

TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2023-9

**RESOLUTION GRANTING PRELIMINARY AND FINAL MAJOR
SUBDIVISION IN NO. 2022-10**

**NJ House Flippers, LLC – Applicant/Owner
145 Washington Street
Phillipsburg, New Jersey 08865**

Block 905, Lot 50.01

Application #2022-10

WHEREAS, NJ House Flippers, LLC (hereinafter referred to as the “Applicant”), has applied to the Town of Phillipsburg Land Use Board (hereinafter referred to as the “Board”), for Major Subdivision Approval; Bulk Variance Approval pursuant to N.J.S. 40:55D-70(c); and any and all variances, design exceptions and/or waivers, for the subdivision of the existing lot into two new lots on the property known as Block 905, Lot 50.01, located in the Town’s R-50 Zone (hereinafter “the subject property”) (collectively “the Application”); and

WHEREAS, the Board having satisfied itself that proper notice was given to neighboring property owners and to all 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 Applicant appeared before the Board at a regularly-scheduled meeting on November 21, 2022, and was represented by Lawrence Sachs, Esq., at which time the Board considered the April 29, 2022 Application for Minor Subdivision which was followed by an undated Application for Conventional/Major Subdivision; the Appeal from Zoning Officer’s denial of a Permit, dated July 8, 2022; and the drawings, as more fully described below; and the Board Engineer’s September 14, 2022, and November 21, 2022 review letters, at which time the Applicant requested certain waivers from the Preliminary and Final Conventional/Major Subdivision checklists said waivers being summarized in the Board Engineer’s November 21, 2022 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 Thomas Roselli, Esq., presented a brief explanation concerning the Application, *to wit*, the subdivision of the existing lot into two new lots on the property known as Block 905, Lot 50.01; 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 November 21, 2022, remained accurate; and

WHEREAS, the Board being satisfied that both the original application and the revised 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 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 July 8, 2022;
- B. Town of Phillipsburg – “Application for Minor Subdivision” for Block 905, Lot 50.01, dated April 29, 2022;
- C. Town of Phillipsburg – “Application for Major Subdivision” for Block 905, Lot 50.01, November 15, 2022;
- D. Certification from the Collector Taxes, dated February 15, 2023, that realty taxes and sewer payments were current;
- E. Revised Subdivision Plan entitled: “Variance Plan” prepared by D’Amico Engineering, LLC, dated April 25, 2022, consisting of one sheet and last revised March 8, 2023
- F. Survey Plan entitled: “Existing Conditions,” prepared by VS Land Data dated January 11, 2018, consisting of one sheet;
- G. A single survey sheet without date or surveyor group label; and
- H. Letter from D’Amico Engineering, LLC, dated March 9, 2023; and

WHEREAS, the Board has considered the review letters of the Board Engineer dated September 14, 2022, November 21, 2022, and March 21, 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 “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit lot frontage of forty-two and one-half feet (42.5’) on both proposed Lots where L.O. 625-8(B) and L.O. 625-80 require fifty feet (50’) of lot frontage;
- 2. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a front yard setback of nine and eight-tenths feet (9.8’) for Lot A and fifteen and one-half feet (15.5’) for Lot B where L.O. 625-8(E) and L.O. 625-80 require a front yard setback of twenty-five feet (25’); and

3. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a side yard setback of four and one-tenths feet (4.1’) for Lot A where L.O. 625-8(E) and L.O. 625-80 require a side yard setback of five feet (5’); and

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

1. A waiver from L.O. 555-9(B) which requires a sketch plat to contain all existing structures and wooded areas with the portion to be subdivided and within 200 feet thereof; and
2. A waiver from L.O. 555-9(E) which requires a sketch plat to contain all streets or roads and streams within 500 feet of the subdivision; and

WHEREAS, on November 21, 2022 at a hearing before the Board on the completeness of the application, the Applicant’s attorney and 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 November 21, 2022 letter and further recommended that the Board grant temporary waivers from the Town’s Subdivision checklist, as outlined in the November 21, 2022 letter; 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 Major Subdivision checklist which was requested by the Applicant and which are referenced in the Board engineer’s November 21, 2022, letter and further recommended that the Board grant temporary waivers from the Town’s Major Subdivision checklist, as outlined in the November 21, 2022 letter; and

WHEREAS, by unanimous vote on November 21, 2022, the Board granted the permanent waiver and temporary waivers referenced above, and reaffirmed the same on February 23, 2022; and

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

1. Deborah D’Amico, P.E., C.M.E., who is the Applicant’s engineer; and
2. Dwayne Eddings, who is the Applicant’s principal; and

WHEREAS, the following documents were marked as exhibits at the February 23, 2023, and March 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 Deborah D’Amico, P.E., C.M.E.;
2. Exhibit “A-2”: Variance Plan;
3. Exhibit “A-3”: Revised Variance Plan; and
4. Exhibit “A-4”: Final Plat Plan; and

WHEREAS, on February 23, 2023, the Applicant first offered Deborah D’Amico, P.E., C.M.E., who after being sworn, was accepted as an engineering expert by the Board based upon her education, training, knowledge and experience and his Curriculum Vitae marked as Exhibit “A-1,” and provided testimony on behalf of the Applicant. The Variance plan marked as Exhibit “A-2.” She testified briefly as to the variances requested. As to parking on Washington Street, which is one-way street, no on-site parking is proposed as the current use of the property does not have parking on-site. She testified that all parking in that neighborhood is on-street. Ms. D’Amico testified that she investigated the parking situation in site area on both weekdays and weekends and opined that the requested variances will not affect parking in the area. Ms. D’Amico did not offer any additional testimony.

WHEREAS, the Chairman then asked the Board members if they had any questions of Ms. D’Amico and no member did; and

WHEREAS, Mr. Roselli and Mr. Timothy O’Brien, the Board’s engineer, then discussed the requested waivers and variances. Mr. Roselli said that the Applicant agrees to address all of the technical comments in Mr. O’Brien’s November 21, 2022, letter. Mr. O’Brien then asked Ms. D’Amico how often she made an on-site investigation of the parking. She said once. Mr. O’Brien responded that parking is generally very tight in that part of the Town and was not sure if the granting of the application would negatively affect parking; and

WHEREAS, the Board was satisfied with Ms. D’Amico’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 Board attorney then inquired of Mr. Roselli attorney that the Applicant was seeking the three permanent waivers set forth in in the Board engineer’s November 21, 2022 review letter as set forth on page 2; as well as the four variances referenced above and set forth in the Board engineer’s review letter; and if the Applicant would comply with all of the technical comments in the Board engineer’s letter as conditions of approval to which he agreed; and

WHEREAS, Board members inquired if single family homes would be erected on the proposed sub-divided lots and Ms. D’Amico confirmed the same. The Applicant agreed that as a condition of approval there would not be two-family houses erected on either proposed lot; and

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

WHEREAS, the meeting was opened to the public by the Chairman and there was comment. Evelyn Rivera of 141 Washington Street commented about having concerns with the building construction’s effect on the roadway during the construction period with construction vehicles on-site. She stated that parking is tight already and is concerned that it will worsen during construction. William Ross of 159 Washington Street stated that existing parking is too tight in the area of the site. He opposes the

application. David Morrisette expressed concern that existing parking on Washington Street is very tight especially on weekends. There was no further public comment; and

WHEREAS, in response to the preceding, Mr. Roselli then said that the Applicant intends to amend the application to address parking on the proposed Lot B; and

WHEREAS, the Board attorney then asked Mr. Roselli whether the variances sought were under subsections c(1) or c(2) of N.J.S. 40:55D-70(c), to which Mr. Roselli said subsection c(2). Then, the Board attorney suggested that planning testimony would be appropriate given that relief is being sought under subsection c(2) and further recommended that a formal amended application be submitted given that the Applicant now intended to place on-stie parking on Lot B; and

WHEREAS, Mr. Roselli then asked for an adjournment to March 23, 2023, in order to submit an amended Subdivision Plan with driveway drawings and to provide planning testimony which was granted without the necessity of further notice by the Applicant; and

WHEREAS, on March 9, 2023, the Applicant submitted the March 9, 2023, letter from D'Amico Engineering and the Revised Variance Plan as referenced above; and

WHEREAS, on March 23, 2023, the public hearing was continued, and the Applicant was represented by Mr. Sachs; and

WHEREAS, on March 23, 2023, the Applicant first offered Deborah D'Amico, P.E., C.M.E., who was reminded that she remained under oath, and who was continued as an engineering expert by the Board based upon her education, training, knowledge and experience and his Curriculum Vitae marked as Exhibit "A-1," and provided testimony on behalf of the Applicant. Ms. D'Amico offered the revised variance plan which was marked as Exhibit "A-3." She explained the purpose of the revisions were to address the parking and the Plan included a driveway on Lot B which provided one parking space and that a garage was considered for the house to be built on Lot B which would provide a second parking space. Ms. D'Amico characterized the revised Plan as a concept plan and more details would be included in a later site plan. Ms. D'Amico also said that all conditions of approval requested in the Board Engineer's letter will be complied with. Ms. D'Amico then testified that a final plat plan was submitted to the Board Secretary which neither the Board nor the Board Engineer had seen. It was marked as Exhibit "A-4." The Board Engineer reviewed Exhibit "A-4" and stated that it was generally acceptable provided that the property owner signed it. Then, Dwayne Eddings sworn and testified. He agreed to sign Exhibit "A-4" and provided brief testimony which was consistent with Ms. D'Amico that a garage and a driveway will be installed for Lot B. Mr. O'Brien said that under the residential site improvement standards ("RSIS"), a garage counts as a parking space. Some Board members expressed concern whether use of the garage as a parking space, and not as a storage space, was enforceable to which the Board Attorney said it was not.

WHEREAS, the Board was satisfied with Ms. D’Amico’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 meeting was opened to the public by the Chairman and there was one comment in which David Morrisette complimented the Applicant for revise the application to address the parking; 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 permanent design waivers and a motion was made by Mayor Tersigni, and second by Mr. Brotzman, to grant the requested variances as recorded below; and

WHEREAS, the Chairman called for a motion on the variances 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 Application for Preliminary and Final Major Subdivision 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 R-50 residential zone.
2. That N.J.S. 40:55D-1, *et. seq.*, the “New Jersey Municipal Land Use Law,” provides for review and Approval of Major Subdivisions by the Board.
3. That the Applicant must obtain Preliminary and Final Major Subdivision Approval from the Board before it subdivides 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 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 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 “Land Subdivision Ordinance of the Town of Phillipsburg.”

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 waivers from the “Land Subdivision Ordinance of the Town of Phillipsburg” requirements be granted as to the two items noted above, and contained in the Board’s Engineer letters dated November 21, 2022, and March 21, 2023, as more particularly set forth herein this Resolution.
10. That variances be granted as to the three (3) items noted above, and contained in the Board’s Engineer letter dated March 21, 2023, as more particularly set forth herein this Resolution.
11. That the subject property currently is used as a single-family home.
12. That the Applicant has adequately addressed a genuine concern from the community that granting of the Application would exacerbate the dearth of parking in the area by revising the Subdivision Plan to include on-site parking.
13. That the supply of housing in the Town is lower than demand for housing.
14. That the application provides another single-family home in the Town.
15. That increasing the availability of market rate housing in the Town is beneficial to the Town.
16. That the Applicant has met its burden as to the positive criteria under N.J.S. 40:55D-70(c)(2) in that the benefits of a deviation from the zoning ordinances substantially outweigh any detriments by providing another residential unit at a market rate that will not exacerbate the inadequacy of parking because two parking spaces will be placed on site and further that the lot frontage, front yard setbacks and side yard setbacks deviations from the zoning ordinances are minimal and are consistent with the housing in the neighborhood.
17. That the Applicant has met its burden as to the negative criteria under N.J.S. 40:55D-70(c)(2) in that granting the requested variances will not be substantially detrimental to the public good and will not substantially impair the intent of either the Town’s Master Plan or the Town’s zoning ordinances as the zoning ordinances allow for deviations are minor and are consistent with the housing in the neighborhood.
18. That the subdivision will not harm the public at all.
19. That the subdivision will only minimally affect the intensity of the use of the property.
20. That the proposed subdivision of the property is not inconsistent with the Town’s Master Plan.

21. That the proposed subdivision 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.
22. That the proposed subdivision of the property is not inconsistent with New Jersey Municipal Land Use Law, N.J.S. 40:55D-1, *et. seq.*
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 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 the two permanent design waivers from the “Town of Phillipsburg’s Site Plan Ordinance of 1979,” as set forth above, is hereby **GRANTED**, on Motion of Mayor Tersigni and Seconded by Mr. Brotzman:

ROLL CALL VOTE

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

Nays: None.

Abstentions: Mr. Kennedy.

Recused: None.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant’s request for three (3) variances from the “Town of Phillipsburg Zoning Ordinance,” under Chapter 625 of the Town of Phillipsburg’s Ordinances, pursuant to N.J.S. 40:55D-70(c), as noted above, are hereby **GRANTED**, on Motion of Mayor Tersigni and Seconded by Mr. Penrose:

ROLL CALL VOTE

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

Nays: None.

Abstentions: Mr. Kennedy.

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. Penrose:

ROLL CALL VOTE

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

AND IT IS FURTHER RESOLVED THAT the Applicant’s request for a Preliminary and Final Major Subdivision Approval for the subdivision of buildable lots on the property known as Block 905, Lot 50.01, located in the Town of Phillipsburg R-50 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 November 21, 2022, and March 21, 2023, as modified at the February 23, 2023 and March 23, 2023 hearings, 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 ensure that the houses are constructed and erected in strict compliance with the Final Site Plan with the understanding that any deviation therefrom which is deemed by the Board’s Engineer’s to be a significant deviation from the Plan hereby approved shall require further review and approval by this Board.
3. The Applicant shall not be permitted to construct a two-family home on either Lot.
4. The Applicant shall procure, and provide copies to the Board, of all applications, licenses and permits required by all federal, state and municipal agencies.
5. The Applicant shall schedule a pre-construction conference with the Town Engineer’s office at least two days prior to commencement of construction.
6. 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.
7. Any portion of any prior Subdivision approvals are hereby vacated to the extent they may be inconsistent with this Subdivision.
8. The Applicant shall have roof leaders directed away from adjacent properties.

9. The Applicant shall verify sanitary laterals from the property connect to main sanitary sewer system by dye test.

10. The Applicant shall replace all sidewalk and curbing along the frontage of the property as directed by the Town Engineer and Town construction official.

11. The street addresses for the subdivided lots shall be coordinated with the Town's 911 coordinator.

12. The Applicant shall coordinate with the Town tax assessor to establish tax block and lot numbers.

13. The Applicant shall submit to the Town Engineer a copy of the deed and subdivision map in AutoCAD format.

14. The Applicant shall have all plans, subdivisions and surveys signed and sealed by the appropriate professionals who prepared the same.

15. 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, Warren County Soil Conservation District, the Phillipsburg Sewer Utility, Elizabethtown Gas, Aqua New Jersey and Jersey Central Power & Light ("JCP&L").

16. That all necessary and proposed easements be obtained before construction commences and be shown on the site plat drawing and be approved by the Board's Attorney and the Board's Engineer.

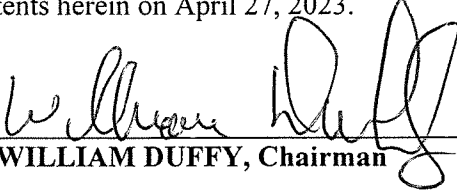
17. The Applicant shall provide the form of the real property deeds for proposed Lots 50.01 and 50.02, to be reviewed by the Board Engineer and the Board attorney prior to filing the same.

18. The Applicant shall perfect the Subdivision by filing the real property deeds for proposed Lots 50.01 and 50.02, with the Warren County Clerk no later than one hundred and ninety (190) days of the date of this Resolution pursuant to N.J.S. 40:55D-47(d).

19. The Applicant shall provide a subdivision map with a mete and bounds description prepared by a qualified land surveyor pursuant to N.J.A.C. 13:40-7.4(c).

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 March 2023, by a majority of the aforesaid members approving the oral approval for the contents herein on April 27, 2023.

Dated: April 27, 2023


WILLIAM DUFFY, Chairman