

PZ-03-23  
Ricardo Arnt  
38 Glen Hook Road (Block 105, Lot 7)

**BOROUGH OF HILLSDALE  
PLANNING BOARD  
RESOLUTION # 2024-09**

**CASE NO. PZ-03-23**

**WHEREAS**, the Planning Board of the Borough of Hillsdale is a duly constituted body as authorized by statute with responsibility to supervise and be concerned with the orderly development and planning of the Borough, as authorized by the statutes and ordinances made and provided; and

**WHEREAS**, Ricardo Arnt (the “Applicant”) filed an application with the Planning Board of the Borough of Hillsdale (the “Board”) for property known as Block 105, Lot 7 on the tax map of the Borough of Hillsdale, located at 38 Glen Hook Road (the “Property”), for bulk variance relief to replace and expand an existing patio around an existing in-ground swimming pool on the Property; and

**WHEREAS**, Ricardo Arnt and Milena Garcia are the owners of the Property; and

**WHEREAS**, the Board deemed the application to be complete on September 26, 2023 and a public hearing was conducted on February 27, 2024; and

**WHEREAS**, the Applicant was represented by Matthew G. Capizzi, Esq. (“Mr. Capizzi”) of Capizzi Law Offices, 205 Fairview Avenue, Westwood, NJ 07675; and

**WHEREAS**, the Applicant was present at the public hearing but did not provide testimony; and

**WHEREAS**, the Applicant’s Engineer, Paul Gdanski, P.E. (“Mr. Gdanski”), of Paul Gdanski, P.E., PLLC, 633 Woodmont Lane, Sloatsburg, NY 10974, was present at the public hearing and was duly sworn and qualified to provide expert testimony in support of the application; and

**WHEREAS**, the Applicant’s Landscape Architect, William R. Boyce (“Mr. Boyce”), of Biosphere Landscape Architecture, 180 Old Tappan Road, Building 5, Suite 4, Old Tappan, NJ 07675, was present at the public hearing and was duly sworn and qualified to provide expert testimony in support of the application; and

**WHEREAS**, the public was given notice of the application and had an opportunity to participate in the hearing and no individuals appeared to be heard; and

**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 property 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 Zoning 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 submitted proof that a copy of said notifications were published at least 10 days prior to the date set forth for public hearing in the official newspaper of the Borough of Hillsdale

PZ-03-23

Ricardo Arnt

38 Glen Hook Road (Block 105, Lot 7)

in accordance with the Zoning Ordinance of the Borough of Hillsdale as amended and supplemented and the MLUL; and

**WHEREAS**, all jurisdictional requirements of the applicable state statutes and local ordinance were met; and

**WHEREAS**, the Applicant submitted an application and the following supporting documents:

1. Survey, prepared by George J. Anderson, P.L.S., Bulls Eye Surveying LLC, PO Box 430, Saddle Brook, NJ 07663, unsigned, dated May 8, 2021, consisting of 1 sheet; and
2. Pool Plan, prepared by Paul Gdanski, P.E., of Paul Gdanski, P.E., PLLC, 633 Woodmont Lane, Sloatsburg, NY 10974, dated April 7, 2023, revised October 31, 2023, consisting of 1 sheet; and
3. Proposed Landscape Plan, prepared by William R. Boyce of Biosphere Landscape Architecture, 180 Old Tappan Road, Building 5, Suite 4, Old Tappan, NJ 07675, dated March 31, 2023, revised October 31, 2023, consisting of 1 sheet; and
4. Photo Exhibit, unsigned and undated, consisting of 5 sheets; and

**WHEREAS**, the Applicant also submitted a Letter of Denial issued by Steven Loesner, Zoning Official, dated April 27, 2023; and

**WHEREAS**, the Board Engineer, Christopher P. Statile, P.E. (“Mr. Statile”), issued a review letter on the application, dated August 21, 2023, and an updated review letter on the application, dated February 24, 2024; and

**WHEREAS**, after carefully considering the evidence and testimony presented by the Applicant’s professionals, as well as the Letter of Denial issued by Borough Zoning Official and the Engineering Review Letters issued by Mr. Statile, and after due deliberation, the Board has made the following factual findings and conclusions:

The Property

1. The Property is a corner lot on the northeast corner of the intersection of Glen Hook Road and Craig Road within the R-1 Residential Zone District (minimum lot size 22,500 square feet). The Property is undersized for the R-1 Zone, containing 16,545 square feet (0.38 acres).

2. The Property is improved by a one-story dwelling with an enclosed porch and multiple patios. A swimming pool with surrounding concrete patio and deck are located in the front yard along Craig Road. A macadam driveway provides access to the dwelling from Craig Road. The existing pool, surrounding deck and portions of the patio are non-conforming.

3. The Property has pre-existing non-conforming conditions with respect to the following: (1) swimming pool location, constructed in the front yard where accessory structures are only permitted in the rear yard; (2) minimum deck setback, where 10 feet is required and 3 feet is existing to the front and rear

PZ-03-23

Ricardo Arnt

38 Glen Hook Road (Block 105, Lot 7)

lot lines; (3) minimum lot area, where 22,500 square feet is required and 16,545 square feet is existing; (4) minimum lot width, where 150 feet is required and 105.9 feet is existing; and (5) minimum side yard setback, where 25 feet is required and 9.96 feet is existing.

#### The Proposal

4. The Applicant is proposing to replace and expand an existing patio around an existing in-ground swimming pool on the Property.

5. The Board considered the Letter of Denial issued by the Zoning Officer, which indicated that the proposed application triggered the following relief: Patio around the pool located approximately 5 feet from the rear and side property lines, where 10 feet is required. Borough Code § 310-55.

6. Based on the documents submitted by the Applicant, the application required the following new variance relief: (1) patio setback, where 10 feet is required and 5.9 feet is proposed to the lot line along Craig Road; and (2) patio setback, where 10 feet is required and 6 feet is proposed to the lot line perpendicular to the lot line along Craig Road.

7. The Board reviewed the application and deemed it complete on September 26, 2023 during its work session. The Board conducted a public hearing on the application on February 27, 2024.

#### Public Hearing February 27, 2024

8. Mr. Capizzi provided a brief explanation of the application. The Property is a corner lot with frontage on Glen Hook Road and Craig Road. There is an existing in-ground swimming pool on the Property, which was constructed around 1974, and is in a non-conforming location in the front yard along Craig Road. The Applicant proposes to remove the existing patio, which is made of concrete and has an elevated portion made of wood. A new patio will be constructed made out of pavers. The patio setbacks will be increased from what exists today.

9. The Board heard testimony from Mr. Gdanski, the Applicant's Engineer, who was duly sworn and qualified to provide expert testimony. Mr. Gdanski testified regarding the existing conditions on the Property and the proposed features to be removed. The patio and deck will be removed and replaced with pavers. The patio setbacks will be improved from what is existing. Along Craig Road, the setback will be increased from 3.3 feet to 5.9 feet; and along the northern property line, the setback will be increased from 4.6 feet to 6 feet.

10. Mr. Gdanski introduced Exhibit A-1, which was an enlarged pool plan sheet prepared by Paul Gdanski, P.E., PLLC dated February 27, 2024.

11. Mr. Gdanski testified that there will be a slight increase in impervious coverage, but it still in compliance with the Borough Ordinance. The new patio and existing pool area will be screened by 2 small stepped retaining walls with landscaping. A drainage unit is proposed to store additional runoff.

PZ-03-23  
Ricardo Arnt  
38 Glen Hook Road (Block 105, Lot 7)

12. The Applicant agreed to comply with the comments and recommendations in the Board Engineer's report(s).

13. Mr. Statile was present at the public hearing and remained under oath to provide testimony as the Board Engineer.

14. In response to questions from the Board Engineer, Mr. Gdanski testified that there is no railing proposed on the top of the retaining walls.

15. In response to questions from the Board, Mr. Gdanski testified that the elevation of the pool is approximately 3.5 feet above ground level. The setback to Craig Road will be increased by 2.6 feet from the patio.

16. In response to additional questions from the Board, Mr. Gdanski testified that there is an existing ramp from the rear yard to the driveway area along Craig Road, which will be replaced and is utilized to take refuse bins to the street.

17. In response to questions from the Board, Mr. Gdanski testified that the retaining walls will be stepped back. One wall is 1 foot in height and the second wall is 2.5 feet in height.

18. In response to additional questions from the Board, Mr. Gdanski testified that the existing swimming pool will be renovated. The existing pool equipment will remain unchanged. The fence on the Property will be replaced.

19. In response to questions from the Board, Mr. Gdanski opined that the project will not impact the neighbors but will improve existing conditions.

20. In response to additional questions from the Board, Mr. Gdanski testified that the existing patio around the pool is in disrepair and needs to be replaced. The patio is proposed around the entirety of the pool so the Applicant can walk around the pool.

21. The Board heard testimony from the Applicant's Landscape Architect, Mr. Boyce, who was duly sworn and qualified to provide expert testimony. Mr. Boyce introduced Exhibit A-2, which was a colorized version of Plan Sheet L101 prepared by Biosphere Landscape Architecture, undated. Mr. Boyce introduced Exhibit A-3, Photo Exhibit and Rendering, prepared by Biosphere Landscape Architecture, undated.

22. Mr. Boyce testified that the existing fence and concrete will be removed and replaced with a new paver pool deck. There will be a fence on the outside of the retaining wall to keep deer out. There will be hedges planted in the planting bed between the 2 retaining walls.

23. In response to questions from the Board, Mr. Boyce testified that there is 4 feet of horizontal space between the retaining walls for planting. The Applicant agreed to consider switching the plantings to a narrower upright species. The Applicant agreed to provide updated plans indicating changes to the types of plantings proposed.

PZ-03-23  
Ricardo Arnt  
38 Glen Hook Road (Block 105, Lot 7)

24. In response to additional questions and concerns from the Board, the Applicant agreed to install fencing on the uppermost retaining wall for safety purposes.

25. Mr. Capizzi provided a brief summation regarding the requested relief and the proposed improvements, including mindful design and improvements to drainage.

26. The Board opened the meeting to the public and no individuals appeared to be heard.

27. The Board then entertained a motion to grant the Applicant's application requesting variance relief for: (1) patio setback, where 10 feet is required and 5.9 feet is proposed to the lot line along Craig Road; and (2) patio setback, where 10 feet is required and 6 feet is proposed to the lot line perpendicular to the lot line along Craig Road, with conditions, pursuant to the Borough of Hillsdale's Zoning Ordinance.

28. A motion was made and seconded to grant the application to replace and expand an existing patio around an existing in-ground swimming pool on the Property, as depicted in the drawings submitted by the Applicant, and as revised on the record, on the following conditions: (1) the Applicant shall comply with the comments and recommendations in the Board Engineer's report(s); (2) the Applicant shall consider switching the plantings to a narrower upright species and shall provide updated plans indicating changes to the types of plantings to be installed; and (3) the Applicant shall install fencing and/or railing on the uppermost retaining wall for safety purposes. A vote was taken and the motion passed by a vote of 9 to 0.

#### Justification for Relief

29. The Board found good cause to grant the Applicant's request for variance relief.

30. The Applicant sought a (c) bulk variance, of which there are two types a (c)(1) hardship variance and a (c)(2) benefit/detriment variance. To receive a (c)(1) variance, an applicant must establish that the physical features, topographic features, or extraordinary and exceptional situation uniquely affecting the property or structures lawfully existing thereon necessitates the variance to relieve such hardship. To receive a (c)(2) variance, an applicant must establish that the purpose of the MLUL would be advanced by the variance and the benefits of any variance would substantially outweigh any detriment. Further, to obtain a (c)(1) or (c)(2) variance, an applicant must also prove that the relief sought would not be substantially detrimental to the public good and would not substantially impair the intent and purpose of the Borough's zone plan and Zoning Ordinance.

31. The Board found that the Applicant's proposal to increase patio setbacks and install new fencing and landscaping would be an improvement from existing conditions and would advance purpose (i) of the MLUL, to promote a desirable visual environment. In addition, the Board found that the Applicant's proposal to install drainage facilities to address stormwater runoff issues on the Property would advance purpose (a) of the MLUL, to encourage appropriate development in a manner which will promote

the public health, safety, morals and general welfare, and purpose (b) of the MLUL, to secure from fire, flood, panic and other natural and man-made disasters.

32. In addition, the Board found that the grant of the variance would have a minimum impact, if any, on surrounding properties within the R-1 Zone because of the Applicant and Mr. Gdanski's testimony and Mr. Boyce's testimony regarding fencing and landscaping; testimony regarding drainage on the Property; and the Applicant's agreement to comply with the Board Engineer's report. The Board further notes that no individuals appeared in opposition to the application.

33. The Board found that the requested variance relief may be granted pursuant to N.J.S.A. 40:55D-70(c)(2), for the reasons discussed herein. The Board found that the purposes of the MLUL are advanced by the grant of the variance and that the benefits of the deviation substantially outweigh any detriments, and the variance can be granted without substantially impairing the intent and purpose of the Master Plan and/or Zoning Ordinance. The Applicant demonstrated a basis for the grant of the variance pursuant to N.J.S.A. 40:55D-70(c)(2) and Kaufman v. Warren, 110 N.J. 551 (1998). The Applicant met its burden of proof. As aforesaid, the Board was satisfied the variance could be granted without any substantial detriment to the public good, as well as the zone plan and Zoning Ordinance of the Borough of Hillsdale. The Board determined the grant of the variance will not impact surrounding properties in the Zone District.

**NOW THEREFORE, BE IT RESOLVED** by the Borough of Hillsdale Municipal Land Use Board, Bergen County, New Jersey, that the Applicant's request for variance relief, as described herein, be and is hereby **APPROVED** for the reasons set forth herein and subject to the terms and conditions contained in the body of this Resolution, and as follows:

1. The Applicant shall post all required application fees and provide sufficient funds with the Borough to satisfy any deficiency in the Applicant's escrow account. No permits or certificates shall be issued, nor will any work be performed by Board professionals or staff at any time that the Applicant's escrow account balance is not paid current, which shall be set forth by certification by the Board Clerk. The Applicant shall have a continuing duty to maintain a positive balance in all escrow accounts until all conditions have been satisfied and all charges have been paid.

2. Before any permits are applied for, it is the responsibility of the owner to see if there are any open permits or violations and to address and resolve those, if any, before a new permit may be issued. When applying for permits, a copy of the signed Resolution and Board-approved plans must accompany the permit application. No certificate of occupancy shall issue unless all inspections have been performed, passed, and all prior approvals have been satisfied, which includes compliance with all conditions imposed by the Board. Prior to the issuance of a certificate of occupancy, the Applicant shall satisfy all amounts due and owing to the Board's professionals.

PZ-03-23  
Ricardo Arnt  
38 Glen Hook Road (Block 105, Lot 7)

3. Completion of the development project and subsequent use of the Property shall be consistent with testimony offered at the public hearing, the plans and renderings submitted with the application and/or as revised, the findings and conclusions of the Board stated herein, and the conditions set forth in this Resolution.

4. The Board's approval is expressly subject to all State, County and Borough statutes, ordinances, rules, regulations and requirements affecting development in the Borough, County and State. 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, including but not limited to the building code, and shall be responsible for all costs and fees associated therewith. The Applicant shall comply with all laws and regulations related to affordable housing and/or the payment of the non-residential development fee, if applicable.

5. The Applicant's obtaining of approvals from all outside agencies shall be a prerequisite for issuance of a building permit, including but not limited to, obtaining written final approval from the Bergen County Planning Board, Bergen County Soil Conservation District, New Jersey Department of Environmental Protection, and the Borough of Hillsdale, if applicable. If other agency approvals substantially modify the approved plan, same will trigger a return to the Board.

6. The Applicant shall apply for and obtain a soil movement permit from the Borough, to the extent same may be required, and shall comply with the reasonable recommendations of the Borough Engineer with respect to same.

7. Revised plans, to the extent necessary, shall be submitted to the Board and the Board professionals for review and approval, to the extent applicable.

8. The Applicant is permitted to replace and expand an existing patio around an existing in-ground swimming pool on the Property, as described in the plans and renderings submitted in the application, as amended on the record, and as set forth in this Resolution. The Applicant is granted the following variance relief: (1) patio setback, where 10 feet is required and 5.9 feet is proposed to the lot line along Craig Road; and (2) patio setback, where 10 feet is required and 6 feet is proposed to the lot line perpendicular to the lot line along Craig Road. The variances are expressly conditioned upon the following:

- a. The Applicant shall comply with the comments and recommendations in the Board Engineer's report(s).
- b. The Applicant shall consider switching the plantings to a narrower upright species and shall provide updated plans indicating changes to the types of plantings to be installed.
- c. The Applicant shall install fencing and/or railing on the uppermost retaining wall for safety purposes.

PZ-03-23  
Ricardo Arnt  
38 Glen Hook Road (Block 105, Lot 7)

d. The Applicant’s proposed use of the Property shall conform to the requirements and conditions of any prior approvals issued by the Board and the Borough, which are not inconsistent with this Resolution, if applicable.

9. To the extent required, the Applicant shall comply with all recommendations and requirements of the Board Planner and the Board Engineer, subject to the reasonable satisfaction and approval of same and the Board.

10. The Applicant shall comply with all comments and conditions imposed by the Board, the Board Planner and the Board Engineer, as stated in the reports submitted to the Board, as stated on the record and as may be stated in this Resolution.

11. If the Applicant commence work on the project, same shall constitute acceptance of the above conditions.

**BE IT FURTHER RESOLVED** that the Chairwoman, Vice Chairman and Secretary of the Planning Board are hereby authorized to affix their signatures to this Resolution granting the variances and the Applicant(s) are 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 and the Applicant(s).

**MOTION TO APPROVE:**

MOVED BY: Raymond  
SECONDED BY: Guzman

VOTE: FOR 9                      AGAINST 0                      ABSTAIN 0

**MEMORIALIZATION:**

MOVED BY:  
SECONDED BY:

VOTE: FOR \_\_\_\_\_                      AGAINST \_\_\_\_\_                      ABSTAIN \_\_\_\_\_

**APPROVED**

Attest:

\_\_\_\_\_  
Scott Raymond, Secretary

\_\_\_\_\_  
Meredith Kates, Chairwoman

**CERTIFICATION**

I certify that the foregoing is a true and accurate copy of the Resolution adopted by the Hillsdale Planning Board on \_\_\_\_\_, 2024.

\_\_\_\_\_  
Scott Raymond, Secretary

Dated: \_\_\_\_\_, 2024