

**BOROUGH OF HILLSDALE
PLANNING BOARD
RESOLUTION NUMBER 2021-11
CASE NUMBER PZ-01-21**

WHEREAS, an application has been submitted by Lawrence Freedberg and Amanda Miller (the “Applicants”) as Owners of property known as 46 Hillsdale Avenue, Hillsdale, New Jersey and identified as Block 1909, Lot 5 (the “Property”); and

WHEREAS, the Applicants applied for a variance for floor area ratio (“FAR”) pursuant to N.J.S.A. 40:55D-70(d)(4) and (c) bulk variances in order to construct a one-story addition on the site; and

WHEREAS, the Applicants represented themselves with regard to the subject application; and

WHEREAS, the Board considered the report of Christopher P. Statile, PE, dated February 8, 2021; and

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

WHEREAS, a hearing was held on March 23, 2021; and

WHEREAS, the application was presented at the Board’s March 23, 2021 hearing, at which the Applicants presented testimony from Wayne Guskind, AIA, who was duly qualified and sworn prior to providing testimony; and

WHEREAS, Christopher P. Statile, PE (Board Engineer) was duly sworn and testified at the March 23, 2021 hearing; and

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

1. Architectural plan entitled “Rear Addition & Alterations to the Freedberg Residence, 46

Hillsdale Avenue, Hillsdale, New Jersey”, prepared by Wayne, J. Guskind, RA, of WJG Architects, LLC, 26 Central Avenue, Hillsdale, NJ 07642, dated November 19, 2020, consisting of the following:

- Sheet T-1: General Notes, House Photos, Zoning Data & Site Plan Diagram;
- Sheet EX-1: Existing Conditions, Basement & First Floor Plans;
- Sheet EX-2: Existing Conditions, Second Floor Plan;
- Sheet EX-3: Existing Conditions, Exterior Elevations;
- Sheet EX-4: Existing Conditions, Exterior Elevations;
- Sheet A-1: Proposed Basement & First Floor Plans;
- Sheet A-2: Proposed Second Floor Plan;
- Sheet A-3: Proposed Exterior Elevations; and
- Sheet A-4: Proposed Exterior Elevations.

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 46 Hillsdale Avenue, designated as Block 1909, Lot 5.
2. The property is situated in the R-3 Residential Zone.
3. Lot 5 consists of 7,478 SF (0.17 acre) and is located on the northeast corner of the Highland Avenue/Hillsdale Avenue intersection in the R-3 Zone District (minimum lot size 10,000 SF). It is improved with a two-story frame dwelling with a front open porch and a back paver patio. A detached garage is located in the northeastern property corner. A macadam driveway provides access from Highland Avenue to the frame garage.
4. As a corner lot, the property has two front yards, with frontage on both Highland Avenue and Hillsdale Avenue. The existing dwelling does not meet the required front yard setback for either street frontage (the Hillsdale Avenue setback is less than 9 inches of what is required). The lot is also substandard for lot area and lot width.

B. The Application

5. The Applicants propose to construct a one-story addition to the back of the building. The addition has a 742 SF footprint and will contain a bedroom with full bathroom, and office/family room, a new entranceway and mudroom, and a new half bathroom. The Applicants also propose to install new brick pavers leading from the addition to the existing driveway. The Applicants received a prior approval for the project, but Mr. Freedberg lost his job and was unable to move forward with the project.
6. The Applicants testified the addition is necessary, as they are both working from home and at present they have limited spaces within which to simultaneously work.

7. If the variance application is approved, after construction the dwelling would contain two bedrooms and one full bathroom on the second level, a living room, dining room, kitchen, office/family room, bedroom, full bathroom and half bathroom on the first level.

8. The proposed improvements exceed the maximum permitted impervious coverage and floor area ratio, requiring a variance pursuant to N.J.S.A. 40:55D-70(d)(4). Also, with the addition, the dwelling will be located too close to the existing detached garage.

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

Proposed Variances

- (a) Impervious Coverage: 38% proposed vs. 30% maximum permitted, a difference of 8% or 613 SF.
- (b) Floor area ratio: 31.8% (2,378 SF) proposed vs. 30% (2,243 SF) maximum permitted, a difference of 1.8% (135 SF).
- (c) Distance from Dwelling to Accessory Structure (Garage), §310-55H(1): No detached accessory building shall be closer to any principal building than a distance equal to a height of such accessory building, but in no event closer than 10 feet to the principal building. The plan shows 8.33 feet separation proposed vs. 10 feet required, a difference of 1.67 feet.
- (d) Front Yard Setback, Highland Avenue: 24.08 feet to addition proposed vs. 30 feet required, a difference of 5.92 feet. The existing, deficient 29.27 foot front yard setback on Hillsdale Avenue triggers the Highland Avenue setback variance.

Existing Variances

- (e) Lot Area: 7,478 SF existing vs. 10,000 SF required, a difference of 2,522 SF.
- (f) Lot Width: 67.98 feet existing vs. 100 feet existing, a difference of 32.02 feet.
- (g) Front Yard Setback, Hillsdale Avenue: 29.27 feet existing vs. 30 feet required, a difference of 0.73 feet.
- (h) Front Yard Setback, Highland Avenue: 10.0 feet existing vs. 30 feet required, a difference of 20.0 feet.

No variance relief was given as to the above noted deficiencies. The existing deficiencies will be continued by the Applicants.

C. The Hearing

10. Wayne Guskind, AIA of WJG Architects, LLC was qualified as a licensed professional architect of the State of New Jersey and duly sworn prior to providing testimony in support of the subject application. He testified that the Applicants have a small two-bedroom home and would like to expand the family's living area. The lot is undersized and, if it was a conforming lot of 10,000 SF, the impervious coverage would not be an issue. The currently exists 29% impervious coverage and 22.04% FAR.

11. The Applicants propose to construct a one-story addition to the back of the building. The addition has a 742 SF footprint and will contain a bedroom with full bathroom, and office/family room, a new entranceway and mudroom, and a new half bathroom. The Applicants also propose to install new brick pavers leading from the addition to the existing driveway.

12. The Applicants, Lawrence Freedberg and Amanda Miller, testified that they received an approval for such a project in 2008, but the resolution was never adopted. They testified that there is a dry well on the property.

13. The Board expressed concerns, as the lot is undersized and is a corner lot. They were also concerned with the garage setback. The Board requested the Applicant use pavers to reduce the impervious coverage.

14. As a condition of any approval, the Applicants agreed to install a 1,000 gallon seepage pit and tie the downspouts into the seepage pit. This is needed to mitigate the overage on impervious coverage.

15. The meeting was opened to the public, and no one appeared either in favor of or opposed to the application.

16. The Applicants applied for a floor area ratio variance pursuant to N.J.S.A. 40:55D-70d (4). The Board determined that the Applicants demonstrated that the site will appropriately accommodate a floor area ratio above what is permitted by the Borough's Ordinance. Randolph Town Center v. Township of Randolph, 324 N.J. Super. 412, 417 (App. Div. 1999). An applicant for a d(4) variance need not show that the site is particularly suited for more intensive development. The inquiry is whether the site will accommodate the problems associated with a floor area larger than that permitted by ordinance. The Applicant must show special reasons to warrant the grant of a d(4) variance. Floor area ratios ("FAR") are, much like density restrictions, are intended to control the intensity of use. The Board determined the site can accommodate the proposed FAR, which exceeds what is permitted pursuant to Hillsdale's Ordinance. The proposal will not result in overdevelopment of the site and will not result in

substantial detriment to the Zone Plan, Zoning Ordinance, Master Plan and the public good. In addition, the Applicants will install a 1,000-gallon seepage pit as a condition of approval.

D. Justification for Relief

17. The Board members felt that the Applicants had met their burden pursuant to N.J.S.A. 40:55D-70(c)(2). As to the bulk variances, the legal basis for the flexible (c) variances are if the benefits outweigh the detriments. The Board felt that all the benefits carry forward in connection with the application and all the bulk requirements are necessary to effectuate the project in an area where it should be situated. The Applicants can establish positive criteria because the application promotes the general welfare because the Property is particularly suitable for the proposed use. The project will result in, without limitation, improved aesthetics, and the design will be within the existing streetscape.

18. The Board further finds the Applicant has met his burden of proof in support of his request for a FAR variance pursuant to N.J.S.A. 40:55D-70(d)(4). Based on the required method of computation per Hillsdale's Zoning Ordinance, the FAR for the residence will be slightly above what is permitted by the Borough's Zoning Ordinance. In the absence of the grant of a (d) variance, the Applicants would be unable to make the improvements. The proposed FAR, is consistent with the neighborhood. The lot is a corner lot and is undersized. The site will appropriately accommodate the proposed FAR in accordance with Randolph Town Center v. Township of Randolph, 324 N.J. Super. 412, 417 (App. Div. 1999).

19. 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 and the site will be adequately parked.
- 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 Applicants has met their burden of proof to the satisfaction of the Planning Board for variance relief, as proposed by the Applicants.
- F. The Board finds the use is permitted in the R-4 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 for variance for floor area ratio ("FAR") pursuant to N.J.S.A. 40:55D-70(d)(4) and (c) bulk variances is hereby granted, to wit:

- (a) Impervious Coverage: 38% proposed vs. 30% maximum permitted, a difference of 8% or 613 SF.
- (b) Floor area ratio: 31.8% (2,378 SF) proposed vs. 30% (2,243 SF) maximum permitted, a difference of 1.8% (135 SF).
- (c) Distance from Dwelling to Accessory Structure (Garage), §310-55H(1): No detached accessory building shall be closer to any principal building than a distance equal to a height of such accessory building, but in no event closer than 10 feet to the principal building. The plan shows 8.33 feet separation proposed vs. 10 feet required, a difference of 1.67 feet.
- (d) Front Yard Setback, Highland Avenue: 24.08 feet to addition proposed vs. 30 feet required, a difference of 5.92 feet.

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 reports of the Board Engineer and/or comments of the Board Engineer as stated on the record.

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 owner 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. The Applicants will provide a 1,000 gallon seepage pit and tie downspouts into the seepage pit.

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 for floor area ratio (“FAR”) pursuant to N.J.S.A. 40:55D-70(d)(4) and (c) bulk variances, as described herein, 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.

MOVED BY:
SECONDED BY:

VOTE: FOR 7 AGAINST 0 ABSTAIN _____

MEMORIALIZATION VOTE:
MOVED BY:
SECONDED BY:

VOTE: FOR _____ AGAINST _____ ABSTAIN _____

APPROVED
Attest:

Meredith Kates, Secretary

Dewey Burleson, Chair

Stephen Riordan, Vice-Chair

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

Meredith Kates, Secretary

Dated: _____, 2021