

**BOROUGH OF HILLSDALE  
PLANNING BOARD  
RESOLUTION NUMBER 2023-06  
CASE NUMBER PZ-09-22**

**WHEREAS**, an application has been submitted by Frank and Fran Padovan (the “Applicants”) for Property known as 42 Parkview Drive, Hillsdale, New Jersey and identified as Block 1007, Lot 6 (the “Property”); and

**WHEREAS**, the Applicants applied for a bulk variance due to an installed above-ground pool not meeting the minimum required 10 foot rear yard setback; and

**WHEREAS**, the Applicant was not represented by counsel; and

**WHEREAS**, the Board considered the report of Christopher P. Statile, PE, dated November 21, 2022; and

**WHEREAS**, a public hearing was held on January 26, 2023; and

**WHEREAS**, the Applicants, Frank and Fran Padovan, testified at the hearing; and

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

1. Survey prepared by Christopher J. Lantelme, PE, LS of Lantelme Kurens & Associates, PC, 101 West Street, Hillsdale, NJ 07642 dated October 4, 2022.
2. A series of photographs of the site; 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 have 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 42 Parkview Drive, designated as Block 1007, Lot 6.
2. The Property is situated in the R-4 Zone District.
3. Lot 6 consists of 7,500 SF (0.17 acre) and is located on the north side of Parkview Drive, east of Reservoir Road in the R-4 Zone District (minimum lot size 7,500 SF).
4. The property is improved with a split-frame dwelling. A wood deck, paver patio, pool and fence are located behind the dwelling. A walkway is present on the property and a macadam driveway provides access to the dwelling from Parkview Drive. The property to the north (Lot 4) is owned by Veolia North America Water.

B. The Application

5. The Applicant has constructed an 18 foot diameter pool in the northeast corner (rear yard) of the property. The pool is 6.2 feet from the rear property line and 15.3 feet from the side property line.
6. According to the report of the Board Engineer, Christopher P. Statile, dated November 21, 2022, the Applicant requires the following variances:

### Proposed Variances

- (a) Swimming Pools, §310-55E: The swimming pool is located 6.2 feet from the rear property line, where a minimum of 10 feet is permitted.

### Existing Non-Conformities

- (a) Impervious Coverage: The impervious coverage is calculated at 37.9%, where a maximum of 30% is allowed.
- (b) Shed: The vinyl shed encroaches onto the neighboring property.

### C. The Hearing

8. Frank and Fran Padovan, as well as the Board Engineer, Christopher Statile, PE, were duly sworn prior to providing testimony to the Board. Mrs. Padovan testified that the property in question is located at 42 Parkview Drive, Hillsdale, NJ and the Applicants reside at the premises.

9. Mrs. Padovan testified that in applying for a permit to perform work on their deck and driveway, the Applicants were advised that they also needed a permit for the above-ground pool which was already installed at the site. She was advised that the pool was not the required 10 feet from the property line and that a variance would be required. The Applicants are before the Board to seek variance relief for the pool. The pool was installed many years ago.

10. Mr. Statile testified and reviewed his findings with the Board. He noted that the impervious coverage is 37.9%, where 30% is permitted. There is a shed on the property which appears to be over the property line. Mr. Padovan testified that the fence on the left side where the shed is located belongs to the neighboring property owner and was there when they bought the property and the shed goes to the fence. Mr. Statile recommended moving the shed over a little. Mr. Statile testified that the pool is located 6.2 feet from the rear property line, where 10

feet is required. The Applicants are seeking relief for the rear yard setback and for impervious coverage.

11. In response to a question from Mr. Statile, Mr. and Mrs. Padovan testified that no trees were removed during the installation of the pool.

12. Ms. Kates asked if the pool could be moved and the Applicants testified that the pool was built to utilize the pre-existing deck, which would not work if the pool was moved. They also noted that the property to the rear is reservoir property and will not be built on. Mr. and Mrs. Padovan explained that they have a special needs adult son and the yard and pool are his refuge. Ms. Kates asked about the impervious coverage and how much of it is caused by the deck. Mr. Statile stated that the deck is 203 SF of the impervious coverage, or 2.7% and they are over by 7.9%.

13. Mr. Raymond inquired as to when the pool was installed and Mr. Padovan responded he put it in either in 2004 or 2005. Mr. Alter asked if the home ever floods and was advised that it does not and is not in a flood zone.

14. The meeting was opened to the public and no one appeared either in favor of or opposed to the application.

15. Scott Raymond made a motion to approve the application, which motion was seconded by Ed Alter with a condition that the shed be moved over so it is completely on the Applicants' property. The application was approved by the Board by a vote of 7 to 0.

D. Justification for Relief

16. The Board further finds the Applicant has met his burden of proof in support of their variance request.

17. 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.
- 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 the burden of proof to the satisfaction of the Planning Board for variance relief, as proposed by the Applicant.
- F. The Board finds the use is permitted in the R-4 Residential Zone.
- G. 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.
- H. 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 and the Board grants the following relief:

- 1. The Applicants have been granted a rear yard setback variance for the pool.

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 Applicants shall comply with the comments contained in the report of the Board Engineer and as stated on the record. All conditions imposed by the Board in this resolution and on the record shall be complied with by the Applicants.

4. 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. Notwithstanding the approval granted by the Board, the Applicants 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 Applicants 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 Applicants shall maintain sufficient escrow funds as requested by the Borough of Hillsdale.

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

12. The Applicants 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 vinyl shed in the driveway will be moved 3 feet so it no longer encroaches on the adjacent property.

**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 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 the Applicants.

MOVED BY: Scott Raymond  
SECONDED BY: Ed Alter

VOTE: FOR 7 AGAINST 0 ABSTAIN \_\_\_\_\_

MEMORIALIZATION VOTE:

MOVED BY:

SECONDED BY:

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

APPROVED

Attest:

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

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

I certify that the foregoing is a true copy of the Resolution adopted on \_\_\_\_\_,  
2023.

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

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