NOVINS, YORK, JACOBUS & DOOLEY
ATTORNEYS AT LAW

50 Tice Blvd., Suite 340
Woodcliff Lake, NJ 07677
(201) 690-5125
(201) 824-2048 Fax
www.nyplaw.com

Robert J. Novins (1936-1973)
Robert F. Novins (1949-2002)
Harvey L. York
Michael A. Jacobus*+
Michael B. York**
Lauren M. Dooley
David M. York**
**Admitted in NJ and NY
*Rule 1:40 Qualified Mediator
+Member of National Academy of Elder Law Attorneys

Ocean County Office
202 Main Street
Toms River, NJ 08753
(732) 349-7100

June 16, 2025

VIA EMAIL

Hillsdale Planning Board
ATTN: Marc Leibman, Esq.
380 Hillsdale Avenue
Hillsdale, New Jersey 07642

RE: 11 BOULEVARD SOUTH, WASHINGTON TOWNSHIP

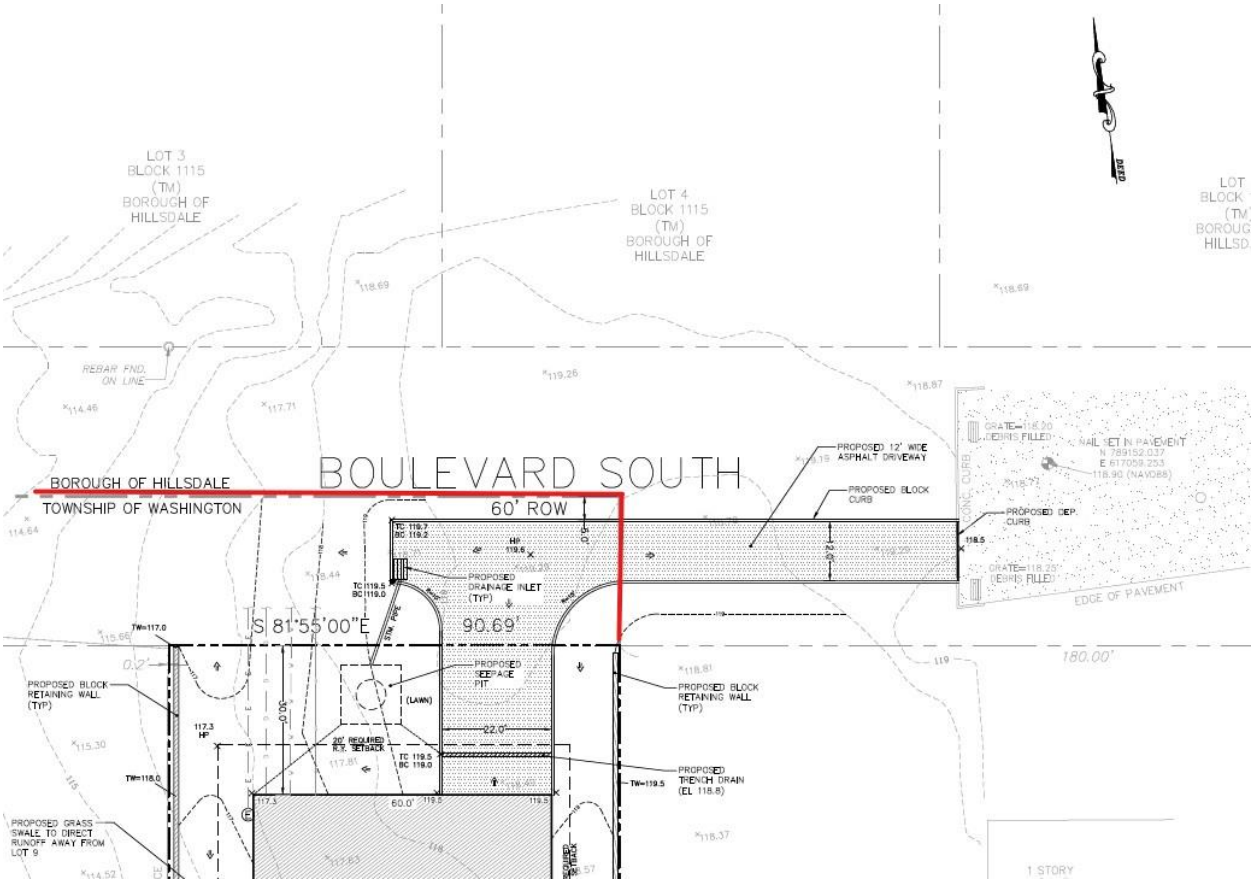
Dear Mr. Leibman:

As you know, our firm represents the applicant, Cianfrone Properties, LLC, with regard to the above-captioned property. Please accept this letter brief in lieu of a more formal brief regarding the jurisdiction of the Hillsdale Planning Board to consider our client's application.

By way of background, the applicant owns the landlocked parcel of real property located at 11 Boulevard South in Washington Township. The four corners of the property are located exclusively within Washington Township; provided, however, the northeastern corner of the property is immediately adjacent to Hillsdale.

The frontage of the property is Boulevard South which is a sixty (60) foot wide unimproved right of way running east to west (from Summit Street in Hillsdale to Taylor Avenue in Washington Township). The municipal boundary line between Hillsdale and Washington Township is split down the centerline of Boulevard South. Along the applicant's frontage, thirty (30) feet, or one half, of the right of way is located in Washington Township and the remaining thirty (30) feet is

located in Hillsdale. For the sake of clarity, we are including the rendering hereinbelow which is set forth in our client's plot plan previously submitted to this Board:



The applicant is unable to access the property from the west through Washington Township due to the existence of a permanent structure blocking said access. Despite the fact that the applicant is seeking judicial relief from Washington Township, the granting of any relief by the Superior Court has no import on the within matter.

The applicant has applied to this Board to obtain access to the property from the east through Hillsdale. The applicant proposes to build a twelve (12) foot wide asphalt driveway on the unimproved portion of Boulevard South in Washington Township to the improved portion of Boulevard South in Hillsdale. The approximate total length of said driveway is one hundred thirty-

five (135) feet and will allow for safe emergency access. The approximate length of the driveway which will be situated in Hillsdale is eighty (80) feet.

This Board is the exclusive venue for which the applicant must appear pursuant to the Municipal Land Use Law (MLUL). The applicant appears before this Board pursuant to N.J.S.A. 40:55D-36 ("direct issuance of a permit for a lot lacking street frontage"). The applicant has a right to access the property through Hillsdale pursuant to the MLUL, constitutional law and New Jersey caselaw for the reasons set forth hereinbelow.

I. MLUL

Pursuant to N.J.S.A. 40:55D-36, in pertinent part:

> Where the enforcement of section 26 of P.L.1975, c.291 (C.40:55D-35) would entail practical difficulty or unnecessary hardship…the board of adjustment may upon application or appeal, vary the application of section 26 of P.L.1975, c.291 (C.40:55D-35) and direct the issuance of a permit subject to conditions that will provide adequate access for firefighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the official map... (emphasis added).

First, the MLUL specifically entrusts this Board with original and exclusive jurisdiction. Second, the MLUL does not require that an applicant seeking this type of relief must exclusively appear before a land use board in the same municipality where the property is located. There can be no doubt that Hillsdale would not permit any improvements to be made to the portion of Boulevard South without the express written consent of Hillsdale. Accordingly, the only entity which may provide such express written consent is this Board.

In his review letter, Mr. Behrens, Jr. stated in pertinent part: "The relief being requested in accordance with N.J.S.A. 40:55D-36 can only be granted by the municipality in which the lot is located and therefore, the Hillsdale Planning Board does not have jurisdiction to grant such relief." While it may be *customary* for an applicant to appear in "the municipality in which the lot is

located," it is not required. Furthermore, Mr. Behrens points to no ordinance, statute nor any caselaw for this proposition.

Mr. Behrens continues: "…only the Governing Body has the authority to grant access to the Boulevard South right-of-way." As previously stated, the MLUL authorizes this Board to "direct the issuance of a permit subject to…" The MLUL does not grant the Governing Body the same. Furthermore, again, Mr. Behrens points to no ordinance, statute nor any caselaw for this proposition.

II. Constitutional Law

Pursuant to Article IV, Section 2 of the United States Constitution, in pertinent part: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." The *Privileges and Immunities Clause* has been interpreted to grant the citizenry a fundamental right to move freely within and between states, and by extension, within municipalities. Pursuant to Article I, Paragraph 1 of the New Jersey Constitution, "All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." This has also been interpreted to include the right to move freely.

An individual need not request permission from Bergen County to move in and among its seventy towns. An individual need not request any right to access a public road or sidewalk. Hillsdale has no right to restrict individual access to a public street as much as Washington Township has no right to restrict individual access to a public street. Hillsdale, however, may condition access to a public street based on the protection of "health and safety." There is no doubt that had Boulevard South been an improved road, the applicant would have had as much of a right to move freely into Hillsdale (turn right from its property) as it would to move freely into

Washington Township (turn left from its property). There is no ordinance, statute nor caselaw which dictates that municipal borders may restrict or infringe upon private property access rights. Boulevard South – all of Boulevard South, not just one-half – is a public street in which any individual may access either or both portions of the same whether it be situated in Hillsdale or Washington Township.

III. Caselaw

In Phillips v. Westfield Bd. of Adjustment, 44 N.J. Super. 491, 498 (App. Div. 1957), the court upheld the decision of the zoning board directing the issuance of a building permit conditioned upon the installation of "a pavement of road stone, 18 feet in width." The Court stated that "permitting the erection of a dwelling on a lot on an unimproved street involves no permanent harmful consequence to the municipality. The municipality may at any time take action for the improvement of the street, either by special assessments against abutting property owners or at general public expense, or partly by each." Id.

In Kligman v. Lautman, 53 N.J. 517, 545 (1969), the court asserted that a municipality may "adopt an ordinance providing that no building permit may issue unless the lot has sufficiently improvement means of access for emergency vehicles, in all weather, by public or private street or lane." (emphasis added).

In Highway Holding Co. v. Yara Engineering Corp., 22 N.J. 119, 136 (1956), the Court stated "that a private right of way in a street is confined to such a use of the road or street as is necessary or useful for the beneficial enjoyment of the lot conveyed; that it is a right to a right of way or access from or to some public highway to or from the premises conveyed. Therefore, if as the result of the vacation of any such street, an abutting owner on such street or abutting owners on other dedicated streets are left without any access whatsoever to a public street or highway, such owners may have an action for damages for the injury to their property and its appurtenances."

In Lima & Sons, Inc. v. Borough of Ramsey, 269 N.J. Super 469, 477 (App. Div. 1994), the court held that a property owner is entitled to "reasonable access" to public roads and "whether reasonable access" exists is a "factual conclusion to be drawn from the surround undisputed facts of the case." Id. at 478.

As discussed supra, the applicant is precluded from accessing the property from the west through Washington Township. The only access to the property is to the east through Hillsdale which is undoubtedly "reasonable access" provided that the applicant is willing and able to comply with any reasonable conditions imposed by Hillsdale, which it is (i.e., access for emergency vehicles, improvements compliant with site improvement standards, etc.).

IV. Conclusion

Based on the foregoing, the jurisdiction of the Hillsdale Planning Board to consider our client's application is proper.

Respectfully submitted,

/s/ David M. York, Esq.
david.york@nyplaw.com

cc: Client (*via email*)