

**JOINT PLANNING BOARD OF THE
BOROUGH OF HILLSDALE**

RESOLUTION 2024-18

VARIANCE APPROVAL

In the Matter of the Application of Michael D. Larsen.

WHEREAS, Michael D. Larsen (the "Applicant") is the owner of property located at 215 Lincoln Avenue and designated as Lot 10 in Block 1624 on the Tax Map of the Borough of Hillsdale, located in an R-4 Residential Zone (the "Property"); and

WHEREAS, the Applicant filed an Application, number PZ-09-24, with the Borough of Hillsdale Joint Planning Board (the "Board") arising from the denial of a Permit to construct a portico in the front of the residence as well as a roof over an existing patio in the rear yard of the Property; and

WHEREAS, the Applicant's request for a Permit was denied by the Borough of Hillsdale Zoning Official, Steven Loesner, by letter dated April 2, 2024, stating:

Your zoning application for 265 sq ft. Addition to your residence is *denied*. The submitted survey indicates a 19.3-foot set back to the rear of the property line where 25 is required.

WHEREAS, on July 25, 2024, the Applicant filed, with the Board, a Notice of Appeal for Variance Approval pursuant to N.J.S.A. 40:44D-70(d)(4) and N.J.S.A. 40:55D-70(c)(1) and (2) (the "Notice of Appeal") to appeal the denial of a Permit; and

WHEREAS, a public meeting was held by the Board on September 24, 2024, in-person, in accordance with Municipal Land Use Law and the Open Public Meetings Act, at which time the Applicant, represented by Priscilla J. Triolo, Esq., (a) presented proof of notice and publication as required by law; and (b) submitted the following Exhibits in support of Applicant's use and bulk variance application:

A. Photos taken of the Property and the location of the proposed portico and roof;

B. A survey dated July 15, 2023, signed and sealed by Kiersten Osterkorn, PE, PLS, PP, of Omland & Osterkorn, Inc.;

C. Architectural plans dated May 16, 2024, signed and sealed by Brian Altman of Element Architectural Group;

D. A complete application; and

WHEREAS, the Board has reviewed the Exhibits set forth above and the other evidence submitted at the hearing including the following Exhibits: (1) Exhibit A-1: Aerial Exhibit dated September 24, 2024 and (2) Exhibit A-2: Photographs of 209 and 213 Lincoln Avenue, dated September 23, 2024; and

WHEREAS, the Board having heard and considered the testimony presented by the Applicant, Charles Osterkorn (who was qualified as an expert in professional planning and civil engineering) and the arguments of counsel; and

WHEREAS, the Board recused the elected official members of the Board in light of the D variance as required by the Municipal Land Use Law; and

WHEREAS, no objectors to the application were present.

NOW, THEREFORE, BE IT RESOLVED that the Joint 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 in the R-4 Zoning District at 215 Lincoln Avenue and designated as Lot 10 in Block 1624 on the Tax Map of the Borough of Hillsdale.
2. The Property is a slightly irregularly shaped rectangular lot measuring 50 feet by 108.75 feet and 50.17 feet by 104.60 feet.
3. The R-4 Residential Zone requires lots to be at least 7,500 square feet in area (which the Property does not satisfy) and also requires the lots to be 75 feet wide.
4. The Application impacts the back of the house as well as the front of the house, creating a 48 square foot covered roof at the front doorway and a 237 square foot roof over the existing patio in the rear of the house. The existing patio will not be enlarged. The improvements proposed represent aesthetic improvements and amenities limited in size and scope.

5. The Application does not propose any renovations to the interior of the home, nor does it propose any changes to drainage on the existing property. The Application proposes some lighting along with the roof over the patio.
6. The Application does not impact the side yard setbacks.
7. The Application maintains existing conformities with respect to the following: lot area, lot frontage, lot width, and side yard setback.
8. The Applicant testified to not having any flooding or drainage issues.
9. The Applicant seeks a d(4) Floor Area Ratio ("FAR") variance due to the improvements creating an FAR of 46.9% where 35% is allowed. This represents an increase of 5.3% from existing conditions, which was also non-conforming.
10. The Applicant also seeks c(1) and c(2) variances for the following: (a) front yard setback (Lincoln Avenue) of 27.79 feet, where 30 feet is required; (b) front yard setback (Oakland Avenue) of 13.5 feet, where 30 feet is required; (c) rear yard setback of 20.1 feet, where 25 feet is required; (d) building coverage of 30.6%, where 25% is allowed; and (e) impervious coverage of 36.4%, where 30% is allowed.
11. As set forth above, the Application requires variance relief pursuant to N.J.S.A. 40:55D-70(c) and (d) due to the

hardship created by the lawfully existing home on the pre-existing narrow lot.

CONCLUSIONS AND DETERMINATIONS

12. All findings of fact set forth above are made a part hereof as if set forth herein at length.
13. The Board finds that the proposed improvements are acceptable.
14. The Board finds as a fact that the FAR variance can be granted without detriment to the public good or any neighboring properties and will not negatively impact any of the neighbors. The harm sought to be avoided through the FAR ordinance is overly large structures which overwhelm their lot and/or adjoining properties. This harm is virtually non-existent in this instance. This is especially true given that the Applicant is increasing impervious coverage by only 0.3%, and the definition of floor area ratio states, "Roofed and/or covered decks & patios are considered Buildings and included in FAR calculations."
15. The Board also finds as a fact that due to the minimal size of the building coverage variance (0.3% over), as well as the improved impact aesthetic impact of the street view and neighborhood feel, the variance can be granted without detriment to the neighborhood.

16. 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, e.g. adequate light, air and open space is provided. Appropriate density remains. The design is creative and is an aesthetic as well as practical improvement.
17. The proposed covering of the patio strictly impacts the rear of the home which creates a condition further limiting the impact of the variance relief.
18. The Applicant has proven his entitlement to approval under N.J.S.A. 40:55D-70(d). 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 to residents.
19. There are no discernable negative impacts from proposed improvements. The application's positive criteria outweigh the negative. The Applicant has proven their property can reasonably accommodate any problem associated with the structure being larger than what the floor area permits.

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:

(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.

(j) The Applicant shall be subject to the jurisdiction of Board Engineer through the issuance of a certificate of occupancy.

IT IS HEREBY CERTIFIED that this is a true and correct copy of a Resolution adopted by the Joint Planning Board of the Borough of Hillsdale upon a roll call vote at a meeting held on October 22, 2024.

A copy of this Resolution shall be given to the Tax Assessor, Applicant, Borough Clerk, Building Department, Zoning Officer and Board 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 October 22, 2024