

**RESOLUTION
TOWNSHIP OF PEQUANNOCK
PLANNING BOARD
IN THE MATTER OF STEVEN AND KATHLEEN PETRARCA
DECIDED ON MAY 6, 2013
MEMORIALIZED ON MAY 20, 2013
DENIAL OF MINOR SUBDIVISION APPLICATION
WITH ANCILLARY “c” VARIANCE RELIEF**

WHEREAS, Steven and Kathleen Petrarca (hereinafter “Applicants”) have filed an application with the Township of Pequannock Planning Board, (hereinafter “Planning Board” or “Board”) seeking minor subdivision approval and ancillary “c” variance relief for property known as Block 503, Lot 8, on the Tax and Assessment Map of the Township of Pequannock (hereinafter “Township”), and located at 157 Mountain Avenue, Pompton Plains, New Jersey, and located in the R-45 Single-Family Residential Zone District (hereinafter “R-45 Zone”); and

WHEREAS, a public hearing was held on May 6, 2013, after the Planning Board determined it had jurisdiction; and

WHEREAS, the Applicants were represented by David C. Dixon, Esq. of Feeney and Dixon, LLP.

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 503, Lot 8, on the Tax and Assessment Map of the Township of Pequannock, which premises are located at 157 Mountain Avenue, Pompton Plains, New Jersey in the R-45 Zone.

Testifying on behalf of the Applicants during the course of the hearing was Paul P. Darmofalski, P.E., P.P. (hereinafter “Darmofalski”), a licensed professional planner and engineer in

the State of New Jersey. The subject site is a 1.7 acre parcel that is currently developed with a 2-story single-family residence situated on the southern side of the property.

The Applicants propose to subdivide the existing lot into two (2) lots. Proposed Lot 8.01 would consist of 38,105.76 square feet and proposed Lot 8.02 would also consist of 38,105.76 square feet. The Applicants propose to divide this parcel exactly in half. In regard to the creation of proposed Lots 8.01 and 8.02 the Applicants intend to leave the existing home on the southern portion of the property on Lot 8.01 and anticipate that a single family dwelling will be built on the newly created lot. However, at this time, no specific plans for such construction were proposed.

Darmofalski testified that all utilities for the new home would come in underground off of Mountain Avenue. Darmofalski used Exhibit A-1, the survey prepared by Robert L. Cigol of DMC Associates, Inc. to show that the proposed subdivision would not, in his opinion, impact the environmental sensitivities on the subject property.

Darmofalski then referenced Exhibit A-2 which is a tax map of the subject property and immediate surrounding areas in conjunction with Exhibit A-3 which is an aerial photograph printed from bing.com of the area corresponding with the tax map shown in Exhibit A-2. He used these exhibits to try and illustrate to the Board the character of the neighborhood and to show that each of the existing lots contain single family homes and environmentally sensitive areas. Darmofalski offered his opinion that dividing the subject property and building a single family dwelling on the newly created lot would not negatively impact the area.

Darmofalski then cited to Kaufmann v. Planning Board for Warren Township, 110 N.J. 551 (1988) (hereinafter "Kaufmann") for the proposition that an oversized lot can be detrimental to the zoning scheme and plan and should, therefore, be subdivided. Darmofalski testified that there was

no hardship and the Applicants were not seeking c(1) hardship variances, however, he did state that the two (2) lots would better conform to the zoning plan than one (1) large lot.

The property owner, Mrs. Kathleen Petrarca, was called as a witness and sworn in. She testified that although they have only been on the property for 12 years, in that time she has experienced no flooding whatsoever.

In addition to the “c” variances required for the two (2) proposed lots for minimum lot size, both lots will also require variances for minimum lot frontage, minimum lot width, and proposed Lot 8.02 will require a variance for minimum side yard setback.

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 section would be satisfied by granting “c” variance relief including: e. the granting of the application would promote the establishment of appropriate population densities.

Jill Hartmann, PP, AICP, the Board Planner (“Hartmann”), testified that the deviation from the Zoning Ordinance requested by the Applicants is “a big deal”. She further stated that in her opinion, creating two (2) significantly undersized lots in a zone where the existing neighborhood and character of the neighborhood includes primarily oversized lots would constitute poor planning. Further, she stated that in her opinion, this application does not satisfy the MLUL pursuant to N.J.S.A. 40:55D-2 subpart (e) to promote the establishment of appropriate population densities. Hartmann contends that increasing the density and population in this neighborhood would not be in conformance with the character of this neighborhood. Furthermore, she referred to her report dated February 28, 2013 in which she analyzed the application and determined that each variance requested resulted in a significant deviation from the Zoning Ordinance. More specifically, the proposed lot size of 38,105 square feet is a deviation of 15 percent (15%) or almost 7,000 square

feet less than the required lot area in the R-45 Zone. Regarding the lot frontage requirement, proposed Lot 8.01 is 16 percent (16%) deficient and proposed Lot 8.02 is 18 percent (18%) deficient while the other lots in the surrounding Mountain Avenue neighborhood exceed the frontage requirement of 150 feet. As to the lot width requirement, proposed Lot 8.01 is 15 percent (15%) deficient and proposed Lot 8.02 is 20 percent (20%) deficient. The Board Planner stated that while she agreed with Mr. Darmofalski that the Kaufmann case stands for the proposition that an oversized lot can be subdivided into two (2) nonconforming lots if and when the proposed undersized lots would better conform to the zoning plan than the single oversized lot, she disagrees that it is appropriate to grant a subdivision with ancillary “c” variance relief in this instance. She reiterated that she does not believe two (2) undersized lots would conform to the zone plan, nor does she believe that two (2) houses, as close together as the proposed subdivision would require them to be, supports the appropriate population density of this neighborhood.

Michael Simone, the Board Engineer, testified that he does not like the idea of subdividing this parcel. Specifically, he indicated that due to various environmental constraints including wetlands and flood plains, the entire backyards of both parcels would be useless. He also indicated that other issues will likely arise in the attempt to build a new home on the parcel including stormwater runoff and other issues.

Emily Weiner, Board Attorney, read a statement from the Environmental Commission of the Township of Pequannock into the record. Mr. Dixon objected as to the Environmental Commission’s authority to comment on zoning and that he believed the Environmental Commission was confusing issues as he believes this development will encourage preservation of open space due to the fact the Applicants offered to Deed restrict the backyard.

At this point, the hearing was opened to the public.

Colleen Glynn who is a resident of the Township of Pequannock and whose parents own the lot adjacent to the subject property addressed the Planning Board. She testified that there are various wetlands, flooding and other environmental issues on her parents' property including a large pond. She indicated that new construction in this area might have a negative impact on those existing environmental conditions. Ms. Glynn indicated that the character of the neighborhood is such that houses are spread out and on large parcels of land.

Darmofalski responded to Ms. Glynn by stating that new construction would have no impact on runoff or flooding. He then stated that while it would not be a net zero, it would be within acceptable limits.

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 subdivision approval and ancillary "c" variance relief for property known and designated as Block 503, Lot 8 as shown on the Tax and Assessment Map of the Township of Pequannock and located at 157 Mountain Avenue, Pompton Plains, New Jersey in the R-45 Zone. The Applicants propose to subdivide an existing 1.7 acre lot presently developed with one single-family home in order to create two (2) lots each with a lot area of 38,105.76 square feet. As a result of the proposed subdivision, the Applicants require ancillary "c" variance relief for minimum lot size, minimum lot frontage, minimum lot width and minimum side yard setback in regard to proposed Lot 8.02.

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.

The Board accepts the representations of the Applicants’ planner that there is no hardship involved in this matter and that the Applicants are not seeking variance relief under the MLUL pursuant to N.J.S.A. 40:55D-70c(1). The Board has therefore examined the request for variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2) and the Board concludes that the Applicants are not entitled to the variance relief requested. Specifically, the

Board reviewed the granting of the ancillary “c” variance relief under the c(2) analysis. In Kaufmann, 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 case under the c(2) criteria in the context of whether or not the approval of this application would effectuate the goals of the community as expressed through the Township’s Zoning and Planning Ordinances. First, as to the positive criteria, the Board finds that the Applicants have not satisfied the purposes of the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-2 and its subparts, more specifically (a) that the approval of this application will not promote the public health, safety, morals and general welfare; (c) the approval of this application will not provide adequate light, air and open space; (e) the approval of this application would not promote the establishment of appropriate population densities and concentrations that will contribute to the wellbeing of persons, neighborhoods, communities and regions and preservation of the environment; (i) the approval of this application would not promote a desirable visual environment through creative development techniques and good civic design and arrangement.

The Board finds that the subject site is located in the R-45 Zone where the minimum lot area is 45,000 square feet. The Board recognizes that existing Lot 8 consists of 76,211.52 square feet. Although the existing lot is significantly larger than the minimum lot area in the R-45 Zone, the existing development pattern along Mountain Avenue consists of numerous lots which meet and/or greatly exceed the minimum lot area of 45,000 square feet in the R-45 Zone. More specifically, the

following properties meet or exceed the minimum lot area in the R-45 Zone: Block 503, Lot 7 to the north and adjacent is 1.70 acres; Block 503, Lot 9 to the south and adjacent is 1.27 acres; Block 503, Lot 10 to the south and adjacent is 1.12 acres; Block 504, Lot 1 to the north and west across Mountain Avenue is 1.07 acres; Block 504, Lot 2 to the west across Mountain Avenue is 1.44 acres; Block 504, Lot 3 to the west across Mountain Avenue is 1.29 acres; Block 504, Lot 4 to the west and south across Mountain Avenue is 1.317 acres; Block 504, Lot 5 to the west and south across Mountain Avenue is 1.11 acres. The granting of this minor subdivision would not be in conformance with the existing pattern of development along Mountain Avenue and would constitute bad planning.

Each proposed lot, in addition to being undersized, does not meet the lot frontage requirement by a substantial amount. Proposed Lot 8 is 16 percent (16%) deficient, and proposed Lot 8.01 is 18 percent (18%) deficient. The lots in the surrounding Mountain Avenue neighborhood all exceed the frontage requirement of 150 feet. Proposed Lot 8 has a minimum lot frontage of 125.25 feet and proposed Lot 8.01 has a minimum lot frontage of 122.70 feet. Variance relief is also required in regard to minimum lot width where the minimum lot width in the R-45 Zone is 150 feet and the Applicants propose a lot width of 128.32 feet for proposed Lot 8 and 119.69 feet for proposed Lot 8.01. Furthermore, in regard to proposed Lot 8, a side yard setback variance was required where a minimum of 55 feet is required and 47.56 feet is proposed.

The Board also finds that there are environmental constraints including wetlands and floodplains which would render unusable significant portions of the back yards of both parcels. The Board finds that with the existence of the environmental constraints, there are already in existence New Jersey Department of Environmental Protection ("NJDEP") standards and regulations which would limit development without having to resort to deed restrictions. The NJDEP standards and

regulations offer adequate protection against further development of environmentally sensitive areas.

The Planning Board having found that the Applicants have not satisfied the positive criteria for granting bulk or “c” variance relief, nevertheless continued its analysis and reviewed the application as to the negative criteria. The Board concludes that ancillary “c” variance relief may not be granted without substantial detriment to the public good. The Board finds that ancillary “c” variance relief or bulk variance relief cannot be granted without a substantial adverse impact upon or detriment to the adjoining properties such that it will cause damage to the character of the neighborhood to constitute substantial detriment to the public good. The Board finds that there would be a substantial detrimental impact on the neighborhood as the two proposed lots and proposed homes would be significantly smaller and closer together than all other homes in the area. The Board does not believe that the character of the area would be served by eliminating one conforming lot and creating two undersized lots.

The Board also finds that bulk or “c” variance relief may not be granted without substantially impairing the intent and purpose of the zone plan and zoning ordinance. The Board reaches these conclusions because although the subject property has a lot area in excess of the minimum lot area in the R-45 Zone, the existing pattern of development and the character of the surrounding neighborhood has been developed with larger homes on large lots that exceed the minimum lot area in the zone. Thus, subdividing this lot into two nonconforming lots relative to lot area constitute a significant deviation from the ordinance and would be inconsistent with the surrounding R-45 Mountain Avenue neighborhood. Furthermore, the Board determines that it is not uncommon for a lot to be oversized when it contains a significant amount of environmental constraints such as the floodplain and wetland areas. This enables the lot to be developed

appropriately in accordance with the character of the surrounding neighborhood. The Board finds that such relief cannot be granted without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

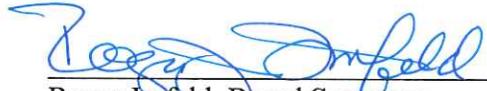
Under these circumstances, it is appropriate for the Board to deny the ancillary “c” variance relief sought. The Board also concludes that under the c(2) analysis that the positive and negative criteria were not met by the Applicants and therefore the granting of “c” variance relief as set forth herein is inappropriate. The Board also finds that the purposes of the Act would not be advanced by a deviation from the zoning ordinance requirements and that the benefits of any deviation would not substantially outweigh any detriment and thus, ancillary “c” or bulk variance relief shall be denied. As the Board determined that the variance relief sought should be denied, so too should the application for minor subdivision approval be denied.

Upon consideration of the plans, testimony and application, the Board determines that the proposed minor subdivision plan has not 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 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 Steven and Kathleen Petrarca for premises commonly known as Block 305, Lot 8, on the Tax and Assessment Map of the Township of Pequannock, and located at 157 Mountain Avenue, Pompton Plains, New Jersey, in the R-45 Zone requesting minor subdivision approval and ancillary “c” variance relief is determined as follows:

- A. Minor subdivision application under the MLUL pursuant to N.J.S.A. 40:55D-47 as well as the Land Development Ordinances of the Township of Pequannock is hereby denied;
- B. Ancillary “c” variance relief under the MLUL pursuant to N.J.S.A. 40:55D-70c(1) and (2) as well as the Land Development Ordinances of the Township of Pequannock is hereby denied.

The undersigned Secretary certifies the within Resolution was adopted by this Planning Board on May 6, 2013, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 20, 2013.



Roger Imfeld, Board Secretary

In Favor: *For denial - Dickinson, Fitamant, Imfeld, Troast, Dyresse, Krause*

Against:

Abstained: *Kapotes, Phelan, Vanderhoff, Altis*
Recuse

Board Members Eligible to Vote:

**RESOLUTION
TOWNSHIP OF PEQUANNOCK
PLANNING BOARD
IN THE MATTER OF
HANDEL CONSTRUCTION CO., INC.
DECIDED ON MAY 6, 2013
MEMORIALIZED ON MAY 20, 2013
MINOR SUBDIVISION/LOT LINE ADJUSTMENT APPROVAL
AND ANCILLARY "C" VARIANCE RELIEF**

WHEREAS, Handel Construction Co., Inc. (hereinafter "Applicant") has filed an application with the Pequannock Township Planning Board, (hereinafter "Planning Board" or "Board"), seeking minor subdivision/lot line adjustment approval and ancillary "c" variance relief for property known as Block 3405, Lots 13 and 14 on the Tax and Assessment Map of the Township of Pequannock and located at 7 and 9 Robert Place, Pequannock, New Jersey in the R-15 Residential Zone District (hereinafter "R-15 Zone"); and

WHEREAS, a public hearing was held on May 6, 2013, after the Planning Board determined it had jurisdiction; and

WHEREAS, the Applicant was represented by Steven Schepis, 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 subdivision/lot line adjustment approval and ancillary "c" variance relief for property known as Block 3405, Lots 13 and 14 on the Tax and Assessment Map of the Township of Pequannock and located at 7 and 9 Robert Place, Pequannock, New Jersey in the R-15 Residential Zone District (hereinafter "R-15 Zone").

Testifying on behalf of the Applicant during the course of the hearing process was Michael Handel, owner of Handel Construction Co., Inc. (hereinafter "Handel"); Frederick C. Meola (hereinafter "Meola", Professional Engineer, Professional Planner and surveyor; John

Carbone (hereinafter "Carbone"), the owner of 7 Robert Place; and Joyce Boyle (hereinafter "Boyle"), the owner of 9 Robert Place.

The subject property consists of two neighboring parcels. The application proposes to transfer a 6 foot wide strip of land totaling 876 square feet from Lot 13 to Lot 14. Both lots are currently in compliance with the lot area requirements in the R-15 zone and will remain in compliance after the proposed subdivision/lot line adjustment. If approved, the new lot areas of each of the subject lots will be: Lot 13: 16,715 SF and Lot 14: 19,293 SF.

The Applicant also requests ancillary "c" variances. Specifically, even with the transfer of 876 square feet of lot area from Lot 13 to Lot 14, Lot 14 will still require a variance for building coverage, where a maximum of 15% is permitted, 16.97% currently exists, and 17.4% is proposed. Additionally, Lot 14 will require a variance for side yard setback wherein the R-15 Zone requires a minimum setback of 15 feet on each side and an aggregate setback of 35 feet. In this matter, the setback on one side is 10.5 feet and the aggregate side yard setback is only 31.6 feet. Finally, the Applicant requests variance relief for the privacy fence in the back yard. It is currently 6 feet in height, but when the fence is moved to be within the additional 876 square feet, a variance will be required to keep the height of the fence consistent. This is necessitated by the change in topography between the two lots.

Handel testified that the variance for building coverage is required due to a mistake in his calculations when creating the construction plans for the home. He also represented that the side yard setback prior to the old home on the site being razed, was only 10.5 feet, so the proposed 10.5 foot side yard to include a 3rd garage bay is no different than the previously existing condition.

Meola testified that the variances were c(2) variances and allowing deviation from the strict interpretation of the zoning ordinance would benefit the community as a whole.

In conjunction with Meola's testimony, two exhibits were entered into the record. The first, Exhibit A-1 is an aerial photograph showing the subject parcels. The second, Exhibit A-2 is a series of 9 photographs taken by the Applicant's attorney, Mr. Schepis, of the newly constructed home at 7 Robert Place from various angles, showing the new construction and the portions of the property that require the variances.

Meola 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(2). He stated the improvements to the aesthetics of the home and the improvement to the house being raised to avoid flooding, and the improvements to the drainage in the backyard would all benefit the community. Further, he stated that the variances requested would advance the purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2, and its subparts, specifically the following sections:

- c) providing adequate light, air and open space;
- i) the granting of the application would promote a desirable visual environment.

Additionally, Meola testified that Planning Objective 10 of the Pequannock Township Master Plan would be furthered by approving the variance for the third garage, as that objective indicates a desire to "promote location of parking in interiors of buildings or side or rear yards." Meola 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. Furthermore, he concluded that the approval of this application would not jeopardize or harm the neighborhood in any way.

Carbone testified that the variances are necessary to improve his home and provide sufficient space for his large family. He testified that the home that was previously on the property and which was torn down and replaced by the current home is the house he grew up in. He stated that the garage of the former house extended further than the current house and would be in the same place as the proposed 3rd garage bay. He also testified that the 3rd garage bay is only intended to be used as a garage and no construction above it is proposed or anticipated. He further testified that he would accept as a condition of approval, a restriction prohibiting any construction above the third garage bay.

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/lot line adjustment approval and ancillary "c" variance relief for property known as Block 3405, Lots 13 and 14 on the Tax and Assessment Map of the Township of Pequannock and located at 7 and 9 Robert Place, Pequannock, New Jersey in the R-15 Residential Zone District (hereinafter "R-15 Zone").

The subject property consists of two neighboring parcels. The application proposes to transfer a 6 foot wide strip of land totaling 876 square feet from Lot 13 to Lot 14. Both lots are currently in compliance with the lot area requirements in the R-15 zone and will remain in compliance after the proposed subdivision/lot line adjustment. The new areas of each of the subject lots will be: Lot 13: 16,715 SF and Lot 14: 19,293 SF.

The Applicant also requests ancillary "c" variances. Specifically, even with the transfer of the 876 square feet from Lot 13 to Lot 14, Lot 14 will still require a variance for building coverage, where a maximum of 15% is permitted, 16.97% currently exists, and 17.4% is proposed. Additionally, Lot 14 will require a variance for side yard setback, wherein the R-15 Zone requires a minimum setback of 15 feet on each side and an aggregate setback of 35 feet. In

this matter, the setback on one side is 10.5 feet and the aggregate side yard setback is only 31.6 feet. Finally, the Applicant requests variance relief for the privacy fence in the back yard. It is currently 6 feet in height, but when the fence is moved to be within the additional 876 square feet, a variance will be required to keep the height of the fence consistent. This is necessitated by the change in topography between the two lots.

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.

In regard to Lot 13, no variances are required.

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)(2). The Board 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, in its review of the application under the c(2) criteria, analyzed the proofs provided by the Applicant relative to the positive criteria under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-2 and its subparts. The Board accepts the representations of the Applicant’s experts that the approval of this application would satisfy the following subparts of N.J.S.A. 40:55D-2 including (c), providing adequate light, air and open space; as well as subpart (i), promoting a desirable visual environment through creative development techniques and good civic design and arrangement. The Board reaches these conclusions based upon the lot area in the R-15 Zone wherein Lot 13 and Lot 14 exceed the minimum lot area of 15,000 in the R-15 Zone. More specifically, Lot 14 exceeds the minimum lot area by approximately 4, 293 square feet or approximately 28 percent (28%). The Board also finds that the size and scope of the

dwelling is appropriate for the lot size in the R-15 Zone and would be in keeping with the existing pattern of development along Robert Place.

Having found that the Applicant has satisfied the positive criteria for granting bulk or “c” variance relief, the Board then turns to the negative criteria. The Board concludes that ancillary “c” variance relief may be granted without substantial detriment to the public good. The Board finds that ancillary “c” variance relief or bulk variance relief can be granted without a substantial adverse impact upon or detriment to the adjoining properties nor will it cause such damage to the character of the neighborhood as to constitute substantial detriment to the public good.

The Board also finds that bulk variance or ancillary “c” variance relief may be granted without substantially impairing the intent and purpose of the zone plan and zoning ordinance. The Board reaches these conclusions because the subject property exceeds the minimum lot area in the R-15 Zone. Lot 14 has a lot area of 19,293 square feet and Lot 13 has a lot area of 16,715 square feet if approved. The minimum required lot area in the R-15 Zone is 15,000 square feet. Thus, both lots will continue to exceed the minimum lot area in the R-15 Zone. The lot area being in excess of the minimum lot area in the R-15 Zone compensates for and acts to mitigate the deficiencies relative to the variance relief sought in this application. More specifically, in regard to maximum building coverage for Lot 14, where a 15 percent (15%) maximum is permitted, 16.97 percent (16.97%) currently exists and 17.4 percent (17.4%) is proposed, the Board considers the deficiency to be de minimis. The Board also notes that the existing residence and pool house received Building Department approval in 2012. At that time, the third car garage addition and the roof over the pool house patio were not included as part of the approved permit and the development plan complied with the permitted 15 percent (15%) building coverage. The current application proposes to retain the pool patio roof and to construct a third garage bay to the residence. The pool patio roof increases the building coverage by 0.5

percent (0.5%) and the garage addition increases it by 1.19 percent (1.19%), for a total of 1.7 percent (1.7%). As a result, the proposed total building coverage is 17.4 percent (17.4%). The Board finds the increase to be de minimis, and to be imperceptible to the public.

The Board also considered the side yard setback where a minimum side yard setback of 15 feet is required and an aggregate side yard setback of 35 feet is required. While, in this matter, the Applicant proposes a minimum side yard setback of 10.5 feet on one side and an aggregate side yard setback of 31.6 feet in total. The Board accepts the representations of the Applicant's witnesses that the side yard setback, prior to the old home on the site being razed, was only 10.5 feet, so the proposed 10.5 foot side yard setback to include a third garage bay is no different than the previously existing condition. The Board further notes that the aggregate side yard setback as proposed is approximately 90 percent (90%) of what is required in the R-15 Zone. Once again, the Board determines that the overall lot area compensates for the deficiencies relative to the minimum side yard setback on one side and the aggregate side yard setback in total. Finally, with respect to the fence height in the back yard, the Board accepts the representations of the Applicant's experts that the variance is necessary due to a change in topography between the two lots in order to keep the height of the fence consistent which also results in improving the aesthetics of the fence area.

Based upon all of these conclusions, the Board finds that the purposes of the Act would be advanced by a deviation from the Zoning Ordinance requirements, and the benefits of any deviation substantially outweigh any detriment and, thus, ancillary "c" or bulk variance relief may be granted. The Board therefore concludes that both the positive and negative criteria were met by the Applicant, and thus, the granting of ancillary "c" or bulk variance relief set forth herein is appropriate to be granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2). The Board also recognizes that under Pullen v. Township of South Plainfield,

291 N.J. Super. 1, 8 (App. Div. 1996), that the Planning Board should consider the entire proposal in an application for a c(2) variance rather than only the benefits derived solely from the requested deviation. The Board has undertaken this analysis and concludes that for the reasons set forth herein, as well as the improvements to the aesthetics to the home, the house being raised to avoid flooding and drainage improvements in the rear yard would all have a positive benefit not only from the perspective of granting the variance relief, but on the community as well.

Upon consideration of the plans, testimony and application, the Board determines that the proposed minor subdivision/lot line adjustment 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 further finds that the granting of this application will not adversely impact or impair the use and enjoyment of adjacent properties. In addition, no variance relief is required in regard to Lot 13.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Township of Pequannock that the application of Handel Construction Co., Inc.. for premises commonly known and designated as Tax Block 3405, Lots 13 and 14 on the Tax and Assessment Map of the Township of Pequannock, located at 7 and 9 Robert Place, Pequannock, New Jersey in the R-15 Zone requesting minor subdivision/lot line adjustment approval and ancillary "c" variance relief is determined as follows:

- A. 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.
- B. Ancillary "c" variance relief is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70(c)(2) as well as the Land Development Ordinances of the Township of Pequannock in regard

to Lot 14 for building coverage where a maximum of 15% is permitted, 16.97% currently exists, and 17.4% is proposed; side yard setback where a minimum side yard setback of 15 feet is required and an aggregate side yard setback of 35 feet is required and a side yard setback 10.5 on one side and an aggregate side yard setback of 31.6 is proposed; and a variance for a fence 6 feet in height in the backyard.

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 minor subdivision plans prepared by Frederick C. Meola, consisting of one sheet, dated September 17, 2012 with a revision date of March 1, 2013 and any subsequent revisions thereto as directed by the Planning Board or the Board's professionals.
2. The Applicant represents that all of its representations and stipulations made 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 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 May 6, 2013.

4. This approval is granted as to the construction of the 3rd garage bay, but that construction shall be limited to a single story and any further construction above the third garage bay shall be prohibited. This restriction shall be included in the subdivision deed to be recorded.
5. 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.
6. The Applicant shall comply with all terms and conditions set forth in the Board Planner's review report dated May 5, 2013, to the satisfaction of the Board Planner.
7. 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, if required.
8. The granting of this application is subject to and conditioned upon Morris County Soil Conservation District approval, if required.
9. The granting of this application is subject to and conditioned upon New Jersey Department of Environmental Protection (NJDEP) approval, if required.
10. The granting of this application is subject to and conditioned upon Morris County Planning Board approval, if required.

11. The granting of this application is subject to and conditioned upon the Township of Pequannock Health Department approval of the septic systems, 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. 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 May 6, 2013 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 20, 2013.



Roger Imfeld, Board Secretary

In favor: *Dickinson, Kapotes, Phelan, Troast, Vanderhoff*

Against: *Fitamant, Imfeld, Krause, Altis*

Abstained:

Board Members Eligible to Vote: