

TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2022-14

**RESOLUTION GRANTING PRELIMINARY AND FINAL MAJOR/CONVENTIONAL SITE
PLAN APPROVAL AND USE VARIANCE APPROVAL IN NO. 2021-10**

**R. Amos Real Estate – Applicant
43708 Victory Boulevard
Staten Island, New York 10314**

**61, 75 & 83 South Main Street Phillipsburg, LLC - Owner
45 McDonald Street
Staten Island, New York 10314**

Block 911, Lots 7 & 8

Application #2021-10

WHEREAS, R. Amos Real Estate (“Applicant”) applied to the Town of Phillipsburg Land Use Board (“Board”) for Preliminary and Final Major/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 removal of a two story frame dwelling to be replaced with an at-grade asphalt parking lot; interior renovations to the existing five story mixed-use building to residential and commercial uses; for the property identified on the Town Tax Map as Block 911, Lots 7 & 8, with a street address of 75 and 83 South Main Street, Phillipsburg, Warren County, New Jersey (the “property”) located in the Town’s RRA-2 Riverfront Redevelopment District 2 – Union Square Area, 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 Keith 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, Mayor Todd Tersigni, being the Class I member of the Board, recused himself entirely from consideration of this Application; and

WHEREAS, the Applicant appeared before the Board at a regularly-scheduled meeting on September 22, 2022, and was represented by Mark Peck, Esq., at which time the Applicant requested certain waivers from the Preliminary and Final Major Site Plan checklists, said waivers being summarized in the Board Engineer’s October 25, 2022 review letter, and the Board having determined by unanimous 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, the Applicant appeared before the Board again at a regularly-scheduled meeting on October 27, 2022, for a public hearing, where the Applicant, represented by Mark Peck, 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 being satisfied that the Application has 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 Zoning Denial of Application, dated July 23, 2021;
- B. Town of Phillipsburg – "Application for Minor or Conventional Site Plan" for Block 911, Lots 7 & 8, dated March 2, 2021,
- C. Town of Phillipsburg Preliminary Site Plan Checklist for Conventional Site Plan;
- D. Town of Phillipsburg Final Site Plan Checklist for Conventional Site Plan;
- E. Checklist Waiver Requests for Block 911, Lots 7&8;
- F. Certification from the Collector Taxes, dated September 20, 2022, that realty taxes and sewer payments were current;
- G. Preliminary & Final Major Site Plan entitled: Preliminary and Final Site Plan, 75 && 83 South Main Street;" prepared by Engineering & Land Planning, PA, dated March 1, 2021, revised September 22, 2021, and consisting of ten (10) sheets;
- H. Proposed Architecture Plans entitled: "75 South Main Street, Phillipsburg, New Jersey, 08865, Warren County A-1, A-2, Elev-1 and Elev-2" prepared by Eclectic Architecture, LLC, dated February 24, 2021, consisting of four (4) sheets;
- I. Environmental Impact Statement prepared by Engineering & Land Planning, PA, dated February 26, 2021;
- J. Traffic Impact Statement prepared by Engineering & Land Planning, PA, dated February 26, 2021 and revised October 24, 2022; and
- K. September 22, 2021 correspondence prepared by Engineering & Land Planning, PA; and

WHEREAS, the Board having considered the letters of the Board engineer dated September 16, 2022 and October 25, 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” use variance, pursuant to N.J.S. 40:55D-70(c), to allow fewer parking spaces than are required by L.O. 625-32; and
2. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to allow a parking lot on Lot 8 as the primary intended use of said Lot in order to service Lot 7, where L.O. 625-25(D) prohibits the same; and

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

1. A waiver from the requirement that Site Plan include the location of all existing buildings, drainage and parking areas within two hundred feet (200’) of the subject property as required by L.O. 510-11(C)(3)(h);
2. A waiver from the requirement that the Site Plan include the location of all existing and proposed sidewalks, driveways, fences, retaining walls, parking space areas and the layouts of all off-street loading areas within one hundred feet (100’) of the subject property as required by L.O. 510-11(C)(3)(l) and L.O. 510-11(D)(3)(p);
3. 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);
4. 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); and
5. A waiver from the requirement that parking areas shall be reasonably level, but shall not exceed a maximum grade of six percent (6%) and shall be graded so stormwater runs from aisles to parking stalls and does not cross drives or roadways in a concentrated flow as required by L.O. 510-12(B)(2)(g)(2); and

WHEREAS, on September 22, 2022 at a hearing before the Board on the completeness of the application, the Applicant’s engineer, Wayne Ingram, 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 September 16, 2022 letter and further recommended that the Board grant temporary waivers from the Town’s Preliminary Site Plan Checklist, as outlined in the September 16, 2022 letter, to items 3a, 3c, 3d, 3e, 3g, 3h, 3i, 3k, 3l, 3m and 3n; and grant temporary waivers from the Town’s Final Site Plan Checklist, as outlined in the September 16, 2022 letter to items 4a through 4q; and grant a permanent waiver from the Town’s Preliminary Site Plan Checklist as outlined in the September 16, 2022 letter as to items 3b, 3f and 3j; and

WHEREAS, before the testimony of the Applicant’s witnesses on October 27 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 September 16, 2022 letter and further recommended that the Board grant temporary waivers from the Town's Preliminary Site Plan Checklist, as outlined in the October 25, 2022 letter, to items 2a, 2c, 2e, 2g, 2h, 2i, 2k, 2l, 2m and 2n; and grant temporary waivers from the Town's Final Site Plan Checklist, as outlined in the October 25, 2022 letter to items 3a, 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, 3j, 3l, 3m, 3n, 3o, 3p, 3q and 3r; and grant a permanent waiver from the Town's Preliminary Site Plan Checklist as outlined in the October 25, 2022 letter as to items 2b, 2f and 2j; and grant a permanent waiver from the Town's Final Site Plan Checklist as outlined in the October 25, 2022 letter as to item 3k; and

WHEREAS, by unanimous vote on September 22, 2022, the Board granted the permanent waiver and temporary waivers referenced above, and reaffirmed the same on October 27, 2022; and

WHEREAS, the Applicant presented the sworn testimony of the following individuals on October 27, 2022:

1. Wayne J. Ingram, P.E., PLS, CME, who is the Applicant's engineer; and
2. Jessica Pisapia Margulies, AIA, who is the Applicant's architect; 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. A-1: Curriculum Vitae of Wayne J. Ingram, P.E., PLS, CME;
2. A-2: Curriculum Vitae of Jessica Pisapia Margulies, AIA;
3. A-3: Architectural Plans, A-1, A-2, Elev-1 and Elev-2; and
4. A-4: Colorized rendering of Site Plan; and

WHEREAS, the Applicant first offered Jessica Pisapia Margulies, AIA, who, after being sworn, was accepted as an architectural expert by the Board based upon her education, training, knowledge and experience and her Curriculum Vitae which was marked as Exhibit "A-2," and provided testimony on behalf of the Applicant. She testified that the two person "governor's mansion building" is not changing. As for the primary five story building, she said there would be residential and commercial units. The entire lot is 1.03 acres, with less than the allowed 32 units per acre in the RRA does not trigger a variance. She said that all of the proposed units meet all of the RRA requirements. She said the only exterior renovations will be the bottom floor front doors. She testified that the first floor will have two (2) retail spaces, one two-bedroom apartment, four (4) one bedroom apartments an elevator, a gym and storage areas. On the second floor, there will be seven (7) two-bedroom apartments and one (1) three-bedroom apartment. On the third floor, there will be nine (9) two-bedroom apartments. On the fourth floor, there will be six (6) two-bedroom apartments and (3) bi-level units into the fifth floor. She stated that some additional windows are proposed on the building. After her testimony, the Board Engineer, Mr. Timothy O'Brien, inquired whether the

proposed improvements would affect the building's historical preservation designation and she said it would not. Mr. O'Brien asked Ms. Margulies whether parking was consistent with RRA based upon the proposed number of units and she said she believes so. Mayor Tersigni then asked whether the existing two-story building on the proposed parking lot would be razed, and she said yes. She also testified that the building will be fully installed with sprinklers. Mr. O'Brien then asked about fire exits and Ms. Margulies said the building will be fully fire code compliant; and

WHEREAS, the Board was satisfied with Ms. Margulies' 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 next offered Wayne J. Ingram, P.E., PLS, CME, who, after being sworn, was accepted as an engineering expert by the Board based upon his education, training, knowledge and experience and his Curriculum Vitae marked as Exhibit "A-1," and provided testimony on behalf of the Applicant. He spoke about the parking issues and testified that the Applicant is willing to make some changes to the Site Plan which eliminates some parking stalls. He briefly addressed the proposed lighting on-site. As for refuse removal, he stated the proposed location of trash is the only location possible for a garbage truck while acknowledging the Board Engineer's concerns that the trash dumpster is proposed in a location which is much closer to an adjacent property owner than the proposed on-site residential units. He said that a sidewalk on the property is not realistic because it would cut into parking spaces. He agreed that six electric vehicle parking spaces are needed on-site and stated that the Applicant will comply which will also reduce ADA parking stall requirements by the same number. He testified that he calculates a need for seventy-four (74) parking spaces under the ordinance less the six electrical vehicle stalls which would result in sixty-eight (68) spaces being needed. He stated that the Applicant proposes fifty-nine (59) parking stalls. He acknowledges that the residential site improvement standards ("RSIS") are applicable to this site. Mr. Ingram offered a strong defense of the number of proposed parking stalls versus the number required by ordinance. He said that parking will not be residential only because there are retail businesses proposed, but that he assumes residents will be at work when businesses are open and this helps justify the proposed number of parking stalls in a shared parking arrangement. Mr. Ingram further testified that he does not believe there will be any stormwater management issues as the impervious lot coverage is not altered and the directions of stormwater drainage remains the same. He said the Applicant does not object to the two subject lots being merged and that could be a condition of approval. He noted that the Applicant they will comply with all of the Town Fire Chief's requirements. He stated that the Applicant will give easements to utility companies. Mr. O'Brien then questioned whether the proposed seven (7) parking spaces on the fifteen percent (15%) or greater slope is functional to which Mr. Ingram said the Applicant would alter this area to reduce the number of stalls to fifty-five (55) and further rotate them in order to eliminate the

variances for slope and for distance of the driveway to the intersection. so. Mr. O'Brien suggested that the dumpster be placed further on the property and away from adjacent property owner and Mr. Ingram agreed to look into the issue further. Mr. O'Brien stated that the Applicant will have to seek a Pleasant Street sidewalk exemption from the Town Council. Mr. Ingram acknowledged the same and commented that installation of sidewalks would eliminate three or four parking spaces. Mr. O'Brien stated that a sidewalk exemption would be consistent with existing layout of property; and

WHEREAS, the Board attorney sought to confirm that the permanent waivers sought by the Applicant were only as to items 2b, 2f, 2j, and 3k in Board Engineer's October 25, 2022 letter and both Mr. O'Brien and Mr. Ingram concurred and stated that item 2d to be a condition of approval; and

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

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

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

WHEREAS, the meeting was then opened to the public and there were comments from five people who were in favor of the project overall, but had some concerns about the parking issues and generally stated that the project would be better if it were down-sized; and

WHEREAS, the Vice-Chairman closed the public comment portion of the hearing and inquired of the Board members if there were any discussion; and

WHEREAS, Mr. Rooney expressed concern about this project making parking more difficult in the Town to which Mr. Peck argued the project is consistent with the Town's redevelopment plan and asserted that the proposed parking is consistent with parking in other urban areas; and

WHEREAS, the Vice-Chairman called for a motion on the variances and a motion was made by Mr. Zwicker, and second by Mr. Brotzman, to grant the requested variances; and

WHEREAS, the Vice-Chairman called for a motion on the permanent design waivers and a motion was made by Mr. Hanisak, and second by Mr. Brotzman, to grant the requested variances; and

WHEREAS, the Vice-Chairman called for a motion on the Application for Preliminary and Final Major Site Plan Approval which was made by Mr. Penrose and seconded by Mr. Turnbull; 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. That the subject property is located in the Town's RRA-2 Riverfront Redevelopment District 2 – Union Square Area, Subarea 3

2. That the Town of Phillipsburg Town Council is the redevelopment authority, pursuant to N.J.S. 40A:12A-1, *et. seq.*;
3. That the Town of Phillipsburg Town Council in Resolution No. 2022-24 had directed the Board to undertake a study to determine if amendments to the Town's Riverfront Redevelopment Plan should be made to increase residential density in District 2, Sub-Area 3;
4. That the Town of Phillipsburg Town Council in Resolution No. 2022-20 made amendments to the Town's Riverfront Redevelopment Plan regarding residential density in District 2, Sub-Area 3;
5. That N.J.S. 40:55D-1, *et. seq.*, the "New Jersey Municipal Land Use Law," provides for review and Approval of Minor Preliminary and Final/Conventional Site Plans by the Board.
6. That the Applicant must obtain Preliminary and Final Major/Conventional Site Plan Approval from the Board before it develops the subject property.
7. That 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.
8. That 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."
9. That 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.
10. That a waiver 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 September 16, 2022, and October 25, 2022, as more particularly set forth herein this Resolution.
11. That 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."
12. That a variance is a deviation from the strict application of Chapters 625 and 117 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.
13. That waivers from the "Town of Phillipsburg's Site Plan Review Ordinance of 1979" requirements be granted as to the five (5) items noted above, and contained in the Board's Engineer letter dated October 25, 2022, as more particularly set forth herein this Resolution.

14. That variances be granted as to two items noted above, and contained in the Board's Engineer letter dated October 25, 2022, as more particularly set forth herein this Resolution.

15. That 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 the five (5) variances from the "Town of Phillipsburg Zoning Ordinance," under Chapters 625 and 117 of the Town of Phillipsburg's Ordinances as noted above, are hereby **GRANTED**, on Motion of Mr. Hanisak and Seconded by Mr. Brotzman:

ROLL CALL VOTE

Ayes: Vice-Chairman Zwicker, Mr. Brotzman, Mr. Hanisak, Mr. Penrose and Mr. Turnbull.

Nays: None.

Abstentions: None.

Recused: Mr. Kennedy and Mayor Tersigni.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant's request for five (5) permanent design waivers from the "Town of Phillipsburg's Site Plan Ordinance of 1979," as set forth above, is hereby **GRANTED**, on Motion of Mr. Hanisak and Seconded by Mr. Brotzman:

ROLL CALL VOTE

Ayes: Vice-Chairman Zwicker, Mr. Brotzman, Mr. Hanisak, Mr. Penrose, Mr. Turnbull and Mr. Rooney.

Nays: None.

Abstentions: None.

Recused: Mr. Kennedy and Mayor Tersigni

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

ROLL CALL VOTE

Ayes: Vice-Chairman Zwicker, Mr. Brotzman, Mr. Hanisak, Mr. Penrose, Mr. Turnbull and Mr. Rooney.

Nays: None.

Abstentions: None.

Recused: Mr. Kennedy and Mayor Tersigni

AND IT IS FURTHER RESOLVED THAT the Applicant's request for Preliminary and Final Major/Conventional Site Plan Approval for removal of a two story frame dwelling to be replaced with an at-grade asphalt parking lot; interior renovations to the existing five story mixed-use building to residential and commercial uses; on the property known as Block 911, Lots 7 & 8, located in the Town's RRA-2 Riverfront Redevelopment District 2 – Union Square Area, 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 September 16, 2022 and October 25, 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 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, the New Jersey Department of Environmental Protection ("DEP"), the State of New Jersey Historical Commission.

8. 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.

9. That the Applicant shall file a deed of merger of Block 911, Lots 7 and 8, in a form satisfactory to the Board attorney and the Board engineer.

10. That the Applicant shall provide a revised Site Plan which contains the storm system data as required by L.O. 510-11(C)(3)(j), as set forth in the Board Engineer's October 25, 2022 review letter.

11. That the Applicant shall provide a revised Site Plan which contains the vehicle access information as required by L.O. 510-11(D)(3)(w), as set forth in the Board Engineer's October 25, 2022 review letter.

12. That the Applicant shall repair and replace all existing curb and sidewalks along all frontages that are found to be in disrepair by the Town Engineer and/or Town Code officials in a manner consistent with the testimony and representations at the October 27, 2022 hearing.


13. That the Applicant shall verify that all sanitary laterals are properly connected to the sanitary sewer system.

14. That the Applicant shall comply with all of the Town's site lighting ordinances.

15. That the Applicant shall secure construction staging areas for access to the general public and provide separation from existing building occupants in order to ensure safety.

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Land Use 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