

TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2023-7

**RESOLUTION GRANTING PRELIMINARY AND FINAL MAJOR SUBDIVISION APPROVAL
IN NO. 2023-2**

**DEBORAH FLEISCHER – Applicant/Owner
25 North Bridge Street
Somerville, New Jersey 08876**

Block 2701, Lots 5.04 and Lots 8 & 9

Application #2023-2

WHEREAS, Manor House Homes, LLC (“Applicant”) applied to the Town of Phillipsburg Land Use Board (“Board”), for Minor Subdivision Approval, and subsequently revised to Preliminary and Final Major Subdivision Approval; and any and all design exceptions and/or waivers for the subdivision of a portion of Block 2701, Lot 5.04 to transfer the land to Block 2701, Lots 8 & 9, and to combine Lots 8 and 9, with a street address of 513 Parkwood Court (Lot 5.04) and 955 Green Street (Lots 8 & 9) respectively, Phillipsburg, Warren County, New Jersey located in the Town’s R-75 Residential 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, on or about February 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, the Applicant did not appear before the Board at a regularly-scheduled meeting on January 26, 2023, and was not represented by counsel, at which time the Board considered the Applicant’s Minor Subdivision application and deemed the same incomplete; and

WHEREAS, the Board then considered the revised application for Preliminary and Final Major Site Plan and the written submissions and documents, more specifically referenced herein, and considered the requested waivers from the Preliminary and Final Major Site Plan checklists, said waivers being summarized in the Board Engineer’s February 20, 2023 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 February 23, 2023, where the Applicant, being represented by Brian R. Tipton, Esq., presented a brief explanation concerning the Application, *to wit*, the

subdivision of a portion of Block 2701, Lot 5.04 to transfer the land to Block 2701, Lots 8 & 9, and to combine Lots 8 & 9; 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 Subdivision” for Block 2701, Lots 5.04 and 8 & 9, dated December 19, 2022;
- B. Town of Phillipsburg revised – “Application for Subdivision” for Block 2701, Lots 5.04 and 8 & 9, dated January 13, 2023;
- C. Certification from the Collector Taxes, dated December 16, 2022, that realty taxes and sewer payments were current;
- D. Consent to Subdivision from 3 J&R Associates, LLC, owner of Block 2701, Lots 8 & 9;
- E. Subdivision Plan entitled: “Parkside Estates Block 2701, Lot 5.05 and Lot 7,” prepared by Carroll Engineering, dated November 21, 2022, and consisting of one sheet;
- F. Subdivision Plat prepared by Carroll Engineering, dated February 8, 2023; and
- G. Letters from Fleischer Law Offices, LLC, dated December 19, 2022, and January 17, 2023; and
- H. February 8, 2023 letter from Carroll Engineering on behalf of Applicant; and

WHEREAS, the Board has considered the review letters of the Board Engineer dated January 11, 2023, January 17, 2023 and February 20, 2023, as subsequently revised, the contents of which the Board adopts and incorporates its finding of fact by reference herein; and

WHEREAS, the Applicant is requesting the following permanent design waiver from the Town Ordinances: A waiver from the requirement that the cross-sections and profiles of street, approved by the Municipal Engineer, accompany the Final Plat as required by L.O. 555-11(k); and

WHEREAS, on January 26, 2023 at a discussion by the Board on the completeness of the application, the Board's engineer discussed the waivers from the Town's Subdivision checklist which was requested by the Applicant and which are referenced in the Board engineer's January 17, 2023 letter and further recommended that the Board grant temporary waivers from the Town's Subdivision Sketch Plat Checklist, as outlined in the January 17, 2023 letter, to items 1a and 1b; and grant temporary waivers from the Town's Subdivision Preliminary Plat Checklist, as outlined in the January 17, 2023 letter to items 2a and 2b; and grant temporary waivers from the Town's Final Plat Checklist as outlined in the January 17, 2023 letter as to items 3a and 3b; and

WHEREAS, the Applicant is requesting the following variances from the Town Ordinances:

1. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit approximately forty and thirty-two one hundredths feet (40.32’) of lot frontage on Lots 8 & 9 along Parkwood Court at the right-of-way where L.O. 625-8(B) and L.O. 625-80 require a minimum of seventy-five feet (75’);
2. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to maintain the existing non-conforming lot to permit approximately seventy-three and four hundredths feet (73.04’) of lot frontage on Lots 8 & 9 along Green Street where L.O. 625-8(B) and L.O. 625-80 require a minimum of seventy-five feet (75’); and
3. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to maintain the existing non-conforming lot to permit approximately thirty and sixteen one hundredths feet (30.16’) of lot frontage along Green Street where L.O. 625-8(B) and L.O. 625-80 require a minimum of seventy-five feet (75’); and

WHEREAS, before the testimony of the Applicant’s witnesses on February 23, 2023, the Board’s engineer again discussed the waivers from the Town’s Subdivision Plat Checklists which was requested by the Applicant and which are referenced in the Board engineer’s January 17, 2023 letter and are restated in the Board engineer’s February 20, 2023 letter, and further recommended that the Board grant temporary waivers from the Town’s Subdivision Sketch Plat Checklist, as outlined in the January 17, 2023 letter, to items 1a and 1b; and grant temporary waivers from the Town’s Subdivision Preliminary Plat Checklist, as outlined in the January 17, 2023 letter to items 2a and 2b; and grant temporary waivers from the Town’s Final Plat Checklist as outlined in the January 17, 2023 letter as to item 3a; and

WHEREAS, by unanimous vote on January 26, 2023, the Board granted the permanent waiver and temporary waivers referenced above, and reaffirmed the same on February 23, 2023; and

WHEREAS, the Applicant presented the sworn testimony of the following individuals on February 23, 2023:

1. Thomas J. Fik, P.E., C.M.E., who is the Applicant’s engineer; and
2. Richard E. Fleischer, Esq, who is the Applicant’s principal; and

WHEREAS, the following documents were marked as exhibits at the February 23, 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 Thomas J. Fik, P.E, C.M.E.;
2. Exhibit “A-2:” Rendering of existing conditions;
3. Exhibit “A-3”: Colorized Rendering of proposed conditions; and

WHEREAS, the Applicant first offered Thomas J. Fik, P.E., C.M.E., who is the Applicant’s engineer 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,” as well as based upon his testimony regarding his qualifications as a licensed engineer in New Jersey, and provided

testimony on behalf of the Applicant. Mr. Fik began by offering Exhibit “A-3.” He further testified as to the specifics of the variance requested. Mr. Fik then addressed stormwater management. He said as a condition of approval the Applicant would undertake stormwater calculations with basin and provide information to Board Engineer whose concern was that excess run-off would flow into the existing basin. Mr. Fik responded that because the lots are not being developed at the present time that future development of Lots 5.04, 7, 8 and 9, may require stormwater be addressed then. Mr. Fik then addressed the issues raised in the Board Engineer’s February 20, 2023 review letter. He confirmed that the proposed uses of the Lots are as single-family homes. Mr. Tipton then asked Mr. Fik if the benefits of the application outweigh any proposed detriments and Mr. Fik said they would. Board Engineer Timothy O’Brien then stated that three variances are needed for lot frontage on both lots as noted herein and that a driveway variance is required because the proposed driveway is too close to the adjoining properties. Mr. O’Brien and Mr. Fik then engaged in a discussion regarding the existing basin, the need to possibly expand the basin, stormwater regulations and whether the existing homeowners’ association (“HOA”) will allow the reconfigured lots access to the existing stormwater drainage system and basin. Mr. O’Brien stated that the HOA needs to provide a letter that it will accept proposed Lots 8 & 9 for stormwater purposes. Mr. Fik responded that the Applicant would comply fully with all stormwater regulations. Mr. Fik and Mr. O’Brien then agreed that the prior hearing testimony on Lots 5.05 and 7, could be incorporated by reference into this hearing. Mr. O’Brien confirmed about stormwater regulations again.

WHEREAS, the Chairman then asked the Board members if they had any questions there were none; and

WHEREAS, the Board was satisfied with Mr. Fik’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 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 subdivision ordinances and considered the comments and advice of the Board’s engineer; and

WHEREAS, the Chairman called for a motion on the permanent design waiver and a motion was made by Mayor Tersigni, and Seconded by Mr. Brotzman, to grant the requested permanent design waivers as recorded below; and

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

WHEREAS, the Chairman called for a motion on the Application for Preliminary and Final Major Site Plan Approval which was made by Mayor Tersigni and seconded by Mr. Hanisak as recorded below;

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 R-75 zone.
2. That N.J.S. 40:55D-1, *et. seq.*, the "New Jersey Municipal Land Use Law," provides for review and approval of all development applications including Major Subdivisions.
3. That the Applicant must obtain Major Subdivision Approval from the Board before it develops or alters the subject property.
4. That the Board has the authority to grant waivers from the provisions of Chapter 555 of the Town of Phillipsburg's Ordinances, *to wit*, the "Land Subdivision Ordinance of the Town of Phillipsburg" 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 a waiver from the "Land Subdivision Ordinance of the Town of Phillipsburg" requirements be granted as to the item noted above, and contained in the Board's Engineer letter dated February 20, 2023, as more particularly set forth herein this Resolution.
7. That the Applicant has met its burden under N.J.S. 40:55D-70(c)(2) as to the positive criteria that the purposed of the New Jersey Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of deviation from the zoning ordinance requirements would substantially outweigh any detriments.
8. That the Applicant has met its burden under N.J.S. 40:55D-70(c)(2) as to the negative criteria that relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the Town's zone plan and zoning ordinances. *Medici v. BPR, Co.*, 107 N.J. 1 (1987).
9. That there currently are no additional plans to renovate, alter or otherwise change the existing site.
10. 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 application to this Board.
11. That the proposed subdivision is not inconsistent with the Town's Master Plan.
12. That the proposed subdivision is not inconsistent with the "Land Subdivision Ordinance of the Town of Phillipsburg," as set forth therein pursuant to N.J.S. 40:55D-62, *et. seq.*, and the regulations established thereto.

13. 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 the waiver from the “Land Subdivision Ordinance of the Town of Phillipsburg,” as set forth above, is hereby **GRANTED**, on Motion of Mayor Tersigni and Seconded by Mr. Brotzman:

ROLL CALL VOTE

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

Nays: None.

Abstentions: None.

Recused: None.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant’s request for four (4) 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, Mr. Bond, Mr. Turnbull, Mr. Brotzman, Mr. Rooney, Mr. Penrose, Mayor Tersigni and Mr. Hanisak.

Nays: None.

Abstentions: None.

Recused: None.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant’s request for Preliminary and Final Major Subdivision Approval is hereby **GRANTED**, on Motion of Mayor Tersigni and Seconded by Mr. Hanisak:

ROLL CALL VOTE

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

Nays: None.

Abstentions: None.

Recused: None.

AND IT IS FURTHER RESOLVED THAT the Applicant's request for Preliminary and Final Major Subdivision Approval for the subdivision of a portion of Block 2701, Lot 5.04 to transfer the land to Block 2701, Lot 7, with a street address of 525 Parkwood Court (Lot 5.05) and Lots 8 & 9 (Green Street) respectively located in the Town of Phillipsburg Residential R-75 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 January 17, 2023 and February 20, 2023, as modified at the February 23, 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 or is unable to reach a reasonable agreement with the Board Engineer, 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. The Applicant shall post a performance bond in a sum which is approved by the Board Engineer and the Board attorney, prior to commencement of site work, to cover the cost of stormwater improvements pursuant to L.O. 555-12(A).

5. The Applicant shall provide a right-of-way dedication along the Green Street frontage to provide no less than one half, or thirty feet (30'), of the required sixty foot (60') right-of-way for a collector road and shall revise the subdivision map to illustrate compliance pursuant to L.O. 55-16(F).

6. The Applicant shall provide plot plans to the Town for approval prior to or contemporaneously with its application for building and zoning permits.

7. The Applicant shall extend the existing landscape buffer on Lot 5.04 to Lots 8 & 9 along the Green Street frontage.

8. The Applicant shall plant shade trees along the Parkwood Court frontage of Lots 8 & 9.

9. The Applicant shall provide written proof, in a form which is recordable and satisfactory to the Board's Engineer and the Board' attorney, that the Green Street Homeowners' Association, Inc. has accepted the reconfigured Lots into its Association in its entirety including as it relates to all stormwater issues. If the Applicant is unable to obtain acceptance by the Association, then the Applicant must propose an alternative plan which will be subject to approval by the Board Engineer and the Board attorney.

10. The Applicant shall provide a stormwater design report and stormwater operations manual and a proposed deed for review by the Board Engineer and the Board attorney prior to filing the subdivision.

11. The Applicant shall confer with the Town's affordable housing official to ensure that the subdivision does not run afoul of the Town's affordable housing obligations.

12. The Applicant shall install, replace and/or repair all sidewalks and curbing along the frontage of the subject properties, in accordance with Americans with Disabilities Act ("ADA") requirements, as directed by the Town Engineer and/or the Town Code inspector.

13. The Applicant shall be permitted to install a driveway that connects to Parkwood Court and Green Street.

14. The Applicant shall demonstrate that the subject properties are not areas of historical fill with soils that are not in compliance with New Jersey statutes and regulations for residential use.

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

16. 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 Phillipsburg Sewer Utility, Elizabethtown Gas, Aqua New Jersey and Jersey Central Power & Light ("JCP&L").

17. 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.

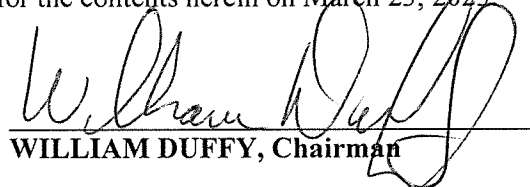
18. The Applicant shall address any overall site maintenance issues based upon a review by the Town's Inspection Official.

19. The Applicant shall note that all of the conditions of approval contained herein shall be set forth in deeds for the new lots, which deeds must be approved by the Board Engineer and Board attorney prior to recording.

20. The Applicant shall include on the subdivision plans all of the conditions of approval as to be completed as part of the final subdivision.

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Planning Board was duly adopted at its regular meeting on the 23RD day of February, 2023, by a majority of the aforesaid members approving the oral approval for the contents herein on March 23, 2023.

Dated: March 23, 2023


WILLIAM DUFFY, Chairman