

TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2023-13

**RESOLUTION GRANTING PRELIMINARY AND FINAL MINOR
SUBDIVISION APPROVAL IN NO. 2023-10**

**Harry L. Wyant, Jr. – Applicant/Owner
1125 Pearl Street
Phillipsburg, New Jersey 08865**

**Block 1312, Lots 10 and 10.1
1-3 Davis Street**

Application #2023-13

WHEREAS, Harry L. Wyant, Jr. (hereinafter referred to as the “Applicant”) has applied to the Town of Phillipsburg Land Use Board (hereinafter referred to as the “Board”) for Preliminary and Final Minor Subdivision Approval; Bulk Variance Approval pursuant to N.J.S. 40:55D-70(c); and any and all design exceptions and/or waivers, for the subdivision of the existing two family lot into two separate single family lots on the property known as 1-3 Davis Street and identified on the Town of Phillipsburg Tax Map as Block 1312, Lot 10, 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 July 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 April 27, 2023, and was represented by William R. Edleston, Esq., at which time the Board considered the March 1, 2023 Application for Minor Subdivision, and determined unanimously that the application is properly considered as a Minor Subdivision; the Appeal from Zoning Officer’s denial of a Permit, dated February 22, 2023; and the drawings, as more fully described below; and the Board Engineer’s April 12, 2023 review letter, at which time the Applicant requested certain waivers from the Preliminary and Final Minor Subdivision checklists said waivers being summarized in the Board Engineer’s April 12, 2023 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 July 27, 2023, where the Applicant, being represented by William R. Edleston, Esq., presented a brief explanation concerning the Application, *to wit*, the subdivision of the existing two-family lot into two separate single-family lots on the property known as 1-3 Davis Street; 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 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 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 February 22, 2023;
- B. Town of Phillipsburg – “Application for Minor Subdivision” for Block 1312, Lot 10, dated March 1, 2023;
- C. Certification from the Collector Taxes, dated July 13, 2023, that realty taxes and sewer payments were current;
- D. “Minor Subdivision – Preliminary Plat,” prepared by Harry L. Wyant, Jr., dated August 1, 2007, and last updated February 8, 2023, consisting of one sheet; and
- E. Letter from Town of Phillipsburg Fire Chief, dated March 27, 2023; and

WHEREAS, the Board has considered the review letters of the Board Engineer dated April 12, 2023, and July 13, 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 a corner lot setback of zero feet along Davis Street where L.O. 625-10(A) requires a twenty-five-foot (25’) setback;
- 2. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a corner lot setback of zero feet along Filmore Street where L.O. 625-10(A) requires a twenty-five-foot (25’) setback;
- 3. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit an accessory structure front yard setback of less than one foot along Filmore Street where L.O. 625-14 requires a twenty-five-foot (25’) setback;
- 4. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit an accessory structure side yard setback to be less than one foot along Filmore Street where L.O. 625-14 requires a twenty-five-foot (25’) setback from the property line of Block 1312, Lot 11;
- 5. A “c” variance, pursuant to N.J.S. 40:55D-70(c), so as not to provide on-site or off-street parking for proposed Lot 10, where two parking spaces per lot are required by L.O. 625-32(A);

6. A “c” variance, pursuant to N.J.S. 40:55D-70(c), so as not to provide on-site or off-street parking for proposed Lot 10.1, where two parking spaces per lot are required by L.O. 625-32(A);
7. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit lot frontage of approximately twenty-five and forty-one hundredth feet (25.41’) for proposed Lot 10 along Davis Street where L.O. 625-8(B) and L.O. 625-80 require fifty feet (50’) of lot frontage;
8. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit lot frontage of approximately twenty-five and forty-one hundredth feet (25.41’) for proposed Lot 10.1 along Davis Street where L.O. 625-8(B) and L.O. 625-80 require fifty feet (50’) of lot frontage;
9. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a front yard setback of zero feet for proposed Lot 10 along Davis Street where L.O. 625-8(E) and L.O. 625-80 require a front yard setback of twenty-five feet (25’);
10. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a front yard setback of zero feet for proposed Lot 10.1 along Davis Street where L.O. 625-8(E) and L.O. 625-80 require a front yard setback of twenty-five feet (25’);
11. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a front yard setback of zero feet for proposed Lot 10 along Filmore Street where L.O. 625-8(E) and L.O. 625-80 require a front yard setback of twenty-five feet (25’);
12. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a side yard setback of zero feet for proposed Lot 10 where L.O. 625-8(E) and L.O. 625-80 require a side yard setback of five feet (5’);
13. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a side yard setback of zero feet for proposed Lot 10.1 where L.O. 625-8(E) and L.O. 625-80 require a side yard setback of five feet (5’);
14. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a side yard setback of four and eighty-five one hundredth feet (4.85’) for proposed Lot 10.1 where L.O. 625-8(E) and L.O. 625-80 require a side yard setback of five feet (5’);
15. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a floor area of eight hundred and seven feet (807’) for proposed Lot 10 where L.O. 625-8(D) and L.O. 625-80 require a minimum floor area of one thousand and two hundred feet (1,200’);
16. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a floor area of six hundred and forty feet (640’) for proposed Lot 10.1 where L.O. 625-8(D) and L.O. 625-80 require a minimum floor area of one thousand and two hundred feet (1,200’);
17. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a lot coverage of fifty-seven and eight tenths percent (57.8%) for proposed Lot 10 where L.O. 625-8(C) and L.O. 625-80 allow a maximum of forty percent (40%) lot coverage; and

18. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a lot coverage of thirty-nine and eighty-three one hundredths percent (39.83%) for proposed Lot 10.1 where L.O. 625-8(C) and L.O. 625-80 allow a maximum of forty percent (40%) lot coverage; and

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

1. A waiver from L.O. 555-10(D) which requires a preliminary sketch plat to contain sufficient elevations or contours to determine the general slope and natural drainage of the land and the high and low points and tentative cross sections and centerline for profiles for all proposed new streets;
2. A waiver from L.O. 555-10(E) which requires a preliminary sketch plat to contain the location of existing and proposed property lines, streets, buildings, watercourses, railroads, bridges, culverts, drainpipes and any natural features such as wooded areas and rock formations;
3. A waiver from L.O. 555-11(K) which requires a final sketch plat to contain cross sections and profiles of streets, approved by the Municipal Engineer;
4. A waiver from L.O. 555-11(L) which requires a final sketch plat to contain contours at five-foot (5’) intervals for slopes averaging ten percent (10%) or greater and at two-foot (2’) intervals for land of lesser slope; and
5. A waiver from L.O. 555-11(M) which requires a final sketch plat to contain plans and profiles of storm and sanitary sewers and water mains; and

WHEREAS, on April 27, 2023, 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 Minor Subdivision checklist which was requested by the Applicant and which are referenced in the Board engineer’s April 12, 2023 letter and further recommended that the Board grant temporary waivers from the Town’s Subdivision preliminary plat and final plat checklists, as outlined in the April 12, 2023 letter; and

WHEREAS, before the testimony of the Applicant’s witnesses on July 27, 2023, the Board’s engineer again discussed the waivers from the Town’s Minor Subdivision checklist which was requested by the Applicant and which are referenced in the Board engineer’s April 12, 2023 letter and further recommended that the Board grant temporary waivers from the Town’s Minor Subdivision checklist, as outlined in the April 12, 2023 letter; and

WHEREAS, by unanimous vote on April 27, 2023, the Board granted the temporary waivers referenced above as to items 1a, 1e, 2a, 2b, 2c, 2g, 2h and 2i, as set forth in the Board Engineer’s April 12, 2023 letter, and reaffirmed the same on July 27, 2023, with the understanding that all of the temporary waivers must be met to the satisfaction of the Board’s Engineer prior to final approval; and

WHEREAS, by unanimous vote on April 27, 2023, the Board granted the permanent waivers referenced above only as to items 1b, 1c, 2d, 2e and 2f, as set forth in the Board Engineer's April 12, 2023 letter, and did not grant the requested waiver as to item 1d in the Board Engineer's April 12, 2023 letter, *to wit*, a waiver from L.O. 555-10(F) which requires a preliminary sketch plat to contain proposed utility layouts showing feasible connections to existing or any proposed utility system and reaffirmed the same on July 27, 2023; and

WHEREAS, the Applicant presented the sworn testimony of one individual on July 27, 2023, *to wit*, Harry L. Wyant, Jr., who is the Applicant; and

WHEREAS, the Applicant did not mark any exhibits at the July 27, 2023 hearing; and

WHEREAS, at the April 27, 2023 hearing, the Board attorney inquired of Mr. Edleston that the Applicant was seeking the five (5) permanent waivers set forth in in the Board engineer's April 12, 2023 review letter; and if the Applicant would comply with all of the technical comments in the Board engineer's July 13, 2023 letter as conditions of approval to which he agreed; and

WHEREAS, the Board attorney also asked Mr. Edleston on April 27, 2023, whether the variances sought were under subsections "c(1)" or "c(2)" of N.J.S. 40:55D-70(c), to which Mr. Edleston said the variances are sought under both subsections "c(1)" and "c(2)." Then, the Board attorney suggested that planning testimony might be appropriate given that relief is being sought under subsection "c(2)" and further recommended that a formal amended application be submitted to which Mr. Edleston then said that the Applicant intends to amend the application; and

WHEREAS, the Applicant did not submit an amended application; and

WHEREAS, before the testimony of any witnesses on July 27, 2023, the Board attorney inquired of the Applicant's attorney whether the Applicant was seeking the eighteen (18) variances identified in the Board Engineer's July 13, 2023 letter, to which the attorney acknowledged that the Applicant is. Mr. Edleston then offered a short argument that, in his opinion, the variances should be granted pursuant to N.J.S. 40:55D-70(c) given the uniqueness of the property and that the benefits of the proposed subdivision outweigh any potential detriments; and

WHEREAS, on July 27, 2023, the Applicant, who after being sworn, testified that the subdivision of the subject lot will promote home ownership as the subdivided lots are more likely to be owned than rented whereas the current lot will always consist of at least one of the units being leased. The Applicant also testified that he would comply with all of the conditions of approval that have been recommended by the Board engineer in his July 13, 2023 letter. Mr. Wyant also commented that the subdivision would be infeasible if the existing shared sewer lines on the property were required to be separated. The Applicant then agreed to the Board engineer's recommendation that the subdivision deeds include a perpetual

provision that the lot owners are responsible for the sewer and sanitary connections. The Applicant did not offer any additional testimony; and

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

WHEREAS, the Board was satisfied with the Applicant's testimony, especially in light of the Board Engineer's comments and review, such that the Board did not have any additional questions or comments; and

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

WHEREAS, the meeting was opened to the public by the Chairman and there was no comment offered; and

WHEREAS, the Board considered all of the preceding and also considered the Town's Master Plan, the Town's zoning ordinances, the Town's subdivision ordinances and considered the comments and advice of the Board's engineer; and

WHEREAS, the Chairman called for a motion on the permanent design waivers 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 variances and a motion was made by Mr. Zwicker, and second by Mr. Rooney, to grant the requested variances as recorded below; and

WHEREAS, the Chairman called for a motion on the Application for Preliminary and Final Minor Subdivision Approval which was made by Mr. Zwicker and seconded by Mr. Rooney, 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 Minor Subdivisions by the Board.
3. That the Applicant must obtain Preliminary and Final Minor 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 to the “Land Subdivision Ordinance of the Town of Phillipsburg.”
7. 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.
8. That waivers from the “Land Subdivision Ordinance of the Town of Phillipsburg” requirements be granted as to the five (5) items noted above, and contained in the Board’s Engineer letters dated April 12, 2023 and July 13, 2023, as more particularly set forth herein this Resolution.
9. That variances be granted as to the eighteen (18) items noted above, and contained in the Board’s Engineer letter dated July 13, 2023, as more particularly set forth herein this Resolution.
10. That the subject property currently is used as a single two-family home.
11. That subdivision of the existing lot into two separate lots will encourage home ownership.
12. 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.
13. 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.
14. 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.
15. That the subdivision will not harm the public at all.
16. That the subdivision will not affect the intensity of the use of the property.
17. That the proposed subdivision of the property is not inconsistent with the Town’s Master Plan.
18. 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.
19. 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.*
20. 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.

21. 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 five (5) permanent design waivers from the "Town of Phillipsburg's Site Plan Ordinance of 1979," as set forth above, is hereby **GRANTED**, on Motion of Mr. Zwicker and Seconded by Mr. Penrose:

ROLL CALL VOTE

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

Nays: None.

Abstentions: None.

Recused: Mayor Tersigni and Mr. Kennedy.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant's request for eighteen (18) 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. Rooney:

ROLL CALL VOTE

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

Nays: None.

Abstentions: None.

Recused: Mayor Tersigni and Mr. Kennedy.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant's request for Preliminary and Final Minor Subdivision Approval, is hereby **GRANTED**, on Motion of Mr. Zwicker and seconded by Mr. Rooney:

ROLL CALL VOTE

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

Nays: None.

Abstentions: None.

Recused: Mayor Tersigni and Mr. Kennedy.

AND IT IS FURTHER RESOLVED THAT the Applicant's request for a Preliminary and Final Minor Subdivision Approval for the subdivision of the property known as Block 1312, Lot 10, 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 April 12, 2023 and July 13, 2023, as modified at the July 27, 2023 hearing, unless altered by this approval, including any comments contained in subsequent reports. In the event that the Applicant is unable to comply with any of the Board Engineer's requirements or recommendations, it is understood that it reserves the right to apply to this Board for relief therefrom.

2. The Applicant shall ensure that the subdivision is carried-out in strict compliance with this Resolution with the understanding that any deviation therefrom which is deemed by the Board's Engineer's to be a significant deviation from the hereby approved shall require further review and approval by this Board.

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

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 maintain current all real estate taxes, sewer and water charges pertaining to this site.

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

8. The Applicant shall separate the shared sanitary sewer service into separate sewer service if deemed appropriate by the Phillipsburg Sewer Utility.

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

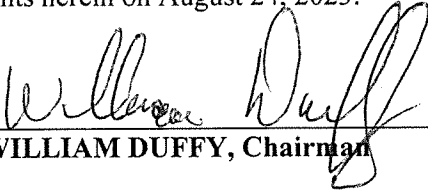
10. The Applicant shall install, replace and/or repair all sidewalks and curbing along the frontage of the subject properties, in accordance with Americans with Disabilities Act ("ADA") requirements, as directed by the Town Engineer and/or the Town Code inspector.

11. The Applicant shall revise the plat to be drawn to scale.

12. The Applicant shall revise the plat to include vertical and horizontal datum used for reference.
13. The Applicant shall submit the AutoCAD to the Town Tax Assessor.
14. The Applicant shall trim all vegetation along the lot frontages to ensure the vegetation does not obstruct the sidewalk or the roadway and otherwise complies with the Town Ordinances.
15. The Applicant shall coordinate street addresses for the subdivided lots with the Town's 911 coordinator.
16. The Applicant shall coordinate with the Town tax assessor to establish tax block and lot numbers.
17. The Applicant shall submit to the Town Engineer a copy of the deed and subdivision map in AutoCAD format.
18. The Applicant shall have all plans, subdivisions and surveys signed and sealed by the appropriate professionals who prepared the same.
19. The Applicant shall address any overall site maintenance and code compliance issues based upon a review by the Town's Inspection Official.
20. The Applicant shall include on the subdivision plans all of the conditions of approval as to be completed as part of the final subdivision.
21. The Applicant shall confer with the Town's affordable housing official to ensure that the subdivision does not run afoul of the Town's affordable housing obligations.
22. The Applicant shall note that all of the conditions of approval contained herein shall be set forth in deeds for the new lots, which deeds must be approved by the Board Engineer and Board attorney prior to recording.
23. The Applicant shall provide the form of the real property deeds for proposed Lots 10 and 10.01, to be reviewed by the Board Engineer and the Board attorney prior to recording the same.
24. The Applicant shall perfect the Subdivision by filing the real property deeds for proposed Lots 10 and 10.01, 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).
25. The Applicant shall provide a subdivision map with a metes 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 27th day of July, 2023, by a majority of the aforesaid members approving the oral approval for the contents herein on August 24, 2023.

Dated: August 24, 2023



WILLIAM DUFFY, Chairman