

**RESOLUTION
TOWNSHIP OF PEQUANNOCK PLANNING BOARD
IN THE MATTER OF WILLIAM C. BOCK, JR.
DECIDED ON SEPTEMBER 19, 2011
MEMORIALIZED ON OCTOBER 17, 2011
MINOR SUBDIVISION APPROVAL AND
ANCILLARY "C" VARIANCE RELIEF**

WHEREAS, William C. Bock, Jr. (hereinafter "Bock" or "Applicant") has filed an application with the Pequannock Township Planning Board, (hereinafter "Planning Board" or "Board"), seeking minor subdivision approval and ancillary "c" variance relief for property known as Block 1202, Lot 9 on the Tax and Assessment Map of the Township of Pequannock and located at 341 Boulevard, Pompton Plains, New Jersey in the R-15 Residential Zone District (hereinafter "R-15 Zone"); and

WHEREAS, a public hearing was held on September 19, 2011, after the Planning Board determined it had jurisdiction; and

WHEREAS, the Applicant was not represented by legal counsel.

NOW, THEREFORE, the Planning Board makes the following findings of fact, based on evidence presented at its public hearing, at which time a record was made.

The application before the Board is a request for minor subdivision approval and ancillary "c" variance relief for property known as Block 1202, Lot 9 on the Tax and Assessment Map of the Township of Pequannock, which premises are located at 341 Boulevard, Pompton Plains, New Jersey 07444 in the R-15 Zone.

Testifying on behalf of the Applicant during the course of the hearing process was William C. Bock, Jr. (hereinafter "Bock") and Paul P. Darmofalski, P.E., P.P., (hereinafter "Darmofalski"), a licensed Professional Planner and Engineer in the State of New Jersey.

The subject site consists of 33,849 square feet of lot area and is presently developed with a two-story single family residence, located in the northern portion of the site, a detached three-car garage, which is located in the southern portion of the site, an in-ground swimming pool, which is also located in the southern portion of the site, as well as a second detached three-car garage located in the northwestern portion of the site behind the single-family residence. There is also a circular driveway that provides access to the site.

The Applicant proposes to subdivide the existing lot into two lots. Proposed Lot 9.01 will consist of 16,749.61 square feet of lot area while proposed Lot 9.02 will consist of 17,099.42 square feet of lot area. In regard to the creation of proposed lot 9.02, the Applicant proposes to remove various improvements/structures from the southern portion of existing Lot 9 including, but not limited to, the detached three-car garage, the in-ground swimming pool and associated improvements, asphalt driveways and the septic system disposal area. In regard to the creation of proposed Lot 9.01, the Applicant proposes to remove various improvements and structures from the northern portion of existing Lot 9 including, but not limited to, a detached three-car garage, asphalt driveways, a frame deck and a covered concrete patio. The existing curb cuts will be removed and two new curb cuts will be constructed to accommodate the new driveways for proposed lots 9.01 and 9.02 respectively.

Darmofalski testified that each residence would be serviced by new underground utilities. There would also be new septic systems installed in the front yard of each residence. The Pequannock Township Health Department issued a memo dated September 14, 2011 confirming that the proposed lots will be able to support on-site wastewater disposal systems that will be in compliance with current septic regulations.

Seepage pits will also be installed for stormwater management purposes. Darmofalski also confirmed that there would be adequate distance between the seepage pits and the septic areas.

The proposed minor subdivision requires ancillary "c" variance relief. Darmofalski testified in support of granting the "c" variance relief as required under this application. In regard to proposed Lot 9.01, the Applicant requires variance relief in connection with lot width and lot frontage where 76.87 feet and 76.35 feet is provided and the ordinance requires a lot width and lot frontage of 100 feet. In regard to the side yard setback, the Applicant requires "c" variance relief for a side yard setback of 10 feet on one side and 20.23 feet in the aggregate, whereas the minimum side yard setback as required by ordinance is 15 feet on one side and 35 feet in the aggregate. The Applicant also requires "c" variance relief in regard to building coverage where 15.82% is proposed and 15% maximum is allowed.

In regard to proposed Lot 9.02, the Applicant similarly needs ancillary "c" variance relief in regard to lot width and lot frontage where 78.03 feet and 76.35 feet are proposed and 100 feet for both lot width and lot frontage is required. The Applicant also required a side yard setback variance but only with respect to the aggregate side yard setback being provided at 34.3 feet, whereas the side yard setback requires a minimum setback of 35 feet in the aggregate.

In regard to the variances, Darmofalski provided planning testimony. Darmofalski stated that the proposed lot frontage and lot width are similar to many other properties existing in the area. Darmofalski produced an exhibit titled "Proposed Subdivision Line Overlay 2007 Aerial & Tax Map Lines". Darmofalski reviewed with the Board the various lot frontages and lot widths as depicted on the aforesaid aerial map.

Darmofalski and Bock indicated in regard to proposed Lot 9.02 which as proposed required a side yard setback variance for the combined side yard setback total where 35 feet is required and 34.3 feet is proposed that they would be agreeable to eliminating this variance with the removal of the proposed bay window on the southern side of the proposed new single family residence as recommended by the Board Planner. The Board Planner agreed that the new combined side yard setback would be 36 feet, which would comply with the ordinance requirements and thus, the side yard setback variance on proposed lot 9.02 would be eliminated. Darmofalski also represented that the new house would be set back approximately 85 feet from the property line.

Darmofalski represented that the Applicant was entitled to "c" variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1) by reason of the exceptional narrowness, shallowness or shape of a specific piece of property. In this instance, Darmofalski stated that the lots as proposed are narrow but extremely deep. In addition, he represented that "c-1" variance relief could be granted due to exceptional situations uniquely affecting a specific piece of property or the structures lawfully existing thereon. Darmofalski testified that the existence of the residence which is an approximate 107 year old colonial home should be preserved in its present state and thus was a reason to grant the variance relief.

Darmofalski reviewed the purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2, and its subparts, and found that the following sections would be satisfied by granting "c" variance relief including:

- a) promoting safety;
- c) providing adequate light, air and open space;

- d) the proposed development would not conflict with the development and general welfare of neighboring municipalities;
- e) the granting of the application would promote the establishment of appropriate population densities; and
- i) the granting of the application would promote a desirable visual environment.

Darmofalski also stated that under c2, the Applicant was entitled to ancillary "c" variance relief because the purposes of the act would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment. He further found that the variances could be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance. He arrived at these conclusions based upon the purposes of the Municipal Land Use Law being advanced; the approval of this application would result in the removal of an existing nonconformity; and the ability to preserve a residential dwelling in excess of 100 years old. Furthermore, he concluded that the approval of this application would not jeopardize or harm the neighborhood in any way.

NOW, THEREFORE, the Planning Board hereby makes the following conclusions of law, based upon the foregoing findings of fact.

The application before the Board is a request for minor subdivision approval and ancillary "c" variance relief for property known and designated as Tax Block 1202 Lot 9 as shown on the Tax and Assessment Map of the Township of Pequannock and located at 341 Boulevard, Pompton Plains, New Jersey in the R-15 Zone.

The Applicant proposes to subdivide an existing 33, 849 square foot lot presently developed with a two-story single family residence and other improvements in order to create two lots with proposed lot 9.01 having 16,749.61 square feet and proposed Lot 9.02 having 17,099.42 square feet. To create lot 9.02, the Applicant proposes to remove the following improvements/structures from the southern portion of existing lot 9, including but not limited to a detached three-car garage; the in-ground swimming pool and associated improvements; asphalt driveways and the septic system disposal area. In addition, in order to create lot 9.01, the Applicant proposes to remove the following improvements/structures from the northern portion of existing lot 9 including, but not limited to, a detached three-car garage, asphalt driveways, framed deck and covered concrete patio. The existing curb cuts will be removed and two new curb cuts constructed in order to accommodate the new driveways for proposed lots 9.01 and 9.02 respectively.

The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the applicant may also supply evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that

property. Additionally, under the c(2) criteria, the applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or (c) variance relief. Finally, an applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the applicant to establish these criteria.

The proposed minor subdivision requires ancillary "c" variance relief. In regard to proposed Lot 9.01, the Applicant requires variance relief in connection with lot width and lot frontage where 76.87 feet and 76.35 feet is provided and the ordinance requires a lot width and lot frontage of 100 feet. In regard to the side yard setback, the Applicant requires "c" variance relief for a side yard setback of 10 feet on one side and 20.23 feet in the aggregate whereas the minimum side yard setback is 15 feet on one side and 35 feet in the aggregate. The Applicant also requires "c" variance relief in regard to building coverage where 15.82% is proposed and 15% maximum is allowed.

In regard to proposed Lot 9.02, the Applicant similarly needs ancillary "c" variance relief in regard to lot width and lot frontage where 78.03 feet and 76.35 feet are proposed and 100 feet for both lot width and lot frontage is required. The Applicant

also required a side yard setback variance but only with respect to the aggregate side yard setback being provided at 34.3 feet, whereas the side yard setback requires a minimum setback of 35 feet in the aggregate.

In regard to proposed Lot 9.02, which as proposed required a side yard setback variance for the combined side yard setback total where 35 feet is required and 34.3 feet is proposed, the Applicant is agreeable to eliminating this variance with the removal of the proposed bay window on the southern side of the proposed new single family residence as recommended by the Board Planner. The Board Planner agreed that the new combined side yard setback would be 36 feet, which would comply with the ordinance requirements and thus, the side yard setback variance on proposed lot 9.02 will be eliminated.

The Board has examined the request for variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70(c)(1) and the Board concludes that the Applicant is entitled to all of the variance relief requested under "c(1)" by reason of the exceptional narrowness, shallowness or shape of a specific piece of property which, in this case, would be narrow but extremely deep lots. In addition, the Board finds that "c(1)" variance relief may be granted by reason of an extraordinary and exceptional situation uniquely effecting a specific piece of property where the structures are lawfully existing thereon which, in this instance, includes the existing approximate 100 year old residence currently located on the property.

The Board also reviewed the granting of ancillary "c" variance relief under the "c(2) analysis. In Kaufman v. Planning Bd. for Warren Tp. 110 N.J. 551, 563 (1988) the New Jersey Supreme Court held:

"By definition, then, no c(2) variance should be granted when merely the purposes of the owner will be advanced. The grant

of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of a c(2) case, then, will be not on the characteristics of the land that, in light of current zoning requirements, create a hardship on the owner warranting a relaxation of standards, but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.”

The Board reviewed this application under the “c(2)” criteria and determines that the purposes of the Municipal Land Use Law are advanced by approval of this application pursuant to N.J.S.A. 40:55D-2 and its subparts: a) “public safety”; c) “light, air and open space; d), “no conflict with the development and general welfare of neighboring municipalities”; e), “promoting the establishment of appropriate population densities; i), “promoting a desirable visual environment”. The Board finds that the proposed subdivision would have no negative impact on the neighborhood and no negative impact on the public good. The Board accepts the testimony of the Applicant’s Planner that as to the request for lot frontage and lot width variances, that granting the relief would be in keeping with the character of the developed area because the proposed lot width and frontage are similar to many other existing lots in the area. As to the side yard setback variances, they may be granted because the lots, although they are narrow, they have more than adequate lot depth. The overall lot area for each lot exceeds the minimum lot size in the R-15 Zone. Thus, the side yard setback deficiencies are compensated for based upon the overall size of the proposed lots. The Board also concludes that the variance for building coverage where a maximum of 15% is allowed and 15.82% is provided in Lot 9.01 is a very deminimis variance of less than 1% and may be granted.

As a result, the Board concludes that the granting of minor subdivision approval and ancillary “c” variance relief as set forth herein may be granted under the “c(2)”

criteria because it will not be substantially detrimental to the public good and further, the approval will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The Board also concludes that the benefits of the approval would outweigh any conceivable negative detriment. Under these circumstances, it is appropriate for the Board to grant ancillary "c" variance relief. The Board also concludes that under the "c(2)" analysis the positive and negative criteria were met by the Applicant and the granting of "c" variance relief as set forth herein as appropriate.

Upon consideration of the plans, testimony and application, the Board determines that the proposed minor subdivision plan approval has met the minimum requirements of the Municipal Land Use Law, case law and Township ordinances to a sufficient degree so as to enable the Board to grant the relief being requested. The Board further finds that the granting of this application will not adversely impact or impair the use and enjoyment of adjacent properties.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Township of Pequannock that the application of William C. Bock, Jr. for premises commonly known and designated as Tax Block 1202, Lot 9 on the Tax and Assessment Map of the Township of Pequannock, located at 341 Boulevard, Pompton Plains, New Jersey in the R-15 Zone requesting minor subdivision approval and ancillary "c" variance relief is determined as follows:

1. Minor subdivision approval is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-47 as well as the land development ordinances of the Township of Pequannock.
2. Ancillary "c" variance relief is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70(c)(1) and (2) as well

as the land development ordinances of the Township of Pequannock in regard to proposed lot 9.01 regarding lot width and lot frontage where 100 feet is required and 76.87 feet and 76.35 feet are proposed; and in regard to side yard setback where a 15 feet minimum side yard setback on one side and 35 feet side yard setback is required in the aggregate and 10 feet on one side and 20.23 feet in the aggregate is proposed, as well as for building coverage where 15% maximum is allowed and 15.82% is proposed. In regard to proposed lot 9.02, for lot width and lot frontage where 78.3 feet and 76.35 feet is proposed and 100 feet minimum lot width and frontage is required.

IT IS FURTHER RESOLVED that the above land use relief is granted subject to the following terms and conditions:

1. The subdivision of this parcel shall be implemented in accordance with the proposed site and subdivision plans prepared by Darmofalski Engineering Associates, Inc. dated July 14, 2011 and any subsequent revisions thereto as directed by the Planning Board or the Board's professionals.
2. The Applicant represents that all of his representations and stipulations made by him or on his behalf to the Township of Pequannock Planning Board are true and accurate, and acknowledges that the Planning Board specifically relied upon said stipulations in the Board's granting of approval. If said

representations and stipulations are false, this approval is subject to revocation.

3. This approval is granted strictly in accordance with any recommendations set forth on the record by the Planning Board at the time of the public hearing on September 19, 2011.
4. The Deed recorded memorializing the minor subdivision shall specifically refer to this Resolution and shall be subject to the review and approval of the Board Engineer and Board Attorney. The Applicant shall record the Deed within 190 days of the memorializing Resolution being adopted. Failure to do so shall render the approval null and void.
5. The Applicant shall comply with all terms and conditions set forth in the Board Planner's review report dated September 16, 2011, to the satisfaction of the Board Planner.
6. The granting of this application is subject to and conditioned upon the Township of Pequannock Tax Assessor assigning appropriate lot numbers in connection with this approval.
7. The granting of this application is subject to and conditioned upon Morris County Soil Conservation District approval, if required.
8. The granting of this application is subject to and conditioned upon New Jersey Department of Environmental Protection (NJDEP) approval, if required.

9. The granting of this application is subject to and conditioned upon Morris County Planning Board approval, if required.
10. The granting of this application is subject to and conditioned upon the Township of Pequannock Health Department approval of the septic systems, if required.
11. Payment of all fees, costs and escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
12. Certificate that taxes are paid current to date of approval.
13. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Pequannock, County of Morris, State of New Jersey or any other jurisdiction.

The undersigned secretary certifies the within Resolution was adopted by this Planning Board on September 19, 2011 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on October 17, 2011.



Roger Imfeld, Board Secretary

In favor:

Against:

Abstained:

Board Members Eligible to Vote: