

TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2022-15

RESOLUTION GRANTING PRELIMINARY AND FINAL MAJOR SUBDIVISION APPROVAL, PRELIMINARY AND FINAL MAJOR/CONVENTIONAL SITE PLAN, AND USE VARIANCE IN NO. 22-008

**PC7 REO, LLC – Applicant/Owner
2500 McClellan Avenue, Suite 200
Pennsauken, New Jersey 08109**

Block 1503, Lot 14

Application #2022-008

WHEREAS, PC7 REO, LLC (“Applicant”) applied to the Town of Phillipsburg Land Use Board (“Board”), for Preliminary and Final Major Subdivision Approval; Preliminary and Final Major Site Plan Approval; Bulk Variance Approval pursuant to N.J.S. 40:55D-70(c); Use Variance Approval pursuant to N.J.S. 40:55D-70(d); and any and all design exceptions and/or waivers for the subdivision of the existing lot into two new lots with one lot to maintain the existing church building and the other lot to maintain the existing parsonage to be utilized as a residence, on the property identified on the Town Tax Map as Block 1503, Lot 14, with a street address of 326 South Main Street, Phillipsburg, Warren County, New Jersey (the “subject property”) located in the Town’s B-4 Business Zone (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 21, 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, a public hearing was held on October 27, 2022, where the Applicant, being represented by Mark Peck Esq., presented a brief explanation concerning the Application, *to wit*, the subdivision of the existing lot into two new lots on the property known as Block 1503, Lot 14; 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. Mr. Peck said that the intent of the project is to sub-divide the current lot with the church and the parsonage into separate lots – church on one lot and residence on other lot. He said that a church is allowed in B-4 zone under L.O. 625-66 and that a residence is a permitted conditional use under L.O. 625-68 as long as there is compliance with the R-50 zoning standards; and

WHEREAS, the Board being satisfied that the revised 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 Zoning Denial of Application, dated February 3, 2022;
- B. Town of Phillipsburg – “Application for Major Subdivision” for Block 1503, Lot 14, dated August 2, 2022;
- C. Certification from the Collector Taxes, dated August 26, 2022, that realty taxes and sewer payments were current;
- D. Town of Phillipsburg Preliminary Site Plan Checklist for Conventional Site Plan, dated April 18, 2022;
- E. Town of Phillipsburg Final Site Plan Checklist for Conventional Site Plan, dated April 18, 2022;
- F. Town of Phillipsburg Variance Application, dated April 18, 2022;
- G. Preliminary & Final Major Site Plan entitled: “Preliminary and Final Minor Subdivision and Major Site Plan, Grace Baptist Church,” prepared by Engineering & Land Planning Associates, PA, dated October 19, 2021, and consisting of three (3) sheets; and
- H. Transmittal letters from Florio, Perrucci, Steinhardt, Cappeli, Tipton & Taylor, LLC, dated April 18, 2022 and August 8, 2022; and

WHEREAS, the Board has considered the review letters of the Board Engineer dated May 20, 2022, August 18, 2022, September 15, 2022 and October 21, 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 permit a minimum lot area on the proposed residential lot of approximately three thousand eight hundred square feet (3800’ sq.) where L.O. 625-8(B) and L.O. 625-80 requires a minimum lot area of five thousand square feet (5000’ sq.);
2. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to permit forty-six and sixty-eight one hundredths feet (46.68’) of lot frontage on the proposed residential lot where L.O. 625-8(B) and L.O. 625-80 require a minimum of fifty feet (50’);
3. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to permit a front yard setback of sixteen feet (16’) for the residential lot where L.O. 625-8(E) and L.O. 625-80 require a minimum of twenty-five feet (25’);
4. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to permit a side yard setback of one and thirty-one hundredths feet (1.31’) and three and twenty two hundredths feet (3.22’) for the residential lot where L.O. 625-8(E) and L.O. 625-80 require a minimum of five feet (5’);
5. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to permit lot coverage of eighty-seven percent (87%) for the residential lot where L.O. 625-8 and L.O. 625-80 permit no more than forty percent (40%);
6. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to allow fewer parking spaces for the church lot than the parking requirements set forth in L.O. 625-32; 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 construction details of all proposed site improvements be on the Site Plan as required by L.O. 510-11(D)(3)(bb); and
3. A waiver from the requirement that all existing and proposed sidewalks, driveways, fences, retaining walls, parking space areas and the layouts thereof and all off-street loading areas, together with the dimensions of the foregoing on the site and within one hundred feet (100’) be on the Site Plan as required by L.O. 510-11(C)(3)(l); 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 October 21, 2022 letter and further recommended that the Board grant temporary waivers from the Town’s Preliminary Site Plan Checklist, as outlined in the October 21, 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 October 21, 2022 letter to items 3a through 3t and 3v through 3y; and grant a permanent

waiver from the Town's Preliminary Site Plan Checklist as outlined in the October 21, 2022 letter as to item 2j; and grant a permanent waiver from the Town's Final Site Plan Checklist as outlined in the October 21, 2022 letter as to item 3u;

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 October 21, 2022 letter and further recommended that the Board grant temporary waivers from the Town's Preliminary Site Plan Checklist, as outlined in the October 21, 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 October 21, 2022 letter to items 3a through 3t and 3v through 3y; and grant a permanent waiver from the Town's Preliminary Site Plan Checklist as outlined in the October 21, 2022 letter as to item 2j; and grant a permanent waiver from the Town's Final Site Plan Checklist as outlined in the October 21, 2022 letter as to item 3u; 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., PP, PLS, CME, who is the Applicant's engineer and planner; and
2. Joseph Cash, who is the Applicant's real estate agent; 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., PP, PLS, CME; and
2. A-2: Site plan, sheet 2.

WHEREAS, the Applicant first offered Joseph Cash, who is the Applicant's real estate agent, who after being sworn provided testimony on behalf of the Applicant. He stated that the Applicant purchase the property at a tax sale and the property has been vacant at least for the past ten (10) years; and

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

WHEREAS, the Applicant next offered Wayne J. Ingram, P.E., PP, 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 referenced the Site Plan which he prepared. He said they are seeking a sub-division line in the middle of the property as best they can. He testified that there is no parking issue at the church which is not in use and that the parking would be associated with residential lot and ultimately parking would be

shared via an easement between the two lots. He said that two parking stalls for residential lot would be in conformance with ordinances. He testified that exterior improvements are not proposed at the site at the present time. He said the Applicant would comply with the proper public sewer connections. Mr. Ingram said applicant is seeking “d(3): variance and argues that, even given the deficiencies, the proposed use is appropriate. He noted that the Site Plan has a proposed residential lot of 3800 sq. ft. even though 5000 sq. ft. is required by ordinance. He acknowledged given that there is an existing residence on the proposed lot and there is no change in use, a variance is appropriate. Mr. Ingram concurred that the five “d” variances as noted in the Board engineer’s October 21, 2022 letter are appropriate under the R-50 zone standards. As for the parking variance, Mr. Ingram said that there are no changes regarding the use of the property. As for potential detriments to the zoning plan, Mr. Ingram testified that because the existing structures and uses are not changing, there is no detriment. Mr. Ingram further stated that he believes that lighting, landscaping, and sewer requirements are not pertinent as no activity is planned on the site. Accordingly, Mr. Ingram believes that permanent waivers from those zoning requirements should be granted. He said that the Applicant will comply with all outside agencies’ requirements. The Board Engineer, Mr. Timothy O’Brien, then stated that under the ordinance 48 parking spaces are needed and confirmed that is the sum of parking spaces for which a waiver is sought. Mr. O’Brien also said applicant should get letter of no interest from Warren County as South Main Street, while a local road, has some past indication of being a County Route. Mr. O’Brien suggested the Board should make a condition of approval that the Applicant obtain approval from the Town Fire Chief. Mr. Ingram stated that the Applicant agrees to get any necessary easements for the Town along the road or nearby properties. Mr. O’Brien asked that fencing be addressed to be certain the property is safe. No signage on property is proposed according to Mr. Ingram. Mr. O’Brien then said the church kitchen should have a workable grease trap. Mr. Ingram responded that church kitchen issues should be C.O./C.H. issues because there is no intent to use kitchen to which Mr. O’Brien stated that he is ok with not making that a condition of approval. Mr. Ingram confirmed that ADA-compliant parking spaces are not proposed because of the residential use proposed and that if commercial use is proposed in the future, that would have to be addressed. Sheet 2 of the Plan was marked as Exhibit “A-2;” and

WHEREAS, the Vice-Chairman then asked the Board members if they had any questions and Mr. Penrose questioned whether subdivision makes sense because while the residential lot would be attractive the remainder lot (church) will be useless given its dilapidated condition. In response thereto, Mr. Ingram said that razing the existing parsonage would give the existing one lot very little additional parking and does not make much sense; 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 opened to the public and there was one comment from one woman who owns property nearby and said that the existing property is not marketable because the church roof is no good and needs to be replaced and

WHEREAS, the Board considered all of the preceding;

WHEREAS, the Vice-Chairman called for a motion on the variances and a motion was made by Mr. Penrose, 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. Brotzman, 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 Subdivision Approval and Preliminary and Final Major Site Plan Approval which was made by Mr. Rooney 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 of Phillipsburg B-4 zone.
2. That N.J.S. 40:55D-1, *et. seq.*, the "New Jersey Municipal Land Use Law," provides for review and Approval of Major Subdivisions and Preliminary and Final Site Plans by the Board.
3. That the Applicant must obtain Minor Subdivision Approval and Preliminary and Final Site Plan Approval from the Board before it develops the subject property.
4. 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.
5. 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.
6. 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."
7. That 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. That waivers from the "Town of Phillipsburg's Site Plan Review Ordinance of 1979" requirements be granted as to the two items noted above, and contained in the Board's Engineer letter dated October 21, 2022, as more particularly set forth herein this Resolution.

9. That variances be granted as to the six (6) items noted above, and contained in the Board’s Engineer letter dated October 21, 2022, as more particularly set forth herein this Resolution.
10. That the subject property has been in a state of disrepair and has not been used for many years.
11. That the subject property currently is a non-conforming use.
12. That a church is allowed in B-4 zone under L.O. 625-66 and that a residence is a permitted conditional use under L.O. 625-68 as long as there is compliance with the R-50 zoning standards.
13. That there currently are no plans to renovate, alter or otherwise change the existing site.
14. That the Applicant acknowledges that any plans to renovate, alter or otherwise change the existing site cannot take place in the absence of a further site plan application to this Board.
15. That the proposed subdivision is not inconsistent with the Town’s Master Plan.
16. That the proposed subdivision is not inconsistent with 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.
17. 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 six (6) 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. Penrose 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: Mayor Tersigni and Mr. Kennedy.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant’s request for two 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. Rooney and Seconded by Mr. Penrose:

ROLL CALL VOTE

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

Nays: None.

Abstentions: None.

Recused: Mayor Tersigni and Mr. Kennedy.

NOW THEREFORE, BE IT RESOLVED THAT the Applicant's request for Preliminary and Final Major Subdivision Approval and Preliminary and Final Site Plan Approvals, are hereby **GRANTED**, on Motion of Mr. Rooney 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: Mayor Tersigni and Mr. Kennedy.

AND IT IS FURTHER RESOLVED THAT the Applicant's request for Preliminary and Final Major Subdivision Approval and Preliminary and Final Major/Conventional Site Plan approval for the subdivision of the existing lot into two new lots with one lot to maintain the existing church building and the other lot to maintain the existing parsonage to be utilized as a residence, on the property known as Block 1503, Lot 14, located in the Town of Phillipsburg B-4 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 21, 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 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.

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

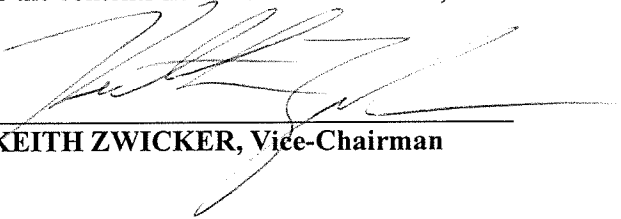
5. That the Applicant applies for, and obtains, approval from all other agencies and governmental bodies which may have concurrent jurisdiction over this project including, but not limited to, the Town of Phillipsburg Fire Chief, the Town of Phillipsburg Chief of Police, the Warren County Planning Board, the Warren County Road Department, the Warren County Soil Conservation District, the Phillipsburg Sewer Utility, Elizabethtown Gas, Aqua New Jersey and Jersey Central Power & Light ("JCP&L").

6. The Applicant shall repair and replace any existing fencing that is to remain on the property which needs repair and/or replacement based upon a review by the Town's Inspection Official.

7. The Applicant shall address any overall site maintenance issues based upon a review by the Town's Inspection Official.

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