

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

RESOLUTION 2024-14

VARIANCE APPROVAL

In the Matter of the Application of Antero and Katelyn Cortes.

WHEREAS, Antero and Katelyn Cortes (the "Applicant" or "Applicants") are the owners of the property located at 11 Ellen Court and designated as Lot 7 in Block 504 on the Tax Map of the Borough of Hillsdale (the "Property"); and

WHEREAS, the Applicants filed an Application, number PZ-05-24, with the Planning Board, Borough of Hillsdale (the "Board") arising from the Borough of Hillsdale Zoning Official's February 29, 2024 denial of an application for a 600 square foot addition, which noted that a 26' rear yard setback was proposed and 50' is required;

WHEREAS, the Zoning Official, Steven Loesner, on February 29, 2024 denial letter cites to Borough Ordinance 310-55(A)

General. No building shall hereafter be erected and no existing building shall be moved, structurally altered, rebuilt, added to or enlarged, unless it shall conform to the requirements of this chapter. No land shall be used for any purpose other than for a permitted use under this chapter and in conformity with the requirements of the Schedule of Uses and Requirements.¹¹ No yard or other required open space contiguous to any building shall be encroached upon or reduced in any manner, except in conformity to the setbacks, lot area, building location, percentage of lot coverage, off-street parking space and all other regulations designated in the said Schedule and this chapter for the district in which it is located. Any

unlawful encroachment or reduction shall constitute a violation of this chapter, and any building permit, use permit and any other permit granted therefor shall, upon determination of such violation, be void.; and

WHEREAS, On March 14, 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 issued by the Zoning Official; and

WHEREAS, Public meetings were held by the Board on May 9, 2024 and June 13, 2024, in-person, in accordance with Municipal Land Use Law and the Open Public Meetings Act, at which time the Board considered, and the Applicants, *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. Eight (8) photos taken by the Applicant of the property accurately depicting existing conditions.

B. A signed and sealed Plot Plan for Covered Patio and Paver Walkway, dated May 28, 2024, from Mathew R. Wilder, PLS of Morgan Engineering and Surveying, showing existing conditions, proposed 10x10x3 storm water management system, proposed covered patio, proposed patio pavers, impervious coverage calculations, building coverage calculations and notes.

C. Survey signed by David J. Vonsteenbure, PLS of Morgan Engineering and Surveying, dated April 11, 2019, marked up by

the Applicants to show proposed improvements referred to in "B" above.

D. Clean copy of survey signed by David J. Vonsteenbure, PLS of Morgan Engineering and Surveying, dated April 11, 2019, with impervious coverage calculations.

E. A complete application.

F. Testimony of the Applicants who answered questions posed by the Board to the satisfaction of the Board and the reasons for the proposed improvement which include adding functionality and modern features to the home.

G. Architectural plan dated June 3, 2024, consisting of one sheet, signed and sealed by James B. Foran, Architect, showing electrical plan, ridge detail, pier and roof framing plan, partial rear elevation, and various notes.

H. Testimony of Guitano Mione, of 1709 Lakeside Drive South, Forked River, New Jersey, the proprietor of Patio Paradise, the contractor engaged by the Applicants to design and build the improvements. Mr. Mione testified that he has been in business for 20 years constructing improvements similar to that proposed here. He installed a similar feature recently in Hillsdale and prepared two artistic renderings which were submitted to the Board as well as two exhibits showing the layout for the proposed patio and covered living area.

I. Statement of Hardship.

J. Certification of taxes and assessments being current.

K. Review letter dated April 22, 2024 from Christopher P. Statile, PA, the Board Engineer.

L. Testimony of Edward Madger from, PE, from Christopher P. Statile, PA's office, the Board Engineer.

M. Testimony of:

- Noah Lerman, 4 Marylin Lane
- Kevin Sullivan, 7 Ellen Court
- Gary Tepper, 835 Hillsdale Avenue
- David Johnson, 5 Marylin Court

All of whom testified that they have seen the plans, live close by the Property and support the Application. Kevin Sullivan further testified that there is no present flooding or water issues in the area.; and

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

- Tax Map;
- Zoning Permit Denial from the Borough of Hillsdale Zoning Official dated February 29, 2024;

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

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 11 Ellen Court and designated as Lot 7 in Block 504 on the Tax Map of the Borough of Hillsdale.
2. The Property is a slightly irregularly shaped lot 127.65' by 129.89' by 125' by 130.73' comprised of approximately 15,899 square feet.
3. The lot exceeds the 15,000 square feet required in the R-2 Residential Zone. It is improved with a single-family home and related improvements.
4. The lawfully existing nature of the presently existing home on the lot which is insufficiently deep (150' required, 130+/- existing) contributes to the condition of the Property supporting variance relief under N.J.S.A. 40:55D-70(c)(1).
5. The proposed improvements include storm water management of 800+ gallons which will be connected to the roof leaders.
6. The improvements represent continued investment in a single-family home characteristic of this R-2 Zone. It supports the Master Plan Amendment, section 4, page 49, of the 2022 Master

Plan to provide a mix of housing, with appropriate buffers. It supports section 5, also page 49, by maintaining the density, scale and character of the existing single family zone with adequate buffer.

7. The proposed outdoor covered patio will not be enclosed within anything more than insect screening and allows for sufficient light air and open space in accord with N.J.S.A. 40:55D-2 because it will be visually unobstructed and allow air to pass through.
8. The Applicant seeks a variance rear yard setback only.
9. There is no variance necessary for height, impervious coverage, building coverage or floor area ratio.
10. As set forth above, the Application requires variance relief pursuant to N.J.S.A. 40:55D-70(c).

CONCLUSIONS AND DETERMINATIONS

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

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

13. The Applicants have proven to the satisfaction of the Board their entitlement to a variance under N.J.S.A. 40:55D-70(c) (1) & (2).

14. The Board finds as a fact that the lawfully existing home on the site makes improvements to the rear impractical without

variance relief. The rear yard setback ordinance is designed to ensure not just buffering between properties but also sufficient outdoor recreational space. Outdoor recreational space includes more than just grass and includes modern features such as outdoor living/cooking areas as proposed herein. Additionally, the lot is undersized in terms of lot depths, 130.31' (on the south side) exists, but 150' is required, which is largely the reason for the necessary variance. Accordingly, there is support for the Board's finding of hardship under (c)(1).

15. Multiple purposes of the MLUL are furthered by the within application:

- Promotes general welfare by encouraging outdoor activity.
- Provides safety from flood/natural disaster with storm water detention in excess of the 500-gallon requirement.
- Provides adequate light air and open space.
- Promotes establishment of appropriate population density.
- Promotes appropriate location of appropriate residential use.
- Promoted desirable visual environment through created development technique.

16. 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.

17. 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 as noted in the points above.

18. Variance from the rear yard setback requirements provide benefits that substantially outweigh any discernable detriment. The variance sought, and granted herein, is as shown the May 28, 2024 plan by Mathew Wilder is 25.1' to the rear property line.

16. The Board finds as a fact that there are no discernable negative impacts from the proposal.

NOW, THEREFORE, BE IT RESOLVED by the Joint Planning 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:

- Compliance with the letter of the Board Engineer Christopher P. Statile, P.A. dated April 22, 2024.

- Increase planting in rear yard. Landscaping plan to be prepared and submitted to Board Engineer for approval prior to the issuance of permits.
- Drainage from roof and hardscape to connect to new storm water drainage system which will be constructed as shown the plans approved, 800+/- gallons.
- Test pits to be constructed, inspected, and approved by Board Engineer.
- Fire feature will be gas.
- Chimney/fire feature to be flush with construction.
- Covered patio shall not be enclosed with walls, tarps, or any other material other than insect screening.

(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 25, 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:

Scott Raymond, Secretary

Meredith Kates, Chairwoman

BOROUGH OF HILLSDALE PLANNING BOARD

VOTING

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

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

Voted on June 25, 2024