

**BOROUGH OF HILLSDALE
PLANNING BOARD
RESOLUTION NUMBER 2021-15
CASE NUMBER PZ-02-21**

WHEREAS, an application has been submitted by Vartan Sayegh and Linda Leuffgen (the “Applicants”) for property known as 27 Orchard Lane, Hillsdale, New Jersey and identified as Block 407, Lot 5 (the “Property”); and

WHEREAS, the property is owned by the Applicants; 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 a bulk variances for front yard setback to front addition and rear yard setback, in order to construct both a first floor and a second level addition; and

WHEREAS, the Applicant was not represented by counsel; and

WHEREAS, Mayor Ruocco and Zoltan Horvath recused themselves from the hearing of this application; and

WHEREAS, the Board considered the reports of Christopher P. Statile, PE, dated March 8, 2021 and March 23, 2021; and

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

WHEREAS, a public hearing was held on May 13, 2021; and

WHEREAS, the application was presented at the Board’s May 13, 2021 hearing. Caesar Bustamante, AIA, 2250 Balmoral Avenue, Union, NJ 07083 was duly qualified and sworn, and testified at the May 13, 2021 hearing; and

WHEREAS, Linda Leuffgen provided testimony after being duly sworn; and

WHEREAS, Christopher P. Statile, PE (Board Engineer) was duly sworn and testified at the May 13, 2021 hearing; and

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

1. Architectural plan entitled “27 Orchard Lane, Borough of Hillsdale, NJ 07642”, prepared by Caesar Bustamante, AIA, 2250 Balmoral Avenue, Union, NJ 07083, dated January 18, 2020, revised to March 22, 2021, consisting of the following:
 - Drawing A-100.00: Plot Plan, Tables, Zoning and Notes;
 - Drawing A-200.00: Cellar and 1st Floor, Demolition Plans and 200 Ft. Property Owner’s List;
 - Drawing A-300.00: Cellar, 1st Floor, 2nd Floor and Roof Construction Plans;
 - Drawing A-400.00: Elevations;
 - Drawing A-500.00: Section, Plumbing, Gas and Water Piping Risers, Notes and Details; and
 - Drawing E-100.00: Cellar, 1st Floor, 2nd Floor and Roof Electric Plans and Notes.
2. Property Survey prepared by Thomas D. Strong, LS, of Schwerzler Land Surveying, LLC, 440 Market Street, Elmwood Park, NJ 07407, dated October 8, 2020; 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 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 27 Orchard Lane, designated as Block 407, Lot 5.
2. The property is situated in the R-2 Zone District.
3. Lot 5 consists of 10,816 (0.25 acre) and is located on the northern side of Orchard Street in the R-2 Zone District (minimum lot size 15,000 SF).
4. The lot is improved with a one-story frame dwelling. Various paver areas are located on the lot. An asphalt driveway provides access from Orchard Lane to the dwelling.
5. The dwelling encroaches into the front and rear yard setback areas. The lot is also substandard for lot area and lot depth.

B. The Application

6. The Applicant proposes to construct both a first-floor and a second-level addition. The first level addition consists of 63 SF and is proposed for the front of the dwelling. The second-level addition consists of 1,427 SF and will contain bathrooms and bedrooms.
7. After the proposed construction to the dwelling, same will contain a garage, kitchen, living room, half bathroom and a bedroom on the first level. The second level will contain three bedrooms and two full bathrooms.

8. The proposed improvements will exceed the maximum permitted floor area ratio (“FAR”) and the addition encroaches into the required setback area.

9. According to the report of the Board Engineer, Christopher P. Statile, dated March 23, 2021, the Applicant requires the following variances:

Proposed Variances

- (a) Floor area ratio: 28.74% (3,109 SF) proposed vs. 27% (2,920 SF) maximum permitted, a difference of 1.74% (189 SF).
- (b) Front Yard Setback to Front Addition: 33.1 feet proposed vs. 50 feet required, a difference of 16.9 feet.
- (c) Rear Yard Setback: 37.1 feet proposed vs. 50 feet required, a difference of 12.9 feet. Although the “sun room” is closer to the rear lot line (30.5 feet), it is not considered a new variance. The second-level addition is not being constructed over the sunroom.

Existing Variances

- (d) Lot Area: 10,816 SF existing vs. 15,000 SF required, a difference of 4,184 SF.
- (e) Lot Depth: 105 feet existing vs. 150 feet required, a difference of 45 feet.
- (f) Front Yard Setback: 33.1 feet existing vs. 50 feet required, a difference of 16.9 feet.
- (g) Rear Yard Setback: 30.5 feet existing vs. 50 feet required, a difference of 19.5 feet.

C. The Hearing

10. Christopher P. Statile, PE, the Board Engineer, outlined the application to the Board. The Applicants seek to place additions on their single-family residence at 27 Orchard Lane that will result in certain variances. The FAR will increase to 28.74%, where 27% is permitted, a difference of 1.74%, or 189 SF. The front yard setback to the front addition is 33.1 feet where 50 feet is required. The rear yard setback to the new addition is 37.1 feet, where 50 feet is required. Mr. Statile stated that this is an undersized lot at 10,800 SF, where 15,000 SF is required. The lot is 105 feet deep, where 150 feet is required. The existing front yard setback is 33.1 feet and the existing rear yard setback is 30.5 feet.

11. The Board professionals and the Applicants were duly sworn prior to providing testimony regarding the subject application.

12. Linda Leuffgen, one of the Applicants, testified that they are seeking to increase the living space of their home. She works from home and the Applicants are hoping to start a family and desire additional space.

13. The first witness to testify was Caesar Bustamante, AIA. Mr. Bustamante's credentials as a licensed professional architect of the State of New Jersey were accepted by the Board and he was duly sworn prior to providing testimony. He testified that the Applicants seek to construct a first floor addition and add a second-level addition to their one-story home. The Board noted that there are pre-existing non-conforming conditions with regard to the lot. However, during the hearing, there was discussion that a rear yard setback variance is also required. Mr. Bustamante testified that the Applicants are seeking variances for FAR and front yard setback. The owners do not know if variances were previously granted for the existing non-conformities.

14. The Board noted that the proposed FAR is approximately 100 SF over the permitted amount and asked if the Applicants could bring the proposal into compliance. Mr. Bustamante stated that the plans were prepared based on the footprint of the dwelling. It is the porch overhang that provides for the excess FAR. Reducing the additions to comply with the FAR would create a more difficult build for the Applicants. The proposal before the Board is more aesthetically pleasing than it would be by making any reduction to the plans. Ms. Leuffgen clarified that the Applicants propose to bump out the front door slightly, as it opens into the kitchen, to create a small entryway when entering the home.

15. The Board Attorney asked for clarification as to the number of variances requested by the Applicants, as Mr. Bustamante testified as to two variances and Mr. Statile's report outlines three. Mr. Bustamante apologized for the error and stated that the Applicants also seek a rear yard setback variance. Ms. Nabbie noted that the zoning table calculations with regard to the rear yard setback are incorrect on Drawing A-100.00 of the plans submitted to the Board and that, if approved, revised plans showing the correct rear yard setback to the addition of 37.1 feet are to be submitted as a condition of approval.

16. The Board asked for confirmation that the sun room and garage are existing and the Applicants confirmed same. The Applicant do not plan to remove any existing trees or vegetation. In response to a question from the Board, the Applicants advised that there will not be a bedroom in the basement, and that the basement window is for egress in the event of emergency. There is no bathroom in the basement.

17. The Board requested the Applicants install a 1,000 stormwater seepage pit to prevent possible future flooding issues, and the Applicants agreed to same as a condition of approval.

18. The Applicants stated they would be willing to remove the asphalt driveway and replace it with peat gravel to reduce the impervious coverage, as long as still had the ability to get a car into the garage. The Applicants confirmed that no trees will be removed.

19. There were no additional questions or comments from the Board members or Board professionals. There were no members of the public appearing with regard to the application.

20. The Applicants applied for a floor area ratio variance pursuant to N.J.S.A. 40:55D-70d(4). The Board determined that the Applicants 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. The Applicants agreed to install a seepage pit.

D. Justification for Relief

21. The Board further finds the Applicants have met their burden of proof in support of their 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 Applicants would be unable to make the improvements. The proposed FAR, is consistent with the neighborhood. The lot is undersized. 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).

22. 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 proposed additions.
- 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 Applicants have met their burden of proof to the satisfaction of the Planning Board for variance relief, as proposed by the Applicants.
- F. The Board finds the use is permitted in the R-2 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 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), to wit:

- (a) Floor area ratio: 28.74% proposed vs. 27% maximum permitted, a difference of 1.74% (189 SF).
- (b) Front yard setback to front addition: 33.1 feet proposed vs. 50 feet required, a difference of 16.9 feet.
- (c) Rear yard setback: 37.1 feet proposed vs. 50 feet required, a difference of 12.9 feet.

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 reports of the Board Engineer and as stated on the record. All conditions imposed by the Board, as stated herein 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 Applicants shall install a 1,000 stormwater seepage pit.

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

15. Revised plans were submitted by the Applicants revising the zoning table and depicting the correct rear yard setback of 37.1 feet on Drawing A-100.00 prior to adoption of the memorializing resolution.

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), front yard setback to front addition and rear yard setback, 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.

MOVED BY: Scott Raymond
SECONDED BY: Meredith Kates

VOTE: FOR 7 AGAINST 0 ABSTAIN _____

MEMORIALIZATION VOTE:
MOVED BY:
SECONDED BY:

VOTE: FOR _____ AGAINST _____ ABSTAIN _____

APPROVED
Attest:

Meredith Kates, Secretary

Dewey Burleson, Chair

Stephen Riordan, Vice-Chair

I certify that the foregoing is a true copy of the Resolution adopted on _____,
2021.

Meredith Kates, Secretary

Dated: _____, 2021