----	----	----
Brian J. Lind						
Danilo Ramirez						
<b>TOTAL</b>	----	----			----	----

**MOTION** was made at the Board's public hearing on **April 21, 2025** to approve and adopt the foregoing Resolution as drafted by Sophy Sedarat, Esq.

**ROLL CALL VOTE UPON FORM OF RESOLUTION**

Name	Motion	Second	Yes	No	Abstain	Absent
John F. Gallagher						X
David A. Schroter			X			
Victor Cuttitta, Jr.			X			
Jodi DeMarco	X		X			
Lyle Hatch		X	X			
Marco A. Totaro			X			
Eleanor Conley Wenzke						X
ALTERNATES	----	----	----	----	----	----
Brian J. Lind			X			
Danilo Ramirez						X
<b>TOTAL</b>	----	----			----	----

  
JOHN F. GALLAGHER, CHAIRMAN

  
JOAN HERVE, BOARD SECRETARY