

**BOROUGH OF HILLSDALE
PLANNING BOARD
RESOLUTION NUMBER 2020-12
CASE NUMBER PZ-04-19**

WHEREAS, Built for Success, LLC (the “Applicant”) filed an application for preliminary and final site plan approval; variance relief pursuant to N.J.S.A. 40:55D-70(d)(1); variance relief associated with a free standing sign and other relief as may be set forth herein in connection with a multi-family residential building consisting of 30 units, together with associated site improvements at property commonly known as 10 Orchard Street and identified on Hillsdale’s current tax assessment map as Block 1201, Lots 5, 6 and 7 (the “Property”); and

WHEREAS, the Applicant was represented by Jennifer Knarich, Esq., of Price Meese Shulman & D’Arminio, PC, having an address of 50 Tice Boulevard, Woodcliff Lake, New Jersey 07677; and

WHEREAS, the Applicant’s counsel submitted an application to the Planning Board Secretary by cover letter dated June 6, 2019 and filed the following documents with the Deputy Board Secretary:

- Completed application form, with Addendum (the “Application”);
- Owner’s consent;
- Zoning Officer’s denial letter;
- Tax map indicating the subject Property;
- Sixteen (16) copies of drainage calculations prepared by Christopher Lantelme, dated February 11, 2019;

- Sixteen (16) copies of a traffic impact study prepared by Stonefield Engineering and Design, LLC, dated May 14, 2019;
- Sixteen (16) sets of landscape plans prepared by Meumann Associates, dated May 2, 2019;
- Sixteen (16) sets of architectural plans prepared by Zampolin & Associates, dated February 11, 2019 and revised to May 7, 2019;
- Sixteen (16) copies of the Property survey prepared by Lantelme Kurens and Associates, PC, dated January 29, 2019;
- Sixteen (16) sets of the site plan prepared by Lantelme Kurens and Associates, PC, dated February 11, 2019;
- Photographs;
- Tax Certification;
- 200' list of property owners;
- Prior Resolution of approval (PZ-15-11);
- Title search;
- Legal and escrow fees; and
- W-9 form; and

WHEREAS, in the Addendum to the application, Applicant's counsel informed the Board, *inter alia*, that Built for Success, LLC (hereinafter referred to as the "Applicant"), is the contract purchaser of property known as 10 Orchard Street, Borough of Hillsdale, Bergen County, New Jersey. The Property is identified on the Borough's tax assessment map as Block 1201, Lots 5, 6 and 7, and the Property is within the Borough's

Commercial “C” District (the “C” Zone). The Property is owned by the estate of John Post and maintains three single-family homes and;

WHEREAS, the Applicant proposes to demolish the existing structures and to construct a two-story, 30-unit residential structure consisting of (A) 8 one-bedroom units; (B) 21 two-bedroom units; and (C) 1 three-bedroom unit. In order to accommodate said units, the Applicant proposes 60 parking spaces, whereby 58.5 parking spaces are required pursuant to the New Jersey Residential Site Improvement Standards (“RSIS”); and

WHEREAS, Hillsdale’s Zoning Ordinance does not permit residential use in the “C” Zone, triggering a use variance pursuant to N.J.S.A. 40:55D-70(d)(1); and

WHEREAS, Christopher P. Statile, PE (“Mr. Statile”), the Board Engineer, prepared an initial report dated July 19, 2019. In that report, Mr. Statile conducted a review of the application and supporting documents, as described herein; and

WHEREAS, according to Mr. Statile’s July 19, 2019 report, the Applicant applied for a use variance, as the proposed use is not permitted in the “C” Zone, as well as bulk variances and major preliminary and final site plan approval; and

WHEREAS, Mr. Statile prepared and submitted reports dated July 19, 2019; November 11, 2019 and; February 10, 2020; and

WHEREAS, the Board also received reports from Phillips, Preiss, Grygiel, Leheny, Hughes, LLC (referred to herein as “PPG”) dated November 12, 2019 and September 3, 2019 (revised to September 9, 2019); and

WHEREAS, the Board received a report dated May 19, 2020 from Caroline Reiter, PP, who was appointed as the Board Planner in connection with this application after PPG's term with the Board ended; and

WHEREAS, the Board also received the following documents in connection with the application: (1) Borough of Hillsdale Planning & Referral Form from the Hillsdale Police Department; (2) Environmental Commission Referral Form and; (3) Hillsdale Police Department Intra-Agency Memo to Chief Francaviglia to Sargent Thomas Smith dated November 25, 2019; and

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

WHEREAS, hearings were held on September 12, 2019; November 14 or 17, 2019; December 3, 2019; January 9, 2020; February 13, 2020; February 25, 2020; and May 26, 2020, at which time the Board heard testimony from the Applicant and its professionals on behalf of the Applicant; and

WHEREAS, at the hearings the Board's professionals, Christopher P. Statile, PE; Richard Preiss, PP; and Caroline Reiter, PP, AICP were duly sworn and provided expert testimony; and

WHEREAS, Sean McClellan, P.E. ("Mr. McClellan") of Lantelme, Kurens & Associates, P.C., 101 West Street, Suite 9, Hillsdale, New Jersey 07642, was duly sworn and qualified as an expert professional engineer and provided testimony in support of the application at the November 14, 2019 and February 13, 2020 hearings; and

WHEREAS, Robert Zampolin, A.I.A. ("Mr. Zampolin") of Zampolin & Associates, 187 Fairview Avenue, Westwood, NJ 07675, was duly sworn and qualified as

an expert architect and provided testimony in support of the application at the November 14, 2019; February 13, 2020 and May 26, 2020 hearings; and

WHEREAS, Bradley A. Meumann, L.A., P.P. (“Mr. Meumann”) of Meumann Associates LLC, 7 Ledgerock Court, Morris Plains, NJ 07950, was duly sworn and qualified as an expert landscape architect and provided testimony in support of the application at the November 14, 2019 and February 13, 2020 hearings; and

WHEREAS, Andrew Villari, P.E. (“Mr. Villari”) of Stonefield Engineering and Design LLC, 92 Park Avenue, Rutherford, NJ 07070, was duly sworn and qualified as an expert in traffic engineering and provided testimony in support of the application at the November 14, 2019 and December 3, 2019 hearings; and

WHEREAS, John P. Szabo, Jr., PP, AICP (“Mr. Szabo”) of Burgis Associates, Inc., 25 Westwood Avenue, Westwood, NJ 07675, was duly sworn and qualified as an expert planner and provided testimony in support of the application at the December 3, 2019 hearing; and

WHEREAS, the following Exhibits were marked during the hearings:

- Exhibit A-1: Sheet S-1 of the plans prepared by Zampolin & Associates;
- Exhibit A-2: A colored rendering of the project;
- Exhibit A-3: Sheet A-2 of the Zampolin & Associates plan (third floor COAH plan);
- Exhibit A-4: Sheet A-3 of the Zampolin & Associates plan (proposed front elevation and proposed right side elevation);
- Exhibit A-5: Sheet A-4 of the Zampolin & Associates plan (real elevation, left elevation and front elevation at the main entry);

- Exhibit A-6: Sheet A-5 of the Zampolin & Associates plan (façade materials);
- Exhibit A-7: Site Plan prepared by Lantelme Kurens;
- Exhibit A-8: Revised Lantelme Kurens site plan;
- Exhibit A-9: Revised colored rendering of the project;
- Exhibit A-10: Revised Zampolin & Associates plans, dated October 24, 2019;
- Exhibit A-11: Landscape plan, dated October 30, 2019;
- Exhibit A-12: Updated colorized Landscape Plan;
- Exhibit A-13: Concept View “A” dated November 14, 2019;
- Exhibit A-14: Concept View “B” aerial view;
- Exhibit A-15: Burgis Engineering photographs dated November 14, 2019;
- Exhibit A-16: Traffic Impact Study, dated May 14, 2019 and revised to November 1, 2019, prepared by Stonefield Engineering & Design;
- Exhibit A-17: Handout prepared by John Szabo, PP of Burgis Engineering;
- Exhibit A-18: Grading and Drainage Plan prepared by Lantelme Kurens, dated February 11, 2019;
- Exhibit A-19: Revised Landscape Plan dated January 19, 2020;
- Exhibit A-20: Concept View “A”, dated February 13, 2020;
- Exhibit A-21: Concept View “B”, dated February 13, 2020;
- Exhibit A-22: Fencing detail; and
- Exhibit A-23: Colored rendering of proposed building; and

WHEREAS, no member of the public appeared in support of or in opposition to the subject application; 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 makes the following findings of fact based on the evidence presented at the public hearings, as well as all documents which were made part of the record in this matter:

1. Built for Success, LLC, applied to the Board for preliminary and final site plan approval, a use variance pursuant to N.J.S.A. 40:55D-70d(1), as well as bulk variances and other relief, as described herein, in connection with a proposed 30-unit multi-family building at the Property.

The Property

2. Mr. Statile's report describes the Property as Block 1201, Lots 5, 6 and 7, which are located on the north side of Orchard Street, west of the Broadway/Orchard intersection, in the "C" Zone (minimum lot size 7,500 SF). Lot 5 is adjacent to the rail line. Lots 6 and 7 are located east of Lot 5. Lot 7 is adjacent to a residential dwelling and opposite a bank. The Shell gas station is located on the northeast corner of the Broadway/Orchard Street intersection.

3. The site slopes to the west, with approximately a 6-foot to 10-foot grade differential.

4. Lot 5 is improved with a 2½-story frame dwelling and a detached frame shed. The driveway to Lot 5 extends over the property line that is shared with adjacent Lot 6. Lot 6 is improved with a 2½-story dwelling and a detached frame garage. Lot 7 is improved with a two-story frame dwelling with a detached block garage. A gravel driveway extends over the property line between Lots 6 and 7 and appears to be a shared driveway. Various fences, walls, patios, concrete areas, walkways and other improvements are present on the Property.

5. All three residential dwellings on the Property are non-conforming uses in the "C" Zone. The three lots combined contain 46,751 SF, or 1.07 acre.

6. The Property was the subject of a use variance application in 2011 for construction of a two-story residential structure containing 36 multi-family units. The Board denied the application, as memorialized in Resolution PZ-15-11, dated October 2012.

The Application

7. The Applicant proposes to remove the existing improvements on the Property and construct an apartment building with associated parking and other accessory improvements. The Applicant proposes to construct a two-story apartment building containing 30 residential units, or 28 units per acre. The proposed building will have a footprint of 20,876 SF. The 30 units (inclusive of 5 affordable units) will consist of:

- a. 8 one-bedroom units;
- b. 21 two-bedroom units; and
- c. 1 three-bedroom unit.

8. 60 parking spaces (4 barrier free) are proposed. One driveway into and out of the site is proposed from Orchard Street.

9. The proposed multi-family use is not permitted in the “C” Zone. Therefore, a use variance is required. In addition, the building is proposed at a height of 33.7 feet, which exceeds the maximum 30-foot permitted height in the “C” Zone by greater than 10% (3 feet), thus a bulk variance pursuant to N.J.S.A. 40:55D-70(d)(6) is required. Variances are also required for signage.

10. According to Mr. Statile’s report, the application is considered a major site plan. In his July 2019 report, Mr. Statile identified the following variances:

- a. Building height variance: 33.7 feet proposed versus 30 feet maximum permitted, for a difference of 3.7 feet. A height variance pursuant to N.J.S.A. 40:55D-70(d)(6) is required.
- b. Free-standing sign.

- c. Building setback: 23 foot proposed setback versus 60 foot setback required.
- d. Free-standing sign size: 41 SF proposed versus 25 SF permitted. The proposed sign area was computed as the entire brick monument and sign panel.
- e. Use variance: The proposed multi-family use is not permitted in the “C” Zone.

11. The “C” Commercial Zone District permits:

- Professional offices;
- Retail businesses and personal service establishments such as but not limited to: grocery stores, drug stores, hardware stores, liquor stores, barber and beauty shops, tailor and dry cleaning pick up shops;
- Offices, banks and fiduciary institutions;
- Restaurants, except drive-in and drive-through restaurants) and fraternal organizations;
- Medical and dental clinics;
- Commercial or business schools;
- Public parks and playgrounds.

12. The Applicant proposes a mix of market and affordable units. As rentals are proposed, a 15% set aside for affordable units is proposed, or 5 affordable units. In terms of the bedroom distribution for the affordable units, the Applicant proposes the following:

- 2 one-bedroom units;
- 2 two-bedroom units; and
- 1 three-bedroom unit.

13. In terms of the RSIS, approximately 59 parking spaces are required, and the Applicant proposes 60 parking spaces.

14. In his report, Mr. Statile expressed concern “...over eastbound left turns in Orchard Street, into the driveway, where a vehicle(s) may be queued up on the tracks, and a warning gate becomes activated by an approaching train. The vehicle queue distance is about one car length long. The Applicant’s traffic profession (sic) should discuss same.”

15. Mr. Statile’s report offered various other comments related to the proposed project, which included, but are not limited to, the establishment of a fire zone; as well as comments regarding signage, without limitation.

16. In his report, Mr. Statile further commented that the project is considered a Major Development under the Hillsdale Ordinance, since the project will construct one-quarter acre of new impervious surfaces and disturb more than one acre. In accordance with Hillsdale’s Ordinance No. 06-06 for stormwater management requirements, the Applicant must address Section G, Stormwater Runoff Quality Standards, for measures to remove total suspended solids (“TSS”) by 80% of the anticipated load of the developed site (parking and roadways). Mr. Statile further stated that a maintenance and repair plan is required, pursuant to the Borough’s Ordinance, as are annual reports. Various other engineering comments were included in Mr. Statile’s reports and same are incorporated herein by reference.

17. Mr. Statile also included comments and concerns regarding lighting, landscaping, stormwater and, again, relating to signage in connection with the proposed project.

September 12, 2019 Hearing

18. At the September 12, 2019 hearing, the Applicant's attorney, Jennifer Knarich, Esq. ("Ms. Knarich"), presented testimony from Robert E. Zampolin, AIA ("Mr. Zampolin"), project architect. Mr. Zampolin was duly sworn and provided testimony in support of the subject application. During the course of the hearing, the Board received a handout, revised drawing no. A-5 of the Zampolin plan, which was not submitted with the original application and supporting documents. Mr. Zampolin testified as to drawing no. S-1 of his architectural plan. He testified that the subject Property is 150 feet away from the intersection of Orchard Street and Broadway. The Property consists of 1.07 acres.

19. The Applicant proposes a three-story building consisting of 30 residential dwelling units, of which 25 market-rate units are proposed and 5 affordable units are proposed. Mr. Zampolin testified that 47 parking spaces are proposed, of which 30 spaces will be dedicated to the proposed units and 17 spaces will be unassigned. A fully enclosed parking area is proposed on the first floor. An elevator and 2 stairways are proposed in connection with the project. A package room is also proposed, as well as a community center, trash room with compactor for recycling and for regular household waste. The footprint of the subject building is 21,000 SF, and the building will be L-shaped, according to Mr. Zampolin.

20. Exhibit A-1, as marked at the hearing, is drawing no. S-1 of Mr. Zampolin's architectural plan. Mr. Zampolin also testified as to Exhibit A-2, which is a colored rendering of the subject project. Drawing no. A-1 (second floor plan) of the Zampolin plan was marked as Exhibit A-3. Mr. Zampolin testified that 15 units per floor are proposed by the Applicant. He testified that the breakdown of the units are as follows:

- 7 one-bedroom units;
- 1 one-bedroom COAH unit;
- 18 two-bedroom units;
- 3 two-bedroom COAH units; and
- 1 three-bedroom COAH unit.

21. The one-bedroom COAH unit is proposed at 712 SF. The two-bedroom COAH units are proposed at 883 SF. The three-bedroom COAH unit is proposed at 1,475 SF.

22. The one-bedroom market-rate units are proposed at 994 SF. The two-bedroom market-rate units will range from 1,180 SF to 1,370 SF.

23. Drawing no. A-2 of the Zampolin plan was marked as Exhibit A-3. Drawing no. A-3 of the Zampolin plan was marked as Exhibit A-4. Drawing no. A-4 of the Zampolin plan was marked as Exhibit A-5. Drawing no. A-5 of the Zampolin plan was marked as Exhibit A-6.

24. Drawing no. A-2 of the Zampolin plan, which was marked as Exhibit A-3, is the third-floor plan depicting the layout of the COAH units, as well as the one- and two-bedroom market-rate units.

25. Drawing no. A-3 of the Zampolin plan, which was marked as Exhibit A-4, shows the proposed front elevation and right-side elevation of the subject project.

26. Drawing no. A-4 of the Zampolin plan, which was marked as Exhibit A-5, depicts the rear elevation, left-side elevation and front elevation at the main entry, in connection with the proposed project. It was brought to the Board's attention at the hearing that Exhibit A-5 was not submitted with the application.

27. Drawing no. A-5 of the Zampolin plan was marked as Exhibit A-6 and depicts the façade materials, which include Lap siding, panel with batton board, and brick veneer. In terms of Exhibit A-6, Mr. Zampolin testified that the brick will be approximately 20 feet above the first floor, and four-inch brick is proposed. The Applicant is proposing 3 types of siding, including Hardie Plank and custom Colonial smoot siding. Mr. Zampolin also testified that board and batton siding is also proposed at the cantilevers.

28. Mr. Zampolin further testified that the building will be fully sprinklered and the walls will be fire rated. Lighting is proposed at the front entrance and the garage. The building is L-shaped, and the purpose of the design was to pull the building away from the railroad tracks. Mr. Zampolin testified that decorative parapets are proposed and they count toward the height of the subject building. At the time of the September 2019 hearing, Mr. Zampolin was uncertain as to where the meters would be located.

29. In response to Mr. Zampolin's testimony, the Board requested the lighting details, and the Applicant agreed to provide same at the next hearing.

30. Mr. Zampolin continued his testimony and testified that small grates/grills are proposed for intake of air and will blend with the color of the building. The Board requested that the Applicant submit revised renderings in advance of the next hearing date. The Applicant also assured the Board that it would advise, in response to a question from a Board member, whether generators were being proposed on-site.

31. Mr. Zampolin testified that the building will consist of a steel deck with wood frame above. The glass to be utilized is noise resistant and, during the course of discussion with the Board, Mr. Zampolin advised that triple-paned windows for noise attenuation in connection with the adjacent railroad tracks would be a possibility for inclusion in the proposed project. Mr. Zampolin testified that the Applicant is proposing a ground-mounted sign. No signage above the entrance is proposed. An elevator is proposed and, according to Mr. Zampolin, same will not require a mechanical room. As to the garage, same is 100% enclosed and will have to be mechanically ventilated. Board member Reardon requested a brick sample at the next hearing.

32. At the hearing, the Lantelme Kurens site plan was marked as Exhibit A-7. However, there was confusion at the hearing, as the Lantelme Kurens plan was revised in order to address the comments made by the Board Engineer in his initial report and the Board had not received the revised plan. Sean McClellan, PE (“Mr. McClellan”) was duly sworn and qualified and testified in support of the application. He testified as to the site plan prepared by his office. Mr. McClellan testified that the roof water is clean water. The stormwater from the roof will go into one system and surface parking area water will go into a filter to be cleaned and then will drain into the system. All roof

leaders are on grass and nothing would be contained or treated for total suspended solids (“TSS”).

33. The testimony from Mr. McClellan was that the height variance will be eliminated. The proposed monument sign will be ten (10) feet off of the right-of-way, but a variance is needed for said sign.

34. Mr. McClellan testified that swales and inlets are proposed. The Applicant does need a soil movement permit and a use variance, among other relief. All new sidewalks and curbs are proposed.

35. Two (2) handicap van-accessible spots are proposed. Pursuant to RSIS, 58.5 parking spaces are required, and the Applicant meets the requirements of RSIS.

36. In terms of the lighting, Mr. McClellan testified that the proposed lights are consistent with lighting that is utilized in other similar-type buildings in the Borough of Hillsdale.

37. In terms of additional approvals, Mr. McClellan confirmed that approval from the Bergen County Soil Conservation District, as well as Bergen County Planning Board approval, is also required. A maintenance plan for the drainage system and yearly report are required by the Borough, and the Applicant, assuming the project was approved, is required to comply with same.

38. The application was carried to the Board’s **November 14, 2019** hearing. In advance of the November 14, 2019 hearing, the Board Engineer, Christopher Statile, PE, prepared an updated report dated November 11, 2019 in response to the revised Lantelme Kurens and Associates plan dated February 11, 2019 and revised to October 22, 2019. The Lantelme Kurens plans, consisting of a title sheet; existing conditions

plan; drainage and grading plan; soil erosion and sediment control plan; details sheet; and lighting plan all bear a notation that they were revised to October 22, 2019 and, alongside that notation on each such page of the Lantelme plan, it says “revised entrance, footprint.” Mr. Statile’s November 11, 2019 report is incorporated herein by reference.

November 14, 2019 Hearing

39. Four witnesses testified at the November 14, 2019 hearing, including Sean McClellan, PE (“Mr. McClellan”). The revised Lantelme Kurens plan was marked as Exhibit A-8 (revised through October 22, 2019) at the November 14, 2019 hearing of the Board.

40. Mr. McClellan added the information requested by the Board at the prior hearing, including the lighting information, and he testified as to same. Mr. McClellan testified that the building size was reduced from 21,430 SF to 21,054 SF or approximately 400 SF. He testified as to the revised site plan and in part, informed the Board that the proposed curb cut is 100 feet from the railroad tracks. He also testified as to stormwater, in response to which Mr. Statile expressed dissatisfaction or unhappiness with the stormwater plan.

41. The next witness to testify at the November 14, 2020 Board hearing was Robert Zampolin (“Mr. Zampolin”). Exhibits A-8 through A-17, hereinbefore identified in this Resolution, were marked at the November 14, 2019 Board hearing. Mr. Zampolin testified as to an undated rendering marked as Exhibit A-9 and he informed the Board the proposed building will have a traditional look. Mr. Zampolin also testified as to Exhibit A-10, which was his architectural drawings revised to October 27, 2019. Mr.

Zampolin informed the Board of changes to the east elevation and bedroom distribution, among other things. Twenty-five (25) market rate units are proposed and 5 COAH units are proposed, for a total of 30 units. According to Mr. Zampolin, in terms of market-rate units, 7 one-bedroom units and 18 two-bedroom units are proposed. Mr. Zampolin also testified, in terms of the COAH units, that the Applicant is proposing 1 one-bedroom unit, 3 two-bedroom units and 1 three-bedroom unit.

42. The Board also heard testimony from Bradly Meumann (“Mr. Meumann”), a licensed professional architect of the State of New Jersey. Mr. Meumann was duly sworn and qualified prior to providing testimony to the Board in support of the application. Mr. Meumann testified as to Exhibits A-11, A-12, A-13 and A-14. Exhibit A-11 is the October 3, 2019 landscape plan and A-12 was the colorized version of said plan. Exhibit A-13 was “concept view A” and Exhibit A-14 was “concept view B”. Mr. Meumann informed the Board that the proposed sign does not meet the sign placement requirements. Mr. Meumann, in part, testified that there would be 106 replacement trees required and that the Applicant is obligated to comply with same. A PVC fence along the track side will be constructed and the existing fence, on the opposite side of the Property, will be replaced. Plantings will be added to the west side of the Property, for screening from the railroad tracks, and an irrigation system will be installed. Mr. Meumann also testified to Exhibit A-15, which was the Burgis photo exhibit dated November 14, 2019.

43. The Board heard testimony in support of the application from Andrew Villari, PE (“Mr. Villari”) of Stonefield Engineering. Mr. Villari testified as to the Traffic Impact Study, which is dated May 14, 2019 and revised to November 1, 2019. The Traffic

Impact Study was prepared by Charles D. Olivo, PP, PE, PTOE of Stonefield Engineering & Design, LLC and was marked as Exhibit A-16.

44. The Traffic Impact Study was prepared to investigate the potential traffic and parking impacts of the proposed multi-family residential apartment building on the adjacent roadway network. The Property is located along the northerly side of Orchard Street in the Borough of Hillsdale, Bergen County, New Jersey. According to the testimony, a detailed field investigation was performed to assess the existing conditions of the adjacent roadway network. Data was collected in order to identify the existing traffic volumes at the study intersection to serve as a base for the traffic analyses. According to the testimony, the subject Property has approximately 210 feet of frontage along Orchard Street. Land uses in the area are a mix of commercial and residential uses. Orchard Street is a local roadway, with a general east/west orientation, and is under the jurisdiction of the Borough of Hillsdale. Broadway (County Route 104) is classified as an Urban Minor Arterial Roadway, with a general north/south orientation, and is under the jurisdiction of Bergen County. Orchard Street and Broadway intersect to form an unsignalized T-intersection, with the eastbound approach of Orchard Street operating under Stop control. The northbound approach of Broadway provides one shared left-turn/through lane, and the southbound approach of Broadway provides one shared through/right-turn lane. The eastbound approach of Orchard Street provides one shared left/right-turn lane.

45. A level of service and volume/capacity analysis was conducted for the 2019 existing condition during the weekday morning, weekday evening and Saturday mid-day peak hours at the study intersection. Under the existing condition, the turning

movements at the unsignalized intersection of Orchard Street and Broadway are calculated to operate at acceptable level of service C or better during the weekday morning and weekday evening peak hours, and acceptable level of service D or better during Saturday mid-day peak hour. For purposes of the analysis, Stonefield projected an assumed a complete “project buildout” within 2 years of the preparation of its study. The 2021 Buildout/Capacity Analysis was prepared.

46. Mr. Villari testified that a Level of Service and Volume/Capacity Analysis was also conducted for the 2021 build condition during the weekday morning, weekday evening and Saturday mid-day peak hours at the study intersection and proposed driveway. Under the 2021 build condition, the individual turning movements at the unsignalized intersection of Orchard Street and Broadway were calculated to operate generally consistently with the 2021 no-build condition. According to the testimony, the site driveway operates at level of service B or better during the weekday morning, weekday evening, and Saturday mid-day peak hours.

47. Mr. Villari also testified as to site circulation/parking supply. He testified that a review was conducted of the proposed residential development using the Lantelme Kurens and Associates site plan, last revised October 22, 2019. Particular attention was focused on site access, circulation and parking. He testified that access is proposed via one full-movement driveway along Orchard Street. The proposed building will be located on the northerly and easterly portions of the site and raised above ground level, with a parking area located beneath it and on the southwest portion of the site. An outdoor patio and green area will be provided on the northwesterly portion of the site. Two-way vehicular circulation throughout the site would be facilitated by drive aisles,

with a minimum width of 24 feet. The site is bounded by Conrail New Jersey and New York Railroad to the west.

48. According to Mr. Villari, the Applicant complies with RSIS and 9-foot by 18-foot parking spaces are proposed. Mr. Villari testified that a portion of Hillsdale's residents (approximately 18%) utilize public transportation, walk or use means other than single-passenger vehicles to commute to work. Mr. Villari testified that the location of the proposed development was suited to provide transit options for its occupants, as it is located 0.2 miles from Hillsdale's train station. Mr. Villari offered his opinion that the proposed development would not have a significant impact on the traffic operations of the adjacent roadway network. He also opined that the site driveways and on-site layout were designed to provide for effective access to and from the subject Property. Furthermore, Mr. Villari testified that the site's proximity to downtown Hillsdale, Hillsdale Train Station, and various bus stops would contribute to a reduction in automobile use and reduce the need for automobile ownership by residents. He testified that the parking supply would be sufficient to support the subject project.

49. The Board received a referral form from the Hillsdale Police Department dated July 9, 2019 and therein, a comment was made regarding the Police Department's concerns relating to traffic accidents in the area of the intersection of Patterson Street and Orchard Street.

50. The Board also received an Intra-Agency Memorandum from the Hillsdale Police Department dated November 25, 2019 from Sergeant Thomas Smith ("Sgt. Smith") to Chief Francaviglia advising, *inter alia*, that "the intersection of Orchard Street & Patterson Street is notorious for Motor Vehicle crashes."

December 3, 2019 Hearing

51. The Applicant appeared at the December 3, 2019 hearing. Mr. Villari testified in response to the memorandum to Chief Francavigilia from Sgt. Smith in connection with the subject project. In the memorandum, Sgt. Smith shared his opinion, *inter alia*, that increased traffic in an area that already sees a lot of vehicular traffic may cause an issue. While there is no history for the address itself, according to Sgt. Smith, “the intersection of Orchard Street & Paterson Street is notorious for motor vehicle crashes.” There was a “Highest Speed Summary Report” that was submitted to the Board, along with the memorandum prepared by Sgt. Smith.

52. Mr. Villari responded to the aforesaid memorandum by explaining the motor vehicle collision history at the subject intersection between August of 2016 and August of 2019, based on information he received in connection with an OPRA request that was submitted to the Borough of Hillsdale. Mr. Villari testified that he looked at 3 years of data, and the data revealed that there were 6 accidents. Mr. Villari testified that he compared the data with how many vehicles go through the intersection in question, which he opined as 13,000 vehicles a day. Mr. Villari testified that 7.6 times more traffic would be generated by an as-of-right retail use at the subject site than the traffic generated by the proposed use. He also testified that a restaurant would generate just under three times more traffic than what is proposed in connection with the project.

53. Mr. Villari opined that the intersection in question will not be improved or impacted by the Applicant. Mr. Villari testified that 4 vehicles would be added in the morning hours. He also testified that there would be a low number of vehicles added per hour. All 30 units would not be active in the same hour, according to Mr. Villari. Mr.

Villari again reiterated to the Board that between August of 2016 and August of 2019 there were 6 accidents at the subject intersection, while 12 accidents occurred at Orchard and Broadway. Mr. Villari opined that Broadway is a busier roadway than Orchard Street. Mr. Villari further opined that Orchard and Broadway is 14.6 miles and that 12 accidents is fewer than 1 accident per one million vehicles, which is a low frequency. The Board had questions for Mr. Villari and expressed concerns over the intersection and the discrepancy in the data between the Hillsdale Police Department and Stonefield Engineering. A Board member also expressed concern with vehicles stacking up if the train is in the station and blocking the road.

54. At that hearing, the Board also heard testimony from John Szabo, PP (“Mr. Szabo”), of Burgis Associates. Mr. Szabo was duly qualified and sworn prior to providing testimony to the Board in support of the application. Mr. Szabo testified that the Property is currently developed with 3 structures. The site is at the “fringe” of the Broadway corridor. The Verizon building is to the north and a single-family dwelling is to the east. The railroad station is to the west and there is a multi-family project in the vicinity of the proposed project, according to Mr. Szabo.

55. Mr. Szabo testified as to the Bank of America site, which he characterized as having been rezoned for mixed-use development.

56. Mr. Szabo testified that the project fits within the existing development. The Applicant is proposing 5 affordable housing units, and the remainder will be market-rate units. The Applicant will comply with RSIS and the Uniform Housing Affordability Control (“UHAC”). According to Mr. Szabo, he shared his opinion that the impervious coverage is low, which translates into more open area and landscaping. The

Property is zoned commercial. In terms of special reasons, he testified that the project satisfies Purpose A of N.J.S.A. 40:55D-2, which is to guide the appropriate use of land. He also testified that the project meets Purposes E, G, I and J of N.J.S.A. 40:55D-2. The intention is to repurpose the site. In terms of RSIS, the Applicant complies with the parking demand, and residents can either walk or drive to downtown Hillsdale. Mr. Szabo testified that the project creates a walkable neighborhood and provides for a range of housing choices.

57. In terms of reconciliation with the Master Plan, Mr. Szabo testified that the land use element encourages residential development. Mr. Szabo further testified that the Borough of Hillsdale rezoned 2 properties to mixed use, to the left and to the right of the Property and that those properties were rezoned in connection with the Borough's Third Round Affordable Housing Obligation ("Third Round Obligation").

58. The Board found that the Property is located in the middle of the 2 sites identified by Mr. Szabo. The Board, having adopted a Housing Element and Fair Share Plan ("HEFSP"), dated April 10, 2018, in connection with the Borough's 2015 Declaratory Judgment ("DJ") Action, was well aware that the Borough of Hillsdale purposely chose not to rezone the subject Property for mixed-use development and made an affirmative decision to have the Property remain zoned for commercial purposes only, as described herein and in the Borough's Zoning Ordinance, as amended.

59. The Board's HEFSP was endorsed by the Hillsdale Borough Council. The subject Property is situated in the middle of the Verizon and Bank of America ("BOFA") sites. The Verizon site is Block 1201, Lot 11. The BOFA site is Block 1102, Lots 2, 3 and 4. The Council rezoned the Verizon and BOFA sites, as testified to during the HEFSP

hearings, to permit mixed-use developments and to, *inter alia*, allow multi-family residential above the ground floor. As stated herein, the Board and Borough Council, via the HESFP, explicitly elected not to permit residential uses on the subject Property.

60. Mr. Szabo testified that residential development near this train station is consistent with Hillsdale's Master Plan goals. However, as stated herein, the Board did not accept Mr. Szabo's testimony in light of the HEFSP adopted in 2018, which purposely did not include the subject Property for multi-family residential development to assist the Borough in meeting its Third Round Obligation. Mr. Szabo testified that a bulk variance is required for the proposed monument sign, and he justified same under N.J.S.A. 40:55D-70(c)(2) and Purpose I of N.J.S.A. 40:55D-2.

61. In terms of the negative criteria, Mr. Szabo testified that the application can be granted without substantial detriment to the Borough of Hillsdale's Zoning Ordinance and the Zone Plan. Mr. Szabo testified that the Applicant is eliminating a non-conforming use, which is residential use in the "C" Zone. The Board expressed concerns regarding that statement, as the Applicant is eliminating a non-conforming use (residential) and replacing it with a denser residential project, which is also a non-permitted use in the "C" Zone. As aforesaid, the Borough of Hillsdale purposely rezoned the properties to the left and right of the subject Property (the Verizon and BOFA sites) and intentionally chose not to rezone the Property, which was the subject of the application to permit multi-family residential development.

62. According to Mr. Szabo, if a permitted use is developed at the site, it will result in greater impervious coverage. The proposed development is compatible with the surrounding area, per Mr. Szabo.

63. Mr. Szabo provided the Board with Exhibit A-17, which is a handout. He testified that the site will be a transition area between the Verizon and BOFA mixed-use developments. However, the Applicant is not proposing a mixed-use development.

64. The Board then heard the testimony of Richard Preiss, PP (“Mr. Preiss”), the Board Planner. Mr. Preiss testified that the homes on the Property are pre-existing, non-conforming uses and have been there since approximately 1907. During Mr. Preiss’ statement to the Board and questions presented to Mr. Szabo, Mr. Szabo stated that developing the site for retail use is problematic. Mr. Szabo testified that the Property is not an attractive site for commercial use, and the lack of visibility is why it has remained as residential throughout the years. Mr. Preiss questioned Mr. Szabo and asked about the site being utilized for mixed-use development. Mr. Szabo testified that he could not respond to that question. Mr. Szabo expressed his opinion that purely residential use at the site would benefit the community. Mr. Preiss did not share Mr. Szabo’s opinion, nor did certain members of the Board, who questioned why the Hillsdale Borough Council did not re-zone the Property from commercial to residential, despite having an opportunity to do so during the affordable housing litigation.

65. Mr. Preiss took the Board through the proofs required in connection with the grant of the (d)(1) variance, including Medici v. BPR. He informed the Board that it has to reconcile the omission of the proposed residential use from the Borough of Hillsdale’s Zoning Ordinance for the “C” Zone.

66. Mr. Preiss informed the Board that the Borough of Hillsdale purposely chose not to include the Property for affordable housing purposes as part of its HEFSP and 2015 DJ Action.

67. Mr. Preiss further informed the Board that the Borough of Hillsdale did not rezone the Property for residential purposes despite having an opportunity to do so in connection with its Third Round Obligation. Again, Mr. Preiss, advised the Board of its obligation to reconcile the Borough of Hillsdale's intentional omission of permitting residential use of the subject Property in evaluating the subject application. He testified that the zoning in place is commercial.

68. The proposed use is not inherently beneficial, per Mr. Preiss' testimony. Mr. Preiss also testified that the proposal does not meet the goals of the Master Plan, despite Mr. Szabo's testimony, and that there may have been other circumstances that may have come into play when the Borough Council and the Board were evaluating sites in connection with the Third Round Obligation.

January 9, 2020 Hearing

69. At the January 9, 2020 hearing, the Applicant's counsel, Ms. Knarich, explained to the Board that the Applicant wished to scale back its proposed project to include fewer units.

70. Counsel for the Board advised the Board that amendments to applications are not typically accepted at hearings and that the Applicant should return with revised materials reflecting any proposed changes.

February 13, 2020 Hearing

71. In advance of its February 13, 2020 meeting, the Board received revised plans scaling back the project. The Board also received Mr. Statile's February 10, 2020 report, wherein Mr. Statile informed the Board that the Applicant submitted revised plans from Lantelme, Kurens & Associates (consisting of 6 sheets and revised to January

20, 2020) and revised architectural plans from Zampolin and Associates (consisting of 6 sheets and revised to January 29, 2020). In his report, Mr. Statile also informed the Board, *inter alia*, that he was in receipt of and reviewed a Landscape Plan prepared by Meumann Associated (consisting of 1 sheet dated May 2, 2019 and revised to January 30, 2020); Drainage Calculations prepared by Lantelme, Kurens & Associates, PC (dated February 11, 2019 and revised to January 30, 2020); and Property Survey prepared by Lantelme, Kurens & Associates, PC (dated January 29, 2019). Mr. Statile's report also advised that 86 trees are proposed for removal. Under Hillsdale's Ordinance, the Applicant must provide 2 trees for every tree removed or 172 trees.

72. In his February 10, 2020 report, Mr. Statile informed the Board that the Applicant reduced the density of the project from 30 units to 24 units or 22 units per acre. The Applicant's amended plans propose a building with a 17,734 SF footprint from the prior footprint of 21,054 SF. The 24 units will include 4 affordable units consisting of:

- 7 one-bedroom units;
- 16 two-bedroom units; and
- 1 three-bedroom unit

73. When the Applicant returned on February 13, 2020, the revised plans were testified to by the Applicant's professionals. Mr. McClellan testified on behalf of the Applicant. He testified that 24 units are proposed and that the subject is 68 feet off the side lot line. Under the revised proposal, 47 parking spaces are required by RSIS and 55 parking spaces are proposed. Mr. McClellan testified as to Exhibit A-18, which is the Grading and Drainage Plan that was prepared by Lantelme Kurens and revised to

February 11, 2019. He testified as to the lighting that is being proposed, which he testified is the prevailing type of lighting in Hillsdale. The proposed patio was removed and lawn space was added, according to Mr. McClellan. He also testified that the building footprint was decreased by 3,300 SF to 37.9% and the building was pulled further away from the railroad tracks. The building was decreased in size, but the subsurface drainage remained the same. Mr. McClellan informed the Board that the Applicant will comply with the comments made by its Board Engineer on the record and as stated in the Board Engineer's reports.

74. According to Mr. McClellan, snow will be removed off-site. The piping was rerouted to avoid the removal of trees and 48 trees will be removed.

75. The Board then heard testimony from Mr. Zampolin. He testified that the easterly portion of the building remained the same. He testified that the closest corner of the building is 135 feet from the railroad tracks, whereas it was previously proposed at 85 feet from the railroad tracks. He testified that the COAH units have dropped by one unit, as the Applicant is now proposing 24 units in total. The Applicant will meet the 15% requirement for the affordable housing units and will comply with UHAC in terms of the bedroom distribution. In terms of the bedroom distribution, 16 two-bedroom units are proposed; 7 one-bedroom units are proposed; and 1 three-bedroom unit is proposed.

76. He also testified that visually the front elevation of the building is what was modified by the Applicant. The Applicant is proposing to utilize real brick instead of brick veneer, as well as Hardie Plank. Only exterior lighting is proposed at the front entrance of the proposed building. The utilities will be appropriately screened.

77. The Board expressed concerns regarding sound attenuation as the Property abuts the railroad tracks. Mr. Zampolin testified that the Applicant would be willing to utilize spray foam and triple-pane windows in order for noise attenuation due to the rail station which bounds the Property. The Board asked that a colored rendering be prepared and submitted by Mr. Zampolin that would be consistent with Mr. Meumann's rendering. A flat roof is proposed.

78. The Board professionals then engaged in discussions with the Applicant's professionals, whereby it was set forth on the record that the Applicant shall fully comply, if the project was approved, with UHAC, including advertising, affirmative marking and the entry of 30-year deed restrictions.

79. Mr. Meumann then testified as to the revised landscape plan, which was marked as Exhibit A-19. Mr. Meumann also testified as to Exhibit A-20, identified as "Concept View", dated February 13, 2020 and prepared by Mr. Meumann, which depicts the Tudor-looking building. Mr. Meumann also testified as to Exhibit A-21, which is "Concept View B", dated February 13, 2020 and likewise prepared by Mr. Meumann. At that hearing, it was discussed and agreed that the Applicant would install a fence along the entire length of the railroad track. In terms of the fencing, Exhibit A-22 showed the fencing detail, which is a PVC fence with wood grain that will reduce glare, according to Mr. Meumann. According to Mr. Meumann, 43 trees will be removed and 86 replacement trees shall be contributed, in accordance with Hillsdale's Zoning Ordinance. A dense evergreen buffer is proposed on the residential side, and the evergreens are proposed to be 8 feet high. The Applicant also agreed to install an irrigation system along the entire Property. The Applicant also agreed that Belgian-

block curbing in the parking lot would be utilized by the Applicant. The monument sign, in terms of lighting, will be appropriately shielded.

February 25, 2020 Hearing

80. The Applicant returned to the Board on February 25, 2020, and Ms. Knarich presented additional testimony from Mr. Zampolin. He testified that the roof will be a dark charcoal color. Mr. Zampolin brought sample materials, including Hardie Plank and brick. He testified that the Applicant would, in terms of the exterior, utilize Hardie Plank, real brick and batton siding. There would be true brick utilized along the perimeter of the first floor, according to Mr. Zampolin. The grills will be powder coated to meet the color of the Hardie Plank. The east wing is now the longer portion of the building, according to Mr. Zampolin. Mr. Zampolin testified as to Exhibit A-23, which is a colored rendering of the proposed building. According to Mr. Zampolin, the proposed Hardie Plank will help deaden the sound of trains passing on the railroad tracks which border the Property. Mr. Zampolin confirmed that no generator would be utilized in connection with the subject development.

81. The Board, in light of COVID-19, cancelled various public meetings. Counsel for the Board contacted Applicant's counsel, Ms. Knarich, on or about March 24, 2020 to confirm that the Planning Board meeting of March 24, 2020 was being cancelled in light of COVID-19. In that communication, an extension of time for the Board to act was requested and agreed to by counsel for the Applicant. The April meetings of the Board were likewise cancelled and additional extensions of time for the Board to act were granted by Applicant's counsel. The Applicant next appeared at a virtual Board meeting of **May 26, 2020**.

May 26, 2020 Hearing

82. At the May 26, 2020 hearing, Caroline Reiter, PE (“Ms. Reiter”), acting Planner for the Board and John Szabo (“Mr. Szabo”), planner for the Applicant, were duly sworn and provided testimony to the Board. Sean McClellan was duly sworn but did not provide testimony at the subject hearing.

83. Caroline Reiter, PP, AICP (“Ms. Reiter”) prepared a report dated May 19, 2020 in connection with the subject application. In essence, Ms. Reiter’s planning analysis described the subject application as a major site plan with both use and bulk variances. In her report, Ms. Reiter informed the Board that the Applicant necessitates a use variance, as the proposed use is not permitted in the “C” Zone. Ms. Reiter informed the Board in her report and during her testimony that Block 1201, Lots 5, 6 and 7 are located on the north side of Orchard Street, west of the Broadway/Orchard intersection, in the “C” Zone (minimum lot size 7,500 SF). The subject lots are located within Hillsdale’s Commercial Downtown Area. Lot 5 is adjacent to the rail line. Lots 6 and 7 are located east of Lot 5. Lot 7 is adjacent to a residential dwelling and opposite a bank. In her report, Ms. Reiter further stated that Lot 5 is improved with a 2½-story frame dwelling and detached frame shed. The driveway to Lot 5 extends over the property line that is shared with adjacent Lot 6. Lot 6 is improved with a 2½-story frame dwelling and a detached frame garage. Lot 7 is improved with a two-story frame dwelling with a detached block garage. A gravel driveway extends over the property line between Lots 6 and 7 and appears to be a shared driveway. Various fences, walls, patios, concrete areas, walkways and other improvements are present on the properties. All three residential

dwellings are non-conforming uses in the Commercial Zone. The three lots combined contain 46,751 SF, or 1.07 acres.

84. In terms of the proposal, Ms. Reiter informed the Board that the Applicant amended its original application and is now proposing a 24-unit multi-family development with a storage area and a community center. The proposed building has a 17,734 SF building footprint. Fifty-five (55) on-site parking spaces (2 barrier-free) are proposed. Access to the site will be from Orchard Street. Of the units, 4 will be affordable units. The unit breakdown is as follows:

- 7 one-bedroom units (1 affordable);
- 16 two-bedroom units (2 affordable); and
- 1 three-bedroom unit (1 affordable).

85. Ms. Reiter further informed the Board that prior submissions included a denser development, with a larger building and more parking spaces.

86. Ms. Reiter informed the Board of the proofs required in connection with the grant of a variance pursuant to N.J.S.A. 40:55D-70(d)(1). She also informed the Board that the Applicant necessitated relief pursuant to Section 310-65D(1) of Hillsdale's Zoning Ordinance in connection with the proposed free-standing sign. She informed the Board that a free-standing sign is allowable where the building has a 60-foot right-of-way setback versus the 20-foot setback proposed. As stated herein, she also informed the Board that the Applicant requires a use variance.

87. Mr. Szabo testified that the number of units had been reduced to 24 units, of which there would be 7 one-bedroom units; 16 two-bedroom units; and 1 three-bedroom unit. Mr. Szabo testified that the building coverage was reduced from 45% to

37.9%. The impervious coverage was likewise reduced. He testified that a 68-foot side yard to the railroad tracks is being provided, and the Applicant is adding parking beyond what is required pursuant to RSIS. Mr. Szabo testified that the development is less intense than what was originally proposed by the Applicant. The Applicant reduced the height of the building in order to comply with the maximum height requirements. He testified that the Applicant is requesting a variance pursuant to N.J.S.A. 40:55D-70(d)(1) and a bulk variance to allow for a monument sign. Mr. Szabo once again took the Board through the special reasons and pursuant to N.J.S.A. 40:55D-2. He testified that it satisfies special reasons A, B, E, G, I and J.

88. Mr. Szabo opined that the mixed uses proposed at the Bank of America and Verizon sites will help reopen Hillsdale's community in light of COVID-19. He also testified that the site can be appropriately developed for multi-family use and that the site can accommodate the project. He also testified that the site is particularly suited for the proposed residential use, due to its proximity to mass transit and to the downtown. He also testified and opined that the application provides housing choices by proposing rental housing. In terms of the monument sign, he testified that the sign is required to be set back at 60 feet, and that the "wing" of the sign is set back 20 feet, but that same could be justified under (c)(2) relief.

89. The Board engaged in discussions regarding the project and expressed various concerns following the testimony by Mr. Szabo and Ms. Reiter. One Board member expressed concerns regarding the proposed density of the project, which Mr. Szabo said was 22.4 dwelling units per acre. The concern expressed by another Board

member dealt with the proximity of the proposed project to the railroad tracks and concerns regarding noise and dust generated by the trains.

90. At the conclusion of the testimony, a Board member made a motion to approve the application, which was seconded by another Board member. However, 4 out of 7 Board members voted against the application. The motion to approve failed. The Board members who voted to deny the application placed their factual findings on the record, which are summed up in the following paragraphs.

Justification of Decision

91. On the record, it was stated by either one of the Board professionals or a member of the Board that other multi-family projects within the Borough, which were approved by the Board during the Third Round Obligation, range from 13.33 dwelling units per acre to 20.89 dwelling units per acre. The Applicant proposes 22.4 dwelling units per acre. However, both of the projects referred to on the record were approved with the intention of providing affordable housing with regard to the Borough of Hillsdale's Third Round Obligation. The Board members who voted to deny the application felt that the proposed project was dense and that multi-family use is not permitted. Such Board members determined that the Property is not suitable for multi-family development.

92. One of the Board members made a factual finding that the governing body of the Borough of Hillsdale, during the Third Round Obligation, had the opportunity to rezone the subject Property from commercial to residential and purposely chose not to do so. In fact, the Board did not designate the subject Property in its HEFSP as a mechanism to help satisfy the Borough's Third Round Obligation. Said Board member

also found that the governing body of the Borough of Hillsdale purposely chose to rezone the properties to the left and right of the subject site (the Bank of America and Verizon sites) but affirmatively chose not to rezone the subject Property from commercial to residential. The Applicant proposed to replace the existing non-conforming use with another non-conforming use. The members voting to deny the applicant could not reconcile the Borough's affirmative decision to have the Property remain commercial zoned with the multi-family project proposed by the Applicant.

93. Another Board member found that residential use is not permitted in the Commercial Zone District and that the Property can be utilized for its zoned purposes.

94. A Board member questioned that if the surrounding lots (Bank of America and Verizon) were rezoned, why was the subject site not rezoned by Hillsdale's governing body. That Board member felt that the omission of rezoning the subject site was indicative of the Borough of Hillsdale's intention to prohibit or otherwise not permit residential uses only at the subject Property. That Board member further stated that it was not compelling testimony from the Applicant's professionals, particularly Mr. Szabo, that the set aside for affordable housing would help satisfy the Borough's Fourth Round Obligation.

95. Another Board member again expressed the same concerns, that the governing body of the Borough of Hillsdale had the opportunity to rezone the subject Property during the Borough's Third Round Obligation and chose not to do so. That Board member was also concerned about density and also about the current zoning of the site for commercial purposes versus proposed residential, which would replace one non-conforming use with another non-permitted use.

96. The members who voted to deny the application determined that they could not reconcile the Borough's omission of residential development on the subject Property under Medici, as testified to by its Planner, Richard Preiss, PP.

97. As stated herein, the Board received reports from its Planners, including PPG. The reports prepared by PPG and Ms. Reiter are incorporated herein by reference. According to the reports and as testified to by the Board Planners on the record, the subject Property is located within the Borough's "C" Zone, which does not permit residential uses. As such, a (d)(1) use variance is required for the proposed multi-family residential use. The MLUL, at N.J.S.A. 40:55D-70(d)(1) permits a board of adjustment to grant a variance to allow a "use or principal structure in a district restricted against such use or principal structure". A (d) variance may be granted only "in particular cases for special reasons". These "special reasons" for a use variance may include that the use is inherently beneficial, that the property owner would suffer undue hardship if compelled to use the property in conformity with the permitted uses in the zone, or that the site is particularly suited for the use so as to promote the general welfare. The proposed development is not inherently beneficial. The Board determined that it was not compelling testimony by the Applicant's Planner that the 15% set aside of affordable units was a compelling enough reason to grant a use variance in connection with the subject project.

98. In addition, the Applicant must also address the "negative criteria" and affirmatively demonstrate that the variance can be granted "without substantial detriment to the public good" and "without substantial impairment to the intent and purpose of the zone plan and zoning ordinance" of the municipality. A (d)(1) variance

applicant for a use that is not inherently beneficial is further required to address the “enhanced quality of proof” from Medici v. BPR Co., 107 N.J. 1 (1987); “the grant of a use variance is not inconsistent with the intent and purpose of the master plan and zoning ordinance”.

99. As determined by the Board members who voted to deny the application, the grant of the use variance is inconsistent with the intent and purpose of the Borough of Hillsdale’s Master Plan, Zone Plan and Zoning Ordinance, which does not permit residential use in the “C” Zone. The Applicant failed to meet the enhanced quality of proof. The Borough of Hillsdale’s governing body had an opportunity to rezone the subject Property for residential purposes during the Third-Round litigation and affirmatively decided not to permit residential development on the subject site. In fact, the Hillsdale governing body re-zoned the BOFA and Verizon properties, which border the subject Property, for mixed-use development and multi-family residential development. The Board was also concerned about the suitability of the Property for multi-family residential development due to its proximity to the railroad track, as well as the proposed density.

100. The Board recognized that the Borough of Hillsdale’s governing body affirmatively chose not to rezone the subject Property for residential purposes during its affordable housing litigation. For the reasons summarized herein and on the record, the Board denied the application.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Hillsdale that the Applicant’s application for preliminary and final site plan approval; variance relief pursuant to N.J.S.A. 40:55D-70(d)(1); and variance relief

associated with a free-standing sign is hereby denied, for the reasons set forth herein and on the record.

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 denying the requested relief as described herein and the Applicant is authorized to advertise the action taken by way of this Resolution in a local newspaper; and, further, the Secretary of the Board is authorized to send copies of this Resolution to the Construction Code Official and to the Applicant's counsel, by Jennifer Knarich, Esq., of Price Meese Shulman & D'Arminio, PC.

VOTE TO APPROVE THE APPLICATION

MOVED BY:

SECONDED BY:

VOTE: FOR 3 AGAINST 4 ABSTAIN _____

DENIED

MEMORIALIZATION VOTE

MOVED BY:

SECONDED BY:

VOTE: FOR _____ AGAINST _____ ABSTAIN _____

ATTEST:

Meredith Kates, Secretary

Michael Giancarlo, Chair

Joanne Miano, Vice-Chair

I certify that the foregoing is a true and accurate copy of the Resolution adopted by the Hillsdale Planning Board at its meeting held on _____, 2020.

Dated: _____, 2020

Meredith Kates, Secretary