JOINT LAND USE BOARD OF THE BOROUGH OF HILLSDALE

RESOLUTION #2025-12

DENIAL OF JURISDICTION

In the Matter of the Application of Cianfrone Properties LLC:

WHEREAS, Cianfrone Properties, LLC (the "Applicant") seeks to develop the landlocked property located at 11 Boulevard South, Washington Township, designated as Lot 14 in Block 4103, in Washington Township (the "Property"); and

WHEREAS, on or about November 7, 2024, the Applicant filed an application (the "Application") with the Joint Land Use Board, Borough of Hillsdale (the "Board"). The Application proposed to build a driveway on a paper street on the tax map of Hillsdale, Boulevard South, in order to access the Property.

WHEREAS, the Applicant requested an appeal from N.J.S.A. 40:55D-35, which states that "[n]o permit for the erection of any building or structure shall be issued *unless the lot abuts a street* giving access to such proposed building or structure." The Property in question in fact does not abut such a street; and

WHEREAS, in a memorandum dated March 24, 2025, the Board's Planner, Tom Behrens, PP, AICP, rendered his opinion that the relief being requested is inconsistent with the nature of proposed improvements, and furthermore, the Board is not the appropriate

proper venue to grant approvals for the improvements of public roads being sought; and

WHEREAS, in a letter dated June 16, 2025, Applicant's counsel, Harvey York, Esq., presented legal arguments rebutting the Board Planner's conclusions; and

WHEREAS, in a memorandum dated June 23, 2025, the Board Attorney, Marc Leibman, Esq., rendered his opinion regarding the jurisdictional dispute in which he concluded that the Board does not have jurisdiction to entertain the Application; and

WHEREAS, said memorandums are incorporated herein as if set forth at length; and

WHEREAS, a public meeting was held by the Board on June 24, 2025, in person, in accordance with the Open Public Meetings Act and the Municipal Land Use Law, at which time the Applicant, through his counsel, presented legal arguments in support of the position that the Board has jurisdiction to entertain the Application; and

WHEREAS, the Board has reviewed the letters and memorandas set forth above and the legal arguments presented by Applicant's counsel; and

WHEREAS, the Board, having heard and considered such arguments presented by the Applicant, and noting that no members of the public offered questions or comments:

NOW, THEREFORE, BE IT RESOLVED that the Joint Land Use Board of the Borough of Hillsdale makes the following findings of fact and conclusions of law with respect to the within Application:

1. The Property is located at 11 Boulevard South and is designated as Lot 14 in Block 4103 in Washington Township. The Property is entirely within Washington Township. It consists of 15,881 SF (0.36 acre) and is unimproved. The Property is located on the unimproved south side of the Boulevard South right-of-way between Taylor Street and Summit Street.

2. The municipal boundary line between Hillsdale Borough 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. The Property does not have any direct frontage on an improved public road and does not front on any unimproved road in Hillsdale.

3. Access to the Property from the west through Washington Township is blocked by a retaining wall. The Applicant has commenced litigation against Washington Township and the owner of the aforementioned adjoining property for access.

4. A majority of the length of the proposed driveway (80 of the total 135 feet) would be situated in Hillsdale on land which is owned by the Borough.

5. The proposed driveway would not connect the Property to Hillsdale. It would instead connect the Property to a paper street in Washington Township, which in turn is proposed to connect to the paper street in Hillsdale.

6. The Applicant is not precluded from accessing the Property in any other manner other than the proposed driveway; removing the retaining wall to access the Property from the west would not be unreasonably difficult.

7. Section three of the application regarding ownership was left blank. The application makes no reference to sewer activity nor the provision of utilities into the Property.

8. The Property is currently without any utility as a result of Washington Township's refusal to permit access to it.

CONCLUSIONS AND DETERMINATIONS

9. All findings of fact set forth above are made a part hereof as if set forth herein at length.

10. For the reasons set forth in the Board Attorney's memorandum and herein, the Board concludes that it does not have jurisdiction to entertain the Application for the proposed driveway.

11. Specifically, the Board concludes that there is nothing in the MLUL that provides the Board with the authority to connect a property in another municipality to a paper street in that municipality in order to access a paper street in its own Borough.

12. The authority to grant access and improvement to a public street rests with a governing body, not with a planning or zoning board. And this Board does not have the jurisdiction to order a superior agency to grant such access.

13. This determination of lack of jurisdiction does not constitute denying Applicant access to Boulevard South.

14. Neither N.J.S.A. 40:55D-36 nor any other source of law that the Board is aware of grants the Board the power to order another municipality to grant the relevant permit, or to compel the issuance of a permit over property owned by Hillsdale to property owned by Washington Township.

15. There does not appear to be a practical difficulty or unnecessary hardship, as required for relief by N.J.S.A. 40:55D-36, in complying with the street access requirement of N.J.S.A. 40:55D-35.

16. N.J.S.A. 40:55D-35 is inapplicable inasmuch as the site has access to a public street in Washington Township which the applicant seeks to improve (and then connect to a paper street in

Hillsdale) which is distinct from requesting relief to develop a lot that does not have access on a public street as *may* be granted under N.J.S.A. 40:55D-36.

17. The proposed driveway in Hillsdale appears inadequate for emergency services and does not propose a conforming cul-de-sac or conform to Residential Site Improvement Standards ("RSIS")/

18. It is the Board's finding that Washington Township's land use board(s) and council's failure to grant relief to the Applicant in this case would be arbitrary, capricious and unreasonable and subject to reversal in court, or alternatively may constitute a taking in violation of the 4th, 5th and 14th Amendments of the U.S. Constitution.

19. There already exists an access way to the driveway in Washington Township which services the home adjacent to the Applicant's Property. Any suggestion by Washington Township or it's land use board(s) that such road cannot be extended due to safety concerns is specious given that it already exists and merely needs to be extended to the subject property.

NOW, THEREFORE, BE IT RESOLVED by the Joint Land Use Board of the Borough of Hillsdale, based upon the above findings of fact and conclusions of law, that the within application is hereby

dismissed because the Board does not have jurisdiction under N.J.S.A. 40:55D-36.

IT IS HEREBY CERTIFIED that this is a true and correct copy of a Resolution adopted by the Board of the Borough of Hillsdale upon a roll call vote at a meeting held on July 10, 2025.

A copy of this Resolution shall be given to the Borough Clerk for further transmission to the Borough Attorney and Council.

ATTEST: SO APPROVED:

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Scott Raymond, Secretary Meredith Kates, Chairman

Date of Adoption: July 10, 2025