

TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2022-9

**RESOLUTION APPROVING PRELIMINARY AND FINAL SITE PLAN AND VARIANCES IN
CASE NO. 22-5**

**43-45 South Main Street, LLC – Applicant/Owner
2015 41st Street
North Bergen, New Jersey 07047**

Block 903, Lot 47

Application #2022-5

WHEREAS, 43-45 SOUTH MAIN STREET, LLC (“Applicant”) applied to the Town of Phillipsburg Land Use Board (“Board”), for Preliminary and Final Conventional Site Plan Approval; Bulk Variance Approval pursuant to N.J.S. 40:55D-70(c); and any and all design exceptions and/or waivers for renovation of the existing four (4) story structure to a mixed residential and commercial use consisting of a restaurant or other commercial use on the ground floor with a total of three (3) two-bedroom residential dwelling units on the three (3) remaining floors, for the property identified on the Town Tax Map as Block 903, Lot 47, with a street address of 43-45 South Main Street, Phillipsburg, Warren County, New Jersey (the “property”) located in the Town’s RRA-2 Riverfront Redevelopment Zone, Subarea 3 (collectively “the Application”); 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, Councilman Kennedy, being a member of the Town Council, and being the Class III member of the Board, recused himself entirely from consideration of this Application; and

WHEREAS, the Applicant appeared before the Board at a regular Meeting on May 26, 2022, and was represented by Benjamin Lindeman, Esq., at which time the Applicant requested certain waivers from the Preliminary Site Plan and Final Site Plan checklists, 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 public hearing was held on June 23, 2022, where the Applicant, represented by Joseph A. Paparo, Esq., presented an explanation concerning the original Application, *to wit*, renovation of the existing four (4) story structure to a mixed residential and commercial use consisting of a restaurant or other commercial use on the ground floor with a total of three (3) two-bedroom residential dwelling units on the three (3) remaining floors; and

WHEREAS, the Applicant presented expert testimony from its architect, Ryan G. Welty, AIA, who was accepted by the Board as an expert and whose testimony was accepted and is set forth below; and

WHEREAS, the Board being satisfied that the 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 or Conventional Site Plan for Block 903, Lot 47, dated April 8, 2022, which included a Certification from the Collector of Taxes, dated April 8, 2022, that realty taxes were current;
- B. Plan set entitled: “Alteration to 43-45 South Main Street, Phillipsburg, NJ” prepared by RGW Architecture, LLC, dated March 25, 2022, consisting of five (5) sheets;
- C. Survey entitled: “Survey of Property, Lot 47 Block 903, Town of Phillipsburg, County of Warren, New Jersey” prepared by Morgan Engineering & Surveying, dated June 22, 2020, and consisting of one sheet;
- D. Letter from Town of Phillipsburg Fire Chief dated May 9, 2022;

WHEREAS, the Applicant is requesting a variance from the Town Ordinances as follows: A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit no onsite parking spaces where same are required by L.O. 625-32(B); and

WHEREAS, the Board has considered the review letters of the Board Engineer dated May 19, 2022 and June 21, 2022, 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 June 23, 2022:

1. Manuel Montesino, who is the Applicant’s principal;
2. Ryan G. Welty, AIA, who is the Applicant’s architect; and

WHEREAS, the following documents were marked as exhibits at the June 23, 2022 hearing and were discussed and testified to by the Applicant’s witnesses. These are now included as part of the record:

1. A-1: Curriculum Vitae of Ryan G. Welty, AIA;
2. A-2: Photographs from Applicant’s informal investigation of nearby parking; and
3. A-3: May 9, 2022 letter from Phillipsburg Fire Chief; and

WHEREAS, on May 26, 2022, the Board’s engineer and the Applicant’s attorney discussed the temporary waivers from the Town’s Site Plan checklist which were requested by the Applicant and which

are referenced in the Board engineer's May 19, 2022 letter and further recommended that the Board grant temporary waivers from the Town's Preliminary Site Plan Checklist, as outlined in the May 19, 2022 letter to items 2g, 2i, 2j, 2k, 2l, 2m, 2n, 2o, 2q, 2r and 2s, and grant a permanent waiver as to items 2h and 2p; and grant temporary waivers from the Town's Final Site Plan Checklist, as outlined in the May 19, 2022 letter to items 3a, 3j, 3jk, 3l, 3m, 3n, 3o, 3p, 3r, 3s, 3t, 3v, 3w, 3y, 3z, 3aa, 3bb and 3cc; and

WHEREAS, by unanimous vote on May 26, 2022, the Board granted the temporary waivers referenced above, by unanimous voice and the Application was deemed complete; and

WHEREAS, Mr. Welty, after being sworn, was accepted as an architectural expert by the Board based upon his education, training, knowledge and experience; and

WHEREAS, Mr. Welty testified regarding the proposed design and use of the building in general, *to wit*, the existing configuration of the four (4) story structure, former use, and proposed interior renovations to convert the upper floors into three (3) two-bedroom residential units. Mr. Welty discussed the existing elevator servicing the building as well as the additional exterior stair to be added to provide a second means of egress for the new residential units. Mr. Welty also confirmed that the building will be serviced by a fire suppression/sprinkler system; and

WHEREAS, Mr. Welty provided testimony concerning the size and configuration of the ground floor commercial space including the seating for the space if used as a restaurant. Mr. Welty testified that the net seating area measured approximately 515 square feet which could accommodate approximately 35 people and according to the parking requirements of the Town Zoning Ordinance for a restaurant/tavern use, a total of 12 parking spaces would be required for that use; and

WHEREAS, Mr. Welty confirmed that the parking requirements for a restaurant/tavern use were greater than other retail or commercial uses and the more conservative parking requirement was utilized to provide the Applicant with flexibility in marketing and leasing the ground floor commercial space; and

WHEREAS, Mr. Welty testified that the total parking required for both the proposed ground floor restaurant/tavern use and upper floor residential units was 18 parking spaces with no onsite parking spaces existing or proposed, thereby triggering the need for a variance from Section 625-32; and

WHEREAS, Mr. Welty also confirmed by way of testimony that no designated off-street loading area existed on the property or would be provided as part of the proposed renovations, thereby requiring a variance from Section 625-31B & C; and

WHEREAS, the project architect discussed specific comments and recommendations set forth in the report from the Board Engineer involving refuse, signage and lighting; and

WHEREAS, Mr. Welty'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. Welty’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 offered the testimony of a principal of the Applicant, Manuel Montesino who testified as to the anticipated use of the building and his plans for off-site parking, *to wit*, to secure parking permits for the residential tenants in the nearby Riverside and Market Street municipal parking lots; and

WHEREAS, Mr. Montesino provided testimony involving his personal observations of the parking conditions both along South Main Street and in the Riverside and Market Street parking lots; and

WHEREAS, in support of his testimony, Mr. Montesino referred to photographs and parking inventories that he personally conducted on various days of the week and times of the days, which information was introduced as Exhibit A-2 at the June 23, 2022 meeting; and

WHEREAS, Mr. Montesino concluded his testimony by offering his opinion, based upon his personal observations of the availability of parking in both the Riverside and Market Street parking lots as well as along South Main Street, that adequate parking opportunities were present in these areas to accommodate the parking needs of the project; and

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

WHEREAS, the meeting was then opened to the public and there were no comments, 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. Brotzman, and seconded by Mr. Penrose, to approve a parking variance and relief from the loading requirements; and

WHEREAS, the Chairman called for a motion on the Application for Preliminary and Final Site Plan Approval which was made by Mr. Rooney and seconded by Mayor Tersigni; and

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 Preliminary and Final Site Plans by the Board.
2. The subject property is located in the Town of Phillipsburg’s Riverfront Redevelopment Zone, District 2, Subarea 3.
3. The Applicant must obtain 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. N.J.S. 40:55D-51(b) states: "The planning board when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions of the site plan review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question."

6. 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.

7. 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."

8. 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.

9. That waivers from the "Town of Phillipsburg's Site Plan Review Ordinance of 1979" requirements be granted as to the items noted above and contained in the Board's Engineer letters dated May 19, 2022 and June 21, 2022, as more particularly set forth herein this Resolution.

10. That variances be granted as to the items noted above, regarding the lack of one off-street loading area and the off-street parking requirement of 18 spaces with no off-street parking provided, as referenced in the Board Engineer's letters dated May 19, 2022 and June 21, 2022, as more particularly set forth herein this Resolution.

11. 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 a loading area and from the requirements of parking spaces required under L.O. 625-31 and 625-32, as noted above, are hereby **GRANTED**, on Motion of Mr. Brotzman and Seconded by Mr. Penrose :

ROLL CALL VOTE

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

Nays: None.
Abstentions: None.
Recused: Mr. Kennedy

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant's request for Preliminary and Final Conventional Site Plan approval, is hereby **GRANTED**, on Motion of Mr. Rooney and Seconded by Mayor Tersigni :

ROLL CALL VOTE

Ayes: Chairman Duffy, Mr. Turnbull, Mr. Brotzman, Mr. Fulper, Mr. Hanisak, Mr. Penrose, Mr. Rooney and Mr. Zwicker.
Nays: None.
Abstentions: None.
Recused: Mr. Kennedy.

AND IT IS FURTHER RESOLVED THAT the Applicant's request for Variances and Preliminary and Final Conventional Site Plan approval for the conversion of the existing four (4) story commercial building into a mixed residential and commercial use consisting of a restaurant or other commercial use on the ground floor with a total of three (3) two-bedroom residential dwelling units on the three (3) remaining floors, on the property known as 43-45 South Main Street, Block 903, Lot 47, located in the Town of Phillipsburg Riverfront Redevelopment Zone, District 2, Subarea 3 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 May 19, 2022 and June 21, 2022, as modified at the June 23, 2022 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 construction is done 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 procure, and provide copies to the Board, of all applications, licenses and permits required by all federal, state and municipal agencies.

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

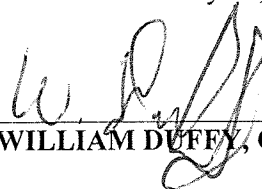
5. The Applicant shall pay all outstanding fees and deficiencies in the review escrow account and brings current all real estate taxes, sewer and water charges pertaining to this site.

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

7. 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, 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").

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Land Use Board was duly adopted at its regular meeting on the 23rd day of June, 2022, by a majority of the aforesaid members approving the oral approval for the contents herein on July 28, 2022.

Dated: July 28, 2022



WILLIAM DUFFEY, Chairman