

TOWN OF PHILLIPSBURG PLANNING BOARD RESOLUTION

**RESOLUTION DENYING PRELIMINARY SITE PLAN, USE VARIANCE AND BULK
VARIANCE APPROVALS IN CASE NO. 19-001**

**Ingerman Development Company, LLC – Applicant/Owner
5 Powell Lane
Collingswood, New Jersey 08108**

Block 1901, Lot 13

Application #2019-001

WHEREAS, Ingerman Development Company, LLC (hereinafter referred to as the “Applicant”) initially applied to the Town of Phillipsburg Planning Board (hereinafter referred to as the “Board”) for Preliminary Site Plan Approval, Use Variance Approval pursuant to N.J.S. 40:55D-70(d)(1) and Bulk Variance Approval pursuant to N.J.S. 40:55D-70(c), along with any and all design exceptions and/or waivers (collectively “the Application”), for the construction of one senior age-restricted sixty-seven (67) unit one hundred percent (100%) affordable residential facility, for the property identified on the Town Tax Map as Block 1901, Lot 13, with a street address of 220 Stockton Street; and

WHEREAS, the Applicant subsequently revised its application to the Board for Preliminary Site Plan Approval, Use Variance Approval and Bulk Sale Approval in this Application #2019-001; and

WHEREAS, the Board having satisfied itself that proper notice was given to neighboring property owners and to all others entitled to notice, as well as publication pursuant to both the Town of Phillipsburg Code and to N.J.S. 40:55D-12, on two occasions – on or about August of 2019, and again on or about August of 2020; and

WHEREAS, on August 22, 2019, the Board commenced a public hearing on the Application, as more fully set forth herein below; and

WHEREAS, the August 22, 2019 public hearing was adjourned for reasons more fully set forth herein below; and

WHEREAS, due to the public health emergency necessitated by the Covid-19 pandemic, beginning in March of 2020, 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, at various times only essential businesses have been open to the public, including real estate development and construction, a category in which the Applicant falls; 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 general 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, the Applicant appeared before the Board at a regularly-scheduled meeting on August 22, 2019, at which time the Applicant requested certain waivers from the Preliminary Site Plan checklist, the Use Variance requirements and the Bulk Variance requirements, and the Board having determined that said waivers can be granted and the Application was determined by the Board to be complete; and

WHEREAS, the Applicant appeared virtually before the Board at a regularly-scheduled meeting on August 27, 2020, at which time the Applicant requested certain waivers from the Preliminary Site Plan checklist, the Use Variance requirements and the Bulk Variance requirements, and the Board having determined that said waivers can be granted and the Application was determined by the Board to be complete; and

WHEREAS, the Applicant appeared virtually before the Board at a specially-scheduled meeting on September 18, 2020, at which time the Applicant requested certain waivers from the Preliminary Site Plan checklist, the Use Variance requirements and the Bulk Variance requirements, and the Board having determined that said waivers can be granted and the Application was determined by the Board to be complete; and

WHEREAS, at all of the preceding hearings, the Applicant was represented by Katharine A. Coffey, Esquire, who presented a brief explanation concerning the Applicant's intended use of the subject property and the approvals sought; and

WHEREAS, the Applicant is requesting the following variances from the Town Ordinances:

1. A "d(1)" use variance, pursuant to N.J.S. 40:55D-70(d)(1), to permit a senior residential development, where such a use is not permitted in the I-1, Light Industrial Zone;
2. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit a side yard setback of approximately twenty-one feet (21'), where a side yard setback of thirty feet (30') is required;
3. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit a front yard setback of approximately twenty-three and one-half feet (23.5'), where a front yard setback of thirty-five feet (35') is required;
4. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit a driveway width of forty-five feet (45') at the curblin, where a maximum residential driveway width of twenty feet (20') is permitted at the curblin;
5. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit a building in the I-1 Zone, Light Industrial to be located forty-seven and two-tenths feet (47.2') from a residential zone where a distance of twice the height, to wit, eighty and six-tenths feet (80.6') is required; and
6. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit forty-five (45) parking spaces where sixty-seven (67) parking spaces is required; and

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

- A. Application Submission Transmittal dated July 31, 2019, from Applicant's attorney;
- B. Town of Phillipsburg – Application for Minor or Conventional Site Plans (Amended) for Block 1901, Lot 13, dated July 31, 2019, which included a Certification from the Collector Taxes that realty taxes are current;
- C. Site plan entitled: "Use Variance & Preliminary Site Plan for Ingerman Development Company, LLC Proposed Birchwood at Phillipsburg, Block 1901, Lot 13 – Tax Map

- #19, Dated April 1987, 220 Stockton Street, Town of Phillipsburg, Warren County, New Jersey,” prepared by Dynamic Engineering Consultants, PC, dated July 29, 2019, with a revision date of August 12, 2020, and consisting of fifteen (15) sheets;
- D. Application Addendum submitted under cover of submittal correspondence;
 - E. Certified Property Owner’s List issued by Town of Phillipsburg dated July 23, 2019;
 - F. Town of Phillipsburg Application for Site Plan dated July 24, 2019;
 - G. Tax Certification and Sewer Utility Certification dated July 9, 2019;
 - H. “Will Serve” Letter issued by Phillipsburg Waste Water Treatment Plant dated July 29, 2019;
 - I. ALTA/NSPS Land Title Survey entitled: “Ingerman Phillipsburg Existing Conditions, Block 1901, Lot 13, 220 Stockton Street, Town of Phillipsburg, Warren County, New Jersey,” prepared by Dynamic Survey, LLC, consisting of 1 sheet dated July 18, 2019;
 - J. Architectural Plans entitled: “Birchwood at Phillipsburg, 220 Stockton Street, Phillipsburg, NJ 08865,” prepared by Haley Donovan, consisting of 3 sheets dated July 25, 2019, and revised June 15, 2020;
 - K. Traffic Impact Statement entitled: “Traffic Impact Statement for Ingerman Proposed Senior Living Facility property located at 220 Stockton Street, Block 1901, Lot 13,” prepared by Dynamic Traffic dated July 29, 2019, and revised June 30, 2020;
 - L. Drainage Statement Letter and report prepared by Dynamic Engineering dated July 29, 2019, and revised August 12, 2020;
 - M. Sanitary Sewer and Water Flow Analysis prepared by Dynamic Engineering dated July 29, 2019, and revised June 30, 2020;
 - N. Technical Review Response letter submitted by Dynamic Engineering dated July 2, 2020;
 - O. Transmittal letter submitted by Dynamic Engineering dated July 8, 2020;
 - P. Aqua New Jersey “Will Serve” letter dated July 26, 2019;
 - Q. Transmittal letter submitted by Dynamic Engineering dated August 13, 2020;
 - R. September 18, 2020 email from Phillipsburg Fire Chief Richard A. Hay; and
 - S. August 24, 2020 letter from Phillipsburg Fire Chief Richard A. Hay, which includes an August 13, 2019 letter from him; and

WHEREAS, the Board having considered the letters of the Board engineer dated June 18, 2019, and August 21, 2020, the contents of which the Board adopts and incorporates its finding of fact by reference herein; and

WHEREAS, the Applicant presented the sworn testimony of the following individuals on August 22, 2019:

1. Brett Skapinetz, P.E. who is the Applicant's engineer;
2. James Haley, who is the Applicant's architect;
3. Geoffrey Long, who is an Applicant's principal;
4. Corey Chase, who is the Applicant's traffic engineer; and
5. Paul Phillips, who is the Applicant's professional planner; and

WHEREAS, the following documents were marked as exhibits at the August 22, 2019 hearing and were discussed and testified to by the Applicant's witnesses. These are now included as part of the record:

1. A-1 ALTA Land Title survey dated July 18, 2019;
2. A-2 Aerial Map dated July 19, 2019;
3. A-3 Site Plan Rendering dated August 22, 2019;
4. A-4 Architectural Plans;
5. A-5 Architectural "Partial Plan Apartments;"
6. A-6 Architectural "Common Areas Partial Plan Entrance;"
7. A-7 Architectural "Building Perspective;" and
8. A-8 Architectural plans; and

WHEREAS, some of the preceding documents were also marked as exhibits at the August 27, 2020 and/or September 18, 2020 hearings and were discussed and testified to by the Applicant's witnesses and remain as part of the record; and

WHEREAS, before the testimony of the Applicant's witnesses on August 22 2019, the Board's engineer discussed the waivers from the Town's Site Plan checklist which was requested by the Applicant and which are referenced in the Board engineer's June 18, 2019 letter and further recommended that the Board grant waivers to items 2a, 2b and 2c and grant temporary waivers to items 2d, 2e, 2f, 2g and 2h; and

WHEREAS, by unanimous vote the Board granted the waivers and temporary waivers referenced above; and

WHEREAS, Brett Skapinetz, P.E., a New Jersey Licensed Engineer, after being sworn and accepted as an engineering expert, provided testimony on behalf of the Applicant. Mr. Skapinetz discussed all of the following. He identified and described the property with Exhibits A-1, A-2 and A-3. He discussed the basis for the Applicant's request of a variance from the driveway width and curblin requirements. He was then asked by the Board's engineer to address Fire Chief Hay's August 13, 2019 letter wherein the Chief stated it would be most desirable for the Fire Department to have driveway access around the entire three level building. Mr. Skapinetz stated that he did not believe a driveway around the entirety of the building was feasible. He then discussed the Chief's concerns regarding the fire department connections on the proposed structure and noted the Applicant would address the same. He then discussed the Chief's concerns regarding water service to the site and noted that the Applicant would work with the Chief to alleviate the concerns. Mr. Skapinetz then very briefly discussed pedestrian walkways, utility services, stormwater management, landscaping, lighting and signage. Mr. Skapinetz then briefly discussed the reasons for the variances sought. He also acknowledged that the Applicant must meet the requirements of other governmental agencies; and

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

WHEREAS, after Mr. Skapinetz' testimony, the Applicant offered James Haley, the Applicant's architect, who after being sworn and accepted as an architectural expert, provided testimony on behalf of the Applicant. Mr. Haley discussed all of the following. He identified and described Exhibit A-4 as the architectural plans for the building. He then identified and described Exhibit A-5 as partial architectural plans for individual apartment units. He then identified and described Exhibit A-6 as partial architectural plans for the entranceway and common areas. He then described Exhibit A-7 as additional architectural plans from a different perspective. Mr. Haley very briefly also discussed the HVAC equipment, lighting, energy, ventilation and interior and exterior air quality; and

WHEREAS, Mr. Haley was asked by the Board what "affordable senior housing" meant and the Applicant's attorney provided a brief explanation that the project is limited to low income individuals in accordance with affordable housing regulations and also that the project would be deed restricted age fifty-five (55) and older housing; and

WHEREAS, the Board engineer raised an inquiry whether the Town had a fair share housing obligation; and

WHEREAS, the Board was satisfied with Mr. Haley's testimony such that the Board did not have any additional questions or comments; and

WHEREAS, after Mr. Haley's testimony, the Applicant offered Geoffrey Long, a principal of the Applicant, who after being sworn, provided testimony on behalf of the Applicant. Mr. Long discussed his understanding of the Town's demographics including the age of the population and the income levels of the residents. He also stated the amount of rent the Applicant expected to charge per unit; and

WHEREAS, Mr. Long was asked by the Board's engineer whether the building's income requirements would be regulated by anyone and Mr. Long stated there would be a deed restriction. The Board engineer also inquired whether the Applicant had been in contact with the Phillipsburg Housing Authority and Mr. Long said it had not; and

WHEREAS, the Chairman asked Mr. Long if the project was being marketed as Section 8 housing. Mr. Long stated no and that the intended market is low income senior citizens and provided further explanation regarding the income levels at which he expected senior citizens to be eligible to reside at the apartments; and

WHEREAS, the Board was satisfied with Mr. Long's testimony such that the Board did not have any additional questions or comments; and

WHEREAS, after Mr. Long's testimony, the Applicant offered Corey Chase, the Applicant's traffic engineer, who after being sworn and accepted as a traffic engineering expert, provided testimony on behalf of the Applicant. Mr. Chase stated that the Applicant was seeking a parking variance and discussed parking and traffic circulation issues. He referenced Exhibit A-3. He testified that he believed the apartments would generate only a maximum of twenty-two (22) trips during the peak hour which is approximately twenty percent (20%) of the number of trips that would constitute a significant increase in traffic as determined by the New Jersey Department of Transportation and the Institute of Transportation Engineers ("ITE"). He stated that this low increase would not affect the adjacent roadway network. He further testified that the ITE data suggests that only forty-one (41) parking spaces (for market rate senior housing) or only twenty-eight (28) parking spaces (for affordable rate senior housing) are required for this project, less than

the forty-five (45) proposed. Mr. Chase then briefly testified regarding the variance request for the driveway; and

WHEREAS, Mr. Chase was asked by the Board engineer to clarify his intermingled use of the phrases "age-restricted" and "senior" housing and he noted they are the same; and

WHEREAS, Mr. Chase continued his testimony regarding the Applicant's intent to provide a shuttle service for the building's residents as part of an existing public shuttle service and Mr. Long interceded and stated the shuttle service would be provided by the Easton Coach Company through its existing agreement with Warren County; and

WHEREAS, the Board and the Board engineer questioned Mr. Chase, Mr. Long, Mr. Skapinetz and the Applicant's attorney regarding their estimates of the number of parking spaces, suggesting that the estimates were very low and inquiring whether the Applicant had considered adding parking spaces or seeking off-site parking arrangements with adjacent property owners or modifying the overall plans to allow for additional parking;

WHEREAS, the Applicant was afforded a brief recess to address the Board's parking concerns and then offered the testimony of Mr. Skapinetz who stated that the Applicant would re-design its building and parking area to include seventy (70) parking spaces; and

WHEREAS, the Board re-visited the Fire Chief's concerns which caused Mr. Haley to testify that the Applicant would address the Fire Chief's concerns and would follow NFPA 13 standards for better fire protection; and

WHEREAS, the Board was satisfied with Mr. Chase's testimony such that the Board did not have any additional questions or comments; and

WHEREAS, after Mr. Long's testimony, the Applicant offered Paul Phillips, the Applicant's planner, who after being sworn and accepted as a planning expert, provided testimony on behalf of the Applicant. Mr. Phillips discussed what is permitted in the Town's I-1, Light Industrial Zone and acknowledged that a "d(1)" variance is required to construct the proposed senior affordable housing development. He testified that the project is inherently beneficial, which meets the positive criteria for a "d(1)" variance because it is senior affordable housing and that is an inherently beneficial use under controlling New Jersey law. He stated that under the law's four-part balancing test, all of the positive criteria are met as follows: (1) the public interest is met with one hundred percent (100%) affordable housing as that is inherently beneficial; (2) the project is consistent with the Town's master plan; (3) the general welfare of the Town is fostered with this

type of housing; (4) the Town's population is aging and this project addresses the same; (5) the project is not detrimental to the Town, but rather is beneficial as the subject property is in need of redevelopment; and (6) the project will not negatively affect the adjacent property owners, the traffic flow and/or the nearby roadway network; and

WHEREAS, after the preceding testimony, the Board moved and unanimously approved a motion declaring the project to be inherently beneficial;

WHEREAS, Mr. Phillips continued his testimony regarding the negative criteria for a "d(1)" variance and testified that the subject location, while located in an industrial zone, will not be negatively affected because it is bordered by a mixed-use building and railroad tracks which act as buffers. When asked about the potential noxious fumes and noise that emanates from an adjacent active industrial operation, Mr. Phillips stated that the building's design adequately addresses odors and noise. He concluded by opining that the positive criteria outweigh the negative criteria.

WHEREAS, Mr. Phillips also stated that the Applicant was seeking "c" variances for the front and side yard setbacks. As for the front yard setback, under "c(2)," he stated the proposed location of the building is consistent with the setbacks along the same street and that the building's common amenities are designed along the front yard as opposed to the rental units. As for the side yard setback, under "c(1)" and "c(2)," Mr. Phillips briefly testified that the narrowness of the lot, the concessions made by the Applicant regarding parking and the location of the building on the lot and the nature of the project all merit the variances. He also testified that a *de minimis* exception from the RSIS standards was appropriate; and

WHEREAS, the Board was satisfied with Mr. Phillip's testimony such that the Board did not have any additional questions or comments; and

WHEREAS, after the preceding testimony, the Board raised numerous questions regarding the financing of the Applicant's project, more specifically the payment in lieu of taxes ("PILOT") application which the Applicant stated it intended to submit to the Town Council; and

WHEREAS, the Board asked for public comment and received a question regarding how the project would affect the water and sewer in the area, especially flooding of Sitgreaves Street, and Mr. Skapinetz testified that the Applicant would be working with the Board/Town engineer to address the concerns regarding waterflow; and

WHEREAS, the Board attorney solicited a motion from the Board regarding the negative criteria for a "d(1)" variance; and

WHEREAS, Mr. Rooney made a motion to deem the negative criteria satisfied and the Chairman seconded the motion, a discussion was held on the motion; and

WHEREAS, the Chairman expressed concern regarding the affect a proposed PILOT for this project would have on the Town's financial status and expressed a desire to table this application until the Town acted on the Applicant's proposed PILOT application and moved to that effect;

WHEREAS, Mr. Rooney then withdrew his motion and Mr. Stettner seconded the Chairman's motion; and

WHEREAS, the Applicant's attorney intervened and stated that the issue of the PILOT is not a relevant issue for the Board's consideration, that a delay in a decision on the application could substantially affect the Applicant's ability to complete the project and that only preliminary approvals were sought at the present time such that the Board's concerns in this regard could be addressed at the final approval hearing; and

WHEREAS, the Board voted unanimously to table the application; and

WHEREAS, the Applicant requested a special meeting be held at a later date in order to allow it time to address its PILOT application; and

WHEREAS, the Board granted the Applicant's request to continue the hearing to September 9, 2019; and

WHEREAS, the Applicant's application was not brought before the Board during the remainder of the calendar year of 2019; and

WHEREAS, the members of the Board who were present at the August 22, 2019 hearing were the following: Mayor Stephen Ellis, Councilwoman Danielle DeGerolamo, Chairman Keith Zwicker, James Stettner, David Morissette, Dominick Vangelli, Roseann Rohm, Darren Bodogh, and Bernie Rooney; and

WHEREAS, Mayor Stephen Ellis and Councilwoman Danielle DeGerolamo recused themselves from participating as Board members at the August 22, 2019 meeting, yet remained at the hearing as observers; and

WHEREAS, on January 23, 2020, the membership of the Board was re-configured so that only three Board members who served on the Board in 2019 were also sworn-in to serve on the Board in 2020, to wit, Mr. Zwicker, Mr. Bodogh and Mr. Rooney; and

WHEREAS, a transcript of the August 22, 2019 pubic hearing on this Application was provided to all of the 2020 Board members for review and consideration;

WHEREAS, each of the 2020 Board members, who were not Board members in 2019, have certified that they read the August 22, 2019 public hearing transcript, thereby rendering each member eligible to vote on this application; and

WHEREAS, Mayor Todd Tersigni and Councilman Harry Wyant recused themselves from participating as Board members at the August 28, 2020 and September 18, 2020 meetings, yet remained at the hearing as observers; and

WHEREAS, on August 28, 2020, the public hearing on this application was re-convened after the Board having been satisfied that new adequate notice of the public hearing had been provided to all 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;

WHEREAS, Geoffrey Long, a principal of the Applicant, after being duly sworn, provided testimony on behalf of the Applicant. Mr. Long testified that he has been with the Applicant for fourteen (14) years. The Applicant has been developing mutli-dwelling housing in New Jersey (including Warren and Hunterdon Counties) and in Pennsylvania's Lehigh Valley and it has developed more than ninety (90) communities in New Jersey, Pennsylvania, Delaware and Maryland. More than half of the communities are located in New Jersey. He discussed the Applicant's number of employees, value of its business and the value of projects. As for this Application, he confirmed the affordable housing units. He discussed the demographics of Phillipsburg. He discussed the history of the subject property – a coal yard until the 1960s; a pallet factory in the 1970s; in disrepair in the 1980s; titled in Town in 2002 as the result of a tax delinquency; sold via tax sale; suffered a fire; and remained vacant thereafter. He said thirty-four percent (34%) of I-1, Light Industrial zone property in Phillipsburg is currently vacant. He believes the property has minimal industrial value as it abuts railroads which are of limited use. He contrasted the value of this property to the value of the former Ingersoll-Rand property (now Bridgepoint) which is adjacent to highways. He believes the proposed use is an asset to the Town because otherwise there is not much to do with property and residential is a good use. He

acknowledged the Board engineer's question regarding whether Phillipsburg needs more affordable housing. He said the targeted residents would be moderate (as opposed to low) income seniors for which he believes Phillipsburg has a demand. The Board engineer asked how the units will be marketed. Mr. Long said the funding for the project is made through the United States Treasury (not the United States Department of Housing and Urban Development) and the Applicant has to strictly ensure applicants' qualifications are met – ie – citizenship, income. He said enforcement is done by the Internal Revenue Service. He said project has nothing at all to do with New Jersey's COAH, Fair Share Housing, etc. He said this project is not Section 8 housing, but rather is age fifty-five and older (55+) housing. The mortgage to finance the project will be obtained from the New Jersey Mortgage Finance Authority ("NJMFA"); and

WHEREAS, the Board was satisfied with Mr. Long's testimony such that the Board did not have any additional questions or comments; and

WHEREAS, Brett Skapinetz, P.E., a New Jersey Licensed Engineer, after being sworn and accepted as an engineering expert, provided testimony on behalf of the Applicant. Mr. Skapinetz began by showing and discussing Exhibits A-1, A-2 and A-3. He stated that the proposed parking lot meets the Town's ordinance requirements of one space per dwelling unit – more specifically, the proposal is for seventy-five (75) parking spaces, which includes three (3) ADA-designated spaces and which is greater than the sixty-seven (67) residential units. He discussed the location of the trees and shrubbery. He discussed lighting fixtures not spilling onto adjacent properties, other than minimal spillage onto the railroad property. He discussed utility services, fire hydrants, sprinklers and related systems in the building. He stated private refuse/recycling collection would service the property. He testified that the current impervious coverage equals approximately seventy-five (75%) of the entire site. He stated that a detention system would be installed underneath the parking area. He discussed water discharge from the area and noted those plans are a work-in-progress with the Town. He discussed some of the Fire Chief's concerns regarding access to the building. The Chief's primary concern is that fire trucks cannot get around the entire building' and

WHEREAS, the Board engineer stressed that the Applicant must completely satisfy the Fire Chief's concerns which prompted the following. The Applicant's attorney stated that the Applicant will meet all of the Chief's concerns prior to seeking final site plan approval to which the Board engineer stated that the Chief's concerns could affect the entire preliminary site plan –

proposed parking, placement of the building, the number of units, etc. The attorney then said that the Board must approve the application prior to its September 24, 2020 submission due to the NJMFA. The Board engineer then said he does not think Board should grant preliminary approval with the outstanding, substantial issues raised by the Fire Chief. Mr. Zwicker then advised the Applicant that it was bad form to demand approval at the present time the Chief's concerns outstanding. Mr. Bodogh then reminded the Applicant that in 2019 the Fire said he wanted a truck access all the way around the building and the issue was still not addressed; and

WHEREAS, the Applicant requested a recess which was granted; and

WHEREAS, after the recess, the Board granted the Applicant's request to continue the public hearing on the application to Friday, September 18, 2020, at 6:00 p.m.; and

WHEREAS, the continued hearing date was publicly announced such that the Applicant was not required to publish formal notice of the new hearing date; and

WHEREAS, at a specially scheduled meeting on September 18, 2020, the public hearing was continued on the Applicant's application; and

WHEREAS, the Applicant presented the sworn testimony of the following individuals on September 18, 2020:

1. Brett Skapinetz, P.E. who is the Applicant's engineer;
2. Michael Donovan, who is the Applicant's architect;
3. Corey Chase, who is the Applicant's traffic engineer; and
4. Paul Phillips, who is the Applicant's professional planner; and

WHEREAS, the Applicant's attorney first spoke and stated the Applicant has reached an agreement with the industrial neighbors to address noise and odor issues such that double pane windows will be installed and each living unit will have HVAC filters changed annually. Further, all prospective tenants will be notified that the property is near an industrial site and such notice will be placed in each tenant's lease and in the property owner's deed which runs with the land. She stated that additional trees will be placed on the industrial side of the property as additional buffering. She also said that the engineer would address Chief Hay's concerns; and

WHEREAS, Brett Skapinetz, P.E., a New Jersey Licensed Engineer, after being sworn and accepted as an engineering expert, provided testimony on behalf of the Applicant. Mr. Skapinetz discussed all of the following. He identified and showed Exhibit A-9 and described the changes to the exhibit made since last meeting being solely to address Fire Chief Hay's concerns.

The primary concerns were getting a fire truck around all sides of the building and having a ladder truck being able to access the property without interference from over-hanging wires. In response thereto, he stated that the balcony extensions were modified, the retaining walls were added and the roadways around the west side of building created. Mr. Skapinetz then stated that the "c" variance request to permit a side yard setback of twenty-six feet (26'), instead of twenty-one feet (21') as previously requested, was the other change. He acknowledged that, as it relates to water pressure for water flow to the building, that will have to be addressed from an engineering standpoint. The Board engineer then commented that this issue should be a condition of preliminary approval – this is known as "fire flow." The Board engineer continued that the Applicant needs a developer's agreement with the Town to address the water issue as it affects off-site properties. The Applicant's attorney said that is acceptable. Mr. Skapinetz then stated fencing and illumination issues will be addressed before final approval. Mr. Skapinetz also said all of the Board engineer's issues in his August 21, 2020 review letter have and/or will be addressed; and

WHEREAS, the Chairman then opened questioning of the Applicant's engineer to Board members which consisted of the following. Mr. Zwicker asked about storm water run-off issues. The Board engineer said the proposed underground retention system will improve storm water issues. The Board engineer also said all utilities – including sewer – have submitted "will serve" letters. Then, Mr. Spencer inquired about handicap parking spaces as he believes three (3) is inadequate. Mr. Skapinetz replied that three (3) meets the Town Code requirements. Mr. Spencer continued to express his concerns. Mr. Skapinetz explained that handicap parking spaces take-up more than one traditional parking space, but that the Applicant would consider more handicap parking spaces; and

WHEREAS, the Board was satisfied with Mr. Skapinetz' testimony such that the Board did not have any additional questions or comments; and

WHEREAS, after Mr. Skapinetz' testimony, the Applicant offered Michael Donovan, the Applicant's architect, who after being sworn and accepted as an architectural expert, provided testimony on behalf of the Applicant. He showed and described Exhibit A-9 and explained the design of the building. He stated it is a very safe building, above and beyond what is required by law. He stated that the balconies in the rear of the building were removed from the prior design to address Fire Chief Hay's concerns. He stated sound transmission class ("STC") value will be 34, where only 26 is needed, in order to address the noise from nearby industrial sites. He also stated

that the interior walls will be two inches (2") by six inches (6") as opposed to two inches (2") by four inches (4") for noise as well. He then discussed appliances in the units, the building's thirty-nine foot (39') height, the location of the stairways to the units and other design features. Mr. Penrose then asked about the air quality in the building in order to protect residents from the nearby pipe factory. Mr. Donovan discussed the type of filters being installed and annual changing of filters. Then, Mr. Bodogh asked what would happen if the number of cars on-site exceeded the number of parking spaces as there is no off-street parking. Chairman Duffy then inquired about what "5% adaptable" means. Mr. Donovan stated that five percent (5%) of the units will have all the handicap grab bars, but that the remaining units can be made handicap adaptable easily based upon design. The Board engineer then commented that the fire protection is FP-13, which is better than the Town Code which only requires FP-11; and

WHEREAS, the Board was satisfied with Mr. Donovan's testimony such that the Board did not have any additional questions or comments; and

WHEREAS, after Mr. Donovan's testimony, the Applicant offered Corey Chase, the Applicant's traffic engineer, who after being sworn and accepted as a traffic engineering expert, provided testimony on behalf of the Applicant. Mr. Chase stated that the traffic was low intensity and would be approximately twenty percent (20%) of the maximum increase in traffic intensity. He stated that the seventy-five (75) parking spaces exceed the sixty-seven (67) parking spaces required by the Town ordinance. He believes that based upon national standards for senior housing and senior affordable housing that seventy-five (75) spaces are more than sufficient. He testified that site access, parking and traffic circulation can be adequately handled at this site. He also stated the Applicant is working with Warren County to have the site be designated as a shuttle stop. The Board engineer then inquired whether some of the parking spaces could be designated "visitor" and the Applicant agreed. Mr. Duffy then inquired about number of employees on-site. Ms. Coffey said there would be two full-time employees on-site, thus requiring only two parking spaces. The Board engineer then inquired about a site triangle obstruction and Mr. Skapinetz said there would be no such obstruction; and

WHEREAS, the Board was satisfied with Mr. Chase's testimony such that the Board did not have any additional questions or comments; and

WHEREAS, after Mr. Chase's testimony, the Applicant offered Paul Phillips, the Applicant's planner, who after being sworn and accepted as a planning expert, provided testimony

on behalf of the Applicant. Mr. Phillips testified as to the relief sought and why it should be granted. Because the property is located in the I-1, Light Industrial zone in which senior affordable housing is not allowed, the d(1) variance is sought. He stated that also, "c" variances on the application are requested. As to the "d" variance, he stated the positive/negative criteria required. He stated the New Jersey Supreme Court holds that senior affordable housing is inherently beneficial and thus the positive criteria is met. He said the Board must consider the Sica test – (1) what is the public interest; (2) what are the detrimental impacts; (3) whether reasonable conditions can be imposed to lessen adverse impacts; and (4) weigh the positive and negatives with conditions and determine whether positive is greater than negative. He then testified to the following: As for prong #1 regarding the public interest, he cited case law which allegedly states that affordable housing/affordable senior housing is an inherently beneficial use. He said that the income levels and the aging population in Town (more than 30% over the age of 55) make senior affordable housing necessary. He also cited the Town's 2013 Master Plan revisions which support residential senior affordable housing. As for prong #2 regarding detrimental impacts, he says the project does not pose any detriment as the site in its current condition is an eyesore and unusable, and the project will generate minimal traffic impact with no appreciable impact on the adjoining road network. As for prong #3 regarding reasonable conditions, he then stated that the rear of the building is located as from the rail line as possible (twice the allowable rear yard setback), keeping the grade change and the building designs to limit noise and air issues from the adjacent pipe factory. He also said the overall design with fencing, tree lines, etc. lessened any impact. Mr. Phillips further testified that the property is across the street from a residential development and that the neighboring uses are mixed commercial and industrial uses, not the classical industrial uses known to have nuisance factors. As for prong #4 regarding whether the positive criteria outweighs the negative criteria, he says it is clear in this case. Mr. Phillips then testified regarding the "c" bulk variances as follows: he said that as to front yard set-back request (#3), it does not appear that any industrial buildings on Stockton Street are set-back thirty-five feet (35'), that the Applicant's proposed setback is consistent with the setbacks of neighboring buildings, and this allows the building to be set further from the rail line; (2)- he said that as to the side yard set-back (#2), he stated it is a function of the narrowness of the lot and the desire to position the lot away from the rail line and there was no detriment resulting from variance due to screening proposed by the Applicant; (3) he said that the variance regarding the driveway width (#4) is a "no-brainer: as it enables emergency vehicles to

have proper access; and (4) he said as to the requirement for a setback from a residential zone, the requirement is meant to buffer residential uses from permitted industrial uses, but her the Applicant is already proposing a residential use (#5), it is not an issue because the property is already industrial. As for all "c" variances, he said c(2) is satisfied. Chairman Duffy then inquired at what point is affordable housing no longer inherently beneficial. Mr. Phillips said that is a legal question addressed by the Courts, but under the criteria above, this project is inherently beneficial. Chairman Duffy then commented that the Town does not need additional affordable housing. Mr. Phillips acknowledged that the State of New Jersey does not hold Phillipsburg needs more affordable housing, but he said that there is much sub-standard affordable housing in Phillipsburg and this project will address it. He then referenced the Applicant's pending NJMFA application supports the position that affordable housing is needed. Mr. Phillips also testified that although the parking currently complies with the Town Ordinance, a *de minimis* exception from RSIS standards was still required, and in this case, is appropriate given the proposed use; and

WHEREAS, Mr. Zwicker then inquired if this project is Section 8 housing. Mr. Phillips says it is not. Mr. Zwicker was skeptical of this answer because he believes the proposed tenants who are Section 8 eligible can be accepted. Mr. Long then stated, as a private organization, the landlord can reject Section 8 applicants. Angela Knowles, Phillipsburg planner, spoke-up and said the Board must consider the Town's Master Plan which says that senior affordable housing is needed and this project is consistent with the Master Plan. She said courts have already held that senior affordable housing is inherently beneficial; and

WHEREAS, Mr. Rooney asked about the "tax credit project." Mr. Long responded that is a financing issue regarding federal tax credits which are allocated to the States. States then award these credits to project developers. He said New Jersey has designated the Town as in great need of senior affordable housing. He explained that the project will be deed-restricted senior affordable housing. He asserted that the project is intended for moderate income tenants; and

WHEREAS, Mr. Rooney inquired whether Applicant will pay realty taxes. Mr. Long acknowledged that the Town approved a PILOT. Mr. Zwicker asked Mr. Long what he expected the assessed value of completed building would be. Mr. Long said he could not say with certainty, but probably \$3,000,000. Therefore, realty taxes would likely be \$120,000.00 per annum. Mr. Long acknowledged that under the PILOT realty tax payments are much lower. Discussion continued between the Applicant's principal and Board members regarding the PILOT; and

WHEREAS, Mr. Penrose then inquired what happens if a few years later the adjacent pipe factory is spewing pollution. Mr. Long stated the issue will be addressed in leases and in deed restriction as Ms. Coffey stated at the outset of the hearing. The Board's attorney sought clarification. Ms. Coffey said there will be a deed requirement that will run with the land which requires the property owner to have notice of the industrial use in tenant's leases or in a separate document; and

WHEREAS, the Board attorney then commented regarding the Board's limited statutory jurisdiction and that some of the discussed issues may be general welfare questions that may be outside the Board's jurisdiction; and

WHEREAS, Mr. Kita then inquired about the unresolved fire flow issues. Mr. Skapinetz and Mr. Donovan addressed this issue and acknowledged that Applicant will work with the Board engineer and Fire Chief Hay on this issue. The Board engineer reminded the Applicant that final site plan approval will not be granted until this issue is addressed and a developer's agreement with the Town is in place; and

WHEREAS, Ms. Coffey moved exhibits A-1, A-2, A-3, A-9 and A-10 into evidence, which were accepted upon motion made by Mr. Rooney and seconded by Mr. Zwicker with a voice vote; and

WHEREAS, the hearing was then opened to the public; and

WHEREAS, Councilman Frank McVey of Corliss Avenue was heard. He did not offer any constructive comment, but rather ranted against the Board about not moving the Town forward and praised the Applicant; and

WHEREAS, Joan Pierce, 111 Sitgreaves Street, was heard and had a question about the sewer. Mr. Skapinetz inquired whether she meant sanitary sewer or storm water sewer. She said both and said the sewer system cannot handle any more water and that the area around her home floods regularly. The Board's engineer and the Applicant's engineer stated that the issue will be addressed. Ms. Pierce then had some questions about parking which were addressed; and

WHEREAS, the Board considered all of the preceding.

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

1. The property in question is located in the Phillipsburg I-1 Light Industrial Zone.
2. N.J.S. 40A:12A-13 provides for review and approval of site plans by the Board.
3. The Board has the authority to grant waivers from the provisions of its Site Plan Ordinance as provided in N.J.S. 40:55D-51. 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.
4. It has been acknowledged by the Board that a waiver of the requirements be granted as to each of the items contained in the Completeness Review of the Board's Engineer.
5. The Board concurs that the condition of the property is satisfactory and meets the requirements of the Town of Phillipsburg Ordinances thereby authorizing the granting of waivers as requested by the Applicant.
6. Mr. Rooney moved for approval of a "d(1)" variance. Mr. Kita second the motion.

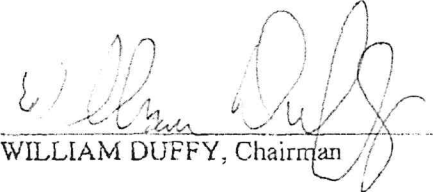
ROLL CALL VOTE

Ayes: Mr. Rooney, Mr. Kita, Mr. Penrose
Nays: Chairman Duffy, Mr. Bodogh, Mr. Spencer, Mr. Zwicker, Mr. Samarelli
Abstentions: None
Recusals: Mayor Tersigni, Councilman Wyant

NOW THEREFORE, BE IT RESOLVED THAT the Applicant's request for a bulk variance pursuant to N.J.S. 40:55D-70(d)(1) is **DENIED**.

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Planning Board was duly adopted at its regularly scheduled meeting on the 26th day of February, 2021, by a majority of the aforesaid members approving the oral approval for the contents herein on September 18, 2020.

Dated: February 26, 2021


WILLIAM DUFFY, Chairman