

TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION No. 2026-2

**RESOLUTION GRANTING PRELIMINARY MAJOR SITE PLAN,
LOT CONSOLIDATION,
AND BULK VARIANCE APPROVALS IN NO. 26-002**

**SOUTH MAIN LIHTC, LLC – Applicant
5 Powell Lane
Collingswood, New Jersey 08108**

**1116 SOUTH MAIN STREET, LLC – Owner Lots 2, 3, 4 and 5
312 Eisler Lane
Hillsborough, New Jersey 08844**

**JD ZARB, LLC – Owner Lot 7
2052 Highway 35, Suite 203
Wall, New Jersey 07719**

**Block 2806, Lots 2, 3, 4, 5 and 7
South Main Street
Phillipsburg, New Jersey**

Application #2026-002

WHEREAS, South Main LIHTC, LLC (“Applicant”) applied to the Town of Phillipsburg Land Use Board (“Board”) for Subdivision Approval under the “Land Subdivision Ordinance of the Town of Phillipsburg;” Preliminary Major Site Plan Approval under the “Town of Phillipsburg Site Plan Review Ordinance of 1979,” pursuant to N.J.S. 40:55D-51; and Bulk Variance Approval pursuant to N.J.S. 40:55D-70(c), and any and all design exceptions and/or waivers for certain improvements to the real property owned by 1116 South Main Street, LLC (“Owner of Lots 2, 3, 4 and 5”) and by JD Zarb, LLC (“Owner of Lot 7”), identified on the Phillipsburg Tax Map as Block 2806, Lots 2, 3, 4, 5 and 7, without a street address on South Main Street, Phillipsburg, Warren County, New Jersey, located in the Towns’ B-5 Business – South Main Street Zone, consisting of approximately four and one-half acres (4.5 ac.) (“the subject property”) to permit consolidation of Lots 2, 3, 4, 5 and 7, and construction of a four-story residential building, with a maximum height of fifty-four feet (54’), consisting of approximately forty-eight (48) affordable age-restricted housing units, with forty-four (44) being one-bedroom units and four (4) being two-bedroom units, together with parking to include fifty-five (55) parking spaces, traffic circulation, utilities, storm water management facilities and other ancillary site improvements (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 June of 2026, that a public hearing would take place on June 15, 2026, and having satisfied itself that it had jurisdiction over the Application; and

WHEREAS, the Board being satisfied that the Application had been made accessible to the public by both being posted on the Town of Phillipsburg’s website and being physically available for inspection with the Secretary of the Board; and

WHEREAS, after the original submission, supplemental submissions and revisions to the Application, the Applicant appeared before the Board at a regularly-scheduled meeting on May 28, 2026, and was represented by Amanda Curley, Esq., at which time the Applicant requested certain waivers from the Major Site Plan checklist as set forth below, said waivers being summarized in the Board Engineer’s May 21, 2026 review letter, and the Board having determined by unanimous vote of the Board members present that said waivers can be granted temporarily and the Application was determined by the Board to be complete; and

WHEREAS, a public hearing was held on June 15, 2026, where the Applicant, being represented by Katharine A. Coffey, Esq., presented an explanation concerning the Application and summarized the benefits of the project, *to wit*, the consolidation of Lots 2, 3, 4, 5 and 7, and construction of a four-story residential building, with a maximum height of fifty-four feet (54’), consisting of approximately forty-eight (48) affordable age-restricted housing units, with forty-four (44) being one-bedroom units and four (4) being two-bedroom units, together with parking to include fifty-five (55) parking spaces, traffic circulation, utilities, storm water management facilities and other ancillary site improvements; 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 May 28, 2026, remained accurate; and

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

- A. Town of Phillipsburg Ordinance No. 2026-11;
- B. Application Submission Transmittal dated April 23, 2026, from Applicant’s attorney;
- C. Town of Phillipsburg zoning permit application, dated April 23, 2026;
- D. Town of Phillipsburg zoning appeal denial email, dated April 23, 2026;
- E. Town of Phillipsburg “Application for Minor or Conventional Site Plans” for Block 2806, Lots 2, 3, 4, 5 and 7, dated May 18, 2026, consisting of thirteen (13) pages;
- F. Applicant’s Subdivision and Site Plan Waiver Checklist requests, dated April 22, 2026, prepared by Langan Engineering & Environmental Services, LLC;
- G. Site Plan entitled: “Birchwood at South Main Preliminary Site Plan, Block 2806, Lots 2, 3, 4, 5 & 7, Town of Phillipsburg, Warren County, New Jersey,” prepared by Langan Engineering

and Environmental Services, LLC, dated April 22, 2026, and revised on May 18, 2026, consisting of seven (7) sheets;

- H. Applicant's document entitled: "Project Rider, Preliminary Major Site Plan & Lot Consolidation, Town of Phillipsburg Land Use Board, South Main LIHTC, LLC (the "Applicant"), South Main Street, Block 2806, Lots 2, 3, 4, 5, 6 & 7 (the "Property")," consisting of four (4) pages, as revised on May 18, 2026, to eliminate reference to Lot 6 which is not a subject of this applicaiton;
- I. Architectural Plans entitled: "Birchwood at South Main," prepared by Thriven Design, consisting of two (2) sheets, dated April 24, 2026;
- J. Certification from the Phillipsburg Collector of Taxes, dated May 28, 2026, that realty taxes and sewer payments were current through the second quarter of 2026;
- K. Phillipsburg Tax Assessor certified list of property owners within two hundred feet (200') of Tax Map Block 2806, Lots 2, 3, 4, 5, 6 and 7, dated May 19, 2026;
- L. Pohatcong Township Tax Assessor certified list of property owners within two hundred feet (200') of Pohatcong Tax Map Block 38, Lot 1, dated May 4, 2026;
- M. May 14, 2026 letter from Phillipsburg Fire Chief Richard A. Hay, which includes an October 6, 2025 email between himself, the Board Engineer, the Applicant's Engineer and the Town Administrator and additional comments;
- N. Boundary & Topographic Survey prepared by Langan Engineering and Environmental Services, LLC, Thomas J. Reeves, PLS, dated May 22, 2026, and consisting of two pages;
- O. Landowner's Consent Certification from 1116 South Main Street, LLC, dated April 26, 2026; and
- P. Landowner's Consent Certification from JD Zarb, LLC, dated May 27, 2026; and

WHEREAS, the Board has considered the review letter of the Board Engineer dated May 21, 2026, the contents of which the Board adopts and incorporates its finding of fact by reference herein; and

WHEREAS, the Applicant is requesting the following variance from the Town Ordinances: A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit a minimum distance between an existing on-site telecommunications tower and the nearest residential building of approximately one hundred and sixty-nine feet (169') where the required distance is five hundred feet (500') under L.O. 625-90(C)(5); and

WHEREAS, the Applicant is requesting the following permanent design waivers from the Town Ordinances for Preliminary Site Plan approval:

1. A waiver from the requirement that all landscaped areas, fencing and trees over four inches (4") in diameter be shown on the Site Plan as required by L.O. 510-11(C)(3)(e), which is referenced in the Board engineer's May 21, 2026 letter as item 2a;

2. A waiver from the requirement that all existing and proposed signs, utility poles and their size, type, construction and location be shown on the Site Plan as required by L.O. 510-11(C)(3)(f), which is referenced in the Board engineer's May 21, 2026 letter as item 2b;
3. A waiver from the requirement that the location of all buildings, drainage and parking areas within two hundred feet (200') of the proposed development be shown on the Site Plan as required by L.O. 510-11(C)(3)(h), which is referenced in the Board engineer's May 21, 2026 letter as item 2c;
4. A waiver from the requirement that the approximate location and size of all existing and proposed storm drainage facilities be on the Site Plan as required by L.O. 510-11(C)(3)(j), which is referenced in the Board engineer's May 21, 2026 letter as item 2d;
5. A waiver from the requirement of an analysis of the existing utility providers to accept the proposed facility as required by L.O. 510-11(C)(3)(k), which is referenced in the Board engineer's May 21, 2026 letter as item 2e;
6. A waiver from the requirement that estimated average number of automobiles, number and size of trucks and buses that will enter and leave the site daily and during peak hours, and an analysis of the ability of the existing road system to accept traffic be provided as required by L.O. 510-11(C)(3)(m), which is referenced in the Board engineer's May 21, 2026 letter as item 2f;
7. A waiver from the requirement that the location, size and nature of all existing and proposed rights-of-way, easements and other incumbencies and lands to be dedicated to the Town or to Warren County be shown on the Site Plan as required by L.O. 510-11(C)(3)(n), which is referenced in the Board engineer's May 21, 2026 letter as item 2g;
8. A waiver from the requirement that all plans and profiles of streets adjoining the property for five hundred feet (500') in any direction, including driveways and intersecting streets, and an indication of the minimum sight distances be shown on the Site Plan as required by L.O. 510-11(C)(3)(p), which is referenced in the Board engineer's May 21, 2026 letter as item 2h;
9. A waiver from the requirement that the nature and extent of proposed sight lighting be shown on the Site Plan as required by L.O. 510-11(C)(3)(q), which is referenced in the Board engineer's May 21, 2026 letter as item 2i;
10. A waiver from the requirement of development staging and tentative scheduling of construction be provided as required by L.O. 510-11(D)(3)(s); which is referenced in the Board engineer's May 21, 2026 letter as item 2j;
11. A waiver from the Residential Site Improvement Standards (RSIS) requirement of sidewalk installation on site; and
12. A waiver from the Residential Site Improvement Standards (RSIS) requirement of vertical curve design speed with regard to the internal on-site road; and

WHEREAS, on May 28, 2026 at a discussion by the Board on the completeness of the application, the Board's engineer discussed the waivers from the Town's Preliminary Site Plan checklist which was requested by the Applicant and which are referenced in the Board engineer's May 21, 2026 letter and further recommended that the Board grant temporary waivers from the Town's General Completeness Checklist, as outlined in the May 21, 2026 letter, to item 1a; and grant permanent waivers from the Town's Preliminary Site Plan Checklist, as outlined in the May 21, 2026 letter to items 2a through 2i; and

WHEREAS, by unanimous vote on May 28, 2026, the Board granted the temporary waiver and the permanent waivers referenced above, by unanimous voice and the application was deemed complete and reaffirmed the same on June 25, 2026; and

WHEREAS, the Board having considered the letter of the Board Engineer dated May 21, 2026, the contents of which the Board adopts and incorporates its finding of fact by reference herein; and

WHEREAS, the Applicant presented the sworn testimony of the following individuals on June 15, 2026:

1. John Cote, P.E., who is the Applicant's engineer;
2. Mary M. Johannesen, AIA, who is the Applicant's architect; and
3. Sean F. Moronski, PP, AICP, who is the Applicant's professional planner; and

WHEREAS, the following documents were marked as exhibits at the June 15, 2026 hearing and were discussed and testified to by the Applicant's witnesses and attorney. These are now included as part of the record:

1. Exhibit "A-1": Curriculum Vitae of John Cote, P.E.;
2. Exhibit "A-2": Sheet VL-101 of Boundary & Topographic Survey prepared by Langan Engineering and Environmental Services, LLC, Thomas J. Reeves, PLS, dated May 22, 2026;
3. Exhibit "A-3": Sheet CS-101 (page 3) of Site Plan entitled: "Birchwood at South Main Site Plan, Block 2806, Lots 2, 3, 4, 5, 6 & 7, Town of Phillipsburg, Warren County, New Jersey," prepared by Langan Engineering and Environmental Services, LLC, dated April 22, 2026, and last revised on May 18, 2026, consisting of seven (7) sheets;
4. Exhibit "A-4": Sheet CG-101 (page 5) of Site Plan entitled: "Birchwood at South Main Grading Plan, Block 2806, Lots 2, 3, 4, 5, 6 & 7, Town of Phillipsburg, Warren County, New Jersey," prepared by Langan Engineering and Environmental Services, LLC, dated April 22, 2026, and last revised on May 18, 2026, consisting of seven (7) sheets;
5. Exhibit "A-5": Sheet CG-102 (page 6) of Site Plan entitled: "Birchwood at South Main Drainage Plan, Block 2806, Lots 2, 3, 4, 5, 6 & 7, Town of Phillipsburg, Warren County, New Jersey," prepared by Langan Engineering and Environmental Services, LLC, dated April 22, 2026, and last revised on May 18, 2026, consisting of seven (7) sheets;

6. Exhibit "A-6": Sheet CU-101 (page 7) of Site Plan entitled: "Birchwood at South Main Utility Plan, Block 2806, Lots 2, 3, 4, 5, 6 & 7, Town of Phillipsburg, Warren County, New Jersey," prepared by Langan Engineering and Environmental Services, LLC, dated April 22, 2026, and last revised on May 18, 2026, consisting of seven (7) sheets;
7. Exhibit "A-7": Sheet GI-1002 (page 2) of Site Plan entitled: "Birchwood at South Main Project Information, Block 2806, Lots 2, 3, 4, 5, 6 & 7, Town of Phillipsburg, Warren County, New Jersey," prepared by Langan Engineering and Environmental Services, LLC, dated April 22, 2026, and last revised on May 18, 2026, consisting of seven (7) sheets;
8. Exhibit "A-8": May 14, 2026 letter from Phillipsburg Fire Chief Richard A. Hay, which includes an October 6, 2025 email between himself, the Board Engineer, the Applicant's Engineer and the Town Administrator and additional comments;
9. Exhibit "A-9": Architectural Drawings entitled: "Birchwood at South Main," prepared by Thriven Design, consisting of two (2) sheets, dated April 24, 2026;
10. Exhibit "A-10": Architectural Drawings entitled: "Birchwood at South Main," prepared by Thriven Design, consisting of one sheet, dated June 15, 2026;
11. Exhibit "A-11": Curriculum Vitae of Mary M. Johannesen, AIA;
12. Exhibit "A-12": Sheet CS-201 (page 4) of Site Plan entitled: "Birchwood at South Main Road Profiles, Block 2806, Lots 2, 3, 4, 5, 6 & 7, Town of Phillipsburg, Warren County, New Jersey," prepared by Langan Engineering and Environmental Services, LLC, dated April 22, 2026, and last revised on May 18, 2026, consisting of seven (7) sheets; and
13. Exhibit "A-13": Curriculum Vitae of Sean F. Moronski, PP, AICP; and

WHEREAS, on June 15, 2026, the Applicant's first witness was John Cote, P.E., who after being sworn, was accepted upon motion and approved by voice vote as an engineering expert by the Board based upon his education, training, knowledge and experience and his Curriculum Vitae marked as Exhibit "A-1." Mr. Cote testified regarding the proposed designs, alterations, and uses of the property. Mr. Cote began his testimony, by utilizing Sheet VL-101 of Boundary & Topographic Survey prepared by Langan Engineering and Environmental Services, LLC, which was marked as Exhibit "A-2" to demonstrate the site's existing conditions. Mr. Cote then used Sheet CS-101 (page 3) of the Site Plan, which was marked as Exhibit "A-3," to show the proposed conditions on-site including the locations of the building and the parking lot which includes four (4) Americans with Disabilities Act ("ADA") parking spaces and eight (8) electric vehicle charging parking spaces. He testified that the building would consist of four (4) stories and approximately twelve thousand eight hundred and sixty-six square feet (12,866' sq.) footprint. He testified that the building's proposed location is approximately one hundred and sixty-nine feet (169') from the existing telecommunications tower. Mr. Cote acknowledged that a variance is required to locate the

building within this distance of the tower. He stated that, if something were to happen with the tower, the building would be located a sufficient distance so as not to damage the building. He testified with regard to the proposed locations of transformer and the refuse area in relation to vehicular circulation on site. As for the RSIS design waiver from the requirement of a sidewalk in the front of the building, given the steepness of the driveway and the fact that seniors will be occupying the premises, he believes it would be a better idea to install a sidewalk on the southeast corner of the site which will connect to the adjacent Willows of Pohatcong development. Mr. Cote then referenced Exhibit "A-4," which is Sheet CG-101 (page 5) of the Site Plan in testifying with regard to the Grading Plan, wall erection and positioning of the proposed building as it relates to the detention basin and emergency services access. Mr. Cote then referenced Exhibit "A-5" Sheet CG-102 (page 6) of the Site Plan to discuss the Drainage Plan. He testified that the proposed drainage plan will comply with the state and local stormwater management regulations and that issue will be further developed at the time of the application for final site plan approval. Mr. Cote then referenced Exhibit "A-6," Sheet CU-101 (page 7) of the Site Plan, which is the utility plan. He testified regarding the sanitary, water, electric, telephone and gas connections to the site. Mr. Cote then referenced Exhibit "A-7," Sheet GI-002 (page 2) of the Site Plan, noted as the Project Information Plan, to discuss the potential variances required. He started by discussing the rationale for proposing a five foot (5') fence as better for fall protection and more of a fence climbing deterrent. As for the variance of the distance from the telecommunications tower, Mr. Cote testified that the building is proposed to be located as far away from the tower as possible while still allowing proper fire access around the building. Mr. Cote then testified why a parking variance is not required. Thereafter, Ms. Coffey stated that the Applicant would comply with conditions 8, 9 and 14, in the Board Engineer's May 21, 2026 review letter which Mr. Cote confirmed. At this time, Mr. Cote's direct testimony was concluded, but the Board members did make further inquiry of Mr. Cote regarding driveway access to the property which Mr. Cote and the Board Engineer answered to the Board's satisfaction, upon the marking and admission of Exhibit "A-8;" and

WHEREAS, the Board was satisfied with Mr. Cote'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 of substance; and

WHEREAS, after Mr. Cote's testimony, the Applicant offered Mary M. Johannesen, AIA, the Applicant's architect, who after being sworn was accepted upon motion and approved by voice vote as an architectural expert based upon her education, training, knowledge and experience and her Curriculum Vitae marked as Exhibit "A-11." Ms. Johannsen began her testimony by referencing Exhibit "A-9" as architectural sheet A-1, floor plans, and described the overall floor plans. She then referenced Exhibit "A-10," which is the exterior renderings of the proposed building and briefly described the same; and

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

WHEREAS, the Applicant recalled Mr. Cote to address an inquiry from the Board regarding the retaining walls and stormwater management. Mr. Cote used Exhibit "A-3" to respond that a proposed on-site basin should adequately address stormwater run-off issues and not strain the existing Town sewer system, and likely will provide relief to the same. Mr. Cote re-affirmed that the Applicant will comply with all state and local stormwater management requirements. The Board Engineer commented that he was satisfied with the Applicant's testimony on this issue. Then, Mr. Cote offered additional testimony with regard to Exhibit "A-12," Sheet CS-201 (page 2) of the Site Plan regarding road profiles and the *de minimis* exception required from compliance with RSIS standards for the driveway which the Board had some questions about that were satisfactorily answered; and

WHEREAS, the Applicant next offered Sean F. Moronski, PP, AICP, who after being sworn was accepted upon motion and approved by voice vote as a planning expert based upon his education, training, knowledge and experience and his Curriculum Vitae marked as Exhibit "A-13" and provided testimony on behalf of the Applicant. Mr. Moronski began by discussing the need for variance relief regarding distance from the telecommunications tower. In so doing, he utilized Exhibit "A-3." He stated the requested relief is sought as a bulk variance under "c(1)," and potentially under "c(2)," as the property is uniquely shaped. He testified that the building's placement in relation to the tower is appropriate given the design of the roadways and the grading of the site. He stated that construction of affordable, senior housing is inherently beneficial which supports the requested variance relief. He testified that there is minimal detriment to the proposed location. Mr. Moronski testified he believed that the application meets purposes a, g and n of the N.J.S. 40:55D-1, *et. seq.* He stated that the Site Plan, as proposed, is the most effective way to facilitate the development of affordable housing and fulfill the Town's affordable housing obligations. As for the "negative criteria" standard, he testified that there is not substantial detriment to the public good as the tower has been in existence for years and the proposed design of the site will not interfere with the tower's use or impede the site development. Mr. Moronski testified that he does not believe there is any substantial impairment of the Town's zoning ordinance and zone plan for a site which offers both telecommunications and affordable housing uses. As for the fencing, Mr. Moronski opined that the proposed fence height facilitates an efficient and safe development of the site; and

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

WHEREAS, the Applicant recalled Mr. Cote to address an inquiry from the Board regarding snow removal. Mr. Cote referenced Exhibit "A-4" and explained the anticipated removal of snow from the site; and

WHEREAS, the Board was satisfied with Mr. Cote'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 of substance; and

WHEREAS, the Applicant did not offer any additional witnesses, documents or evidence and formally moved all of the exhibits into evidence; and

WHEREAS, the Vice-Chairman opened comment to the public and there no were comments; and

WHEREAS, the Board's engineer and the Board's attorney thereafter provided comments, and made inquiries of the Applicant which the Board considered

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

WHEREAS, the Board considered the application, the expert witness' testimony, the submitted exhibits and the exhibits referenced herein, 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, Board's planner and Board's attorney and collectively made certain findings of fact and drew some conclusions; and

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

1. That the subject property is located in the Town of Phillipsburg B-5 Business – South Main Street zone.
2. That N.J.S. 40:55D-1, *et. seq.*, the “New Jersey Municipal Land Use Law,” provides for review and approval of all development applications including Subdivisions and Preliminary Site Plans.
3. That the “Land Subdivision Ordinance of the Town of Phillipsburg” provides for review and approval of all subdivision applications pursuant to Chapter 555 of the Town of Phillipsburg's Ordinances.
4. That the Applicant must obtain Subdivision Approval from the Board before it develops or alters the subject property.
5. That the “Town of Phillipsburg Site Plan Review Ordinance of 1979” provides for review and approval of all site plan applications pursuant to Chapter 510 of the Town of Phillipsburg's Ordinances.
6. That the Applicant must obtain Preliminary Major Site Plan Approval from the Board before it develops or alters the subject property.
7. That the Board has the authority to grant waivers from the provisions of Chapter 555 of the Town of Phillipsburg's Ordinances, *to wit*, the “Land Subdivision Ordinance of the Town of Phillipsburg” pursuant to N.J.S. 40:55D-51.

8. 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 Site Plan Review Ordinance of 1979" pursuant to N.J.S. 40:55D-51.
9. That 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."
10. That a waiver, or an exemption is an acknowledgment by the Board that conditions of the property are satisfactory and meet the requirements of the Town of Phillipsburg Ordinances.
11. That waivers from the "Land Subdivision Ordinance of the Town of Phillipsburg" requirements be granted as to the item noted above, and contained in the Board's Engineer letter dated May 21, 2026, as more particularly set forth herein this Resolution.
12. 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 Chapter 625 of the "Town of Phillipsburg Zoning Ordinance."
13. 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 Ordinances," as set forth therein pursuant to N.J.S. 40:55D-62, *et. seq.*, and the regulations established thereto.
14. That there are legal standards for relief under N.J.S. 40:55D-70(c). Under N.J.S. 40:55D-70(c)(1), a bulk variance may be granted if the Board finds that because of: (a) by reasons of exceptional narrowness, shallowness or shape of a specific property; or (b) by reason of exceptional topographical conditions or physical features directly affecting a specific piece of property; or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific property or the structures lawfully existing thereon, the strict application of any regulation of the Township's land use ordinances, would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the developer of such property. The aforementioned language describes the "positive" criteria of a "c(1)" variance. Generally, "undue hardship" refers solely to particular physical conditions of the property as described in subsection c(1) of the statute, as opposed to personal hardship, financial or otherwise. *Lang v. Zoning Board of Adjustment*, 160 N.J. 42, 53, 55-66 (1999), although there have been some cases considering financial hardship when closely related to a unique feature

of the property, such as found in *Hawrylo v. Board of Adjustment*, 249 N.J. Super. 568, 581-583 (App. Div. 1991), *Cohen v. Borough of Rumson*, 396 N.J. Super. 608, 618-620 (App. Div. 2007). The hardship standard, however, does not require that the applicant prove that, without the variance, the property would be zoned into inutility. Instead, a Board may grant a variance where the applicant demonstrates that the property's unique characteristics inhibit "the extent" to which the property can be used. *Lang*, 160 N.J. at 55; *Kauffman v. Planning Board of Warren*, 110 N.J. 551 (1988). In either the case of a (c)(1) or c(2) variance, notwithstanding the positive criteria of each section, the applicant must also satisfy the negative criteria of the statute, which provides that no variance may be granted without a showing that such variance or other relief can be granted without substantial detriment to the public good, and without substantially impairing the intent and purpose of the zone plan and the zone ordinance. The phrase "zone plan" as used in N.J.S. 40:55D-70, means the town's "master plan." *Medici v. BPR Co.*, 107 N.J. 1, 4, 21 (1987).

15. That the Applicant has met its burden under N.J.S. 40:55D-70(c)(2) as to the positive criteria that the purpose of the New Jersey Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of deviation from the zoning ordinance requirements would substantially outweigh any detriments because age-restricted affordable housing is inherently beneficial.
16. Positive Criteria: The Board agrees that the relief is appropriate under N.J.S. 40:55D-70(c)(1) because of the configuration of property, for the reasons testified to at the hearing
17. That the Applicant has met its burden under N.J.S. 40:55D-70(c)(2) as to the negative criteria that relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the Town's zone plan and zoning ordinances for the reason testified to at the hearing. *Medici v. BPR, Co.*, 107 N.J. 1 (1987).
18. Negative Criteria: With respect to the negative criteria, the Board finds that, based on the testimony provided by the applicant, and with the imposition of certain conditions, granting the requested relief under either "c(1)" of "c(2)" will not cause substantial detriment to the public good, or substantial impairments of the zone plan for the reasons testified to at the hearing.
19. That Land Use Boards have inherent authority to impose conditions on any approval it grants. *North Plainfield v. Perone*, 54 N.J. Super. 1, 8-9 (App. Div. 1959), *certif. den.*, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. *See Alperin v. Mayor and Tp. Committee of Middletown Tp.*, 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); *Eagle*

Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). Moreover, N.J.S. 40:55D-49(a) authorizes a board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance requirements, and such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Martin Group v. Township of Randolph, 137 N.J. 216, 232-233 (1994). See Urban v. Manasquan Planning Board, 124 N.J. 651, 661 (1991) (explaining that “aesthetics, access, landscaping or safety improvements might all be appropriate conditions for approval of a subdivision with variances” and citing with approval Orloski v. Ship Bottom Planning Board, 226 N.J. Super. 1 (App. Div. 1989) as to the validity of such conditions); Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162 N.J. 418, 438-439 (2000) (explaining that site plan review “typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping” and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties). Further, municipal ordinances and board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See Cox and Koenig, New Jersey Zoning & Land Use Administration (Gann. 2022 ed.), §28-2.2 and §28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the board’s implicit authority versus by virtue of board rule or municipal ordinance). Boards have authority to condition approval on review and approval of changes to the plans by board experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. Super. 193, 205-206 (App. Div. 2011): “The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications” and using such professional consultants to review and evaluate revised plans “as well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application.”

20. That there currently are no additional plans to renovate, alter or otherwise change the existing site.

21. That the Applicant acknowledges that any plans to renovate, alter or otherwise change the existing site cannot take place in the absence of a further application to this Board.
22. That the subject property has been in a state of disrepair and has not been used for many years.
23. That the granting of the Application will improve the property aesthetically, economically and environmentally.
24. That the granting of the Application will not harm the public at all.
25. That the granting of the Application will not adversely affect the adjacent properties and surrounding area.
26. That the granting of the Application is beneficial to the Town as the intended use of the property will provide affordable, age-restricted housing.
27. That the law acknowledges age-restricted, affordable housing is inherently beneficial.
28. That strict enforcement of the Town's zoning standards would result in practical difficulties and/or undue hardship on the Applicant and the property owner.
29. That there currently are no plans to renovate, alter or otherwise change the existing site.
30. That the Applicant acknowledges that any plans to renovate, alter or otherwise change the existing site cannot take place in the absence of a further site plan application to this Board.
31. That the strict application of the Town's Zoning Ordinances would result in peculiar and exceptional practical difficulties and/or create an undue hardship to the owner of the property.
32. That the granting of the Application is not inconsistent with the Town's Master Plan.
33. That the granting of the Application 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.
34. That the granting of the Application is not inconsistent with New Jersey Municipal Land Use Law, N.J.S. 40:55D-1, *et. seq.*
35. That the granting of the Application is consistent with New Jersey Municipal Land Use Law purposes under N.J.S. 40:55D-2.
36. 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 twelve (12) permanent design waivers from the "Town of Phillipsburg Site Plan Review Ordinance of 1979," as set forth above, is hereby **GRANTED**, on Motion of Mr. Penrose and Seconded by Mayor Piazza:

ROLL CALL VOTE

Ayes: Vice-Chairman Zwicker, Mayor Piazza, Mr. Bond, Mr. Branch, Mr. Kennedy, Mr. Penrose and Mr. Turnbull.

Nays: None.

Abstentions: None.

Recused: None.

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

ROLL CALL VOTE

Ayes: Vice-Chairman Zwicker, Mayor Piazza, Mr. Bond, Mr. Branch, Mr. Kennedy, Mr. Penrose and Mr. Turnbull.

Nays: None.

Abstentions: None.

Recused: None.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant's request for Preliminary Major Subdivision Approval is hereby **GRANTED**, on Motion of Mr. Penrose and Seconded by Mr. Bond:

ROLL CALL VOTE

Ayes: Vice-Chairman Zwicker, Mayor Piazza, Mr. Bond, Mr. Branch, Mr. Kennedy, Mr. Penrose and Mr. Turnbull.

Nays: None.

Abstentions: None.

Recused: None.

AND IT IS FURTHER RESOLVED THAT the Applicant's request for Preliminary Major Site Plan Approval, Subdivision Approval, and Bulk Variance Approval for the Block 2806, Lots 2, 3, 4, 5 and 7, without a street address on South Main, Phillipsburg, Warren County, New Jersey, located in the Towns' B-5 Business – South Main Street Zone, consisting of approximately four and one-half acres (4.5 ac.), 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 letter dated May 21, 2026, under "Technical Review," as modified at the June 15, 2026 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 or is unable to reach a reasonable agreement with the Board Engineer, it is understood that it reserves the right to apply to this Board for relief therefrom.
2. The Applicant shall procure, and provide copies to the Board, of all applications, licenses and permits required by all federal, state and municipal agencies.
3. The Applicant shall pay all outstanding fees and deficiencies in the review escrow account and brings current all real estate taxes, sewer and water charges pertaining to this site.
4. The Applicant shall provide plot plans to the Town for approval prior to or contemporaneously with its application for building and zoning permits.
5. The Applicant shall coordinate with the Town of Phillipsburg Fire Chief as to the location of the sprinkler room and access to the sprinkler room.
6. The Applicant shall provide proof of turning and ground clearance to demonstrate that the fire department equipment and other emergency management equipment can access the site and reach the building roof.
7. The Applicant shall provide level grades at the rear of the building for fire department hand ladder access.
8. The Applicant shall install no less than two fire hydrants on-site, at the direction and approval of the Town of Phillipsburg Fire Chief, with one fire hydrant being located near the trash collection room and the parking lot entrance.
9. The FDC connection shall be placed as directed by the Town of Phillipsburg Fire Chief.
10. The Applicant shall provide proof of turning movements to illustrate that sanitation and delivery vehicles can access the site.
11. The Applicant shall plant lawn areas with meadow mix and a mixture of plantings and trees for soil stabilization and habitat development to improve stormwater quality, with the exception of the lawn area proximate to the building to allow for maintenance.

12. The Applicant shall provide a copy of its' development plans for the adjacent property in Pohatcong Township.

13. 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.

14. Subject to the Residential Site Improvement Standards (RSIS) requirement to install sidewalk along the subject property's frontage granted as part of this approval, the Applicant shall install, replace and/or repair all sidewalks, pedestrian improvements and curbing, including the approved pedestrian connection to the adjacent Willows at Pohatcong development, in accordance with Americans with Disabilities Act ("ADA") requirements, as directed by the Town Engineer and/or the Town Code inspector.

15. The Applicant shall be provide consent from the operator of the on-site telecommunications tower to the re-formatting of the cell tower driveway access.

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

17. That the Applicant applies for, and obtains, approval from all other agencies and governmental bodies which may have concurrent jurisdiction over this project including, but not limited to, the Town of Phillipsburg Fire Chief, the Town of Phillipsburg Chief of Police, the Warren County Planning Board, the Warren County Road Department, the Phillipsburg Sewer Utility, Pohatcong Township, Elizabethtown Gas, Aqua New Jersey and Jersey Central Power & Light ("JCP&L").

18. The Applicant shall repair and replace any existing fencing that is to remain on the property which needs repair and/or replacement based upon a review by the Town's Inspection Official.

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

20. The Applicant shall note that all of the conditions of approval contained herein shall be set forth in a deed, declaration, or other recordable instrument for the new lot, which deed must be approved by the Board Engineer and Board attorney prior to recording.

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Land Use Board on June 15, 2026, was duly adopted at its regular meeting on the 23rd day of July, 2026, by a majority of the aforesaid members present.

Dated: July 23, 2026


WILLIAM DUFFY, Chairman