

**TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2023-2**

**RESOLUTION GRANTING VARIANCES AND APPROVING PRELIMINARY AND FINAL  
CONVENTIONAL/MAJOR SITE PLAN IN NO. 2022-14**

**AVANTOR PERFORMANCE MATERIALS, LLC – Applicant/Owner  
600 North Broad Street  
Phillipsburg, New Jersey 08865**

**Block 101, Lot 5  
600 North Broad Street**

**Application #2022-14**

**WHEREAS**, Avantor Performance Materials, LLC (“Applicant”) applied to the Town of Phillipsburg Land Use Board (“Board”) for Preliminary and Final Conventional/Major Site Plan Approval under the “Town of Phillipsburg’s Site Plan Ordinance of 1979,” pursuant to N.J.S. 40:55D-51; Bulk Variance Approval pursuant to N.J.S. 40:55D-70(c); and any and all design exceptions and/or waivers for certain improvements to the property identified on the Town Tax Map as Block 101, Lot 5, with a street address of 600 North Broad Street, Phillipsburg, Warren County, New Jersey, located in the Town’s I-2 Industrial Zone, *to wit*, the erection of solar canopy arrays over the existing parking lot and a grass area along with restriping of the existing parking lot, replacement of the existing fence and gate, relocation of a water line and removal of light poles and utility poles; 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, on or about December of 2022, and having satisfied itself that it had jurisdiction over the Application; and

**WHEREAS**, the Board being satisfied that the 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 Applicant appeared before the Board at a regularly-scheduled Meeting on October 27, 2022, and was represented by Mark Peck, Esq., at which time the Applicant requested certain temporary waivers from the Preliminary and Final Major/Conventional Site Plan checklists, said waivers being summarized in the Board Engineer’s October 4, 2022 and December 9, 2022 letters, and the Board having determined by 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 December 15, 2022, where the Applicant, being represented by Mark Peck, Esq., presented an explanation concerning the Applicant’s intended use of the

subject property and the approvals sought and summarized the benefits of the project, *to wit*, the installation of a solar facility over the existing parking areas to help power the Applicant's facility; and

**WHEREAS**, the Board Engineer and the Board Attorney were satisfied that the Board's determination of the application's completeness, which was made on October 27, 2022, remained accurate; and

**WHEREAS**, the Board has received certain documentation and reports from the Applicant, the Board's professional consultants and others, all of these having been given due consideration and being the following:

- A. Town of Phillipsburg Zoning Denial of Application, dated July 29, 2022;
- B. Town of Phillipsburg Zoning Officer Appeal, dated August 25, 2022
- C. Town of Phillipsburg – "Application for Minor or Conventional Site Plan" for Block 101, Lot 5, dated August 8, 2022;
- D. Town of Phillipsburg Preliminary Site Plan Checklist for Conventional Site Plan;
- E. Town of Phillipsburg Final Site Plan Checklist for Conventional Site Plan;
- F. Certification from the Collector Taxes, dated November 10, 2022, that realty taxes and sewer payments were current;
- G. Preliminary & Final Major Site Plan entitled "Preliminary and Final Site Plans Avantor Solar Project" prepared by T&M Associates, dated June 28, 2021, consisting of thirty (30) sheets;
- H. Transmittal letter from T&M Associates, dated August 24, 2022;
- I. Town of Phillipsburg Tax Map, Sheet 1;
- J. Affidavit – "Freshwater Wetlands, Wetland Transition Areas, and Open Space Water Absence, Avantor – Proposed Solar Array," prepared by T&M Associates, dated June 16, 2022; and
- K. Geotechnical Engineering Report entitled: "Avantor 900kw Carport Photovoltaic Solar System" prepared by RPM Engineering, dated June 10, 2022;
- L. Stormwater Compliance Statement prepared by T&M Associates, dated June 28, 2022; and
- M. Warren County Planning Department letter dated October 25, 2022; and

**WHEREAS**, the Board has considered the review letters of the Board Engineer dated October 4, 2022, and December 9, 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 front yard setback of four tenths of one foot (0.4') for the solar array where L.O. 625-80 requires a minimum of thirty-five feet (35');
2. A "c" use variance, pursuant to N.J.S. 40:55D-70(c), to permit the continuation of a non-conforming front yard setback of an existing building; and

3. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to permit the continuation of a non-conforming side yard setback of an existing building; and

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

1. A waiver from the requirement that all existing, proposed and landscaped areas, fencing, and trees be shown on the plans as required by L.O. 510-11(C)(3)(e);
2. A waiver from the requirement that all existing and proposed signs, utility poles and their size, type of construction and location be shown on the stie plan as required by L.O. 510-11(C)(3)(f);
3. A waiver from the requirement that existing and proposed structures and buildings floor spaces and grading elevations be on the site plan as required by L.O. 510-11(C)(3)(g);
4. A waiver from the requirement that the method of sewage disposal and water supply be on the site plan as required by L.O. 510-11(C)(3)(r);
5. A waiver from the requirement that the existing and proposed principal building or structure and all accessory structures, if any, and finished grade elevations of all first floors and roofs as required by L.O. 510-11(D)(3)(i); and
6. A waiver from the requirement that refuse and garbage disposal be provided in the site plan pursuant to L.O. 510-11(D)(3)(x); and

**WHEREAS**, on October 27, 2022, the Board’s engineer and the Applicant’s attorney discussed the temporary waivers from the Town’s Site Plan checklist which were requested by the Applicant and which are referenced in the Board engineer’s October 4, 2022 letter and further recommended that the Board grant temporary waivers from the Town’s Preliminary Site Plan Checklist, as outlined in the October 4, 2022 letter to items 2a, 2d, 2e, 2f, 2g, 2i and 2k; and grant permanent waivers as to items 2b, 2c, 2d, 2h and 2j; and grant temporary waivers from the Town’s Final Site Plan Checklist, as outlined in the October 4, 2022 letter to items 3a, 3b, 3c, 3e, 3h, 3i, 3k, 3l, 3m, 3n, 3o, 3p, 3q, 3r, 3s and 3t; and grant permanent waivers as to items 3d, 3f , 3g and 3j; and

**WHEREAS**, by unanimous vote on October 27, 2022, the Board granted the temporary waivers referenced above, by unanimous voice and the application was deemed complete and reaffirmed the same on December 15, 2022; and

**WHEREAS**, the Applicant presented the sworn testimony of the following individuals on December 15, 2022:

1. Michael Thomas, P.E., PMP, LEED, AP, ND, who is the Applicant’s engineer; and
2. John McDonough, PP, who is the Applicant’s planner; and

**WHEREAS**, the following documents were marked as exhibits at the October 27, 2022 and December 15, 2022 hearings and were discussed and testified to by the Applicant's witnesses. These are now included as part of the record:

1. Exhibit "A-1:" Curriculum Vitae of Michael Thomas, P.E., PMP, LEED, AP, ND
2. Exhibit "A-2": Colorized version of Site Plan;
3. Exhibit "A-3": Site Plan, Sheet 8;
4. Exhibit "A-4": Site Plan, Sheet 10;
5. Exhibit "A-5": Site Plan, Sheet 23;
6. Exhibit "A-6": Site Plan, Sheet 22; and
7. Exhibit "A-7": Curriculum Vitae of John McDonough, PP;

**WHEREAS**, the Applicant first offered Mr. Thomas, 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." Mr. Thomas testified regarding the proposed designs, alterations, and uses of the property. He started by giving a brief overview of the project – ground mounted solar panel arrays. He said that Avantor intends to incorporate more solar in its portfolio. He then introduced a colorized version of the Site Plan which was marked as Exhibit "A-2." He spoke about the rights-of-way on three sides of the property. Avantor owns the adjacent property on the fourth side. He said that the existing parking lots are not ideal and as a result the Site Plan includes re-configuring and conforming the parking lots to appropriate standards. He said that there will 8 solar panel arrays – seven over the parking lots and one over a grass area for employee seating (the one closest to N. Main Street). He then offered Site Plan, Sheet 8 as Exhibit "A-3" which contains the dimensions for the solar arrays and parking area. He testified that the height of the canopies are nineteen feet (19') for arrays two through eight and the height of canopy one is no more than twenty-five feet (25'). He then discussed the length of the parking lots as set forth on the Plan. He said the goal was to maintain the 258 existing number of parking spaces without adding or deleting spaces, but instead just re-configuring the spaces. He discussed the gating on the property's perimeter and the need for the same. He testified that the Applicant is willing to provide keys to locked gates on site for fire department access. He stated that Applicant has its own fire crew on site and that its fire chief meets with the Phillipsburg Fire Chief regularly. He said the Applicant is willing to enter into an emergency access plan with the Town Fire Company. As for the need for the variances due to the solar arrays causing the setback violations, Mr. Thomas testified that the existing parking lot fencing already encroaches the right-of-way on Fifth Street. He said that the proposed reconfigured parking lot fencing remains within the right-of-way on Fifth Street and therefore the Applicant intends to appear before Town Council to obtain approval to maintain its encroachment in the right-of-way. As for the landscaping, Mr. Thomas testified that Applicant does not intend to remove any trees. He said additional trees will be planted

as a landscaping buffer. As for lighting, Mr. Thomas said there are new utility poles which are being proposed with removal of the two existing utility poles. He said the planning in this regard was done with JCP&L. A new transformer is proposed near array number 5 in front of Fifth Street. He then offered Sheet 10 of Site Plan as Exhibit "A-4." He said there is no re-grading of the site at all. Mr. Thomas said that the parking lot lighting is being placed on the underside of the solar arrays. There also will be snowguards on the arrays. He said that the Warren County Soil Conservation District has already approved the project. Mr. Thomas further testified that the Applicant is working with the New Jersey Department of Environmental Protection, the Warren County Planning Board and Lopatcong Township for their respective approvals. He stated that the proposed improvements are more than one hundred and fifty feet (150') from any wetlands areas and therefore there are no relevant issues to address. He said that there is no disturbance of any grass except that a small portion grass will now be covered by some of the arrays. He then introduced Sheets 23 and 22 of Site Plan as Exhibits "A-5" and "A-6." Mr. Thomas testified that the Applicant does not intend to re-pave the existing parking area, but that the area will be re-striped. In response to questions from the Chairman, Mr. Thomas that array area eight will be a corporate picnic area. Board Engineer Timothy O'Brien then reaffirmed with Mr. Thomas that as a condition of approval the fence in the existing right-of-way on Fifth Street must be approved by Town Council. Mr. O'Brien wants the Town Fire Chief to have input on an emergency access plan as a condition of approval. Mr. O'Brien inquired if odor or noise was going to be generated. Mr. Thomas said that there is no change in odor with this Site Plan. As for noise from the solar arrays, Mr. Thomas stated said that "string inverters" on the arrays will be in place so that there will be no increase in noise and there will be compliance with noise standards in the zone. Mr. O'Brien then asked for a copy of the survey used for the Site Plan which the Applicant agreed to provide; and

**WHEREAS**, Mr. Thomas' testimony was concluded and, especially in light of the Board Engineer's comments and review, the Board did not have any additional questions or comments; and

**WHEREAS**, the Applicant next offered the testimony of John McDonough, PP, who is the Applicant's professional planner, who after being sworn, was accepted as a planning expert by the Board based upon his education, training, knowledge and experience and his Curriculum Vitae marked as Exhibit "A-7." Mr. McDonough testified that the requested variances are "c2" variances pursuant to N.J.S. 40:55D-70(c)(2) He acknowledged that the solar arrays simply violate the setback, but do not change the use of the property. He said in a positive versus negative criteria, it is no contest as the positive criteria are met and that there is nothing negative or detrimental about the proposed Site Plan and the requested variances. More specifically, he opined that under N.J.S. 40:55D-2(a),(c),(d),(g),(h),(i),(m) & (n), the purposes of the "New Jersey Municipal Land Use Law" are met; 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 no comments, at which time the Chairman closed the public comment portion of the hearing; and

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

**WHEREAS**, the Chairman called for a motion on the variances above-referenced and a motion was made by Mr. Rooney, and second by Mr. Tersigni, to grant the requested variances as recorded below; and

**WHEREAS**, the Chairman called for a motion on the above-referenced permanent design waivers and a motion was made by Mayor Tersigni, and second by Mr. Penrose, to grant the requested permanent design waivers as recorded below; and

**WHEREAS**, the Chairman called for a motion on the Application for Preliminary and Final Conventional/Major Site Plan Approval which was made by Mayor Tersigni and seconded by Mr. Brotzman, to grant approval, as recorded below; 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. That the subject property is located in the Town of Phillipsburg I-2 Industrial Zone.
2. That N.J.S. 40:55D-1, *et. seq.*, the "New Jersey Municipal Land Use Law," provides for review and approval of Minor and Conventional/Major Preliminary and Final Site Plans by the Board.
3. That 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. That the Applicant must obtain Preliminary and Final Conventional/Major Site Plan Approval from the Board before it develops the subject property.
5. 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.
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. That 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
8. That waivers 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 Engineer’s letters dated October 4, 2022 and December 9, 2022, as more particularly set forth herein this Resolution.
9. 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.”
10. 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.
11. That variances be granted as to the three (3) items noted above, and contained in the Board Engineer’s letter dated December 9, 2022, as more particularly set forth herein this Resolution.
12. That the subject property currently is used as an industrial chemicals and materials facility.
13. That the granting of the variances and the Site Plan will improve the property aesthetically, economically and environmentally.
14. That the granting of the variances and the Site Plan will not harm the public at all.
15. That the granting of the variances and the Site Plan is beneficial to the Town as the application is environmentally-friendly.
16. That the granting of the variances and the Site Plan will not affect the intensity of the use of the property.
17. That the strict application of the Town’s Zoning Ordinances would result in peculiar and exceptional practical difficulties and/or create an undue hardship to the owner of the property.
18. That the granting of the variances and the Site Plan is not inconsistent with the Town’s Master Plan.
19. That the granting of the variances and the Site Plan 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.
20. That the granting of the variances and the Site Plan is not inconsistent with New Jersey Municipal Land Use Law, N.J.S. 40:55D-1, *et. seq.*
21. That the Applicant acknowledges that any plans to renovate, alter or otherwise change the existing Site Plan cannot take place in the absence of a further site plan application to this Board.
22. 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 three (3) variances from the "Town of Phillipsburg Zoning Ordinance," under Chapter 625 of the Town of Phillipsburg's Ordinances, pursuant to N.J.S. 40:55D-70(c), as noted above, are hereby **GRANTED**, on Motion of Mr. Rooney and Seconded by Mayor Tersigni:

**ROLL CALL VOTE**

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

Nays: None.

Abstentions: Mr. Hanisak

Recused: None.

**NOW THEREFORE, BE IT FURTHER RESOLVED THAT** the Applicant's request for six (6) permanent design waivers from the "Town of Phillipsburg's Site Plan Ordinance of 1979," as set forth above, is hereby **GRANTED**, on Motion of Mayor Tersigni and Seconded by Mr. Penrose:

**ROLL CALL VOTE**

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

Nays: None.

Abstentions: Mr. Hanisak.

Recused: None.

**NOW THEREFORE, BE IT RESOLVED THAT** the Applicant's request for Preliminary and Final Conventional/Major Site Plan approval 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 and Mr. Turnball.

Nays: None.

Abstentions: Mr. Hanisak

Recused: None.



**AND IT IS FURTHER RESOLVED THAT** the Applicant's request for Preliminary and Final Conventional/Major Site Plan approval of certain interior improvements to the existing structure, at the property identified on the Town Tax Map as Block 101, Lot 5, with a street address of 600 North Broad Street, Phillipsburg located in the Town of Phillipsburg I-2 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 letters dated October 4, 2022, and December 9, 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. 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 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 before commencement of construction.

5. The Applicant shall provide and affidavit from the owner of the property that the site plan has been submitted with its knowledge and consent pursuant to L.O. 510-11(D)(3)(b).

6. The Applicant shall obtain all necessary easements and/or rights-of-way over property belonging to the Town or within the Town's right-of-way or belonging to adjacent property owners or within adjacent property owners' rights-of-way.

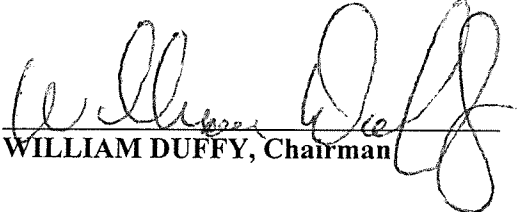
7. The Applicant shall provide a complete list of the site improvements by item and the quantities thereof to be constructed along with cost estimates pursuant to L.O. 510-11(D)(3)(ee).

8. The Applicant shall apply 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 Utility, the Township of Lopatcong, the New Jersey Department of Environmental Protection and the Warren County Planning Board, Elizabethtown Gas, Aqua New Jersey and Jersey Central Power and Light ("JCP&L") and provide copies of permits to the Town pursuant to L.O. 510-11(D)(3)(ff).

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

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Planning 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