

**TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2023-1**

**RESOLUTION GRANTING SITE PLAN EXEMPTION & VARIANCES IN CASE NO. 2022-16**

**Jose Reynoso – Applicant/Owner  
180 North Riverview Road  
Phillipsburg, New Jersey 08865  
Block 2904, Lot 1**

**Application #2022-16**

**WHEREAS**, Jose Reynoso (“Applicant”) applied to the Town of Phillipsburg Land Use Board (“Board”) for Site Plan Waiver/Exemption pursuant to L.O. 510-9; and Bulk Variance Approval pursuant to N.J.S. 40:55D-70(c), along with any and all design exceptions and/or waivers (collectively “the Application”), for alteration of the residential property owned by Applicant, known as 180 North Riverview Road, and identified on the Town of Phillipsburg Tax Map as Block 2904, Lot 1, (“the subject property”) located in the R-50 Residential Zone, to permit the enclosure of the front porch in order to make the same a livable space; 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 December of 2022; and

**WHEREAS**, the Applicant appeared before the Land Use Board at a regularly-scheduled meeting on November 21, 2022, at which time the Board considered the undated Application for Site Plan Waiver/Exemption; the November 2, 2022 Petition of Appeal from Zoning Officer’s denial of application; the Zoning Officer’s May 16, 2022 denial of application; the property survey as more fully described below; and the Board Engineer’s November 21, 2022 review letter, and the Board having determined that said Application was complete by unanimous voice vote; and

**WHEREAS**, a public hearing was held on December 15, 2022, where the Applicant, represented by William Edleston, Esq., presented a brief explanation concerning the Application, *to wit*, a request for a Site Plan Waiver/Exemption and a bulk variance relief to permit the enclosure of the front porch in order to make the same a livable space at the residence at 180 North Riverview Road; 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 expansion of a non-conforming use on the lot to permit the enclosure of the front porch in order to make the same a livable space, where L.O. 625-18 does not allow extension or enlargement of a non-conforming use; and

2. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to permit a front yard setback of eighteen and eight-tenths feet (18.8’) for the subject property lot where L.O. 625-8(E) and L.O. 625-80 require a minimum of twenty-five feet (25’); 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 Site Plan Exemption, undated;
- B. Town of Phillipsburg Application for Appeal from Zoning Officer’s decision, dated November 2, 2022;
- C. Town of Phillipsburg Zoning Officer’s Denial of Application, dated May 16, 2022; and
- D. “Plan of Survey” for Tax Lot 1, Block 2004, 180 North Riverview Road, prepared by Leeper Land Group, LLC, dated June 30, 2022, consisting of one sheet; and

**WHEREAS**, the Board having considered the letter of the Board engineer dated November 21, 2022, the contents of which the Board adopts and incorporates its finding of fact by reference herein; and

**WHEREAS**, the Applicant’s attorney, Mr. Edleston, stated that the Applicant would not be offering any planning testimony, but that he believed the application was consistent with the purposes of the “New Jersey Municipal Land Use Law,” specifically N.J.S. 40:55D-2(a),(e);

**WHEREAS**, the Applicant presented the sworn testimony of Eleana Reynoso, who is the Applicant’s adult daughter and who resides at the property with her parents, and who provided very brief testimony that the Applicant intends to enclose the front porch and make it an interior dining room; and

**WHEREAS**, the Board was satisfied with Mr. Edleston’s comments and Ms. Reynoso’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**, no documents were marked as exhibits at the December 15, 2022 hearing;

**WHEREAS**, the Board did not have any further inquiry of the Applicant; and

**WHEREAS**, the Board asked for public comment and received none; and

**WHEREAS**, the Board considered all of the preceding and also considered the Town’s Master Plan, the Town’s Zoning Ordinances, the Town’s Site Plan ordinances and considered the comments and advice of the Board’s engineer; and

**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 R-50 Residential 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 he 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 variances under the “New Jersey Municipal Land Use Law,” pursuant to N.J.S. 40:55D-70 and pursuant to Section 625-1, *et. seq.*, of the “Town of Phillipsburg Zoning Ordinance.”
12. The Board finds that a Site Plan Waiver/Exemption for this single-family home is appropriate based upon the Completeness Review letter of the Board’s Engineer dated November 21, 2022; the

presentation of the matter at the December 15, 2022 public hearing; and upon consideration of all the preceding.

13. The Board finds that the granting of the variances as set forth herein is appropriate and is not inconsistent with either the “New Jersey Municipal Land Use Law,” N.J.S. 40:55D-1, *et. seq.*, Town’s Master Plan or the Town’s Zoning Ordinance in that: (a) the Applicant is not expanding the size of the structure, but rather is simply enclosing an existing porch to make the same interior living space; (b) the exterior of the structure will not be altered; (c) the use of the property is not changing; and (d) the existing non-conforming use is not being expanded.
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 Exemption/Waiver 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 L.O. 510-9(C) of the “Town of Phillipsburg Site Plan Review Ordinance of 1979,” is hereby **GRANTED**, on Motion of Mayor Tersigni and seconded by Mr. Brotzman:

**ROLL CALL VOTE**

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

Nays: None.

Abstentions: None.

Recusals: None.

**NOW THEREFORE, BE IT RESOLVED THAT** the Applicant’s request for two variances from the “Town of Phillipsburg Zoning Ordinance,” under Chapter 625 of the Town of Phillipsburg’s Ordinances, as noted above, pursuant to N.J.S. 40:55D-70(c), is hereby **GRANTED**, on Motion of Mayor Tersigni and seconded by Mr. Brotzman:

**ROLL CALL VOTE**

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

Nays: None.

Abstentions: None.

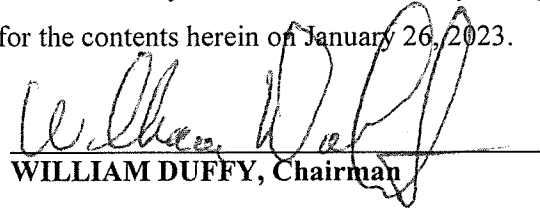
Recusals: None.

**AND IT IS FURTHER RESOLVED THAT** the Applicant's request for Site Plan Waiver/Exemption approval for enclosure of the front porch in order to make the same interior livable space on the property known as Block 2904, Lot 1, located in the R-50 Residential 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 November 21, 2022, as modified at the December 15, 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. That, if applicable, the Applicant procure, and provide copies to the Board, of all applications, licenses and permits required by all federal, state and municipal agencies.
3. That a pre-construction conference be scheduled with the Town Engineer's office at least two days prior to commencement of construction.
4. That the Applicant pays all outstanding fees and deficiencies in the review escrow account pertaining to this application.
5. That any portion of any prior Site Plan approvals are hereby vacated to the extent they may be inconsistent with this Site Plan Exemption/Waiver.
6. 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 and Jersey Central Power & Light ("JCP&L").

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Land Use Board was duly adopted at its regular meeting on the 15<sup>th</sup> day of December, 2022, by a majority of the aforesaid members approving the oral approval for the contents herein on January 26, 2023.

Dated: January 26, 2023

  
WILLIAM DUFFY, Chairman