

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

RESOLUTION 2024-15

VARIANCE APPROVAL

In the Matter of the Application of Mark and Michelle DiPisa.

WHEREAS, Mark and Michelle DiPisa (the "Applicant" or "Applicants") are the owners of the property located at 12 Avon Court and designated as Lot 4 in Block 1303 on the Tax Map of the Borough of Hillsdale (the "Property"); and

WHEREAS, the Applicants filed an Application, number PZ-08-24, with the Planning Board, Borough of Hillsdale (the "Board") arising from the denial of a Permit for the construction of new front porch.

WHEREAS, the Applicant's request for a Permit was denied by the Borough of Hillsdale Zoning Official, Steven Loesner, on May 7, 2024 stating:

Your application to construct a front porch is denied. Plans indicate a front setback of 23.9 ft and a 367.4 sqft footprint. By code you are limited to an eight-foot encroachment and an area of forty sqft.

310-54 General Regulations

C.

In the R-1, R-2, R-3 and R-4 Zones, roofed and unroofed front porches, entry platforms and/or associated stoops and steps shall be permitted to encroach into the required front yard setback area a maximum of eight feet. The area of the porch, platform,

stoops or steps that is permitted to encroach in the front yard setback area shall not exceed 40 square feet. The roofed or unroofed front porch, entry platform and/or associated steps must be attached to a one-family dwelling that meets the required front yard setback. The eight-foot encroachment shall only be permitted where the one-family dwelling meets the required front yard setback for the zone in which it is located. Where such an encroachment is proposed, the structure or improvement that is projecting into the front yard setback area shall not have a width in excess of 10 feet. The improvement that is encroaching into the front yard setback area shall be a one-story structure. There shall not be a story above the improvement or a basement or cellar beneath it.; and

WHEREAS, On May 10, 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 July 11, 2024, in-person, in accordance with Municipal Land Use Law and the Open Public Meetings Act, at which time the Applicant (an Attorney at Law of the State of New Jersey), *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 eighteen (18) photos taken by the Applicant of the property and nearby properties with similar porches.

B. A survey dated May 21, 2024, from Paparozzi Associates, Inc, signed and sealed by Gary Paparozzi, PLS.

B. Plans, signed, sealed and prepared by Thomas J. Mesuk, AIA of Thomas J. Mesuk Architect, LLC dated May 6, 2024, comprised of 5 sheets as follows:

- T-1: Plot Plan, zoning table, general notes, showing variance required for front yard setback as 23.9' but with testimony that the correct setback is 23.8' proposed;
- A-1 Photograph of front of home and front elevation;
- A-2 Before and "after" rendering and elevations;
- A-3 Design details;
- A-4 General specifications

C. A complete application.

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

E. Testimony of Thomas J. Mesuk, AIA, accepted by the Board as an expert in his field, who described the plans as including 4 columns, a gable peak, attractive design features and other details; 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:

- Zoning Permit Application;
- Relevant portion of tax map;
- Zoning Permit Denial from the Borough of Hillsdale Zoning Official dated May 7, 2024;
- Review letter from Christopher P. Statile, PA, the Board Engineer, comprised of 4 pages dated June 7, 2023, which deemed the application complete; and

WHEREAS, the Board having heard and considered the testimony presented by the Applicants and notes no members of the public offered questions or comments with the exception of Berge Abajia, of 10 Avon Court, who testified that the application should be approved, that he lives next door and that the rear yard is not useful and there is no detriment from the proposal.

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 12 Avon Court and designated as Lot 4 in Block 1303 on the Tax Map of the Borough of Hillsdale.

2. The Property is an irregularly pie shaped lot at the end of a cul-de-sac, comprised of approximately 16,125 square feet.
3. The lot is oversized inasmuch as 10,000 square feet is required in the R-3 zoning district.
4. The Applicant provided testimony through their witnesses that the property suffers from several peculiar hardships, specifically: the sloping topography, Pascack Brook in the back yard and lawfully existing structure on the lot severely limit the use of the lot's back yard creating a need to use the front yard for family recreation and a covered place upon which to sit.
5. The Applicant agreed, as a condition of approval, that the front porch will not be enclosed.
6. The proposed porch is to be built with a paver surface at grade and no more than 30" in height so as not to require a railing under the construction code;
7. As set forth above, the Application requires variance relief pursuant to N.J.S.A. 40:55D-70(c)(1)&(2).

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 Applicants have proven their case.

11. The Board finds that the Application is suitable and acceptable.

12. The Board finds as a fact that the variance for front yard setback can be granted without detriment to the public good or any neighboring properties and will not negatively impact any of the neighbors. Other nearby homes have similar improvements and setbacks.

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 open design which encourages eyes on the street, neighborly interaction and a covered area from which to enter and exit the home. It is desirable visual enhancement.

14. The Property's pie shape, topography and area with the Pascack Brook make variance relief necessary.

15. The Applicants have proven entitlement to approval under N.J.S.A. 40:55D-70(c)(1) and (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 continued investment in the housing stock of

the Borough and provides a desirable visual and practical feature.

16. There are no discernable negative impacts from proposal.

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:

- Front porch cannot be enclosed.

(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 July 23, 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 August 8, 2024