

**RESOLUTION  
TOWNSHIP OF PEQUANNOCK PLANNING BOARD  
IN THE MATTER OF  
HEART AND VASCULAR ASSOCIATES  
OF NORTHERN NEW JERSEY, P.A.  
DECIDED ON NOVEMBER 19, 2012  
MEMORIALIZED ON DECEMBER 17, 2012  
PRELIMINARY AND FINAL SITE PLAN APPROVAL  
WITH ANCILLARY "C" VARIANCE RELIEF  
AND DESIGN WAIVERS FOR SIGNAGE**

**WHEREAS**, Heart and Vascular Associates of Northern New Jersey, P.A. (hereinafter "Applicant" or "Heart and Vascular") has filed an application with the Pequannock Township Planning Board (hereinafter "Planning Board" or "Board"), seeking preliminary and final site plan approval, ancillary "c" variance relief and design waivers in regard to signage for property located at 637 Route 23 South, Pompton Plains, New Jersey, and known and designated as Block 1404, Lot 8, on the Tax and Assessment Map of the Township of Pequannock (hereinafter "Township"), which premises are located in the C-2 Highway Commercial District; and

**WHEREAS**, a public hearing was held on November 19, 2012, after the Planning Board determined it had jurisdiction; and

**WHEREAS**, the Applicant was represented by Joseph Russo, Esq. (hereinafter "Russo").

**NOW, THEREFORE**, the Planning Board makes the following findings of fact, based upon 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, ancillary "c" variance relief and design waivers for signage in regard to property known and designated as Block 1404, Lot 8, on the Tax and Assessment Map of the Township of Pequannock, which premises are located at 637 Route 23 South, Pompton Plains, New Jersey, in the C-2 Zone.

Submitted in support of the application were the following documents:

1. Completed Pequannock Township Application signed by Dr. Mahesh Bikkina, dated September 7, 2012.
2. Completed Pequannock Township Sign Application, signed by Dr. Mahesh Bikkina, dated September 7, 2012.
3. Completed Pequannock Township Variance Application, signed by Dr. Mahesh Bikkina, dated September 7, 2012.
4. Site Plan, consisting of nine sheets, prepared by Paul P. Darmofalski PE, dated August 28, 2012.
5. Architectural Plan, consisting of two sheets, prepared by J. R. Frank, RA, dated August 24, 2012 with revisions through October 2, 2012.

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

- A. Memorandum dated November 16, 2012, from Jill A. Hartmann, PP, AICP, Planner to the Pequannock Township Planning Board.
- B. Memorandum dated November 19, 2012, from David Battaglia, P.E., CME, CFM, Township Engineer to the Pequannock Township Planning Board.

The nature of the application is to convert an existing commercial retail strip shopping center to a medical office, as well as to construct an addition to the existing structure.

Testifying on behalf of the Applicant was Dr. Mahesh Bikkina (hereinafter "Bikkina"). Bikkina testified that the medical offices would consist of a cardiology and vascular practice. He also testified that his practice is in multiple locations and that the approval of this application would enable Dr. Bikkina to consolidate his practice at the Pompton Plains location.

It is anticipated that there will be ten to twelve employees onsite. There will be no overnight patient stays at this location. Primarily, the office will be open 9:00 a.m. to 5:00 p.m., Monday through Friday, with occasional office hours on Saturday morning.

Dr. Bikkina also testified that there is a primary care component to his practice which includes, but is not limited to, patients coming to his facility when they are ill in order to seek medical treatment as well as other patients seeking physical examinations.

With respect to the cardiovascular component of the practice, Dr. Bikkina testified that typical diagnostic tests will be performed including, but not limited to, the administration of echocardiograms, ultrasound and stress tests.

Dr. Bikkina also testified that at the present time, he will lease the property with an option to purchase the property in the future. The Applicant is also proposing to construct a one-story, 3,384 square foot addition to the northern side of the existing building. Dr. Bikkina explained that this additional space would either be utilized by Dr. Bikkina in the future or will be rented out for use as medical offices.

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"). Darmofalski presented the Board with an orientation of the site and surrounding area. Darmofalski also reviewed with the Board the zoning table in regard to this development application. He further testified in regard to the implementation of stormwater management measures to improve onsite drainage. Darmofalski testified that the Applicant would be removing inlets and clogged pipes. The Applicant will be undertaking a complete replacement of the existing stormwater management system along the NJDOT right-of-way with the installation of two new seepage pits and a similar perforated pipe system. A series of interconnected seepage pits are designed to collect all building runoff. The existing site contours direct any surface overflow, which is not collected, out to Route 23 where it will be collected by the State's drainage system along the property frontage. The entire proposed site is curbed with

the addition of curbing at the south property line. Therefore, runoff flow to Route 23 will be collected in the Route 23 system. Furthermore, roof runoff will be oriented to the seepage pits in the rear of the property. Therefore, Darmofalski concluded that there will be no adverse impact on adjoining property owners in regard to the stormwater management measures to be undertaken by the Applicant.

Darmofalski also stated that the Applicant will install a new septic system in order to accommodate the proposed use.

With respect to ancillary "c" variance relief, Darmofalski testified that the Applicant requires two "c" variances in relation to lot depth where a minimum lot depth of 200 feet is required and 182.38 feet is existing, as well as in regard to relief from the buffer strip where a 10 foot buffer strip is required and a 3.9 foot buffer strip is proposed. Darmofalski represented that in regard to the lot depth deficiency, the Applicant has no ability to purchase additional property in order to bring the property into conformity. Furthermore, Darmofalski contends that in the past, this site had land taken from it due to the Route 23 widening. However, even at that time, the lot depth was nonconforming.

With respect to the issue of the buffer, the Applicant will provide a solid white vinyl fence six feet in height as a buffer along the rear yard.

Pursuant to the Municipal Land Use Law ("MLUL") under N.J.S.A. 40:55D-2, Darmofalski identified which purposes of the MLUL would be met by granting variance relief. More specifically, Darmofalski indicated that section A would be met. More specifically, the granting of variance relief would encourage Municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals and general welfare. Additional sections of the Act would be advanced, inclusive of

items (c) to provide adequate light, air and open space; (d) to provide sufficient space in appropriate locations for a variety of commercial and industrial uses; and (i) to promote a desirable visual environment through creative development techniques and good civic design and arrangement.

Darmofalski testified that it would be appropriate to grant ancillary “c” variance relief under c(1) due the exceptional narrowness, shallowness or shape of the property and by reason of exceptional topographic conditions or physical features which uniquely affect a specific piece of property.

Darmofalski also concluded that the negative criteria would also be met by granting the variance relief because the variance relief 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.

Darmofalski further testified in regard to the number of onsite parking spaces where fifty-three (53) parking spaces are required and fifty-six (56) parking spaces are provided. However, Darmofalski stated that of the total number of fifty-six (56) parking spaces, there will be fifty (50) regular parking spaces, four (4) handicap parking spaces, and two (2) drop-off spaces. Therefore, even if the two (2) drop-off parking spaces are not considered as part of the overall parking count, the number of onsite parking spaces exceeds the ordinance requirements.

Lighting conditions were discussed and the Applicant stipulated that there would be shielded shoebox fixtures on the rear of the site and lighting would be turned off by 9:00 p.m.

Darmofalski also testified in regard to reducing the size of the driveway from 20 feet to 15 feet in order to install a 5 foot in width sidewalk so that there would be a walkway for 3 sides of the building with the exception being the south side.

Darmofalski also addressed the issue of design waivers for signage and indicated that design waivers were required from the sign ordinance of the Township of Pequannock in regard to the installation of two attached signs where the ordinance allows one freestanding sign and one attached sign for each use. Secondly, the Applicant requires a design waiver relative to the sign area of the freestanding sign where a maximum sign area of 50 square feet is permitted, 110 square feet is existing, which will be reduced to 101.75 square feet. Darmofalski also stated in this regard, the Applicant is proposing an eleven (11) foot by four (4) foot, or a forty-four (44) square foot sign for Dr. Bikkina's use and an eleven (11) by three (3) or thirty-three (33) square foot sign for use by the potential tenant. The additional sign area is the result of adding the numerical address of the building "637" to the sign. Thus, the total sign area for the freestanding sign is 101.75 square feet.

With respect to landscaping, the Applicant stipulated that it would work with the Board Planner, Jill Hartmann, to enhance landscaping on the site.

Also testifying on behalf of the Applicant was J. R. Frank, RA, PP, a licensed architect in the State of New Jersey (hereinafter "Frank"). Frank characterized the site as a small strip mall which hasn't been updated in many years. Frank testified that it was the Applicant's intention to maintain the existing canopy and to develop a drop-off area under the covered area. He characterized the construction materials in the front of the building as being porcelain tile with a wood grain effect and stucco. The other three sides of the building would be stucco.

Frank explained that the patients will enter in the front of the building. With respect to the rear of the property, there will be two rear door entrances with one entrance being for each tenant. These entrances in the rear will be for employees only and not for the use of the general public.

The Board expressed some concerns about the appearance of the rear of the building, and the Applicant stipulated that it would work with the Board Planner to come up with a satisfactory solution to address the issue of the mass of the building in the rear of the property.

Other miscellaneous items discussed by the Applicant and the Board were relative to the installation of appropriate screening around the dumpster area. Furthermore, air conditioning units were being moved from the rear of the roof to the front of the roof. It is anticipated that the relocation of the air conditioning units will reduce noise levels at the property line. The Applicant will, therefore, comply with all requirements of the State noise code and Township of Pequannock noise ordinance.

The meeting was opened up to members of the public, and the Board was addressed by Laura Bianca, the daughter of Dominic Bianca who is the owner of real property in Lot 7 in Tax Block 1404, and located at 11 Garden Place, Pompton Plains, New Jersey. Bianca had concerns about stormwater management and the potential for run-off onto her father's property. She also expressed concern about the septic field being in close proximity to her father's property. She further inquired about construction-related issues in regard to staging of construction equipment, the hours during which construction will be permitted to occur, and where the construction workers will park. It was explained to Ms. Bianca that run-off will not be directed towards her father's property. Furthermore, it is anticipated that all construction staging will occur onsite, and that all construction workers will park on the site during construction. The Applicant will be required to comply with all ordinance requirements for construction-related activities.

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

The application before the Board seeks preliminary and final site plan approval, ancillary “c” variance relief and design waivers in regard to signage. The subject site is located in the C-2 Zone. The subject site is designated as Block 1404, Lot 8, on the Tax and Assessment Map of the Township of Pequannock and located at 637 Route 23 South, Pompton Plains, New Jersey.

The subject site is a 1.178 acre parcel developed with a single-story 9,719 square foot building that is presently used as a commercial retail center providing space for three commercial businesses. The site is nonconforming with regard to lot depth, impervious surface coverage and screening. The Applicant proposes an entire site renovation that includes repaving and restriping of parking spaces and a total interior building renovation in order to permit the structure to be utilized for medical offices. The Applicant is also proposing landscape improvements, a new septic system installation, stormwater management improvements, and a one-story addition to the northern side of the building of approximately 3,384 square feet.

Off-street parking with a total of 56 spaces is provided along the north, south and western perimeter of the property. Minimal landscaping is proposed along the western property line in the northeastern corner of the site.

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 Applicant requires two “c” variances. A variance for lot depth is required where a minimum lot depth of 200 feet is required and 182.38 feet exists. This is an existing condition. The Board accepts the representation of the Applicant that no new property can be acquired in order to eliminate this condition. Secondly, the Applicant requires “c” variance relief from the Code of the Township of Pequannock, and more specifically Section 189.050.020(B)(8)(a), which requires a ten foot buffer strip consisting of landscaping or natural vegetation between the proposed medical office and the adjacent residential zone. The Applicant proposes a 3.9 foot buffer area setback from the adjacent residential zone to the site’s rear parking. Grass and deciduous trees are proposed for this area. The Board notes that the Applicant has agreed to

install a white vinyl fence, six feet in height, along the rear property line (western property line) in order to enable the Board to grant the relief requested. The Board determines that the installation of a six (6) foot in height white vinyl fence would be consistent with the intent of the buffer requirement and that the fence, in addition to the proposed landscaping, will provide the necessary screening for vehicle headlights associated with the fourteen parking spaces along the site's western property line.

The Board determines that the Applicant is entitled to ancillary "c" variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1) due to the exceptional narrowness, shallowness or shape of the property or by reason of exceptional topographic conditions or physical features uniquely affecting the property. The Board notes that the issue of lot depth is a pre-existing condition and that in the past, the lot depth although not conforming was further reduced in order to provide land for the widening of Route 23. The Board also finds that the lack of lot depth impacts the Applicant's ability to provide the requisite ten foot buffer strip. The Board also notes that the building is existing on the site and that this presents a unique condition and also prevents the Applicant from complying with the ten foot buffer strip requirement. The Board also finds that ancillary "c" variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

The Planning Board also reviewed the request for ancillary "c" variance relief under the "c(2)" criteria. In Kaufman v. Planning Board for Warren Township, 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 finds that the variance relief will benefit the community in that it represents a better zoning alternative for the property. The Board reaches its conclusion based on the fact that the existing strip mall hasn't been updated in many years and the Board sees this as an opportunity to make aesthetic improvements to the building which will enhance the aesthetics of this area along the Route 23 corridor. The Board also sees this as an opportunity to adapt and reuse the existing structure for medical offices which will similarly benefit the public. In addition, the Board notes that the Applicant will be improving stormwater management on the site which will benefit the public. Furthermore, the approval of this application will result in a reduction of impervious coverage which is currently at ninety-eight percent (98%) and is nonconforming to eighty-eight percent (88%) which will now conform to ordinance requirements. Thus, the Board sees this as an additional benefit to the community. As such, the Board concludes that it is appropriate to grant ancillary “c” variance relief under the “c(2)” analysis because the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement; the variance can be granted without substantial detriment to the public good; and the benefits of the deviation would substantially outweigh any detriment. Finally, the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

In regard to the request for design waivers for signage, the Board determines it is appropriate to grant waivers from the Sign Ordinance of the Township of Pequannock, and more specifically Section 153.06(B)(2)(b), which provides for the installation of one (1) freestanding sign and one (1) attached sign for each use, whereas the Applicant seeks the installation of two

(2) building-attached signs. The building façade is approximately 3,420 square feet. Pursuant to the Sign Ordinance of the Township of Pequannock, and more specifically Section 153.06(B)(2)(c)(2), a total sign area of 136.85 square feet is permitted. The Applicant is installing two (2) building façade signs with the “Heart and Vascular” sign having a total sign area of 82 square feet and the remaining sign with a sign area of 32 square feet. Thus, even though two (2) building façade signs are proposed where only one (1) is permitted, the total sign area for the two (2) signs at 114 square feet does not exceed the maximum sign area of 136.85 square feet which is allowed based upon a 3,420 square feet building façade. Therefore, the Board determines it is appropriate to grant the requested design waiver.

Secondly, the Applicant requires a design waiver from Section 153.06(B)(2)(c)(1) in regard to the sign area of a freestanding sign where 50 square feet is permitted and 110 square feet is existing and it is currently being reduced to 101.75 square feet. The Board notes that in regard to the freestanding sign, the Applicant intends to install one sign panel at 44 square feet for Dr. Bikkina’s use and a second sign panel at 33 square feet for the proposed tenant. In addition, the Applicant is proposing to include the building number “637” on the freestanding sign. As a result, the total sign area for the freestanding sign is 101.75 square feet. The Board determines it is appropriate to grant a design waiver in regard to the overall sign area of the freestanding sign because 110 square feet was previously existing and there will be a slight reduction in overall sign area to 101.75 square feet.

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, ancillary “c” variance relief and design waiver relief for signage.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Township of Pequannock that the application of Heart and Vascular Associates of Northern New Jersey, P.A. for premises commonly known and designated as Block 1404, Lot 8, on the Tax and Assessment Map of the Township of Pequannock and located as 637 Route 23 South, Pompton Plains, New Jersey, in the C-2 Zone District requesting land use relief as determined as follows:

- A. Preliminary site plan approval is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-46;
- B. Final site plan approval is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-50;
- C. Ancillary “c” variance relief as set forth herein is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1) and (2);
- D. Design waiver relief is granted pursuant to Township of Pequannock Sign Ordinance Section 153.06(B)(2)(b) and 153.06(B)(2)(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 notes that it

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 November 19, 2012.

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 November 16, 2012, 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 contained in the report of David Battaglia, P.E., CME, CFM, dated November 19, 2012, Township Engineer to the Pequannock Township Planning Board.

6. The granting of this application is subject to and conditioned upon the Applicant implementing stormwater management measures in accordance with the plans submitted to the Board, which shall be subject to the review and approval of the Township Engineer.

7. The granting of this application is subject to and conditioned upon the Applicant providing a landscape plan to improve landscaping along Garden Place and Route 23 which shall be subject to the review and approval of the Planning Board Planner.

8. The granting of this application is subject to and conditioned upon the Applicant installing a solid white vinyl fence, six (6) feet in height, as a buffer along the rear yard which shall be subject to the review and approval of the Board Planner.

9. The granting of this application is subject to and conditioned upon the Applicant providing shielded light shoebox fixtures on the rear of the site. The site lighting shall be on a timer and shall be turned off by 9:00 p.m. This shall be subject to the review and approval of the Board Planner and Township Engineer.

10. The granting of this application is subject to and conditioned upon the Applicant reducing the size of the driveway in the vicinity of Garden Place from 20 feet to 15 feet and installing a 5 foot in width walkway in order to permit a walkway along 3 sides of the building with the exception of the south side, which shall be subject to the review and approval of the Board Planner and Township Engineer.

11. The granting of this application is subject to and conditioned upon the Applicant's architect providing a revised plan to address the issue of massing along the rear of the building which shall be subject to the review and approval of the Board Planner.

12. The granting of this application is subject to and conditioned upon the installation of two (2) doors in the rear of the property with one (1) door being for each tenant use, and being limited for employees only. The plan shall be revised accordingly. All patients will only be permitted to enter the building through the front entrance.

13. The granting of this application is subject to and conditioned upon the Applicant providing an appropriate screen around the dumpster area which shall be subject to the review and approval of the Board Planner.

14. The granting of this application is subject to and conditioned upon the relocation of air conditioning units to the front of the roof and the Applicant will comply with all State noise code requirements and noise requirements of the Ordinances of the Township of Pequannock, all of which shall be subject to the review and approval of the Board Planner.

15. The granting of this application is subject to and conditioned upon the Applicant submitting revised plans with appropriate amendments to the zoning table including the setback for the covered area for the drop off of patients, which shall be subject to the review and approval of the Board Planner.

16. The granting of this application is subject to and conditioned upon NJDEP approval, if required.

17. The granting of this application is subject to and conditioned upon Morris County Planning Board approval, if required.

18. 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.

19. Certificate that taxes are paid current to date of approval.

20. Prior to the issuance of any construction permit, the Applicant shall file with the Board and Construction Official and 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.

21. The granting of this application is subject to and conditioned upon Pequannock Township Health approval in regard to the septic system.

22. 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 November 19, 2012, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on December 17, 2012.

  
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Roger Imfeld, Board Secretary

In Favor:

Against:

Abstained:

Board Members Eligible to Vote:

573279\_1 PEQ-353E Heart and Vascular Resolution Granting Preliminary and Final Site Plan Approval etc.