TOWN OF PHILLIPSBURG LAND USE BOARD RESOLUTION NO. 2023-16

RESOLUTION DENYING PRELIMINARY AND FINAL MINOR SITE PLAN APPROVAL, BULK VARIANCES AND USE VARIANCE IN NO. 23-12

DWILLIAMS, LLC – Applicant/Owner
4254 Church Road
Easton, Pennsylvania 18045

Block 1405, Lot 1
154-156 Hudson Street

Application #2023-12

WHEREAS, DWILLIAMS, LLC ("Applicant") applied to the Town of Phillipsburg Land Use Board ("Board"), for Preliminary and Final Minor Site Plan Approval; Bulk Variance Approval pursuant to N.J.S. 40:55D-70(c); Use Variance Approval pursuant to N.J.S. 40:55D-70(d); and any and all design exceptions and/or waivers for certain improvements to the property owned by the Applicant identified on the Town Tax Map as Block 1405, Lot 1, with a street address of 154-156 Hudson Street, Phillipsburg, Warren County, New Jersey, located in the Town's R-50 Residential Zone ("the subject property") for the change of a pre-existing non-conforming use of the existing mixed commercial/residential building to convert the non-residential third floor into a multi-family, three residential apartment units from its current vacant use, (collectively "the Application"); and

WHEREAS, the Board having satisfied itself that proper notice was given to neighboring property owners and others entitled to notice, as well as publication pursuant to both the Town of Phillipsburg Code and to N.J.S. 40:55D-12, on or about October of 2023, and having satisfied itself that it had jurisdiction over the Application; and

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

WHEREAS, Mayor Todd Tersigni, being the Class I member of the Board, recused himself entirely from consideration of this Application; and

WHEREAS, Keith Kennedy, being the Class III member of the Board, recused himself entirely from consideration of this Application; and

WHEREAS, the Applicant appeared before the Board at a regularly-scheduled meeting on August 24, 2023, and was represented by Aileen Brennan, Esq. of Hill Wallack, LLP, at which time the Applicant requested the application be considered by the Board to be a Minor Site Plan application; and the Board having considered the request determined by unanimous vote that the application should be considered a Minor Site Plan; and

WHEREAS, the Applicant appeared before the Board at a regularly-scheduled meeting on August 24, 2023, and was represented by Aileen Brennan, Esq., at which time the Applicant requested certain waivers from the Preliminary and Final Minor Site Plan checklists, said waivers being summarized in the Board Engineer's May 16, 2023 review letter, and the Board having determined by unanimous vote of the Board members present that said waivers can be granted temporarily and the Application was determined by the Board to be complete; and

WHEREAS, a public hearing was held on October 26, 2023, where the Applicant, being represented by Aileen Brennan, Esq., presented a brief explanation concerning the Application and the Applicant's intended use of the subject property and the approvals sought and summarized the benefits of the project on the property known as Block 1405, Lot 1; 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 August 24, 2023, remained accurate; and

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

A. Town of Phillipsburg Zoning Application #ZA-23-0104, dated May 16, 2023;
B. Town of Phillipsburg Zoning Denial of Application, dated May 17, 2023;
C. Town of Phillipsburg – "Application for Minor or Conventional Site Plans" for Block 1405, Lot 1, dated March 27, 2023, which includes a small sized architectural drawing entitled: "New Interior Renovation for 3 Apt Units 154 Hudon St Phillipsburg, NJ," prepared by Steven Considine, Architect, consisting of four (4) pages and dated December 30, 2022; and which also includes an eight (8) page document dated March 2, 2023, from Colonna Consulting, LLC;
D. Certification from the Collector Taxes, dated August 7, 2023, that realty taxes and sewer payments were current;
E. Town of Phillipsburg Checklist for Minor Site Plan, dated March 27, 2023;
F. Variance and Site Plan entitled: "Minor Site Plan of Block 1405, Lot 1, Town of Phillipsburg, Warren County, New Jersey," prepared by Finelli Consulting Engineers, dated March 22, 2023, and consisting of one sheet;
G. Architectural Plans entitled: "New Interior Renovation for 3 Apt Units 154 Hudon St Phillipsburg, NJ," prepared by Steven Considine, Architect, consisting of four (4) sheets and dated December 30, 2022;
H. Letter from Finelli Consulting Engineers dated August 9, 2023;
I. Undated photograph of existing building on site;

J. Unidentified three (3) page sketch of proposed interior of building on site;

K. April 8, 2002 Order of the Superior Court of New Jersey, Warren County at docket no. WRN-L-199-95;

L. Town of Phillipsburg Fire Chief letter dated April 20, 2023;

M. February 15, 2002 letter authored by Gregory Gianforcaro, Esq.; and

N. October 27, 2023 email from Applicant's attorney to the Land Use Board attorney; and

WHEREAS, the Board has considered the review letter of the Board Engineer dated May 16, 2023, the contents of which the Board adopts and incorporates its finding of fact by reference herein; and

WHEREAS, the Applicant is requesting the following variances from the Town Ordinances:

1. A "d(3)" conditional use variance, pursuant to N.J.S. 40:55D-70(d), to permit the third floor of the existing building to be converted into three separate apartment residence in the Town's R-50 Residential Zone where the same is neither a permitted use pursuant to L.O. 625-51, nor a permitted accessory use pursuant to L.O. 625-52, but where it may be permitted as a conditional use pursuant to L.O. 625-53 and L.O. 625-88;
2. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit two (2) two bedroom living units with a floor area of less than one thousand square feet (1000') where the same is prohibited by L.O. 625-88(C);
3. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit more than one dwelling unit per one thousand eight hundred square feet (1800') where the same is prohibited by L.O. 625-88(B);
4. A "c" variance, pursuant to N.J.S. 40:55D-70(c), to permit the exterior fire escape to be located on the side of the structure within the front yard setback of Filmore Street where L.O. 625-88(C) requires the exterior fire escape to be located at the rear or at the side of the structure;
5. A "c" variance, pursuant to N.J.S. 40:55D-70(c), so as not to provide any on-site parking spaces where six (6) parking spaces are required by L.O. 625-32(A), and where a multiple family dwelling conditional use requires conformance with the parking requirements of the Town Ordinances pursuant to L.O. 625-88(D); and

WHEREAS, the Applicant is requesting the following permanent design waiver from the Town Ordinances - a waiver from the landscaping requirements of L.O. 510-5(C)(8); and

WHEREAS, on August 24, 2023, at a hearing before the Board on the completeness of the application, the Applicant's engineer, Bryce D. Good, P.E. and the Board's engineer discussed the waivers from the Town's Site Plan checklists which was requested by the Applicant and which are referenced in the Board engineer's May 16, 2023 letter and further recommended that the Board grant temporary waivers from the Town's Site Plan Checklist, as outlined in the May 16, 2023 letter to all the items 2b, 2c, 2d, 2e and 2f, for purposes of completeness; and

WHEREAS, before the testimony of the Applicant's witnesses on October 26, 2023, the Board's engineer again discussed the waivers from the Town's Site Plan checklist which was requested by the Applicant and which are referenced in the Board engineer's May 16, 2023 letter and the Applicant confirmed that it was requesting that the Board grant a permanent waiver from the Town's Minor Site Plan Checklist only as to item 2d; and

WHEREAS, by unanimous vote on August 24, 2023, the Board granted the temporary waivers referenced above, and reaffirmed the same on October 26, 2023; and

WHEREAS, the Applicant presented the sworn testimony of the following individuals on October 26, 2023:

1. Denise Williams, who is the principal of the Applicant;
2. Bryce D. Good, P.E., who is the Applicant's engineer; and
3. James T. Kyle, P.P., A.I.C.P., who is the Applicant's planner; and

WHEREAS, the following documents were marked as exhibits at the October 26, 2023 hearing and were discussed and testified to by the Applicant's witnesses. These are now included as part of the record:

1. Exhibit "A-1": Curriculum Vitae of Bryce D. Good, P.E.;
2. Exhibit "A-2": Curriculum Vitae of James T. Kyle, P.P., A.I.C.
3. Exhibit "A-3": February 15, 2002 letter authored by Gregory Gianforcaro, Esq.;
4. Exhibit "A-4": Finelli Consulting Engineer's informal traffic study;
5. Exhibit "A-5": Aerial photographs of site;
6. Exhibit "A-6": Town of Phillipsburg Fire Chief letter dated April 20, 2023; and
7. Exhibit "A-7": Email from Applicant's attorney to Board attorney, dated October 27, 2023; and

WHEREAS, the Applicant first offered Denise Williams as a witness who is the sole member of the Applicant, DWilliams, LLC." Debbie Williams was offered as the first witness and testified that she has owned the property since September of 2022. She briefly commented about the past about the current property uses. She said that she also owns a property at 159 S. Main Street since December of 2020 and rents the property as a commercial unit on the ground floor and residential units on the top two floors – which is similar to the current application. She stated that she did not have any problem renting 159 S. Main Street and does not anticipate having difficulty renting the subject property due to the high residential housing demand. She testified that on the third there will be a total of three two-bedroom apartments. She testified that the second floor has three-bedroom units. Upon conclusion of her testimony, the Board attorney asked who owns the subject property and she conceded she is owner of a single member LLC that owns the property and that she does not individually own the property; and

WHEREAS, the Chairman then asked the Board members if they had any questions of Ms. Williams and there were no further questions; and

WHEREAS, the Board was satisfied with Ms. William'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 then offered James T. Kyle, P.P., A.I.C.P., who is the Applicant's professional planner, who, after being sworn, was accepted as a professional planning expert by the Board based upon his education, training, knowledge and experience and his Curriculum Vitae marked as Exhibit "A-2," and provided testimony on behalf of the Applicant. He testified that that request for a third apartment on third floor, as opposed to the existing non-conforming use of two apartments on the third floor makes the application a request for a conditional use variance under "d(3)." He offered Exhibit "A-5" which is an aerial photograph of the subject property. He said that conditional uses for multifamily residences are permitted in the R-50 zone. He opined that the application is consistent with the Superior Court's April 8, 2002 Order that authorizes two residential units on the third floor. Mr. Kyle conceded that a "c" variance is needed as the minimum size of the proposed dwelling units does not conform. He acknowledged that variances for unit size, parking and the number of units on the third floor are "d(3)" conditional use variances because the existing non-conforming uses are allowed. Mr. Kyle testified that application of the R-50 zoning standards to the subject building is difficult. He is of the opinion that a "d(1)" use variance is not necessary because the nature of the existing non-conforming is not being changed. He believes that purposes "a" (promotion of general health, safety and welfare) and "m" (more efficient use of land) under the New Jersy Municipal Land Use Law are met with the application and thus establishing the positive criteria as the proposed use of the property, to wit, three residential units on the third floor is peculiarly suited for this property which has existing two residential units on the third floor. As to the parking variance, Mr. Kyle testified that the subject building formerly was used as a mason lodge and those meetings required much more parking than would be needed under the current application. He testified that providing affordable housing is good for the community's limited housing supply. He said the owner will accept Section 8 tenants. As for the variance regarding the minimum unit size of one thousand square feet (1000'), he believes that the proposed residential units with approximately eight hundred (800') square feet minimum is appropriate. He then stated that if the application is not granted, then the property owner may abandon the project which is not good for the Town. Returning to the parking, Mr. Kyle testified that the majority of the Town's households have zero or one car, and that New Jersey Transit transportation is available in the Town so that the parking demand is minimal which supports the parking variance. As to the negative criteria for the conditional use variance, Mr. Kyle offered opinions that there is no effect on the neighboring properties because there are no exterior renovations proposed to the building and two

apartments already exist on the third floor and that a third unit would require no more than two parking spaces. Mr. Kyle then opined regarding the application's impact on the Town's Master Plan and the Town's zoning ordinances by the requested variances. He testified that the Town's Master Plan goals include: (1) addressing housing density and intensity and increase; and (2) identify obsolete buildings and adaptive re-use of a buildings for residential uses. He conceded, however, that the proposed units will not be age-restrictive and/or handicap accessible because an elevator does not exist and is not planned on the property. Mr. Kyle also stated that the L.O. 625-2 purposes are met. In sum, Mr. Kyle opined that the Town gains more housing with an owner who is willing to accept Section 8 and housing supply in good condition is increased.

WHEREAS, the Chairman then asked the Board members if they had any questions and Mr. Kyle; and

WHEREAS, the Board was satisfied with Mr. Kyle'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 next offered Bryce D. Good, P.E., who, after being sworn, was accepted as an engineering expert by the Board based upon his education, training, knowledge and experience and his Curriculum Vitae marked as Exhibit "A-1," and provided testimony on behalf of the Applicant. Mr. Good started by going through all of the nineteen technical comments in the Board Engineer's May 16, 2023 letter, which the Board has incorporated by reference and adopted herein. Mr. Good said that item #1 was addressed. As to item #2, while Ms. Williams and Mr. Kyle provided adequate testimony regarding the building's use, the Board Engineer said that either the site plan or the architectural plan must include the square footage for of all units in the building, to which Mr. Good clarified that the application applies only to the third floor and no variance relief is sought for the first and second floors, but agreed to provide the dimensions for the entire building. Mr. Good then offered Exhibit "A-4" which is an informal parking study prepared by the Applicant's engineer and opined that the document supports the grounds for the parking variance. However, both the Board Engineer and the Board Chairman questioned the informal study including the fact that it did not appear to address weekend parking. The Board Engineer confirmed that the study considered only legal parking spaces and not handicap parking spaces, other no or limited parking spaces, fire hydrants, etc. Mr. Good conceded that specific parking space measurements were not made for the informal parking study. As to items #3 and #9, Mr. Good stated that the Applicant was not making any changes to the existing exterior lighting proposed to which the Board Engineer stated he would like a lighting study to ensure conformance with the Town's lighting standards and the Applicant agreed to ensure conformance with the standards. As to item #4, Mr. Good testified that the existing commercial trash pick-up is in place and that there exists sufficient space for additional refuse storage from

the proposed third floor units. In response to an inquiry regarding the existing garbage removal, Ms. Williams interjected and confirmed that existing tenants bring the garbage to the curb and that a property manager enforces that. As to item #5, Mr. Good stated that the Applicant will repair sidewalk cracks on the two road frontages to which the Board Engineer said that the Town code official will identify which sidewalks are to be repaired. Item #6 was addressed by Mr. Kyle's testimony. As to item #7, Mr. Good agreed that compliance with sanitary sewer system, and approval by the sanitary sewer engineer, should be a condition of the applications' approval. As to item #8, Mr. Good stated that the Applicant will comply with the Town's COAH official. As to item #10, the Applicant's engineer stated that a waiver of this requirement is requested, to which the Town Engineer said that the Applicant's architect should provide letter of whether the building is "ADA" compliant or whether a formal waiver is needed. As to item #11, Mr. Good agreed that this item should be a condition of approval. As to item #12, Mr. Good testified that the location of roof top mechanicals should be addressed by the architect. As to item #13, Mr. Good stated no exterior renovations are proposed. As to item #14, the Applicant's engineer agreed that code enforcement issues should be a condition of approval. As to item #15, Mr. Good agreed that the Applicant will fully comply with the fire and police requirements. As to item #16, the Applicant agreed that old commercial signage remove is an appropriate condition of approval. As to item #17, Mr. Good believes that there will not be any commercial signs on/in the building, but that the Applicant would comply with the Town's sign ordinances if they were. As to item #18, Mr. Good said that emergency fire gate will be addressed and comply with all fire egress/ingress requirements. As to item #19, the Applicant's engineer says removal of swale would be a problem with water run-off to which the Board Engineer responded that trench grates and drains can be installed with ADA-compliant covers. Mr. Good stated that the existing trench drain will be replaced. After that, the Board attorney confirmed that the only permanent waiver from the minor site plan checklist is the landscaping requirements. The Board Engineer then reminded the Applicant that the temporary waivers which were previously granted need to be addressed; and

WHEREAS, the Chairman then asked the Board members if they had any questions of Mr. Good; and

WHEREAS, the Board was satisfied with Mr. Good'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, but requested that the hearing remain open and be carried to a later date, to which the Board agreed; and

WHEREAS, the meeting was opened to the public and there was commentary from four people, along with one written submission. Mrs. Bury of 154 Filmore Street focused her comments on the inadequate off-site parking with the addition of three apartment units on the third floor. She stated that

exterior bricks are missing, and that snow removal is not done and that weeds are growing through the sidewalks. She also inquired on the number of people allowed to reside per unit. She also commented that garbage is thrown on the sidewalk by existing building occupants. Mr. Lenny Boutros of 159 Hudson Street next commented. He has a market across the street and said that the dearth of parking is a significant problem and that people use his market parking lot because there is no parking. Mr. Lawrence Bury of 154 Filmore Street testified that garbage is an issue and that building occupants simply throw the garbage out the window. Mayor Tersigni commented as a private citizen that the property is a problem with rubbish and weed and stated that all of the preceding public comments are accurate; and

WHEREAS, it was announced that the public hearing on this application would be adjourned until the November 20, 2023 meeting; and

WHEREAS, on October 27, 2023, the Applicant's attorney sent an email communication to the Board's attorney wherein it was requested "that the record established at last night's meeting be closed, and a vote on the application for 154-156 Hudson St Minor Site Plan with Variances be taken at the Board's earliest convenience" which communication the Board identified as Exhibit "A-7" and incorporates here into the record; and

WHEREAS, on November 20, 2023, the Applicant did not offer an oral closing argument, did not submit a written closing argument, and did not formally offer any exhibits into evidence, yet the Board did consider the testimony of the Applicant's witnesses, and upon the advice of the Board's attorney considered the exhibits; and

WHEREAS, Board members, Mr. Penrose and Mr. Brotzman, were absent from the October 26, 2023, but have certified with the Board Secretary that they listened to an audio transcription of the October 26, 2023 hearing, and have filed Certifications attesting to the same, which the Board Secretary possesses, and which the Board hereby incorporates by reference; and

WHEREAS, on November 20, 2023, 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 waiver above-referenced and motion was made by Mr. Bond and seconded by Mr. Brotzman, to grant the permanent waiver as recorded below; and

WHEREAS, the Chairman called for a motion on the "d(3)" conditional use variance above-referenced and a motion was made by Mr. Penrose, and second by Mr. Brotzman, to **DENY** the requested variance as recorded below; and

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

1. That the subject property is located in the Town of Phillipsburg R-50 residential zone.
2. That N.J.S. 40:55D-1, *et. seq.*, the "New Jersey Municipal Land Use Law," provides for review and approval of Minor and Major/Conventional Preliminary and Final Site Plans by the Board.
4. That the Applicant must obtain Preliminary and Final Minor Site Plan Approval from the Board before it develops the subject property.
5. That the Board has the authority to grant waivers from the provisions of Chapter 510 of the Town of Phillipsburg's Ordinances, *to wit*, the "Town of Phillipsburg's Site Plan Ordinance of 1979" pursuant to N.J.S. 40:55D-51.
6. 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.
7. That waivers from the "Town of Phillipsburg's Site Plan Review Ordinance of 1979" requirements be granted as to the three items noted above, and contained in the Board's Engineer letters dated May 16, 2023, as more particularly set forth herein this Resolution.
8. 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."
9. 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.

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

ROLL CALL VOTE

Ayes:	Chairman Duffy, Mr. Bond, Mr. Brotzman, Mr. Penrose and Mr. Turnbull.
Nays:	None.
Abstentions:	None.
Recused:	Mr. Kennedy.

NOW THEREFORE, BE IT FURTHER RESOLVED THAT the Applicant's request for a conditional use variance from the "Town of Phillipsburg Zoning Ordinance," under Chapter 625 of the Town of Phillipsburg's Ordinances, pursuant to N.J.S. 40:55D-70(d)(3), to permit change of a pre-existing non-conforming use of the existing mixed commercial/residential building to convert the non-residential third floor into a multi-family, three residential apartment units from its current vacant use in the Town's R-50 Residential Zone where the same is neither a permitted use pursuant to L.O. 625-51, nor a permitted accessory use pursuant to L.O. 625-52, but where it may be permitted as a conditional use pursuant to L.O. 625-53 and L.O. 625-88as noted above, is hereby **DENIED**, on Motion of Mr. Penrose and Seconded by Mr. Brotzman.

ROLL CALL VOTE

Ayes:	Chairman Duffy, Mr. Bond, Mr. Brotzman, Mr. Penrose and Mr. Turnbull.
Nays:	None.
Abstentions:	None.
Recused:	Mr. Kennedy.

The foregoing Resolution memorializing the action taken by the Town of Phillipsburg Land Use Board on November 20, 2023, was duly adopted at its regular meeting on the 21st day of December, 2023, by a majority of the aforesaid members orally approving the contents herein on November 20, 2023.

Dated: December 21, 2023

WILLIAM DUFFY, Chairman