

**TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2023-3**

**RESOLUTION GRANTING PRELIMINARY AND FINAL MINOR SITE PLAN APPROVAL,  
BULK VARIANCES AND USE VARIANCE IN NO. 22-017**

**GROVE PLACE, LLC – Applicant/Owner  
1604 Hyde Boulevard  
Phillipsburg, New Jersey 08865**

**Block 1102, Lot 5  
577 Memorial Parkway**

**Application #2022-017**

**WHEREAS**, GROVE PLACE, LLC (“Applicant”) applied to the Town of Phillipsburg Land Use Board (“Board”), for Preliminary and Final Minor 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 certain improvements to the property owned by the Applicant identified on the Town Tax Map as Block 1102, Lot 5, with a street address of 577 Memorial Parkway (State Route 22 westbound), Phillipsburg, Warren County, New Jersey, located in the Town’s B-2 Business Zone (“the subject property”) for the change of use of the existing building from a mixed commercial/residential use to a two-family residence, without any exterior building renovations, with reconfiguration of off-street parking to accommodate the requested use, (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, on or about January of 2023, 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**, 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 December 15, 2022, and was represented by Mark Peck, Esq., at which time the Applicant requested certain waivers from the Preliminary and Final Minor Site Plan checklists, said waivers being summarized in the Board Engineer’s December 9, 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 January 26, 2023, where the Applicant, being represented by Mark Peck Esq., presented a brief explanation concerning the Application and the Applicant's intended use of the subject property and the approvals sought and summarized the benefits of the project on the property known as Block 1102, Lot 5; 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 December 15, 2022, remained accurate; 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 September 8, 2022;
- B. Town of Phillipsburg – “Application for Minor or Conventional Site Plans” for Block 1102, Lot 5, dated November 11, 2022;
- C. Certification from the Collector Taxes, dated December 12, 2022, that realty taxes and sewer payments were current;
- D. Town of Phillipsburg Checklist for Minor Site Plan, dated November 11, 2022;
- E. Town of Phillipsburg Zoning Officer Requirement Checklist, dated November 11, 2022;
- F. Variance and Site Plan entitled: “Variance Plan Preliminary and Final Minor Site Plan Lot 5 Block 1102, The Town of Phillipsburg, Warren County, New Jersey,” prepared by Stires Associates, PA, dated September 22, 2022, and consisting of four (4) sheets;
- G. Architectural Plans entitled: “Existing Conditions Drawing,” prepared by Mark Zgoda, AIA, PA, dated October 31, 2022, consisting of one sheet;
- H. Transmittal letter from Florio, Perrucci, Steinhardt, Cappeli, Tipton & Taylor, LLC, dated November 14, 2022; and
- I. Town of Phillipsburg Fire Chief letter dated November 30, 2022; and

**WHEREAS**, the Board has considered the review letter of the Board Engineer dated 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 “d” use variance, pursuant to N.J.S. 40:55D-70(d), to permit a two-family residence in the Town's B-2 Business Zone where the same is neither a permitted use pursuant to L.O. 625-57, nor a permitted accessory use pursuant to L.O. 625-58;

2. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to permit fifty feet (50’) of lot frontage on the property lot where L.O. 625-8(B) and L.O. 625-80 require a minimum of one hundred feet (100’);
3. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to permit a minimum lot area on the property of approximately five thousand seven hundred and fifty square feet (5,750’ sq.) where L.O. 625-8(B) and L.O. 625-80 requires a minimum lot area of ten thousand square feet (10,000’ sq.);
4. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to permit a front yard setback of zero feet (0’) for the property lot where L.O. 625-8(E) and L.O. 625-80 require a minimum of fifteen feet (15’);
5. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to permit a side yard setback of three and eighty-eight one hundredths feet (3.88’) where L.O. 625-8(E) and L.O. 625-80 require a minimum of twenty-five feet (25’);
6. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to permit the existing roofed porch to encroach the existing front yard and side yard setbacks where L.O. 625-8(I) and L.O. 625-80 prohibit the same;
7. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to allow a twenty-four foot (24’) two-way parking aisle where L.O. 625-26(D)(5) requires a minimum of twenty-five feet (25’);
8. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), to permit a driveway width of approximately twenty-seven feet (27’) at the right-of-way line where a maximum of eighteen feet (18’) feet is permitted by L.O. 625-30(A); and
9. A “c” use variance, pursuant to N.J.S. 40:55D-70(c), so as not to install landscaping and/or sidewalks along the edge of a roadway as required by L.O. 6235-30(A); and

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

1. A waiver from the requirement that adequate storm drainage facilities be designed in accordance with the applicable Town Codes and be set forth on the Site Plan as required by L.O. 510-12(B)(2)(a)(1) and L.O. 510-5(C)(7);
2. A waiver from the requirement that landscaping and shrubbery be installed in accordance with the applicable Town Codes and be set forth on the Site Plan as required by L.O. 510-12(B)(2)(d)(1) and L.O. 510-5(C)(8); and
3. A waiver from the requirement that all existing and proposed driveways be designed in accordance with the grading design standards set forth in the Town Codes as required by L.O. 510-12(B)(2)(g)(1); and

**WHEREAS**, on December 15, 2022 at a hearing before the Board on the completeness of the application, the Applicant’s engineer, Craig W. Stires, 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 December 9, 2022 letter and further recommended that the Board grant temporary waivers from the Town's Site Plan Checklist, as outlined in the December 9, 2022 letter at page 2, as to items 2a and 2b; and grant a permanent waiver from the Town's Site Plan Checklist and Design Guidelines as outlined in the December 9, 2022 letter at page 5 as to items 2a, 2b and 2c; and

**WHEREAS**, before the testimony of the Applicant's witnesses on January 26, 2023, 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 December 9, 2022 letter and further recommended that the Board grant temporary waivers from the Town's Preliminary Site Plan Checklist, as outlined in the December 9, 2022 letter; and

**WHEREAS**, by unanimous vote on December 15, 2022, the Board granted the permanent waiver and temporary waivers referenced above, and reaffirmed the same on January 26, 2023; and

**WHEREAS**, the Applicant presented the sworn testimony of the following individuals on January 26, 2023:

1. Craig W. Stires, P.E., who is the Applicant's engineer; and
2. Mark J. Zgoda, AIA, P.A., who is the Applicant's architect; and

**WHEREAS**, the following documents were marked as exhibits at the January 26, 2023 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": Curriculum Vitae of Craig W. Stires, P.E.;
2. Exhibit "A-2": Colorized rendering of Site Plan;
3. Exhibit "A-3": Twenty-four (24) photographs depicting existing site conditions;
4. Exhibit "A-4": January 26, 2023 letter from Phillipsburg Office of Public Services;
5. Exhibit "A-5": Curriculum Vitae of Mark J. Zgoda, AIA, P.A.; and
6. Exhibit "A-6": Architectural Plans;
7. November 30, 2022 letter from Town of Phillipsburg Fire Chief; and
- 8.

**WHEREAS**, the Applicant first offered Craig W. Stires, P.E., 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, and which was marked as Exhibit "A-2." He discussed the current layout and past uses of the property. Mr. Stires acknowledged that the existing non-functioning light would be repaired or replaced. Mr. Peck then interjected and requested that the twelve-page package of twenty-four (24) photographs be marked as Exhibit "A-3," which was done. Mr. Stires then discussed the undersized lot size and lot width and testified that the existing lot size and lot width are

consistent with the properties nearby which are residential. Mr. Stires stated that the property is located in the B-2 business zone and therefore residential use is not a permitted use. Mr. Stires testified that the driveway would be modified to have five (5) parking spaces which includes one ADA compliant space whereas the ordinance requires seven (7) parking spaces for a two-family residence. Mr. Stires said that the parking area improvements will result in an increased net impervious coverage of two hundred and seventy-three square feet (273') which he characterized as *de minimis* as it relates to stormwater runoff. Mr. Stires opined that the site is appropriate for residential use. Mr. Peck then asked Mr. Stires about a few comments in Mr. O'Brien's December 9, 2022 letter. The first question was whether the Applicant was requesting a design waiver with regard to the existing Route 22 asphalt sidewalk as the ordinances require that sidewalks be concrete and be ADA compliant. Mr. Peck acknowledged that the Applicant would make a formal request to Town Council regarding the sidewalks as required by the ordinances. Mr. Peck then asked Mr. Stires if he considered installing stormwater management or green infrastructure improvements as inquired by Mr. O'Brien. Mr. Stires provided an adequate explanation. Mr. Stires also stated that none of the parking spaces would be electrical vehicle ready spaces. He also stated that the Applicant would work with the Town engineer to address the site lighting. Mr. Stires also stated that there will not be any changes to the landscaping. Mr. Peck then offered Exhibit "A-4" which is a letter from the Phillipsburg Office of Public Services, dated January 26, 2023, which confirms that the sanitary sewer laterals are connected to the sanitary sewer system. Mr. Stires completed his testimony by confirming that the residential units are intended to be apartments. Mr. O'Brien then obtained confirmation that the roof leaders would be directed away from the adjacent properties; and

**WHEREAS**, the Chairman then asked the Board members if they had any questions and Mr. Bond inquired whether access to the building would be from the parking areas or from Route 22 to which Mr. Peck said that the Applicant's architect would provide testimony; and

**WHEREAS**, the Board was satisfied with Mr. Stires' 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 then offered Mark J. Zgoda, AIA, P.A., 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-5," and provided testimony on behalf of the Applicant. He stated that he prepared the architectural plans for the Applicant, which was marked as Exhibit "A-6." Mr. Zgoda then showed a map of the existing conditions which includes a one unit that is accessed from the parking area that is eight hundred and seventy-nine square feet (879' sq.) and which would be converted to residential use. The other unit is two levels and consists of one thousand two hundred and ninety square feet (1290' sq.) and has two means of ingress/egress. Mr. Zgoda confirmed that storage space

for both units can be designed. Mr. O'Brien then inquired whether the livable space would comply with similar zones and Mr. Zgoda agreed.

**WHEREAS**, the Board was satisfied with Mr. Zgoda's testimony 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**, Mr. Peck argued that the Applicant has met its burden for a "d" use variance. He asserted that both the positive and negative criteria are met. As for the positive criteria, Mr. Peck argued that purposes "e" and "g" of N.J.S. 40:55D-2 are satisfied. He contends that the property is in a condition ready for immediate use as two residential units. He also notes that the site location is in a transitional area, is adjacent to residential properties and is compatible with the neighborhood. As for the negative criteria Mr. Peck argues that the proposed use will not detriment the public good and will not substantially impair the intent and purpose of the Town's zoning plan and zoning ordinances. Mr. Peck also argued that the proposed use does not expand or alter the existing non-conforming uses, but rather improves the property. Mr. Peck concluded by arguing that the proposed minor site plan meets the Town's site plan ordinances; and

**WHEREAS**, the meeting was opened to the public and there 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

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

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

**WHEREAS**, the Chairman called for a motion on the 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 Minor Site Plan Approval which was made by Mayor Tersigni and seconded by Mr. Penrose as recorded below; 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-2 business 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 Major/Conventional Preliminary and Final Site Plans by the Board.
3. That the Applicant must obtain Preliminary and Final Minor 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, 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.
6. That waivers from the “Town of Phillipsburg’s Site Plan Review Ordinance of 1979” requirements be granted as to the three items noted above, and contained in the Board’s Engineer letter dated December 9, 2022, as more particularly set forth herein this Resolution.
7. 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.”
8. 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.
9. That variances be granted as to the nine (9) items noted above, and contained in the Board’s Engineer letter dated December 9, 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 utilized to its optimal purpose for many years.
11. That the subject property currently is permitted for commercial use on the first floor and residential on the second floor but is vacant and has been vacant for some time.
12. That a two-family residence is neither a permitted use nor a permitted accessory use in the B-2 business zone under L.O. 625-57 and L.O. 625-58, but that in this case approving a two-family residence allows the property to be improved and occupied and not to remain in a state of disrepair and under-utilization.
13. That increasing the availability of residential rental units in the Town is inherently beneficial to the Town.
14. That the change of use will not harm the public at all.
15. That the change of use will not affect the intensity of the use of the property.
16. 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.

17. That the requested variances are necessary simply due to the proposed change in the existing use, but that it is recognized the current existence of the property is non-conforming.
18. That there currently are no other plans to renovate, alter or otherwise improve the existing site.
19. That the proposed use of the property is not inconsistent with the Town's Master Plan.
20. That the proposed use of the property 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.
21. That the proposed use of the property is not inconsistent with New Jersey Municipal Land Use Law, N.J.S. 40:55D-1, *et. seq.*
22. That the Applicant has met its burden of proof to allow the Board to grant the requested variances pursuant to N.J.S. 40:55D-70(c) and (d);
23. 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.
24. 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 a use variance 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(d), to permit a two-family residence in the Town's B-2 Business Zone where the same is neither a permitted use pursuant to L.O. 625-57, nor a permitted accessory use pursuant to L.O. 625-58, as noted above, is hereby **GRANTED**, on Motion of Vice Chairman Zwicker and Seconded by Mr. Penrose

**ROLL CALL VOTE**

Ayes: Chairman Duffy, Vice Chairman Zwicker, Mr. Bond, Mr. Penrose, Mr. Turnbull, Mr. Hanisak

Nays: None.

Abstentions: Mr. Brotzman, Mr. Rooney

Recused: Mayor Tersigni

**NOW THEREFORE, BE IT RESOLVED THAT** the Applicant's request for eight (8) 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 Vice Chairman Zwicker and Seconded by Mr. Penrose

**ROLL CALL VOTE**



Ayes: Chairman Duffy. Vice Chairman Zwicker, Mr. Hanisak, Mr. Penrose, Mr. Turnbull, Mr. Bond

Nays: None.

Abstentions: Mr. Brotzman, Mr. Rooney

Recused: Mayor Tersigni

**NOW THEREFORE, BE IT FURTHER RESOLVED THAT** the Applicant's request for three (3) permanent design waivers from the "Town of Phillipsburg's Site Plan Ordinance of 1979," as set forth above, is hereby **GRANTED**, on Motion of Vice Chairman Zwicker and Seconded by Mr. Penrose:

**ROLL CALL VOTE**

Ayes: Chairman Duffy, Vice Chairman Zwicker, Mr. Hanisak, Mr. Penrose, Mr. Turnbull, Mr. Bond

Nays: None.

Abstentions: Mr. Brotzman, Mr. Rooney

Recused: Mayor Tersigni

**NOW THEREFORE, BE IT RESOLVED THAT** the Applicant's request for Preliminary and Final Minor Site Plan Approval is hereby **GRANTED**, on Motion of Vice Chairman Zwicker and seconded by Mr. Penrose:

**ROLL CALL VOTE**

Ayes: Chairman Duffy. Mr., Hanisak, Mr. Penrose, Mr. Turnbull, Mr. Bond, Vice Chairman Zwicker

Nays: None.

Abstentions: Mr. Brotzman, Mr. Rooney

Recused: Mayor Tersigni

**AND IT IS FURTHER RESOLVED THAT** the Applicant's request for Preliminary and Final Minor Site Plan approval for the change of use of the existing building from a mixed-use to a two-family residence, with reconfiguration of off-street parking, on the property known as Block 1102, Lot 5, located in the Town of Phillipsburg B-2 business 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 December 9, 2022 letter, as modified at the January 26, 2023 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 obtain approval from the Town of Phillipsburg Council not to replace the existing asphalt sidewalk adjacent to State Route 22.

3. The Applicant shall ensure that the sanitary sewer laterals are connected to the sanitary sewer system.

4. The Applicant shall ensure that roof leaders are not directed to adjacent properties.

5. Before renovating the building on the subject property, the Applicant shall submit a construction permit application and supporting documentation to the construction official which illustrates that construction of the multi-family dwelling is made in accordance with L.O. 625-88. In the event that the Applicant cannot provide the preceding, the Applicant shall make further application to this Board prior to commencement of construction.

6. The Applicant shall procure, and provide copies to the Board, of all applications, licenses and permits required by all federal, state and municipal agencies.

7. 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.

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

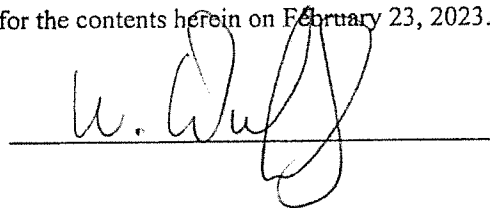
9. That the Applicant applies for, and obtains, approval from all other agencies and governmental bodies which may have concurrent jurisdiction over this project including, but not limited to, the Town of Phillipsburg Fire Chief, the Town of Phillipsburg Chief of Police, the Warren County Planning Board, the Warren County Road Department, the New Jersey Department of Transportation, the Phillipsburg Sewer Utility, Elizabethtown Gas, Aqua New Jersey and Jersey Central Power & Light ("JCP&L") and provide copies of permits to the Town pursuant to L.O. 510-11(D)(3)(ff).

10. 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.

11. 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 26<sup>th</sup> day of January, 2023, by a majority of the aforesaid members approving the oral approval for the contents herein on February 23, 2023.

Dated: February 23, 2023



A handwritten signature in black ink, appearing to read "W. Duff", is written over a horizontal line.

**WILLIAM DUFFY, Chairman**