

TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2022-13

RESOLUTION GRANTING SITE PLAN WAIVER/EXEMPTION IN NO. 2022-15

**G&G DISTRIBUTION, INC. – Applicant
125 Howard Street
Phillipsburg, New Jersey 08865**

**125-165 HOWARD STREET, LLC - Owner
1758 East 4th Street
Brooklyn, New York 11223**

**Block 2007, Lot 2
125 Howard Street**

Application #2022-15

WHEREAS, G&G Distribution, Inc. (“Applicant”) applied to the Town of Phillipsburg Land Use Board (“Board”) for a Site Plan Waiver/Exemption under the “Town of Phillipsburg’s Site Plan Ordinance of 1979,” pursuant to N.J.S. 40:55D-51, for certain interior only improvements to the existing warehouse, at the property identified on the Town Tax Map as Block 2007, Lot 2, with a street address of 125 Howard Street, Phillipsburg, Warren County, New Jersey, located in the I-1 Industrial Zone; and

WHEREAS, the Applicant appeared before the Board at a regularly-scheduled meeting on October 27, 2022, at which time the Board considered the undated “Application for Site Plan Exemption” and the Board Engineer’s October 26, 2022 review letter, and the Board having determined that said Application was ripe for consideration; and

WHEREAS, at the preceding hearing, the Applicant was represented by Kevin Hahn, Esq., who presented a brief explanation concerning the Applicant’s current and future intended use of the subject property, the interior renovations proposed and the exemption sought; 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 “Application for Site Plan Exemption” for Block 2007, Lot 2, received on October 18, 2022;
- B. Interior fit-out Plan by USA Architects, dated July 2, 2022, consisting of ten (10) pages;
- C. ALTA/NSPS Land Title Survey entitled “Howard Street, Phillipsburg,” prepared by First Order, LLC, dated June 1, 2021; and
- D. October 25, 2022 letter from Nature’s Specialties; and

WHEREAS, the Board having considered the letter of the Board engineer dated October 26, 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 individual on October 27, 2022: Rick Brown, who is the authorized representative of the Applicant; and

WHEREAS, the following documents were marked as exhibits at the October 27, 2022 hearing and were discussed and testified to by the Applicant's witnesses. These are now included as part of the record:

1. Exhibit "A-1": ALTA/NSPS Land Title Survey entitled "Howard Street, Phillipsburg," prepared by First Order, LLC, dated June 1, 2021;
2. Exhibit "A-2": October 25, 2022 letter from Nature's Specialties; and
3. Exhibit "A-3": Interior fit-out Plan by USA Architects, dated July 2, 2022; and

WHEREAS, Rick Brown, the Applicant's authorized representative, who after being sworn, provided brief testimony regarding the interior renovations planned as follows. He testified that he is the authorized representative for G&G Distribution, Inc. which is owned by the company that produces Nexus shampoo. The Applicant manufactures pet shampoo. He said there is a proposed expansion of the business and his company will install large canisters to mix product which is then placed in small canisters for sale. There will be necessary electrical work for the renovations and different floor drains/traps will be installed to catch waste product so as not to flow into the plumbing. He stated that no additional odors will be emitted. He testified there is adequate on-site parking. He said all deliveries are made during regular business hours. Board Engineer Tim O'Brien asked some questions and confirmed that use of the building will remain the same. Mr. Brown then provided some detail to the process to the satisfaction of Mr. O'Brien. Mr. O'Brien inquired whether the Applicant had contact with the Fire Department, the Town sanitary engineer, the Warren County Health Department and/or the Town Sewer Authority to which Mr. Brown said they were in the process of engaging all of the preceding. Mr. O'Brien inquired about outside lighting and Mr. Brown said no new lighting will be added. Mr. O'Brien inquired whether the Applicant would have to seek a sidewalk exemption from the Town Council and Mr. Hahn replied that the sidewalk exemption application had already been made to Town Council and further that the Applicant would be satisfied if this were a condition of approval. Mr. O'Brien inquired about marking parking spaces to be ADA compliant and Mr. Brown said there will be compliance. Mr. O'Brien requested the Applicant obtain letters of no interest from the Town Police Chief, the Town Fire Chief, the Town Sewer Authority and the Warren County Planning Board; and

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

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

WHEREAS, the Board did not have any further inquiry; and
WHEREAS, the Board asked for public comment and received none; 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 I-1 Industrial Zone.
2. N.J.S. 40:55D-1, *et. seq.*, the "New Jersey Municipal Land Use Law," provides for review and approval of all development applications.
3. The "Town of Phillipsburg's Site Plan Ordinance of 1979" provides for review and approval of all development applications, pursuant to L.O. 510-1, *et. seq.*
4. The Applicant must obtain either Site Plan Approval or a Site Plan Exemption/Waiver from the Board before it develops the subject property.
5. 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.
6. 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."
7. L.O. 510-9(C) authorizes the Board to grant a Site Plan Exemption if the criteria set forth in L.O. 510-9(A) & (B) are met.
8. L.O. 510-9(A) states that: "The Board, when acting upon an application for site plan approval, shall have the power to grant such exceptions from the requirements of site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review if the literal enforcement of one or more provisions of this chapter is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question."
9. L.O. 510-9(B) states that: "An applicant for any development or change of use of property that does not increase the intensity or use of the property or change the layout of the site or undertake any structural expansion, and further, if it is not physically possible to meet the other requirements of the Zoning or Development Ordinances of the Town of Phillipsburg requiring additional parking, landscaping, buffering, lighting or other such facilities and is so certified, in writing, by the

applicant, may file a written application for waiver of the site plan review on forms provided in the office of the administrative officer at least 10 days prior to the next regularly scheduled meeting.”

10. A waiver, or an exemption, is an acknowledgment by the Board that conditions of the property are satisfactory and meet the requirements of the Town of Phillipsburg Ordinances.
11. The Board has authority to grant conditional uses under the “New Jersey Municipal Land Use Law,” pursuant to N.J.S. 40:55D-70 and pursuant to Section 625-81(c) of the “Town of Phillipsburg Zoning Ordinance.”
12. The Board acknowledges that waivers of the requirements be granted as to each of the items contained in the Completeness Review of the Board’s Engineer dated October 26, 2022.
13. The Board finds that a site plan waiver/exemption is appropriate given that, *inter alia*: (a) exterior renovations are proposed; (b) the use of the property is not changing; (c) the condition of the property is not changing; (d) the intensity of the use of the property, if changing at all, is minimally changing; (e) on-site lighting and parking are not changing; and (f) all of the proposed on-site changes are limited to the building’s interior.
14. 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 a Site Plan Waiver/Exemption as requested by the Applicant.
15. 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 a Site Plan Waiver/Exemption on the property, pursuant to Section 510-9(C) of the “Town of Phillipsburg’s Site Plan Review Ordinance of 1979,” is hereby **GRANTED**, on Motion of Mayor Tersigni and Seconded by Mr. Brotzman:

ROLL CALL VOTE

- Ayes: Vice-Chairman Zwicker, Mayor Tersigni, Mr. Kennedy, Mr. Penrose, Mr. Brotzman, Mr. Turnbull, Mr. Hanisak and Mr. Rooney
- Nays: None.
- Abstentions: None.
- Recused: None.

AND IT IS FURTHER RESOLVED THAT the Applicant’s request for Site Plan Waiver for approval of interior renovations known as Block 2007, Lot 2, located in the Town of Phillipsburg I-1 Industrial 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 letter dated October 26, 2022, as modified at the October 27, 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 procure, and provide copies to the Board, of all applications, licenses and permits required by all federal, state and municipal agencies.

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

4. The Applicant shall either install a concrete sidewalk along the frontage of Howard Street or obtain a sidewalk exemption from the Phillipsburg Town Council.

5. The Applicant and/or the owner of the subject property shall mark all parking lot spaces and shall provide properly graded and designated Americans with Disabilities Act ("ADA") parking spaces in a number which complies with the ADA and its regulations.

6. The Applicant shall ensure that the owner of the subject property coordinates with the Town Sewer Engineer to address encroachments into the Town's sewer easement including fencing installation along the rear of the property.

7. The Applicant shall obtain approval from the Warren County Health Department, the Town Sanitary Engineer and Town Plumbing Code official for sanitary flows.

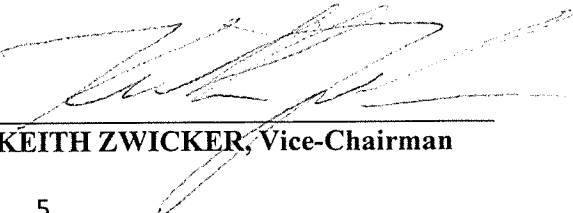
8. The Applicant shall pay all outstanding fees and deficiencies in the review escrow account and brings current all real estate taxes, sewer and water charges pertaining to this site.

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

10. 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 Town of Phillipsburg Sewer Authority, Elizabethtown Gas, Aqua New Jersey, Jersey Central Power & Light ("JCP&L"); and the Warren County Planning Board.

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Planning Board was duly adopted at its regular meeting on the 27th day of October, 2022, by a majority of the aforesaid members approving the oral approval for the contents herein on November 21, 2022.

Dated: November 21, 2022


KEITH ZWICKER, Vice-Chairman