

RESOLUTION

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

ANDREW & LAURA PHILLIPS
**Variances for Front Yard Setback,
Left Side Yard Setback, & Lot Coverage**

WHEREAS, ANDREW & LAURA PHILLIPS (collectively, "Applicant"), having an address of 103 Franklin 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 103 Franklin Avenue, Hawthorne, New Jersey, 07506 ("Property") also known as Block 45, Lot 19 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- and one-half story single family dwelling with accompanying asphalt driveway, covered front porch and steps, rear paver patio, rear concrete slab patio, and rear detached one-bay garage in the northern corner of the Lot.
2. The Applicant proposes to construct a two-story addition to the rear of the existing dwelling.

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 14, 2025.
 - b. Borough Checklist for Required Submissions, to the Planning Board or the Zoning Board of Adjustment, dated January 20, 2025.
 - c. Architectural Plans (4 sheets) entitled, "Proposed Alterations For: Phillips, 103 Franklin Ave, Hawthorne, N.J.", prepared by Edward A. Easse, AIA, dated October 31, 2024.

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: Front Yard Setback. The required minimum front yard setback in the R-2 Zone for detached single-family dwellings is 20 ft. The existing and proposed front yard setback is 16.34 ft.; therefore, the Applicant requires and requests a variance in this regard.
 - b. Chapter 540, Attachment 1: Left Side Yard Setback. The required minimum side yard setback in the R-2 Zone for detached single-family dwellings is 10 ft. The existing and proposed left side yard setback is 3.5 ft.; therefore, the Applicant requires and requests a variance in this regard.
 - c. Chapter 540, Attachment 1: Lot Coverage. The maximum permitted lot coverage in the R-2 Zone for detached single-family dwellings is 35%. The existing lot coverage is 54.5% and proposed lot coverage is 51.1%; 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 single-family dwelling on the Property and indicated that the proposed construction would consist of adding a two-story addition to the rear of the dwelling over/in place of the existing concrete slab and paver patio. Mr. Easse testified that the proposed addition would consist of a family room and a primary bedroom with a bathroom.
8. Mr. Easse testified that the existing one-bay detached garage located in the northern corner of the Lot would be removed in an effort to mitigate the

nonconforming Lot Coverage – effectively reducing the preexisting nonconforming Lot Coverage from 54.5% to 51.1%. Mr. Easse also detailed the three variances requested (paragraph 5 herein), and emphasized all three nonconformities related to the variance relief requested are pre-existing nonconformities; two of which will not be exacerbated whatsoever (front yard setback and left side yard setback), and the third preexisting nonconformity will actually be reduced (lot coverage).

9. Mr. Easse testified that the drainage/stormwater runoff mitigation system will consist of leaders down the side of the dwelling and appropriately directed to pervious ground. The Applicant stipulated, as a condition of approval, that no adverse drainage conditions would be created and no stormwater runoff would be directed to any neighboring properties.
10. Mr. Easse testified that the dwelling is a lawfully existing structure, which predated the Borough's Zoning Code – where the dwelling was constructed in 1918, and the Borough Zoning Code was not adopted until well after. The change in the Code post-construction rendered the lot coverage and front and left side setbacks nonconforming.
11. Mr. Easse testified that the lawful placement of the dwelling on the Lot which predates the Zoning Code, 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 lawful placement of the 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: Front Yard Setback. To allow a front yard setback of 16.34 ft, where the required minimum front yard setback in the R-2 Zone for detached single-family dwellings is 20 ft.
- b. Chapter 540, Attachment 1: Left Side Yard Setback. To allow a left side yard setback of 3.5 ft, where the required minimum side yard setback in the R-2 Zone for detached single-family dwellings is 10 ft.
- c. Chapter 540, Attachment 1: Lot Coverage. To allow a lot coverage of 51.1%, where the maximum permitted lot coverage in the R-2 Zone for detached single-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. There shall be a strict prohibition on onsite construction unless and until all appropriate permits are obtained by the Applicant.
- b. There shall be no adverse drainage directed to any neighboring properties during construction or upon completion of construction.

- c. The Property shall be kept in a clean and tidy condition during the course of construction.
- d. 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.
- e. The Applicant shall comply with all applicable ordinances of the Borough of Hawthorne, and all applicable federal, state and county laws, rules, and requirements.
- f. 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.
- g. 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		X			
Lyle Hatch			X			
Marco A. Totaro		X	X			
Eleanor Conley Wenzke			X			
ALTERNATES	----	----	----	----	----	----
Brian J. Lind						
Danilo Ramirez						
TOTAL	----	----			----	----

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	X			
Jodi DeMarco			X			
Lyle Hatch			X			
Marco A. Totaro	X		X			
Eleanor Conley Wenzke						X
ALTERNATES	----	----	----	----	----	----
Brian J. Lind			X			
Danilo Ramirez						X
TOTAL	----	----			----	----


JOHN F. GALLAGHER, CHAIRMAN


JOAN HERVE, BOARD SECRETARY