

**BOROUGH OF HILLSDALE  
PLANNING BOARD  
RESOLUTION NUMBER 2023-12  
CASE NUMBER PZ-02-23**

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

**WHEREAS**, an application has been submitted to the Board by Jeanette “Theresa” Sayers and John Sayers (the “Applicants”) for property known as 79 Beech Street, Hillsdale, New Jersey and identified as Block 704, Lot 11 (the “Property”); and

**WHEREAS**, the Applicants applied for variance relief for \_\_\_\_ related to the construction of a roof covering over an existing deck on the rear of the Property; and

**WHEREAS**, the Applicants were not represented by counsel; and

**WHEREAS**, the Board considered the report of Christopher P. Statile, PE, dated July 19, 2023; and

**WHEREAS**, a public hearing was held on October 24, 2023; and

**WHEREAS**, the Applicants, Jeanette “Theresa” Sayers (“Mrs. Sayers”) and John Sayers (“Mr. Sayers”) were present at the October 24, 2023 public hearing, and were duly sworn and testified in support of the application; and

**WHEREAS**, along with the application, the Applicants submitted the following:

1. Property Survey prepared by Christopher J. Lantelme, P.E. & L.S. of Lantelme, Kurens & Associates, PC, 101 West Street, Hillsdale, NJ 07642 dated June 26, 2023, and consisting of 1 sheet; and
2. Photograph Exhibit depicting the roofing constructed on the Property, prepared by the Applicants, undated and consisting of 3 sheets; and

**WHEREAS**, the Applicants 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 premises of the subject application, as set forth on a certified list of said owners furnished to the Applicants by the Tax Assessor of the Borough of Hillsdale and provided proof of service of such notice in accordance with the Land

Use 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 Applicants 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 in accordance with the Land Use Ordinance of the Borough of Hillsdale, as amended and supplemented, and the MLUL; and

**WHEREAS**, the Board gave due consideration to all individuals desiring to be heard and after due deliberation, did find and determine that:

The Property

1. The Property is located at 79 Beech Street, designated as Block 704, Lot 11.
2. The Property consists of 5,000 square feet (0.11 acres) and is located on the west side of Beech Street, just south of Hillsdale Avenue in the R-3 Residential Zone District (minimum lot size 10,000 square feet).
3. The Property is improved with a two-story frame dwelling. A shed, pavers and deck are located to the rear of the dwelling on the Property. A macadam driveway provides access to the dwelling from Beech Street. Additional decking and stairs are located to the south of the dwelling.
4. The existing shed on the Property is in a non-compliant location, although no offset dimensions are provided. The pavers and decking on the Property are in non-compliant for required offset to property lines.
5. The Property has existing non-conforming conditions with respect to: (1) minimum lot area, with 5,000 square feet existing where a minimum of 10,000 square feet is required; (2) minimum lot frontage, with 50 feet existing where 100 feet is required; (3) minimum front yard setback, with 25.5 feet existing where 30 feet is required; (4) minimum side yard setback, with 9.7 feet (to dwelling) existing where 10 feet is required; (5) maximum impervious coverage, with 46.7% existing where a maximum of 30% is permitted.

Application and Proposed Relief

6. The Applicants sought relief from the May 23, 2023 letter of denial from the Borough Zoning Official for the construction of a roof over the existing deck on the rear of the dwelling on the Property. The Applicants replaced a damaged awning on the rear of the dwelling with a covered roof. The Applicants performed work prior to seeking approval from the Board.

7. The new covered deck requires the following variances: (1) minimum side yard setback (to north property line), where 10 feet is required and 9.7 feet are proposed; (2) minimum rear yard setback, where 25 feet is required and 24.8 feet is proposed; (3) maximum impervious coverage, where 30% is permitted, 46.7% was existing, and 50.3% is proposed; and (4) maximum building coverage, where 25% is permitted and 34.2% is proposed.

8. The Applicants further seek to maintain the existing non-conforming conditions on the Property.

### Public Hearing

9. Mr. Sayers and Mrs. Sayers appeared at the October 24, 2023 public hearing and were sworn in prior to providing testimony in support of the application.

10. Mrs. Sayers testified that the Applicants understood that they required permits for the covered roof over the existing deck on the Property but they did not realize that they needed variance relief from the Board.

11. Mrs. Sayers testified that the construction was necessitated by a hail storm several years ago that damaged the awning over the rear wood deck on the Property. Mrs. Sayers further testified that the construction was conducted in May of 2023.

12. The Board Engineer, Christopher P. Statile, PE (“Mr. Statile”), was duly sworn to provide expert testimony.

13. Mr. Statile testified that the Property has an undersized lot area and undersized lot frontage for the Zone District. Mr. Statile explained the variances requested in the application.

14. In response to questions from the Board, Mrs. Sayers testified that the size of the deck was not changed. The Applicants only replaced a damaged awning that covered approximately half of the deck. Mr. Sayers testified that the extended drive area was installed to accommodate the vehicles of his family on the small lot.

15. In response to questions from the Board, Mr. Sayers testified that the drainage from the new roof covering leads to the road. Mrs. Sayers testified that architectural drawings were not prepared for the construction. Mr. Sayers testified that he performed the work and is a contractor.

16. In response to questions from the Board, Mrs. Sayers testified that water pooling is not an issue on the Property. Mrs. Sayers further testified that the Property slopes from back to front.

17. In response to concerns from the Board, the Applicants agreed to obtain all necessary permits and inspections from the Borough, including but not limited to electrical, building and construction. The Applicants further agreed to work with the Borough if drainage from the new roofing impacts neighbors.

18. There were no members of the public present at the hearing.

19. The Board entertained a motion on the application. Mr. Alter made a motion to approve the application with the conditions placed on the record by the Board, which motion was seconded by Mr. MacEwen. The application was approved by the Board by a vote of 6 to 0.

#### Justification for Relief

20. The Board found good cause to grant the Applicants' request for variance relief for the roof covering over the rear deck on the Property.

21. The Applicants 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.

22. The Board found that the Property had an undersized lot area, undersized lot width and unique grade that created a hardship and limited development of the Property.

23. In addition, the Board found that the grant of the variance relief would have a minimum impact, if any, on surrounding properties within the R-3 Residential Zone District. No one from the public or within 200 feet of the Property appeared in objection to the application. In addition, the Applicants testified that they do not have drainage issues on the Property. Further, the Applicants agreed to work with the Borough to address drainage issues onto neighboring properties, if same should arise.

24. The Board found that the requested variance relief may be granted pursuant to N.J.S.A. 40:55D-70(c)(1), for the reasons discussed herein. The Board found that due to the

undersized lot area, narrow width and grade of the Property a strict application of the Zoning Ordinance would result in an exceptional practical difficulty and undue hardship to the Applicants. The Applicants demonstrated a basis for the grant of the variance pursuant to N.J.S.A. 40:55D-70(c)(1) and Kaufman v. Warren, 110 N.J. 551 (1998). The Applicants met their burden of proof. The grant of the variances will relieve the Applicants from the practical difficulty created by the physical features of the Property. As aforesaid, the Board was satisfied the variances 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 variances will not impact surrounding properties in the R-3 Residential District.

**NOW THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Hillsdale, Bergen County, New Jersey, that the Applicants' 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 Applicants shall post all required application fees and provide sufficient funds with the Borough to satisfy any deficiency in the Applicants' escrow account. No permits or certificates will be issued, nor will any work be performed by Board professionals or staff at any time that the Applicants' escrow account balance is not paid current, which shall be set forth by certification by the Board Deputy Secretary. The Applicants will 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 Applicants 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 Applicants shall satisfy all amounts due and owing to the Board's professionals.

3. Construction and subsequent use of the Property shall be consistent with testimony offered at the public hearing, the plans and documents submitted with the application,

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 Applicants 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, and shall be responsible for all costs and fees associated therewith. The Applicants 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 Applicants' 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.

6. The Applicants 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 Applicants are permitted to the following: (1) side yard setback (to north property line) of 9.7 feet; (2) rear yard setback of 24.8 feet; (3) impervious coverage of 50.3%; and (4) building coverage of 34.2%, as described in the plans and drawings submitted in the application and as set forth in this Resolution.

9. The Applicant agreed to the following conditions of approval:

- a. The Applicants shall comply with the reasonable advice and recommendations of the Borough Engineer with respect to any drainage and stormwater management required on the Property, if necessary. If drainage and stormwater runoff from the Property impacts neighboring properties, the Applicants shall work with the Borough Engineer to address same.

- b. To the extent applicable, the Applicants shall comply with the Board Planner and the Board Engineer’s recommendations and comments as stated in reports, on the record and in this Resolution, subject to the reasonable satisfaction and approval of same and the Board.
- c. The Applicants shall obtain all necessary permits, inspections and approvals from the Borough and to comply with same, including but not limited to electrical, building and construction.

10. If other agency approvals modify the plan, same will trigger a return to the Board.

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

**BE IT FURTHER RESOLVED** that the Chairman, Vice Chairman and Secretary of the Planning Board are hereby authorized to affix their signatures to this Resolution granting variances for impervious coverage and setback to Property lines, as set forth herein and in the plans, and the Applicants 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 Applicants.

VOTE ON THE APPLICATION:

MOVED BY: Alter  
SECONDED BY: MacEwen

VOTE: FOR   6   AGAINST   0   ABSTAIN           

VOTE ON MEMORIALIZATION:

MOVED BY:  
SECONDED BY:

VOTE: FOR            AGAINST            ABSTAIN           

**APPROVED**

Attest:

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

\_\_\_\_\_  
Stephen Riordan, Chair

**CERTIFICATION**

I certify that the foregoing is a true copy of the Resolution adopted on \_\_\_\_\_, 2023. This Resolution memorializes the Board's approval of this matter at its meeting held on October 24, 2023.

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

Dated: \_\_\_\_\_, 2023