

**ZONING BOARD OF ADJUSTMENT OF THE  
BOROUGH OF HILLSDALE**

**RESOLUTION 2024-13**

**VARIANCE APPROVAL**

In the Matter of the Application of Marianne Illian.

**WHEREAS**, Marianne Illian (the "Applicant") is the owner of the property located at 5 Strawberry Hill Road and designated as Lot 2201 in Block 12 on the Tax Map of the Borough of Hillsdale (the "Property"); and

**WHEREAS**, the Applicant filed an Application, number PZ-06-24, with the Planning Board, Borough of Hillsdale (the "Board") arising from the denial of a Permit for a proposed replacement of an existing 5' fence with a new 6' fence.

**WHEREAS**, the Applicant's request for a Permit was denied by the Borough of Hillsdale Zoning Official, Steven Loesner, on March 12, 2024 stating:

Your application to place a six foot high fence on your property is denied. The application seeks a six foot height where four feet is permitted. By code any lot line along a street is considered to be a front yard.

**A.**

No fence in any district shall exceed four feet in height above the curb level when located within 25 feet of the intersection of two street lines. For the purposes of this article, any outdoor wall other than a retaining wall shall be deemed a fence.

**B.** No fence in any residential district or on a lot in any other district on which residential buildings are erected shall exceed four feet in height

above ground level when located at a distance closer to any street line than the front setback line prescribed for said district, nor shall any such fence exceed six feet in height above ground level when located at a distance equal to or greater than the front setback line prescribed for said district.

[Amended 5-5-2009 by Ord. No. 09-09]; and

**WHEREAS**, On March 19, 2024, the Applicant filed, with the Planning Board, a Notice of Appeal for Variance Approval pursuant to N.J.S.A. 40:55D-70(c) (the "Notice of Appeal") to appeal the denial of a Permit; and

**WHEREAS**, a Public meeting was held by the Board on May 28, 2024, in-person, in accordance with Municipal Land Use Law and the Open Public Meetings Act, at which time the Applicant, *pro se*, (a) presented proof of notice and publication as required by law; and (b) submitted the following Exhibits in support of Applicant's use variance application:

A. Approximately forty (40) photos taken by the Applicant of the property, surrounding properties with similar fences and the fence being replaced, as well as the recently replaced fence portions.

B. A survey dated February 16, 2024 from Andrezej Namyslak, PLS of Geospatial Surveying and Layout (which contains an error, noting that the west side of the Property is Strawberry Hill Road, when in fact it is Ruckman Road).

B. A copy of the survey showing marked up the location of the proposed fencing.

C. A complete application.

D. Testimony of the Applicant who answered questions posed by the Board to the satisfaction of the Board.

**WHEREAS**, the Board has reviewed the Exhibits set forth above and the other evidence submitted at the hearing, as well as the following items:

- Zoning Permit Application;
- Zoning Permit Denial from the Borough of Hillsdale Zoning Official dated March 12, 2024;

**WHEREAS**, the Board having heard and considered the testimony presented by the Applicants and notes no members of the public offered questions or comments.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Board of the Borough of Hillsdale makes the following findings of fact and conclusions of law with respect to the within Application:

1. The Property is located at 5 Strawberry Hill Road and designated as Lot 2201 in Block 12 on the Tax Map of the Borough of Hillsdale.
2. The Property is a slightly irregularly shaped corner lot 125' by 100.61' by 98.55' by 104.38' comprised of approximately 12,365 square feet, with the replaced portion of the fence along Ruckman Road.
3. The lot is undersized inasmuch as 15,000 square feet is required.

4. During the pendency of the Application the Applicant amended her Application to decrease the requested height of the fence along Ruckman Road to five (5) feet.
5. In response to questions posed by the Board the Applicant also agreed to amend the Application to include a lattice as the top foot of the proposed 5-foot fence and the lower 4 feet will be solid. The fence will be construed of a vinyl material and be white in color.
6. The Applicant seeks a variance for fence height in the front yard setback, which replaces a fence which has become dilapidated due to regular wear and tear. No portion of the previous fenced is intended to be reused.
7. As set forth above, the Application requires variance relief pursuant to N.J.S.A. 40:55D-70(c).

#### **CONCLUSIONS AND DETERMINATIONS**

8. All findings of fact set forth above are made a part hereof as if set forth herein at length.

9. The Board finds that the proposed improvement is acceptable.

10. The Applicant amended her application to be a 5-foot vinyl fence, in which the bottom 4 feet is solid vinyl and the top foot is lattice.

11. The Board finds that the Application, as amended during the hearing, creates an improvement that is suitable and acceptable.

12. The Board finds as a fact that the variance can be granted without detriment to the public good or any neighboring properties and will not negatively impact any of the neighbors. Ruckman Road is a busy roadway and the fence, as proposed, provides sufficient privacy and security.

13. The Board further finds as a fact that this approval will not substantially impair the intent and purpose of the Hillsdale Zone Plan and Zoning Ordinance and is in the furtherance of the purposes set forth in N.J.S.A. 40:55D-2. Adequate light, air and open space is preserved by the thoughtful design with lattice for the proposed fencing. The security provided for by the fence promotes the general welfare and security.

14. The Property is undersized in the zone as noted above which creates a condition making variance relief more necessary.

15. The Applicant has proven her entitlement to approval under N.J.S.A. 40:55D-70(c)(1)(2). There is no substantial impairment to the Zone Plan or Zoning Ordinance. The development is in compliance with the Master Plan. The improvement allows adequate light air and open space. The

proposal represents an important improvement and provides a desirable visual environment and modern security to residents.

16. There are no discernable negative impacts from the amended proposed fence which merely replaces an existing fence of the exact same height.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of the Borough of Hillsdale, based upon the above findings of fact and conclusions of law, that the within application for Variance Approval is hereby granted, subject to the following conditions:

- Board Engineer Christopher P. Statile, P.A. will inspect the completed fence to ensure the height along Ruckman Road is 4-feet of solid vinyl and 1-foot of lattice.
- Board Engineer Christopher P. Statile, P.A. will approve, prior to installation a transition fence panel or portion thereof where the replacement portion of the fence connects to the existing 6 foot portion of the fencing remaining on the Property.

(a) Notwithstanding the approval granted herein, the Applicant shall comply with all the ordinances of the Borough of Hillsdale and all applicable county, state, and federal statutes, ordinances, rules and regulations. Without limiting the foregoing, the Applicant shall comply with any and all

applicable requirements of the United States Americans with Disabilities Act;

(b) Unless otherwise addressed herein or at the public hearings before the Board, the Applicant shall comply with the recommendations of the Board and shall further comply with the recommendations of all other officials having jurisdiction with respect to the use of the subject Property.

(c) The Applicant shall obtain the approval (or waiver thereof) of all other governmental agencies having jurisdiction over the proposed development.

(d) The Applicant shall comply with all the stipulations made during the hearing on this Application.

(e) The Applicant shall be required to obtain all necessary permits and approvals from the Construction Official and such other municipal departments as may be necessary.

(f) The Applicant shall post all fees and deposits as required by applicable ordinances of the Borough of Hillsdale which shall include payment to the Borough's professionals for the review of the within Application and the inspection of work to be performed incidental thereto.

(g) The Applicant shall correct and make safe any dangerous or unsafe condition caused by the Applicant or those acting for it affecting public safety or general welfare if any such condition develops.

(h) The Applicant shall be and remain liable for any and all damages or money loss occasioned by the Borough of Hillsdale or its officers or agents by any neglect, wrongdoing, omissions or commissions by the Applicant or his Agents arising from the making of improvements and shall save, indemnify, hold harmless the Borough of Hillsdale or Board, its officers, agents, employees and all charges, judgments, costs or counsel fees arising from such damages or loss. The Applicant agrees not to commit any public or private nuisance by reason of dirt, dust, debris, air-pollution, noise pollution, gas, smoke, or other occurrences resulting from the construction or installation authorized by the approval of this plan or any building permit issued in pursuit thereof.

(i) The Applicant's failure to comply with conditions set forth with this Resolution shall constitute a failure of the conditions and may be the cause for the revocation of a Building Permit issued in respect of the contemplated improvements, subject to reasonable notice and the opportunity to cure.

**IT IS HEREBY CERTIFIED** that this is a true and correct copy of a Resolution adopted by the Planning Board of the Borough of Hillsdale upon a roll call vote at a meeting held on June 13, 2024.



A copy of this Resolution shall be given to the Tax Assessor, Applicant, Borough Clerk, Building Department, Zoning Officer and Borough Engineer.

ATTEST:

SO APPROVED:

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Scott Raymond, Secretary

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Meredith Kates, Chairwoman

**BOROUGH OF HILLSDALE PLANNING BOARD**

**VOTING**

<b><u>BOARD MEMBER</u></b>	<b><u>YES</u></b>	<b><u>NO</u></b>	<b><u>ABSENT</u></b>
Meredith Kates, Chairwoman	<b>x</b>		
Stephen Riordan, Vice Chairman			<b>x</b>
Scott Raymond, Board Secretary			<b>x</b>
Michael Sheinfeld	<b>x</b>		
Janetta Trochimiuk	<b>x</b>		
Ed Alter	<b>x</b>		
Daniel Friedman	<b>x</b>		
Seth Griep	<b>x</b>		
Gia Guzman	<b>x</b>		

<b><u>ALTERNATE BOARD MEMBERS</u></b>	<b><u>YES</u></b>	<b><u>NO</u></b>	<b><u>ABSENT</u></b>
Arthur Weinberg - Alter. I	<b>x</b>		
Stephen Sammarco -Alter. II	<b>x</b>		

Voted on June 13, 2024