

**TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2023-12**

**RESOLUTION GRANTING VARIANCES AND APPROVING PRELIMINARY AND FINAL  
MINOR SITE PLAN IN NO. 2023-11**

**CHILL PROPERTIES, LLC – Applicant**

**P.O. Box 13  
Nazareth, Pennsylvania 18064**

**JOHN DURNIN, III – Owner**

**2777 Sheffield Drive  
Easton, Pennsylvania 18040**

**Block 310, Lot 1  
64 Filmore Street**

**Application #2023-11**

**WHEREAS**, Chill Properties, LLC (“Applicant”) applied to the Town of Phillipsburg Land Use Board (“Board”) for Preliminary and Final Minor 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 John Durnin, III, identified on the Town Tax Map as Block 310, Lot 1, with a street address of 64 Filmore Street, Phillipsburg, Warren County, New Jersey, located in the Town’s R-50 Residential Zone (“the subject property”) to permit a change of use of the existing building from residential use to commercial use, *to wit*, the renovation of the existing building into a laundromat and other ancillary site improvements including updating the building façade and the addition of an ADA-compliant access ramp (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 May 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**, Keith Kennedy, being the Class III 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 April 27, 2023, and was represented by Robert T. McNally, Esq., at which time the Board determined unanimously that the application is properly considered as a Minor Subdivision; and the Applicant requested certain waivers from the Preliminary and Final Minor Site Plan checklists, said waivers being summarized in the Board Engineer's April 5, 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**, public hearings were held on May 25, 2023, and June 26, 2023, where the Applicant, being represented by Robert T. McNally, Esq. (May 25) and Kara K. Kaczynski, Esq. (June 26), presented an explanation concerning the Applicant's intended use of the subject property and the approvals sought and summarized the benefits of the project, a change of use of the existing building from residential use to commercial use, *to wit*, the renovation of the existing building into a laundromat and other ancillary site improvements including updating the building façade and the addition of an ADA-compliant access ramp; 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 April 27, 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. Letters from MYKL, LLC on behalf of Applicant, dated March 22, 2023 and April 13, 2023;
- B. Town of Phillipsburg – "Zoning Permit Application" for Block 310, Lot 1, dated October 20, 2022;
- C. Town of Phillipsburg Zoning Official Denial of Application, dated November 7, 2022;
- D. Town of Phillipsburg – "Application for Minor or Conventional Site Plan" for Block 310, Lot 1, dated February 9, 2023;
- E. "Exhibit A" to Application for Minor or Conventional Site Plan, prepared by Applicant, consisting to two pages;
- F. Certification from the Collector Taxes, dated May 8, 2023, that realty taxes and sewer payments were current;
- G. Consent from the Owner, dated March 2, 2023;
- H. Hand drawing entitled: "Plot Plan 64 Filmore St.," prepared by Applicant, undated, consisting of one page;

- I. Sketches of the property and proposed interiors, prepared by Applicant, consisting of six (6) pages; and
- J. Survey Plan entitled: "Plan of Survey Prepared for Chill Properties LLC Situated in the Town of Phillipsburg, Warren County, NJ," prepared by ELS Surveying, LLC, dated March 10, 2023 and last revised May 22, 2023;
- K. Metes and Bounds legal description of property prepared by Russell S. Kauffman, L.S. of ELS Surveying, LLC, dated March 14, 2023, consisting of two pages;
- L. Letter from Town of Phillipsburg Fire Chief dated April 5, 2023; and
- M. Architectural drawing entitled: "Proposed Laudramat w/ New ADA Accessible Ramp," prepared by Gary R. O'Connor Architect, LLC, dated June 12, 2023, consisting of one page; and

**WHEREAS**, the Board has considered the review letters of the Board Engineer dated April 5, 2023, and May 19, 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 a commercial use in the R-50 Residential Zone, whereas the same is prohibited by L.O. 625-51 and L.O. 625-52;
- 2. A "c" variance, pursuant to N.J.S. 40:55D-70(c)(2), to permit a minimum lot area of approximately two thousand one hundred square feet (2100') whereas L.O. 625-80 requires a minimum of five thousand square feet (5000');
- 3. A "c" variance, pursuant to N.J.S. 40:55D-70(c)(2), to permit a lot coverage of approximately seventy-eight percent (78%) whereas L.O. 625-80 does not allow a lot coverage to exceed forty percent (40%);
- 4. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit lot frontage of thirty feet (30') along Filmore Street where L.O. 625-8(B) and L.O. 625-80 requires fifty feet (50') of lot frontage;
- 5. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit a front yard setback of four feet (4') on Filmore Street whereas L.O. 625-10(A) and L.O. 625-80 require a front yard setback of twenty-five feet (25');
- 6. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit a front yard setback of four tenths of a foot (0.4') on Summit Avenue whereas L.O. 625-10(A) and L.O. 625-80 require a front yard setback of twenty-five feet (25');
- 7. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit a side yard setback of four and seven-tenths feet (4.7') whereas L.O. 625-8(E) and L.O. 625-80 require a side yard setback of five feet (5');

8. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit no accessory building setback (non-front yard) for the existing garage whereas L.O. 625-14 requires a setback of three feet (3’);
9. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit an accessory building front yard setback for the existing garage of eleven and two-tenths feet (11.2) whereas L.O. 625-14 requires a setback of twenty-five feet (25’);
10. A “c” variance, pursuant to N.J.S. 40:55D-70(c), so as not to have a rear yard setback given that the lot is a corner lot, despite the minimum rear yard set back required by L.O. 625-8 and L.O. 625-80;
11. A “c” variance, pursuant to N.J.S. 40:55D-70(c), so as not to provide any on-site parking whereas three (3) parking spaces are required by L.O. 625-32;
12. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a sign on the side yard adjacent to Summit Avenue whereas the same is prohibited by L.O. 625-44;
13. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit signs on the building illuminated by gooseneck lighting whereas illuminated signage is prohibited by L.O. 625-44;
14. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a sign on the building façade at the entrance on the corner of Summit Avenue and Filmore Street whereas the same is prohibited by L.O. 625-44;
15. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a sign at the entrance of the building on the corner of Summit Avenue and Filmore Street to be extended off the building whereas the same is prohibited by L.O. 625-44; and

**WHEREAS**, the Applicant is requesting the following permanent design waiver from the Town Ordinances: A waiver from the requirement that all existing and proposed drainage features be shown on the Site Plan as required by L.O. 510-5(C)(7); and

**WHEREAS**, on April 27, 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 April 5, 2023 letter and further recommended that the Board grant temporary waivers from the Town’s Minor Site Plan Checklist, as outlined in the April 5, 2023 letter to items 2b, 2c, 2d, 2e, 2f, 2g, 2i, 2j and 2k; and grant a permanent waiver as to item 2h; and

**WHEREAS**, by unanimous vote on April 27, 2023, the Board granted the temporary waivers referenced above, by unanimous voice and the application was deemed complete and reaffirmed the same on May 25, 2023; and

**WHEREAS**, before the testimony of the Applicant’s witnesses on May 25, 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 April 5, 2023 and May 19, 2023 letters and

further recommended that the Board grant temporary waivers from the Town's Preliminary Site Plan Checklist, as outlined in the April 5, 2023 letter to items 2b, 2c, 2d, 2e, 2f, 2g, 2i, 2j and 2k; and grant a permanent waiver as to item 2h;

**WHEREAS**, the Applicant presented the sworn testimony of the following individuals on May 25, 2023 and June 26, 2023:

1. Phil Sirmarco, who is the Applicant's principal;
2. Clifford W. Ross, who is the Applicant's laundromat specialist;
3. Gary R. O'Connor, AIA, who is the Applicant's architect;
4. Elizabeth McManus, PP, AICP, LEED AP, who is the Applicant's planner; and

**WHEREAS**, the following documents were marked as exhibits at the May 25, 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": Letter from MYKL, LLC on behalf of Applicant, dated April 13, 2023;
2. Exhibit "A-2": Phillipsburg Town Council Minutes from May 1, 2012 and August 7, 2012 meetings,
3. Exhibit "A-3": Survey Plan entitled: "Plan of Survey Prepared for Chill Properties LLC Situated in the Town of Phillipsburg, Warren County, NJ," prepared by ELS Surveying, LLC, dated March 10, 2023 and last revised May 22, 2023
4. Exhibit "A-4": Hand drawing entitled: "Plot Plan 64 Filmore St.," prepared by Applicant, undated, consisting of one page;
5. Exhibit "A-5": WITHDRAWN BY APPLICANT;
6. Exhibit "A-6": One page sketch of exterior of proposed building depicting rear entrance with ramp and railing;
7. Exhibit "A-7": One page sketch of proposed interior overall layout;
8. Exhibit "A-8": One page sketch of proposed interior of washers/dryers along wall;
9. Exhibit "A-9": One page sketch of proposed interior main entrance and waiting area;
10. Exhibit "A-10": Letter from Town of Phillipsburg Fire Chief dated April 5, 2023;
11. Exhibit "A-11": Curriculum Vitae of Elizabeth McManus, PP, AICP, LEED AP;
12. Exhibit "A-12": Print-out of information regarding Huebsch washers and dryers, consisting of eight pages;
13. Exhibit "A-13": Drawing of "Internal Layout of Laundromat" prepared by Clifford Ross consisting of one page;
14. Exhibit "A-14": Drawing of "Depiction of Dryer Vent" prepared by Clifford Ross consisting of one page;

15. Exhibit "A-15": Print-out of information regarding payment methods for laundromat, consisting of four pages;
16. Exhibit "A-16": Drawing of "View from corner of Summit Ave. and Filmore St. with sign and security cameras," prepared by Phil Simarco, consisting of one page;
17. Exhibit "A-17": Drawing of "View of rear from Summit Ave. with ramp, sign and security cameras," prepared by Phil Simarco, consisting of one page, to replace Exhibit "A-5;"
18. Exhibit "A-18": Print-out of sample exterior lighting, consisting of seven pages;
19. Exhibit "A-19": Copy of five (5) partial photographs of purported site parking conditions on June 7, 2023, at 10:35 a.m. taken by Phil Simarco, consisting of two pages;
20. Exhibit "A-20": Copy of three (3) partial photographs of purported site parking conditions on June 8, 2023, at 3:07 p.m. taken by Phil Simarco, consisting of one page;
21. Exhibit "A-21": Copy of four (4) partial photographs of purported site parking conditions on June 21, 2023, at 6:38 p.m. taken by Phil Simarco, consisting of one page;
22. Exhibit "A-22": Architectural drawing entitled: "Proposed Laudramat w/ New ADA Accessible Ramp," prepared by Gary R. O'Connor Architect, LLC, dated June 12, 2023, consisting of one page; and
23. Exhibit "A-23": Curriculum Vitae of Clifford W. Ross; and
24. Exhibit "A-24": Curriculum Vitae of Gary R. O'Connor, AIA; and

**WHEREAS**, the Applicant's first witness was its principal, Phil Sirmarco, who was sworn. He is managing member of Applicant which is a family-owned business which has been in existence for 5 years. He spoke about his experience rehabilitating houses in Phillipsburg and the surrounding municipalities. He wants to open a laundromat on site in this residential zone. He said the property has been vacant since the 1960s. He offered as Exhibit "A-2" the May 1, 2012, and August 7, 2012 Town Council meeting minutes which includes a discussion about the condition of the property at that time. He also offered Exhibit "A-3" which is the survey and Exhibit "A-4" which is the Plot Plan sketch prepared by Mr. Sirmarco. He testified that he used a laser tape measure to measure building heights in various locations and explained the contents of Exhibit "A-4." Mr. Sirmarco intends to replace the existing doors on the building and will make the doors ADA compliant. He said the garage will be used for storage of business records and garbage. He said that he will prohibit parking in front of the garage. Mr. Simarco then identified Exhibit "A-5" as a front of the building sketch that he prepared. He testified that he would like a laundromat sign with lighting and will submit specifics before the next meeting for the Board's consideration. He then discussed Exhibit "A-6" which was identified as a self-prepared sketch of the building from Summit Avenue which depicts the proposed ramp and railing which would be ADA-compliant. Mr. Simarco stated that he considered the construction of the ramp and railing on Filmore Street, but was advised by an architect that entry on Summit

Avenue is preferable. Mr. Simarco agreed to address all sewer and water issues raised by the Town. He said there will be a roof exhaust vent installed. Mr. Simarco testified that he will repair or replace any sidewalk damage. Mr. Simarco then offered Exhibit "A-7" which he identified as a birds-eye view of the interior layout and described its' depiction. Mr. Simarco stated that he will rely upon a company in the industry to recommend how many washing machines and dryers are installed and where are the best interior locations. Mr. Simarco then offered Exhibit "A-8" which shows additional interior proposals. He also offered Exhibit "A-9" which is another interior sketch of the main entrance and waiting area. As for how he intends to operate the business, Mr. Simarco stated generally that it will be self-service with coin-operated, vending machines, televisions and wi-fi connectivity. He would like to have the laundromat open 24/7. He does not know how many customers will be served at any time. He said he will comply with fire regulations. He will provide private trash hauling. He does not know how many employees will be needed. As for parking, he does not expect that to be an issue as he anticipates most people will walk up, but otherwise customers will use the on-street free parking. Board Engineer Timothy O'Brien then said that he needed to know the expected number of employees in order to calculate the required number of parking spaces, to which Applicant said he did not yet know. Mr. McNally said that at next meeting Applicant will address number of employees. Mr. O'Brien also sought clarification on the hours of operation which Mr. Simarco remained uncertain. Mr. O'Brien inquired about plans for the garage to which Mr. Simarco said that the garage was recently renovated and will not be remodeled any further. Both Mr. O'Brien and the Board Chairman inquired whether any non-business-related storage would occur on-site to which Mr. Simarco said no non-business storage. It was then agreed that would be a condition of approval. Mr. O'Brien inquired about noise issues with exhaust in a residential area to which Applicant stated it will provide more information on exhaust noise at the next meeting. Mr. O'Brien then asked for more specific issues on lighting and signage to determine if design waivers or variances are needed. Mr. Simarco testified that he is agreeable to sidewalk repairs and replacement as directed by code officer/Town Engineer. Mr. O'Brien commented on the entrance ramp and whether it would impede the public right-of-way to which Applicant stated it would not. In response to a question from the Vice-Chairman, Mr. Simarco testified that a videocamera system will be in place 24/7. The Chairman then inquired about the location of vending machines for laundry products and food/drinks which the Applicant stated was dependent upon the location of the washers/dryers; and

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

**WHEREAS**, Mr. Simarco'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 then offered Exhibits “A-1” through “A-10” into evidence which were admitted by the Board; and

**WHEREAS**, the Applicant then requested that the public hearing be continued to the next available date which the Board agreed and announced that the public hearing would continue on June 26,2023; and

**WHEREAS**, the Chairman opened comment to the public and there was comment from Oscar Riba from Plainfield who owns 61 Filmore Street and other properties in Town. He commented in opposition to the application. He believes that most properties in the vicinity have laundry hook-ups in their houses which diminishes the need for the laundromat. Mr. Riba commented that the parking congestion would be exacerbated. Mr. Riba also commented on drug use in the area and that the laundromat would be a potential illegal drug transaction location/hang-out. Mr. Riba stated that he believes there is a need for laundromats in other parts of Town. Mr. Riba opposes a 24/7 operation. Mr. Riba believes that the overall project would diminish residential property values by placing commercial business in residential zone. The Chairman then thanked Mr. Riba for his comments; and

**WHEREAS**, the public hearing was re-commenced on June 26, 2023; and

**WHEREAS**, the Applicant offered Mr. Clifford Ross as a laundromat expert witness. Mr. Ross was sworn and testified that since 1980 he has been a laundry equipment distributor and has extensive experience in the retail laundromat industry. He stated that he has testified more than a dozen times in New Jersey before land use boards regarding the needs and the benefits of laundromats in certain areas, as well as testified with regard to laundry equipment, use, design and location. Without objection, the Board accepted Mr. Ross as a laundromat expert. Mr. Ross testified that the proposed site is a good location for a laundromat due to the absence of competition, population density in the area and that more than five hundred (500) homes are in the immediate vicinity. He characterized access to laundry as a basic need. He stated that he learned of the project by reading about the application and contacted the Applicant to offer his assistance and to attempt to sell laundry equipment. He stated that he has experience designing and functioning laundromats. He testified that a typical laundromat is approximately four thousand square feet (4000’ sq) with fifty (50) washers and (50) dryers. He acknowledged that the pending application is half that size. He stated that he anticipates the demand being approximately two hundred (200) to two hundred and fifty (250) customers per week. Mr. Ross testified that a typical four thousand square foot (4000’) laundromat typically serves one thousand (1000) people weekly. Mr. Ross opined that only locals will use the laundromat and that it is not a destination. He does not believe anyone will drive there to do laundry. Rather, the customers will be pedestrians. He acknowledges that no on-site parking is proposed. He also does not believe anyone from outside the Town will drive to the location. Mr. Ross testified that this location would have twelve (12) washers and six (6) double dryers. Mr. Ross identified Exhibit “A-12” as provided by him and as being the types of machines, he would sell and recommend for the location. Mr. Ross said



the proposed washers will be single load, triple load and oversize load machines and that all dryers are thirty (30) lb. capacity. He says the proposed machines are more energy and environmentally efficient. Mr. Ross then testified as to Exhibit "A-13" as a proposed layout of the machines on site and opined that the layout allows fireman access and disabled customer access without problems. Ms. Kaczynski then interjected that this Exhibit "A-13" is a better exhibit than Exhibits "A-7" and "A-8" which were prepared by Applicant. As to how long someone will be in laundromat, Mr. Ross testified that a wash cycle average is twenty-five (25) minutes, a dryer cycle is twenty-five (25) minutes and with twenty (20) minutes or more for folding and sorting, then a customer should be on site for approximately one to one and one-half hours. Mr. Ross testified that no employees are necessary as the laundromat is self-operated. He said that a cleaning crew would be utilized on a frequency to be determined by the owner. As for payment to operate the machines, Mr. Ross said there is a value add center ("VAC") - a card which will be used to load cash, credit card or cash applications and even to use the on-site restroom. The Board Chairman then inquired if the laundromat proposes to operate cashless to which Mr. Ross said that cash will be available at the VAC, but cash/coins will not operate the machines. Mr. Ross testified that he expects typical operating hours to be between 7:00 a.m. and 10:00 p.m. He then testified as to Exhibit "A-14" which is a dryer vent drawing which he prepared. He stated that venting will be through the roof and that three (3) dryer vents would be typical for a laundromat of this size. Mr. Ross also said that no smoke is generated from the proposed site. Mr. Ross testified that there would be a lint interceptor which is needed for draining as the interceptor takes lint out of the water flow. He believes the lint interceptor needs to be cleaned twice weekly. As for noise, Mr. Ross testified that there is essentially none. Mr. Ross then testified as to Exhibit "A-15" which depicts a cloud based, wireless card payment system that is user friendly - just tap the card. The system allows text messages to be sent to advise customers that a wash/dry cycle is complete. He believes this will assist with any potential on-site overcrowding. Mr. Ross said the payment system can offer deals to avoid peak hour crowding. He said typically there would be interior and exterior security cameras. Mr. Ross believes the cost to outfit and equip the entire facility is approximately two hundred thousand dollars (\$200,000). Mr. Ross concluded his testimony by opining that believes the project is overall a good investment. The Board Chairman and Vice-Chairman sought some clarifications on the testimony which was made consistent with the preceding testimony. Mr. Ross testified that the lint trap is cleaned once annually; and

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

**WHEREAS**, Mr. Ross' 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 then re-called Mr. Simarco, who previously had been sworn and testified. Mr. Simarco started by stating that he believes Mr. Ross' testimony is accurate. He said he expects

to operate between the hours of 7:00 a.m. and 10:00 p.m. Mr. Simarco said that he will have someone stop-by daily to clean-up. He further stated that he expects to have interior and exterior security cameras and based upon whatever a security expert recommends. Mr. Simarco then testified about Exhibit "A-16" which is self-prepared and depicts where he expects security cameras to be located on Filmore Street, but reiterated that he would rely upon a security expert for the best locations for security cameras. Mr. Simarco then testified as to Exhibit "A-17" as being self-prepared drawing of locations from Summit Avenue with proposed security cameras. He testified that he believes the security cameras are a benefit to the area. As for the detached garage, it will remain on-site. Mr. Simarco testified that he will use the garage solely for supplies and for trash until trash pick-up days. He stated that he is willing to employ private garbage refuse if required. Mr. Simarco then testified as to the issues of on-site lighting and signage. He offered stated the primary sign is proposed to be a 2' by 3' sign as depicted in Exhibit "A-18." Ms. Kaczynski then interjected that this Exhibit "A-18" replaces the previously submitted Exhibit "A-5" which is now withdrawn. Mr. Simarco stated that he will comply with all recommendations regarding lighting and signage. Then, Mr. Simarco was asked to address the parking variance. He testified that Exhibit "A-19" consists of photos taken by him on June 7<sup>th</sup> at 10:35 a.m. to depict potential parking issues. He took the photos with his phone. He testified as to Exhibit "A-20" as taken at 3:07 p.m. on June 18, by him while standing outside. He testified to Exhibit "A-21" as taken June 21 around 6:00 p.m. Mr. Simarco claims all the photographs show that there is no need for on-site parking. The Board Engineer confirmed that he did not measure parking sites and did not take trip counts every fifteen (15) minutes for a consecutive twenty-four (24) hours. Rather, Mr. Simarco said he sat at the locations depicted in the photographs for approximately thirty (30) minutes. He believes an employee will always have a parking space available on the street. Mr. Simarco testified that he agrees with the cost estimate of Mr. Ross regarding fit-out. Mr. Simarco then reviewed Exhibit "A-10: and said he would fully comply with all of the Town's fire department requirements. As for sidewalk replacement and repair, Mr. Simarco testified that he is willing to replace and repair any damaged sidewalks caused by construction. The Board engineer then inquired about security lights and noted that floodlights are not permissible to which Mr. Simarco stated that the Applicant will comply with the Town Code. The Board Engineer then questioned Mr. Simarco about parking and said that the photographs do not take into consideration the need for fire hydrants, handicap parking, no parking, etc., to which there was no response. The Board Engineer proposed lighting be limited to above the signs. Mr. Simarco agreed to comply with all recommendations regarding lighting and signage. He was then asked about the parking variance request again;

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

**WHEREAS**, Mr. Sirmaro'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 the testimony of Gary R. O'Connor, the Applicant's architect, who after being sworn, was accepted as an architectural expert by the Board based upon his education, training, knowledge and experience and his Curriculum Vitae marked as Exhibit "A-24." Mr. O'Connor testified that he has B.A. in architecture from the New Jersey Institute of Technology, that he has been a New Jersey licensed architect for thirty-two (32) years. He stated that he is also licensed in Pennsylvania and New York. He has qualified as an expert before land use boards approximately thirty (30) times previously. Mr. O'Connor testified that he has not visited the site, but has looked at the site on Google Maps and has reviewed the survey. He opined that an ADA-compliant ramp is best located on the back of the building and not on the front of the building and that the ramp would be approximately thirty feet (30') in length. Mr. O'Connor offered Exhibit "A-22" as his architectural drawing of the site. He testified that the handrails on the entrance ramp will extend beyond the length of the ramp, but will not encroach over the property line and into the sidewalk area. The Board engineer inquired if sound baffling was necessary, to which Mr. O'Connor said he believes it is not necessary. Board engineer also inquired if there would be any changes to the building's exterior since last submission to which Mr. O'Connor said there would not; and

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

**WHEREAS**, Mr. O'Connor'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 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 her Curriculum Vitae marked as Exhibit "A-11." Ms. McManus said that the property is a single-family residence in the Town's R-50 residential zone and that the property lot is significantly undersized. Ms. McManus stated that the property is an eyesore and has been vacant for more than sixty (60) years. If not improved, Ms. McManus opines that the property is an attractive nuisance. She said that one benefit to the Town would be making vacant property useful. Ms. McManus then commented on the "d" use variance under N.J.S. 40:55D-70(d). A laundromat is not permitted in the Town's R-50 zone. 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, Ms. McManus opined that, overall, the proposal brings life to an abandoned site and provides a

meaningful service for this area of the Town. More specifically, as to the positive criteria, she said the proposed laundromat use is particularly suitable because the property has not been used as a single-family home for more than sixty (60) years. Ms. McManus believes that the small building is suitable to a small commercial use such as a laundromat which is further a necessity to the surrounding neighborhood. She characterized the use as a good community service to the direct neighborhood. Ms. McManus testified that the density is 8.7 units per acre in this Zone. Therefore, the users of the laundromat will be walking, which eliminates the need for parking. As for this specific neighborhood, Ms. McManus stated that "census tract 307" suggests that fourteen percent (14%) of neighborhood households do not have vehicles and that many do not have laundry and that all have low incomes. She testified that the median household income is sixty thousand dollars (\$60,000) and that approximately forty percent (40%) of the residents in the neighborhood pay thirty percent (30%) or more of their income in rent. Ms. McManus opined that the laundromat increases the quality of life of the residents. She testified that the Elder Avenue laundromat, the nearest laundromat in Town, is approximately one mile away which takes approximately twenty (20) minutes to walk. There are a few other laundromats which require longer walks. Therefore, she believes the property is particularly suited to this laundromat application. Ms. McManus then testified that she believes the application is consistent with two purposes of New Jersey's "Municipal Land Use Law," N.J.S. 40:55D-1, *et. seq.* ("MLUL"), *to wit*, purposes "g" and "i" by visually improving the area. Ms. McManus then testified as to the requested "c" variances (before addressing the negative criteria of "d" variance) under N.J.S. 40:55D-70(c). She believes that variances are appropriately characterized as "c(1)" variances as the lot is currently a non-conforming lot. Further, given that the structure is not changing, in her opinion, the requested variances are not a stretch, and it would be hardship if the variances were not granted. Ms. McManus opined that the parking variance is also a "c(1)" variance for lack of parking. She also believes that the parking variance is a "c(2)" variance under a benefits and detriments analysis. She said that, relying upon previous demographic testimony, there is less parking needed to serve this laundromat than the ordinance requires for a typical laundromat. She believes the absence of a parking requirement is actually a good thing visually for the neighborhood. As for the detriments resulting from the potential absence of parking, Ms. McManus believes there are none. Thereafter, Ms. McManus turned to the question of potential detriments to the public good. She believes that there are none. Specifically, she testified that minimal parking demand, no noise pollution, reasonable hours of operation, appropriate lighting, and the absence of outdoor use illustrate that there is no detriment to the public. Environmentally, Ms. McManus also believes there are no detriments. As to the benefits to the public, Ms. McManus testified that the application takes vacant property and makes it useful. As for the Town's Master Plan, Ms. McManus referenced the Plain's commercial goal # 2 at page 7 as being met by making a commercial use at same time as getting rid of vacant property. She also references housing goal #2 at page 7, as being met by

removing obsolete property and re-purposing property. Finally, 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. More specifically, the property cannot be re-occupied under the existing zone standards and compels the variance in this district. Ms. McManus was then asked to address the signage and lighting variances. She believes that a sign over the ADA ramp is critical so that potential customers are aware of the accessibility of the property. As for the lighting variance, lighting is critical to make sure that customers go to the correct entrance and are not meandering around looking for the entrance. She thinks the signage variances are supported by MLUL purpose "i" for the promotion of a desirable visual environment; and

**WHEREAS**, the Chairman then asked the Board members if they had any additional 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 for this witness; and

**WHEREAS**, the Chairman inquired of the Applicant how the hours of operation would be enforced as a customer could start a wash load at any time. Mr. Ross then responded that there are deterrents which could include having the cleaning person around toward closing time to enforce the hours or perhaps the doors could be locked from the outside at a certain time which would preclude customer entrance and still allow customer exiting. The Chairman then asked if the electrical system could be wired to prohibit starting machines at a certain time. Mr. Ross said perhaps.

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

**WHEREAS**, the Chairman opened comment to the public and there was one brief comment in favor of the application; and

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

**WHEREAS**, the Board did not deliberate as there was present on June 26, 2023 a quorum of Board members which was different from the quorum of Board members who were present on May 25, 2023, so that the Applicant requested that the hearing be continued to the next regularly-scheduled meeting so that deliberations take place then; and

**WHEREAS**, on July 27, 2023, the public hearing was continued and the Applicant did not present any additional evidence and no public comment was offered;

**WHEREAS**, on July 27, 2023, the Board deliberated this application with a quorum consisting of Board members who were present at both the May 25, 2023 and June 26, 2023 meetings, or alternatively, have certified that they have reviewed a transcript of one or both of the preceding meetings in accordance with N.J.S. 40:55D-10.2, with said certifications being on file with the Board Secretary; 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 "d" use variance above-referenced and a motion was made by Mr. Zwicker, and second by Mr. Penrose, to grant the requested use variance as recorded below; and

**WHEREAS**, the Chairman called for a motion on the "c" bulk variances above-referenced and a motion was made by Mr. Zwicker, 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 waiver and a motion was made by Mr. Zwicker, and second by Mr. Penrose, to grant the requested permanent design waiver as recorded below; and

**WHEREAS**, the Chairman called for a motion on the Application for Preliminary and Final Minor Site Plan Approval which was made by Mr. Zwicker, and seconded by Mr. Bond, 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 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 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 Minor 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 April 5, 2023 and May 19, 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 commercial use in the R-50 Residential Zone, in this instance, is not inconsistent with the Town’s Zoning Ordinances or with the Town’s Master Plan.
12. That bulk variances be granted as to the fourteen (14) items noted above, and contained in the Board Engineer’s letter dated April 5, 2023, as more particularly set forth herein this Resolution as the granting of the variances for the proposed commercial use in the R-50 Residential, in this instance, is not inconsistent with the Town’s Zoning Ordinances or with the Town’s Master Plan.
13. That the subject property has been in a state of disrepair and has not been used for more than fifty (50) 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 laundromat.
18. 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 given the unique contours of the subject property.
19. That the granting of the variances can be done without substantial detriment to the public good.
20. That the granting of the variances and the Site Plan will not substantially increase 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 will not substantially impair 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.
28. That the granting of the variances and the Site Plan will not substantially impair the Town's Master Plan.
29. That the granting of the variances and the Site Plan is consistent with New Jersey Municipal Land Use Law purposes a, g, and i under N.J.S. 40:55D-2.
30. 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.
31. 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 the commercial use and operation of a laundromat in the Town's R-50 Residential Zone where the same is not 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. Zwicker and Seconded by Mr. Penrose:

#### **ROLL CALL VOTE**

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



**NOW THEREFORE, BE IT RESOLVED THAT** the Applicant's request for fourteen (14) 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. Zwicker and Seconded by Mr. Penrose:

**ROLL CALL VOTE**

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

**NOW THEREFORE, BE IT FURTHER RESOLVED THAT** the Applicant's request for one permanent design waiver from the "Town of Phillipsburg's Site Plan Ordinance of 1979," as set forth above, is hereby **GRANTED**, on Motion of Mr. Zwicker and Seconded by Mr. Penrose:

**ROLL CALL VOTE**

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

**NOW THEREFORE, BE IT RESOLVED THAT** the Applicant's request for Preliminary and Final Minor Site Plan approval is hereby **GRANTED**, on Motion of Mr. Zwicker and Seconded by Mr. Bond:

**ROLL CALL VOTE**

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

**AND IT IS FURTHER RESOLVED THAT** the Applicant's request for Preliminary and Final Minor 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 310, Lot 1, with a street address of 64 Filmore

Street, Phillipsburg, Warren County, New Jersey, located in the Town's R-50 Residential 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 April 5, 2023 and May 19, 2023, as modified at the May 25, 2023 and June 26, 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 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, 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).

3. The Applicant shall procure, and provide copies to the Board, of all applications, licenses and permits required by all other appropriate federal, state and municipal agencies.

4. The Applicant shall schedule a pre-construction conference with the Town Engineer's office at least two days prior to commencement of construction.

5. 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.

6. 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).

7. 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).

8. The Applicant shall have the Plan of Survey certified to the Town of Phillipsburg.

9. 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).

10. 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).

11. 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.

12. 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).

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

14. 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.

15. That Applicant shall furnish a boundary survey in accordance with N.J.S. 45:8-28(e) prepared and certified to the Town of Phillipsburg by a New Jersey licensed land surveyor. The survey shall indicate that it is based upon a field survey performed by or under the supervision of the certifying licensed land surveyor and the date of the field survey. Such field survey shall have been performed no more than two years prior to the date of application to the Board. The survey shall have an error of closure of not less than one part in 10,000.

16. That Applicant shall be permitted to operate the laundromat only between the hours of 7:00 a.m. and 10:00 p.m.

17. That Applicant shall be prohibited from storing anything in the garage which is not substantially related to the laundromat business being operated on-site.

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

19. The Applicant shall install Americans with Disabilities Act ("ADA") compliant railings and ramps which do not extend into the sidewalk area or which would extend beyond the property lines.

20. The Applicant shall prohibit parking either in the driveway or blocking the driveway and shall post signage as to the same.

21. The Applicant shall prohibit parking which blocks the sidewalk and shall post signage as to the same.

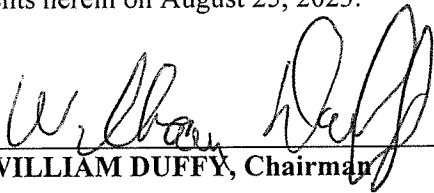
22. The Applicant shall ensure that all lighting standards are in compliance with the lighting standards set forth in L.O. 510-12(B)(2), except as otherwise approved by the variances granted herein this Resolution.

23. The Applicant shall not install signs along the Summit Street frontage that exceed fifteen square feet (15') and along the Filmore Street frontage that exceed eleven square feet (11'), except as otherwise approved by the variances granted herein this Resolution.

24. 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 27<sup>th</sup> day of July, 2023, by a majority of the aforesaid members approving the oral approval for the contents herein on August 25, 2023.

Dated: August 25, 2023

  
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WILLIAM DUFFY, Chairman