

TOWN OF PHILLIPSBURG PLANNING BOARD RESOLUTION

**RESOLUTION APPROVING MINOR SUBDIVISION AND
PRELIMINARY AND FINAL SITE PLAN IN CASE NO. 19-004**

**445 James Street, LLC – Applicant/Owner
45 Timber Ridge Road
North Brunswick, New Jersey 08902**

Block 2307, Lot 5

Application #2019-004

WHEREAS, 445 James Street, LLC (hereinafter referred to as the “Applicant”), has applied to the Town of Phillipsburg Planning Board (hereinafter referred to as the “Board”), for Minor Subdivision Approval and Preliminary and Final Site Plan Approval, along with any and all variances, design exceptions and/or waivers, for the creation of two new lots on the property known as Block 23.07, Lot 5, located in the Town’s R-50 Zone (hereinafter “the subject property”) in Application #2019-004; and

WHEREAS, in 2019, the Applicant originally had applied to the Board for Minor Subdivision Approval and Preliminary and Final Site Plan Approval, along with any and all variances, design exceptions and/or waivers, for the creation of three (3) new lots on the subject property; and

WHEREAS, the Board having satisfied itself that proper notice was given to neighboring property owners and others entitled to notice, as well as publication pursuant to both the Town of Phillipsburg Code and to N.J.S. 40:55D-12, and having satisfied itself that it had jurisdiction over the Application; and

WHEREAS, beginning in March of 2020, due to the public health emergency necessitated by the Covid-19 pandemic, pursuant to the Executive Orders of the Governor of the State of New Jersey, public gatherings have been limited in size, space, location and duration; and

WHEREAS, due to the public health emergency necessitated by the Covid-19 pandemic, pursuant to the Executive Orders of the Governor of the State of New Jersey businesses and gatherings have been open to the public in only a limited capacity; and

WHEREAS, due to the public health emergency necessitated by the Covid-19 pandemic, pursuant to the Executive Orders of the Governor of the State of New Jersey, public bodies, such

as the Board, are expressly authorized by law to conduct public meetings remotely through the use of audio and video technology; and

WHEREAS, due to the public health emergency necessitated by the Covid-19 pandemic, it was the decision of the Board that it was in the best interests of the Board, the Town of Phillipsburg, the Applicant and the public for this Application to proceed without further delay, consistent with the Executive Orders of the Governor of the State of New Jersey; and

WHEREAS, the Board was of the opinion, after consultation with its professionals, that the Board could consider this Application remotely and that its consideration would not be impeded whatsoever by considering the Application remotely; and

WHEREAS, beginning January 1, 2020, Mayor Todd Tersigni became the Class 1 member of the Board and recused himself entirely from consideration of this Application; and

WHEREAS, the Applicant appeared virtually before the Planning Board at a regular Meeting on October 22, 2020, and was represented by William R. Edleston, Esq., at which time the Applicant pursued its original Application for creation of three (3) new lots on the subject property and requested certain waivers from the Minor Subdivision checklist, and the Board having determined by vote of the Board members present that said waivers can be granted temporarily and the Application was determined by the Board to be complete; and

WHEREAS, a virtual public hearing was held on December 10, 2020, where the Applicant, represented by William R. Edleston, Esq., presented an explanation concerning the original Application, to wit, the request to subdivide the subject property into three (3) buildable lots; and

WHEREAS, the Applicant presented expert testimony from its engineer, Christopher Nusser, P.E., P.P., who was accepted by the Board as an expert and whose testimony was accepted and is set forth in detail below; and

WHEREAS, the Chairman opened the Application to public comment, of which there was much public comment in opposition to the Application; and

WHEREAS, after comments and questions from both the Board and the public, the Applicant requested an adjournment, which was granted, without the requirement that the Applicant provide any additional notice; and

WHEREAS, the Applicant thereafter revised the Application to subdivide the property into two (2) lots, as opposed to the three (3) lots contained in the original Application, and

submitted additional documentation in support of the revised application which is set forth below; and

WHEREAS, a virtual public hearing was held on February 22, 2021, where the Applicant, represented by William R. Edleston, Esq., presented an explanation concerning the Application, to wit, the request to subdivide the subject property into two (2) buildable lots, which was a revision from the original Application; and

WHEREAS, the Board Engineer and the Board Attorney were satisfied that the Board's determination of the application's completeness, which was made on October 22, 2020, remained accurate; and

WHEREAS, the Board being satisfied that the revised application had been made accessible to the public by both being posted on the Town of Phillipsburg's website and being physically available for inspection with the Secretary of the Board; and

WHEREAS, the Board has received certain documentation and reports from the Applicant, the Board's professional consultants and others, these having been given due consideration and being the following:

- A. Town of Phillipsburg – Application for Minor Subdivision for Block 2307, Lots 5, dated August 6, 2020, which included a Certification from the Collector Taxes, dated August 4, 2020, that realty taxes were current;
- B. Subdivision Plan entitled: "Minor Subdivision Plan 445 James Street, LLC, 445 James Street, Block 2307, Lot 5, Town of Phillipsburg, Warren County, New Jersey" prepared by Engineering and Land Planning ("ELP"), dated June 30, 2020, consisting of seven (7) sheets; and subsequently revised on January 11, 2021, and consisting of six (6) sheets;
- C. Survey entitled: "Boundary and Topographic Survey 445 James Street Block 2307, Lot 5, Town of Phillipsburg, Warren County, New Jersey," prepared by Engineering and Land Planning ("ELP"), dated May 12, 2020, and consisting of one sheet;
- D. Minor Subdivision Sketch Plant Checklist and Conventional Site Plan Checklist Waiver Request prepared by Engineering and Land Planning ("ELP"), dated November 3, 2020; and
- E. Copy of a "No Further Action Conditions" letter (circa. March 2000) from the State of New Jersey, Department of Environmental Protection.

WHEREAS, the Board has considered the review letters of the Board Engineer dated September 23, 2020, December 9, 2020, and January 25, 2021, the contents of which the Board adopts and incorporates its finding of fact by reference herein; and

WHEREAS, on February 25, 2021, the Applicant presented its Application anew with the testimony of one witness, to wit, Christopher Nusser, P.E. P.P., a New Jersey Licensed Engineer and Professional Planner; and

WHEREAS, Mr. Nusser's Curriculum Vitae was marked as Exhibit "1" and offered into evidence and accepted by the Board and is now included as part of the record; and

WHEREAS, Mr. Nusser, after being sworn, was accepted as an engineering expert and a professional planning expert by the Board based upon his education, training, knowledge and experience; and

WHEREAS, the revised six (6) page Minor Subdivision Plan was marked as Exhibit "2" at the hearing and was discussed and testified to by the Applicant's witness, and is now included as part of the record; and

WHEREAS, Mr. Nusser displayed and discussed the Map marked as Exhibit "2" and stated that the purpose of the Application was to subdivide the property into two lots, proposed as Lot 5.01 and 5.03, to build two single family homes; and

WHEREAS, Mr. Nusser testified that the Applicant's first variance request is from the requirements of the front yard set-backs under L.O. 625-8B, and stated that the proposed front yard set-backs can be the average of all set-backs of the existing houses on the same side of the road which are within two hundred feet (200') of the property which he illustrated on Exhibit "2," Sheet 3. The Board Engineer confirmed that under L.O. 625-8E(1) the requested relief can be granted as a variance by the Board; and

WHEREAS, Mr. Nusser then testified that the Applicant's second variance request is from the limitation of parking spaces within the Webster Street front yard set-back under L.O. 625-28B, and stated that the Applicant is seeking a variances to allow two parking spaces within the set-back which were illustrated on Exhibit "2," Sheet 2; and

WHEREAS, Mr. Nusser then testified that the Applicant was seeking a design waiver from the requirement under L.O. 510-12(5) that all utility lines be underground as all adjoining properties' existing utility lines are above ground; and

WHEREAS, Mr. Nusser and the Board Engineer then engaged in a brief discussion regarding the technical comment #1 in the Board Engineer's January 25, 2021 letter, to wit, stormwater management and drainage issues, at which time the Board Engineer requested that, as a condition of approval of the application, the Board Engineer shall review the grading plan at the time of construction, which was satisfactory to Mr. Nusser and to the Board. Mr. Nusser then addressed technical comment #2 and stated that no easements or property rights need to be obtained from adjacent property owners and that the Applicant will produce the appropriate title work to demonstrate the same. Mr. Nusser then testified that part of Webster Street will re-paved as set forth on Exhibit 2, Sheet 2; and

WHEREAS, Mr. Nusser then addressed technical comment #3 and testified that the Applicant is seeking a waiver from the requirement to install curbing along Webster Street and Moule Alley, under L.O. 545-18, at which time the Board Engineer advised that waiver cannot be granted by the Board and must be obtained from the Town Council, and the Applicant agreed to seek the waiver from the Town Council; and

WHEREAS, Mr. Nusser then continued his testimony and agreed that the Applicant will comply with technical comments #4 #5, #6 and #7. Mr. Nusser then addressed technical comment #11 and confirmed only one house at a time will be built. Mr. Nusser then testified that the Applicant will meet technical comments #13 and #24 through #29; and

WHEREAS, Mr. Nusser then addressed technical comment #31 and testified that he has reviewed the New Jersey Department of Environmental Protection ("NJDEP") records and that NJDEP previously had issued a "No Further Action Conditions" letter and that there are no underground remediation measures required and that there are no restrictions on development. The Applicant agreed to submit this NJDEP documentation to the Board which the Board Attorney stated will be marked as Exhibit "3;" and

WHEREAS, Mr. Nusser's testimony was concluded and the Chairman allowed the Board to ask questions which were satisfactorily addressed; and

WHEREAS, the Board was satisfied with Mr. Nusser's testimony, especially in light of the Board Engineer's comments and review, such that the Board did not have any additional questions or comments; and

WHEREAS, the Applicant did not offer any additional witnesses, documents or evidence; and

WHEREAS, Town Planner Angela Knowles, who was present throughout the hearing, was asked by the Board Engineer to comment on the Application and she confirmed that the Application is consistent with the existing neighborhood; and

WHEREAS, the meeting was then opened to the public and one question about stormwater management was asked and answered to the inquirer's satisfaction, at which time the Chairman closed the public comment portion of the hearing; and

WHEREAS, the Chairman called for any motions and a motion was made by Mr. Penrose, and second by Mr. Brotzman, to approve the two requested variances note above – front yard set-backs and limitations on parking. A vote on the variances was approved unanimously; and

WHEREAS, the Chairman called for a motion on the design waivers which was made by Mr. Penrose and seconded by Mr. Samarelli. The Board Attorney then requested the design waiver motions be separated with a vote on the overhead utility waiver be separate from the vote on the installation of curbing on Webster Street and Moule Alley. Mr. Penrose then amended the motion to separate the design waivers into distinct motions with the condition that the Board recommend to the Town Council that the curbing waiver be approved by the Town Council. Mr. Samarelli seconded the amended motion. The utility design waiver was then approved unanimously. The curbing design waiver recommendation to the Town Council was approved unanimously with Mr. Fulper recusing himself from a vote; and

WHEREAS, the Chairman called for a motion on the Application for Minor Subdivision Approval and Preliminary and Final Site Plan Approval which was made by Mr. Penrose and seconded by Mr. Samarelli.

NOW THEREFORE, as a result of the Applicant's presentation, testimony and exhibits presented by the Applicant's witness as aforesaid and the documentation submitted, the Board finds as follows:

1. N.J.S. 40:55D-1, et. seq., the "New Jersey Municipal Land Use Law," provides for review and Approval of Minor Subdivisions and Preliminary and Final Site Plans by the Board.

2. The subject property is located in the Town of Phillipsburg Park R-50 zone.

3. The Applicant must obtain Minor Subdivision Approval and Preliminary and Final Site Plan Approval from the Board before it develops the subject property.

4. The Board has the authority to grant waivers from the provisions of Chapter 510 of the Town of Phillipsburg's Ordinances, to wit, the "Town of Phillipsburg's Site Plan Ordinance of 1979" pursuant to N.J.S. 40:55D-51.

5. A waiver is an acknowledgment by the Board that conditions of the property are satisfactory and meet the requirements of the Town of Phillipsburg Ordinances.

6. The Board has authority to grant variances from the provisions of N.J.S. 40:55D-1, et. seq., the "New Jersey Municipal Land Use Law," pursuant to N.J.S. 40:55D-70 and pursuant Section 555-22 of the "Town of Phillipsburg's Site Plan Review Ordinance of 1979."

7. A variance is a deviation from the strict application of Chapter 625 of the Town of Phillipsburg's Ordinances, to wit, the "Town of Phillipsburg Zoning Ordinance," as set forth therein pursuant to N.J.S. 40:55D-62, et. seq., and the regulations established thereto.

8. That a waiver from the "Town of Phillipsburg's Site Plan Review Ordinance of 1979" requirements be granted as to the one item noted above, regarding the utility lines, and contained in the Board's Engineer letter dated January 25, 2021, as more particularly set forth herein this Resolution.

9. That variances be granted as to the two items noted above, regarding the front yard set-backs and the off-street parking limitations on Webster Street, and contained in the Board's Engineer letter dated January 25, 2021, as more particularly set forth herein this Resolution.

10. The Board concurs that, in all other respects, the condition of the property is satisfactory and meets the requirements of the Town of Phillipsburg Ordinances.

NOW THEREFORE, BE IT RESOLVED THAT the Applicant's request for Variances from the "Town of Phillipsburg Zoning Ordinance," under Chapter 625 of the Town of Phillipsburg's Ordinances for: (1) from the requirements of the front yard set-backs under L.O. 625-8B;

and; (2) from the limitation of parking spaces within the Webster Street front yard set-back under L.O. 625-28B, as noted above, are hereby **GRANTED**, on Motion of Mr. Zwicker and Seconded by Mr. Penrose:

ROLL CALL VOTE

Ayes: Chairman Duffy, Mr. Turnbull, Mr. Bengivenga, Mr. Brotzman, Mr. Fulper, Mr. Hanisak, Mr. Penrose, Mr. Samarelli and Mr. Zwicker.

Nays: None.

Abstentions: None.

Recused: Mayor Tersigni

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant's request for a waiver from the "Town of Phillipsburg's Site Plan Ordinance of 1979," for a design waiver from the requirement under L.O. 510-12(5) that all utility lines be underground as all adjoining properties' existing utility lines are above ground, is hereby **GRANTED**, on Motion of Mr. Zwicker and Seconded by Mr. Penrose:

ROLL CALL VOTE

Ayes: Chairman Duffy, Mr. Turnbull, Mr. Bengivenga, Mr. Brotzman, Mr. Fulper, Mr. Hanisak, Mr. Penrose, Mr. Samarelli and Mr. Zwicker.

Nays: None.

Abstentions: None.

Recused: Mayor Tersigni.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Board recommends that the Applicant's request for a waiver from the "Town of Phillipsburg's Site Plan Ordinance of 1979," requirement to install curbing along Webster Street and Moule Alley, under L.O. 545-18, that can only be obtained from the Town Council, be granted by the Town Council upon the Applicant's application for the same to Town Council on Motion of Mr. Zwicker and Seconded by Mr. Penrose:

ROLL CALL VOTE

Ayes: Chairman Duffy, Mr. Turnbull, Mr. Bengivenga, Mr. Brotzman, Mr. Hanisak, Mr. Penrose, Mr. Samarelli and Mr. Zwicker.

Nays: None.

Abstentions: None.

Recusals: Mayor Tersigni and Mr. Fulper.

AND IT IS FURTHER RESOLVED THAT the Applicant's request for a Minor Subdivision Approval and Preliminary and Final Conventional Site Plan approval for the construction of two buildable lots on the property known as Block 2307, Lot 5, located in the Town of Phillipsburg R-50 zone, is granted subject to the express and unaltered conformation with the following conditions:

1. The Applicant shall be bound to comply with all comments contained in the Board Engineer's review letters dated September 23, 2020, December 9, 2020, and January 25, 2021, as modified at the February 25, 2021 hearing, unless altered by this approval, including any comments contained in subsequent reports. In the event that the Applicant is unable to comply with any of the Board Engineer's requirements or recommendations, it is understood that it reserves the right to apply to this Board for relief therefrom.

2. The Applicant shall ensure that the houses are constructed and erected in strict compliance with the Final Site Plan with the understanding that any deviation therefrom which is deemed by the Board's Engineer's to be a significant deviation from the Plan hereby approved shall require further review and approval by this Board.

3. The Applicant shall seek a waiver from the requirement to install curbing along Webster Street and Moule Alley, under L.O. 545-18, from the Town Council; and that said waiver must be obtained before construction begins; and further if the Applicant cannot obtain the waiver from the Town Council, then the Applicant must appear before the Board to address the issue before construction begins.

4. The Applicant shall obtain, and provide to the Board, the New Jersey Department of Environmental Protection ("NJDEP") "no further action letter" for the subject property, which shall be marked as Exhibit "3" by the Board Secretary upon receipt of the same.

5. The Applicant shall procure, and provide copies to the Board, of all applications, licenses and permits required by all federal, state and municipal agencies.

6. The Applicant shall schedule a pre-construction conference with the Town Engineer's office at least two days prior to commencement of construction.

7. The Applicant shall pay all outstanding fees and deficiencies in the review escrow account and brings current all real estate taxes, sewer and water charges pertaining to this site.

8. That any portion of any prior Site Plan approvals are hereby vacated to the extent they may be inconsistent with this Site Plan.

9. That the Applicant applies for, and obtains, approval from all other agencies and governmental bodies which may have concurrent jurisdiction over this project including, but not limited to, the Town of Phillipsburg Fire Chief, the Town of Phillipsburg Chief of Police, the Warren County Planning Board, Warren County Soil Conservation District, the Phillipsburg Sewer Utility, Elizabethtown Gas, Aqua New Jersey, Jersey Central Power & Light ("JCP&L"), the New Jersey Department of Transportation and the New Jersey Department of Environmental Protection ("DEP").

10. That all necessary and proposed easements be obtained before construction commences and be shown on the site plat drawing and be approved by the Board's Attorney and the Board's Engineer.

11. The Applicant shall perfect the Minor Subdivision by filing the real property deeds for proposed Lots 5.01 and 5.03, with the Warren County Clerk no later than one hundred and ninety (190) days of the date of this Resolution pursuant to N.J.S. 40:55D-47(d).

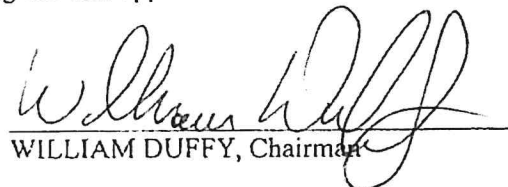
NOW THEREFORE, BE IT RESOLVED THAT the Applicant's request for Minor Subdivision Approval and Preliminary and Final Site Plan Approvals, are hereby **GRANTED**, on Motion of Mr. Penrose and seconded by Mr. Samarelli:

ROLL CALL VOTE

<u>Ayes:</u>	Chairman Duffy, Mr. Turnbull, Mr. Bengivenga, Mr. Brotzman, Mr. Fulper, Mr. Hanisak, Mr. Penrose, Mr. Samarelli and Mr. Zwicker.
<u>Nays:</u>	None.
<u>Abstentions:</u>	None.
<u>Recused:</u>	Mayor Tersigni

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Planning Board was duly adopted at its regular meeting on the 25th day of February, 2021, by a majority of the aforesaid members approving the oral approval for the contents herein on March 25, 2021.

Dated: March 25, 2021


WILLIAM DUFFY, Chairman