

TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2024-1

**RESOLUTION GRANTING AMENDED PRELIMINARY AND FINAL
CONVENTIONAL/MAJOR SITE PLAN APPROVAL IN NO. 2021-1**

**Peron Construction, LLC – Applicant/Owner
91 Larry Holmes Drive, Suite 200
Easton, Pennsylvania 18042**

**Block 2102, Lot 2.02
170 Howard Street**

Application #2021-1

WHEREAS, Peron Construction, LLC (“Applicant”) applied to the Town of Phillipsburg Land Use Board (“Board”) for Amended Preliminary and Final Conventional/Major Site Plan Approval; Bulk Variance Approval pursuant to N.J.S. 40:55D-70(c); and any and all design exceptions and/or waivers (collectively “the Application”), for the construction of an industrial building of approximately three hundred and twenty-eight thousand two hundred and seventy-seven square feet (328,277 sq. ft.) on the property identified on the Town Tax Map as Block 2102, Lot 2.02, with a street address of 170 Howard Street, Phillipsburg, Warren County, located in the Town’s Redevelopment Zone Districts 3 & 5 (“subject property”), with two hundred and fifteen (215) passenger car parking spaces, eighty (80) loading docks and twenty-one (21) spaces for trailer parking, and to raze the existing structures which are located on the properties known as 560 and 562 South Main Street and identified on the Town Tax Map as Block 2015, Lots 1 and 3, in order to construct roadway improvements; which application is an amendment to this Applicant’s prior approvals from this Board in Resolutions No. 2022-2 and No. 2022-12, that permitted the construction of an industrial building of approximately four hundred and twenty thousand square feet (420,000’) on the subject property; and

WHEREAS, on January 27, 2022, the Board granted the Applicant Preliminary Conventional/Major Site Plan Approval and Bulk Variance Approval which was memorialized in Board Resolution No. 2022-2, on February 22, 2022, for the construction of an industrial building of approximately four hundred and twenty thousand square feet (420,000 sq. ft.) on the property identified on the Town Tax Map as Block 2102, Lot 2.02, with a street address of 170 Howard Street, Phillipsburg, Warren County, with three hundred and fifty-two (352) passenger car parking spaces, eighty-eight (88) loading docks and thirty-nine (39) spaces for trailer parking, and to raze the existing structures which are located on the properties known as 560 and 562 South Main Street and identified on the Town Tax Map as Block 2015, Lots 1 and 3, in order to construct roadway improvements; and

WHEREAS, on August 25, 2022, the Board granted the Applicant Final Conventional/Major Site Plan Approval and Bulk Variance Approval which was memorialized in Board Resolution No. 2022-12, on

September 22, 2022, for the construction of an industrial building of approximately four hundred and twenty thousand square feet (420,000 sq. ft.) on the property identified on the Town Tax Map as Block 2102, Lot 2.02, with a street address of 170 Howard Street, Phillipsburg, Warren County, with three hundred and fifty-two (352) passenger car parking spaces, eighty-eight (88) loading docks and thirty-nine (39) spaces for trailer parking, and to raze the existing structures which are located on the properties known as 560 and 562 South Main Street and identified on the Town Tax Map as Block 2015, Lots 1 and 3, in order to construct roadway improvements; 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 December of 2023; and

WHEREAS, the Applicant appeared before the Board at a regularly-scheduled meeting on November 20, 2023, at which time Board Chairman William Duffy announced to the public that he would be recusing himself from consideration of the Application; and

WHEREAS, the Applicant appeared before the Board at a regularly-scheduled meeting on November 20, 2023, at which time the Applicant requested certain temporary waivers from the General, Preliminary and Final Site Plan checklist requirements, said waivers being summarized in the Board Engineer's November 13, 2023 review letter, and the Board having determined that said temporary waivers can be granted and the Application was determined by the Board to be complete; and

WHEREAS, the Applicant appeared before the Board again at a regularly-scheduled meeting on January 25, 2024, at which time the Board commenced a public hearing on the Application as more fully set forth herein below; and

WHEREAS, Board Chairman Willaim Duffy and Mayor Randy Piazza, Jr. announced to the public that they would be recusing themselves from consideration of the Application at the January 25, 2024 hearing; and

WHEREAS, as a result of the preceding recusals, nonetheless, a full membership of the Board, identified below, was established; and

WHEREAS, at the preceding hearings, the Applicant was represented by Mark Peck, Esq. and Brian R. Tipton, Esq., who presented a brief explanation concerning the Applicant's intended use of the subject property and the amended approvals sought and further stated that the Applicant intended to comply with: (i) the requirements set forth by the Board's prior approval of this Application, except to the extent amendments are granted herein; (ii) all of the comments set forth in the Board Engineer's December 22, 2023 letter, as subsequently modified at the January 25, 2024 hearing; and (iii) all of the comments in the Town of Phillipsburg Fire Chief's January 19, 2024 letter; and

WHEREAS, the Board has received certain documentation and reports from the Applicant, the Board's professional consultants and other interested parties, all of these having been given due consideration and being the following:

- A. Town of Phillipsburg – “Application for Minor or Conventional Site Plans” for Block 2102, Lot 2.02, dated October 4, 2023, one page;
- B. Town of Phillipsburg – “Application for Site Plan” for Block 2102, Lot 2.02, dated October 3, 2023, four (4) pages;
- C. Town of Phillipsburg – “Application for Conventional Site Plan” for Block 2102, Lot 2.02, undated, one page;
- D. Town of Phillipsburg – “Preliminary Site Plan Checklist,” for Block 2102, Lot 2.02, undated, two (2) pages;
- E. Town of Phillipsburg – “Final Checklist” for Block 2102, Lot 2.02, undated, two (2) pages;
- F. Town of Phillipsburg – “Zoning Officer Requirement Checklist” for Block 2102, Lot 2.02, undated, one page;
- G. Town of Phillipsburg Tax and Sewer Certifications from Tax Collector that taxes and sewer payments are paid through December 31, 2023, for Block 2102, Lots 1 and 3, and Block 2102, Lot 2.02, dated November 17, 2023;
- H. Amended Preliminary and Final Major Site plan entitled: “Amended Preliminary & Final Major Site Plan for Peron Construction, LLC, Proposed Industrial Development, Map: 21, Block 2102, Lot 2.02, Map: 20, Block 2102, Lot: 1 & 3, ” prepared by Bohler Engineering NJ, LLC, dated September 15, 2023, consisting of ninety (90) sheets;
- I. Survey entitled: “ALTA/NSPS Land Title Survey 170 Howard Street, Lots 1, 2.01 & 2.02, Block 2102, Town of Phillipsburg, Warren County, State of New Jersey,” prepared by Control Point Associates, Inc., consisting of ten (10) sheets, dated January 14, 2021, and last revised on June 10, 2022;
- J. Boundary and Topographical Survey entitled: “Boundary and Topographic Survey Block 2102, Lots 1 & 3 560 & 562 South Main Street Phillipsburg Township Warren County State of New Jersey,” prepared by Control Point Associates, Inc., consisting of ten (10) sheets, dated January 14, 2020, and revised on June 10, 2022;
- K. Boundary and Topographical Survey entitled: “Boundary and Topographic Survey Block 2102, Lots 1 & 3 560 & 562 South Main Street Phillipsburg Township Warren County State of New Jersey,” prepared by Control Point Associates, Inc., consisting of two (2) sheets, dated September 6, 2022;

- L. Architectural Plan entitled: “Proposed Industrial Development,” prepared by Cerminara Architects, dated September 15, 2023, consisting of three (3) sheets;
- M. Stormwater Management Report, prepared by Bohler Engineering, LLC, dated September of 2023;
- N. Stormwater Management Facility Operations & Maintenance Manual, prepared by Bohler Engineering, LLC, dated September of 2023;
- O. Truck Turning Exhibit, prepared by Bohler Engineering, dated October 13, 2021, and last revised on July 11, 2023;
- P. “Traffic Impact Study for the Phillipsburg Industrial Development, Town of Phillipsburg, Warren County, NJ,” prepared by McMahon Associates, Inc., dated October of 2021, and last revised September of 2023;
- Q. Correspondence from Bohler Engineering, LLC, dated January 25, 2024;
- R. Town of Phillipsburg Ordinance 2021-14 – amending Riverfront Redevelopment Plan – District 5;
- S. November 17, 2023 and January 19, 2024 updated letters from Town of Phillipsburg Fire Chief;
- T. Warren County Planning Board letter, dated December 19, 2023; and
- U. Warren County Planning Board Traffic Consultant review letter dated December 13, 2023; and

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

- 1. A permanent waiver from L.O. 510-12(A)(1) which requires preservation of landscape in its natural state insofar as practicable;
- 2. A permanent waiver from L.O. 510-12(A)(2) which requires the proposed building structure relate harmoniously to the landform and to existing buildings in the vicinity;
- 3. A permanent waiver from L.O. 510-12(A)(4) which prohibits the surface water runoff from adversely affect neighboring properties and the public storm drainage system;
- 4. A permanent waiver from L.O. 510-12(B)(2)(A)(3)(a) which requires all lighting from fixtures to be cut off at the adjoining property lines;
- 5. A permanent waiver from L.O. 510-12(B)(2)(d)(2) which requires the planting of shade trees in parking areas with more than fifty (50) spaces;
- 6. A permanent waiver from L.O. 510-12(B)(2)(e) which requires the installation of sidewalks in parking areas with more than one hundred (100) spaces; and
- 7. A permanent waiver from L.O. 510-12(B)(2)(f)(2) which requires all fire aisles have a minimum width of thirty feet (30’); and

WHEREAS, the Board having considered the letters of the Board engineer dated November 13, 2023 and December 22, 2023, the contents of which the Board adopts and incorporates into 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 the construction of a building approximately fifty-seven and nine-tenths feet (57.9’) from parkland where L.O. 625-80 requires a one hundred foot (100’) setback;
2. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to allow the planting of trees in replacement of an existing natural landscaped buffer along the northeast side of the site where L.O. 625-12(A)(1) prohibits the same;
3. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to allow the removal of plantings in the existing natural landscaped buffer along the northeast side of the site where L.O. 625-12(A)(3) prohibits the same;
4. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to allow a deviation from the off-street parking requirements of L.O. 625-25(E) given the nature of the building and use of the building;
5. A “c” variance, pursuant to N.J.S. 40:55D-70(c), so as not to require the completion of parking facilities prior to the issuance of a certificate of occupancy as required by L.O. 625-25(F);
6. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to allow a deviation from the parking landscaping requirements of L.O. 625-25(I) given the nature of the building and use of the building;
7. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to allow non-residential driveways to exceed thirty feet (30’) at the property line and forty feet (40’) at the curb line where L.O. 625-30(B) prohibits the same;
8. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to allow a deviation from the off-street loading space requirements of L.O. 625-31(A) given the nature of the building and use of the building;
9. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to allow fewer loading spaces than required by L.O. 625-31(C) given the nature of the building and use of the building;
10. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to allow two hundred and fifteen (215) parking spaces where L.O. 625-32(B)(1) requires three hundred and sixty-eight (368) parking spaces; and
11. A “c” variance, pursuant to N.J.S. 40:55D-70(c), to allow loading docks and truck parking spaces to front Howard Street where the Town’s Riverfront Redevelopment Plan Section IV, District 5, as amended, prohibits loading docks and truck parking spaces to face or exit directly onto the public street; and

WHEREAS, the Applicant presented the sworn testimony of the following individuals on January 25, 2024:

1. Robert DeBeer, who is the Applicant's representative;
2. Bradford A. Bohler, P.E., who is the Applicant's engineer;
3. John Mannino, RA, who is the Applicant's architect;
4. John Wichner, P.E., who is the Applicant's traffic engineer;
5. John Taikina, P.P., who is the Applicant's professional planner; and

WHEREAS, the following documents were marked as exhibits at the January 25, 2024 hearing and were discussed and testified to by the Applicant's witnesses. These are now included as part of the record:

1. A-1: Bohler Engineer, LLC letter dated January 25, 2024;
2. A-2: Professional Profile of Bradford A. Bohler, P.E.;
3. A-3: Aerial exhibit, dated January 25, 2024;
4. A-4: "Overall Site Plan Layout" C-301, dated August 25, 2022;
5. A-5: "Overall Site Plan Layout" C-301, dated September 15, 2023;
6. A-6: January 19, 2024 letter from Phillipsburg Fire Chief;
7. A-7: Curriculum Vitae of John R. Wichner, P.E.;
8. A-8: Curriculum Vitae of John Mannino, RA;
9. A-9: Level view of proposed building rendering, dated November 22, 2021;
10. A-10: Level view proposed building rendering, dated September 15, 2023; and
11. A-11: Curriculum Vitae of John Taikina, P.P.; and

WHEREAS, Robert DeBeer, the Applicant's representative, was offered as the first witness and testified generally with regard to the history of the project since 2022, that in that year after the original site plan approval, the Applicant entered into an agreement with another party to sell the approval provided that a railway connection could be part of the approval, but that agreement has since terminated and the Applicant hopes to enter into a similar agreement with another party soon, and for this reason, the Applicant is proceeding with the subject application. Mr. DeBeer stated that the Applicant has reviewed the Board Engineer's December 22, 2023 review letter with its professionals, and have conferred with the Board Engineer and prepared a response by Bohler Engineering letter dated January 25, 2024, which is marked as Exhibit "A" and that there will be compliance with the Board Engineer's letter; and

WHEREAS, Bradford A. Bohler, P.E., a New Jersey Licensed Engineer, of Bohler Engineering, LLC, was offered as the second witness, who after being sworn and accepted as an engineering expert, based upon Exhibit "A-2," provided testimony on behalf of the Applicant. Mr. Bohler discussed the following. He offered Exhibit "A-3," which is an illustration of the site dated January 25, 2024, and explained what it represented. He provided a general description of the adjacent neighborhood. He stated that the Applicant has retained a licensed site remediation professional ("LSRP") on site who provides

guidance during the development process. He stated that the Applicant is seeking to remove part of the buffer along the Delaware River and replace it in another location. Mr. Bohler then marked Exhibit "A-4" as a reference point which was part of the prior approval. Mr. Bohler then marked Exhibit "A-5" to illustrate the current site layout. He stated that the Applicant is seeking to erect an industrial building of approximately three hundred and twenty-eight thousand square feet (328,000 sq. ft.). He stated that the main purpose of the amended application is due the railway access being added which has caused the proposed building to be flipped so truck ports are no longer facing the Delaware River and would now face Howard Street. Mr. Bohler acknowledged this request is a variance – which is noted above as variance request #11 – but the only way to have rail access and truck ports is to design the building as set forth in the amended site plan. He said the building would be setback approximately one hundred and seventy feet (170') from Howard Street which is in ordinance compliance. He testified that the building would be set back approximately one hundred and thirty-nine feet (139') from the Delaware River which is in ordinance compliance. He further stated that the Applicant needs a variance from the one-hundred-foot (100') park set back as the building would be approximately fifty-seven and nine-tenths feet (57.9') from the adjacent park – which is noted above as variance request #1. Mr. Bohler then testified that the design standards are in compliance with L.O. 510-12. He testified that the project would not be built in phases as the entire site and the building would be constructed at one time. Mr. Bohler testified that driveways would be installed on both the east and the west sides of the building. The Applicant is requesting thirty-five-foot (35') driveways, with longer widths, which is variance request #7 note above, and which was granted in the prior approval. Mr. Bohler stated that there is a design waiver not to install sidewalks around the building due to landscaping requirements – which is noted above as permanent waiver #6. Mr. Bohler stated that the Applicant also is seeking a design waiver to allow a twenty-four foot (24') wide fire aisle – which is noted above as permanent waiver #6 – and that the Town Fire Chief is in agreement with the size of the fire aisle and that neither employees nor customers would have access to the fire aisle. Mr. Bohler then testified that two employee parking lots, on the east and west sides of the building, are proposed with a total of two hundred and fifteen (215) spaces at nine feet (9') by eighteen feet (18') – which he acknowledged is a variance as noted above as variance request #10. He noted that this variance had been previously granted. Mr. Bohler testified that the entire parking lot would not be completed prior to construction because the Applicant intends to have some flexibility with regard to potential tenants' needs and wishes. He acknowledged that is a variance as noted above as variance request #5. Mr. Bohler then testified with regard to the loading docks and stated that there would be eighty (80) loading docks which would be below grade from Howard Street and which would be a variance as noted above in variance request #9. He testified that the loading docks would be thirteen feet (13') wide which is a variance as noted above in variance request #8. Mr. Bohler stated that this variance was granted in the prior approval. Mr. Bohler then testified that

from a stormwater management perspective this application is an improvement as the impervious coverage decreases from approximately sixty-four percent (64%) to fifty-five percent (55%). He stated that the Applicant will comply with all New Jersey Department of Environmental ("NJDEP") requirements. Mr. Bohler testified that all utilities would be installed underground, but that above-ground transformers will be installed away from the building as requested by the Board Engineer and the Town Fire Chief. Mr. Bohler stated the Applicant will pay for and install a larger and improved water system to the building which is designed by the water company. Mr. Bohler stated that lighting will comply with the Town's ordinances. As for landscaping, Mr. Bohler stated that trees and plantings would be installed to establish buffers, but that a design waiver is requested as to landscaping in the driveway islands which is noted as design waiver #4 above. Mr. Bohler testified that the Applicant withdraws a request to have non-compliant signs and that all signage will comply with the Town's ordinances. Mr. Bohler stated that a design waiver for some light spillage is requested as noted as permanent waiver #4 above. Mr. Bohler stated that the Applicant would comply with the Town Fire Chief's January 19, 2024 letter, which is Exhibit "A-6." Mr. Bohler then stated that the Applicant did not propose any Americans with Disabilities ("ADA") parking spaces and did not plan on an extension of Howard Street and therefore he was not prepared to provide any testimony on those issues; and

WHEREAS, the Board Engineer then inquired whether the Applicant would agree to a Howard Street extension as part of a future redevelopment agreement with the Town, to which Mr. DeBeer stated that the Howard Street extension is not proposed as part of the application and that the site is proposed to be accessed solely through existing public streets. The Board Engineer then inquired if the Applicant would be amenable to working with the Town and others if and when the Howard Street expansion were to take place to which Mr. DeBeer agreed. The Board Engineer then inquired of Mr. Bohler with regard to the railway access design. Mr. Bohler testified that, while the Applicant will grade the site for railway access, once a tenant is in place, the tenant and the railroad company would agree on the design and the railway would be designed and constructed by the railroad company. He stated that schematically as designed on the site plan the railway design is generally acceptable to the railroad company. At this time, Exhibit "A-6" was accepted into evidence. The Board Engineer then inquired of the NJDEP flood hazard permit to which Mr. Bohler stated it was in progress and he was hopeful that it would be issued in approximately six weeks. Mr. Bohler's testimony was concluded; and

WHEREAS, the Board was satisfied with Mr. Bohler'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, John R. Wichner, P.E., the Applicant's engineer, was the third witness, who after being sworn and accepted as an engineering expert, based upon his C.V. which was marked as Exhibit "A-7," provided testimony on behalf of the Applicant. Mr. Wichner testified that with a smaller proposed building there will be less trucks and less motor vehicle trips than expected with the prior approvals. He testified that a twenty-two percent (22%) reduction in the building size equates to a twenty-two percent (22%) reduction in the number of truck trips. Mr. Wichner testified that he believes the railway spur will reduce the volume of truck trips. Mr. Wichner continued that even if there were no railway spur that his study remains valid. He stated that some "geometric improvements" – traffic signals and traffic designs - would need to be made at the intersection of McKean and South Main Streets. Mr. Wichner stated that the proposed designed absence of guard gates or entrance barriers means that truck traffic will not back-up on Howard Street while acknowledging that such gates or barriers may be installed later, but if so, he believes there is sufficient area on site to erect those barriers and gates without causing traffic back-up on Howard Street. Mr. Wichner testified that the design of the site overall makes it that off-site traffic back-ups are unlikely. Mr. Wichner acknowledged that Warren County is involved and the Applicant is working with the County; and

WHEREAS, the Board Engineer inquired whether the traffic study was based upon "peek hours," or during a twenty-four (24) hour period, to which Mr. Wichner commented regarding the number of trips for both trucks and employees and reiterated that the number of trips is based upon the specific tenant, but stated his opinion with regard to the number of trips is based upon industry standards. The Board Engineer then inquired if the traffic study was based upon the assumption that the railway spur is installed to which Mr. Wichner admitted that a modified traffic impact study would have to take place. Mr. Bond then asked if the rail traffic to the site would be coming through the Union Square intersection as he was concerned that would have a negative impact on traffic. Both the Board Engineer and the Applicant said it was unclear as that is a railroad company issue. Mr. Branch then asked Mr. Wichner some questions regarding the number of truck trips; and

WHEREAS, the Board was satisfied with Mr. Wichner's testimony such that the Board did not have any additional questions or comments; and

WHEREAS, John Mannino, the Applicant's architect, was the fourth witness, who after being sworn and accepted as an architectural expert based upon his C.V., which was marked as Exhibit "A-8," provided testimony on behalf of the Applicant. Mr. Mannino began by marking Exhibits "A-9" and "A-10." The former exhibit was the building rendering for the original building design while the later exhibit is the rendering for the new proposed building. He stated the building is one floor that would have a state of the art fire suppression system and that the building height is customary within the industry. Mr. Mannino

testified that only one exterior, code-compliant sign would be erected. He testified that fire department connections (FDCs) would be installed on the northeast and northwest corners of the building as well as the location on the building where the water enters the building. Mr. Mannino testified that wall-mounted lighting would be installed on the building's exterior, and that lighting would be installed about all pedestrian entrances, in compliance with the Town's ordinances. He testified that the proposed building is designed to meet, or to exceed, the current energy requirements including New Jersey solar energy mandates for which the roof is so designed. Mr. Mannino stated that final interior designs will be based upon the specific tenants' needs. As for noise and odor, he opined that it would be the tenants' obligations to comply with noise and odor ordinances; and

WHEREAS, the Board was satisfied with Mr. Mannino's testimony such that the Board did not have any questions or comments; and

WHEREAS, John Taikina, P.P., the Applicant's professional planner, was offered as the fifth witness, who after being sworn and accepted as an environmental engineer based upon his C.V., which was marked as Exhibit "A-11," provided testimony on behalf of the Applicant. Mr. Taikina was offered in support of the Applicant's variance and design waiver requests. He started by stating that there are two new variances in this application – loading docks facing Howard Street and the building setback from the park being only approximately fifty-seven and nine-tenths feet (57.9'). He opined that both variances are "c(2)" variances which have benefits that outweigh the detriments. Mr. Taikina believes the variances benefit the project and the Town with little detriment. More specifically, he believes that a reduction in traffic is a benefit to the Town. He also believes the rail spur is a benefit to the project because most warehouses do not have a rail spur. He opines that once rail service is introduced additional opportunities on the rail line will develop which will advance the goals of the Town's Master Plan and Redevelopment Plan. From a planning perspective, he believes the variances and design waivers are reasonable because of the hardship which would otherwise be imposed. Mr. Taikina testified with regard to the parking variance. He believes the Town's parking ordinance is very stringent. He views this parking variance as reasonable especially in light of the fact that a parking variance was granted in the prior approval; and

WHEREAS, the Board was satisfied with Mr. Taikina'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 Vice-Chairman then asked the Board if they had any questions. Mr. Branch and Mr. Bond had some questions regarding the volume of train traffic and whether the volume would cause traffic problems at Union Square. Mr. Tipton responded that, based upon his knowledge, he believes that the volume of train traffic will be minimal. Mr. Branch also asked additional questions of Mr. Wichner

about truck traffic on South Main Street to which Mr. Wichner opined that the increase of truck traffic would be minimal, perhaps an average of 1.5 seconds additional delay per vehicle per trip; and

WHEREAS, the Board Vice-Chairman then asked for public comment and received comment from seven individuals, *to wit*, David Morrisette of 5 Fairview Heights; Rita Codirlio of 381 Warren Street; Lee Clark of 98 South Main Street; Keith Kennedy of 898 Hill Street; Randy Piazza, Sr. of 309 Mercer Street; Robert Colontrelle of LMR Disposal in Phillipsburg; and Michael J. Perrucci of Bethlehem, Pennsylvania, who is the Applicant's principal, all of whom provided their positions for and/or against the application; and

WHEREAS, the Board considered all of the preceding;

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. The subject property is located in the Town of Phillipsburg Riverfront Redevelopment Zone, Districts 3 and 5.
2. The Town Council passed Resolution 2021-14 which is incorporated by reference herein.
3. N.J.S. 40:55D-1, *et. seq.*, the "New Jersey Municipal Land Use Law," provides for review and Approval of Preliminary and Final Conventional/Major Site Plans by the Board.
4. The "Town of Phillipsburg's Site Plan Ordinance of 1979" provides for review and Approval of Preliminary and Final Conventional/Major Site Plans by the Board, pursuant to L.O. 510-1, *et. seq.*
5. The Applicant must obtain Preliminary and Final Conventional/ Major Site Plan Approval from the Board before it develops the subject property.
6. On August 25, 2022, the Board granted the Applicant Final Conventional/Major Site Plan Approval and Bulk Variance Approval which was memorialized in Board Resolution No. 2022-12, on September 22, 2022, for the construction of an industrial building of approximately four hundred and twenty thousand square feet (420,000') on the property identified on the Town Tax Map as Block 2102, Lot 2.02, with a street address of 170 Howard Street, Phillipsburg, Warren County, with three hundred and fifty-two (352) passenger car parking spaces, eighty-eight (88) loading docks and thirty-nine (39) spaces for trailer parking and to raze the existing structures which are located on the properties known as 560 and 562 South Main Street and identified on the Town Tax Map as Block 2015, Lots 1 and 3, in order to construct roadway improvements.

7. 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.
8. 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."
9. 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.
10. 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."
11. 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.
12. It has been acknowledged by the Board that temporary waivers of the requirements be granted as to each of the items contained in the Board's Engineer's December 22, 2023 letter.
13. The Board finds that the condition of the property is satisfactory and meets the requirements of the Town of Phillipsburg Ordinances thereby authorizing the granting of permanent waivers as requested by the Applicant.
14. The Board finds that, in all other respects, the condition of the property is satisfactory and meets the requirements of the Town of Phillipsburg Ordinances.
15. The Board finds that the Applicant's Amended Site Plan is consistent with the "Town of Phillipsburg's Site Plan Ordinance of 1979."
16. The Board finds that the Applicant's Amended Site Plan is not inconsistent with the Town's Master Plan.
17. The Board finds that benefits of the Amended Site Plan to the Master Plan and to the Town citizenry outweighs any detriments to the same.
18. The Board finds that the Applicant's Amended Site Plan is consistent with N.J.S. 40:55D-1, *et. seq.*, the "New Jersey Municipal Land Use Law."

NOW THEREFORE, BE IT RESOLVED THAT the Applicant's request for the seven (7) 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. Bond and Seconded by Mr. Brotzman:

ROLL CALL VOTE

Ayes: Mr. Zwicker, Mr. Bond, Mr. Penrose, Mr. Turnbull, Mr. Branch, Mr. Noel, Mr. Zagra and Mr. Brotzman.
Nays: None.
Abstentions: Ms. Paulus.
Recused: Mayor Piazza and Chairman Duffy.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant's request for eleven (11) 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. Brotzman and Seconded by Mr. Penrose:

ROLL CALL VOTE

Ayes: Mr. Zwicker, Mr. Bond, Mr. Penrose, Mr. Turnbull, Mr. Branch, Mr. Noel, Mr. Zagra and Mr. Brotzman.
Nays: None.
Abstentions: Ms. Paulus.
Recused: Mayor Piazza and Chairman Duffy.

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

ROLL CALL VOTE

Ayes: Mr. Zwicker, Mr. Bond, Mr. Penrose, Mr. Turnbull, Mr. Branch, Mr. Noel, Mr. Zagra and Mr. Brotzman.
Nays: None.
Abstentions: Ms. Paulus.
Recused: Mayor Piazza and Chairman Duffy.

AND IT IS FURTHER RESOLVED THAT the Applicant's request for Amended Preliminary and Final Conventional/Major Site Plan approval for the construction of an industrial building of approximately three hundred and twenty-eight thousand two hundred and seventy-seven square feet

(328,277 sq. ft.) on the property identified on the Town Tax Map as Block 2102, Lot 2.02, with a street address of 170 Howard Street, Phillipsburg, Warren County (“subject property”), with two hundred and fifteen (215) passenger car parking spaces, eighty (80) loading docks and twenty-one (21) spaces for trailer parking on the property known as Block 2101, Lot 2.02, located in the Town of Phillipsburg Riverfront Redevelopment Zone, District 5, and to raze the existing structures which are located on the properties known as 560 and 562 South Main Street and identified on the Town Tax Map as Block 2015, Lots 1 and 3, in order construct roadway improvements, is granted subject to the express and unaltered conformation with the following conditions:

1. The Applicant shall be bound to comply, strictly and without deviation, with all comments contained in the Board Engineer’s review letters dated November 17, 2023, and December 22, 2023, as modified at the November 17, 2023 and January 25, 2024 hearings, unless altered by this approval, including any comments contained in subsequent reports. In the event that the Applicant is unable to comply with any of the Board Engineer’s requirements or recommendations, it is understood that it reserves the right to apply to this Board for relief therefrom.

2. The Applicant shall ensure that the building is constructed and erected in strict compliance with the Amended Site Plan with the understanding that any deviation therefrom which is deemed by the Board’s Engineer’s to be a significant deviation from the Plan hereby approved shall require further review and approval by this Board.

3. The Applicant shall apply for, and obtain, approval from all other agencies and governmental bodies which may have concurrent jurisdiction over this project including, but not limited to, the New Jersey Department of Environmental Protection, the United States Environmental Protection Agency, the United States Fish and Wildlife Service, the Town of Phillipsburg Fire Chief, the Town of Phillipsburg Chief of Police, the Warren County Planning Board, the Warren County Soil Conservation District, the Warren County Board of Health, the Phillipsburg Sewer Utility, the Shade Tree Commission of the Town of Phillipsburg, the New Jersey Department of Transportation, 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 bring current all real estate taxes, sewer and water charges pertaining to this site before the commencement of construction.

7. The Applicant shall pay all real estate taxes, sewer and water charges pertaining to this site as they come due.

8. The Applicant shall have an on-site lighting plan which is in compliance with the Town's lighting ordinances.

9. The Applicant shall comply with the New Jersey Stormwater Management Regulations, *to wit*, N.J.A.C. 7:8-1, *et. seq.*

10. The Applicant shall comply with the Town of Phillipsburg's Stormwater Ordinances, *to wit*, L.O. 535-1, *et. seq.*

11. The Applicant shall comply with the Stormwater Management Report prepared by Bohler Engineering, LLC, dated September of 2023, to the extent the same is not inconsistent with New Jersey Stormwater Management Regulations and Phillipsburg's Stormwater Ordinances.

12. The Applicant shall comply with the Stormwater Management Facility Operations & Maintenance Manual, prepared by Bohler Engineering, LLC, dated September of 2023, to the extent the same is not inconsistent with New Jersey Stormwater Management Regulations and Phillipsburg's Stormwater Ordinances.

13. The Applicant shall comply with the Town of Phillipsburg's Soil Implementation and Placement Ordinances, *to wit*, L.O. 520-1, *et. seq.*

14. All necessary and proposed easements must be obtained before construction commences and be shown on the site plat drawing and be approved by the Board's Attorney and the Board's Engineer and must be recorded with the Warren County Clerk with proof of recording provided to the Board.

15. The Applicant shall record a property deed which reflects the environmental remediation that takes on the property with said language in the deed being approved by the Board's attorney and the Board's engineer and must be recorded with the Warren County Clerk with proof of recording provided to the Board prior to the issuance of a Certificate of Occupancy.

16. The Applicant shall not cause any work on the site to occur after dusk and before dawn without the express approval of the Town Council.

17. The Applicant shall not cause any blasting to occur on the site without prior approval from the Board Engineer.

18. The Applicant shall erect a six-foot (6') fence around the entire site prior to demolition and clearance of the site.

19. The Applicant shall indemnify and hold harmless the Town of Phillipsburg from any charges by JCP&L for any costs related to the relocation of power lines.

20. The Applicant shall provide an uninterrupted power supply to the site from JCP&L.

21. The Applicant shall obtain approvals from the New Jersey Department of Environmental Protection, the United States Environmental Protection Agency, the United States Fish and Wildlife Service and/or any other governmental agencies or departments prior to removal of trees and vegetation as the site is a potential habitat for protected species.

22. The Applicant shall erect a silt fence off the property line of the Town owned park which is adjacent to the site.

23. The Applicant shall obtain approval from the Town Council and the New Jersey Department of Environmental Protection prior to proposed construction which disturbs and/or affects the Town owned park which is adjacent to the site as the park is protected by the New Jersey Department of Environmental Protection's Green Acres Program.

24. The Applicant shall obtain approval from the Federal Railroad Administration, the New Jersey Department of Transportation and the owner of the railroad which is adjacent to the site prior to construction which disturbs and/or affects the railroad property.

25. The Applicant shall install "no parking" striping and signage along the entire frontage of the site in accordance with the directions of the Town of Phillipsburg Fire Chief and the Town of Phillipsburg Construction Official.

26. The Applicant shall install a sidewalk along the entire frontage of the site.

27. The Applicant shall provide a guiderail warrant analysis for the Howard Street frontage.

28. The Applicant shall request enforcement of New Jersey Statutes Title 39 enforcement from the Town of Phillipsburg.

29. The Applicant shall erect an eight-foot (8') fence along the length of the loading dock to screen the loading dock from the adjacent property and the Delaware River.

30. The Applicant shall provide turning movement signs throughout the site and the surrounding streets.

31. The Applicant shall provide proof that flood hazard areas have been reviewed and approved by the New Jersey Department of Environmental Protection and shall mark site plans accordingly.

32. The Applicant shall provide approval from the New Jersey Department of Environmental Protection regarding the "fill and cut" within the potential flood hazard areas.

33. The Applicant shall provide proof through hydraulic modeling of sufficient water flow for fire department use prior to occupancy to the satisfaction of the Town of Phillipsburg fire sub-code official and the Town of Phillipsburg Fire Chief.

34. The Applicant shall ensure that the on-site fire hydrants be the responsibility of the property owner and shall not be the responsibility of the Town.

35. The Applicant shall obtain the approval of the Town of Phillipsburg Fire Chief with regard to the number, location, size and color of all fire hydrants on site.

36. The Applicant shall mark the curb line along the entire rear of the proposed building as “no parking/fire lane.”

37. The Applicant shall install fire hydrants at the McKeen Street extension and the Howard Street extension in the event that the Howard Street extension is constructed occupancy to the satisfaction of the Town of Phillipsburg fire sub-code official and the Town of Phillipsburg Fire Chief.

38. The Applicant shall provide environmental clean-up requirements and assessments.

39. The Applicant shall provide proof that the environmental clean-up requirements will not impact the stormwater management.

40. The Applicant shall provide proof of soil testing from the New Jersey Department of Environmental Protection.

41. The Applicant shall obtain an occupation agreement from the owner of the railroad which grants the Applicant permission to cross railroad property in order to install and to maintain the proposed extension of the existing eighteen-inch (18”) sewer and stormwater outfall with said language in the occupation agreement being approved by the Board’s attorney and the Board’s engineer and a fully executed copy of said agreement must be provided to the Board.

42. The Applicant shall provide proof that all pervious pavement complies with the New Jersey Department of Environmental Protection Regulations’ Best Management Practices.

43. The Applicant shall provide proof that storage and application on-site of de-icing materials complies with the New Jersey Department of Environmental Protection Regulations’ Best Management Practices.

44. The Applicant shall provide an overall analysis/report that all its Stormwater Management Plan complies with the New Jersey Department of Environmental Protection Regulations’ Best Management Practices.


45. The Applicant shall provide a traffic impact and circulation verification study upon completion of construction and occupancy of building.

46. The Applicant shall document its compliance with the conditions of this Resolution and shall submit proof of said compliance upon the request of the Board.

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

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Land Use Board on January 25, 2024, was duly adopted at its regular meeting on the 22nd day of February, 2024, by a majority of the aforesaid members orally approving the contents herein on January 25, 2024.

Dated: February 22, 2024



KEITH ZWICKER, Vice-Chairman