

**BOROUGH OF HILLSDALE
PLANNING BOARD
RESOLUTION NUMBER 2023-11
CASE NUMBER PZ-01-23**

WHEREAS, an application has been submitted by Chris Bell and Dana Bell (the “Applicants”) for Property known as 5 Howell Avenue, Hillsdale, New Jersey and identified as Block 1604, Lot 6 (the “Property”); and

WHEREAS, the Applicants applied for a variance for front yard setback to construct a covered front porch on the Property; and

WHEREAS, the Applicants were not represented by counsel; and

WHEREAS, the Board considered the report of Christopher P. Statile, PE, dated January 9, 2023; and

WHEREAS, a public hearing was held on March 28, 2023; and

WHEREAS, the Applicant, Chris (“Mr. Bell”) was present at the March 28, 2023 public hearing, was duly sworn and testified in support of the application; and

WHEREAS, the Applicants’ Architect, Brian J. Callahan, AIA (“Mr. Callahan”), was present at the March 28, 2023 public hearing, was duly sworn and qualified to provide expert testimony in support of the application; and

WHEREAS, along with the application, the Applicants submitted the following:

1. Boundary Survey prepared by Steven L. Koestner, PE, PLS of Koestner Associates, Hackensack, NJ 07602 dated December 20, 2022, revised to December 28, 2022 and consisting of 1 sheet; and
2. Architectural Plans prepared by Brian J. Callahan, AIA of Callahan Architecture, LLC, 40A Tillman Street, Westwood, NJ 07675, dated January 20, 2023 and consisting of 3 sheets; and

WHEREAS, the Applicants submitted proof of notification, by mail or personal service at least 10 days prior to the date set forth for public hearing on all persons owning properties within 200 feet from the extreme limits of the subject premises of the subject application, as set forth on a certified list of said owners furnished to the Applicants by the Tax Assessor of the Borough of Hillsdale and provided proof of service of such notice in accordance with the Land Use Ordinance of the Borough of Hillsdale, as amended and supplemented, and the Municipal Land Use Law (the “MLUL”), N.J.S.A. 40:55D-1 to -163; and

WHEREAS, the Applicants submitted proof that a copy of said notifications were published at least 10 days prior to the date set forth for public hearing in the official newspaper of the Borough of Hillsdale in accordance with the Land Use Ordinance of the Borough of Hillsdale, as amended and supplemented, and the MLUL; and

WHEREAS, the Board gave due consideration to all individuals desiring to be heard and after due deliberation, did find and determine that:

The Property

1. The Property is located at 5 Howell Avenue, designated as Block 1604, Lot 6.
2. The Property consists of 9,038 square feet (0.21 acres) and is located at the south side of Howell Avenue at the intersection with Vincent in the R-4 Residential Zone District (minimum lot size 7,500 square feet).
3. The Property is improved with a one-story frame dwelling. A deck and paver patio, along with additional related improvements. A paved driveway provides access to the dwelling from Howell Avenue.
4. The Property has existing non-conforming conditions with respect to minimum front yard setback along Howell Avenue with 29.7 feet existing where a minimum of 30 feet is

required; minimum lot frontage along Vincent Street with 41.37 feet existing where 75 feet is required; minimum rear yard setback with 15.66 feet existing where 25 feet is required; minimum accessory structure setback with 2.3 feet existing where 3 feet is required; minimum patio setback with 1.8 feet from rear property line existing where 10 feet is required; and maximum fence height in the front yard with 6 feet existing in front yard along Vincent Street where 4 feet is permitted.

The Application and Proposed Variance

5. The Applicants are seeking relief from the October 18, 2022 letter of denial from the Borough Zoning Official to construct a 61.1 square foot covered porch on the north side of the dwelling on the Property. The Applicants propose to replace an existing covered porch and change the alignment of the stairs/walkway that access the proposed porch and front door.

6. The new covered front porch is proposed to be located 23.7 feet from Howell Avenue where 30 feet is required, a difference of 6.3 feet. A variance is required. The Borough's exception regarding front porches under Section 310.54(C) does not apply as the dwelling does not meet the required front yard setback and the proposed porch exceeds the 40 square foot maximum required for the exception.

7. The Applicants further seek to maintain the existing non-conforming conditions on the Property.

March 28, 2023 Public Hearing

8. Mr. Bell appeared at the March 28, 2023 hearing and was sworn in prior to providing testimony in support of the application.

9. Mr. Bell testified that he is seeking a variance to construct new front steps and add a covered front porch to the existing dwelling. Mr. Bell testified that the existing steps are in need of repair and the existing walkway is not effective and involves a sharp turn.

10. Mr. Bell opined that the proposed construction would improve the aesthetics of the dwelling and the neighborhood.

11. In response to questions from the Board Engineer, Mr. Bell testified that the covered porch would replace the existing porch and would be located in the same position.

12. In response to questions from the Board, Mr. Callahan testified that the same entry pad would be used and the stairs would meet the Borough Code requirements.

13. In response to additional questions from the Board, Mr. Bell testified that the existing walkway would be realigned. Mr. Callahan testified that the walkway would be fully impervious.

14. In response to additional questions from the Board, Mr. Bell testified that the shed on the Property was there when he purchased the home.

15. Mr. Bell further testified that there are other homes in the area and across the street with similar porches.

16. The meeting was opened to the public and no one appeared with regard to the subject application.

17. Mayor Ruocco made a motion to approve the application with the conditions placed on the record by the Board, which motion was seconded by Mr. Raymond. The application was approved by the Board by a vote of 8 to 0.

Justification for Relief

18. The Board found good cause to grant the Applicants' request for variance for minimum front yard setback along Howell Avenue for the proposed covered front porch.

19. The Applicants sought a (c) bulk variance, of which there are two types a (c)(1) hardship variance and a (c)(2) benefit/detriment variance. To receive a (c)(1) variance, an applicant must establish that the physical features, topographic features, or extraordinary and exceptional situation uniquely affecting the property or structures lawfully existing thereon necessitates the variance to relieve such hardship. To receive a (c)(2) variance, an applicant must establish that the purpose of the MLUL would be advanced by the variance and the benefits of any variance would substantially outweigh any detriment. Further, to obtain a (c)(1) or (c)(2) variance, an applicant must also prove that the relief sought would not be substantially detrimental to the public good and would not substantially impair the intent and purpose of the Borough's zone plan and Zoning Ordinance.

20. The Board also found that the proposed application would benefit the public by promoting the public health, safety, morals, and general welfare and negative impacts would be mitigated by landscaping. Specifically, the application would advance purpose (a) of the MLUL, to promote public health, safety, morals and the general welfare; and purpose (i) of the MLUL to provide for a desirable visual environment. See N.J.S.A. 40:55D-2(a), (i).

21. The Board found that the proposed covered front porch would have a minimal impact, if any, on adjacent and neighboring properties because it was replacing an existing porch, would improve aesthetics on the Property and in the neighborhood, and other homes in the neighborhood had similar improvements.

22. In addition, the Board found that the grant of the variance would have a minimum impact, if any, on surrounding properties within the R-4 Zone. No one from the public or within 200 feet of the Property appeared in opposition of the application.

23. The Board found that the requested variance relief may be granted pursuant to N.J.S.A. 40:55D-70(c)(2), for the reasons discussed herein. The Board found that the purposes of the MLUL are advanced by the grant of the variance and that the benefits of the deviation substantially outweigh any detriments, and that the variance can be granted without substantially impairing the intent and purpose of the Master Plan and/or Zoning Ordinance and without causing substantial detriment to the public good. The Applicants demonstrated a basis for the grant of the variance pursuant to N.J.S.A. 40:55D-70(c)(2) and *Kaufman v. Warren*, 110 N.J. 551 (1998). The Applicants met their burden of proof. The grant of the variance provides a public benefit and is consistent with the neighborhood. As aforesaid, the Board was satisfied the variance could be granted without any substantial detriment to the public.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Hillsdale, Bergen County, New Jersey, that the Applicants' request for variance relief, as described herein, be and is hereby approved for the reasons set forth herein and subject to the terms and conditions contained in the body of this Resolution, and as follows:

1. The Applicants shall post all required application fees and provide sufficient funds with the Borough to satisfy any deficiency in the Applicants' escrow account. No permits or certificates will be issued, nor will any work be performed by Board professionals or staff at any time that the Applicants' escrow account balance is not paid current, which shall be set forth by certification by the Board Deputy Secretary. The Applicants will have a continuing duty to

maintain a positive balance in all escrow accounts until all conditions have been satisfied and all charges have been paid.

2. Before any permits are applied for, it is the responsibility of the Applicants to determine whether there are any open permits or violations for the Property and resolve any such issues to the satisfaction of the Construction Official. A signed Board resolution and Board-approved plans shall be submitted with all applications for permits.

3. No certificate of occupancy will be issued unless all inspections have been performed, passed, and all prior approvals have been satisfied.

4. The Board's approval is expressly subject to all State, County and Borough statutes, ordinances, rules, regulations, and requirements affecting development in the Borough, County and State.

5. The Applicants' obtaining of approvals from all outside agencies shall be a prerequisite for issuance of a building permit, including but not limited to, obtaining written final approval from the Bergen County Planning Board, Bergen County Soil Conservation District, New Jersey Department of Environmental Protection, and the Borough of Hillsdale, if applicable.

6. Construction and subsequent use of the Property shall be consistent with testimony offered at the public hearing, the plans and renderings submitted with the application, the findings and conclusions of the Board stated herein, and the conditions set forth in this Resolution.

7. The Applicants shall apply for and obtain a soil movement permit from the Borough, to the extent same may be required.

8. The Applicants are permitted to a front yard setback (Howell Avenue) of 23.7 feet with respect to the construction of a new covered front porch on the Property, as described in the plans and drawings submitted in the application and as set forth in this Resolution.

9. The Applicants shall comply with the reasonable advice and recommendations of the Borough Engineer with respect to any drainage and stormwater management required on the Property, if necessary.

10. To the extent required, the Applicants shall comply with all requirements of the Board Planner and the Board Engineer, subject to the reasonable satisfaction and approval of same and the Board.

11. The Applicants shall comply with all comments and conditions imposed by the Board, the Board Planner and the Board Engineer, as stated on the record and as may be stated in this Resolution.

12. If other agency approvals modify the plan, same will trigger a return to the Board.

13. The Applicants shall comply with all applicable laws and regulations, including the payment of the non-residential development fee, if applicable, pursuant to the Municipal Land Use Law.

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 variances for impervious coverage and setback to Property lines, as set forth herein and in the plans, and the Applicants are authorized to advertise the action taken by way of this Resolution in a local newspaper; and, further, the Secretary of the Board is authorized to send copies of this Resolution to the Construction Code Official and the Applicants.

VOTE ON THE APPLICATION:

MOVED BY: Mayor Ruocco

SECONDED BY: Scott Raymond

VOTE: FOR 8 AGAINST 0 ABSTAIN _____

VOTE ON MEMORIALIZATION:

MOVED BY:

SECONDED BY:

VOTE: FOR _____ AGAINST _____ ABSTAIN _____

APPROVED

Attest:

Scott Raymond, Secretary

Stephen Riordan, Chair

I certify that the foregoing is a true copy of the Resolution adopted on _____,
2023.

Scott Raymond, Secretary

Dated: _____, 2023