

**RESOLUTION  
TOWNSHIP OF PEQUANNOCK  
PLANNING BOARD  
IN THE MATTER OF DeGROOT HOLDINGS, LLC  
DECIDED ON APRIL 18, 2011  
MEMORIALIZED ON MAY 16, 2011  
APPLICATION FOR SIGN APPROVAL  
AND DESIGN WAIVERS**

**WHEREAS**, DeGroot Holdings, LL (hereinafter "DeGroot" or "Applicant") has filed an application with the Township of Pequannock Planning Board, (hereinafter "Planning Board" or "Board"), for sign approval and design waivers for property known as Block 3001, Lot 2, on the Tax and Assessment Map of the Township of Pequannock (hereinafter "Township"), which premises are located at 280 Farm Road, Pompton Plains, New Jersey and located in the R-87 Residential Zone District (hereinafter "R-87 Zone"); and

**WHEREAS**, the Applicant has applied to the Pequannock Township Planning Board for approval pursuant to the Code of the Township of Pequannock, Chapter 153, Signs, which authorizes the Planning Board to review and approve all sign applications within the Township; and

**WHEREAS**, a public hearing was held on April 18, 2011, after the Planning Board determined it had jurisdiction; and

**WHEREAS**, the Applicant was represented by Frank Scangarella, 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 within application is for premises known and designated as Block 3001, Lot 2 on the Tax and Assessment Map of the Township of Pequannock and located at 280 Farm Road, Pompton Plains, New Jersey. The subject site is located in the R-87 Zone District.

The following documents were submitted in connection with this application for sign approval.

1. Completed sign application signed by DeGroot Holdings, LLC, dated March 29, 2011.
2. Sign elevation illustration, consisting of two sheets, prepared by Butler Sign Co., dated February 28, 2011.

Testifying on behalf of the Applicant was John Janis of Butler Sign Co. (hereinafter "Janis"), and Paul Darmofalski, P.E., P.P. a licensed professional Engineer and Planner in the State of New Jersey (hereinafter "Darmofalski"). This is a sign application to install one (1) free-standing sign at the entrance to an existing farm/nursery. The subject site is located in the R-87 residential district of the Township. The existing farm/nursery is a permitted conditional use. The Applicant seeks to install a two-sided, free-standing sign with 38 square feet of sign area per side. John Janis testified that there will be 8 feet of grade clearance. In addition, the height of the sign will be 13 feet 4 inches from grade to the top of the sign. Janis also testified that the sign would be set back 5 feet from the property line. However, based upon further discussion with the Board, Janis agreed to move the sign back so as to maintain a setback of 15 feet from the property line.

Paul Darmofalski also testified in connection with this application. He testified that the proposed location for the free-standing sign would be approximately 175 feet from the intersection of Jacksonville Road and Farm Road. He also reviewed the proposed sign location plan prepared by his office in connection with this application.

The Applicant requires three (3) design waivers in connection with this application. First, the Applicant requires a design waiver in regard to the size of the sign where the Applicant proposes a two-sided, free-standing sign at 38 square feet per side. Secondly,

the Applicant requires a design waiver in regard to the height of the sign at 13 feet 4 inches. Thirdly, the Applicant requires a design waiver from the setback requirement which requires the sign to be set back 20 feet from the property line and the Applicant proposes to have the sign set back 15 feet from the property line. The Applicant also testified that the location of the DeGroot sign would not conflict in any way with the existing VanWingerden Farms free-standing sign located nearby.

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

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

DeGroot Holdings, LLC is the Applicant for premises known and designated as Block 3001, Lot 2 on the Tax and Assessment Map of the Township of Pequannock and located at 280 Farm Road, Pompton Plains, New Jersey, which site is located in the R-87 Residential Zone District.

The nature of this application is to permit the Applicant to install one free-standing sign at the entrance to an existing farm/nursery. The existing farm/nursery is a permitted conditional use. The Applicant requires a design waiver from the Land Development Ordinances of the Township of Pequannock, Signs, Section 153.06(A)(3) which permits a professional use sign with a maximum sign area of 12 square feet. The professional use designation has been used for guidance in this application. The proposed free-standing sign is 38 square feet in size, thereby requiring waiver relief from Section 153.06(A)(3). Secondly, the Applicant requires a design waiver from Section 153.06(A)(4) because the overall height of the sign is 13 feet 4 inches where the maximum sign height is 12 feet. Thirdly, the Applicant requires design waiver relief from the same Section of the Ordinance

because the minimum setback from the property line is 20 feet and the Applicant is proposing a setback of only 15 feet from the property line. Therefore, the Applicant requires 3 design waivers with regard to the size of the sign, the height of the sign and in regard to the setback requirement for the sign.

The Board is satisfied that all three design waivers should be granted. The Board accepts the representations of the Applicant's experts that the proposed sign would not conflict in any way with the existing free-standing sign for VanWingerden Farms. In addition, the sign will be set back 175 feet from the intersection of Jacksonville Road and Farm Road and thus will not present any sight line impediments. The Board also accepts the representations of the Applicant that since the free-standing sign is proposed to be illuminated with ground lighting, the Applicants will place the lights on a timer and will turn off the lights at 9:00 p.m. The Board also determines that although this is not a professional sign, the size of the sign at 38 square feet is similar in nature to the existing VanWingerden sign and is a reasonable size in regard to the size of the property upon which the sign is located. The Board also determines that the sign will help motorists traveling in the vicinity to identify the location of the business.

Upon consideration of the plans, testimony and application, the Board determines that the Applicant has provided sufficient information so as to enable the Board to render an informed decision with regard to the request for sign approval. The Board determines that it is appropriate to grant the application for signage as proposed by the Applicant inclusive of the granting of design waiver relief as set forth herein.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Township of Pequannock that the application of DeGroot Holdings, LLC for premises commonly known as Block 3001, Lot 2 on the Tax and Assessment Map of the Township of Pequannock

and located at 280 Farm Road, Pompton Plains, New Jersey in the R-87 Zone District requesting sign approval is determined as follows:

1. Approval is hereby granted to enable the Applicant to install one (1) free-standing sign, double sided with 38 square feet of sign area per side in accordance with a sign elevation illustration, consisting of two (2) sheets, prepared by Butler Sign Co. dated February 28, 2011.
2. Waiver relief is granted from the Sign Ordinance of the Township of Pequannock, and more specifically Section 153.06(A)(3) in regard to the sign area of 38 square feet per side; and Section 153.06(A)(4) in order to permit the free-standing sign to have an overall height of 13 feet 4 inches and to be located 15 feet from the property line.

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

1. The Applicant shall comply with all appropriate terms and conditions of the Township of Pequannock Code Chapter 153 – Signs.
2. The Applicant represents that all of its representations and stipulations made by it or on its behalf to the Township of Pequannock 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 April 18, 2011.
4. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions set forth in the Board Planner's review report dated April 18, 2011.
5. The granting of this application is subject to and conditioned upon the free-standing sign being set back 15 feet from the property line.
6. The granting of this application is subject to and conditioned upon the Applicant installing a timer in regard to the ground lights that will illuminate the sign, which timer will cause the lights to be turned off at 9:00 p.m.
7. 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.
8. Certificate that taxes are paid current to date of approval.

9. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Pequannock, County of Morris, State of New Jersey or any other jurisdiction.

The undersigned secretary certifies the within Resolution was adopted by this Planning Board on April 18, 2011 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 16, 2011.

  
\_\_\_\_\_  
Roger Imfeld, Board Secretary

In favor:

Against:

Abstained:

Board Members Eligible to Vote:

X:\WP-DATA\COR\MATTERS\PEQ-331E DeGroot Resolution 4-21-11 rb.doc

**RESOLUTION  
TOWNSHIP OF PEQUANNOCK  
PLANNING BOARD  
IN THE MATTER OF CIGO, LLC  
DECIDED ON APRIL 18, 2011  
MEMORIALIZED ON MAY 16, 2011  
AMENDED SITE PLAN APPROVAL**

**WHEREAS**, Cigo, LLC ("hereinafter "Applicant" or "Cigo") has made application to the Township of Pequannock Planning Board, (hereinafter "Planning Board" or "Board"), for amended site plan approval for property 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 at 637 Route 23 South, Pompton Plains, New Jersey and located in the C-2 Highway Commercial Zone District (hereinafter "C-2 Zone"); and

**WHEREAS**, a public hearing was held on April 18, 2011, after the Planning Board determined it had jurisdiction; and

**WHEREAS**, the Applicant was represented by Frank Scangarella, 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 amended site plan approval for property known 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, which site is located in the C-2 Zone.

Testifying in regard to this application was William Yago (hereinafter "Yago"), the owner of the property and Paul Darmofalski, P.E., P.P., a licensed professional engineer and planner in the State of New Jersey (hereinafter "Darmofalski").

The subject site is a 1.1178 acre corner parcel fully developed with a small 1-story strip commercial center. Access to the site is via Garden Place to the north and Route 23 to the east. The application proposes to utilize the indoor commercial retail space, formerly occupied

by Oak Farms for the retail sale of items including, but not limited to, swing sets and sheds. Darmofalski prepared a proposed site layout dated April 6, 2011 and consisting of one (1) sheet. An outdoor display is proposed for an area adjacent to and north of the proposed indoor sales space. The Board Planner issued a review report dated April 18, 2011 wherein she opined that outdoor display of merchandise is permitted in the C-2 Zone as an accessory use to a permitted use. The application proposes an outdoor display area that will accommodate a number of shed and swing sets. Specifically, the submitted plan shows four (4) playground sets and five (5) sheds. Formerly, the proposed outdoor display area was used as a greenhouse/outdoor sales area for Oak Farms. The outdoor display area has existed for approximately 20 years on the property. A fence is proposed around the entire outdoor display area.

The submitted plans show a rear area or an area on the western side of the property, which is adjacent to the residential neighborhood. This area is depicted on the plan as being a "storage area for outdoor furniture-sheds-play sets-etc." Outdoor storage is not permitted in the C-2 District. The Applicant represented on the record that this element would be removed from the site plan and application and that there would be no outdoor storage in this area.

Furthermore, the Applicant indicated that the proposed new chain link fence to be installed would not exceed 6 feet in height. Also, no new site lighting is proposed in connection with this application. Finally, in regard to signage, the Applicant indicated that it would merely replace signage previously utilized by Oak Farms with signage for the new business which would be no larger than the previously existing signage and would, therefore, result in a replacement of new signs for the signs of the former tenant.

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

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

The application before the Board is a request for amended site plan approval for property known as Lot 8 in Block 1404 on the Tax and Assessment Map of the Township of Pequannock and located at 637 Route 23 South, Pompton Plains, New Jersey which site is located in the C-2 Zone. The Board determines that the nature of the application is to seek amended site plan approval in order to permit the outdoor display of swing sets and sheds as part of a commercial retail use located within the existing strip shopping center. The subject site is located in the C-2 Zone. The proposed retail sale of swing sets and sheds is a permitted use in the C-2 Zone. Outdoor display is permitted as an accessory use to the proposed retail sales component of the business. The Board further determines that the subject is a 1.178 acre corner parcel fully developed with a small 1-story strip commercial center. Access to the site is via Garden Place to the north and Route 23 to the east. The Applicant proposes an outdoor display area that will accommodate a number of shed and swing sets. As depicted on the proposed site layout prepared by Darmofalski Engineering Associates, Inc. dated April 6, 2011, the outdoor display area depicts five (5) sheds and four (4) playground displays. The outdoor display area is depicted in the area of the site north of building. The Board concludes that it is appropriate to grant amended site plan approval in order to permit the outdoor display of items including, but not limited to, playgrounds and sheds. The Board further determines that although the plans depict the display of four (4) playground sets and five (5) sheds, the precise number of outdoor displays is flexible and may change. However, the area of the outdoor display is fixed and the Applicant cannot expand the outdoor display area beyond that which is depicted on the proposed site layout plan and which is located north of the building.

The Board also accepts the representations of the Applicant that it will install a new chain link fence 6 feet in height as depicted on the proposed site layout plan. Furthermore, the Board understands that there is no new site lighting proposed in regard to this application. Also, in regard to signage, the Board understands that the Applicant is merely going to exchange signs in regard to the new business for the signage of Oak Farms, the former tenant. Thus, the Board determines that the new signage will be no larger than the existing signage and will be installed in the same location as the prior signage.

The proposed site layout also depicts a storage area for outdoor furniture-sheds-play sets-etc. which is located in the rear or western side of the property. Outdoor storage is not permitted in the C-2 Zone. The Board specifically directs that this element must be removed from the site plan and that the Board specifically notes that it has not granted any approval, whatsoever, in regard to a storage area in the rear or western side of the property. Therefore, there will be no outside storage in the rear or western side of the property.

Upon consideration of the plans, testimony and application, the Board determines that the proposed amended site plan approval has met the minimum requirements of the Municipal Land Use Law, Case Law and Township Ordinances to a sufficient degree so as to enable the Board to grant the relief being requested. The Board determines that the proposed use of the premises for the retail sale of swing sets and sheds and similar items is a permitted use in the C-2 Zone. The Board further finds that the granting of this application will not adversely impact or impair the use or enjoyment of adjacent properties.

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Township of Pequannock, that the application of Cigo, LLC for premises commonly known 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 in the C-2 Zone District requesting amended site plan approval is determined as follows:

1. Approval is hereby granted to enable the Applicant to operate a business for the retail sale of products including, but not limited to, swing sets and sheds. Outdoor display is permitted as an accessory use to the proposed retail sales component of the store which outdoor display area is limited to the area depicted on the proposed site layout prepared by Darmofalski Engineering Associates, Inc. dated April 6, 2011 which area is depicted north of the building.

**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 plans submitted and approved which plans were prepared by Darmofalski Engineering Associates, Inc. dated April 6, 2011 and consisting of one (1) sheet and as further modified in accordance with the directions of the Planning Board and/or the Board's professionals during the course of the hearing process.
2. The Applicant represents that all of its representations and stipulations made either by it or on its behalf to the Township of Pequannock Planning Board are true and accurate, and acknowledges that the Planning Board specifically relied upon the Applicant's stipulations in the Board's granting of this approval. If the said representations and stipulations are false, this Approval is subject to revocation.

3. This Approval is granted strictly in accordance with any recommendations set forth on the record by the Planning Board at the time of the public hearing on April 18, 2011.
4. The granting of this application is subject to and conditioned upon the Applicant submitting a revised site layout plan confirming all changes to be made to the site plan as directed by the Planning Board and as agreed to by the Applicant during the hearing process.
5. The granting of this application is subject to and conditioned upon there being no outdoor storage of equipment or materials in the rear or western side of the property as originally depicted on the proposed site layout plans prepared by Darmofalski Engineering, Inc.
6. The granting of this application is subject to and conditioned upon the Applicant installing a new chain link fence depicted on the proposed site layout plan which fence shall not exceed 6 feet in height.
7. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions of the Board Planner's review report dated April 18, 2011.
8. 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.

9. Certificate that taxes are paid current to date of approval.
10. 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 April 18, 2011 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 16, 2011.

  
\_\_\_\_\_  
Roger Infeld, Board Secretary

In favor:

Against:

Abstained:

Board Members Eligible to Vote:

X:\WP-DATA\COR\MATTERS\PEQ-332E Cigo 4-26-11 rb.doc

**RESOLUTION  
TOWNSHIP OF PEQUANNOCK  
PLANNING BOARD  
IN THE MATTER OF  
MORRIS HABITAT FOR HUMANITY  
DECIDED ON APRIL 18, 2011  
MEMORIALIZED ON MAY 16, 2011  
MINOR SUBDIVISION EXTENSION APPROVAL**

**WHEREAS**, Morris Habitat for Humanity, ("hereinafter "Morris Habitat" or "Applicant") has filed an application with the Pequannock Township Planning Board, (hereinafter "Planning Board" or "Board"), seeking an extension of minor subdivision approval for property known as Lots 20 through 23, in Tax Block 1404 as designated on the Tax and Assessment Map of the Township of Pequannock, and located at 8 Highland Avenue, Pompton Plains, New Jersey in the R-11 Residential Zone District, (hereinafter "R-11 Zone"); and

**WHEREAS**, the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-47(d) provides that minor subdivision approval shall expire 190 days from the date on which the resolution of municipal approval was adopted unless the minor subdivision is perfected pursuant to the statute; and

**WHEREAS**, the Applicant requests an extension of time through May 28, 2011 within which to perfect the minor subdivision;

**WHEREAS**, the Planning Board considered this matter at its public hearing on April 18, 2011, after the Board determined it had jurisdiction; and

**WHEREAS**, the Applicant was represented by James P. Mullen, Esq. (hereinafter "Mullen").

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

The application before the Planning Board is a request for an extension of time within which to perfect the minor subdivision approval under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-47 which subdivision approval was granted by the Planning Board on August 16, 2010 and memorialized in a Resolution adopted by the Planning Board on September 20, 2010. The Planning Board granted minor subdivision approval and ancillary "c" variance relief for property known and designated as Block 1404 Lots 20 through 23 on the Tax and Assessment Map of the Township of Pequannock and located at 8 Highland Avenue, Pompton Plains, New Jersey. The site is located in the R-11 Residential Zone District. The Board granted the Applicant's request to approve a three (3) lot minor subdivision. In connection therewith, the lot identified as Lot 22.01 would be conveyed to Morris Habitat for the construction of a single family dwelling which would be sold to homeowners that meet the resource and income limits of the Council on Affordable Housing (hereinafter "COAH"). The original approval also contained a condition relative to the placing of a Deed restriction for this home located on Lot 22.01 consistent with COAH regulations.

In accordance with the Municipal Land Use Law, the Applicant had until March 28, 2011 within which to perfect the minor subdivision by recording the minor subdivision deed. The Applicant requests an extension of minor subdivision approval because the Applicant has been diligently attempting to perfect the minor subdivision granted by the Pequannock Township Planning Board. At the present time, the form of deed of subdivision and conveyance has been reviewed and approved by the Pequannock

Township Planning Board Attorney and Engineer. In addition, the property corner markers have been set and the legal descriptions creating the three (3) new lots have been reviewed and approved by the Township Surveyor. Therefore, all that remains is for the Applicant to have the subdivision deed signed off by the Chairman and Board Secretary of the Pequannock Township Planning Board pursuant to the Municipal Land Use Law under N.J.S.A. 40:55D-47(d). As a result, the Applicant seeks an extension of time through May 28, 2011 for purposes of recording the subdivision deed.

There were no members of the public present expressing an interest in 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 an extension of time in accordance with the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-47 in order to seek an extension of minor subdivision approval which was previously granted by the Planning Board on August 16, 2010 and memorialized in a Resolution adopted by the Planning Board on September 20, 2010.

In accordance with N.J.S.A. 40:55D-47(d) the Applicant had 190 days from the date upon which the Resolution of municipal approval was adopted in order to perfect the minor subdivision approval by the recording of a subdivision deed. The Board is satisfied that the proposed form of deed of subdivision and conveyance has been reviewed and approved by the Planning Board Attorney and Engineer, the property corners have been set and legal descriptions creating the three (3) new lots have also been reviewed and approved. Thus, it appears to the Planning Board that all that remains is for the Applicant

to have the subdivision deed signed by all parties, including the Chairman and the Board Secretary to the Pequannock Township Planning Board as required by N.J.S.A. 40:55D-47(d) and then the subdivision deed can be filed with the Morris County Clerk's Office. The Board considers the extension of time through May 28, 2011 to be a reasonable request in order to allow the Applicant to perfect the minor subdivision for all the reasons set forth herein.

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Township of Pequannock that the application of Morris Habitat for property known and designated as Block 1404, Lots 20 through 23 on the Tax and Assessment Map of the Township of Pequannock, and located at 8 Highland Avenue, Pompton Plains, New Jersey in the R-11 Residential Zone District requesting an extension of time through May 28, 2011 within which to extend and to perfect the minor subdivision approval previously granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-47 is granted subject to the following terms and conditions:

1. The development of the parcel shall be implemented in accordance with the plans submitted and approved.
2. 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.
3. All terms and conditions of the Resolution granting minor subdivision approval on August 16, 2010 and memorialized in a Resolution adopted by the Planning Board on September 20, 2010 shall remain in full force and effect with the exception of the Applicant being granted an extension of time within which to perfect the minor subdivision approval through May 28, 2011.

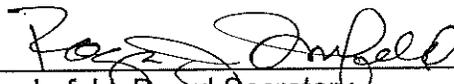
4. The Applicant represents that all of its representations and stipulations made by it or on its behalf to the Township of Pequannock Planning Board are true and accurate, and acknowledges that the Planning Board specifically relied upon the said stipulations in the Board's granting of approval. If said representations and stipulations are false, this approval is subject to revocation.

5. This approval is granted strictly in accordance with any recommendations set forth on the record by the Planning Board at the time of the hearing on April 18, 2011.

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

7. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Pequannock, County of Morris, State of New Jersey.

The undersigned secretary certifies the within Resolution was adopted by the Pequannock Township Planning Board on April 18, 2011 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 16, 2011.

  
\_\_\_\_\_  
Roger Imfeld, Board Secretary

In favor:

Against:

Abstained:

Board Members Eligible to Vote:

**RESOLUTION  
TOWNSHIP OF PEQUANNOCK  
PLANNING BOARD  
IN THE MATTER OF  
STEVE SHAH d/b/a NATURE'S PAVILLION, INC.  
DECIDED ON APRIL 18, 2011  
MEMORIALIZED ON MAY 16, 2011  
APPLICATION FOR SIGN APPROVAL**

**WHEREAS**, Steve Shah, d/b/a/ Nature's Pavilion, Inc. (hereinafter "Shah" or "Applicant") has filed an application with the Township of Pequannock Planning Board, (hereinafter "Planning Board"), for sign approval for property known as Block 902, Lot 14, on the Tax and Assessment Map of the Township of Pequannock (hereinafter "Township"), which premises are located at 564 Route 23 North, Pompton Plains, New Jersey and which premises are located in the C-3 Regional Commercial District (hereinafter "C-3 Zone"); and

**WHEREAS**, the Applicant has applied to the Pequannock Township Planning Board for approval pursuant to the Code of the Township of Pequannock, Chapter 153, Signs, which authorizes the Planning Board to review and approve all sign applications within the Township; and

**WHEREAS**, a public hearing was held on April 18, 2011, after the Planning Board determined it had jurisdiction; and

**WHEREAS**, the Applicant was not represented by legal counsel.

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

The within application is for premises known and designated as Block 902, Lot 14 on the Tax and Assessment Map of the Township of Pequannock and located at 564

Route 23 North, Pompton Plains, New Jersey. The subject site is located in the C-3 Zone District.

The following documents were submitted in connection with this application for development:

1. Completed sign application signed by Steve Shah, dated February 23, 2011.
2. Illustration of sign, prepared by SignsByWeb.

Testifying on behalf of the Applicant was Steve Shah (hereinafter "Shah") the owner of the business. This is an existing commercial site that contains a strip commercial building with several commercial retail uses. The application proposes to remove the existing sign on the existing awning and remove two (2) window signs that read "Nature's Pavilion". The new signage will read "Nature's Pavilion" and will be affixed as two (2) separate signs (one for each word) with one sign on each side of the awning peak.

The proposed "Nature" sign is 2 feet in height by 12.2 feet in length for a total 24.50 square feet of sign area. The "Pavilion" sign is 2 feet in height by 11.5 feet in length for a total 23 square feet of sign area. Thus, the cumulative sign area will be 47.50 square feet which conforms to the Ordinance requirements.

The only waiver relief which is sought by the Applicant is in connection with Section 153.06(B)(2)(b) of the Pequannock Township Sign Ordinance which permits only one attached sign. This application technically proposes two attached signs and, therefore, requires design waiver relief.

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

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

Steve Shah d/b/a Nature's Pavilion, Inc. is the Applicant for premises known and designated as Block 902, Lot 14 on the Tax and Assessment Map of the Township of Pequannock and located at 564 Route 23 North, Pompton Plains, New Jersey, which site is located in the C-3 Zone District.

The Applicant seeks to install new signage which will read "Nature's Pavilion" and will be affixed as two (2) separate signs (one for each word), with one sign on each side of the awning peak. The Applicant shall also remove the existing sign on the existing awning and remove two (2) window signs which read "Nature's Pavilion".

The Applicant requires design waiver relief from the Land Development Ordinance of the Township of Pequannock, Chapter 153 Signs, and more specifically Chapter 153.06(B)(2)(b) which permits only one (1) attached sign. This application technically proposes two attached signs which are separated by the awning peak.

The "Nature" sign is 2 feet in height by 12.25 feet in length for a total 24.50 square feet of sign area and the "Pavilion" sign is 2 feet in height by 11.5 feet in length for a total 23 square feet of sign area. Thus, the cumulative total of the sign area for both the "Nature" and "Pavilion" sign will be 47.50 square feet. Pursuant to the Land Development Ordinances of the Township of Pequannock and more specifically Chapter 153 Signs, Section 153.06(B)(2)(c)[2] permits an attached sign to have a total sign area of 50 square feet where the area of the storefront is between 1,001 and 2,000 square feet. The existing store front has area of 1,800 square feet. Thus, the Applicant is permitted to have a building attached sign not exceeding 50 square feet in sign area. Therefore, the Board determines that although technically the Applicant is seeking approval for two building attached signs, it is in reality one (1) sign that is separated by the awning peak. Nevertheless, the cumulative size of both of the proposed signs is still in conformance with

the overall sign area permitted by Ordinance and thus conforms to the Ordinance requirements. Thus, the Board sees this as a de minimus deficiency for which design waiver relief can be granted by the Planning Board to permit the Nature's Pavilion signage to be installed as requested.

Upon consideration of the plans, testimony and application, the Board determines that the Applicant has provided sufficient information so as to enable the Board to render an informed decision with regard to the request for sign approval. The Board determines that it is appropriate to grant the application for signage as proposed by the Applicant inclusive of the granting of waiver relief as set forth herein.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Township of Pequannock that the application of Steve Shah d/b/a Nature's Pavilion, Inc. for premises commonly known as Block 902, Lot 14 on the Tax and Assessment Map of the Township of Pequannock and located at 564 Route 23 North, Pompton Plains, New Jersey in the C-3 Zone requesting sign approval is determined as follows:

1. Approval is hereby granted to enable the Applicant to install signage to read "Nature's Pavilion". It will be affixed as two (2) separate signs with the text "Nature's" being affixed on one side of the awning peak and the text "Pavilion" being located on the opposite side of the awning peak. The "Nature" sign is 2 feet by 12.25 feet for a total 24.50 square feet of sign area and the "Pavilion" sign is 2 feet by 11.5 feet for a total 23.00 square feet of total sign area. The signage is approved in accordance with the illustration of the signage prepared by

SignsByWeb and submitted as part of the application package.

2. Waiver relief is granted from the sign ordinance of the Township of Pequannock, and more specifically Section 153.06(B)(2)(b) to permit the Applicant to install the aforementioned two (2) building attached signs.

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

1. The Applicant shall comply with all appropriate terms and conditions of the Township of Pequannock Code Chapter 153 – Signs.
2. The Applicant represents that all of its representations and stipulations made by it or on its behalf to the Township of Pequannock are true and accurate and acknowledges that the Planning Board specifically relied upon said stipulations in the Boards 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 April 18, 2011.
4. The granting of this application is subject to and conditioned upon the Applicant complying with all

terms and conditions set forth in the Board Planner's review report dated April 13, 2011.

5. The granting of this application is subject to and conditioned upon the Applicant removing the window signs that read "Nature's Pavilion" as well as the removal of the "Natural Food Market" lettering from the awning. The area of the awning from which the "Natural Food Market" lettering has been removed shall be resurfaced so that no signage will show through on the awning.
6. 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.
7. Certificate that taxes are paid current to date of approval.
8. 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 April 18, 2011 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 16, 2011.

  
\_\_\_\_\_  
Roger Imfeld, Board Secretary

In favor:

Against:

Abstained:

Board Members Eligible to Vote:

X:\WP-DATA\COR\MATTERS\PEQ-330E Shah Resolution 4-21-11.doc

**RESOLUTION  
TOWNSHIP OF PEQUANNOCK  
PLANNING BOARD  
IN THE MATTER OF ARLENE M. PLATT and C. TUCKER PLATT  
DECIDED ON APRIL 18, 2011  
MEMORIALIZED ON MAY 16, 2011  
DENIAL OF APPLICATION SEEKING RELIEF FROM CONDITIONS OF A  
RESOLUTION OF APPROVAL**

**WHEREAS**, Arlene M. Platt and C. Tucker Platt (hereinafter "Applicants" or "Platt") have made application with the Township of Pequannock Planning Board, (hereinafter "Planning Board" or "Board"), seeking relief from conditions of a Resolution of approval memorialized on December 21, 2009 for property known and designated as Block 604, Lot 5, on the Tax and Assessment Map of the Township of Pequannock (hereinafter "Township"), which premises are located at 101 Mountain Avenue, Pompton Plains, New Jersey and located in the R-22 Zone District (hereinafter "R-22 Zone"); and

**WHEREAS**, a public hearing was held on April 18, 2011, after the Planning Board determined it had jurisdiction; and

**WHEREAS**, the Applicant was represented by Peter McArthur, 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 relief from conditions of an approval decided on December 21, 2009 and memorialized in a Resolution adopted by the Planning Board on December 21, 2009.

**Factual Background and History of the Application**

In regard to the factual background and history of this application, The Platts are the owners of real property located at 101 Mountain Avenue, Pompton Plains, New

Jersey which property is known and designated as Tax Block 604, Lot 5 on the Tax and Assessment Map of the Township of Pequannock. The property is located in the R-22 Zone District. Single family residential dwellings are permitted uses in the R-22 Zone District and the minimum lot area in R-22 Zone is a 22,000 square foot lot.

The Platts originally came before the Pequannock Township Planning Board in regard to a minor subdivision application which was the subject of public hearings before the Planning Board on August 18, 2008 and October 20, 2008. The Platts' application sought minor subdivision approval in accordance with the Land Development Ordinances of the Township of Pequannock as well as the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-47 as well as seeking ancillary "c" variance relief pursuant to the Municipal Land Use Law under N.J.S.A. 40:55D-70c in order to subdivide existing lot 5 in tax block 604 into two lots for the construction of a single family dwelling on the newly created flag lot with the existing single family dwelling continuing to remain on the remainder lot. The proofs that were presented to the Planning Board indicated that the flag lot would be approximately 44,002 square feet in lot area with the remainder lot having a lot area of 29,660 square feet. Therefore, the proposed flag lot would be approximately 1.01 acres in size and the remainder lot would be approximately 0.68 acres in sizes. In accordance with Pequannock Township's Flag Lot Ordinance under Section 163.05.040(1) a flag lot in R-22 Zone was required to have a minimum lot area of 44,000 square feet. Thus, this application met the requirements for minimum lot area for a flag lot in the R-22 Zone.

In addition to the request for minor subdivision approval, the Platts also required ancillary "c" variance relief. More specifically, with respect to the proposed remainder

lot, the Platts required three bulk variances from Sub-Section 189.03.030 for: (1) lot width where 110 feet is required and 109.40 feet is proposed; (2) lot frontage where 110 feet is required and 109.04 is proposed; and (3) side yard setback where a minimum 15 feet side yard setback on one side is required and 40 feet in the aggregate is required and the Platts proposed a side yard setback of 7 feet on one side and 41.7 feet in the aggregate.

With respect to the proposed new flag lot, the Platts required bulk variance relief from Sub-Section 163.05.040(i) for: (1) lot frontage where 50 feet is required and 20.60 feet is proposed; (2) width of the access strip where 50 feet is required and 20.60 feet is proposed; and (3) side yard setback where 50 feet is required but only 35 feet for each side is proposed (this is in connection with the reorientation of the house on the rear flag lot to now face Mountain Avenue).<sup>1</sup>

The Platts proposed both lot frontage and an access strip of 20.6 feet in width for the proposed flag lot. The Flag Lot Ordinance requires both lot frontage and the access strip to be at least 50 feet in width. During the course of the hearing process, the Platts reviewed revisions to the plan and represented that they had modified the plan to reflect the 12 foot paved area and a 3 foot shoulder on the 20 foot portion of the access way. A 3 foot area on the remainder lot would be maintained as a permanent easement with no shrubbery, and would allow room for snow plowing. Thus, this area would be part of the safety end of the driveway itself. The Platts also represented on the record that they had

---

<sup>1</sup> The proposed side yard setbacks were originally 50.48 feet on each side. As the layout of the proposed dwelling would not conform to the layout of existing homes in the neighborhood, the Board requested that the proposed dwelling on the flag lot be reoriented 90 degrees such that the front of the dwelling on the flag lot face the rear of the Platts' residence as did other such subdivisions in the neighborhood. As a result of this reorientation of the proposed dwelling on the flag lot, the side yard setbacks were reduced to 35 feet on each side and required a variance from the side yard setback requirement.

obtained the permission of the adjacent property owner, James Henry, the then owner of lot 6 in block 604 to allow the Platts to maintain landscaping on 5 feet of the adjacent Henry property next to the proposed access way. At the conclusion of the public hearing on October 20, 2008, the Board voted to deny the application for minor subdivision approval with ancillary "c" variance relief. On November 17, 2008 the Board adopted a memorializing Resolution.

The Planning Board made findings of fact and conclusions of law in the Resolution in support of its denial of the application for minor subdivision approval with ancillary "c" variance relief. More specifically, the Planning Board found that the Applicants failed to demonstrate that this lot is limited by exceptional narrowness, shallowness or shape. The Applicants have not demonstrated that exceptional topographic conditions or physical features exist which uniquely affect this specific piece of property or that 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.

The Board also determined that it would constitute bad planning to take a fully conforming lot in the R-22 Zone in order to create two (2) nonconforming lots. The Board also concluded that there were at least five (5) other flag lots on Mountain Avenue that maintained a private access strip of 50 feet in width which conform to the Ordinance requirements. In this instance, the Applicants propose lot frontage of only 20.60 feet. The Board also concluded that it had never approved a flag lot with a stem as narrow as 20.60 feet as proposed by the Applicants in this matter. The Board also concluded that to the extent there was any hardship, it was self-created because the Applicants acquired the

undeveloped lot in 1970 and constructed a house thereon in 1972 in such a manner and location so as not to be able to provide for additional lot frontage and an access strip for future subdivision of the lot as a flag lot. The Board also noted that where the minimum lot frontage for a flag lot in the R-22 Zone was 50 feet and the Applicants proposed lot frontage of only 20.60 feet, the Applicants were only meeting 40 percent (40%) of the minimum zoning requirements which the Planning Board deemed to be greatly deficient. The Board also considered the orientation of the house on the flag lot as being directly behind the existing single-family dwelling on the remainder lot. Thus, the proposed house on the flag lot would face the rear yard of the homes located on West End Avenue and would also face the rear of the Platt residence on the remainder lot facing Mountain Avenue. The Board analyzed its decision under Kaufman v. Planning Board of Warren Township, 110 N.J. 551 (1988). The Board concluded that granting the minor subdivision would not present a better zoning alternative for the property and would merely result in advancing the purposes of the owner. As such, the Board concluded that the Applicants were not entitled to ancillary "c" variance relief under the c(2) criteria. The Board also noted that the subject property is currently being used as a single-family residential dwelling which is permitted in the R-22 Zone. Furthermore, the Planning Board found that the strict enforcement of the Zoning Ordinance would not impose a hardship that would inhibit the extent to which the property could be used, because the property is currently used for its permitted use. For all of those reasons, the Board originally denied the application for minor subdivision approval and ancillary "c" variance relief.

**The Platts Appeal the Denial of Minor Subdivision Application  
With Ancillary "c" Variance Relief to the Superior Court**

The Platts then filed a timely appeal of the denial of minor subdivision approval with ancillary "c" variance relief to the Superior Court of New Jersey. The matter was assigned to the Assignment Judge, the Honorable B. Theodore Bozonelis, A.J.S.C., at the Morris County Courthouse. The Court undertook an analysis of this case under the C1 criteria and C2 criteria under the Municipal Land Use Law. Under the C1 criteria, the Court found that the shape of the lot which was described as being long and very deep was a unique feature which should have caused the Planning Board to grant relief. The Court also determined that the Platt property was different from other flag lots on Mountain Avenue. The Court held that although the other lots may be wider than the Platt's lot, they did not have the depth that the Platt lot has.

The Court also undertook an analysis of the access way and determined that the 20.6 feet access width when added to the 3 foot permanent easement on the Platt property, to address the Board's concern about snow removal, along with adding the 5 feet landscaping easement on the adjacent "Henry" property, in reality resulted in the access way being expanded to approximately 28.6 feet. The Court also concluded that the remainder lot at approximately 29,000 square feet in lot area conformed to the ordinance requirements and that the flag lot with an area of approximately 44,000 square feet in lot area also conformed to the lot area requirements of a flag lot in R-22 Zone. Furthermore, in regard to the flag lot, the Court outlined several other reasons that the Board should have granted relief including, but not limited to, (1) significant lot depth of the flag lot; (2) the lot size is more than required in the R-22 Zone; (3) fire access was approved by the Township of Pequannock Fire Department; (4) visually there would be no difference

between other flag lots in the area; and (5) the elimination of a pre-existing non-conforming use, the barn with horses, which would be removed and replaced by a single family dwelling. The Court also commended the Planning Board for asking the Applicant to reorient the house on the flag lot 90 degrees so as to face Mountain Avenue as being based in sound planning. The Court, however, also indicated that there was no ordinance requirement as to the orientation of a house on a flag lot. The Court also indicated that as originally proposed, the house on the flag lot would not require setback variances, but if reoriented to conform to the Board's requirements, side yard setback variances would have been triggered and the Board should have granted the relief.

Therefore, at the conclusion of the trial, Judge Bozonelis entered an Order approving the minor subdivision application as well as granting variance relief and remanded the matter back to the Planning Board strictly for the Planning Board to adopt a memorializing resolution implementing the Order of the Court and imposing reasonable conditions in regard to the Court's approval of the minor subdivision application with ancillary "c" variance relief.

**The Planning Board Complies with the Court Order  
And Approved the Minor Subdivision Application with  
Ancillary "c" Variance Relief**

In accordance with the Order of the Court, the Platts returned to the Planning Board on December 21, 2009 in regard to the Planning Board memorializing a resolution which reflects the Court approved minor subdivision and the granting of variances inclusive of the imposition of reasonable conditions as required by the Court. As directed by the Court, the resolution of approval contained two conditions identified as Conditions 13 and 14 which required the Applicant to record a 5 foot permanent easement for landscaping purposes

running with the land on the "Henry" property identified as lot 6 in tax block 604, which easement is in favor of the proposed flag lot. These conditions of approval were consistent with the stipulations by the Platts and their legal representatives on the record both during the hearing process and in court as well as being consistent with the decision of the Court.

**The Planning Board Extends the Time  
Within Which To Perfect the Minor Subdivision  
Approval Through June 30, 2011**

Under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-47(d) minor subdivision approval shall expire 190 days from the date on which the resolution of municipal approval was adopted unless the minor subdivision is perfected pursuant to the statute. The Planning Board adopted a memorializing resolution on December 21, 2009 pursuant to the Court Order approval of the minor subdivision application with ancillary "c" variance relief. Therefore, the minor subdivision approval was due to expire on June 30, 2010 unless extended by the Planning Board. The Applicant requested a one year extension of time in regard to the granting of minor subdivision approval. The reason for the request for an extension of minor subdivision approval was in regard to the Platts attempt to satisfy the Court ordered condition of obtaining a landscape easement from the owner of lot 6 in tax block 604 in favor of the proposed flag lot. Therefore, the Board granted a one year extension of time to the Platts within which to perfect the minor subdivision approval from June 30, 2010 through June 30, 2011. This matter was decided on May 17, 2010 and memorialized in a resolution adopted by the Planning Board on June 21, 2010.

**The Planning Board Grants an Extension  
Of Ancillary "c" Variance Relief Through  
June 30, 2011**

The Land Development Ordinances of the Township of Pequannock and more specifically Section 016.05.020 provides that any variance duly granted shall expire one year following the date that final municipal approval has been received by the Applicant, which approval is a prerequisite to the obtaining of a building permit, or two years from the date the variance was granted, whichever ever comes first. The Platts therefore requested a one year extension of time from December 21, 2010, through December 21, 2011 in regard to the granting of the ancillary "c" variance relief as part of the minor subdivision approval.

However, the Planning Board determined that the Platts were required to obtain an easement from the owner of lot 6 in block 604 consisting of a 5 foot permanent easement for landscaping purposes running with the land on said lot in favor of the proposed flag lot which conditions were consistent with the stipulations by the Platts or their legal representatives on the record both during the hearing process and in court as well as being in accordance with the decision of the Court. The Board also found that this condition is a condition precedent to perfecting the minor subdivision. The Board granted an extension of ancillary "c" variance relief through June 30, 2011 so as to run concurrently with the extension of time previously granted for the minor subdivision approval. Therefore, the extension of time for the minor subdivision approval and variance relief will both expire on June 30, 2011. This matter was decided on December 20, 2010 and memorialized in a resolution adopted by the Planning Board on January 10, 2011.

**The Platts Seek Relief from the Court Ordered  
Minor Subdivision Approval with Ancillary "c" Variance  
Relief in Order to Eliminate the Condition of Obtaining  
An Easement on Lot 6 in Tax Block 604.**

The Platts have filed an application with the Planning Board seeking relief from conditions 13 and 14 of the resolution memorialized on December 21, 2009 which required the Platts to obtain an easement on real property known and identified as Lot 6 in Tax Block 604. Counsel for the Platts, in a letter to the Planning Board dated March 7, 2011 states that the current owners of the property known and designated as Lot 6 in Tax Block 604 are Vincenzo and Christina Roveccio who refuse to execute a permanent easement. Thus, the Platts now seek relief from conditions 13 and 14 of the resolution of approval.

Mr. McArthur represented to the Planning Board on April 18, 2011 that John Henry, the owner of property identified as Lot 6 in Tax Block 604 was in the course of selling his property to a contract purchaser and the Platts had reached an agreement with that contract purchaser on an Easement in order to conform with the Court Ordered approval. However, that closing fell through and then Henry put the house back on the market and eventually sold the home to Vincenzo and Christina Roveccio. Mr. McArthur stated that the Platts were not aware that the Roveccios had closed title until closing of title had occurred. Thereafter, Mr. McArthur stated that the Platts negotiated with the Roveccios in order to attempt to obtain the Easement in order to comply with the Court Ordered approval of this project. He also stated that the Roveccios' attorney recommended that the Roveccios grant the Easement to the Platts. Nevertheless, the Roveccios refused to sign an Easement instrument and, as such, the Platts are unable to satisfy conditions 13 and 14 of the original approval.

Also testifying on behalf of the Platts at the public hearing on April 18, 2011 was Paul Darmofalski, P.E., P.P. (hereinafter "Darmofalski"). Darmofalski testified that it was the Applicants intention since they were unable to secure the landscaping easement on the former Henry lot identified as Lot 6 in Tax Block 604 to plant upright arborvitae as a landscape buffer and screen for the first 180 feet along the common boundary line between the stem of the proposed flag lot and the adjacent Lot 6 in Tax Block 604. Darmofalski also testified that utilities would be run underground.

Mr. McArthur also stated that a local realtor, Rosemary Knick, issued a letter, which he read into the record, that the granting of an easement for 99 Mountain Avenue which is identified as Lot 6 in Tax Block 604 of a 5 feet Landscape Easement in favor of the Platts lot would not have a detrimental effect but, rather, would enhance the value of the property on 99 Mountain Avenue. Notwithstanding the letter from the local realtor, the Roveccios refused to execute a permanent Easement thus requiring the Platts to now seek relief from conditions 13 and 14 of the Resolution of approval.

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

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

The application before the Board is to seek relief from conditions 13 and 14 of the Resolution memorialized on December 21, 2009 which required the Platts to obtain an Easement on real property known and identified as Lot 6 in Tax Block 604. Conditions 13 and 14 read as follows:

13. The granting of this application is subject to and conditioned upon the submission of revised plans demonstrating a 5 foot permanent Easement on the real property owned by James T. Henry, 99 Mountain Avenue, Pompton Plains, New Jersey and known and designated as Block 604, Lot 6 on the Tax and Assessment Map of the Township of Pequannock to the Building Department prior to the issuance of a building permit. The Easement shall be subject to the review and approval of the Board Attorney and Board Engineer.
14. The granting of this application is subject to and conditioned upon the Applicants executing and recording a 5 foot permanent Easement for landscaping purposes running with the land on the Henry property on Lot 6, Block 604 in favor of the proposed flag lot and being consistent with the stipulations by the Applicants on the record during the hearing process and consistent with the decision of the Court.

The Board determines that conditions 13 and 14 are significant conditions of the Court Ordered approval.

The Board notes that the Platts stipulated on the record during the course of the public hearings that it would obtain a 5 feet landscaping easement on Lot 6, Block 604 in favor of the proposed flag lot. During the course of the prerogative writ trial, the Platts, through their attorney, represented to the Court that they would obtain such an easement and stipulated that they would accept it as a condition of approval. The requirement for the Platts to obtain the landscaping easement was ordered by the Court as a condition of the approval.

The Board determines that pursuant to the Flag Lot Ordinance the requirements for minimum lot frontage of 50 feet with an access strip of 50 feet in width to be reasonable regulations which are designed to protect the character and integrity of the neighborhood. The Board found in the original denial of this application that five (5) other flag lots on Mountain Avenue have a private access strip 50 feet in width which meets the minimum requirements of the Flag Lot Ordinance. The Board also notes that it has never deviated so substantially from the minimum lot frontage and width of access strip requirements for a flag lot to the extent as requested by these Applicants. These Applicants seeks to provide only 20.60 feet of lot frontage which constitutes 40 percent (40%) of the minimum zoning requirements. The Board concludes that to allow for lot frontage in this instance at only 20.60 feet would negatively impact the character of the neighborhood.

In regard to the Court Ordered granting of this application, the Court seemed to indicate that the access strip was more akin to a 28.6 foot access strip because of the Applicants receiving an Easement on the Henry property in order to maintain landscaping on 5 feet of the Henry property adjacent to the proposed access way as well as the additional 3 foot area of a permanent Easement on the Platt's remainder lot which ostensibly was to be used to allow room for snow removal. Thus, the Court concluded that the access way was really akin to 28.6 feet. This would enable the Board to grant relief for the equivalent of a 28.6 foot access way which would be substantially similar to the most narrow access way for a flag lot ever granted by the Planning Board.

Now that the Applicants, based on their own testimony, are unable to comply with the conditions of the Court Ordered approval, the access way has been further reduced to at best 23.6 feet which includes the 20.6 foot access way on the stem on the flag lot with

the inclusion of a 3 feet permanent Easement on the remainder lot for snow removal purposes. Therefore, despite the fact that as far as title records would show the access way is still only 20.6 feet, the Applicants would have the added benefit of having the ability to utilize the additional 3 feet on the remainder lot for snow removal purposes. Notwithstanding all of that, the Applicants still are not able to obtain the 5 feet Easement on adjacent Lot 6 in Tax Block 604 which would provide additional landscaping and, at least in theory, would give the appearance to the public that the access strip for the stem of the flag lot was actually wider than it truly is by blending the landscaping on the adjacent lot with the stem of the flag lot to make it appear as though the landscaping was on the stem of the flag lot.

Therefore, the Board fails to see how allowing a flag lot with a stem that is only 40 percent (40%) of the Ordinance requirements with a house to be located behind the house on the remainder lot, which is not visible to the public would constitute sound planning and would benefit the community. The Board also determines in taking a fully conforming lot and subdividing it so as to create two (2) nonconforming lots constitutes bad planning. The Board also determines that the granting of this application would not present an opportunity for improved zoning and planning that would benefit the community. The Board also concluded that the majority of flag lots on Mountain Avenue do meet the Ordinance requirements of having 50 feet of lot frontage as well as a 50 foot in width access strip. The Board also notes that it has never approved a flag lot with an access strip as narrow as that as proposed by the Applicants, which fact was stipulated to by Paul Darmofalski, P.E., P.P., the Applicants own engineer and planner during the course of the healing process.

The Board has cooperated with the Platts in regard to the granting of the minor subdivision approval as ordered by the Court and has granted an extension of time to perfect the subdivision as well as extending the variance approvals in order to allow the Platts extra time in order to comply with the Court ordered condition to secure a permanent easement on adjacent Lot 6 in Block 604. It is clear to the Board that based upon the proofs presented that the Platts can not comply with a significant condition of the approval. The Board concludes that the condition of the Applicants to obtain a permanent Easement on adjacent Lot 6 in Block 604 for the reasons set forth herein continues to advance the purposes of zoning or planning for which it was imposed and thus, the Board concludes that the condition should not be modified or amended in any respect based upon the reasons set forth herein as well as the reasons for the original denial which are incorporated herein by reference.

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Township of Pequannock, that the application of Arlene M. Platt and C. Tucker Platt for property known and designated as Lot 5 in Tax Block 604 on the Tax and Assessment Map of the Township of Pequannock, located at 101 Mountain Avenue, Pompton Plains, New Jersey in the R-22 Zone District seeking relief in the form of the elimination of conditions 13 and 14 of the Resolution of approval is determined as follows:

1. The application for relief is hereby denied.
2. All terms and conditions of the Board's prior Resolutions in regard to this matter remain in full force and effect except to the extent amended or modified by this Resolution.

The undersigned secretary certifies the within Resolution was adopted by this Planning Board on April 18, 2011 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 16, 2011.

  
\_\_\_\_\_  
Roger Infield, Board Secretary

In favor:

Against:

Abstained:

Board Members Eligible to Vote:

X:\WP-DATA\COR\MATTERS\PEQ-277E Platt resolution 4-26-11 rb.doc