

**TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2023-11**

**RESOLUTION GRANTING MINOR SITE PLAN APPROVAL IN NO. 2022-8**

**MCDONALD'S USA, LLC – Applicant/Owner  
6903 Rockledge Drive  
Bethesda, Maryland 20817**

**Block 1004, Lot 4  
660 Memorial Parkway**

**Application #2022-8**

**WHEREAS**, MCDONALD'S USA, ("Applicant") applied to the Town of Phillipsburg Land Use Board ("Board"), for Minor Site Plan Approval under the "Town of Phillipsburg's Site Plan Ordinance of 1979," pursuant to N.J.S. 40:55D-51; 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 owned by the Applicant identified on the Town Tax Map as Block 1004, Lot 4, with a street address of 660 Memorial Parkway (State Route 22 eastbound), Phillipsburg, Warren County, New Jersey, located in the Town's B-2 Business Zone ("the subject property") for the change of the existing single order point drive-thru configuration into a dual order point drive-thru configuration and to complete certain "Americans with Disabilities Act" 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 April 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 appeared before the Board at a regularly-scheduled meeting on March 23, 2023, and was represented by CherylLynn Walters, Esq., at which time the Applicant requested that the application be considered a Minor Site Plan, and not a Major Site Plan, as there was a question regarding the same and the Board concluded that the application could proceed as a Minor Site Plan; and therefore the Applicant requested certain waivers from the Minor Site Plan checklists, said waivers being summarized in the Board Engineer's March 21, 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 June 26, 2023, where the Applicant, being represented by CherylLynn Walters, Esq., presented a brief explanation concerning the Application and the Applicant's intended use of the subject property and the approvals sought and summarized the benefits of the project on the subject property known as Block 1004, Lot 4; 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 March 23, 2023, remained accurate; and

**WHEREAS**, the Board has received certain documentation and reports from the Applicant, the Board's professional consultants and others, these having been given due consideration and being the following:

- A. Transmittal letters from Nehmad Davis & Goldstein, P.C., dated February 6, 2023, February 23, 2023, March 9, 2023, April 27, 2023 and May 12, 2023;
- B. Town of Phillipsburg Zoning Denial of Application, dated October 17, 2022;
- C. Town of Phillipsburg – "Application for Minor or Conventional Site Plans" for Block 1004, Lot 4, dated December 7, 2022, signed December 15, 2022, and submitted as an "amended" Application with instructions by Applicant's attorney via letter dated March 9, 2023, to replace a previously submitted application;
- D. Certification from the Collector Taxes, dated February 14, 2023, that realty taxes and sewer payments were current;
- E. Letter from Bohler Engineering PA, LLC, dated December 30, 2022;
- F. Site Plan entitled: "Minor Site Plans, Block 1004, Lot 4, 660 Memorial Parkway Phillipsburg NJ," prepared by Bohler Engineering PA, LLC, dated June 3, 2022, and consisting of five (5) sheets;
- G. Survey entitled: "Boundary, Topographic & Utility Survey for Block 1004, Lot 4, 660 Memorial Parkway, Town of Phillipsburg, County of Warren, State of New Jersey," prepared by Control Point Associates, Inc., dated May 12, 2022, and consisting of one page; and
- H. Town of Phillipsburg Fire Chief letter, dated February 23, 2023; and

**WHEREAS**, the Board has considered the review letters of the Board Engineer dated February 20, 2023 and March 21, 2023, the contents of which the Board adopts and incorporates its finding of fact by reference herein, except to the extent such findings were modified and/or revised at the time of the hearing more specifically set forth below; 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), so as to permit parking spaces outside of the area where principal or accessory buildings may be built in the B-2 Business Zone as prohibited by L.O. 625-26(A), which would be an expansion of the existing non-conforming condition;
2. A “c” variance, pursuant to N.J.S. 40:55D-70(c), so as not to have loading spaces on the site plan as required by L.O. 625-31(C), which would be a continuation of the existing non-conforming condition; and
3. A “c” variance, pursuant to N.J.S. 40:55D-70(c), so as to permit twenty-nine (29) parking spaces where thirty-two (32) spaces are required by L.O. 625-32(B)(1); and

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

1. A waiver from the requirement that the existing and proposed minimum setbacks for zone designated, landscaped trees in excess of four inches (4”) in diameter be set forth on the Site Plan as required by L.O. 510-11(C)(3)(e);
2. A waiver from the requirement that all existing and proposed signs, utility poles and their size, type and construction and location be set forth on the Site Plan as required by L.O. 510-11(C)(3)(g);
3. A waiver from the requirement that the location of all buildings, drainage and parking areas within two hundred feet (200’) of the proposed construction be set forth on the Site Plan as required by L.O. 510-11(C)(3)(h);
4. A waiver from the requirement that all existing and proposed utilities and analysis of the capacity of the utilities to accept the proposed facility be provided as required by L.O. 510-11(C)(3)(k);
5. A waiver from an analysis of the traffic on site as required by L.O. 510-11(C)(3)(m);
6. A waiver from the requirement that the plans and profiles of streets adjoining the property for a distance of five hundred feet (500’) of the site be set forth on the Site Plan as required by L.O. 510-11(C)(3)(p);
7. A waiver from the requirement that the architectural plans of the existing building be set forth on the Site Plan as required by L.O. 510-11(D)(3)(j);
8. A waiver from the requirement that the lighting plans be set forth on the Site Plan as required by L.O. 510-11(D)(3)(n);
9. A waiver from the requirement that the information regarding curbs, sidewalks, driveways, fences, retaining walls, parking spaces and layouts thereof within one hundred feet (100’) of the site be set forth on the Site Plan as required by L.O. 510-11(D)(3)(p);

10. A waiver from the requirement that the location, size and type of all existing and proposed utility lines and structures and certification letters from utilities certifying capacity be set forth on the Site Plan as required by L.O. 510-11(D)(3)(s); and

11. A waiver from the requirement that the location, size and type of all proposed off-site improvements be set forth on the Site Plan as required by L.O. 510-8(D)(3)(v); and

**WHEREAS**, on March 23, 2023 at a hearing before the Board on the completeness of the application, the Applicant's engineer, Michael Jeitner, P.E. and the Board's engineer discussed the waivers from the Town's Site Plan checklist which was requested by the Applicant and which are referenced in the Board engineer's March 21, 2023 letter and further recommended that the Board grant temporary waivers from the Town's Preliminary Site Plan Checklist, as outlined in the March 21, 2023 letter, as to items 2a, 2b, 2f and 2j; and grant a permanent waiver from the Town's Preliminary Site Plan Checklist as to items 2c, 2d, 2e, 2g, 2h and 2i; and

**WHEREAS**, on March 23, 2023 at a hearing before the Board on the completeness of the application, the Applicant's engineer, Michael Jeitner, P.E. and the Board's engineer discussed the waivers from the Town's Site Plan checklist which was requested by the Applicant and which are referenced in the Board engineer's March 21, 2023 letter and further recommended that the Board grant temporary waivers from the Town's Final Site Plan Checklist, as outlined in the March 21, 2023 letter, as to items 3a, 3b, 3c, 3d, 3f, 3h, 3j, 3m, 3n, 3o, 3p and 3q; and grant a permanent waiver from the Town's Final Site Plan Checklist as to items 3e, 3g, 3i, 3k and 3l; and

**WHEREAS**, before the testimony of the Applicant's witnesses on June 26, 2023, the Board's engineer again discussed the waivers from the Town's Site Plan checklist which was requested by the Applicant and which are referenced in the Board engineer's March 21, 2023 letter and further recommended that the Board grant temporary waivers and permanent waivers as outlined in the February 20, 2023 and March 21, 2023 letters; and

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

**WHEREAS**, the Applicant presented the sworn testimony of one individual on June 26, 2023, *to wit*, Michael Jeitner, P.E., who is the Applicant's engineer; and

**WHEREAS**, the following documents were marked as exhibits at the June 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 Michael Jeitner, P.E.;
2. Exhibit "A-2": Applicant's Witness & Exhibit List;
3. Exhibit "A-3": Aerial photograph of site;
4. Exhibit "A-4": Site Plan sheet C-301;

5. Exhibit "A-5": red-lined version of portion of Site Plan;
6. Exhibit "A-6": Signage Plan sheet C-302;
7. Exhibit "A-7": Applicant's self-prepared parking study; and
8. Exhibit "A-8": Town of Phillipsburg Fire Chief letter dated February 23, 2023; and

**WHEREAS**, the Applicant first offered Michael Jeitner, 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," provided testimony on behalf of the Applicant. He is the project engineer and referenced the Site Plan which he prepared and was marked as Exhibit "A-3." He discussed the current layout and use of the property. Mr. Jeitner also referenced Exhibit "A-4" throughout his testimony which illustrates the proposed dual drive-through lanes. He said the original application needs to be revised to illustrate thirty-one (31) parking spaces which is the basis for the parking variance. Mr. Jeitner testified that the reason for seeking a dual drive-through lane is that ever since the COVID-19 pandemic, McDonald's has experienced an increase in drive-through business and a decrease in on-site dining business. Mr. Jeitner opined that with the decrease in dining room sales, that the issue of parking spaces is not critical, and that fact alone supports the parking variance. Mr. Jeitner further testified to Exhibit "A-5" which shows that there is a proposed walking area from Marshall Street. He testified that Applicant is working with the Town Council on the sidewalk issues including connectivity with adjacent properties. He also stated that there will not be any modification to the existing building. Mr. Jeitner testified that on-site truck deliveries are quick because all product is delivered in prepared, shrink-wrapped pallets. He stated that all delivery trucks come off Route 22 eastbound. He stated that he has provided truck turning templates to the Board engineer and agreed to add the same on a revised site plan to be submitted. He also stated that all truck deliveries are made during hours in which the restaurant is closed which is a McDonald's practice which it has control over. Mr. Jeitner further opined that the existing truck aisles are adequate and will not impact existing parking. He said that currently there is not a loading zone and that a loading zone is not required in the proposed revision. On the parking issue, Mr. Jeitner said that there are ninety-six (96) dining room chairs which means that the Town ordinances require thirty-two (32) parking spaces on-site. Mr. Jeitner then testified that Exhibit "A-7" is a parking study which was done by a manager on site. He used the study to support his position that the number of required parking spaces provided is sufficient. As for employee parking, he said that there are few employee parking demands as many employees walk to work or are dropped off by others. He said that the traffic study included employee parking. He also testified as to Exhibit "A-6" which addresses the various proposed drive-through signs and opined that the proposed signs are in conformance with the current sign ordinances in Town. When it came to the installation of the sidewalks, the Applicant's attorney requested that any sidewalk issues be addressed to the satisfaction of the Town Council and that simply be a condition of the Board's approval. Mr. Jeitner then concluded his

direct testimony by requesting a waiver on the inlet debris filters. The Board engineer then stated that he believes the application is proposing only twenty-nine (29) parking spaces because he believed two parking spaces in the rear would need to be eliminated to accommodate the new dual lane drive-through configuration. The engineers agreed to further work on that issue. However, the Applicant confirmed that it sought a variance to permit twenty-nine (29) parking spaces where thirty-two (32) are required. The Board engineer then asked whether electronic vehicle parking is being incorporated in the application to which Mr. Jeitner said no because the existing conditions are such that there is no electric vehicle parking and the nature of the application is such that electric vehicle parking is not required to be added. Mr. Zwicker then further inquired about a proposed sidewalk on the Route 22 frontage which Ms. Walters again said was pending review and discussion with the Town Council and the Board should only make sidewalk issues a condition of approval. The Board engineer confirmed that the Applicant and the Town Council are working on the issue. In response to a question, Mr. Jeitner testified that the trash enclosure is not changing and that garbage trucks are not affected by the new drive-through design. Mr. Jeitner acknowledged that some of the existing shrubbery will be removed to accommodate the new design. Mr. Jeitner ended by stating that this dual drive-through design is more efficient and is the new industry standard; and

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

**WHEREAS**, the Board was satisfied with Mr. Jeitner'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**, Ms. Walters argued that the Applicant has met its burden for approval of a Minor Site Plan under the Town's Ordinances; and

**WHEREAS**, the meeting was opened to the public and there was no public comment; 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 Mr. Brotzman, and second by Mr. Penrose, to grant the requested permanent design waivers as recorded below; and

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

**WHEREAS**, the Chairman called for a motion on the Application for Minor Site Plan Approval which was made by Mr. Brotzman and seconded by Mr. Bond as recorded below; and

**NOW THEREFORE**, as a result of the Applicant's presentation, testimony and exhibits presented by the Applicant's witness as aforesaid and the documentation submitted, the Board finds as follows:

1. That the subject property is located in the Town of Phillipsburg B-2 business zone.
2. That N.J.S. 40:55D-1, *et. seq.*, the "New Jersey Municipal Land Use Law," provides for review and approval of Minor and Major/Conventional Preliminary and Final Site Plans by the Board.
2. That the Applicant must obtain Preliminary and Final Minor Site Plan Approval from the Board before it develops the subject property.
3. 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.
4. 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.
5. That waivers from the "Town of Phillipsburg's Site Plan Review Ordinance of 1979" requirements be granted as to the eleven (11) items noted above, and contained in the Board's Engineer letters dated February 20, 2023 and March 21, 2023, as more particularly set forth herein this Resolution.
6. That the existing use of the site as a McDonald's Restaurant is a permitted use in the B-2 Business Zone pursuant to L.O. 625-57.
7. That the exiting McDonald's Restaurant is an existing and thriving business which well serves both Town residents and transitory customers.
8. That the proposed modification to the site will improve the McDonald's business operations on site.
9. That the proposed modification will make the site safer and more efficient to both vehicular and pedestrian traffic.
10. That the modification of the property will not harm the public at all.
11. That the requested variances promote the general health, safety and welfare and promote the free flow of traffic by enabling a more efficient on-site operation and therefore represent a better planning alternative.
12. That the proposed modification to the property is not inconsistent with the Town's Master Plan.
13. That the proposed modification to 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.

14. That the proposed use of the property is not inconsistent with New Jersey Municipal Land Use Law, N.J.S. 40:55D-1, *et. seq.*
15. 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.
16. That there currently are no other plans to renovate, alter or otherwise improve the existing site.
17. 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 FURTHER RESOLVED THAT** the Applicant’s request for eleven (11) 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. Brotzman and Seconded by Mr. Penrose:

**ROLL CALL VOTE**

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

**NOW THEREFORE, BE IT 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 Mr. Bond and Seconded by Mr. Brotzman:

**ROLL CALL VOTE**

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

**NOW THEREFORE, BE IT RESOLVED THAT** the Applicant’s request for Minor Site Plan Approval is hereby **GRANTED**, on Motion of Mr. Brotzman and seconded by Mr. Bond:

**ROLL CALL VOTE**

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



**AND IT IS FURTHER RESOLVED THAT** the Applicant's request for Minor Site Plan approval with the variances and permanent waivers described herein to permit the change of the existing single order point drive-thru configuration into a dual order point drive-thru configuration, on the property known as Block 1004, Lot 4, located in the Town of Phillipsburg B-2 business zone, is granted subject to the express and unaltered conformation with the following conditions:

1. The Applicant shall be bound to comply with all comments contained in the Board Engineer's review letters dated February 20, 2023 and March 21, 2023, as modified at the June 26, 2023 hearing, and 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. Before renovating the building on the subject property, the Applicant shall submit a construction permit application and supporting documentation to the construction official which illustrates that construction is made in accordance with L.O. 625-88. In the event that the Applicant cannot provide the preceding, the Applicant shall make further application to this Board prior to commencement of construction.

3. The Applicant shall procure, and provide copies to the Board, of all applications, licenses and permits required by all federal, state and municipal agencies with jurisdiction over the property or the Applicant's use of the property.

4. The Applicant shall pay all outstanding fees and deficiencies in the review escrow account and maintain current all real estate taxes, sewer and water charges pertaining to this site.

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

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 Warren County Planning Board, the New Jersey Department of Transportation, the New Jersey Department of Environmental Protection, 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).

7. 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.

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

9. The Applicant shall verify that the sanitary sewer line is connected to the sanitary sewer system.

10. The Applicant shall provide an inspection report which demonstrates the grease trap is maintained and operating correctly within ninety (90) days.

11. The Applicant shall install additional landscaping along the Marshall Street frontage at the discretion of the Board engineer.

12. The Applicant shall provide a landscape plan as required by L.O. 510-11(D)(3)(m) demonstrating landscaping approved by the Board Engineer and implemented timely thereafter.

13. The Applicant shall install a sidewalk along State Route 22 frontage, either on-site or in the New Jersey Department of Transportation's right-of-way and further provide a sidewalk easement for pedestrians from Marshall Street to State Route 22 unless the Applicant has obtained a waiver from the Town Council. In the event that a sidewalk is to be installed, the Applicant will coordinate the details with the Board engineer and will depict the sidewalk on revised plans.

14. The Applicant shall install a sidewalk along Marshall Street frontage which connects to adjacent properties unless the Applicant has obtained a waiver from the Town Council.

15. The Applicant shall provide a vehicular circulation plan which depicts fire truck movement including the ability to circulate from Marshall Street.

16. The Applicant shall consult with the Town Fire Chief to determine if a fire hydrant is required along Marshall Street or on-site and shall comply with the recommendations and/or instructions of the Town Fire Chief with respect to the same.

17. The Applicant shall provide a stormwater analysis to demonstrate compliance with the New Jersey Department of Environmental Protection's stormwater regulations.

18. The Applicant shall install inlet debris filter bags in order to capture litter before entering the stormwater system.

19. The Applicant shall revise the inlet catch basin within the Marshall Street driveway to utilize a bicycle safe grate unless State or federal regulations do not require such grates to be installed.

20. The Applicant shall repair the fence along the common property of 680 Memorial Parkway and ensure that the existing wall is in acceptable condition.

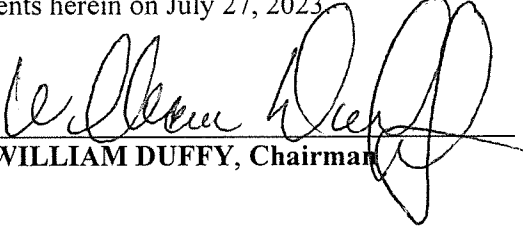
21. The Applicant shall provide a lighting plan in accordance with the Town Code.

22. The Applicant shall provide sight triangles to demonstrate the adequacy of sightlines.

23. The Applicant shall revise the grading to conform with the Town Code so as not to have slopes of more than six percent (6%), or if within one hundred feet (100') of the sideline of an intersecting street not more than four percent (4%), for project areas that the Applicant proposes to regrade or alter elevations.

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Planning Board was duly adopted at its regular meeting on the 26<sup>th</sup> day of June, 2023, by a majority of the aforesaid members approving the oral approval for the contents herein on July 27, 2023.

Dated: July 27, 2023



**WILLIAM DUFFY, Chairman**