

RESOLUTION

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

RAFAELA MARTINEZ

**Variances for Left Side Yard Setback,
Right Side Yard Setback, Combined Side Yard Setback, &
Impervious Lot Coverage**

WHEREAS, RAFAELA MARTINEZ (“Applicant”), having an address of 6 Dixie Avenue, Hawthorne, New Jersey 07506, 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 6 Dixie Avenue, Hawthorne, New Jersey 07506 (“Property”), also known as Block 181.01, Lot 38 on the Tax Assessment Map of the Borough of Hawthorne; and

WHEREAS, public hearing(s) were held upon the application on May 19, 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 located in the R-2 Residential Zone of the Borough of Hawthorne and is developed with a one-and-one-half-story, single-family dwelling, which is a conforming use in the R-2 Zone. The Property is rectangular in shape, with a total lot area of approximately 5,474 square feet, and dimensions of 50 feet by (approx.) 108.98 feet.
2. The Applicant proposes to construct a one-story 240 sf addition at the rear of the existing home, which will serve as a new kitchen and living space. The proposed addition will maintain the existing one-family use of the dwelling.

3. 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 April 15, 2025.
 - b. Site Plan (with existing Property Survey thereon) and Architectural Plan, consisting of four (4) sheets, prepared by Edward A. Easse, titled "Proposed Alterations for: Rozon, 6 Dixie Ave, Hawthorne, N.J.", dated December 23, 2024.

II. VARIANCE(S)/RELIEF SOUGHT

4. 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: Right Side Yard Setback. Minimum Required: 10 ft; Proposed/Existing: 6.1 ft.
 - b. Chapter 540, Attachment 1: Left Side Yard Setback. Minimum Required: 10 ft; Proposed/Existing: 9.0 ft.
 - c. Chapter 540, Attachment 1: Combined Side Yard Setbacks. Minimum Required: 20 ft; Proposed/Existing: 15.1 ft.
 - d. Chapter 540, Attachment 1: Impervious Coverage. Maximum Permitted: 35%; Existing: 45.7%; Proposed: 50.0%.

III. FINDINGS OF FACT

5. Rafaela Martinez, the property owner and Applicant, testified that she has owned the property since 1989. The purpose of the proposed addition is to enlarge the kitchen and provide additional space to accommodate her elderly mother, who will be moving in. The proposed addition will not change the use of the property, which will remain a single-family home.
6. Edward A. Easse, AIA, PP, architect and planner, testified on behalf of the Applicant and prepared the plans submitted. He explained that the addition is sited in the most practical location on the lot—the southwest rear corner of the existing building—where it will have minimal impact on neighbors and will avoid disruption to existing site features. The one-car detached garage will remain, as will the kitchen door and existing porch on the left side of the house. The proposed addition will extend 15 feet to the rear and span 16 feet across the back of the dwelling.
7. The Borough Engineer, John G. Yakimik, PE, advised the Board that pursuant to Section 540-127(a)(7) of the Borough Code, porches attached to the principal structure are subject to principal building yard setback requirements.

8. Mr. Easse testified that the proposed building coverage of 25.3% complies with the Borough's regulations, however, variances are required for both side yard setbacks, combined side yard setback, and impervious lot coverage. Mr. Easse noted that all of the proposed side yard conditions are existing nonconformities which are not being exacerbated, and that the addition is aligned with the existing side walls of the structure.
9. Mr. Easse also testified that a stormwater management plan will be submitted to the Board Engineer for review and approval. Said submission and compliance to the satisfaction of the Board Engineer shall be a condition of this approval.
10. At the conclusion of the hearing, the Board voted to approve the application.

IV. LEGAL DISCUSSION, CONCLUSIONS OF LAW

11. 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.].
12. 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).

13. 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.
14. In this case, the Board finds that the Applicant has demonstrated sufficient grounds to support the grant of bulk variance relief. The preexisting side yard setbacks are longstanding, likely predating the Zoning Code, and are not being exacerbated; the nonconformity and accompanying request for variance relief is due to the placement of the lawfully existing principal dwelling on the lot. The addition is modest in scale and has been sensitively designed to fit within the existing massing of the home. The building coverage will still be compliant with Code requirements and the only new nonconformity created is that of impervious coverage, which will be mitigated by an approved stormwater management plan.
15. The relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Borough’s zoning plan or ordinance. The proposed addition will enhance the functionality of the home, allow for multigenerational living, and maintain the single-family character of the neighborhood. The Board further finds that the proposed increase in impervious coverage is justified and will be mitigated through compliance with the Board Engineer’s drainage/stormwater runoff mitigation system requirements.
16. The Board finds and determines that the proposed deviation is modest and well-justified by the site conditions and proposed improvements. The improvements will enhance the appearance and functionality of the Property without substantial impact on adjacent properties or the surrounding neighborhood.
17. The Board finds that the Applicant’s proposal does not otherwise affect, encumber, or 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.
18. 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.

19. 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.

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. To allow a right side yard setback of 6.1 ft where the minimum required side yard setback in the R-2 Zone is 10 ft.
- b. To allow a left side yard setback of 9 ft where the minimum required side yard setback in the R-2 Zone is 10 ft.
- c. To allow a combined side yard setback of 15.1 ft, where the minimum required combined side yard setback in the R-2 Zone 20 ft.
- d. To allow an impervious lot coverage of 50%, where the maximum permitted lot coverage in the R-2 Zone 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. Drainage calculations and an onsite drainage mitigation system plan must be submitted to the Board engineer for his review and approval prior to the commencement of any construction.
- b. There shall be a strict prohibition on onsite construction unless and until all appropriate permits are obtained by the Applicant.
- c. There shall be no adverse drainage directed to any neighboring properties during construction or upon completion of construction.
- 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.

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 May 19, 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						
TOTAL	----	----	7		----	----

MOTION was made at the Board's public hearing on July 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			
TOTAL	----	----	6		----	----


DAVID A. SCHROTER, VICE CHAIRMAN


JOAN HERVE, BOARD SECRETARY