

**BOROUGH OF HILLSDALE
PLANNING BOARD**

**RESOLUTION NUMBER 2021-
CASE NUMBER PZ-03-21**

WHEREAS, MR. AND MRS. JUSTIN WHITE (hereinafter the “Applicant”) the being owner of, 934 Hillsdale Avenue, located in the Borough of Hillsdale, County of Bergen, State of New Jersey (hereinafter the “Borough”), said premises also being known as, Block 501, Lot 2 (hereinafter the “Site”) as indicated on the Borough’s Tax Assessment Map, has applied to the Borough’s Planning Board (hereinafter the “BOARD”), seeking variance relief to permit a five-foot-high fence to be located within the front yard.

WHEREAS, Applicant has submitted various documents which were considered by BOARD including:

1. Planning Board Application Form with narrative, signed by Justin White, dated February 28, 2021, as supplemented for completeness review on April 20, 2021;
2. Site survey prepared by Matarazzo Engineering, LLC, dated November 16, 2020; and
3. Eight (8) photographs of Site.

WHEREAS, the professional reports and all other memoranda from Borough’s agencies and officials are incorporated herein and made a part hereof by reference in conjunction with this application as if set forth verbatim:

1. Zoning denial letter dated January 7, 2021; and
2. Planning Memorandum prepared by Christopher P. Statile, P.A., dated May 3, 2021.

WHEREAS, the Applicant seeks the following variance relief from the Borough’s Zoning Ordinances:

1. Section 310-56 (B)- To permit a five-foot-high fence to be located within the front yard-setback where no fence located in the front-yard setback shall exceed four-feet in height.

WHEREAS, the BOARD determined it had jurisdiction and upon due notice as required by law, a public hearing was conducted on July 8, 2021

NOW, THEREFORE, BE IT RESOLVED BY THE BOROUGH OF HILLSDALE PPLANNING BOARD that the BOARD hereby makes the following findings of fact:

1. The Site is located in the R-2 Zone District, which permits single-family homes on 15,000 square-foot lots.

2. The Site is located at the northeastern corner of Hillsdale Avenue at the intersection with Apple Tree Lane and consists of 15,000 square feet (0.34-acres).
3. The Site is improved with a two-story frame dwelling with frontage on Hillsdale Avenue. An asphalt driveway provides access from Hillsdale Avenue to the garage. The dwelling has a deck and a side covered porch. A detached masonry garage and shed are both located on eastern side of the Site. An existing fence is located on the property line between the Site and Lot 18, which is the adjacent lot located on Hillsdale Avenue.
4. As a corner lot, the Site has two frontages and two front-yard setbacks. If the primary front-yard setback is compliant to the zoning ordinance, the other, secondary front-yard setback is reduced to 15 feet. For this Site, therefore, one of the front-yard setbacks will not be compliant with the Borough Ordinance.
5. The Applicant proposes to install a five-foot-high fence along the perimeter of the Site.
6. The Applicant presented testimony in support of the Application. The Applicant was sworn, qualified, and accepted by the BOARD as a fact-witness.
7. The Applicant testified the Site is a corner lot with two front-yard designations. The Applicant seeks to install a five-foot-high fence in the effective rear yard and the effective side yard.
8. The Applicant testified that the property slopes downward toward Apple Tree Lane. As a result, a four-foot-high fence would be inadequate to enclose the yard. Also, the 50-foot setback requirement from Apple Tree Lane would significantly reduce the usable rear yard by more than half.
9. The Applicant further noted they have a dog that can hurdle a smaller fence and are asking for an additional variance to permit the fence to be five-feet high. The Applicant noted Hillsdale Avenue is a busy road with a 40-mph speed limit and fear the dog could escape the yard and be injured.
10. The Applicant testified the fence will run along Apple Tree Lane and end at the rear corner of the dwelling.
11. The Applicant further testified the fence will be constructed of black aluminum and will be open slotted. The Applicant agreed, as a condition of approval, a solid privacy fence design would require BOARD additional review and approval.
12. Moreover, the Applicant noted that no trees would be removed as part of the Application, however, the hedgerow along Hillsdale Avenue would be removed to create a better line-of-sight for vehicles negotiating the intersection.

WHEREAS, the public was given the opportunity to present sworn testimony and none was so produced.

NOW, THEREFORE, BE IT RESOLVED BY THE BOROUGH OF HILLSDALE PLANNING BOARD the BOARD makes the following findings of fact and conclusions of law:

1. The Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70c provides the Board with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain proofs which are enunciated in the statute. Specifically, an applicant may be entitled to relief if this specific parcel is limited by exceptional narrowness, shallowness or shape. An Applicant may show that exceptional topographic or physical features exist that uniquely affect a specific piece of property. Further, the applicant may also provide evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Those categories specifically enumerated above constitute the positive criteria necessary in order to obtain “bulk” or C variance relief.
2. Moreover, the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70c (2) further provides the Board with the power to grant variances based on whether the Applicant’s proofs advance the purposed of the MLUL by the deviation from the zoning ordinance requirements and if the benefits of the deviation from the zoning ordinance requirements substantially outweigh any detriment.
3. In addition, the applicant must show that the proposed variance relief sought will not have a substantial detriment to the public good and further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. See, Jacoby v Englewood Cliffs Zon. Bd. Of Adjustment, 442 N.J. Super. 450, 471 (App. Div. 2015).
4. This is known as the negative criteria.
5. It is only in those instances when the Applicant has satisfied that the positive criteria outweigh the negative criteria can relief be granted.
6. The burden of proof rests upon the Applicant to establish these criteria.
7. After a review of the record evidence, the BOARD finds the Applicants have satisfied its burden of proof pursuant to the N.J.S.A. 40:55D-70c (1).
8. The BOARD finds the Site is a corner lot, which results in two front-yard designations. Also, the BOARD finds the Site’s topography slopes from east to west toward Apple Tree Lane, the location where the fence is proposed. The BOARD

finds the slope renders the four-foot height requirement untenable for the proposed location.

9. Also, the BOARD finds as a corner lot, the Site has two frontages and two front-yard setbacks. The BOARD finds that no matter the designation, one of the front-yard setbacks will not be compliant with the Borough Ordinance.
10. The BOARD the Applicant has satisfied its burden of finds that exceptional topographic and physical features exist that uniquely affects the Site. Further, the BOARD finds the Applicant has satisfied its burden of proof that exceptional and extraordinary circumstances exist which uniquely affects the Site and the existing dwelling. The BOARD finds the strict application of the Borough's Zoning Ordinance results in a peculiar and exceptional practical difficulty and exceptional and undue hardship upon the Applicant.
11. In addition, the BOARD finds the variance relief sought will not have a substantial detriment to the public good and further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance.
12. The BOARD finds the proposed fence will in a location so as not to create line-of-sight issues for passing motorists. The BOARD finds he fence will end even with the rear of the existing dwelling away from the intersection. The BOARD finds the fence will consist of open slots.
13. The BOARD also notes the Applicant has agreed to remove the existing hedgerow located on Hillsdale Avenue to further alleviate any potential for visual obstructions to vehicles navigating the intersection
14. Finally, the BOARD notes that no member of the public spoke in opposition to the granting of the variance relief.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Hillsdale Planning Board that the Applicant is granted hereby variance relief pursuant to N.J.S.A. 40:55D-70c (1) to permit installation of a five-foot-high fence to be located in the designated front yard, subject to the following conditions:

1. The granting of this relief shall not be construed or eliminate the satisfaction of any other requirements of the zoning ordinance or requirements of the agencies, boards, or authorities of the Township, County or State;
2. All improvements are to be performed in accordance with testimony provided to the BOARD;
3. The Applicant shall obtain all necessary permits and pay all fees prior to commencing any modifications to the Site;

4. The Applicant shall install an open slotted fence. Should the homeowner ever seek to install a solid privacy fence the homeowner must submit a new application for variance relief;
5. The Applicant shall remove the existing hedgerow located on Hillsdale Avenue;
6. Any ambiguities regarding the interpretation of this Resolution shall be resolved by the BOARD upon due notice to the public.

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 relief pursuant to N.J.S.A. 40:55D-70(c)(1), as set forth herein; and, further, the Secretary of the Board is authorized to send copies of this Resolution to the Construction Code Official and to the Applicant.

MOVED BY:
 SECONDED BY:

VOTE: FOR 7 AGAINST 0 ABSTAIN

MEMORIALIZATION VOTE:
 MOVED BY:
 SECONDED BY:

VOTE: FOR AGAINST ABSTAIN

APPROVED
 Attest:

 Meredith Kates, Secretary

 Dewey Burleson, Chair

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

 Meredith Kates, Secretary

Fred