

**BOROUGH OF HILLSDALE
PLANNING BOARD
RESOLUTION NUMBER 2020-16
CASE NUMBER PZ-04-20**

WHEREAS, an application has been submitted by John Kellenberger (the “Applicant”) as Owner of property known as 281 Raymond Street, Hillsdale, New Jersey and identified as Block 1510, Lot 30 (the “Property”); and

WHEREAS, the Applicant applied for a variance for floor area ratio (“FAR”) pursuant to N.J.S.A. 40:55D-70(d)(4) and (c) bulk variances in order to install an in-ground swimming pool and to construct various additions to the existing dwelling on the site; and

WHEREAS, the Applicant was represented by Duncan Prime, Esq., of Prime & Tuvel, 14000 Horizon Way, Suite 325, Mount Laurel, NJ 08054; and

WHEREAS, the Board considered the reports of Christopher P. Statile, PE, dated August 7, 2020 and September 14, 2020; and

WHEREAS, the Board determined that the application was complete and that a public hearing be conducted by the Board; and

WHEREAS, a hearing was held on September 22, 2020; and

WHEREAS, the application was presented at the Board’s September 22, 2020 hearing, at which the Applicant presented testimony from Joseph Bruno, AIA; Mark Whitaker, PE and Brigitte Bogart, PP. All parties were sworn prior to providing testimony, and the witnesses were duly qualified; and

WHEREAS, Christopher P. Statile, PE (Board Engineer) and Thomas Behrens, PP, AICP (Board Planner) were duly sworn and testified at the September 22, 2020 hearing; and

WHEREAS, along with the application, the Applicant submitted the following:

1. Site plan entitled “John Kellenberger Proposed Site Improvements, Block 1510, Lot 30, 281 Raymond Street, Borough of Hillsdale, Bergen County, New Jersey”, prepared by Mark A. Whitaker, PE of Dynamic Engineering, 1904 Main Street, Lake Como, NJ 07719, dated May 11, 2020, with Sheets 1 and 2 revised to August 27, 2020 and Sheet 3 revised to August 17, 2020, consisting of the following:
 - Sheet 1 of 3: Plot Plan;
 - Sheet 2 of 3: Grading & Utility Plan; and
 - Sheet 3 of 3: Construction Details.
2. Architectural plans entitled “Addition and Alterations to the Kellenberger/Carey Residence, 281 Raymond Avenue, Hillsdale, New Jersey”, prepared by Joseph J. Bruno, AIA, 29 Pascack Road, Park Ridge, NJ 07656, dated January 14, 2020, revised to May 30, 2020, consisting of three sheets.
3. Landscape plan entitled “Landscape Concept Plan for Kellenberger/Carey Residence, 281 Raymond Avenue, Hillsdale, New Jersey”, prepared by William L. Koenig, ASLA, 28 Pascack Road, Park Ridge, NJ 07656, dated June 25, 2020 and revised to July 2, 2020, consisting of one sheet; 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 premises 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 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 Applicant has submitted proof that a copy of said notifications have been 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:

A. The Property

1. The Property is located at 281 Raymond Street, designated as Block 1510, Lot 30.
2. The property is situated in the R-3 Residential Zone.
3. The property is located on the west side of Raymond Street, south of the Raymond Court intersection, in the R-3 Residential Zone District (minimum lot size 10,000 SF). Lot 30 consists of 10,744 SF (0.25 acre). The property is improved with a two-story frame dwelling. An asphalt driveway provides access from Raymond Street to the dwelling.

B. The Application

4. The Applicant proposes to install an in-ground swimming pool and to construct various additions to the dwelling in order to accommodate the needs of his disabled sons. The proposed swimming pool conforms to Ordinance requirements and does not require any variances. The Applicant is proposing a two-story addition containing approximately 450 SF per level on the south side of the dwelling. The ground floor consists of a garage addition and the first level contains two bedrooms, a walk-in closet and a bedroom addition.

5. The Applicant is also proposing a new bathroom and elevator on the ground level of the house containing approximately 160 SF. On the first level, the addition will include

additional kitchen and dining space, as well as the elevator, and consists of approximately 210 SF.

6. The Applicant proposes a swimming pool and play area in the back yard, as well as a new front portico and a new concrete paver driveway. The front portico will encroach into the required front yard setback area, and the proposed improvements exceed the maximum permitted floor area ratio (“FAR”).

7. According to the report of the Board Engineer, Christopher P. Statile, dated September 14, 2020, the following variances are proposed by the Applicant:

- (a) Front yard setback: To portico – 27.2 feet proposed vs. 30 feet minimum required, a difference of 2.8 feet.
- (b) Floor area ratio: 33% proposed vs. 30% maximum permitted, a difference of 3% (322 SF).
- (c) Patio area vs. building footprint for side/rear setbacks: Patio area 74% vs. 20% permitted to infringe into rear/side yard setback areas.
- (d) Impervious coverage, total: 32.1% proposed vs. 30% maximum permitted, a difference of 2.1% (225 SF).
- (e) Footprint of decks and porches: Shall not exceed 20% of the gross principal dwelling area footprint vs. 59% of the footprint proposed, a difference of 39%.

C. The Hearing

8. The Applicant, John Kellenberger, testified that he has lived in the subject dwelling for seven years. He has twin boys, age 6, both of whom have disabilities. During his testimony, Mr. Kellenberger testified as to the disabilities and challenges of one of his sons, who

he identified as Austin throughout his testimony. Mr. Kellenberger's son, Austin, has permanent and significant injuries and is in need of significant medical care. Some of the care is in-patient and some of the care is out-patient. Mr. Kellenberger informed the Board that his family is confined to the home most of the time. His son has cerebral palsy and cannot use his right arm. The therapy is done with large equipment. The equipment has increased in size as his son ages. Mr. Kellenberg and his wife have challenges in order to get their son up and down the stairs, and they have limited space in the existing dwelling.

9. They desire a home so their son can engage with the rest of the family. The improvements that are being proposed are to accommodate the needs of his sons. The reason for the request for the installation of an in-ground swimming pool and variances is because the pool is utilized for aqua therapy for his son.

10. The Board heard testimony from Joseph Bruno, AIA, a licensed professional architect of the State of New Jersey, having an address of 29 Pascack Road, Park Ridge, NJ 07656. Mr. Bruno was duly qualified and sworn and provided testimony to the Board in support of the relief being sought by the Applicant. He testified that the subject dwelling is a bi-level ranch that poses a number of challenges, including vertical circulation, so an elevator is a must. A larger garage is necessary and is safer. Mr. Kellenberger and his family need more circulation space, given his son's physical challenges. In addition, the proposed project will improve the exterior of the subject dwelling. Mr. Bruno's architectural plan was marked as Exhibit A-1 and is dated January 14, 2020 and revised to March 30, 2020.

11. Exhibit A-2 is a compilation of photographs taken by Mr. Bruno. Mr. Bruno testified that there are challenges to (in addition to what he described) having a small deck or no deck.

12. He also testified that the project, if approved, would present certain benefits, including, but not limited to, a more aesthetically pleasing dwelling, which would include new clapboard, shutters and the like.

13. In terms of the variance relating to the stairs, he testified that the existing stair is in the same position that it is now. The intention is to construct a roof above the platform. The Applicant is proposing a deck that is 12 feet off the back of the existing dwelling.

14. Mr. Bruno informed the Board that the improvements are associated with accommodating the needs of the Kellenberger family.

15. In addition, the deck is about 9 feet off the finished surface. There will be a patio beneath the deck.

16. In response to a question by a Board member as to whether the pool will be heated or gas heated, the Applicant testified that the intention may be to heat the pool. The Applicant shall comply with all building and other applicable codes, inclusive of all codes relating to the heating of the pool.

17. The Board then heard testimony from Mark Whitaker, PE, of Dynamic Engineering. Mr. Whitaker was duly sworn and qualified prior to providing testimony to the Board. Mr. Whitaker's plans were dated May 11, 2020, with Sheets 1 and 2 revised to August 27, 2020 and Sheet 3 revised to August 17, 2020, consisting of Sheets 1 - 3, and were marked as Exhibit A-3 at the hearing. Mr. Whitaker testified that the setback of the front steps has not changed but is non-conforming because of the elevation change.

18. A walkway of permeable pavers is proposed, which is 5 feet in width. In response to question from a Board member as to whether or not the pool will be heated, Mr. Whitaker stated that the Applicant will add a note on the Dynamic plans that the pool equipment

will conform to Code as to natural gas, solar heaters or the like. He testified that the Applicant will attempt to reduce the impervious coverage by approximately 100 SF. Notwithstanding, Applicant's counsel advised that the Applicant is requesting an impervious coverage variance of 32.1%. The Applicant did not modify the relief being sought. The testimony was that the Applicant will do his best to reduce the impervious coverage and, if he is not able to do so given that the improvements are necessary to accommodate the disabilities of Mr. Kellenberger's sons, then the initial relief sought and as set forth herein shall apply.

19. Mr. Statile informed the Board that the seepage tank may need to be moved or re-located. Mr. Whitaker agreed that the seepage tank may need to be moved and he testified that the Applicant is open to moving the dry well and will work with the Board Engineer as to the location of the seepage tank.

20. Christopher Statile was duly sworn and qualified prior to providing testimony in connection with the subject application. He testified in response to a question from one of the Board members as to his zoning review dated September 14, 2020. At page 2 of said report, Mr. Statile stated that the Applicant necessitated a variance, without limitation, for "patio area vs. building footprint for side/rear setbacks; patio area is 74% vs. 20% permitted to infringe into rear/side yard setback areas". Mr. Statile informed the Board that the Ordinance requires the patio to be kept out of the setback areas and that the variance is triggered when the patio area infringes into the rear and side yard setback areas by greater than 20%. In addition, in his September 14, 2020 review letter, Mr. Statile identified the following variances:

- (a) Front yard setback to portico: 27.2 feet proposed vs. 30 feet minimum required, a difference of 2.8 feet.

- (b) Floor area ratio (“FAR”): 33% proposed vs. 30% maximum permitted, a difference of 3% (322 SF).
- (c) Patio area vs. building footprint for side/rear setbacks: Patio area is 74% vs. 20% permitted to infringe into the rear/side yard setback areas.
- (d) Impervious coverage total: 32.1% proposed vs. 30% maximum permitted, a difference of 2.1% (225 SF).
- (e) Footprint of decks and porches: Shall not exceed 20% of the gross principal dwelling area footprint vs. 59% of the footprint proposed, a difference of 39%.

21. The Board then heard testimony from Brigette Bogart, PP, a licensed professional planner of the State of New Jersey. Ms. Bogart was duly qualified and sworn prior to providing testimony to the Board in connection with the subject application. Ms. Bogart testified that she looked at the FAR in the neighborhood and that the range is anywhere from approximately 9% to 50% and that the proposed FAR of 33% is within the range of what the FAR is within the existing neighborhood. The proposal fits into the neighborhood, per Ms. Bogart. She testified that the neighborhood has a variety of housing styles.

22. A front yard setback variance is requested. The front yard setback for the portico is 27.2 feet vs. 30 feet required.

23. In terms of the bulk variances, Ms. Bogart testified that the bulk variances could be granted under N.J.S.A. 40:55D-70(c)(1), given the exceptional circumstances that exist in connection with the subject application. The MLUL provides that a Board may grant a (c) or “bulk” variance when the applicant can show that, by reason of exceptional narrowness, shallowness or shape of a specific property, or by reason of exceptional topographic conditions

or physical features uniquely affecting a piece of property, or by reason of an extraordinary or exceptional situation uniquely affecting a specific piece of property, the strict application of any zoning regulation would result in peculiar and exceptional difficulties to, or an exceptional or undue hardship upon, the developer of land. Alternatively, a Board may grant a (c) variance where the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment. Further, as for a use variance, the applicant must also demonstrate that the proposed variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan and the Zoning Ordinance.

24. Ms. Bogart testified that the bi-level design of the subject structure makes it difficult to comply with Hillsdale's Ordinance. In addition, the Applicant is proposing the subject improvements and additions in order to accommodate the needs of his sons, who have disabilities.

25. Ms. Bogart also justified the grant of the bulk variances under N.J.S.A. 40:55D-70(c)(2). She justified that the proposed design furthers Purposes A and I of N.J.S.A. 40:55D-2. The project will result in, without limitation, improved aesthetics, and the design will be within the existing streetscape. She also informed the Board that Hillsdale's Master Plan talks about FAR, and that the FAR that is being proposed complies with the FAR within the subject neighborhood.

26. The Applicant also needs a variance pursuant to N.J.S.A. 40:55D-70(d)(4). The Applicant applied for a floor area ratio variance pursuant to N.J.S.A. 40:55D-70d (4). The Board determined that the Applicant demonstrated that the site will appropriately accommodate a floor area ratio above what is permitted by the Borough's Ordinance. Randolph Town Center v.

Township of Randolph, 324 N.J. Super. 412, 417 (App. Div. 1999). An applicant for a d(4) variance need not show that the site is particularly suited for more intensive development. The inquiry is whether the site will accommodate the problems associated with a floor area larger than that permitted by ordinance. The Applicant must show special reasons to warrant the grant of a d(4) variance. Floor area ratios (“FAR”) are, much like density restrictions, are intended to control the intensity of use. The Board determined the site can accommodate the proposed FAR, which exceeds what is permitted pursuant to Hillsdale’s Ordinance. The proposal will not result in overdevelopment of the site and will not result in substantial detriment to the Zone Plan, Zoning Ordinance, Master Plan and the public good. In addition, the improvements are necessary in order to accommodate the needs of the Kellenberger family given the disabilities and challenges faced by their sons.

27. The Board also heard testimony from Thomas Behrens, PP, of Burgis Associates. He was duly sworn prior to providing testimony to the Board. Mr. Behrens advised the Board that there are public benefits because of the design features associated with the project, including the portico and the stormwater management, as well as landscaping.

28. Mr. Behrens informed the Board that the Applicant is over by approximately 3%, or 150 SF per floor.

29. The Board further heard testimony from Christopher Statile, and he advised the Board that most of the improvements that are proposed are within the rear yard and are not really visible.

30. With regard to landscaping, the Applicant agreed to work with the Board and the Board Engineer to agree on a landscape plan and to otherwise solidify the landscape plan to the

satisfaction of Christopher Statile. The landscape plan was prepared by William L. Koenig, ASLA and was marked as Exhibit A-4.

31. No member of the public appeared at the hearing to object to the relief sought by the Applicant.

D. Justification for Relief

32. The Board members felt that the Applicant had met his burden pursuant to N.J.S.A. 40:55D-70(c)(2). As to the bulk variances, the legal basis for the flexible (c) variances are if the benefits outweigh the detriments. The Board felt that all the benefits carry forward in connection with the application and all the bulk requirements are necessary to effectuate the project in an area where it should be situated. The Applicant can establish positive criteria because the application promotes the general welfare because the Property is particularly suitable for the proposed use. The project will result in, without limitation, improved aesthetics, and the design will be within the existing streetscape. Mr. Kellenberger and his family need more circulation space, given the physical challenges faced by their sons. Most of the improvements that are proposed are within the rear yard and are not really visible.

33. The Board further finds the Applicant has met his burden of proof in support of his request for a FAR variance pursuant to N.J.S.A. 40:55D-70(d)(4). Based on the required method of computation per Hillsdale's Zoning Ordinance, the FAR for the residence will be slightly above what is permitted by the Borough's Zoning Ordinance. In the absence of the grant of a (d) variance, the Applicant would be unable to make the improvements which are necessary to make the residence handicapped accessible for his sons who have disabilities. The proposed FAR, per Ms. Bogart, is consistent with the neighborhood. The site will appropriately

accommodate the proposed FAR in accordance with Randolph Town Center v. Township of Randolph, 324 N.J. Super. 412, 417 (App. Div. 1999).

34. The Board makes the following findings and conclusions with respect to this application:

- A. The Board finds that the application as presented will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the Borough's Zone Plan and Land Use Ordinance.
- B. The proposed construction will go toward the positive criteria. The Board further determined that the Property can accommodate the use and the site will be adequately parked. The improvements are necessary to accommodate the needs of the Kellenbergers, whose sons have disabilities and challenges.
- C. Further, the Board finds that using prudent zoning and planning principles, project will not negatively impact the existing neighborhood nor the community as a whole.
- D. The Board hereby determines that the overall objectives of sound and prudent zoning and planning principles are advanced by the granting of the application.
- E. The Board hereby determines that the Applicant has met his burden of proof to the satisfaction of the Planning Board for variance relief, as proposed by the Applicant.
- F. The Board also finds the proposed seepage pit will result in a net decrease in water runoff from the Applicant's property onto surrounding properties.
- G. The Board finds the use is permitted in the R-4 Residential Zone.
- H. The Board also finds that the application as presented will not substantially impair the intent and purpose of the Borough's Zone Plan and Zoning Ordinance.

I. The Board finds that using prudent zoning and planning principles, the request for the variances will not affect the existing neighborhood, nor the community as a whole. The Planning Board hereby determines that the overall objectives of sound and prudent zoning and planning principles are advanced by the granting of the application.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Hillsdale as follows:

1. The Applicant's application for variance for floor area ratio ("FAR") pursuant to N.J.S.A. 40:55D-70(d)(4) and (c) bulk variances is hereby granted, to wit:

- (a) Front yard setback: To portico – 27.2 feet proposed vs. 30 feet minimum required, a difference of 2.8 feet.
- (b) Floor area ratio: 33% proposed vs. 30% maximum permitted, a difference of 3% (322 SF).
- (c) Patio area vs. building footprint for side/rear setbacks: Patio area 74% vs. 20% permitted to infringe into rear/side yard setback areas.
- (d) Impervious coverage, total: 32.1% proposed vs. 30% maximum permitted, a difference of 2.1% (225 SF).
- (e) Footprint of decks and porches: Shall not exceed 20% of the gross principal dwelling area footprint vs. 59% of the footprint proposed, a difference of 39%.

2. The application is specifically conditioned upon any and all other approvals required by any governmental entity having jurisdiction over the development, including, but not limited to Bergen County Planning Board approval or waiver, Bergen County Soil Conservation District approval and NJDEP approval, to the extent applicable.

3. The Applicant shall comply with the reports of the Board Engineer and/or comments of the Board Engineer as stated on the record.

4. 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, and shall be responsible for all costs and fees associated therewith. Notwithstanding the approval granted by the Board, the Applicant shall obtain all other applicable approvals and comply with all applicable laws, codes, ordinances, regulations and the like as to the Property.

5. Before any permits are applied for, it is the responsibility of the owner to see if there are any open permits or violations and address these before a new permit can be issued.

6. When applying for the permits, a copy of the signed resolution and board-approved plans must accompany the permit application.

7. No certificate of occupancy will be issued unless all inspections have been performed, passed, and all prior approvals have been satisfied.

8. The Applicant shall maintain sufficient escrow funds as requested by the Borough of Hillsdale.

9. The Applicant shall obtain all appropriate and applicable approvals and permits as required from all governmental agencies having jurisdiction over the project or the subject matter of this application, shall comply with each and every requirement of every issued permit, and shall be responsible for all costs and fees associated with these approvals. Before any permits are applied for, the Applicant shall determine whether there are any open permits or violations for the Property and resolve any such issues to the satisfaction of the Construction Official. A signed Board resolution and Board-approved plans shall be submitted with all applications for permits.

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

11. The Applicant shall comply with the conditions of the Board and Board Engineer, as set forth herein and in the record.

12. The Applicant shall comply with all applicable laws and regulations, including the payment of the non-residential development fee, if applicable, pursuant to the Municipal Land Use Law.

13. The Applicant shall comply with the comments of the Board Engineer.

14. The Board Engineer shall work with the landscape architect to solidify the landscape plan to the satisfaction of Christopher P. Statile, PE.

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 variance for floor area ratio (“FAR”) pursuant to N.J.S.A. 40:55D-70(d)(4) and (c) bulk variances, as described herein, and the Applicant is 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 to the Applicant’s counsel, Duncan Prime, Esq.

MOVED BY:

SECONDED BY:

VOTE: FOR _____ AGAINST _____ ABSTAIN _____

MEMORIALIZATION VOTE:
MOVED BY:
SECONDED BY:

VOTE: FOR _____ AGAINST _____ ABSTAIN _____

APPROVED
Attest:

Meredith Kates, Secretary

Dewey Burleson, Chair

Joanne Miano, Vice-Chair

I certify that the foregoing is a true copy of the Resolution adopted on _____,
2020.

Dated: _____, 2020