

**RESOLUTION**  
**TOWNSHIP OF PEQUANNOCK PLANNING BOARD**  
**IN THE MATTER OF 777 ROUTE 23 ASSOCIATES, LLC**  
**DECIDED ON: DECEMBER 7, 2015**  
**MEMORIALIZED ON JANUARY 11, 2016**  
**REVISED ON: APRIL 18, 2016**  
**PRELIMINARY AND FINAL SITE PLAN APPROVAL**

**WHEREAS**, 777 Route 23 Associates, LLC (hereinafter “Applicant”), has filed an application with the Pequannock Township Planning Board (hereinafter “Planning Board” or “Board”) seeking preliminary and final site plan approval for property located at 777 Route 23 South, Pompton Plains, New Jersey and known and designated as Block 802, Lot 1 on the Tax Assessment Map of the Township of Pequannock (hereinafter “Township”) which premises are located in the C-2 highway commercial district (hereinafter “C-2 Zone”); and

**WHEREAS**, a public hearing was held on December 7, 2015 after the Planning Board determined it had jurisdiction; and

**WHEREAS**, the Planning Board approved the application on December 7, 2015; and

**WHEREAS**, the Planning Board memorialized its decision in a Resolution adopted on January 11, 2016; and

**WHEREAS**, subsequent to the memorialization of the Resolution on January 11, 2016; it was discovered that there were minor discrepancies between the record and what was set forth in the Resolution; and

**WHEREAS**, the Planning Board on April 18, 2016 authorized minor revisions to the Resolution to correct the minor discrepancies on pages 3 and 6 in order to confirm that some, but not all, of the pipes will be stored in the pole barns.

**WHEREAS**, the Applicant was represented by Joseph Rasa, Esq.

**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 in regard to property known and designated as Block 802, Lot 1 on the Tax Assessment Map of the Township of Pequannock which premises are located at 777 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 of site plan, signed by Michael Stern, dated June 4, 2015.
2. Completed Pequannock Township application for flood plain development, signed by Michael Stern, dated June 4, 2015.
3. Site plan, consisting of four (4) sheets prepared by Paul P. Darmofalski, P.E. of Darmofalski Engineering Associates, Inc., dated January 2015.
4. Architectural/Structural plans consisting of three (3) sheets, prepared by Structural Engineering Resources, LLC, dated June 19, 2014.

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

- A. Memorandum dated December 7, 2015 from Jill A. Hartmann, P.E., A.I.C.P., planner to the Pequannock Township Planning Board.
- B. Memorandum dated October 19, 2015 from Joe Golden, P.E., C.M.E., Township Engineer to the Pequannock Township Planning Board.
- C. Report of Pequannock Township Environmental Commission.

The nature of the application is to legalize two (2) existing accessory pole barn structures and to construct a new accessory single story pole barn structure in the far northern corner of the subject site, adjacent to the New York Susquehanna and Western Railway Corp. right of way and the Route 23 right of way.

Testifying on behalf of the Applicant was Michael Stern. Mr. Stern testified that two (2) of the pole barns were existing and were made out of steel pipes with fiberglass sheeting for the roof and steel Sealand containers for the sides. Mr. Stern further stated that a few years ago during a storm event the roofs on the barns collapsed. As a result, and in order to protect the product from the elements, the Applicant constructed two (2) pole barns. Mr. Stern further testified that he buys product both domestically and from overseas. However, the product that is purchased overseas is in larger quantities and, therefore, he is forced to purchase a greater quantity of product at one time which causes the applicant to store more of the product on site. The Applicant seeks to eliminate the outdoor storage of some pipes and other materials in order to store the materials within the pole barns.

Next, testifying on behalf of the Applicant was Paul P. Darmofalski. Mr. Darmofalski is a licensed professional engineer and planner in the State of New Jersey. Mr. Darmofalski stated that the Applicant is seeking approval for three (3) pole barns. The pole barns will have no electric and no plumbing. In effect, they are simply buildings to store product and other pipe materials.

Mr. Darmofalski stated that the buildings in question are in the northeast corner of the property. Mr. Darmofalski further reviewed with the Board the size of each of the pole barn buildings which are identified as Buildings A, B and C. Mr. Darmofalski stated that Building A is proposed and will consist of 4,455 s.f. and that Buildings B and C are existing with Building B consisting of 3,250 s.f. and Building C consisting of 2,250 s.f. The buildings are located in the northeast corner of the property. Mr. Darmofalski testified that the buildings are not visible from the highway. Mr. Darmofalski further testified that building coverage will increase from 8.7% to 9.2% and impervious surface coverage will increase from 54% to 54.7%.

Mr. Darmofalski further represented that the location of the pole barns are not in the flood plain. Building A which is the proposed pole barn will be 30 ft. by 150 ft. and will replace a lean to and storage container.

Mr. Darmofalski also addressed the issue of stormwater management as a result of the proposed improvements. Mr. Darmofalski testified that roof water will be discharged into seepage pits from the three (3) pole barns. Building A will have five (5) seepage pits, Building B will have three (3) seepage pits and Building C will have two (2) seepage pits. Thus, there will be a total of ten (10) seepage pits on site.

The Board and the Applicant also reviewed the comments of the Pequannock Township Environmental Commission. Mr. Darmofalski testified that the Applicant is not diverting overland flow to the seepage pits. Mr. Darmofalski stated that there is also no existing drainage structure other than overland flow that will discharge to the onsite pond. Furthermore, in regard to the Environmental Commission's concern that the building runoff to the seepage locations may raise groundwater levels enough to impact basements of nearby residences, Mr. Darmofalski stated that the soil is very permeable and that the proposed storm water management measures will not have any negative impact on the water table. He also stated that the water table is well below ten (10) feet.

Mr. Darmofalski also testified that all pole barns are three-sided buildings with the fronts open.

Mr. Darmofalski agreed on behalf of the Applicant to submit a marked up site plan in order to depict the removal of storage containers from the site.

The meeting was opened up to members of the public and the Board was addressed by Tim Dudgeon, 13 Woodland Place. Mr. Dudgeon testified that he lives behind the north end of the site and that the pipe company has been a good neighbor. Mr. Dudgeon was merely seeking additional information in regard to the application, in particular about the building height.

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

The Application before the Board is a request for preliminary and final site plan approval. The subject site is located in the C-2 Zone. The subject site is designated as Block 802, Lot 1 on the Tax Assessment Map of the Township of Pequannock and located at 777 Route 23 South, Pompton Plains, New Jersey.

The subject site is a 13.05 acre site that is fully developed with a two-story office/storage building that fronts on Route 23. A significant amount of outdoor storage of pipes is located through the site as well as a number of pole barn style storage buildings. The Board notes that the site has been the subject of several site plans over the years, the most recent of which was to permit a second story addition to the existing office building.

The nature of the application is to legalize two (2) existing accessory pole barn structures and to construct a new accessory single story pole barn structure. All three (3) pole barns are located in the far northern corner of the subject site, adjacent to the New York Susquehanna and Western Railway Corp. right-of-way and the Route 23 right-of-way.

The Board notes that the existing and proposed pole barns will increase the site building coverage to 9.2% where a maximum of 30% is permitted in the C-2 Zone. Moreover, approval

of this application will result in an increase in impervious surface coverage from 54% to 54.7% where 90% is permitted. The Board further notes that no variance relief is required in regard to this site plan application. The Board concludes that even with the approval of three (3) pole barns, the increase in building coverage is approximately 1/3 of the maximum building coverage permitted in the zone. In addition, the impervious surface coverage is approximately only 60% of what the maximum impervious surface coverage is in the C-2 Zone. Thus, the improvements proposed by the Applicant are far below the maximums allowed under the ordinance. The Board also finds that the approval of this application will enable the applicant to clean up the site and provide for the storage of some pipes and other products within the pole barns and, thus, they will not be out in the open. The Board is also satisfied that the proposed drainage improvements are appropriate and will not cause any disturbance to the adjoining property owners nor will it have any negative effect on the water table in the area. The Board also notes that the Board Engineer has no engineering objection to the Board granting site plan approval.

Upon consideration of the plans, testimony and application, the Board determines that the Applicant has submitted sufficient information for us 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 for a permitted use which is fully conforming to the zone requirements in the C-2 Zone.

**NOW, THEREFORE,** be it resolved by the Planning Board of the Township of Pequannock that the application of 777 Route 23 South Associates, LLC for premises commonly known and designated at Block 802, Lot 1 on the Tax Assessment Map of the Township of

Pequannock and located at 777 Route 23 South, Pompton Plains, New Jersey in the C-2 Zone district requesting land use relief is 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.

**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 December 7, 2015.

4. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions contained in a report of Jill A.

Hartmann, P.P., A.I.C.P., dated December 7, 2015, 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 Joe Golden, P.E., C.M.E., dated October 19, 2015, Township Engineer for the Pequannock Planning Board.

6. The granting of this application is subject to and conditioned upon the applicant submitting a marked-up site plan depicting the location and the number of storage containers to be removed from the site which shall be subject to the review and approval of the Board Planner and Zoning Officer.

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

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

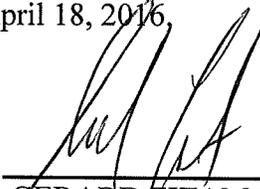
9. Payment of all fees, costs and escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.

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

11. 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 to supply and the Planning Board a copy of any approvals received.

12. 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 December 7, 2015, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on January 11, 2016 and revised on April 18, 2016.

 4/21/16  
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GERARD PITAMANT, Board Secretary

**RESOLUTION  
TOWNSHIP OF PEQUANNOCK  
PLANNING BOARD  
IN THE MATTER OF BENARD R. AND MARY THOMAS  
DECIDED ON MARCH 21, 2016  
MEMORIALIZED ON APRIL 18, 2016  
GRANTING OF MINOR SUBDIVISION APPLICATION  
WITH ANCILLARY "C" VARIANCE RELIEF**

**WHEREAS**, Benard R. and Mary Thomas, ("hereinafter "Applicants") have made application to the Pequannock Township Planning Board, (hereinafter "Board" or "Planning Board"), for property known and designated as Block 303, Lot 10, on the Tax Map of the Township of Pequannock, (hereinafter "Township"), which premises are located at 10 Pearl Avenue, Pompton Plains, New Jersey 07444 and located in the R-15 Zone District, (hereinafter "R-15 Zone"); and

**WHEREAS**, a public hearing was held on March 21, 2016 after the Planning Board determined it had jurisdiction; and

**WHEREAS**, the Applicants were represented by Joseph Rasa, Esq.

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

The application before the Planning Board is a request for minor subdivision approval with ancillary "c" variance relief for property known and designated as Block 303, Lot 10 on the Tax Assessment Map of the Township of Pequannock, which premises are commonly known as 10 Pearl Avenue, Pompton Plains, New Jersey. The subject site is located in the R-15 Zone district. The purpose of the application is to subdivide existing Lot 10 in order to create an additional building lot for the construction of a single family dwelling.

Submitted in support of the application were the following documents:

1. Completed Pequannock Township Application for Subdivision signed by Benard and Mary Thomas dated February 5, 2016.
2. Completed Pequannock Township Site Plan Application, signed by Benard and Mary Thomas, dated February 5, 2016.
3. Completed Pequannock Township Variance Application, proposed lot with existing residence, signed by Benard and Mary Thomas, dated February 5, 2016.
4. Completed Pequannock Township Variance Application, proposed lot with proposed residence, signed by Benard and Mary Thomas, dated February 5, 2016.
5. Minor Subdivision Plan and Survey, consisting of 3 sheets, prepared by Robert L. Cigol, NJPLSA of DMC Associates, Inc., dated August 7, 2015 with revisions through October 30, 2015.
6. Proposed Subdivision and Development Plan, consisting of Title Sheet and 5 sheets, prepared by Paul P. Darmofalski, PE, dated January 11, 2016 with revisions through February 29, 2016.

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

- a. Memorandum dated March 20, 2016 from Jill A. Hartmann, P.P., AICP, Planner to the Pequannock Township Planning Board.
- b. Report dated March 17, 2016 from Joseph R. Golden, P.E., P.P., CME, Pequannock Township Planning Board Engineer.

- c. Memorandum dated March 11, 2016 from the Pequannock Township Health Officer.
- d. Letter dated March 18, 2016 from Robert D. Westdyk, Fire Marshall, Township of Pequannock Bureau of Fire Safety.

Testifying in regard to the application was Paul P. Darmofalski, P.E., P.P., a licensed professional engineer and planner in the State of New Jersey. The Board accepted Mr. Darmofalski's credentials and Mr. Darmofalski presented expert testimony as both a planner and an engineer. Also testifying was the Applicant, Benard R. Thomas.

Mr. Darmofalski testified that the Applicants previously presented an application for a minor subdivision of this lot with related "c" variance relief. That application was presented to the Board on June 19, 2000, whereupon at the conclusion of the public hearing, the Board denied the application. The decision of the Board was memorialized in a Resolution adopted by the Board on July 17, 2000. The first issue addressed by the Board was whether or not the doctrine of res judicata would prevent the Applicants from pursuing a minor subdivision application in regard to the same property for which the Planning Board previously denied an application. Thus, the Board undertook an analysis to determine whether or not the subject application would be barred by the doctrine of res judicata. The elements for the doctrine of res judicata are:

1. The second application is substantially similar to the first;
2. The same parties or their privies are involved;
3. There must be no substantial change in the application itself or conditions surrounding the properties;
4. There must have been an adjudication on the merits in the first case; and

5. Both applications must involve the same cause of action.

Mr. Darmofalski testified that the present application is substantially different from the application that was presented to the Planning Board on June 19, 2000. Mr. Darmofalski stated that the lot areas are different, the footprint of the proposed new dwelling is smaller than that which was previously proposed and the Applicants are now proposing an emergency access easement on the property that would connect Pearl and Walnut Avenue for emergency vehicles. The Board Planner, Jill A. Hartmann, P.P. confirmed that in her opinion, the present application is substantially different from the prior application. As a result, the Board determined that the present application is substantially different from the prior application, and, as such, the Board had jurisdiction to proceed with the current application.

The nature of the application is to subdivide existing Lot 10 into two Lots with access to the existing dwelling being maintained from Pearl Avenue and access to a new residence from Walnut Avenue. The subject property is located in the R-15 Zone District where the minimum lot area is 15,000 square feet. Existing Lot 10 has a lot area of 52,516.61 square feet. As a result of this subdivision, proposed Lot 10.01 (existing dwelling) will consist of 27,358.14 square feet of lot area and proposed Lot 10.02 (new dwelling) will consist of 25,158.48 square feet of lot area.

Mr. Darmofalski testified that Lot 10 in its current configuration is more than 3 times the size of the required minimum lot area in the R-15 Zone. In regard to proposed Lot 10.01, the Applicant will meet or exceed the bulk standards in the R-15 Zone with the exception of two (2) existing non-conforming conditions. They are in regard to lot frontage where a minimum of 100 feet is required and 45 feet is currently existing and for side yard

setback where the minimum side yard setback is 15 feet for one side and 35 feet in the aggregate and the Applicant has a side yard setback of 12.71 feet on one side and 56.26 feet existing in the aggregate condition. The two (2) existing non-conforming conditions for proposed Lot 10.01 will not be aggravated or exacerbated as a result of this subdivision.

In regard to proposed Lot 10.02, all bulk standards in the R-15 Zone are met or exceeded by this application with the exception of lot frontage where the minimum lot frontage in the R-15 Zone is 100 feet and the Applicant proposes a lot frontage of 25.27 feet, thus requiring variance relief.

Mr. Darmofalski testified in regard to a 20 foot wide emergency access easement that would provide access from Pearl Avenue through the subject property to Walnut Avenue. He further testified that the Applicant would install a Geoblock System so that grass would grow through it, but the system would support the weight of emergency vehicles including fire trucks.

In regard to the emergency access way, the Applicants originally proposed to install a security gate in order to prevent thru access by non-emergency vehicles, but after a discussion between the Board and the Applicants, the Applicants agreed to install a removable fence as opposed to a gate, which removable fence would be located on the common property line separating the two (2) lots. Mr. Darmofalski does not recommend connecting Pearl Avenue to Walnut Avenue as a thru street because in his opinion as a Planner, this would change the complexion of the neighborhood. He further confirmed that pursuant to the Residential Site Improvements Standards ("RSIS") that a 20 foot wide access way is acceptable.

Mr. Darmofalski also represented that the Applicants would comply with the Fire Marshall's letter of March 18, 2016, as well as in regard to the Board Engineer's Review Report dated March 17, 2016.

Mr. Darmofalski also represented that each property owner would be responsible for snow removal and maintenance of the Geoblock emergency access easement area for those portions on the respective properties in order to keep the access way free and clear of any obstruction for use by emergency vehicles.

Mr. Darmofalski confirmed that utilities to the new dwelling on Lot 10.02 will be underground.

Mr. Darmofalski also agreed to provide additional landscaping between the proposed new dwelling on Lot 10.02 and the residential property on Walnut Avenue (the westerly side of the site).

Mr. Darmofalski presented planning testimony in support of the application. Mr. Darmofalski then testified that certain purposes under the Municipal Land Use Law ("MLUL") are applicable in regard to this development application. Mr. Darmofalski also reviewed with the Board the proofs required in order to enable the Board to grant ancillary "c" variance relief under the MLUL pursuant to N.J.S.A. 40:55-70c(2): 1) Mr. Darmofalski stated that it relates to a specific piece of property; 2) that the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements; 3) that the variance can be granted without substantial detriment to the public good; 4) that the benefits of the deviation would substantially outweigh any detriment; and 5) that the variance will not substantially impair the intent and purpose of the zone plan and zoning

ordinance. Mr. Darmofalski also stated that this matter is similar to the Kaufmann case. Mr. Darmofalski provided the Board with a brief recitation of the facts in the Kaufmann case.

Mr. Darmofalski testified that in the Township of Pequannock, there are at least four (4) flag lots that were created with 25 feet of frontage. Furthermore, there are sixteen (16) properties in the Pompton Plains section of the Township with 25 feet of frontage which is consistent with what the Applicants are proposing in this application. Furthermore, Mr. Darmofalski stated that 25 feet of frontage conforms to RSIS requirements.

Next, Mr. Darmofalski testified in regard to the purposes of the Municipal Land Use Law that are advanced by the approval of this application. He stated that under the MLUL pursuant to N.J.S.A. 40:55D-2, the purposes of the Act that would be advanced would be; a) to encourage municipal action to guide the appropriate use or development of all lands in the State of New Jersey in a manner which will promote the public health, safety, morals and general welfare; b) to secure safety from fire, flood, panic and other natural and manmade disasters; c) to provide adequate light, air and open space; e) to promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions; g) to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses; and i) to promote a desirable visual environment through creative development techniques and good civic design.

Mr. Darmofalski reiterated the variances that are required in regard to this development application which are set forth herein. Mr. Darmofalski stated that providing emergency access was a better alternative than to extend the roadway to connect Pearl Avenue and Walnut Avenue. He testified that connecting Pearl Avenue to Walnut Avenue

for unrestricted access would not constitute good planning for the neighborhood and would degrade the neighborhood. Mr. Darmofalski also stated that numerous properties in the vicinity of Pearl Avenue and the Walnut Avenue and Foothills Section of the Township would benefit by the use of an emergency access easement without negatively impacting the surrounding neighborhood.

The meeting was opened up to members of the public and no members of the public addressed 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 a request for minor subdivision approval and ancillary "c" variance relief for property known as Block 303, Lot 10 on the Tax Assessment Map of the Township of Pequannock and located at 10 Pearl Avenue, Pompton Plains, New Jersey 07444. The subject property is located in R-15 Zone.

The subject site is an oversized 52,516.61 square foot parcel located in the vicinity of Pearl Avenue, Orchard Road and Walnut Avenue. The site is currently developed with a single family residence. The existing site is non-conforming in regard to lot frontage where the minimum lot frontage is 100 feet and the Applicants currently have 45 feet of lot frontage as well as in regard to a side yard setback where the minimum side yard setback is 15 feet on one side and 35 feet in the aggregate and the Applicants have 12.71 feet on one side and 160.79 feet in the aggregate. As a result of the proposed subdivision, lot frontage for proposed Lot 10.01 will remain at 45 feet and the side yard setback will be maintained at 12.71 feet on one side with an aggregate side yard setback of 56.26 feet. The aggregate side yard setback for proposed Lot 10.01, although being decreased from

160.79 feet to 56.26 feet, still exceeds the minimum aggregate 35 feet combined side yard setback.

In regard to proposed Lot 10.02, the only variance required is in regard to Lot frontage where a minimum of 100 feet is required and 25.27 feet is proposed.

The Board finds that the Applicant is proposing a permitted use in the Zone but does, however require variance relief. 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 viewed the granting of ancillary "c" variance relief under the c(2) analysis. 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, 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 MLUL pursuant to N.J.S.A. 40:55D-2 and its subparts. The Board finds that the intent and the purpose of the MLUL would be advanced pursuant to N.J.S.A. 40:55D-2(a) to encourage municipal action to guide the appropriate use or development of all lands in the State of New Jersey, in a manner which will promote the public health, safety, morals and general welfare. The Board accepts the representations of the Applicants' Planner that the approval of this minor subdivision with a 20 foot wide emergency access way promotes public safety by enabling emergency vehicles to have direct access between Pearl Avenue and Walnut

Avenue during emergency situations. The Board finds that 2 (c) which is to provide adequate light, air and open space is also met. The Board accepts the representations of the Applicants' Planner that the proposed lot areas of Lot 10.01 at 27,358.14 square feet and proposed Lot 10.02 at 25,158.48 square feet greatly exceed the minimum lot area of 15,000 square feet in the R-15 Zone and will promote sensible development while maintaining open space on each of the lots;

The Board also determines that 2 (e) is satisfied by promoting the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions. The Board accepts the representations of the Applicants' Planner that there are four (4) flag lots that were created with 25 feet of frontage and 16 properties in the Pompton Plains section with 25 feet of frontage. The Board determines that the combination of 25 feet of frontage, with the proposed 20 feet wide emergency access promotes the establishment of population densities and contributes to the well-being of neighborhoods.

The Board finds that the Applicants have satisfied 2 (g) which is to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses. Once again, the Board finds that there are a significant number of lots that are undersized and lack the required lot frontage. The Board further accepts the representations of the Applicants' Planner that the proposed subdivision is consistent with the surrounding neighborhood and is reflective of the existing development pattern notwithstanding the deviations from the Zoning Ordinance.

The Board finds that the approval of this application satisfies 2 (i) by promoting a desirable visual environment through creative development techniques and good civic

design. The Board further accepts the representations of the Applicants' Planner that the subdivision will result in the construction of a new single family dwelling with direct access to Walnut Avenue which is consistent with the overall development pattern on that street.

Having found that the Applicants have satisfied the positive criteria granting bulk or "c" variance relief, the Board then turns to the negative criteria. For the reasons set forth herein, the Board concludes that ancillary "c" or bulk variance relief may be granted without substantial detriment to the public good. The Board finds that "c" or bulk variance relief may 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 reaches these conclusions based on the proofs presented and the nature of the relief sought in this matter. The Board also finds that "c" or bulk variance relief may be granted without substantially impairing the intent and purpose of the zone plan and zoning ordinance.

Based upon all of these conclusions, the Board finds that the purposes of the MLUL 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 MLUL pursuant to N.J.S.A. 40:55D-70c(2).

Upon consideration of the plans, testimony and application, the Board determines that the Applicant has met the minimum requirements of the MLUL, case law and Borough ordinances to a sufficient degree so as to enable the Board to grant the relief being

requested. The Board further finds that the granting of this application will not adversely impact or impair the use and enjoyment of adjacent properties.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Township of Pequannock with regard to the application of Benard R. and Mary Thomas for property known and designated as Block 303, Lot 10 on the Tax Assessment Map of the Township of Pequannock and located at 10 Pearl Avenue, Pompton Plains, New Jersey, and located in the R-15 Zone requesting land use 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; and
- B. ancillary c or bulk variance relief is granted in regard to proposed Lot 10.01 for lot frontage and side yard setback; and
- C. ancillary c or bulk variance relief is granted in regard to proposed Lot 10.02 for lot frontage.

**IT IS FURTHER RESOLVED** that the aforementioned 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 Applicants 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 March 21, 2016.

4. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions contained in the March 17, 2016 report of Joseph R. Golden, PE, P.P, CME, Engineer to the Pequannock Township Planning Board and as testified to during the hearing process.

5. The deed recorded memorializing this subdivision shall specifically refer to this resolution and shall be subject to the review and approval of the Board Engineer, Township Surveyor and Board Attorney. The Applicant shall record the subdivision deed within 190 days of the memorializing resolution being adopted. Failure to do so shall render this approval null and void unless an extension of time is granted.

6. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions set forth in the report of Jill A. Hartmann, P.P., AICP dated March 20, 2016.

7. The granting of this application is subject to and conditioned upon each owner of Lot 10.01 and 10.02 keeping the emergency access way on their respective properties clear and free of any obstructions including snow removal, that would prohibit or impede access by emergency service vehicles.

8. The granting of this application is subject to and conditioned upon the Applicants installing a removable fence on the common property line between Lots 10.01 and 10.02 along the emergency access way.

9. The granting of this application is subject to and conditioned upon utilities that service the new dwelling on Lot 10.02 being located underground.

10. The granting of this application is subject to and conditioned upon the Applicants providing additional landscaping on the westerly side of Lot 10.02 and adjacent to the residential dwelling on Lot 22, Block 2.02 on the westerly side of the site.

11. The granting of this application is subject to and conditioned upon the submission of revised plans which shall be reviewed and approved by the Board Engineer. The plans shall not be signed by the Board Secretary and Chairman until the revised plans have been reviewed and approved by the Board Engineer. An appropriate escrow shall also be established and maintained by the Applicant to cover the cost of professional review and inspection fees.

12. The granting of this application is subject to and conditioned upon the Applicant providing an access easement across proposed Lots 10.01 and 10.02 for purposes of providing access for emergency service vehicles which shall be subject to the review and approval of the Township Engineer and Board Attorney.

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

14. The granting of this application is subject to and conditioned upon Morris County Soil Conservation District approval, if required.

15. The granting of this application is subject to and conditioned upon New Jersey Department of Environmental Protection approval, if required.

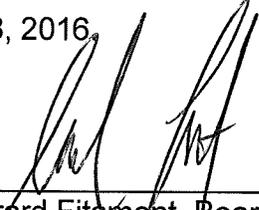
16. This approval is subject to the payment in full by the Applicant of all taxes, fees, escrows, assessments and other amounts due and owing to the Borough and/or any

other agency. Any monies are to be paid by the Applicant within twenty (20) days of said request by the Board Secretary.

17. Certification that taxes are paid to date of approval.

18. 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 agency having jurisdiction hereunder.

The undersigned secretary certifies the within Resolution was adopted by the Pequannock Township Planning Board on March 21, 2016 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on April 18, 2016.

 4/21/16  
\_\_\_\_\_  
Gerard Fitarone, Board Secretary

In favor:

Against:

Abstained:

Board Members Eligible to Vote: