

**RESOLUTION
TOWNSHIP OF PEQUANNOCK
PLANNING BOARD
IN THE MATTER OF MANIPINAL CORP. d/b/a KING'S KID DELI
DECIDED ON OCTOBER 17, 2011
MEMORIALIZED ON NOVEMBER 21, 2011
MINOR SITE PLAN APPROVAL**

WHEREAS, Manipinal Corp., d/b/a King's Kid Deli ("hereinafter "Applicant" or "King's Kid") has made application to the Township of Pequannock Planning Board, (hereinafter "Planning Board"), for minor site plan approval for property known and designated as Block 4011, Lots 3 & 4, on the Tax and Assessment Map of the Township of Pequannock (hereinafter "Township"), which premises are located at 235 Newark-Pompton Turnpike, Pompton Plains, New Jersey and located in the C-1 Community Business Zone District (hereinafter "C-1 Zone"); and

WHEREAS, a public hearing was held on October 17, 2011 after the Board determined it had jurisdiction; and

WHEREAS, the Applicant was represented by Frederick Roughgarden, Esq.

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 site plan approval for property known as Block 4011, Lots 3 & 4 on the Tax and Assessment Map of the Township of Pequannock and located at 235 Newark-Pompton Turnpike, Pompton Plains, New Jersey, which site is located in the C-1 Zone.

Testifying in regard to this application was James P. Cutillo, a licensed professional architect in the State of New Jersey (hereinafter "Cutillo"). The Applicant seeks minor site plan approval in order to install tables for additional seating at an established mixed use

delicatessen and multi-family residential building as well as to provide additional on-site parking. The site is located in the C-1 Zone. The existing retail use is permitted and the apartments above the delicatessen are a permitted conditional use. The proposed ancillary restaurant use is permitted as a conditional use as well. No variance relief is required from the conditional use regulations.

The subject site is a 17,578 square foot parcel containing a two-story mixed use building with a deli on the first floor and four (4) two bedroom units on the second floor. Parking is provided north and northwest of the building. The Applicant proposes to modify the interior of the existing deli in order to add two (2) tables with four (4) seats each and one (1) table with two (2) seats for a total of ten (10) new seats. The existing parking lot to the northwest of the existing building will be modified to add additional parking. The overall site requires a total of twenty-five (25) off-street parking spaces. The Applicant proposes twenty-nine (29) off-street parking spaces.

Cutillo testified that the Applicant was going to repave the entire parking lot. The Applicant and the Board engaged in a discussion in regard to the location of a parallel handicapped parking space along the northern property line. After extensive discussion, the Applicant agreed to eliminate the parallel handicapped parking space along the northern property line and to relocate the handicapped space so that parking spaces 22 and 23 would be reconfigured in order to provide 2 handicapped parking spaces at that location. Therefore, the Applicant would have twenty-eight (28) parking spaces which exceeds the minimum number of parking spaces required in regard to this application, which would be twenty-five (25) parking spaces.

The meeting was opened up to members of the public and there were no members of the public present expressing an interest in this application.

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

The Application before the Board is a request for minor site plan approval for property designated as Block 4011, Lots 3 & 4 on the Tax and Assessment Map of the Township of Pequannock and located at 235 Newark-Pompton Turnpike, Pompton Plains, New Jersey, which site is located in the C-1 Zone.

The Board determines that the nature of the application is to seek minor site plan approval in order to permit the Applicant to modify the interior of the existing delicatessen in order to add two (2) tables with four (4) seats each and one (1) table with two (2) seats for a new total of ten (10) additional seats. The existing parking lot to the northwest of the existing building will be modified to add additional parking.

The Board understands that the overall site requires twenty-five (25) off-street parking spaces. The Applicant proposes twenty-eight (28) off-street parking spaces inclusive of a modification to the plan to eliminate the parallel handicapped parking space along the northern property line and to reconfigure parking spaces 22 and 23 in order to provide two (2) handicapped accessible parking spaces. Thus, the Board concludes that the Applicant, by providing twenty-eight (28) on-site parking spaces inclusive of two (2) handicapped accessible parking spaces exceeds the parking requirements for the proposed utilization of the site in the C-1 Zone. And, thus, no variance relief is required for the number of on-site parking spaces.

In addition, the proposed seating in the delicatessen, will not result in any new variance conditions. The Board also understands that the Applicant is going to repave the entire parking lot.

Upon consideration of the plans, testimony and application, the Board determines that the proposed minor site plan application 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 determines that the proposed continued use of the premises along with the addition of two (2) tables with four (4) seats each and one (1) table with two (2) seats for a new total of ten (10) additional seats in the delicatessen is a permitted use in the C-1 Zone and that on-site parking is sufficient for the proposed use. The Board further finds that the granting of this application will not adversely impact or impair the use or enjoyment of adjacent properties.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Township of Pequannock that the Application of Manipinal Corp. d/b/a King's Kid Deli for premises known and designated as Block 4011, Lots 3 and 4, on the Tax and Assessment Map of the Township of Pequannock, and located at 235 Newark-Pompton Turnpike, Pompton Plains, New Jersey in the C-1 Zone and requesting minor site plan approval, is determined as follows:

1. Minor Site Plan approval is hereby granted in order to permit the Applicant to add two (2) tables with four (4) seats each and one (1) table with two (2) seats for a new total of ten (10) additional seats within the delicatessen as well as to repave and expand the parking area to include a total of twenty-eight

(28) parking spaces of which two (2) parking spaces will be handicapped accessible.

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

1. The development of this parcel shall be implemented in accordance with the plans submitted and approved, which plans were prepared by James P. Cutillo, Architect, dated May 31, 2011 and consisting of 2 sheets and as further modified in accordance with the directions of the Planning Board and/or the Board's professionals during the course of the hearing process.
2. The Applicant represents that all of its representations and stipulations made either by it or on its behalf to the Township of Pequannock Planning Board are true and accurate, and acknowledges that the Planning Board specifically relied upon the Applicant's stipulations and the Board's granting of this approval. If the 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 October 17, 2011.
4. The granting of this Application is subject to and conditioned upon the Applicant submitting a revised site plan confirming all

changes to be made to the site plan as directed by the Planning Board and as agreed to by the Applicant during the hearing process.

5. The granting of this Application is subject to and conditioned upon the Applicant complying with all terms and conditions of the Board Planner's review report dated October 12, 2011.
6. All terms and conditions of the Board's prior approvals remain in full force and effect except as modified by this approval.
7. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within 20 days of said request of the Board's secretary.
8. Certificate that taxes are paid current to date of approval.
9. 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 October 17, 2011 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on November 21, 2011.



Roger Imfeld, Board Secretary

In favor:

Against:

Abstained:

Board Members Eligible to Vote:

458868

**RESOLUTION
TOWNSHIP OF PEQUANNOCK PLANNING BOARD
IN THE MATTER OF
PEQUANNOCK SENIOR HOUSING CORP.
(HEARLE VILLAGE SENIOR HOUSING)
DECIDED ON OCTOBER 17, 2011
MEMORIALIZED ON NOVEMBER 21, 2011
PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH ANCILLARY C VARIANCE RELIEF**

WHEREAS, Pequannock Senior Housing Corp. (Hearle Village Senior Housing) (“hereinafter “Applicant” or “Hearle Village”) has filed an application with the Pequannock Township Planning Board, (hereinafter “Planning Board” or “Board”), seeking preliminary and final site plan approval and ancillary “c” variance relief in regard to property located at 101 Boulevard, Pequannock, New Jersey and known and designated as Block 3506, Lot 4, Block 3505, Lots 7 and 8, and Block 3902, Lot 11 on the Tax and Assessment Map of the Township of Pequannock (hereinafter “Township”) which premises are located in the R-15 Residential District, (hereinafter “R-15 Zone”) as well as within the Senior Citizen Housing Overlay Zone of the Township; and

WHEREAS, a public hearing was held on October 17, 2011 after the Planning Board determined it had jurisdiction; and

WHEREAS, the Applicant was represented by Frank Scangarella, Esq. (hereinafter “Scangarella”).

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 preliminary and final site plan approval and ancillary “c” variance relief in regard to property known and designated as Block 3506, Lot 4, Block 3505, Lots 7 and 8, and Block 3902, Lot 11 as designated on the Tax and

Assessment Map of the Township of Pequannock, which premises are located at 101 Boulevard, Pequannock, New Jersey in the R-15 Zone.

Submitted in support of the application were the following documents:

1. Completed Pequannock Township Application of Site Plan, signed and dated July 29, 2011
2. Completed Pequannock Township Application for Variance, signed and dated July 29, 2011
3. Proposed Site Development Plan, consisting of 15 sheets, prepared by Paul P. Darmofalski, PE, dated July 25, 2011
4. Fence Plan, consisting of 1 sheet, prepared by William M. Moore, Licensed Landscape Architect, dated September 19, 2011.
5. Architectural Plan for Existing Community Center, consisting of 2 sheets, prepared by James P. Cutillo, RA dated August 30, 2010 with revisions through June 13, 2011.
6. Architectural Plan for New Buildings – North End Project, consisting of 3 sheets, prepared by James P. Cutillo, RA dated August 5, 2010.
7. Architectural Plan for New Buildings – South End, consisting of 3 sheets, prepared by James P. Cutillo, RA dated November 3, 2010.
8. Planning and Variance Report, prepared by Kenneth Ochab, AICP, PP, dated September 16, 2011.

The Board also considered the following reports and or memoranda in regard to this application:

- a. Memorandum dated October 16, 2011 from Jill A. Hartmann, P.P., A.I.C.P., Planner to the Pequannock Township Planning Board.

- b. Memorandum dated September 19, 2011 from the Pequannock Township Health Department.
- c. Memorandum dated September 23, 2011 from the Pequannock Township Police Traffic Bureau.
- d. Memorandum dated October 12, 2011 from Thomas Newman, P.E., Chairman, Pequannock Township Environmental Commission.
- e. Memorandum dated October 17, 2011 from David C. Battaglia, P.E., CME, CFM, Township Engineer to the Pequannock Township Planning Board.

The Applicant seeks preliminary and final major site plan approval with ancillary "c" variance relief in order to construct thirty-three (33) new senior citizen housing units to an existing 112 unit senior citizen residential complex as well as to provide additional improvements throughout the existing development. The subject site is located in the R-15 Residential District and is within the Senior Citizen Housing Overlay Zone of the Township. The subject site is commonly known as Hearle Village and the site is approximately 10.06 acres in size.

The Applicant's attorney, Frank Scangarella, Esq., informed the Board that in 1978, 100 units were constructed on this site and in 1996 there were an additional 12 units constructed. All of the units are low and moderate income senior citizen units. As to the breakdown of the proposed 33 new dwelling units, 11 of the units will be on the north portion of the project, 22 of the units will be on the south portion of the project, along with the reconstruction and expansion of the community room.

Testifying on behalf of the Applicant was Paul P. Darmofalski, P.E., P.P., a licensed professional engineer and planner in the State of New Jersey (hereinafter "Darmofalski"). However, in this matter, Darmofalski only testified as an engineer. Darmofalski represented that the application was separated into 3 phases because they were really 3 different,

independent projects. He testified that there was a need in Pequannock Township for low and moderate income housing and senior housing. Thus, the Applicant seeks approval for 33 additional dwelling units. It is anticipated that the first phase of development will be the north section, which is closest to Pompton Plains. Eleven one-story residential units will be constructed on this site, containing their own washers and dryers and their own self-contained air conditioning/heating units. The breakdown of units consists of 10 one bedroom units and 1 two bedroom unit. This first phase, which is called Phase 1B will have an additional 32 parking spaces, all underground utilities and an underground detention basin.

Phase 1A involves the expansion and upgrading of the community social center. The community social center will be upgraded. It will contain a recreation room, laundry room, renovated office space, multi-purpose room, recycling area and 5 added parking spaces. It is the Applicant's intention to land bank 22 parking spaces because the Applicant does not believe the additional parking spaces are required at this time, but may be needed at some point in time in the future and thus the parking would be available for future use.

Phase 2 is identified as the southern project which is located on a piece of property with 100 feet of frontage on the Boulevard with 22 units, located in two separate buildings. There will be an additional 17 parking spaces in that area. Darmofalski represented that the site is flat and in a non-flood area. Darmofalski testified that the allowable density is 20 dwelling units per acre and that the Applicant is significantly below that by providing a density of 11.63 dwelling units per acre. The site will be serviced by municipal sewer and water. Furthermore, as to the phasing of construction, Darmofalski testified that it is the Applicant's intention to first construct the community building. As to the southern portion of the project, Darmofalski stated that the 22 new units would be constructed in 2 buildings.

Darmofalski represented that there is ample sewer capacity available for the proposed project.

In regard to stormwater issues, Darmofalski stated that the stormwater calculations include the future development of land banked parking spaces by taking into consideration the additional impervious surface for the additional parking. He also represented that the water from the site will discharge to the county stormwater system located in the Boulevard.

Darmofalski stated that there would be no basements for the units because the dwelling units would be constructed as slab on grade.

Darmofalski represented that the Applicant agreed with the recommendations of the Pequannock Township Police Department to install a 6-foot wide striped crosswalk across the proposed parking lot connecting the existing complex with the proposed development. The Applicant will also install an unsignalized pedestrian crosswalk sign at this location.

Darmofalski also reviewed with the Board the contents of a memorandum from the Pequannock Township Environmental Commission and indicated that as to the Environmental Commissions request that the Applicant consider using pervious pavers for the parking and drive areas, that the Applicant did not believe this was a good idea and would not be able to comply with that recommendation.

Next testifying on behalf of the Applicant was James P. Cutillo, a licensed professional architect in the State of New Jersey (hereinafter "Cutillo"). Cutillo testified that in the north area there would be constructed a one-story brick building with 11 dwelling units located therein. This building will be identical in nature to the existing floor plans although the Applicant was adding larger mechanical rooms.

Next turning to the social center, Cutillo outlined proposed improvements. Cutillo testified in regard to the improvements to the social center including, but not limited to, a new conference-multimedia room, enlarging the recreation/all purpose room, a new kitchen area, a new laundry room, new workshop/storage room, new mechanical room, and new recycling room. Cutillo also testified that the Applicant was not changing access around the building.

As to the southern portion of the project, Cutillo represented that the Applicant was providing 22 new dwelling units. The dwelling units would be located in a two-story building. The first floor would contain 14 dwelling units and the second floor would contain 8 dwelling units. Cutillo also stated that all walkways were roofed over and protected from the elements. There would be one centrally located elevator within the building. The stairs would be on the exterior. Cutillo also testified in regard to building height and indicated that the height of the building would be 32 feet, 6 inches from grade to the ridgeline. He also reviewed the height of a single-family residence as being 35 feet for the median height. Thus, Cutillo testified that the proposed structures would be below the maximum height permitted in the Zone under the Pequannock Township Zoning Ordinance. He also testified that the building would be no higher than existing homes on Ackerson Avenue.

Next testifying on behalf of the Applicant was William Moore, a landscape architect (hereinafter "Moore"). Moore gave an overview of his landscape plan. The landscape plan will re-establish shade trees throughout the property as well as trees around the buildings to soften the façade of the buildings. He reviewed with the Board a colorized version of Sheet 3 of 4 from his plan submission, which was identified as Exhibit A-1. Moore testified that it was his intention to provide screening along the property line to provide an appropriate tree canopy as well as to provide layering of plantings. As to the southerly side, Moore testified in regard to the planting of Evergreen trees and Evergreen arborvitae. He stated that the Evergreen arborvitae installed would be approximately 7 to 8 feet high and would grow approximately 1 ½ to 2 feet per year. In regard to the evergreen trees, they would be planted at 8 to 10 feet in height. He also testified that River Birch trees would be planted. They would be planted at 12 feet in height and he indicated that they would grow to approximately 25 feet in height in about 5 years. He also recommended planting White Fir trees at the corner of the building. Along the Boulevard, he discussed planting flowering trees such as Oak, Oak Glory and Red Maple.

Moore also indicated that he coordinated the tree planting with the engineer, Mr. Darmofalski. He also agreed that he would overlay the drainage system onto the plans to ensure that the tree plantings would not conflict in any manner, whatsoever, with the underground detention system.

Moore also reviewed with the Board Sheet 4 of 4 of his plan submission which was identified as Exhibit A-2. He referred to the three existing large graphic circles along the Boulevard and indicated that it was the Applicant's intention to maintain the trees and to recreate the look of the Boulevard. He also testified in regard to providing flowering ornamental trees around the building and that he was also looking to provide overhead foliage by planting Elm trees.

Moore then addressed the perimeter fence which was set forth on a plan submitted by the architect and identified as Exhibit A-3. The revised fence plan was dated October 4, 2011. The Applicant intends to remove the existing galvanized chain link fence around the perimeter of the site and reinstall a new 4-foot high decorative aluminum fence with a black finish along the property line. The fence will accommodate all existing vegetation. The Hearle Street fence will maintain the same alignment but the Applicant will embellish planting to break up the fence and the monotony of the street in the vicinity of the cul-de-sac area.

Moore also reviewed the Environmental Commission's letter in regard to tree removal and replacement. Moore testified that 17 trees would be removed in the southern Phase of the site and 30 trees would be removed in the northern Phase of the site for a total of 47 trees being removed. In regard to new plantings, there would be 61 trees being planted in the southern phase and 34 trees being planting in the northern phase for a total of 95 trees to be replanted.

In general, the two-story buildings will have shade and flowering trees to soften the buildings and break up the roof lines. Each resident will have a patio and around the patio

flowering shrubs will be planted. The northern part of the project where there are 11 units there will be walkways connecting them to the rest of the site. These walkways will have flowering trees and bushes dispersed among the walkways.

Next testifying on behalf of the Applicant was Kenneth Ochab, a licensed professional planner in the State of New Jersey (hereinafter "Ochab"). Ochab issued a planning report dated September 16, 2011. Ochab testified that the property lies within the Senior Citizen Housing Overlay Zone in the R-15 zone district. He stated that an overlay zone is a special zoning tool utilized to provide incentives or to provide a permitted use in a zone. In this instance, the Applicant meets all bulk requirements in the overlay zone with one exception which is in regard to the front yard setback where a minimum front yard setback of 50 feet is required and 49.85 feet is existing and is proposed. Thus, the Applicant requires ancillary "c" variance relief for 1.8 inches. The request for variance relief is only in regard to one building which is identified as "Building A" within the complex. However, the proposed additions to the Hearle Village senior development is fully in compliance with the senior citizen housing overlay district. The density for the entire development is 14.41 units per acre where 20 units per acre are allowed. In addition, the building coverage and total impervious coverage on this site are within the limitations of the zoning ordinance and the proposed building height is proposed at 1 story in height which is consistent with the existing residential buildings on the site.

Ochab also provided testimony in regard to the distance from the buildings on the subject site to the property line and then comparing that to the distance from the buildings on the adjoining property. Ochab testified that as to the north side there is a 30 feet side yard setback from the property line to the nearest residential building and the adjoining house is 25 feet off of the property line, making a total separation of 55 feet between the two buildings. On the south side there is a distance of 31 feet from the building to the property line and the

nearest home to the south is 21 feet off of the property line for a total of 52 feet between the buildings on this site and the adjoining property. Ochab also stated that the separation of buildings was sufficient for buffering purposes.

Ochab also addressed the issue of the variance. The front setback requirement is 50 feet and the existing building is 49.85 feet from the front property line. This setback applies to only one of the existing residential buildings which has been identified as Building A and is not applicable to the new construction.

Ochab also stated that the granting of "c" variance relief is based on two criteria, hardship (c-1) or where the benefits of granting the variance outweigh the detriments (c-2). A hardship variance is based on the physical property factors or unique circumstances or situations having to do with the property itself. The granting of the "c-2" variance is based on a finding that the deviation from the zoning requirements results in a better plan and design option for the site and will benefit the public. In this instance, Ochab testified that the appropriate variance criteria would be the "c-1" or hardship criteria. The building in question exists on the site and encroaches into the front yard by 1.8 inches. From a visual perspective, this degree of deviation is not perceptible. The intent of the front setback requirement is met notwithstanding the de minimis deviation from the requirement. Furthermore, it would be a hardship to require the existing building to be modified to comply with the front setback requirements.

Ochab determined that the proposed bulk variance would not create a substantial detriment to the public good. The adjoining properties would not be unduly impacted by the deviation from the front setback requirement which, in his opinion, would be imperceptible from the surrounding properties. Furthermore, Ochab testified that there would be no substantial impairments to the zone plan as a result of granting the requested variance.

The final witness of the evening was Debra Crenshaw, a project manager for the Hearle Village senior housing complex. She testified that there is one property manager and three maintenance people on site. She also testified that there is a lengthy waiting list to obtain a dwelling unit at Hearle Village. She also reviewed with the Board a breakdown of subsidized units versus unsubsidized units as well as the income restrictions and limitations for single individuals and couples. As to unsubsidized affordable housing units, she indicated there were 12 units on site. The minimum income would be \$30,000 and the maximum income would be \$51,000 for a single person, and \$57,000 for a couple. There are 100 units which are subsidized. In regard to the subsidized units, 30% of the rent is paid by tenants and 70% is paid by the government. The maximum income would be \$41,000 which must be certified annually.

The meeting was opened up to the public and there were no members of the public present that addressed the Board in regard to this application.

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 for preliminary and final major site plan approval and ancillary "c" variance relief, in order to construct and add 33 new senior citizen housing units to an existing 112 senior citizen residential complex as well as to provide additional improvements throughout the existing development. The subject site is located in the R-15 Residential District and is within the senior citizen housing overlay zone of the Township. The subject site is known and designated as Block 3506, Lot 4, Block 3505, Lots 7 and 8, and Block 3902, Lot 11 on the Tax and Assessment Map of the Township of Pequannock. The property is more commonly known as the Hearle Village Senior Housing Complex and is located at 101 Boulevard, Pequannock, New Jersey. The Board finds that the development proposed for the north parcel would include 11 residential units in a quad-like development

scenario with two buildings attached by a covered breeze-way and all buildings connected by a central walkway. Ten of the proposed units will be one bedroom units and designated for senior citizen housing. One unit will be a two-bedroom unit dedicated for use by the site manager. A new parking lot, with direct access to the Boulevard, will be constructed and will contain 32 off-street parking spaces. Access to the overall site and community building will be provided with an extension of an existing sidewalk pathway.

As to the southern portion, development is proposed with 22, one bedroom senior citizen units in two separate buildings. The building adjacent to the Boulevard contains 18 units in a combined one and two story building arrangement, with the center having two stories and the two wings one story each. The building located further west is a one story structure containing 4 one bedroom senior citizen units. Two new parking lots will be constructed off of the existing southern site access driveway from the Boulevard. A total of 17 new parking spaces will be provided.

The Board also concludes that an addition is proposed for the existing community center and interior renovations will be undertaken including, but not limited to, the expansion of the recreation/all purpose room, providing a new sitting area, a new laundry room and a new workshop/storage area. The addition will also include a new conference/multi-media room. Also, 22 new off-street parking spaces are located centrally on the site but they are proposed for land banking for future use. These spaces are proposed in a location in the immediate and general vicinity of the community center.

The application proposes phasing the above-noted development into 3 phases. Phase 1-A would be the community center addition and renovation; Phase 1-B would be the north site development; and Phase 2 would be the south site development.

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 Board also determines that as to the proposed new construction, the Applicant complies in all respects with the bulk or dimensional requirements of the senior citizen housing overlay zone district. However, the Applicant requires ancillary "c" variance relief with regard to the existing Building "A" relative to the front yard setback where a minimum front yard setback of 50 feet is required and 49.85 feet is currently existing. This means that the

Applicant requires ancillary "c" variance relief for 1.8 inches. The Board has carefully reviewed the reports of the Applicant's Planner, Mr. Ochab, dated September 16, 2011 as well as his testimony before the Planning Board. The Board concurs with the findings of Mr. Ochab that in this instance, it would be appropriate to grant "c-1" or "hardship" variance relief to the Applicant. The building in question exists on the site and encroaches into the front yard by merely 1.8 inches. From a visual perspective, this degree of deviation will be absolutely imperceptible to the public. The Board also agrees that the intent of the front yard setback requirement is met notwithstanding the de minimis deviation from the requirement. The Board also agrees that it would be an extreme hardship to require the existing building to be modified to comply with the front yard setback requirements. The Board also finds as to the negative criteria that variance relief can be granted without substantial detriment to the public good and without substantial impairment of the zone plan and zoning ordinance.

Upon consideration of the plans, testimony and application, the Board determines that the Applicant has submitted sufficient information so as to enable the Board to render an informed decision. The Board also determines that the Applicant 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 inclusive of preliminary and final site plan approval and ancillary "c" variance relief.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Township of Pequannock that the application of Pequannock Senior Housing Corp. (Hearle Village Senior Housing) for premises commonly known and designed as Block 3506, Lot 4, Block 3505, Lots 7 and 8, and Block 3902, Lot 11 on the Tax and Assessment Map of the Township of Pequannock and located at 101 Boulevard, Pequannock, New Jersey in the R-15 Residential District within the senior citizen housing overlay zone requesting land use relief is determined as follows:

1. Preliminary site plan approval is granted under the Municipal Land Law pursuant to N.J.S.A. 40:55D-46.
2. Final site plan approval is granted under the Municipal Land Law pursuant to N.J.S.A. 40:55D-50.
3. Ancillary "c" variance relief as set forth herein is granted under the Municipal Land Law pursuant to N.J.S.A. 40:55D-70(c)1.

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

1. The development of this parcel shall be implemented in accordance with the plans submitted and approved, as well as any further amendments required by the Planning Board or the Board's professionals as a result of the hearing process.
2. The granting of this application is subject to and conditioned upon all of the representations and stipulations being made by or on behalf of the Applicant to the Township of Pequannock Planning Board being true and accurate. 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 hearings on October 17, 2011.
4. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions contained in

the report of Jill A. Hartmann, P.P., AICP dated October 16, 2011, Planner to the Pequannock Township Planning Board.

5. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions set forth in a memorandum of the Pequannock Township Police Department Traffic Bureau dated September 23, 2011 in regard to providing a six (6) foot wide striped crosswalk as well as requiring the installation of an unsignalized pedestrian crosswalk sign as reflected on the attachments to the police department memo, all of which are incorporated herein by reference.
6. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions set forth in the Township Engineer's review report dated October 17, 2011 and prepared by David C. Battaglia, P.E., CME, CFM.
7. The granting of this application is subject to and conditioned upon the Applicant's landscape plan not conflicting with the underground detention system which landscape plan shall be subject to the review and approval of the Township Engineer as well as the Board Planner.
8. The granting of this application is subject to and conditioned upon review and approval of the Pequannock Township Fire Official.
9. The granting of this application is subject to and conditioned upon the Applicant providing written notice to the Pequannock Township Clerk as well as the Pequannock Township Planning Board ninety

(90) days in advance of the Applicant paving the land banked parking spaces for use on the site.

10. The granting of this application is subject to and conditioned upon NJDEP approval, if required.
11. The granting of this application is subject to and conditioned upon Morris County Planning Board approval, if required.
12. 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.
13. Certificate that taxes are paid current to date of approval.
14. Prior to the issuance of any construction permit, the Applicant shall file with the Board and Construction Official an Affidavit verifying that the Applicant is in receipt of all necessary agency approvals other than the municipal agency having land use jurisdiction over the application and supply to the Planning Board a copy of any approvals received.
15. 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 October 17, 2011 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on November 21, 2011.



Roger Imfeld, Board Secretary

**RESOLUTION
OF THE PLANNING BOARD
OF THE TOWNSHIP OF PEQUANNOCK
OPEN PUBLIC MEETINGS ACT – EXECUTIVE SESSION
DECIDED AND MEMORIALIZED ON NOVEMBER 21, 2011**

WHEREAS, N.J.S.A.10:4-6, Open Public Meetings Act, permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently now exist:

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Pequannock, County of Morris and State of New Jersey, as follows:

1. The public shall be excluded from discussion of the hereinafter specified subject matters.
2. The general nature of the subject matter to be discussed is as follows:
 - a). Discussion of pending litigation in the matter of Arlene M. Platt and C. Tucker Platt v. Township of Pequannock Planning Board, Docket No. MRS-L-1632-11
3. It is anticipated at this time that the above matter will be made public upon completion of the litigation, including any appeals.
4. This Resolution shall take effect immediately.

PLANNING BOARD OF THE
TOWNSHIP OF PEQUANNOCK



Roger Imfeld, Board Secretary