

**BOROUGH OF HILLSDALE  
PLANNING BOARD  
RESOLUTION NUMBER 2023-10  
CASE NUMBER PZ-11-22**

**WHEREAS**, an application has been submitted by Robert Buesser and Dorothy Buesser (the “Applicants”) for Property known as 39 Hopkins Street, Hillsdale, New Jersey and identified as Block 1706, Lot 23 (the “Property”); and

**WHEREAS**, the Applicants applied for a variance for side yard setback to install a standby generator 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, Robert Buesser (“Mr. Buesser”) was present at the March 28, 2023 public hearing, was duly sworn and testified in support of the application; and

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

1. Boundary Survey prepared by Christopher J. Lantelme, PE, PLS of Lantelme, Kurens & Associates, PC, 101 West Street, Hillsdale, NJ 07642 dated January 20, 2023 and consisting of 1 sheet; and
2. Correspondence from Paul W. Valentine, owner of Valentine Electric Inc., dated November 21, 2022 consisting of 1 sheet; and
3. GENERAC Guardian Standby Generator specifications, consisting of 6 sheets; and
4. Site Plan drawing indicating location of proposed generator, unsigned and undated, consisting of 1 sheet; and
5. Existing site photo, unsigned and undated, consisting of 1 sheet; and

6. Aerial site photo indicating location of proposed generator and the locations of the existing electric meter and gas meter, unsigned and undated, consisting of 1 sheet; 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 have been 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 39 Hopkins Street, designated as Block 1706, Lot 17.
2. The Property consists of 16,860 square feet (0.39 acres) and is located at the south side of Hopkins Street, east of Carlyle Street in the R-3 Residential Zone District (minimum lot size 10,000 square feet).
3. The Property is improved with a one-story frame dwelling. An above-ground pool, deck, patio, shed and masonry wall are located in the rear yard, along with additional

related improvements. A macadam driveway provides access to the dwelling from Hopkins Street.

4. The Property has an existing non-conforming condition with respect to minimum front yard setback where 25.8 feet is existing where a minimum of 30 feet is required.

The Application and Proposed Variance

5. The Applicants are seeking relief from the November 3, 2022 letter of denial from the Borough Zoning Official to construct an emergency standby generator on the side of the existing dwelling on the Property.

6. The generator is proposed to be located 6.5 feet from the western side lot line, adjacent to Block 1706, Lot 24.

7. The generator is proposed to be 6.5 feet from the side property line, where a minimum of 10 feet is required. A variance is required.

8. The six-foot high fence is prohibited in the Winthrop Road front yard setback area and requires a variance.

March 28, 2023 Public Hearing

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

10. Mr. Buesser testified that he is seeking a variance to install a standby generator on the Property. The proposed location is 6.5 feet from the side lot line, where 10 feet is required, which is a variance of 3.5 feet.

11. Mr. Buesser testified that the generator would be gas and would turn on automatically when the power in the dwelling goes out. Mr. Buesser testified that he needs the standby generator for necessary medical equipment on the Property.

12. Mr. Buesser testified that the proposed generator would be located near the existing service panels for gas and electric.

13. In response to questions from the Board, Mr. Buesser testified that you would not be able to see the generator from the street due to existing landscaping and it would not obstruct sight lines.

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

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

#### Justification for Relief

16. The Board found good cause to grant the Applicants' request for variance for minimum side yard setback from the proposed generator.

17. 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.

18. 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. See N.J.S.A. 40:55D-2(a).

19. The Board found that the proposed generator would have a minimal impact, if any, on adjacent and neighboring properties because it is screened by landscaping and is will only run during emergencies.

20. In addition, the Board found that the grant of the variance would have a minimum impact, if any, on surrounding properties within the R-3 Zone. No one from the public or within 200 feet of the Property appeared in opposition of the application.

21. 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. Completion of the generator installation 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 are permitted to a side yard setback of 6.5 feet with respect to the installation of a standby generator on the Property, as described in the plans and drawings submitted in the application and as set forth in this Resolution.

8. 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.

9. 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.

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

11. 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: Scott Raymond

SECONDED BY: Ed Alter

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