

RESOLUTION

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

ANTHONY WHITE

**Variances for Lot Area, Lot Width, Left Side Yard Setback,
Combined Side Yard Setback, & Lot Coverage**

WHEREAS, ANTHONY WHITE (“Applicant”), having an address of 92 Frederick 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 92 Frederick Avenue, Hawthorne, New Jersey, 07506 (“Property”) also known as Block 121, Lot 3.01 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 one- and one-half story single family dwelling with accompanying front steps and landing, driveway, concrete walkway, and rear shed.
2. The Applicant proposes to construct a second-floor addition to the existing one- and one-half story dwelling and a new 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, undated, stamped "received" February 10, 2025.
 - b. Property Survey, prepared by Paul Schilling & Son, dated June 8, 2009.
 - c. Architectural Plans (3 sheets) entitled, "Addition/Renovation for: Residence, Block 121 Lot 3.01, 92 Frederick Avenue, Hawthorne, New Jersey", prepared by Chris Blake, AIA, dated January 30, 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 detached single-family dwellings is 6,500 sf. The existing and proposed lot area is 5,000 sf; therefore, the Applicant requires and requests a variance in this regard.
 - b. Chapter 540, Attachment 1: Lot Width. The required minimum lot width in the R-2 Zone for detached single-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.
 - c. 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 7 ft.; therefore, the Applicant requires and requests a variance in this regard.
 - d. Chapter 540, Attachment 1: Combined Side Yard Setback. The required minimum combined side yard setback in the R-2 Zone for detached single-family dwellings is 20 ft. The existing and proposed combined side yard setback is 18.68 ft.; therefore, the Applicant requires and requests a variance in this regard.
 - e. 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 35.62% and proposed lot coverage is 40.38%; therefore, the Applicant requires and requests a variance in this regard.

III. FINDINGS OF FACT

6. Chris Blake, AIA, licensed architect, appeared and offered testimony of behalf of the Applicant.

7. Mr. Blake 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 and constructing an addition on the second floor of the dwelling. Specifically, Mr. Blake testified that the intent is to make the existing second floor of the dwelling into a full second floor as opposed to a "cape cod style of look" – converting the one-and-one-half story dwelling into a two-and-one-half story dwelling. Mr. Blake testified that the proposed additions would provide for better living area and conformity to a modern aesthetic, in line with the neighborhood look.
8. Mr. Blake enumerated the variances requested and testified that of the five variances requested, only one (Lot Coverage) will be exacerbating the nonconformity, with the remaining four variances being preexisting nonconformities which will not be exacerbated whatsoever. Mr. Blake further noted that the Lot Coverage will consist of an increase in impervious coverage of just under 5%.
9. In light of the increase in impervious coverage, and absent any proposal with regard to a drainage mitigation system, the Applicant stipulated to providing a comprehensive drainage mitigation proposal, with appropriate drainage calculations, to the Board engineer for his review and approval.
10. There was a discussion regarding fencing depicted on the survey provided in the application materials, and the Applicant was questioned with regard to the fence on the right side of the dwelling seemingly encroaching onto the neighboring property. In response, the Applicant presented Jennifer Ciccarella, of 88 Frederick Avenue. Ms. Ciccarella testified that she is the property owner to the right of the subject Property and Ms. Ciccarella claimed ownership over the fence, such that the issue of potential encroachment of said fence from the Applicant's standpoint is moot.
11. Mr. Blake testified that due to undersized nature of the Lot, the exceptional narrowness of the Lot, and the placement of the lawfully existing structure on the Lot, it is 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. Blake 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. Blake 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 undersized nature of the Lot, the exceptional

narrowness of the Lot, and the placement of the lawfully existing structure 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 5,000 sf, where the required minimum lot area in the R-2 Zone for detached single-family dwellings is 6,500 sf.
- b. 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 detached single-family dwellings is 65t ft.
- c. Chapter 540, Attachment 1: Left Side Yard Setback. To allow a left side yard setback of 7 ft, where the required minimum side yard setback in the R-2 Zone for detached single-family dwellings is 10 ft.

- d. Chapter 540, Attachment 1: Combined Side Yard Setback. To allow a combined side yard setback of 18.68 ft, where the required minimum combined side yard setback in the R-2 Zone for detached single-family dwellings is 20 ft.
- e. Chapter 540, Attachment 1: Lot Coverage. To allow a lot coverage of 40.38%, 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 Applicant shall provide drainage calculations and a proposed drainage mitigation system to the Board engineer for his review and approval.
- d. The Property shall be kept in a clean and tidy condition during the course of construction.
- e. 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.
- f. The Applicant shall comply with all applicable ordinances of the Borough of Hawthorne, and all applicable federal, state and county laws, rules, and requirements.
- g. 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.
- h. 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.

WHITE: Block 121, Lot 3.01
92 Frederick Ave.

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.

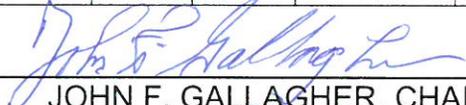
ROLL CALL VOTE UPON MOTION

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


JOHN F. GALLAGHER, CHAIRMAN


JOAN HERVE, BOARD SECRETARY