

TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2023-4

RESOLUTION GRANTING SITE PLAN EXEMPTION & VARIANCES IN CASE NO. 2023-006

**Saed Alamarat – Applicant
2147 South Fountain Street
Allentown, Pennsylvania 18103**

**Ayad Nasser – Owner
1213 Anderson Avenue
P.O. Box 3207
Fort Lee, New Jersey 07024**

**Block 1103, Lots 1, 2 & 3
596 Elder Avenue**

Application #2023-006

WHEREAS, Saed Alamarat (“Applicant”) applied to the Town of Phillipsburg Land Use Board (“Board”) for Site Plan Waiver/Exemption pursuant to Section 510-9 of the “Town of Phillipsburg’s Site Plan Ordinance of 1979” and pursuant to N.J.S. 40:55D-51, and Bulk Variance Approval pursuant to N.J.S. 40:55D-70(c), along with any and all design exceptions and/or waivers, for alteration of the commercial property leased by the Applicant and owned by Ayad Nasser, known as 596 Elder Avenue, and identified on the Town of Phillipsburg Tax Map as Block 1103, Lots 1, 2 & 3, located in the B-1 Business Zone (“the subject property”), to permit the operation of a dine-in restaurant on the property which formerly was a dine-in restaurant and with the addition of outdoor seating (“the Application”); and

WHEREAS, the Board 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 January 26, 2023, at which time the Board considered the undated Application for Site Plan Waiver/Exemption; the Board Engineer’s January 19, 2023 review letter, the documents listed below, and the testimony referenced herein; 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, *to wit*, a request for a Site Plan Waiver/Exemption and bulk variance relief to permit the operation of a dine-in restaurant with outdoor seating on the subject property; 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 subject lot to permit the operation of a dine-in restaurant with outdoor seating on the subject property, 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 less parking spaces than are required by L.O. 625-32(B)(1); 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. Survey for Tax Lots 1, 2 &3, Block 1103, 596 Elder Avenue, prepared by RWC Surveying, dated January 11, 2023, consisting of one sheet;
- C. Architectural Plans entitled: “Amasi Restaurant Tenant Renovations 596 Elder Ave. Phillipsburg, NJ 08865,” prepared by Eclectic Architecture, LLC, dated May 31, 2022, and revised on November 30, 2022, consisting of two sheets;
- D. Two photostatic copies of potential layouts for building signs on the front of the building from Ameer Sign;
- E. January 17, 2023 letter from Town of Phillipsburg Fire Chief; and

WHEREAS, the Board having considered the letters of the Board engineer dated January 17, 2023, the contents of which the Board adopts and incorporates its finding of fact by reference herein; and

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

1. Jessica Pisapia Marguiles, AIA, who is the Applicant’s architect; and
- 2.

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 Jessica Pisapia Marguiles, AIA;
2. Exhibit “A-2”: Town of Phillipsburg Office of Public Services letter, undated;
3. Exhibit “A-3”: Three (3) photographs of the existing sidewalks; and

WHEREAS, the Applicant offered Ms. Marguiles, 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 marked as Exhibit “A-1.” Ms. Marguiles testified that the building occupancy load will be 189 people whereas the prior restaurant use had an estimated 210 occupancy load. More specifically,

she said that there would be seating for 159 people indoors and 30 people for outdoor dining. Ms. Marguiles testified that there are 43 parking spaces on the lot with 2 handicap spots included therein. As for building signage, she testified that there are two options pending – either two rows of lettering or three rows of lettering and that a sign permit application is pending. Mr. O’Brien said he did not see any sign package information in the application. Mr. O’Brien recommends that the Applicant choose which ever number of rows (two or three) that conforms with the Town’s sign ordinances. Ms. Marguiles then testified that there would be updated lighting installed on the building. She then testified there will not be any change with regard to the location of garbage and loading. The Applicant’s attorney then offered Exhibit “A-2” which is the Office of Public Services letter that confirms a sewer connection. Then, Exhibit “A-3” was introduced which are three photos of the current sidewalk conditions. Mr. O’Brien then stated that the existing ADA parking spaces are not in compliance with the ADA regulations as to the grading and recommends that the Town address this deficiency. As for sidewalks, it was Mr. O’Brien’s opinion that new sidewalks be installed along Elder Avenue. Mr. O’Brien then raised the issue of parking and said the site is 26 parking spaces below ordinance requirements. He said that outdoor dining requires 10 parking spaces. He recommended that a parking plan be provided. Mr. O’Brien then said there is a genuine question of how many seats existed in the prior restaurant use. Mr. O’Brien also said there are nine parking spaces of only fifteen feet (15’) which Ms. Marguiles agreed would be designated as compact parking only. Then, the Chairman inquired how the Applicant intends to address the ADA parking space issues which were raised. Ms. Marguiles responded that there will be upgrading of the ADA parking spaces to make them compliant and as a result one or two parking spaces will be lost; and

WHEREAS, the Board was satisfied with Ms. Marguiles’ comments and testimony such that the Board did not have any further questions or comments; and

WHEREAS, then Mr. Peck 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(e),(g); and that believes that application qualifies for site plan waiver/exemption under L.O. 519-9(B); and

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

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

WHEREAS, the Board attorney read L.O. 519-9(B) and reminded the Board of its duties when considering an application for site plan waiver/exemption; 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 B-1 Business 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 property is appropriate based upon the letter of the Board’s Engineer dated January 19, 2023; the presentation of the matter at the January 26, 2023 public hearing; and upon consideration of all the following: (a) the Applicant is not expanding the size of the structure, but rather is simply re-opening the same type of business which was previously on site; (b) the exterior of the structure will be improved; (c) the use of the property is not changing; and (d) the overall improvement to the Town’s economically and aesthetically.
13. The Board finds that the granting of the Site Plan Waiver/Exemption 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.
14. The Board finds that the granting of the variances, to allow outdoor dining and to have less parking spaces than is required by the Town Ordinances, 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 re-opening the same type of business which was previously on site; (b) the exterior of the structure will be improved; (c) the use of the property is not changing; and (d) the overall improvement to the Town’s economically and aesthetically.
15. 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 Waiver/Exemption as requested by the Applicant.
16. 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.
- 17.

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,” along with the granting of the 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. Zwicker:

ROLL CALL VOTE

Ayes: Chairman Duffy, Mayor Tersigni, Mr. Zwicker, Mr. Penrose, Mr. Hanisak, Mr. Turnbull and Mr. Bond.

Nays: None.

Abstentions: Mr. Brotzman, Mr. Rooney

Recusals: None.

AND IT IS FURTHER RESOLVED THAT the Applicant's request for Site Plan Waiver/Exemption approval for operation of a restaurant on the property known as Block 1103, Lot 1, 2 and 3 located in the B-1 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 January 19, 2023, 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. 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 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).

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Land Use Board was duly adopted at its regular meeting on the 26th 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



WILLIAM DUFFY, Chairman