

**BOROUGH OF HILLSDALE
PLANNING BOARD
RESOLUTION NUMBER 2022-18
CASE NUMBER PZ-05-22**

WHEREAS, an application has been submitted by Roger Gross (the “Applicant”) for property known as 271 Pascack Road, Hillsdale, New Jersey and identified as Block 605, Lot 17 (the “Property”); and

WHEREAS, the Applicant applied for minor subdivision approval and bulk variances to subdivide Lot 17 into two lots; and

WHEREAS, the Applicant was represented by Stephen P. Sinisi, Esq. (“Mr. Sinisi”), Law Offices of Stephen P. Sinisi, Esq., 2 Sears Drive, Suite 204, Paramus, NJ 07652; and

WHEREAS, the Board considered the report of Christopher P. Statile, PE, dated May 9, 2022; and

WHEREAS, the Board considered the Police Department e-mail comments dated August 23, 2022; and

WHEREAS, public hearings were held regarding the application on June 28, 2022 (held remotely via Zoom) and August 23, 2022 (held in-person); and

WHEREAS, the Applicant’s Engineer, Sean McClellan, PE (“Mr. McClellan”) of Lantelme Kurens and Associates, 101 West Street, Hillsdale, NJ and the Applicant’s Planner, Peter Steck, PP (“Mr. Steck”), 80 Maplewood Avenue, Maywood, NJ, were duly sworn and qualified and provided testimony with regard to the subject application; and

WHEREAS, the Board Engineer, Christopher P. Statile, PE (“Mr. Statile”) and the Board Planner, Thomas Behrens, PP (“Mr. Behrens”) were duly sworn and testified with regard to the application; and

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

1. Minor Subdivision Plan entitled “Minor Subdivision for Roger Gross, 271 Pascack Road, Lot 17, Block 605, Borough of Hillsdale, Bergen County, NJ”, prepared by Christopher Lantelme, PE of Lantelme Kurens & Associates, PC, 101 West Street, Hillsdale, NJ 07642, dated February 22, 2022, consisting of one sheet;
2. Site Plan entitled “Conceptual Site Plan for Roger Gross, 271 Pascack Road, Lot 17, Block 605, Borough of Hillsdale, Bergen County, NJ”, prepared by Christopher Lantelme, PE, dated May 20, 2022, consisting of one sheet;
3. Planning Memorandum prepared by Peter G. Steck, PP of 80 Maplewood Avenue, Maplewood, NJ 07040, dated July 13, 2022; 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 271 Pascack Road, designated as Block 605, Lot 17.
2. The Property is situated in the R-2 Residential Zone District.
3. The Property consists of 57,109 square feet (1.31 acres) and is located on the north side of Pascack Road, west of the Jolen Drive intersection in the R-2 Zone District (minimum lot size 15,000 square feet).
4. The Property is irregularly shaped and is improved with a two-story frame dwelling and two accessory structures. A long gravel drive provides access from Pascack Road to the dwelling.
5. The existing dwelling encroaches into the required rear yard setback area.

B. The Application

6. The Applicant proposes to subdivide the Property into two lots identified as Proposed Lots 17 and 17.01. The existing dwelling and accessory structure will be located on Proposed Lot 17.01, which will contain 39,106 square feet. Proposed Lot 17 will front on Pascack Road and contain 16,518 square feet. No new structures are shown on Proposed Lot 17. A 13.5-foot road widening easement to Bergen County is shown along the frontage of Proposed Lot 17.
7. Both proposed lots will exceed the minimum lot area requirements and meet most other bulk regulations. However, Proposed Lot 17.01 will not have frontage on a public road. An access easement, measuring approximately 150 feet in length, is proposed in the area of the existing gravel driveway along the eastern (right side) property line of Proposed Lot 17. The easement will provide access from Pascack Road to Proposed Lot 17.01.
8. According to Mr. Statile's report dated May 9, 2022, the Applicant requires the

following variances:

- (a) Proposed Lot 17.01 – Frontage, Ordinance 310-55B: No frontage on a public road.
- (b) Proposed Lot 17.01 – Planning Variance Pursuant to N.J.S.A. 40:55D-35: Building lot does not abut a street.
- (c) Proposed Lot 17.01 – Rear Yard Setback: 43.3 feet is existing, where 50 feet is required, a difference of 6.7 feet. This is an existing nonconformity.
- (d) Proposed Lot 17.01 – Frontage: 0 feet proposed, where 100 feet is required, a difference of 100 feet.

C. June 28, 2022 Remote Public Hearing

9. The Applicant’s Attorney, Mr. Sinisi, addressed the Board and stated he represents the Applicant, Roger Gross, with regard to the subject minor subdivision application and bulk variance requests. Mr. Sinisi stated he reviewed Mr. Statile’s May 9, 2022 review letter and agrees with the initial findings. As stated in Mr. Statile’s report, the Applicant proposes to subdivide the Property into two lots identified as Proposed Lots 17 and 17.01 and that the existing dwelling and accessory structure will be located on Proposed Lot 17.01, which will contain 39,106 square feet. Proposed Lot 17 will front on Pascack Road and will contain 16,518 square feet. No new structures are proposed for Proposed Lot 17. A 13.5-foot road widening easement is to be provided to Bergen County along the frontage of Proposed Lot 17. According to Mr. Statile’s report, both lots will exceed the lot area requirement of the Borough and will meet most other bulk regulations. Proposed Lot 17.01 will not have frontage on a public road and the Applicant seeks relief for same.

10. The Applicant's two witnesses, Mr. McClellan and Mr. Steck, were duly sworn after their qualifications were accepted by the Board.

11. Board Member Dan Friedman recused himself from the hearing of the subject application.

12. The Board first entertained testimony from the Applicant's Engineer, Mr. McClellan. Mr. McClellan testified that he prepared the subdivision plan and the conceptual site plan for the application and that he physically visited the site as part of the preparation of the plans. Mr. Sinisi requested that the two-page subdivision plan dated February 22, 2022 be marked as Exhibit A-1. Mr. McClellan placed the subdivision plan on the screen for viewing by the meeting participants. Mr. McClellan described the Property and noted it is over 57,000 square feet, where 15,000 square feet is required under the Ordinance. Mr. McClellan testified that the Property is approximately 110 feet wide on Pascack Road and then widens out toward the rear. The existing home and garage are located at the rear of the site. There is a rear yard setback of 43.3 feet, where 50 feet is required. The existing non-conformity will remain. Mr. McClellan identified the proposed subdivision line. Proposed Lot 17.01 will be 39,106 square feet and Proposed Lot 17 will be 16,500 square feet. The existing gravel driveway will remain. The Applicant proposes a 20-foot-wide easement to allow access to Proposed Lot 17.01 from Pascack Road. Mr. McClellan testified that each of the two new lots will exceed the minimum lot area of 15,000 square feet required by the Borough Ordinance.

13. Mr. McClennan further testified as to the zoning table included as part of the Subdivision Plan. The existing rear yard setback on the Property is 43.3 feet, this condition will remain on Proposed Lot 17.01, where 50 feet is required. The lot frontage for Proposed Lot 17.01 is 0 feet, where 100 feet is required. Two additional variances are required for Proposed

Lot 17.01: (1) for not fronting on a public street, and (2) the building lot does not abut a street. A one-sheet plan dated May 9, 2022 prepared by Lantelme Kurens and Associates was submitted to Mr. Statile noting that there are no streams located within 500 feet of the subject property. Mr. Sinisi marked this one-sheet plan as Exhibit A-2.

14. Mr. McClellan then placed the plan entitled “Conceptual Site Plan for Roger Gross” prepared by Lantelme Kurens and Associates dated May 20, 2022 on the screen for viewing. This plan was prepared in response to Item No. 3 under General Comments of Mr. Statile’s May 9, 2022 review letter. The Conceptual Site Plan shows Proposed Lot 17, which will consist of approximately 16,588 square feet. The Applicant proposes to construct a typical, conforming house on Proposed Lot 17. Mr. McClellan further testified that the Conceptual Site Plan shows 50 foot front and rear yard setbacks and 10 foot side yard setbacks. A house on this size lot typically requires two 1,000 gallon seepage pits, which will be provided. The Conceptual Site Plan depicts a garage with a driveway that would tie into the existing driveway that runs from Pascack Road to the existing house, which will remain on Proposed Lot 17.01. Mr. McClellan explained that the new house will require sewer, gas and water lines and are depicted on the plan. Mr. McClellan opined that there is sufficient space for emergency vehicles to access the existing home on Proposed Lot 17.01, as well as adequate turning radius. Mr. McClellan further testified as to Proposed Lot 17.01, which contains an existing two-story frame dwelling with a driveway and detached garage. The existing house is not visible from Pascack Road. As you drive further into the existing driveway the existing dwelling becomes visible. The Conceptual Site Plan dated May 20, 2022 was marked as Exhibit A-3.

15. Mr. McClellan testified that the Applicant will address and comply with the comments of Mr. Statile’s May 9, 2022 letter. Mr. McClellan opined that the subdivision will

not create a substantial detriment to the public good or impair the Applicant's ability to comply with the Borough Ordinance. An easement will be entered into to continue the use of the gravel driveway to access the existing dwelling on Proposed Lot 17.01. The proposed new dwelling will meet the Borough's requirements as to setbacks, impervious coverage, height, building coverage and floor area ratio. No bulk variances will be required.

16. Mr. Statile advised that he would like to see the utilities going to the existing dwelling depicted on the plan. Mr. Statile further requested that easements be entered into for the areas surrounding the existing or new utility poles which are going to be utilized for the utility lines so there is no issue with PSE&G accessing them for any needed repairs. In addition, Mr. Statile stated that Veola (formerly Suez) does not like to see long water lines. They may require a meter be placed near Pascack Road. Mr. Statile requested a letter from Veola that they will provide water service and that the water lines be depicted on the plans. Mr. Statile advised he will also require something in writing from both the Police and Fire Departments that they do not oppose the proposed subdivision and will have no problem accessing either of the two proposed lots in the event of an emergency. Mr. Sinisi noted that copies of the application were submitted to both Departments and they have not responded in any way. Mr. Statile stated that he would reach out to the two Departments for their referrals. Mr. Statile raised concerns that, in the event of an emergency, it will be difficult for numerous emergency vehicles to access the rear lot as there is no street frontage. Mr. Sinisi noted that access to the house at the rear of the site is an existing condition and that there will be an easement guaranteeing access in the future. Mr. Statile wants something on the record from the Police and Fire Departments. Mr. Statile commented that stormwater management is required for both proposed lots. Mr. Statile

requested that stormwater management be a condition of any approval and that the seepage pits be provided for any new construction.

17. Mr. Behrens reiterated Mr. Statile's comment regarding the necessity of receiving comments from both the Police Department and the Fire Department. Mr. Behrens stated that same is required by statute to ensure that emergency vehicles have sufficient access to a lot that is not accessed directly from a public street. Mr. Behrens further agreed with Mr. Statile's comments regarding the utilities. Mr. Behrens asked Mr. McClellan the width of the existing driveway at its narrowest point. In response to Mr. Behrens' question, Mr. McClellan testified that the driveway is approximately 9 feet at the narrowest point. Mr. Behrens requested that the Police and Fire Departments to confirm that is an acceptable width or if same must be made wider. Mr. Behrens also noted that the driveway, as it nears Pascack Road, has a 0 foot setback. Mr. Statile advised there is no required setback for driveways. Mr. Behrens stated that the lot has 110 feet of frontage along Pascack Road, within which a 20-foot-wide easement is proposed to provide access to the rear of the lot. Mr. Behrens suggested to provide 10 feet of the full driveway width as part of the rear lot and reduce the easement to 10 feet, which would eliminate the need for the variance for the rear lot not having street frontage. Mr. Sinisi requested that Mr. Behrens present that question to Mr. Steck upon completion of his testimony. Mr. Behrens also recommended that the Board, if the application is approved, require a deed restriction prohibiting any current or future owners from further subdividing the lot. Mr. Behrens also recommended it be a condition of approval that the easement agreement be provided for review and approval of the Board Engineer and Board Attorney prior to recordation with the County of Bergen. Mr. Behrens also noted that the Property is very steep and believes there may be privacy issues with the residents of Proposed Lot 17.01 being able to view Proposed Lot 17.

18. Mr. Statile hypothesized as to possible issues with the easement. There could also be issues with regard to impervious coverage, fencing, driveway maintenance, plowing, etc. if the property owners do not get along.

19. There were no comments or questions from the Board Attorney.

20. The Board raised concerns regarding parking along the shared driveway, no on-street parking on Pascack Road, the width and condition of the existing driveway, and emergency access to Proposed Lot 17.01. The Board raised additional concerns regarding stormwater management and the steep slope of the Property.

21. The Board raised additional concerns regarding receipt of referrals from the Police and Fire Departments.

22. In response to questions from the Board, Mr. McClellan testified that two vehicles could fit in the driveway on Proposed Lot 17 in the Conceptual Site Plan.

23. The meeting was opened to the public to ask questions of the Applicant's Engineer. George Kritzler, 275 Pascack Road, Hillsdale, New Jersey wanted to comment regarding the subject application. He was advised that at this point in the hearing he could only ask questions of the Applicant's Engineer and would be provided the opportunity to comment later in the hearing.

24. Tessie Miranda and Fabrizio Gambino of 251 Pascack Road, Hillsdale, New Jersey asked about the plan for what is depicted as "garage" on the Conceptual Site Plan and Mr. McClellan advised that it is an existing garage and will remain. Mr. Gambino asked for more specifics as to the dwelling on Proposed Lot 17, as the plans do not give details of the building. Mr. Sinisi responded that, at this point in time, the Applicant merely seeks to subdivide the property into two lots. There are no specific plans to build and the proposed dwelling is noted on

the plans to provide a building envelope as to where a potential dwelling would be built in the future.

25. There were no other members of the public seeking to ask questions of Mr. McClellan.

26. Based on the foregoing comments, Mr. Sinisi made three comments for the record. Mr. Sinisi opined that the Applicant was being put at a disadvantage because his team had not received comments back from the Borough's Departments that have had an opportunity to provide same. Mr. Sinisi noted that Mr. Behrens had numerous questions and comments regarding the application and would have liked to have those in writing prior to the hearing so the Board professionals could have responded appropriately. The Board Attorney advised Mr. Sinisi that the Board provided all of reports prepared by its professionals and clarified, for the record, that the Board Planner had not prepared a report with regard to the subject application. As to Mr. Statile's comments regarding the utility pole easements, Mr. Sinisi stated he is amenable to preparing such a document for review by the Board Engineer and Board Attorney.

27. The Board then entertained testimony from the Applicant's Planner. Mr. Steck's credentials were accepted by the Board and he was duly sworn at the onset of the hearing. Mr. Steck testified he was engaged to coordinate a potential subdivision of the property, which involved seeing the property on several occasions, walking the property, discussing issues with the Applicant and reviewing the Zoning Ordinance and Master Plan of the Borough. Mr. Steck also identified the area surrounding the site. Mr. Steck testified that the application is to divide the subject property into two lots. The rear larger lot will contain the existing dwelling and the existing access driveway. There is a proposed new front lot which would receive a new (not yet designed) dwelling to be constructed by a new purchaser, which lot will be fully conforming.

This subdivision is intended to create one new buildable lot, which is the lot closest to Pascack Road. Rather than create a traditional flag lot, Mr. Steck had recommended to the Applicant the use of the driveway easement. Mr. Steck testified that there are two pre-existing non-conforming setbacks for rear yard to the existing dwelling and the side setback to the existing garage. All other variances are triggered by the fact that the proposed back lot does not have direct frontage on Pascack Road.

28. Mr. Steck testified that the Ordinance provides that every lot have frontage on a public street, requiring a minimum frontage of 100 feet. There are parallel sections of the Municipal Land Use Law, N.J.S.A. 40:55D-35 and 36, which state that when requesting a building permit for a lot that does not have frontage on a street, the Applicant must demonstrate adequate access for emergency vehicles. Mr. Steck opined that this application is the reverse. The Applicant is not requesting a building permit for the lot that does not have frontage on the street but the building permit will be requested for the lot in front which is fully conforming. A variance is clearly needed for lot frontage of less than 100 feet and not fronting at all on a public street.

29. Mr. Steck testified that he reviewed Mr. Statile's May 9, 2022 review letter. Mr. Steck agrees that both proposed lots exceed the minimum lot area required and meet most other bulk requirements and regulations of the Borough other than those stated in Mr. Statile's letter. Mr. Steck stated he prepared an exhibit with regard to the application. Mr. Steck placed the five-page exhibit, marked as Exhibit A-4, on the screen for viewing. This exhibit was prepared by Mr. Steck on June 27, 2022. Page 1 is the current tax map. Page 2 is an aerial photograph on which the subject property is highlighted. Page 3 provides commentary as to the Applicant's proposal. Pages 4 and 5 are photographs taken by Mr. Steck on June 26, 2022, which adequately depict the

existing conditions of the Property. The first photograph on Page 4 shows the driveway on the Property from Pascack Road. There is a stockade fence on the right side. This part of the Property is not that steep. There is overgrowth to the south or left side of the driveway. This is the current access to the dwelling at the rear of the property. Driving up the driveway you will encounter the garage depicted in the second photograph on Page 4. This garage is approximately 2 feet from the property line. The last two photographs on this page are the existing dwelling on the Property. The first photograph on page 5 shows the existing dwelling and the land beginning to slope up to the west, which then slopes significantly. The Property is fairly flat until you get to the existing house. The second photograph shows a view of the vacant area of the Property looking north. The third photograph depicts the vacant area of the Property facing south. The fourth photograph shows the existing garage and the area proximate to the fence. The last two photographs are taken from Pascack Road approaching the Property from the north and from the south, respectively.

30. Mr. Steck returned to Page 1 of Exhibit A-4 and testified that the subject lot is highly irregular. The Property is 3.8 times the minimum lot size for the zone district. The bulk of the land is in the rear of the Property, which is the part that is already developed. The Property is located in the R-2 Zone. Page 2 of Exhibit A-4 is a 2020 infrared aerial photograph of the Property, so the trees are not visible. The Property is outlined and Mr. Steck approximated where the subdivision line would be. The existing dwelling and garage are in the rear portion of the Property and the front portion is where a potential new dwelling would be constructed.

31. Mr. Steck testified as to Page 3 of Exhibit A-4, which shows the existing dwelling does encroach on the rear setback, which is not changing. The sheet depicts the existing garage, which has an existing non-conforming side yard setback, which will remain. Relief is required

from N.J.S.A. 40:55D-35 and 36, which is triggered when applying for a building permit for a lot that does not front on a public street. Mr. Steck testified that this is an unusual situation because the building permit that will be required is not for the back lot. Mr. Steck opined that access to the back lot will actually be improved because the driveway will be infilled to provide adequate room for emergency vehicles. Mr. Steck testified that it was his recommendation to the Applicant that, rather than creating a typical flag lot with a 10 foot strip of land to Pascack Road, the driveway access be accommodated via a 20-foot easement. The Proposed Lot 17 (the front lot) would be conforming. A 10-foot strip of land added to Proposed Lot 17.01 would still preserve sufficient lot frontage on Proposed Lot 17, but Mr. Steck did not find 10 feet to be sufficiently wide for a driveway. Page 3 of Exhibit A-4 shows a sample house on Proposed Lot 17 to demonstrate that it could fit. Mr. Steck testified that the purpose of the easement is to guarantee continued access to the rear lot. Mr. Steck testified he believes the Applicant would agree to a stipulation that the rear lot not be further subdivided. Mr. Steck stated that the Applicant is flexible regarding how to handle the driveway. Mr. Steck opined that not having an additional curb cut is generally a good thing. Mr. Steck understood Mr. Statile's concern that sometimes property owners do not get along with each other. Whether the solution is a shared driveway or side-by-side driveways, that can be definitively defined.

32. Mr. Steck further testified that the 2003 Master Plan recognizes that flag lots are not an acceptable lot formation and should be prohibited. Mr. Steck explained that a flag lot is defined as a large lot that does not meet minimum frontage requirements and where access to the public road is by a long private narrow right-of-way or driveway. The classic flag lot is one that has a strip of land that goes from the large portion in the back to the public road. Mr. Steck opined that this is not a classic flag lot. The Master Plan provision is meant to keep from

subdividing a large rear lot. This is just the opposite. The proposed lot for a future new dwelling is in the front. The variances that are required are for the rear lot. There is no frontage on a public street for the rear lot and, if there was frontage, it will be insufficient to meet the Ordinance requirements. That is the only relief requested by the Applicant. The side yard setback and rear yard setback deficiencies are pre-existing conditions which will not change. Mr. Steck further opined that this application can be looked at as both a (c)(1) hardship and (c)(2) benefits outweigh the detriments standpoint. Mr. Sinisi interjected that an applicant seeking variance relief is required to demonstrate satisfaction of the positive criteria and negative criteria. For the negative criteria the Applicant must demonstrate that an approval will not be substantially detrimental to the public good and that grant of the relief would not impair the intent and purpose of the Master Plan and Borough Ordinance. Mr. Sinisi also noted that according to the Municipal Land Use Law, a municipal board can consider mitigating conditions to lessen or eliminate negative impacts that a proposed variance application presents.

33. Mr. Steck continued his testimony and observed that this is a very large lot with a very unusual shape, unlike any other lot in the area, with most of its land in the rear portion. The rear lot, from the existing dwelling forward, is very slightly sloping topography. The steep slopes begin in the area of the dwelling and continue to the rear of the site. There are no physical impediments to constructing on the Property. Because of the shape of the Property and its large size and all of the surrounding lots on Pascack Road are already developed, there is no opportunity for the Applicant to expand the site and he has to work with the existing shape of the lot. Mr. Steck opined that this is a classic (c)(1) hardship, which requires some kind of relief. Mr. Steck testified that, by virtue of the land area, the Property could contain 3.8 dwellings. The Applicant seeks to add one additional dwelling on the Property. Mr. Steck testified there are

public purposes that are advanced by a subdivision. Mr. Steck opined that this application advances Purpose A (encourage appropriate use of lands to promote the general health, safety and welfare of the residents of the Borough); Purpose E (promote appropriate population density); Purpose G (provide sufficient space in an appropriate location); Purpose H (encourage the location and design of transportation routes to promote the free flow of traffic); Purpose I (promote a desirable visual environment); and Purpose M (encourage more efficient use of land).

34. As to the negative criteria, Mr. Steck opined that this is a unique situation. There is no other lot with this shape and acreage in the area. There is a benefit to one curb cut but the Applicant is flexible. The new dwelling on Proposed Lot 17 would be 100% conforming. There is adequate access for emergency vehicles. The Applicant proposes some infill on the driveway for emergency vehicles to maneuver. While the Master Plan discourages flag lots, Mr. Steck opined that this is not technically a flag lot. Mr. Steck testified that he does not believe there would be a privacy issue, as the proposed site of a new dwelling is 50 feet from the proposed property line. Mr. Steck does not believe the proposal will substantially impair the Master Plan. Because of the size and uniqueness of the property, Mr. Steck opined that the relief can be granted without substantial impairment to the Master Plan and will not be detrimental to the public good. Mr. Steck stated that the Applicant is willing to submit language regarding the utility pole easements and is amenable to having a separate driveway if the Board wishes. Mr. Steck further stated that the Applicant will agree to a deed restriction that the rear lot cannot be further subdivided.

35. Mr. Behrens commented that the Board should have the terms and language of the proposed easement for review prior to making a decision with regard to the application. Mr. Behrens acknowledged that the Municipal Land Use Law give special consideration to lots with

no street frontage, one of the reasons being access for emergency vehicles. Mr. Behrens stated that it is imperative to receive the referrals from the Police and Fire Departments, and possibly EMS, prior to the Board making a decision on the application. Mr. Behrens addressed Mr. Steck's comment that there are no other lots this size in the area by stating that there are three other lots comparable in size, those being Lots 9, 11 and 12. Lot 9, which abuts the subject Property, is almost twice the size of this lot and contains one single-family home. Mr. Behrens questioned what is the hardship for the Applicant as the site can be developed with a larger single-family home similar to other lots if the existing dwelling is demolished. Mr. Steck responded that the hardship is that this is a uniquely-shaped lot which is underdeveloped with only the small single-family dwelling in the rear of the site. As to the Master Plan's avoidance of flag lots, Mr. Behrens questions if the relief is granted if it will exacerbate a condition which the Master Plan seeks to discourage. Mr. Behrens discussed other criteria in the Master Plan. One is achieving a balance between an existing community and new development. There is a concept of limited variance requests based on subdivision approvals. Mr. Behrens pointed out that the Conceptual Site Plan calls for construction of a conforming new dwelling, it is not known at this time if any future development will be conforming or not. Mr. Steck stated the Applicant will accept a condition of approval that any such new construction will be fully conforming. Mr. Behrens stated that, under the MLUL, applications should maintain the land use patterns and characters of established single-family neighborhoods as a priority; to ensure that any new development minimizes impact on surrounding uses and the community at large; and to maintain the density scales and characters of existing single-family zones. According to Mr. Behrens, the issue of access is paramount.

36. Mr. Statile noted Mr. Steck's testimony wherein he stated that a new house advances the visual environment. Mr. Statile asked if there were any studies done to back this up. Mr. Steck replied that the Municipal Land Use Law encourages that new construction fit the neighborhood scheme and stated that the lots in the area are all pretty standard in size, which produces homes which are fairly standard in size. Mr. Steck opined that, without subdivision, the subject Property has the ability, due to the size of the parcel, to produce a home that is much larger than those in the area. Mr. Statile responded that the Borough has requirements for new construction and any new home could not be excessive in size. Mr. Statile noted that the Master Plan specifically discourages flag lots. Mr. Statile asked if there were any other lots in the area that have easements going to other homes behind them. Mr. Steck was unsure but stated none show up on the tax map.

37. The Board Attorney commented that the proposed easement would need to be submitted for review and approval by the Board Attorney and Board Engineer. She also stated that the Applicant will need to submit an updated Conceptual Site Plan indicating the utilities to the rear lot, per Mr. Statile's request. She also reiterated that the Board will need to review the referrals from the Police and Fire Departments and that Mr. Statile will follow up regarding same. Mr. Sinisi agreed to work on the easement language with the Board Attorney and Board Engineer.

38. Mr. Statile also raised a concern regarding stormwater management in the easement area. If the driveway is paved in the future and the new home built on the front lot, there could be drainage issues and those will need to be addressed at that time.

39. The Board raised concerns that even though a typical flag lot is not being created by the subdivision, the necessity for the driveway easement creates the same type of situation

and the Master Plan discourages same. The issue here is the subdivision creates a lot with zero lot frontage.

40. In response to questions from the Board regarding whether there are instances where a flag lot has had a negative effect on a community, Mr. Steck testified that flag lots are an issue of land use pattern and aesthetics. If you have an area with extremely large estates attempting such a subdivision, it would be an issue. That is not what is happening in this instance. The question here is whether the combination of the site shape and acreage warrants the granting of the requested relief.

41. The Board raised additional concerns that the existing house could get demolished and an extremely large home can be built on the rear lot. Mr. Steck responded that a condition can be placed on the property as to the size of the dwelling that can be constructed on that rear lot due to the access concerns.

42. The meeting was opened to the public only for the purpose of asking questions of Mr. Steck. Eleanor Fischbein of 40 Weirimus Lane, Hillsdale, New Jersey asked if the intent was to build a group home on the proposed front lot. Mr. Steck testified he knows of no proposal to construct a group home on the Property but pointed out that a group home is permitted in the zone.

43. Tessie Miranda and Fabrizio Gambino of 251 Pascack Road, Hillsdale, New Jersey asked if the proposed new dwelling will be a rental situation as currently exists. Mr. Steck stated that it was his understanding that the new house would be an owner-occupied property and whether or not a property will be owner-occupied is not a factor when considering the variances.

44. There were no other members of the public wishing to ask any questions of Mr. Steck.

45. The application was carried to July 26, 2022. Mr. Sinisi waived all timeframes for the Board to act until that date.

July 26, 2022 Meeting

46. At the July 26, 2022 meeting of the Board, the application was carried to August 23, 2022.

August 23, 2022 In-Person Public Hearing

47. At the August 23, 2022 meeting, Board members Dan Friedman and Joanne Miano recused themselves from the hearing of the subject application.

48. Mr. Sinisi addressed the Board and reminded them that this is an application for minor subdivision and variance approval, as well as for relief from the section of the Borough Ordinance that properties front on a public road. The application was deemed complete and one review letter dated May 9, 2022 was submitted by the Board Engineer, which was discussed quite extensively at the initial hearing on this application. Mr. Sinisi stated that, shortly before the public hearing, the Police Chief submitted his opinion from the perspective of the Police Department which states “upon a visual search conducted on the property this morning (August 23, 2022), I don’t see anything that would prohibit a proper police reponse if needed”. Mr. Sinisi stated that he also was advised prior to the start of the hearing that Mr. Statile had a meeting with the Fire Chief. Prior to Mr. Statile responding, both Mr. Statile and Mr. Behrens were sworn. Mr. Statile advised the Board that the Fire Chief did not have any issue with the fire schematics for the proposed rear lot. If necessary, in the event of a fire, a fire truck would be parked on Pascack Road and a fire hose run to the site of any fire. There is no written report from the Fire

Department and Mr. Sinisi requested that Mr. Statile's testimony be placed on the record with regard to the Fire Department's position.

49. Mr. Sinisi reiterated that this is an application for minor subdivision and variance approval. This is an oversized lot with a pre-existing non-conforming rear yard setback (50 feet required and 43.3 feet existing, a deviation of 6.7 feet), which will not be changed. If the subdivision is approved, each of the lots will exceed the Borough's lot area requirement. Extensive testimony was given by the Applicant's Engineer and Planner at the June meeting. Mr. Sinisi stated that, based on the prior testimony, Mr. Statile's May 9, 2022 report, and the recent reports from the Police and Fire Departments, that the application should be approved.

50. Mr. Steck was recalled to testify. Mr. Steck's credentials were previously accepted by the Board and he was duly sworn prior to providing testimony. Prior to the June 28, 2022 hearing, Mr. Steck produced a memorandum addressed to the Board dated July 15, 2022. Mr. Steck's initial testimony was that a (c)(1) hardship variance is necessary due to the size and shape of the Property. The small single-family dwelling is located to the far side of the rear Property. He also testified in June that there is a (c)(2) basis, meaning that the public benefits substantially outweigh any detriments. Mr. Steck testified that, currently, the Property can be developed with anything approved by the Zoning Ordinance. Mr. Steck opined that the benefit of approving the subdivision is that the Board can place conditions on what is developed on the Property, including the driveway, among other things. Mr. Steck opined that a benefit of approval is that it would limit the size of what could be constructed on the property and would allow the Board to impose reasonable conditions. Mr. Steck's July 15, 2022 memorandum included an illustration of what could be built on the Property without the subdivision and without the need for any variances. Mr. Steck testified that a two-story dwelling of

approximately 70 feet by 100 feet (7,000 square feet) could be built, plus a detached four-car garage and same would be a variance-free application. Mr. Steck testified that his memorandum contains illustrations indicating that such a dwelling would be much larger than the homes in the area and would clearly be out of character. Mr. Steck opined that the benefit of granting the subdivision is that the Board could impose conditions and would be assured that any dwelling constructed on the front lot would fit in with the other dwellings in the neighborhood. Mr. Sinisi noted that granting variance relief can actually improve the permitted uses that the community has already adopted. Mr. Steck's July 15, 2022 memorandum was marked as Exhibit A-5. Mr. Steck further opined that the variance relief that the Applicant is seeking will not present a substantial detriment to the public good and there will be no impairment to the Master Plan or Borough Ordinance as a result of the application. Mr. Steck noted that there is a provision in the Master Plan discouraging flag lots, which, in his opinion was to avoid the construction of a dwelling behind an existing dwelling. Mr. Steck stated that this instance is the opposite of the normal flag lot and seeks to allow new construction on the proposed front lot, which would bring the Property into greater conformance with the neighborhood. Mr. Steck further noted that the proposed lots will still be significantly larger than that required in the zone.

51. In response to a request for clarification of the variances the Applicant is seeking, Mr. Steck testified that, as to the proposed rear lot, there will be no frontage on a public road as required by Borough Ordinance. There is an existing condition on the proposed rear lot as to substandard rear yard setback. There is an existing free-standing garage located close to the property line, which will remain. Lots are required to have 100 feet of frontage and, as the rear lot will have no frontage on a public road, there is 0 feet provided. Also, pursuant to N.J.S.A. 40:55D-35(d)(36), when asking for a building permit for a lot that does not front on a public

street, there is certain relief required, one of which is adequate access for emergency vehicles. Mr. Steck testified that it has been demonstrated that there is sufficient access for same.

52. Mr. Behrens asked questions regarding the application. Mr. Sinisi asked if a written report was prepared by the Board Planner and Mr. Behrens advised there was none but Mr. Behrens had provided extensive testimony at the June 28, 2022 hearing. Mr. Sinisi objected to the lack of a written report and Chairman Burleson permitted Mr. Behrens to question the Applicant's Planner. Mr. Behrens noted Mr. Steck's statement that if the subdivision is not approved, the property owner could construct a 7,000 square foot dwelling on the site and asked if Mr. Steck has prepared analysis as to what size homes can be built if the subdivision is granted by the Board. Mr. Steck responded that the proposal is that any new home built would be constructed variance free and adhere to all Borough Zoning Ordinance standards permitted in the zone. Mr. Behrens testified he did prepare such an analysis. For the front lot, fronting on Pascack Road, a 4,460 square foot home would be permitted and the rear lot would permit a dwelling of 10,558 square feet. Mr. Behrens asked Mr. Steck if homes such as those described would be in character with the surrounding neighborhood. Mr. Steck testified that the front home would be a little larger than the surrounding dwellings and the rear home would be substantially larger but would not be that noticeable from the street. As to Mr. Steck's testimony at the August 23, 2022 hearing that a (c)(1) hardship case can be made by the Applicant, Mr. Behrens noted that while the shape of the Property is irregular, it is conforming with regard to lot area. Mr. Behrens believes this application falls under the (c)(2) category of relief, where the Applicant is required to show that the public benefits substantially outweigh the detriments of the application. Mr. Steck testified that the subject Property is unique in its size of 53,175 square feet. Mr. Behrens explained that there are adjacent parcels that are larger than the subject

Property. Mr. Behrens asked Mr. Steck how this lot is different than the other oversized lots in the zone. Mr. Steck testified that there is an adjacent lot which is larger than the subject lot but that it is a regularly shaped rectangle and the house is located at the front of the property, which is typical. In that instance he would not recommend subdivision in order to construct a home in the rear. Mr. Steck testified that, as to the subject Property, it is an irregular shape with an existing house in the far rear of the site that cannot be seen from the road. The most buildable (flattest) portion of the Property is located at the front towards Pascack Road. Mr. Behrens asked if both this and the adjacent lot were subdivided and homes built on each empty lot, how would they be functionally different. Mr. Steck responded that conditions could be placed on any approval the Board grants with regard to any new construction on the proposed lots. Mr. Behrens asked if the Applicant would accept any Board limitations as to the size of any homes constructed and Mr. Steck stated the Applicant would need to respond to that question but noted the Board has the ability to impose reasonable conditions.

53. Mr. Behrens noted that the Fire and Police Departments have stated that there is adequate space for emergency vehicles to access the site, there are still questions as to access for the proposed rear lot, overlapping parking and blockage of the driveway by parked vehicles that need to be addressed and asked Mr. Steck to comment with regard to same. Mr. Behrens noted there is no parking on Pascack Road and questioned what will happen with overflow parking requirements. Mr. Behrens raised concerns about homeowners and emergency vehicles accessing the back lot if the owner of the front lot has a large number of cars parked on the site.

54. Several Board Members noted that despite Mr. Steck's characterization of the proposed subdivision, the application is creating a flag lot in shape and function. Chairmain Burleson raised concerns that this application goes against the Borough Ordinance, which

dictates that no lot should be without access to a public road. In addition, the Master Plan states that flag lots should be prohibited. Mr. Sinisi stated that the Applicant has presented a case outlining why the application should be approved. The Applicant is not denying that the conditions Mr. Burleson described exist, but the Applicant has explained a justification for deviation from the Master Plan and Borough Ordinance. Mr. Sinisi stated that he reached out to his client, who would agree to a condition of the Board that there would be no further subdivisions of the Property and the Applicant is willing to also agree to a condition that new construction on each lot be limited to buildings of 4,500 square feet.

55. In response to questions from the Board, Mr. Steck testified that initially the Applicant proposed one shared driveway but as discussion ensued at the last hearing, the Board appeared to favor separate driveways. The Applicant could go either way. Mr. Steck's July 15, 2022 report provided for an 18-foot driveway and a 20-foot easement to access Proposed Lot 17.01. This could be changed to provide for two separate driveways.

56. Mr. McClellan was sworn to clarify the dimensions of the proposed driveway. Mr. McClellan referred to the plot plan submitted by the Applicant, noting the 20-foot easement. Mr. McClellan testified that the plan depicts the existing gravel drive from Pascack Road, which goes straight past any proposed new dwelling and curves to the left leading to the existing garage. Mr. McClellan stated that two separate driveways could be installed by moving the garage of the proposed dwelling to the left of the front lot and providing a separate driveway for same. Mr. Statile noted that the Applicant needs to be careful with any proposed paving of the existing gravel driveway, as the bulk of that paving would affect the impervious coverage for the front lot.

57. The Board highlighted that at the prior hearing there were utility issues discussed that needed to be addressed. Mr. Sinisi noted that, if approved, the Applicant will commit to a condition that they meet and address the concerns of the Board Attorney and Board Engineer as to the utility box location and any necessary easements.

58. The Board raised questions and concerns about garbage collection and deliveries to the rear lot. Mr. Steck responded that the owner currently brings the garbage down to Pascack Road for pickup, which will remain the same. The owner of the proposed new dwelling will also bring the trash to the front of its driveway on Pascack Road for pickup. As for deliveries, trucks currently go up the driveway to the existing home on the proposed rear log and this will not change.

59. Several Board Members expressed a strong preference for separate driveways for the two proposed lots to prevent issues with parking and access to the rear lot.

60. In response to Board questions regarding whether the application results in the equivalent of a flag lot, Mr. Steck responded that the application has the same planning issues as a flag lot. Mr. Steck opined that it is technically not a flag lot because there is no “pole” dedicated to the rear lot to provide access to the public roadway. The strip of land for the driveway will be an easement and not a dedicated portion of the rear property. Dedicating this strip to the rear lot would create lot width issues for the front lot. The Board was concerned by the lack of written confirmation from the Fire Chief as to site accessibility. In response to questions from the Board regarding whether the Applicant intends to demolish the existing dwelling on the proposed rear lot and construct a new dwelling, Mr. Sinisi responded that the application before the Board is for the subdivision and does not include the demolition of the

existing dwelling. The Applicant agreed that, as a condition of approval, two separate driveways would be required.

61. In response to Board questions regarding the widths of the two proposed driveways, Mr. McClellan responded that the driveway for the front lot would be between 20 and 24 feet and have a kickout for vehicles to turn so they do not back out onto Pascack Road. The existing gravel driveway would service the rear lot.

62. In response to questions from the Board regarding whether creating a flag lot has a benefit to the area, Mr. Behrens could only reiterate Mr. Steck's testimony that if the subdivision is not granted, any potential future construction on the site could be much larger than any of the existing homes in the neighborhood due to the size of the lot. Mr. Steck's testimony was that subdividing the lot and constructing a dwelling closer to Pascack Road will be in keeping with the character of the area.

63. No members of the public appeared either in favor of or opposed to the application.

64. Mayor Ruocco made a motion to approve the application with the conditions placed on the record by the Board (i. that any dwelling constructed on either lot cannot exceed 4,500 square feet; ii. that the proposed front lot has a separate and distinct driveway; and iii. no further subdivisions will be permitted on the Property), which motion was seconded by Ed Alter. The application was approved by a vote of 5 to 1.

D. Justification for Relief

65. The Board further finds the Applicant has met his burden of proof in support of granting minor subdivision approval and their variance request.

66. 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-2 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 as follows:

- 1. The Applicant's application has been approved, to wit:

- (a) Minor subdivision of the Property into two lots, as follows:
 - a. Lot 17, which shall have a lot area of 16,518 square feet; and
 - b. Lot 17.01, which shall have a lot area of 39,106 square feet.
 - c. The numbering of the above-referenced lots shall be confirmed by the Borough Tax Assessor.
- (b) For Lot 17.01, the Applicant is granted a variance for no frontage on a public road.
- (c) For Lot 17.01, the Applicant is granted a variance for not abutting a street pursuant to N.J.S.A. 40:55D-35, 36.
- (d) For Lot 17.01, the Applicant is permitted to maintain a rear yard setback of 43.3 feet, which is an existing nonconformity.
- (e) For Lot 17.01, the Applicant is permitted to maintain the existing non-conforming side yard setback for an accessory structure.
- (f) For Lot 17.01, the Applicant is granted a variance for minimum lot frontage of 0 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 Applicant 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 in this resolution and on the record shall be complied with by the Applicant.

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 Applicant 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. There shall be no further subdivisions of the Property.

15. Any new construction on either of the two lots created by the subdivision will not exceed 4,500 square feet, for each lot.

16. There will be a separate and distinct driveway created for the new lot at the front of the site (Lot 17).

17. The driveway easement and utility easements shall be submitted to the Board Engineer and Board Attorney for review prior to recordation. The Applicant shall comply with the Board Engineer's and Board Attorney's reasonable recommendations and revisions to any such easement.

18. Pursuant to N.J.S.A. 40:55D-37(c), the subdivision approval shall be conditioned upon timely receipt of a favorable report by the Bergen County Planning Board or approval by the Bergen County Planning Board by its failure to report thereon within the required time period. In addition, a copy of the final recorded Deeds containing the signatures of the Land Use Board Chairman and Secretary shall be provided to the Board Clerk.

19. The Applicant agreed to comply with any drainage mitigation required by the Borough Engineer, to the extent same may be necessary.

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 Applicant.

MOVED BY: Mayor John Ruocco

SECONDED BY: Ed Alter

VOTE: FOR 5 AGAINST 1 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 _____,
2022.

Meredith Kates, Secretary

Dated: _____, 2022