

**BOROUGH OF HILLSDALE  
PLANNING BOARD**

**RESOLUTION NUMBER 2022-10  
CASE NUMBER PZ-09-21**

**WHEREAS**, SALVATORE AMITRANO (hereinafter the “Applicant”) being owner of, 6 Deer Trail Road, located in the Borough of Hillsdale, County of Bergen, State of New Jersey (hereinafter the “Borough”), said premises also being known as, Block 2102, Lot 11 (hereinafter the “Site”) as indicated on the Borough’s Tax Assessment Map, has applied to the Borough’s Planning Board (hereinafter the “BOARD”), seeking variance relief to permit a six-foot-high fence to be located within the designated front yard setback contrary to Borough Ordinance 310-56B.

**WHEREAS**, Applicant has submitted various documents which were considered by BOARD including:

1. Planning Board Application Form with narrative, signed by Salvatore Amitrano, dated June 22, 2021;
2. Site survey prepared by Surveying Technologies, Inc., dated July 20, 2021;
3. Affidavit of Publication with Certified Mail receipts, signed by Sal Amitrano, dated November 26, 2021; and
4. Twelve (12) photographs of surrounding neighborhood.

**WHEREAS**, the professional reports and all other memoranda from Borough’s agencies and officials are incorporated herein and made a part hereof by reference in conjunction with this application as if set forth verbatim:

1. Zoning denial letter signed by Zoning Officer Steven Loesner, dated May 18, 2021; and
2. Engineering Memorandum prepared by Christopher P. Statile, P.A., dated September 14, 2021.

**WHEREAS**, the Applicant seeks the following variance relief from the Borough’s Zoning Ordinances:

1. Section 310-56 (B)- To permit a six-foot-high fence to be located within the secondary front yard-setback where no fence located in the secondary front-yard setback shall exceed four-feet in height if less than half the required primary front-yard setback.

**WHEREAS**, the BOARD determined it had jurisdiction and upon due notice as required by law, a public hearing was conducted on December 2, 2021;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOROUGH OF HILLSDALE PLANNING BOARD** that the BOARD hereby makes the following findings of fact:

1. The Site is located in the R-2 Zone District, which permits single-family homes on 15,000 square-foot lots.
2. The Site is located at the northwestern corner of the intersection of Ruckman Road and Deer Trail Road. Ruckman Road is under the jurisdiction of Bergen County and maintains a high volume of traffic.
3. The Site is currently improved with a two-story brick and frame dwelling that fronts on Deer Trail Road. An asphalt driveway provides access to the dwelling from Deer Trail Road. A drainage pipe and easement are located along the northwest property line.
4. The Applicant proposes to install a six-foot-high fence along the rear property line and the effective side yard that runs parallel to Ruckman Road. The fence will begin at the drainage easement on the rear property line and continue for approximately 65 feet to the northeastern property corner, then continue approximately 95 feet along Ruckman Road, then turn and continue approximately 25 feet connecting to the dwelling's front façade.
5. Based on the Site's position as a corner property, the Site has two frontages. The effective side yard along Ruckman Road is considered a front yard. Where the setback is compliant on the primary frontage, the secondary setback need only be ½ the required distance. The fence is proposed within the 25 foot secondary front yard setback (1/2 the required setback of 50 feet for Deer Trail Road) resulting in the need for variance relief. The Site is compliant with all other bulk requirements.
6. The Applicant, Mr. Salvatore Amitrano, presented testimony in support of the application. Mr. Amitrano was sworn, qualified, and accepted by the BOARD as a fact-witness.
7. The Applicant testified that he is seeking to install a six-foot-high vinyl fence along the effective side yard and rear yard. The fence will not go over the existing drainage easement.
8. The Applicant testified that bushes in that location provided privacy, however, those bushes have been eaten by deer leaving a wide open view of Ruckman Road. The Applicant testified the fence will provide permanent privacy and keep the deer out of the effective rear yard.

9. The proposed fence will be beige with a one-foot lattice top. Along the outer fence line, the Applicant will plant bushes and install new grass to increase aesthetics.
10. Also, the Applicant testified there is no sidewalk along the western side of Ruckman Road and the proposed fence will not disturb pedestrian traffic.
11. The Applicant also testified that several of the dwellings in the area have six-foot-high fences. The Borough Engineer confirmed that there are nine dwellings in the immediate vicinity of the Site that have six-foot-high fences with five that did not obtain permits the remaining four do have permits.
12. The Borough Engineer confirmed that there are no line-of-site issues as the fence is approximately fifty feet from the front yard on Deer Trail Road and will be ten feet from the edge of the curb line on Ruckman Road.
13. The Applicant testified that a four-foot-high fence would not provide the privacy from Ruckman Road.
14. The Applicant testified that no trees will be removed as part of this application.

**WHEREAS**, the public was given the opportunity to present sworn testimony and none was so produced.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOROUGH OF HILLSDALE PLANNING BOARD** the BOARD makes the following findings of fact and conclusions of law:

1. The Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70c provides the Board with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain proofs which are enunciated in the statute. Specifically, an applicant may be entitled to relief if this specific parcel is limited by exceptional narrowness, shallowness or shape. An Applicant may show that exceptional topographic or physical features exist that uniquely affect a specific piece of property. Further, the applicant may also provide evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Those categories specifically enumerated above constitute the positive criteria necessary in order to obtain "bulk" or C variance relief.
2. Moreover, the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70c (2) further provides the Board with the power to grant variances based on whether the Applicant's proofs advance the purposed of the MLUL by the deviation from the zoning ordinance requirements and if the benefits of the deviation from the zoning ordinance requirements substantially outweigh any detriment.

3. In addition, the applicant must show that the proposed variance relief sought will not have a substantial detriment to the public good and further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. See, Jacoby v Englewood Cliffs Zon. Bd. Of Adjustment, 442 N.J. Super. 450, 471 (App. Div. 2015).
4. This is known as the negative criteria.
5. It is only in those instances when the Applicant has satisfied that the positive criteria outweigh the negative criteria can relief be granted.
6. The burden of proof rests upon the Applicant to establish these criteria.
7. After a review of the record evidence, the BOARD finds the Applicants have satisfied its burden of proof pursuant to the N.J.S.A. 40:55D-70c (1).
8. The BOARD the Applicant has satisfied its burden of finds that exceptional topographic and physical features exist that uniquely affects the Site. Further, the BOARD finds the Applicant has satisfied its burden of proof that exceptional and extraordinary circumstances exist which uniquely affects the Site and the existing dwelling. The BOARD finds the strict application of the Borough's Zoning Ordinance results in a peculiar and exceptional practical difficulty and exceptional and undue hardship upon the Applicant.
9. The BOARD finds the Site is a corner lot, which results in two front-yard designations. The effective side yard along Ruckman Road is considered a front yard and, therefore, a six-foot-high fence is prohibited in that location. The BOARD finds a complaint fence in this location would not provide the Applicant sufficient privacy from Ruckman Road, a heavily traveled county road.
10. In addition, the BOARD finds the variance relief sought will not have a substantial detriment to the public good and further, will not substantially impair the intent and purpose of the Master Plan and Zoning Ordinance.
11. The BOARD finds the proposed fence will be in a location so as not to create line-of-sight issues for passing motorists or pedestrians. There is no sidewalk on the eastern side of Ruckman Road. The fence will end even with the front of the existing dwelling away from the intersection providing sufficient sight distance for vehicles.
12. The fence will not traverse the existing drainage easement at the northwest corner of the property allowing for continued access for maintenance.
13. No trees are being removed as a result of the proposed fence.

14. The BOARD also notes that the proposed fence will be compatible with the surrounding neighborhood as several of the dwellings in the area have six-foot-high fences.
15. Finally, the BOARD notes that no member of the public spoke in opposition to the granting of the variance relief.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough of Hillsdale Planning Board that the Applicant is granted hereby variance relief pursuant to N.J.S.A. 40:55D-70c (1) to permit installation of a five-foot-high fence to be located in the designated front yard, subject to the following conditions:

1. The granting of this relief shall not be construed or eliminate the satisfaction of any other requirements of the zoning ordinance or requirements of the agencies, boards, or authorities of the Township, County or State;
2. All improvements are to be performed in accordance with testimony provided to the BOARD;
3. The Applicant shall obtain all necessary permits and pay all fees prior to commencing any modifications to the Site;
4. The Applicant shall replenish all escrow fees prior to the adoption of this Resolution;
5. The Applicant shall remove the existing bushes damaged by the deer and replace with new bushes and grass.
6. Any ambiguities regarding the interpretation of this Resolution shall be resolved by the BOARD upon due notice to the public.

**BE IT FURTHER RESOLVED** that the Chairman, Vice Chairman and Secretary of the Planning Board are hereby authorized to affix their signatures to this Resolution granting variance relief pursuant to N.J.S.A. 40:55D-70(c)(1), as set forth herein; and, further, the Secretary of the Board is authorized to send copies of this Resolution to the Construction Code Official and to the Applicant.

MOVED BY: Board member Horvath  
SECONDED BY: Mayor Ruocco

VOTE: FOR   7   AGAINST   0   ABSTAIN           

MEMORIALIZATION VOTE:  
MOVED BY:

SECONDED BY:

VOTE: FOR \_\_\_\_\_ AGAINST \_\_\_\_\_ ABSTAIN \_\_\_\_\_

APPROVED

Attest:

\_\_\_\_\_  
Meredith Kates, Secretary

\_\_\_\_\_  
Dewey Burleson, Chair

I certify that the foregoing is a true copy of the Resolution adopted on \_\_\_\_\_,  
2021.

Fred

\_\_\_\_\_  
Meredith Kates, Secretary