

TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2023-14

**RESOLUTION GRANTING PRELIMINARY AND FINAL MAJOR SUBDIVISION IN NO. 2023-003
TO SUBDIVIDE BLOCK 1314, LOT 34 TO CORRECT AND ADJUST THE PROPERTY LINE
BETWEEN BLOCK 1314, LOT 34 (38 Colby Place) AND BLOCK 1314, LOT 33 (34 Colby Place)**

**Christopher Alan Kophazy and Ashley Marie Kophazy – Applicants/Owners
34 Colby Place
Phillipsburg, New Jersey 08865**

**Block 1314, Lots 34 and 33
38 and 34 Colby Place**

Application #2023-003

WHEREAS, Christopher Alan Kophazy and Ashley Marie Kophazy (hereinafter referred to as the “Applicants”) have applied to the Town of Phillipsburg Land Use Board (hereinafter referred to as the “Board”) for Preliminary and Final Major 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 property known as 34 Colby Place and identified on the Town of Phillipsburg Tax Map as Block 1314, Lot 33, 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 Applicants previously appeared before the Board at a regularly-scheduled meeting on January 26, 2023, and was represented by Brian T. Grace, Esq., at which time the Board considered the December, 14, 2022, Application, revised December 15, 2022 and revised again on January 16, 2023, and determined unanimously that the application is properly considered as a Major Subdivision; and the drawings, as more fully described below; and the Board Engineer’s January and July 2023 review letters, at which time the Applicant requested certain waivers from the Preliminary and Final Major Subdivision checklists said waivers being summarized in the Board Engineer’s January and July 2023 letters, 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 Brian T. Grace, Esq., presented a brief explanation concerning the Application, *to wit*, the Applicants seek to correct an error which exists regarding the property line boundary between 38 Colby Place and 34 Colby Place known as Block 1314, Lots 34 and 33 respectively; 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 July 27, 2023, remained accurate; and

WHEREAS, the Board being satisfied that both 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. Application for Minor Site Plan dated December 15, 2022;
- B. Survey entitled “Plan of Survey” prepared by Brunswick West, Inc., dated April 6, 2021, consisting of 1 sheet;
- C. Tax Certification dated January 17, 2023;
- D. Correspondence prepared by Curzi Law Offices dated January 16, 2023 with attachments;
- E. Revised application for Major Subdivision ;
- F. Minor Subdivision Plat entitled “Plan of Proposed Minor Subdivision for...Block 1314 Lot 33 and 34” prepared by Brunswick West, Inc dated April 28, 2023.; and

WHEREAS, the Board has considered the review letters of the Board Engineer of January and July 2023, the contents of which the Board adopts and incorporates its finding of fact by reference herein; and

WHEREAS, the Applicants are requesting the following variances from the Town Ordinances:

1. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit an accessory structure side yard setback to be zero feet where L.O. 625-14 requires a three-foot (3’) setback from the property line of Block 1314, Lot 34;
2. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit lot frontage of approximately thirty-two and twenty-one hundredth feet (32.20’) for proposed Lot 34 along Colby Place where L.O. 625-80 require fifty feet (50’) of lot frontage;
3. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit lot frontage of approximately Thirty-one and twenty-seven-one hundredth feet (31.27’) for proposed Lot 33 along Colby Place where L.O. 625-80 require fifty feet (50’) of lot frontage;
4. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a front yard setback of zero feet for proposed Lot 33 along Colby Place where L.O. 625-80 require a front yard setback of twenty-five feet (25’);
5. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a side yard setback of four and four-one hundredth feet (4.4’) for proposed Lot 33 where L.O. 625-80 require a side yard setback of five feet (5’);
6. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a lot coverage of sixty-five percent (65%) for proposed Lot 33 where L.O. 625-80 allow a maximum of forty percent (40%) lot coverage; and

7. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to permit a lot coverage of ninety percent (90%) for proposed 34 where L.O. 625-80 allow a maximum of forty percent (40%) lot coverage; and

WHEREAS, the Applicants are requesting the following permanent design waivers from the Town Ordinances:

1. A waiver from L.O. 555-9(A and B) which requires a subdivision sketch plat to contain all existing structures and wooded areas within the portion to be subdivided and within 200 feet thereof;
2. A waiver from L.O. 555-9(E) which requires a subdivision sketch plat to contain all streets or roads and streams within 500 feet of the subdivision;
3. A waiver from L.O. 555-9(A) which requires a preliminary sketch plat to contain a key map showing the entire subdivision and its relation to surrounding areas;
4. A waiver from L.O. 555-9(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 center line profiles for all proposed new streets;
5. A waiver from L.O. 559-9(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;
6. A waiver from L.O. 555-9(F) which requires a preliminary sketch plat to contain Plans of proposed utility layouts (sewers, storm drains, water, gas and electricity) showing feasible connections to existing or any proposed utility systems. When an individual water supply and/or sewage disposal system is proposed, the plan for such system must be approved by the appropriate local, county or state health agency. When a public sewage disposal system is not available, the developer shall have percolation tests made and submit the results with the preliminary plat. Any subdivision or part thereof which does not meet with the established requirements of this chapter or other applicable regulations shall not be approved. Any remedy proposed to overcome such a situation shall first be approved by the appropriate local, county or state health agency. Waiver required to make a condition of approval that sanitary main connection is verified for both properties;
7. A waiver from L.O. 555-11(E) which requires a final sketch plat to contain minimum building setback line on all lots and other sites;
8. A waiver from L.O. 555-11(G) which requires a final sketch plat to contain names of owners of adjoining unsubdivided land;
9. A waiver from L.O. 555-11(H) which requires a final sketch plat to contain a certification by an engineer or surveyor as to accuracy of details of plat. Waiver required to make a condition of approval

that the subdivision plat includes a certification as to accuracy and details of plat and provides a copy of deeds;

10. 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 may be required to accompany the final plat;
11. A waiver from L.O. 555-11(L) which requires a final sketch plat to contain contours at five-foot intervals for slopes averaging 10% or greater and at two-foot intervals for land of lesser slope; and
12. 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.

WHEREAS, on July 27, 2023 at a hearing before the Board on the completeness of the application, the Applicants' attorney and the Board's engineer discussed the waivers from the Town's Major Subdivision checklist which was requested by the Applicants and which are referenced in the Board engineer's July 20, 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 July 20, 2023 letter; and

WHEREAS, before the testimony of the Applicants' witnesses on July 27, 2023, the Board's engineer again discussed the waivers from the Town's Major Subdivision checklist which was requested by the Applicants and which are referenced in the Board engineer's July 20, 2023 letter and further recommended that the Board grant temporary waivers from the Town's Major Subdivision checklist, as outlined in the July 20, 2023 letter; and

WHEREAS, by unanimous vote on July 27, 2023, the Board granted the permanent waivers referenced above as to items 1a and b, 1e, 2a, 2f, 2g, 2h, 3d, 3f, 3g, 3i, 3j and 3k as set forth in the Board Engineer's July 20, 2023 letter, and reaffirmed the same on July 27, 2023; and

WHEREAS, the Applicants presented the sworn testimony of the following individuals on July 27, 2023:

1. Christopher Kophazy, who is one of the Applicants; and

WHEREAS, the Board attorney then inquired of Mr. Grace that the Applicants were seeking the twelve (12) permanent waivers set forth in in the Board engineer's July 20, 2023 review letter, as well as the seven (7) variances referenced above and set forth in the Board engineer's review letter; and if the Applicants would comply with all of the technical comments in the Board engineer's letter as conditions of approval to which they agreed; and

WHEREAS, before the testimony of any witnesses on July 27, 2023, the Board attorney inquired of the Applicants' attorney whether the Applicants were seeking the seven (7) variances identified in the Board Engineer's July 20, 2023 letter, to which the attorney acknowledged that the Applicants are; and

WHEREAS, the Chairman then asked the Board members if they had any questions of and they asked questions concerning his knowledge of the issues regarding the property and the process for purchasing the property; and

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

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

WHEREAS, the meeting was opened to the public by the Chairman and there were no comments; 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. Rooney, 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 Mayor Tersigni, 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 Major Subdivision Approval which was made by Mr. Zwicker and seconded by Mr. Rooney as recorded below; and

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

1. That the subject property is located in the Town of Phillipsburg R-50 residential zone.
2. That N.J.S. 40:55D-1, *et. seq.*, the "New Jersey Municipal Land Use Law," provides for review and Approval of Major Subdivisions by the Board.
2. That the Applicants must obtain Preliminary and Final Major Subdivision Approval from the Board before it subdivides 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 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 the Board has authority to grant variances from the provisions of N.J.S. 40:55D-1, *et. seq.*, the "New Jersey Municipal Land Use Law," pursuant to N.J.S. 40:55D-70 and pursuant Section 555-22 of the "Land Subdivision Ordinance of the Town of Phillipsburg."
6. That the Board has authority to grant variances from the provisions of N.J.S. 40:55D-1, *et. seq.*, the "New Jersey Municipal Land Use Law," pursuant to N.J.S. 40:55D-70 and pursuant Section 555-22 of the "Town of Phillipsburg's Site Plan Review Ordinance of 1979."

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 twelve (12) items noted above, and contained in the Board's Engineer letter dated July 20, 2023, as more particularly set forth herein this Resolution.
9. That variances be granted as to the seven (7) items noted above, and contained in the Board's Engineer letter dated July 20, 2023, as more particularly set forth herein this Resolution.
10. That the Applicants have met their burden under N.J.S. 40:55D-70(c)(2) in that the benefits of a deviation from the zoning ordinances substantially outweigh any detriments by subdividing the property and further that the lot frontage, front yard setbacks, side yard setbacks and lot coverage deviations from the zoning ordinances are minimal and are consistent with the housing in the neighborhood.
11. That the Applicants have met their burden 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.
12. That the subdivision will not harm the public at all.
13. That the subdivision will not affect the intensity of the use of the property.
14. That the proposed subdivision of the property is not inconsistent with the Town's Master Plan.
15. 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.
16. 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.*
17. That the Applicants acknowledge 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.
18. 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 Applicants' request for the twelve (12) permanent design waivers from the "Town of Phillipsburg's Site Plan Ordinance of 1979," as set forth above, is hereby **GRANTED**, on Motion of Mr. Rooney and Seconded by Mr. Penrose:

ROLL CALL VOTE

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

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicants' request for seven (7) variances from the "Town of Phillipsburg Zoning Ordinance," under Chapter 625 of the Town of Phillipsburg's Ordinances, pursuant to N.J.S. 40:55D-70(c), as noted above, are hereby **GRANTED**, on Motion of Mayor Tersigni and Seconded by Mr. Rooney:

ROLL CALL VOTE

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

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicants' request for Preliminary and Final Major Subdivision Approval, is hereby **GRANTED**, on Motion of Mayor Tersigni and seconded by Mr. Penrose:

ROLL CALL VOTE

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

AND IT IS FURTHER RESOLVED THAT the Applicants' request for a Preliminary and Final Major Subdivision Approval for the subdivision of lots on the property known as Block 1314, Lot 33, 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 of January and July 2023, including any comments contained in subsequent reports. In the event

that the Applicants are unable to comply with any of the Board Engineer's requirements or recommendations, it is understood that they reserve the right to apply to this Board for relief therefrom.

2. The Applicants 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 Applicants 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 Applicants shall procure, and provide copies to the Board, of all applications, licenses and permits required by all federal, state and municipal agencies.

5. The Applicants 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.

6. The Applicants shall revise plat to be drawn at a scale, this may have been caused by a reproduction error as portions of the title block are cut off.

7. The Applicants shall revise plat to include vertical and horizontal datum's used for reference.

8. The Applicants shall submit AutoCAD file to the Tax assessor at time of filing. 5. Applicant shall obtain approval from Sewer Authority for sewer connections and/or sewer separation.

9. The Applicants shall repair and/or replace curbs and sidewalks as directed by Town code inspector/Town Engineer if they are not meeting town standards (Town Code 545-16).

10. The Applicants shall perform a dye test to confirm existing sanitary lateral is connected to the town sanitary sewer system and submit results to the Town sewer authority.

11. The Applicants shall trim tree all existing trees along frontage to ensure tree limbs do obstruct the sidewalk or roadway (Town Code 591-11).

12. The Applicants shall address any code requirements as noted by Town Inspectors.

13. The Applicants shall provide a signature block for signature by the Board sectary and Board Engineer in addition to the space already provided for the board chairman.

14. The Applicants 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.

15. The Applicants shall include on the subdivision plans all of the conditions of approval as to be completed as part of the final subdivision.

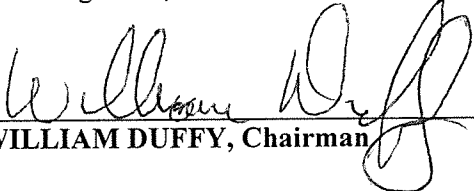
16. The Applicants shall provide the form of the real property deeds for proposed Lots 34 and 33, to be reviewed by the Board Engineer and the Board attorney prior to recording the same.

17. The Applicants shall perfect the Subdivision by filing the real property deeds for proposed Lots 34 and 33, 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).

18. The Applicants 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