

**TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2023-8**

**RESOLUTION GRANTING VARIANCES AND APPROVING PRELIMINARY AND FINAL  
CONVENTIONAL/MAJOR SITE PLAN IN NO. 2023-4**

**540 MARSHALL, LLC – Applicant  
1132 West Hamilton Street  
Allentown, Pennsylvania 18101**

**LEHIGH LAND HOLDING, LLC – Owner  
24 Cedar Crest Boulevard  
Allentown, Pennsylvania 18104**

**Block 1005, Lot 3  
540 Marshall Street**

**Application #2023-4**

**WHEREAS**, 540 Marshall, 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; Use Variance Approval pursuant to N.J.S. 40:55D-70(d); 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 commercial property owned by Lehigh Land Holding, LLC, identified on the Town Tax Map as Block 1005, Lot 3, with a street address of 540 Marshall Street, Phillipsburg, Warren County, New Jersey, located in the Town’s B-2 Business Zone (“the subject property”) to permit the construction of eighty-four (84) senior, 55+ age-restricted housing units and a grocery store which requires renovation of the three existing buildings on the site and erection of a fourth building of approximately six thousand three hundred and eight square feet (3680’ sq.) with removal and replacement of sidewalk, repair of parking area and other ancillary site improvements (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**, 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 January 26, 2023, and was represented by John W. Ferraro, Esq., at which time the Applicant requested certain waivers from the Preliminary and Final Conventional/Major Site Plan checklists, said waivers being summarized in the Board Engineer's January 13, 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 Joseph W. Ferraro, 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 construction of eighty-four (84) senior, 55+ age-restricted housing units and a grocery store which requires renovation of the three existing buildings on the site and erection of a fourth building of approximately six thousand three hundred and eight square feet (3680' sq.) with removal and replacement of sidewalk, repair of parking area and other ancillary site improvements; 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 January 26, 2023, 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 – “Application for Minor or Conventional Site Plan” for Block 1005, Lot 3, dated December 23, 2023;
- B. Town of Phillipsburg Preliminary Site Plan Checklist for Conventional Site Plan;
- C. Town of Phillipsburg Final Site Plan Checklist for Conventional Site Plan;
- D. Certification from the Collector Taxes, dated December 22, 2022, that realty taxes and sewer payments were current;
- E. Preliminary & Final Major Site Plan entitled: “540 Marshall Street Preliminary and Final Site Plans” prepared by Black Forest Engineering, LLC, dated December 21, 2022, consisting of nine (9) sheets;
- F. Architectural Drawings entitled: “Proposed Apartment Buildings to be Located at 540 Marshall Street, Phillipsburg, NJ,” prepared by ECO Architects, LLC, dated September 19, 2022, consisting of six (6) sheets; and
- G. Letter from Town of Phillipsburg Fire Chief dated January 20, 2023; and

**WHEREAS**, the Board has considered the review letters of the Board Engineer dated January 13, 2023, and February 20, 2023, 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)(1), to permit residential uses in the B-2 Business Zone, where the same is prohibited by L.O. 625-57 and L.O. 625-58;
2. A “c” use variance, pursuant to N.J.S. 40:55D-70(c)(2), to permit more than one principal structure on a lot, except accessory structures, where the same is prohibited by L.O. 625-8(A);
3. A “c” use variance, pursuant to N.J.S. 40:55D-70(c)(2), so as not to erect screening or buffers between residential parking areas and non-residential parking areas, where the same is required by L.O. 625-25(C);
4. A “c” use variance, pursuant to N.J.S. 40:55D-70(c)(2), to permit parking areas in the front yard setback, where the same is prohibited by L.O. 625-26(A);
5. A “c” use variance, pursuant to N.J.S. 40:55D-70(c)(2), so as not to construct designated loading spaces where there is use or distribution of materials or merchandise in motor vehicles, where the same is required by L.O. 625-31;
6. A “c” use variance, pursuant to N.J.S. 40:55D-70(c)(1), to permit a front yard setback of approximately nineteen feet (19’) for building #2 on the lot where L.O. 625-8(E) and L.O. 625-80 require a minimum of twenty-five feet (25’); and
7. A “c” use variance, pursuant to N.J.S. 40:55D-70(c)(1), to permit a front yard setback of approximately twenty feet (20’) for building #3 on the lot where L.O. 625-8(E) and L.O. 625-80 require a minimum of twenty-five feet (25’); and

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

1. 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 Site Plan as required by L.O. 510-11(C)(3)(f);
2. A waiver from the requirement that the approximate location and size of all existing and proposed storm drainage facilities be on the Site Plan as required by L.O. 510-11(C)(3)(j);
3. A waiver from the requirement that 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 Site Plan and that “will serve” letters be obtained from each utility as required by L.O. 510-11(D)(3)(s);

4. A waiver from the requirement that the location, size and type of all proposed off-site improvements be provided as required by L.O. 510-11(D)(3)(v); and
5. A waiver from the requirement that the location of any other feature on-site and/or off-site which directly effects the use of the property as required by L.O. 510-11(D)(3)(bb); and

**WHEREAS**, on January 26, 2023, the Board's engineer, the Board's attorney 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 January 13, 2023 letter and further recommended that the Board grant temporary waivers from the Town's Preliminary Site Plan Checklist, as outlined in the January 13, 2023 letter to items 2b, 2c, 2e, 2f, and 2g; and grant permanent waivers as to items 2a and 2d; and grant temporary waivers from the Town's Final Site Plan Checklist, as outlined in the January 13, 2023 letter to items 3a, 3b, 3c, 3d, 3e, 3f, 3h, 3i, 3j, 3k, 3m, 3n and 3o; and grant permanent waivers as to items 3g and 3l; and

**WHEREAS**, by unanimous vote on January 26, 2023, the Board granted the temporary waivers referenced above, by unanimous voice and the application was deemed complete and reaffirmed the same on February 23, 2023; 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 Site Plan checklist which was requested by the Applicant and which are referenced in the Board engineer's January 13, 2023 and February 20, 2023 letters and further recommended that the Board grant temporary waivers from the Town's Preliminary Site Plan Checklist, as outlined in the February 20, 2023 letter to items 2b, 2c, 2e, 2f, and 2g; and grant permanent waivers as to items 2a and 2d; and grant temporary waivers from the Town's Final Site Plan Checklist, as outlined in the January 13, 2023 letter to items 3a, 3b, 3c, 3d, 3e, 3f, 3h, 3i, 3j, 3k, 3m, 3n and 3o; and grant permanent waivers as to items 3g and 3l; and

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

1. Joseph Colasuonno, who is the Applicant's principal;
2. Joseph E. Rentko, P.E., who is the Applicant's engineer;
3. Emanuel Obiora, who is the Applicant's architect; and
4. Elizabeth K. McManus, P.P., A.I.C.P., LEED AP, who is the Applicant's planner; and

**WHEREAS**, the following documents were marked as exhibits at the January 26, 2023, and February 23, 2023 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 Joseph E. Rentko, P.E.;
2. Exhibit "A-2": Curriculum Vitae of Emanuel Obiora,

3. Exhibit "A-3": Curriculum Vitae of Elizabeth K. McManus, P.P., A.I.C.P., LEED AP;
4. Exhibit "A-4": Site Plan;
5. Exhibit "A-5": Rendering of apartments;
6. Exhibit "A-6": Rendering of mixed-use building; and
7. Exhibit "A-7": Overall site map; and

**WHEREAS**, the Applicant's first witness was its principal, Joseph Colasuonno, who was sworn. He is managing member of Applicant. He briefly discussed the overall project. He testified that the staging of development would consist of renovating the three existing buildings and then erecting the mixed-use building. He stated that sixteen (16) electric vehicle (EV) parking spaces are proposed. Mr. Ferraro then asked him about some of the technical comments and the suggested conditions of approval as set forth in the Board engineer's February 20, 2023 letter. Mr. Colasuonno testified that the grocery store would be expected to be open daily and have customary hours. He stated that he does not have a tenant for the grocery store part of the proposed mixed-use building. He stated that his company currently manages approximately five hundred (500) apartment units. Mr. Colasuonno testified that, as for trash collection, four of the ninety-eight (98) parking spaces will be screened trash areas. Board Member Penrose inquired about EV charging stations and asked if EV parking is required. Board Engineer Timothy O'Brien responded that EV parking is required and that the state regulations grant a 2:1 parking ratio for EV parking spaces versus traditional parking spaces. In other words, if ten (10) parking spaces are required under a local ordinance, an Applicant is deemed compliant if five spaces are EV. Mr. Colasuonno testified that he does not have any agreements in place with adjacent property owners regarding parking. He then provided testimony regarding the number of apartment units proposed. Chairman Duffy then asked Mr. Colasuonno a number of questions regarding parking including EV spaces, dedicated spaces residential occupants and handicapped spaces and queried if enough parking is being proposed. In response thereto, Mr. Colasuonno said he may reconsider locating the designated trash area off the proposed parking area.

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

**WHEREAS**, Mr. Colasuonno's 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 for this witness; and

**WHEREAS**, the Applicant next offered Joseph E. Rentko, 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." Mr. testified regarding the proposed designs, alterations, and uses of the property. He started by giving a brief overview of the project. He then introduced a colorized version of the Site Plan which was marked as Exhibit "A-4." Mr. Ferraro then

directed Mr. Rentko to page 9 of the Board engineer's February 20, 2023 review letter in order to discuss the variances requested and to provide testimony as to the need for the variances. Mr. Rentko stated that, under the Town Ordinances, twenty-one (21) parking spaces must be allocated for a grocery store. In order to address the proposed deficiency in this area, in part, the Applicant planned for the grocery store to negotiate with vendors so that deliveries would be made during grocery store's closed hours. Mr. O'Brien then asked Mr. Rentko about the applicability of New Jersey' stormwater regulations on the site. Mr. Rentko testified that the Applicant will utilize "best practices" to comply with the regulations and noted that there will be a slight increase in impervious coverage under the proposed Site Plan. He further opined that, because the existing buildings were erected prior to 2004, certain stormwater regulations are not applicable to this application. Mr. Rentko stated that the only increase in area square footage space would be the mixed-use building. Mr. O'Brien then inquired about ADA parking regulations to which the Applicant's engineer agreed there would be compliance. Board Member Zwicker then pressed Mr. Rentko with a few questions on the parking variance and noted that the applicable Town Ordinances require one parking space per one residential unit. Mr. Zwicker stated that he believed some residential units will have two cars which would exacerbate the parking problem to which Mr. Rentko responded that some residential units will not have any vehicles which would balance with the multi-vehicle units. Mr. Rentko then opined that the proposed Site Plan is consistent with the geographical area and commented that it is a "gross improvement" over current site conditions. Mr. Rentko testified that all utilities would remain underground. Board Member Rooney asked the Applicant if a grocer was contracted with yet to which the Applicant again stated that had not occurred. Mr. Rentko testified that the on-site generators will be ground-mounted and would be outside the setbacks; and

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

**WHEREAS**, Mr. Rentko's 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 Emanuel Obiora, as a witness, who is an architect, whose C.V. was marked as Exhibit A-2. He testified very briefly about his education and experience. Given his testimony and his C.V., Mr. Obiora was recognized by the Board as an architectural expert. As to the building designs specifically, Mr. Obiora said that the three existing buildings would have five units per floor on four floors for a total of nineteen (19) residential units per building. As for mixed-use building, Mr. Obiora testified that proposed are three residential floors of nine units each for a total of twenty-seven (27) units. Mr. Obiora then testified regarding ingress/egress to units. He also testified about the location of the mechanical units and the landscaping. He testified about the location of the back-up generator. As for existing buildings, Mr. Obiora stated that the foundations and the primary level of each unit will be utilized

and will be reinforced to handle the increased load. Mr. Obiara stated that the mixed-use building height is proposed at less than fifty feet (50'). As for energy efficiency, Mr. Obiara testified that the Applicant will utilize "best practices." Mr. O'Brien then inquired about sound attenuation to which Mr. Obiara said that no modifications to the building and building materials were planned other than as manufactured. Mr. Obiara then testified that a common area will be on the ground floors and that a laundry room will be on every floor of the three residential buildings. In response to a question from the Board, Mr. Obiara stated that there would not be any interior garbage collection and that all residents would have to take their trash outside. Mr. Obiara testified that the apartment sizes varied and included three hundred square feet (300 sq. ft.) studio apartments and five hundred and fifty square feet (550 sq. ft.) apartments. Mr. Zwicker reacted very negatively about the small size of apartments to which the other Board members did not express any concern. Chairman Duffy then asked if the residential garbage collection would be separate from the commercial garbage collection to which Mr. Obiara stated yes. Chairman Duffy also asked about enhance security on the ground floor windows. The Applicant responded that there was nothing planned beyond customary window locking and that the site will have security cameras installed; and

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

**WHEREAS**, Mr. Obiara's 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 Elizabeth McManus, P.P., A.I.C.P., LEED AP, who is the Applicant's professional planner, who after being sworn, was accepted as a planning expert by the Board based upon her education, training, knowledge and experience and his Curriculum Vitae marked as Exhibit "A-3." Ms. McManus began her testimony by addressing the requested use variance under N.J.S. 40:55D-70(d), to wit, the positive criteria and the negative criteria under New Jersey law. She said that, overall, the proposal brings life to an abandoned site and does good for this area of the Town. As for the positive criteria, she said senior housing is being proposed for people with limited budgets and frugal lifestyles. She testified that senior housing is inherently beneficial to the Town and that the Board can make that finding. Ms. McManus testified more specifically as to specific d(1) criteria, by using Exhibit 7, which is the overall Site Plan, and said the proposed use is consistent with uses in the areas surrounding the site. Specifically, she mentioned there are approximately one hundred and fifty-six (156) residential units at Village Arms and approximately two hundred and six (206) residential units at Heckman House and that Heckman Terrace has approximately three hundred and seventy-five (375) residential units. She said most of the surrounding area is residential. As for locations of the buildings on the site, she noted that mixed-use building with the grocery store abuts adjacent non-residential uses and the three proposed residential buildings abut adjacent residential properties. Ms. McManus testified that keeping foundations

of the existing buildings is beneficial because there will not be waste and excessive construction. Ms. McManus opined that despite the site being in the B-2 zone, the hidden visibility of the property from the highway is why a permitted use in the zone (another business), which needs advertising will not be successful there. Ms. McManus stated that the lack of visibility from the highway is positive. Ms. McManus then cited purposes a, e, g, i, j, l and m of New Jersey's "Municipal Land Use Law" (the "MLUL"), N.J.S. 40:55D-2, as being satisfied with the proposed project. She also said that there are no environmental constraints on the site which is beneficial to redevelopment. Ms. McManus testified that a grocery store on the site is beneficial because at least five hundred (500) residents are within walking distance of the grocery store. Ms. McManus then testified that the said United States Department of Agriculture has designated Phillipsburg as a "food desert" - which she defined as being more than one mile from a grocery store and with limited incomes. Ms. McManus said that twenty-six percent (26%) of neighborhood does not have access to a vehicle which makes grocery shopping challenging. Ms. McManus opined that all of the preceding support the positive criteria under "d" variance. As for the "c(1)" variances, she identified them as items 3c, 3d, 3f and 3g in the Board Engineer's February 20, 2023 letter. As for the "c(2)" variances, she identified them as items 3a and 3e in the same letter. Ms. McManus opined that purposes e, g, i, j, l and m of the MLUL are met for the "c(2)" variances. She stressed how the site is markedly improved under this the proposed project. As for negative criteria, Ms. McManus opined that there is no impairment to either the Master Plan or the Town's zoning ordinances. Ms. McManus said that she believes Site Plan meets at least five of the Town's 2013 Master Plan objectives. She again emphasized that a grocery store which would serve the specific area in need is consistent with the Master Plan. She characterized the proposal as a "huge improvement" to the property which does not do any detriment to the public good. Ms. McManus testified about how the Site Plan would improve the landscaping and the roadways in the area. She said the proposed buildings will fit harmoniously with the surrounding area. She then emphasized that, in her opinion, there is absolutely no detriment to the Town. Ms. McManus opined that, under controlling law specifically the case of *Medici v. BPR Co.*, 107 N.J. 1 (1987), the property is unique and qualifies for a variance. Chairman Duffy then asked Ms. McManus about signage on the mixed-use building to which Mr. Colasuonno said there would be full compliance with the Town's sign ordinances. Chairman Duffy also asked about the rents to be charged. Mr. Colasuonno responded that project is not necessarily low income and that he will seek market rate for age 55+ senior housing. Board Member Brotzman inquired about a timeline for obtaining a grocery store tenant to which Mr. Colasuonno stated he did not know; and

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

**WHEREAS**, Ms. McManus' 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 did not offer any additional witnesses, documents or evidence; and

**WHEREAS**, the Chairman opened comment to the public and there was comment. Councilman Lee Clark commented passionately in favor of the project and noted that he lives nearby. Stuart Ridley then commented in favor of the project. Mayor Tersigni then commented in favor of the project by stating that there were many benefits to the Application without any drawbacks. David Morrisette then commented in favor of the project. As there was no more public comment, Chairman Duffy closed the public comment portion of the hearing; and

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

**WHEREAS**, some Board members openly deliberated on the Application with Mr. Zwicker stating that he was opposed to the project and other members stating they were in favor; 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 Mr. Rooney, and second by Mr. Bond , to grant the requested use variance as recorded below; and

**WHEREAS**, the Chairman called for a motion on the bulk variances above-referenced and a motion was made by Mr. Brotzman, and second by Mr. Penrose, 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 Mr. Rooney, and second by Mr. Bond, 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 Mr. Penrose, 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 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 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 January 13, 2023, and February 17, 2023, 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 a use variance be granted as to the use of the property as more particularly set forth herein this Resolution as the proposed residential use in the B-2 Business Zone, in this instance, is not inconsistent with the Town's Zoning Ordinances of with the Town's Master Plan.
12. That bulk variances be granted as to the six (6) items noted above, and contained in the Board Engineer's letter dated February 20, 2023, as more particularly set forth herein this Resolution as the proposed residential use in the B-2 Business Zone, in this instance, is not inconsistent with the Town's Zoning Ordinances of with the Town's Master Plan.
13. That the subject property has been in a state of disrepair and has not been used for many years.
14. That the granting of the variances and the Site Plan will improve the property aesthetically, economically and environmentally.
15. That the granting of the variances and the Site Plan will not harm the public at all.
16. That the granting of the variances will not adversely affect the adjacent properties and surrounding area.

17. That the granting of the variances and the Site Plan is beneficial to the Town as the intended use of the property will benefit a significant portion of the Town's population which does not have readily available access to a grocery store.
18. That senior, age-restricted housing is inherently beneficial to the Town.
19. That strict enforcement of the Town's zoning standards would result in practical difficulties and/or undue hardship on the Applicant and the property owner.
20. That the granting of the variances and the Site Plan will not affect the intensity of the use of the property.
21. That there currently are no plans to renovate, alter or otherwise change the existing site.
22. 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.
23. 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.
24. That the granting of the variances and the Site Plan is not inconsistent with the Town's Master Plan.
25. 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.
26. 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.*
27. That the granting of the variances and the Site Plan is consistent with New Jersey Municipal Land Use Law purposes a, e, g, i, j, l and m, under N.J.S. 40:55D-2.
28. 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.
29. 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 residential use 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, as noted above, is hereby **GRANTED**, on Motion of Mr. Rooney and Seconded by Mr. Bond:

**ROLL CALL VOTE**

Ayes: Chairman Duffy, Mr. Brotzman, Mr. Rooney, Mr. Bond, Mr. Penrose, Mr. Hanisak and Mr. Turnbull.  
Nays: Mr. Zwicker.  
Abstentions: None.  
Recused: Mayor Tersigni.

**NOW THEREFORE, BE IT RESOLVED THAT** the Applicant's request for six (6) 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. Brotzman and Seconded by Mr. Penrose:

**ROLL CALL VOTE**

Ayes: Chairman Duffy, Mr. Brotzman, Mr. Rooney, Mr. Bond, Mr. Penrose, Mr. Hanisak and Mr. Turnbull.  
Nays: Mr. Zwicker.  
Abstentions: None.  
Recused: Mayor Tersigni.

**NOW THEREFORE, BE IT FURTHER RESOLVED THAT** the Applicant's request for five (5) permanent design waivers from the "Town of Phillipsburg's Site Plan Ordinance of 1979," as set forth above, is hereby **GRANTED**, on Motion of Mr. Rooney and Seconded by Mr. Bond:

**ROLL CALL VOTE**

Ayes: Chairman Duffy, Mr. Brotzman, Mr. Rooney, Mr. Bond, Mr. Penrose, Mr. Hanisak and Mr. Turnbull.  
Nays: Mr. Zwicker.  
Abstentions: None.  
Recused: Mayor Tersigni.

**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 Mr. Penrose and Seconded by Mr. Brotzman:

**ROLL CALL VOTE**

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

Nays: Mr. Zwicker.

Abstentions: None.

Recused: Mayor Tersigni.

**AND IT IS FURTHER RESOLVED THAT** the Applicant's request 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; Use Variance Approval pursuant to N.J.S. 40:55D-70(d); 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 1005, Lot 3, with a street address of 540 Marshall Street, Phillipsburg, Warren County, New Jersey, located in the Town's 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 letters dated January 13, 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, 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 architectural plans, certified by a New Jersey licensed architect, with building heights, floor areas, and grade elevations of all principal and accessory buildings and structures pursuant to L.O. 510-11(C)(3)(g).

6. The Applicant shall provide architectural plans, certified by a New Jersey licensed architect, with the location of all existing buildings, drainage and parking areas within two hundred feet (200') of the lot pursuant to L.O. 510-11(C)(3)(h).

7. The Applicant shall provide "will serve" letters from all utilities which will serve the lot pursuant to L.O. 510-11(C)(3)(k) and L.O. 510-11(D)(3)(s).

8. The Applicant shall provide an 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).

9. 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.

10. 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).

11. 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, New Jersey Department of Transportation, the New Jersey Department of Environmental Protection, 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).

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

13. The Applicant shall ensure that the sanitary sewer laterals are connected to the sanitary sewer system and shall be fully responsible for the cost of the same.

14. The Applicant shall coordinate with the Warren County Department of Public Safety and the Town of Phillipsburg Police Chief to ensure the buildings, and the individual units in the buildings, are properly numbered and addressed.

15. The Applicant shall replace the existing asphalt driveway aprons with reinforced concrete.

16. The Applicant shall replace sidewalks which are in disrepair or which pose a tripping hazard subject to coordination with, and approval by, the Town Engineer and/or the Town Code Enforcement Officer.

17. The Applicant shall provide sidewalk connectivity between the easterly parking Heckman Street entrance and the proposed new mixed-use building.

18. The Applicant shall connect the existing courtyard to the new mixed-use building.

19. The Applicant shall install a grease trap for the mixed-use building grocery store.

20. The Applicant shall ensure that all lighting standards are in compliance with the lighting standards set forth in L.O. 510-12(B)(2).

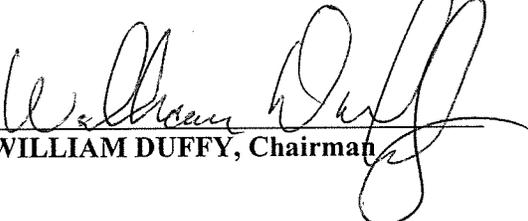
21. The Applicant shall install fire hydrants within six hundred feet (600') and along each road frontage subject to approval by the Town of Phillipsburg Fire Chief.

22. The Applicant shall ensure that parking lot has inlet debris filters, eco-curb pieces and bicycle safe grates installed.

23. 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 23<sup>rd</sup> 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**