

**BOROUGH OF HILLSDALE
PLANNING BOARD
RESOLUTION NUMBER 2021-17
CASE NUMBER PZ-06-21**

WHEREAS, an application has been submitted by Matthew DeFelice (the “Applicant”) for property known as 47 Kent Road, Hillsdale, New Jersey and identified as Block 2303, Lot 1 (the “Property”); and

WHEREAS, the Applicant applied for variances for impervious coverage and setback in order to install an in-ground pool and paver patio; and

WHEREAS, the Applicant was not represented by legal counsel; and

WHEREAS, the Board considered the report of Christopher P. Statile, PE, dated July 14, 2021; and

WHEREAS, the Board determined that the application was complete on July 27, 2021 and that a public hearing be conducted by the Board; and

WHEREAS, a public hearing was held on September 9, 2021; and

WHEREAS, the application was presented at the Board’s September 9, 2021 hearing. Kent Rigg, PE, was duly qualified and sworn, and Mr. Rigg and the Applicant, Matthew DeFelice, testified at the September 9, 2021 hearing; and

WHEREAS, Christopher P. Statile, PE (Board Engineer) was duly sworn and testified at the September 9, 2021 hearing; and

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

1. Site plan entitled “Site Plan of Property at 57 Kent Road, Borough of Hillsdale, NJ, County of Bergen”, prepared by Kent Rig, PE, of Kent Rigg Engineering & Land Surveying, LLC, 24 Godwin Avenue, Midland Park, NJ 07432, dated May 12, 2021,

consisting of two sheets.

2. Pool Structure Details, prepared by Jeffrey J. Careaga, PE, of Careaga Engineering, Inc., 382 Route 46 West, Equity Plaza Suite 5, Budd Lake, NJ 07828, dated May 4, 2021.
2. Property Survey prepared by Christopher J. Lantelme, LS, of Lantelme Kurens & Associates, PC, 101 West Street, Hillsdale, NJ 07642, undated; and

WHEREAS, the Applicant 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 Applicant 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 Applicant has 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:

A. The Property

1. The Property is located at 47 Kent Road, designated as Block 2303, Lot 1.
2. The property is situated in the R-2 Zone District.

3. Lot 1 consists of 15,235 SF (0.35 acre) and is located on the west side of Kent Road, south of the Baylor Avenue intersection, in the R-2 Zone District (minimum lot size 15,000 SF).

4. The lot is improved with a two-story frame dwelling and back paver patio with a fireplace and kitchen area. Various walls, walks and fencing are located on the property. A macadam driveway provides access to the dwelling from Kent Road.

5. The existing improvements on the property exceed the permitted impervious coverage. In addition, Lot 1 is substandard for lot depth, and the existing dwelling encroaches into the required rear yard setback area.

B. The Application

6. The Applicant proposes to install an in-ground swimming pool behind the dwelling. A paver patio is proposed around the swimming pool. The pool area measures approximately 14' x 26'. Per the Board Engineer, swimming pools are not counted as impervious coverage. The surrounding paver patio consists of approximately 300 SF.

7. The proposed pool improvements that contain impervious coverage (pool coping and equipment area), as well as the new paver patio area around the pool, are further adding to the impervious coverage on the property, resulting in the need for a variance.

8. According to the report of the Board Engineer, Christopher P. Statile, dated July 14, 2021, the Applicant requires the following variances:

Proposed Variances

- (a) Impervious Coverage (§310-49): 33.3% proposed (5,068 SF) vs. maximum 30% allowed (4,570.5 SF), a difference of 3.3% (approximately 498 SF). The Applicant is adding 301 SF coverage via

this application.

- (b) Accessory Uses, Patios (§310-55H(5)): 10 foot setback from all property lines, versus 3 feet proposed.

Existing Variances

- (c) Lot Depth: 140 feet existing vs. 150 feet required, a difference of 10 feet.
- (d) Rear Yard Setback: 43 feet existing versus 50 feet required, a difference of 7 feet.
- (e) Impervious Coverage: 31.3% existing (4,767 SF) vs. 30% maximum permitted (4,570.5 SF), a difference of 1.3% (197 SF).

C. The Hearing

9. At the onset of the September 9, 2021 hearing, Christopher P. Statile, PE, the Board Engineer, was duly sworn prior to providing testimony to the Board.

10. Mr. Statile gave the Board an overview of the application. The application is for the installation of an in-ground swimming pool and surrounding paver deck at the end of Kent Road. The property borders the Edgewood Country Club golf course. The impervious coverage exceeds the allowable 30% in the District at 33.3% proposed, a difference of approximately 498 SF. Approximately 300 SF is being added as a result of the subject application. In addition, under §310-55H Accessory Uses/Patios, a 10 foot setback is required from all property lines to the patio, and the Applicant propose a 3 foot rear yard setback. The Applicant's rear yard is a side yard to the house behind them. There are existing violations on the property as to lot depth, rear yard setback to the dwelling and impervious coverage. These are pre-existing non-conforming.

11. Matthew DeFelice testified that the proposal is to install an in-ground swimming pool with a roughly 2½-3 foot paver patio around the pool. The paver patio is minimal and is needed to anchor a pool cover during the winter. The application was initially denied due to the impervious coverage. Mr. DeFelice advised there was an error in the plans submitted to the Board. The rear setback to property line is not 3 feet, it is actually about 8 feet and that Kent Rigg, PE, of Kent Rigg Engineering & Land Surveying, LLC is available to testify as to this issue. The pool itself is more than 10 feet from the property line and the beginning of the paver patio is approximately 8 feet from the property line.

12. The Board had several questions for the Applicant. At the shallow end of the pool, the plans refer to a “topsoil stockpile”, and the Board requested clarification of same. Kent Rigg, PE was qualified as a licensed professional engineer of the State of New Jersey and was duly sworn. He responded to the Board’s question by testifying that that is a temporary place to store the removed topsoil when digging for the pool installation. The subsoil is actually removed and the topsoil is then spread out again. This is part of the soil erosion and sediment control for the project. The soil will be used to fill in the grade as needed, with the majority of the soil being removed from the property.

13. Mr. Rigg also confirmed for the Board that there is a 12 foot rear setback to the pool, with 1 foot of coping and 3 feet of patio. The rear setback is 8 feet from the property line to the paver patio, where 10 feet is required.

14. A Board member inquired as to the slope of the rear yard and was advised that the properties slope towards the Applicant’s home, so any pool overflow will not affect neighboring properties. A question also arose regarding the rear yard setback, where 50 feet is required and 43 feet exists. Mr. DeFelice explained that prior to their purchase of the home in 2015, the prior

owners had filed an application and received approval to extend the kitchen. The 43 foot setback was a pre-existing condition when the Applicant purchased the property.

15. Mr. Statile suggested in his letter that the existing driveway be removed and replaced with pavers, which would negate the additional impervious coverage for the project. Mr. DeFelice advised they have considered doing so, but it is a large area and would substantially increase the cost of the project and he is not financially able to do so. In addition, the Applicant has the driveway plowed in the winter, which would damage the pavers.

16. The Board asked if the Applicant was willing to reduce the size of the paver area to increase the rear setback closer to conformance. Mr. DeFelice advised that the pool installation company recommended the 3 foot paver patio in order to anchor the pool cover in the winter. A Board member also noted that the plans depict pool equipment south of the pool and asked if the equipment will be 10 feet from the property line. Mr. Rigg advised the pool equipment has a conforming setback.

17. In response to a question from the Board as to fencing, Mr. DeFelice testified that the property itself is completely fenced, with a self-closing gate on each side. The existing fence is 5 feet in height. Mr. DeFelice also responded to a question by testifying that the pool is 12' x 24'.

18. Board Chairman Burleson raised concerns about the exacerbation of the existing impervious coverage. He asked the Applicant if he was willing to reduce the size of the paver patio. Mr. DeFelice advised they are willing to do so if it would leave sufficient space to anchor the pool cover. He would need to speak with the pool designer. Mr. Burleson asked Mr. Statile to advise the Board how impervious coverage is ascertained for swimming pools and Mr. Statile stated that, under the Borough's Ordinance, swimming pools are not counted as impervious

coverage. The pavers are considered at 50% coverage. In response to Mr. Burleson's question, Mr. DeFelice testified that they have not had any water drainage issues since purchasing the property in 2015.

19. The Board noted that this is a slightly oversized lot so there is no hardship reason for the impervious coverage being over 30%. Mr. Statile suggested a drainage retention system for the roof, which would mitigate the increased impervious coverage. Dr. Lichtstein believes the increased impervious coverage will not be an issue in this instance, as the property slopes towards the Applicant's home and any flooding issues will not affect adjoining properties. He also feels that the pavers are necessary to keep mud out of the pool during rainstorms.

20. Mr. Rigg testified that there are grates on three sides of the pool in the pavers in order to capture stormwater and pool runoff, and it will be directed to the underground detention system, which is designed for over 800 SF of impervious area. Mr. Statile again suggested adding an additional detention tank and attaching the roof leaders for drainage. While this would not reduce the proposed impervious coverage, it would mitigate any effects of drainage with regard to this project. The Board questioned the cost of adding another detention tank to the ones proposed, and Mr. Statile advised it would be no more than \$1,500.00. The hole is already being dug for the proposed detention system.

21. Chairman Burleson stated that, given the location of the property, this is a fair application and he is comfortable with the increase in impervious coverage with the Board's suggestions. He asked the Applicant if they were willing to make any of the changes suggested by the Board. Mr. DeFelice testified that he is willing to add another tank, if necessary. Mr. Rigg testified that the pool is designed with grates and three detention tanks to collect up to 800 SF of runoff. There is a leader from the garage roof which could be connected to the drainage

detention system, which would provide for an additional ±400 SF and would require an additional tank.

22. Mayor Ruocco concurred with Dr. Lichtstein that the impervious coverage increase is de minimis and that drainage is not an issue on this particular property and its surrounding properties.

23. There were no members of the public appearing either in favor of or opposed to the application.

24. Dr. Elliott Lichtstein made a motion to approve the application as submitted by the Applicant, which motion was seconded by Zoltan Horvath. The application was approved by a vote of 7 to 2.

D. Justification for Relief

24. The Board further finds the Applicant has met his burden of proof in support of their variance request.

25. The Board makes the following findings and conclusions with respect to this application:

- A. The Board finds that the application as presented will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the Borough's Zone Plan and Land Use Ordinance.
- B. The proposed construction will go toward the positive criteria. The Board further determined that the Property can accommodate the use.
- C. Further, the Board finds that using prudent zoning and planning principles, project will not negatively impact the existing neighborhood nor the community as a whole.

- D. The Board hereby determines that the overall objectives of sound and prudent zoning and planning principles are advanced by the granting of the application.
- E. The Board hereby determines that the Applicant has met the burden of proof to the satisfaction of the Planning Board for variance relief, as proposed by the Applicant.
- F. The Board finds the use is permitted in the R-2 Residential Zone.
- G. The Board also finds that the application as presented will not substantially impair the intent and purpose of the Borough's Zone Plan and Zoning Ordinance.
- H. The Board finds that using prudent zoning and planning principles, the request for the variances will not affect the existing neighborhood, nor the community as a whole. The Planning Board hereby determines that the overall objectives of sound and prudent zoning and planning principles are advanced by the granting of the application.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Hillsdale as follows:

- 1. The Applicant's application has been approved, to wit:
 - (a) Impervious Coverage (§310-49): 33.3% proposed (5,068 SF) vs. maximum 30% allowed (4,570.5 SF), a difference of 3.3% (approximately 498 SF). The Applicant is adding 301 SF coverage via this application.
 - (b) Accessory Uses, Patios (§310-55H(5)): 10 foot setback from all property lines, versus 8 feet proposed.
- 2. The application is specifically conditioned upon any and all other approvals required by any governmental entity having jurisdiction over the development, including, but not

limited to Bergen County Planning Board approval or waiver, Bergen County Soil Conservation District approval and NJDEP approval, to the extent applicable.

3. The Applicant shall comply with the comments contained in the reports of the Board Engineer and as stated on the record. All conditions imposed by the Board in this resolution and on the record shall be complied with by the Applicant.

4. The Applicant shall comply with any and all Federal, State, County and local laws, ordinances, codes, rules and regulations with respect to all aspects of the project, property and proposed use, and with all such applicable laws and codes, and shall be responsible for all costs and fees associated therewith. Notwithstanding the approval granted by the Board, the Applicant shall obtain all other applicable approvals and comply with all applicable laws, codes, ordinances, regulations and the like as to the Property.

5. Before any permits are applied for, it is the responsibility of the Applicant to see if there are any open permits or violations and address these before a new permit can be issued.

6. When applying for the permits, a copy of the signed resolution and board-approved plans must accompany the permit application.

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

8. The Applicant shall maintain sufficient escrow funds as requested by the Borough of Hillsdale.

9. The Applicant shall obtain all appropriate and applicable approvals and permits as required from all governmental agencies having jurisdiction over the project or the subject matter of this application, shall comply with each and every requirement of every issued permit, and shall be responsible for all costs and fees associated with these approvals. Before any permits are

applied for, the Applicant shall 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.

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

11. The Applicant shall comply with the conditions of the Board and Board Engineer, as set forth herein and in the record.

12. The Applicant 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.

13. The Applicant shall comply with the comments of the Board Engineer.

14. Revised plans are required to be submitted by the Applicant depicting the correct rear yard setback to the property line and depicting the drainage detention system on the plans. Revised plans prepared by Kent Rigg, PE, revised to September 14, 2021, were submitted prior to adoption of the memorializing resolution.

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 Applicant is 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 Applicant.

MOVED BY: Dr. Elliott Lichtstein
SECONDED BY: Zoltan Horvath

VOTE: FOR 7 AGAINST 2 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.

Meredith Kates, Secretary

Dated: _____, 2021