

TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2022-11

**RESOLUTION GRANTING PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL
AND USE VARIANCE APPROVAL IN NO. 2022-11**

**PBXDEV 2, LLC – Applicant
361 Summit Boulevard, Suite 110
Birmingham, Alabama 35242**

**K.S.B. Corporation – Owner
1 Garfield Avenue
Jersey City, New Jersey 07305**

Block 1003, Lots 4 and 8

Application #2022-11

WHEREAS, PBXDEV 2, LLC, applied to the Town of Phillipsburg Land Use Board (“Board”) for Preliminary and Final Major Site Plan Approval; Bulk Variance Approval pursuant to N.J.S. 40:55D-70(c); and any and all design exceptions and/or waivers (collectively “the Application”) for the demolition of the existing building and the construction of an approximately five thousand six hundred and seventy (5,670) square foot food store, trading as QuickChek, with fuel sales and fifty-five (55) parking spaces, a loading zone and a fuel canopy with fuel pumps, for the property identified on the Town Tax Map as Block 1003, Lots 4 and 8, with a street address of 671 Memorial Parkway, Phillipsburg, Warren County; 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 or about August of 2022; and

WHEREAS, on August 25, 2022, the Board commenced a public hearing on the Application, as more fully set forth herein below; and

WHEREAS, the Applicant appeared before the Board at a regularly-scheduled meeting on July 28, 2022, at which time the Applicant requested certain waivers from the Preliminary Site Plan checklist requirements, said waivers being summarized in the Board Engineer’s July 22, 2022 and August 19, 2022 review letters, 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 before the Board again at a regularly-scheduled meeting on August 25, 2022;

WHEREAS, at the preceding hearings, the Applicant was represented by Jason R. Tuvel, Esq., who presented a brief explanation concerning the Applicant’s intended use of the subject property and the approvals sought and summarized the benefits of the project; 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. Town of Phillipsburg Division of Inspections Denial of Application, dated June 9, 2022;
- B. Town of Phillipsburg – “Application for Minor or Conventional Site Plans” for Block 1003, Lots 4 and 8, dated June 20, 2022;
- C. Town of Phillipsburg – Preliminary Site Plan Checklist for Conventional Site Plan, dated June 20, 2022;
- D. Town of Phillipsburg – Final Checklist for Conventional Site Plan, dated June 20, 2022;
- E. Certification from the Collector Taxes, dated July 26, 2022, that realty taxes and sewer account are current;
- F. Preliminary and Final Major Site plan entitled: “Preliminary/Final Major Site Plan for PBXDEV 2, LLC, Proposed Food Store with Fuel Sales for Block 1003, Lots 4 and 8, 671 Memoria Parkway, Town of Phillipsburg, Warren County, New Jersey,” prepared by Bohler Engineering, LLC, dated May 18, 2022, and consisting of twenty (20) sheets;
- G. ALTA/NSPS Land Title Survey entitled: “ALTA/NSPS Land Title Survey, CGP Acquisitions & Development, LLC” for Block 1003, Lots 4 and 8, Town of Phillipsburg, Warren County, State of New Jersey,” prepared by Blue Marsh Associates, Inc., consisting of two sheets, dated November 23, 2021, and last revised on May 3, 2022;
- H. Architectural Plans entitled: “Proposed Building for QuickChek,” prepared by Gary Kliesch and Associate Architects, consisting of one sheet, dated May 17, 2022;
- I. Architectural Plans entitled: “Proposed Building for QuickChek,” prepared by Gary Kliesch and Associate Architects, consisting of four (4) sheets, dated May 17, 2022;
- J. “Traffic Impact Study Proposed Quickcheck with Fuel Sales” prepared by Stonefield Engineering & Design, LLC, dated December 14, 2021;
- K. “Stormwater Management Facilities Operations & Maintenance Manua for PBXDEV 2, LLC, Proposed Food Store with Fuel Sales, Prepared for QuickChek Corporation, Block 1003, Lots 4 & 8, 671 Memorial Parkway, Town of Phillipsburg, Warren County, New Jersey”, prepared by Bohler Engineering, LLC, dated May of 2022;
- L. July 25, 2022 letter from Town of Phillipsburg Fire Chief;
- M. Storm Sewer Tabulation dated May 19, 2022; and
- N. July 26, 2022 letter from Warren County Planning Board; and

WHEREAS, the Board having considered the letters of the Board engineer dated July 22, 2022 and August 19, 2022, the contents of which the Board adopts and incorporates its finding of fact by reference herein; and

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

1. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit the non-residential driveway at Elder Avenue to exceed thirty feet (30') at the property line and forty feet (40') feet at the curb line where L.O. 625-30(B) prohibits the same;
2. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit the non-residential driveway at State Route 22 to exceed thirty feet (30') at the property line and forty feet (40') feet at the curb line where L.O. 625-30(B) prohibits the same
3. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit parking spaces to be closer than ten feet (10') to the building where L.O. 625-60(B)(5) prohibits the same;
4. A "c" use variance, pursuant to N.J.S. 40:55D-70(c), to permit three ground mounted signs where L.O. 625-40(A)(2) limits the same to two ground mounted signs;
5. A "c" use variance, pursuant to N.J.S. 40:55D-70(c), to permit the maximum aggregate sign area to exceed sixty-five (65) square feet, to with one hundred and thirty-three square feet (133' sq.) proposed, where L.O. 625-40(B)(1) prohibits the same;
6. A "c" use variance, pursuant to N.J.S. 40:55D-70(c), to allow a parking lot along the State Route 22 frontage where L.O. 625-60(B)(2) requires a parking lot be located behind or next to buildings;
7. A "c" use variance, pursuant to N.J.S. 40:55D-70(c), to permit parking spaces to be closer than ten feet (10') to the building where L.O. 625-60(B)(5) prohibits the same; and
8. A "c" use variance, pursuant to N.J.S. 40:55D-70(c), to allow more parking spaces than are allowed by L.O. 625-32(B)(6); and

WHEREAS, the Applicant is requesting the following permanent design waivers from the Town Ordinances:

1. A waiver from the requirement that plans and profiles of all adjoining properties within five hundred feet (500') be set forth on the Site Plan as required by L.O. 510-11(C)(3)(p);
2. A waiver from the requirement that driveways and roadways shall not exceed a maximum grade of six percent (6%) and shall not exceed a grade of four percent (4%) within one hundred feet (100') of the sideline of an intersecting street as required by L.O. 510-12(B)(2)(g)(1), for the drive slope at Elder Avenue; and
3. A waiver from the requirement that driveways and roadways shall not exceed a maximum grade of six percent (6%) and shall not exceed a grade of four percent (4%) within one hundred feet

(100') of the sideline of an intersecting street as required by L.O. 510-12(B)(2)(g)(1), for the driveway slope at State Route 22; and

WHEREAS, on July 28, 2022 at a hearing before the Board on the completeness of the application, the Applicant's engineer, Kyle McKenna, P.E. and 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 July 22, 2022 letter and further recommended that the Board grant temporary waivers from the Town's Preliminary Site Plan Checklist, as outlined in the July 22, 2022 letter, to items 2a, 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i and 2k; and grant temporary waivers from the Town's Final Site Plan Checklist, as outlined in the July 22, 2022 letter to items 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, 3j, 3k, 3l, 3m, 3n, 3o, 3p, 3q, 3r and 3s; and grant a permanent waiver from the Town's Preliminary Site Plan Checklist as outlined in the July 22, 2022 letter as to item 2j; and

WHEREAS, before the testimony of the Applicant's witnesses on August 25 2022, the Board's engineer again 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 July 22, 2022 and August 19, 2022 letters and further recommended that the Board grant temporary waivers from the Town's Preliminary Site Plan Checklist, as outlined in the July 22, 2022 and August 19, 2022 letters, to items 2a, 2b, 2c, 2d, 2e, 2f, 2g, 2h, 2i and 2k; and grant temporary waivers from the Town's Final Site Plan Checklist, as outlined in the July 22, 2022, and August 19, 2022 letters to items 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, 3j, 3k, 3l, 3m, 3n, 3o, 3p, 3q, 3r and 3s; and grant a permanent waiver from the Town's Preliminary Site Plan Checklist as outlined in the July 22, 2022 and August 2022 letters as to item 2j; and

WHEREAS, by unanimous vote on July 28, 2022, the Board granted the permanent waiver and temporary waivers referenced above, and reaffirmed the same on August 25, 2022; and

WHEREAS, the Applicant presented the sworn testimony of the following individuals on August 25, 2022:

1. Stuart Kimmel, who is QuickChek's (proposed tenant) real estate manager;
2. Tung To-Lam, P.E. who is the Applicant's engineer;
3. John R. Corak, P.E., who is the Applicant's traffic engineer; and
4. Elizabeth K. McManus, P.P., A.I.C.P., who is the Applicant's professional planner; *and*

WHEREAS, the following documents were marked as exhibits at the August 25, 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 Tung To-Lam, P.E.;
2. A-2: Ariel Exhibit of Overall Site and nearby properties, dated August 5, 2022;

3. A-3: "Site Layout Plan" which is sheet C-3 of the site plan;
4. A-4: One sheet of architectural drawing, dated May 17, 2022;
5. A-5: Curriculum Vitae of John R. Corak, P.E.;
6. A-6: Curriculum Vitae of Elizabeth K. McManus, P.P., A.I.C.P., and
7. A-7: Town of Phillipsburg Fire Chief letter dated July 25, 2022;

WHEREAS, the Applicant first offered Stuart Kimmel, who is the proposed tenant's New York/New Jersey real estate manager, who after being sworn, provided testimony on behalf of the Applicant. Mr. Kimmel testified regarding the history of the QuickChek business. He stated that he has been in the real estate development business for fifteen years. He testified that QuickChek was started in 1880s as a delivery of milk company; became a convenience store in 1966; and in 2000 fuel sales started. In 2021, QuickChek was taken over by another company but will continue to trade under the QuickChek name. QuickChek is not a franchise and is based in Whitehouse Station, New Jersey. The proposed store would operate 24/7 store and have 40-50 employees of which 30-40 would be new hires. He stated that on average there would be 8-10 employees per day shift with three employees per night shift. He stated that there would be a loading zone and a delivery zone on site. He testified that on average there would be one tractor trailer delivery daily and 6-8 box truck deliveries daily and that garbage pick-up would be three times per week; and

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

WHEREAS, Tung To-Lam, P.E., a New Jersey Licensed Engineer, of Bohler Engineering, was offered as the second witness, who after being sworn and accepted as a civil engineering expert, based upon Exhibit "A-1," provided testimony on behalf of the Applicant. Mr. To-Lam discussed all the following. He offered Exhibit "A-2" which is an August 5, 2022 aerial exhibit of the overall site and the nearby properties and described what the exhibit illustrates. Then, Mr. To-Lam offered Exhibit "A-3," which is the "site layout plan," sheet C-3, which illustrates the proposed conditions of the property. He testified that the three existing driveways would be consolidated into two driveways. He stated that the overall site impervious coverage would be reduced from its current acreage to approximately 1.2 acres. He identified the location of the trench drains proposed. He stated that approximately 422 plants of differing colors and variety are proposed, which would result in more overall green space – especially on the Elder Avenue side of the property. Mr. To-Lam further testified that there will be ten gas pumps with as many as sixteen vehicles possibly fueling at one time. He testified regarding the new curbing and sidewalks along both the Route 22 and Elder Avenue frontages. He stated that a concrete, as opposed to asphalt, paving would be installed as long as the New Jersey Department of Transportation ("NJDOT") does not object. He stated that the Applicant will comply with all of the Phillipsburg Fire Chief's requirements as set forth in Exhibit "A-7."

Mr. To-Lam testified that fifty-five (55) parking spaces are proposed on the site including two make-ready electrical vehicle spaces where the Town's ordinance only allows fifty-two (52) parking spaces. He stated that all fuel, garbage and other deliveries are proposed to enter only from Route 22, and not from Elder Avenue. He testified regarding proposed signage including an eighty (80) square foot sign along Route 22. He stated that there would be a wall-mounted sign on the west side of a fuel canopy. Then, Exhibit "A-4" was introduced and marked, which is one page from the above-referenced May 17, 2022 architectural drawing. He testified regarding the location of business logos and signs shown on the Exhibit. Mr. To-Lam testified that the front of the proposed building would look more elevated than the rear because the Applicant would be hiding rooftop HVAC equipment. He stated that there would be an eight-foot (8') grading change in the driveway which as proposed would be compliant with the Americans with Disabilities Act ("ADA") requirements. Mr. To-Lam testified that there would not be an on-site generator, but that there would be an "automatic switch" with off-site generator third party access for immediate power. Mr. To-Lam stated that the Applicant will comply with all technical comments set forth in the Board Engineer's August 19, 2022 letter. He said he expected it would take six months for the site construction from "shovel in the ground to ribbon cutting." However, Mr. To-Lam stated that it could take the NJDOT as many as eighteen (18) months to issue a highway permit. Therefore, the Applicant would like to start construction on the Elder Avenue side of the property as soon as possible, but acknowledged that the business could not operate until NJDOT highway permit is obtained. He testified that garbage and recycling containers will be in a masonry enclosure with a screen and that there would be a maintenance shed for the large on-site vacuum cleaner.

WHEREAS, the Board was satisfied with Mr. To-Lam'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, John Corak, P.E., a New Jersey Licensed Engineer, who is the Applicant's traffic engineer was offered as the third witness and whose expertise was recognized by the Board based upon his curriculum vitae which was marked as Exhibit "A-5." Mr. Corak utilized Exhibits "A-2" and "A-3" during his presentation. He testified that Route 22 carries approximately forty thousand (40,000) cars daily in front of the subject site. He stated that he undertook a traffic analysis which included turning movement counts done during morning, afternoon and evening peak hours. He said that he made adjustments based upon the assumption that COVID reduced the number of automobile trips and based upon historic NJDOT traffic records. He stated that he expected customers will travel from the north and south of the site. He testified that any delays at the traffic light at the intersection of Roseberry Street and Route 22 due to additional QuickChek traffic would be approximately two seconds which he characterized as insignificant. He said that the proposed driveway along Route 22 is designed in accordance with NJDOT regulations and that the

Elder Avenue driveway is designed in accordance with NJDOT standards. He stated that passenger vehicles will not interact with delivery trucks and gas delivery trucks. He said there is plenty of room for movement on the site for all passenger traffic. He testified that he believed the proposed fifty-five (55) parking spaces meets the spirit of the Town Ordinances and is adequate for the QuickCheck business. He said the proposed driveways are safe and efficient as to width and slope; and

WHEREAS, the Board Engineer inquired about mass transit vehicles (ie: buses) on the site and opined that the proposed site design adequately addresses any safety concerns. Th Board Engineer then asked Mr. Corak if he could address the two points raised in paragraphs #16 and #17 at page 11 of his August 19, 2022 review letter. Mr. Corak responded that as for the church activity there was minimal traffic and that Sunday traffic counts are less than weekday traffic counts. As for the point raised in paragraph #16, he said the Applicant would supplement its traffic study. He testified that the NJDOT highway permit is complete and that the same has been acknowledged by NJDOT and that the Applicant is waiting for approval. The Board attorney then asked the Board Engineer to verify that a supplemental traffic study to address paragraph #16 was requested and the Board Engineer stated yes based on the testimony; and

WHEREAS, the Board Chairman had questions regarding circulation on site that Mr. Chorak reiterated that all fuel and delivery trucks are only supposed to ingress/egress from Route 22. Mr. Chorak also said that the Applicant is willing to post signage on-site which directs Route 22 eastbound traffic to Elder Avenue; and

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

WHEREAS, Elizabeth K. McManus, P.P., A.I.C.P., the Applicant's planner, was the fourth witness, who after being sworn and accepted as a planning expert, based upon Exhibit "A-6," provided testimony on behalf of the Applicant. She testified that she reviewed the application and all relevant materials. She addressed the requested variances. She stated that the driveway widths proposed are necessary as "c2" variances and cited purpose H (N.J.S. 40:55D-2(h)) of the New Jersey Municipal Land Use Law ("MLUL") for the driveway variances. She also testified as to parking variances being necessary "c2" variances which are also supported by MLUL purpose H. She described the Route 22 frontage as "massively improved" as proposed with shrubbery and sidewalks. As for variance for parking spaces to be closer than ten feet (10') to the building, Ms. McManus again cited to MLUL purpose H and says as proposed the parking spaces are convenient, safe and quick. She then discussed the variance request for fifty-five (55) parking spaces as a "c2" variance and again referenced MLUL purpose H. She testified that adequate parking is important to avoid unnecessary circulation by customers searching for parking spaces. She testified that if the two make-ready electrical vehicle parking spaces and the two vacuum area special purpose parking spaces are not considered, then there are fifty-one (51) parking spaces which would comply

with the Town Ordinances. Ms. McManus then testified that two ground advertising signs and one directional sign are “c2” variances that are supported by MLUL purpose H. She believes the proposed signs are consistent with the existing highway corridor and are necessary for safety. As to the four wall mounted signs proposed where only two are allowed, she said the proposal is supported by MLUL purpose I, to wit, N.J.S. 40:55D-2(i). Ms. McManus said that wall mounted signs make the building look more attractive and are an enhancement to the architecture of the building. She testified the number of signs is not incompatible with signs on other businesses along Route 22 and specifically mentioned KFC, Burger King and McDonald’s as having two signs on the front and one on the side of their buildings. Ms. McManus stated that all of the preceding testimony were part of the positive criteria required for variances under N.J.S. 40:55D-70(c). As for negative criteria under N.J.S. 40:55D-70(c), Ms. McManus testified that there would be nothing negative to the neighborhood were the requested variances granted for the following reasons. First, she stated that the proposal is a “massive improvement” to the site’s current condition. Second, she said that improved stormwater management, decreased impervious coverage and increased lighting are beneficial to the neighborhood. Third, she testified that architecturally the proposed QuickChek building is better for Elder Avenue residents. Fourth, she testified that the proposed building will be set back further from Elder Avenue which improves the neighborhood and does not have a negative impact on surrounding properties. Overall, Ms. McManus opined that the benefits of granting the variances substantially outweigh any possible detriments “by far.” Finally, she addressed the Board Chairman’s question regarding lighted signs possible effect on Elder Avenue residents; and

WHEREAS, the Board was satisfied with Ms. McManus’ testimony 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, the Board asked for public comment and received only brief comment from the owner/operator of the Lukoil gas station near the site; and

WHEREAS, the Applicant’s attorney then summarized all of the preceding and asked for the ability to being construction with a “comfort letter” from NJDOT which the Board Engineer said was appropriate; and

WHEREAS, the Board considered all of the preceding;

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

1. The subject property is located in the Town of Phillipsburg B-2 Business zone where the proposed use is a principal permitted use.
2. N.J.S. 40:55D-1, et. seq., the “New Jersey Municipal Land Use Law,” provides for review and Approval of Preliminary and Final Major Site Plans by the Board.

3. The Applicant must obtain Preliminary and Final Major 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. The Town has expressly stated in L.O. 625-60 that "[i]t is the Town's intention to provide alternatives to the strip development pattern currently found along the Route 22 corridor and to upgrade the corridor from an economic, aesthetic and functional perspective. The following standards are to be applied to all development proposals located in the B-2 Zone. Each application for development shall document how each standard is addressed." The Board expressly incorporates by reference herein the entire language of L.O. 625-60 as if set forth herein.
9. The Application meets the standards of L.O. 625-60.
10. It has been acknowledged by the Board that waivers of the requirements be granted as to each of the items contained in the Completeness Review of the Board's Engineer.
11. 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.
12. 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 FURTHER RESOLVED THAT the Applicant's request for two design waivers from the "Town of Phillipsburg's Site Plan Ordinance of 1979," as set forth above, is hereby **GRANTED**, for the reasons set forth on the record by the Applicant's professionals, on Motion of Mr. Tersigni and Seconded by Mr. Penrose:

ROLL CALL VOTE

Ayes: Chairman Duffy, Mr. Brotzman, Mr. Hanisak, Mr. Penrose, Mayor Tersigni, Mr. Kennedy, Mr. Turnbull and Mr. Zwicker.

Nays: None.

Abstentions: None.

Recused: None.

NOW THEREFORE, BE IT RESOLVED THAT the Applicant's request for the eight (8) variances from the "Town of Phillipsburg Zoning Ordinance," under Chapter 625 of the Town of Phillipsburg's Ordinances as noted above, are hereby **GRANTED**, on Motion of Mr. Tersigni and Seconded by Mr. Brotzman:

ROLL CALL VOTE

Ayes: Chairman Duffy, Mr. Brotzman, Mr. Hanisak, Mr. Penrose, Mayor Tersigni, Mr. Kennedy, Mr. Turnbull and Mr. Zwicker.

Nays: None.

Abstentions: None.

Recused: None.

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

ROLL CALL VOTE

Ayes: Chairman Duffy, Mr. Brotzman, Mr. Hanisak, Mr. Penrose, Mayor Tersigni, Mr. Kennedy, Mr. Turnbull and Mr. Zwicker.

Nays: None.

Abstentions: None.

Recused: None.

AND IT IS FURTHER RESOLVED THAT the Applicant's request for Preliminary and Final Major Site Plan approval for the construction of two separate structures on the property known as Block 1003, Lots 4 and 8, located in the Town of Phillipsburg B-2 Business 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 July 22, 2022, and August 19, 2022, as modified at the August 25, 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 buildings 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 provide the Board with a supplemental traffic impact study.

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

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

6. 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.

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

8. 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") and the New Jersey Department of Transportation.

9. Under no circumstances shall the business on site be opened for business to the public until the New Jersey Department of Transportation issues a highway permit.

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.

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Land Use Board was duly adopted at its regular meeting on the 22nd day of September, 2022, by a majority of the aforesaid members approving the oral approval for the contents herein on August 25, 2022.

Dated: September 22, 2022


WILLIAM DUFFY, Chairman