

**RESOLUTION
TOWNSHIP OF PEQUANNOCK
PLANNING BOARD
IN THE MATTER OF M&T BANK
DECIDED ON DECEMBER 7, 2020
MEMORIALIZED ON JANUARY 11, 2021
APPROVAL OF A MONUMENT SIGN AND
“c” VARIANCE RELIEF**

WHEREAS, M&T Bank (hereinafter “Applicant”) has made application to the Pequannock Township Planning Board, (hereinafter “Board” or “Planning Board”), for property known and designated as Block 4102, Lot 9, on the Tax Assessment Map of the Township of Pequannock, (hereinafter “Township”), which premises are located at 150 Newark-Pompton Turnpike, Pompton Plains, New Jersey 07444 and located in the C-1 Community Business Zone District, (hereinafter “C-1 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 189 Signs which authorizes the Planning Board to review and approve all sign applications within the Township;

WHEREAS, a public hearing was held on December 7, 2020 after the Planning Board determined it had jurisdiction; and

WHEREAS, the Applicant was represented by Armen Mcomber, Esq.

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

Counsel for the Applicant provided an overview of the application. The subject property is located at 150 Newark-Pompton Turnpike. The site contains an existing M&T Bank. Mr. Mcomber represented that there is an existing free-standing sign with a sign face of 28 square feet. The Applicant proposes to remove the existing free-standing sign and to replace it with a monument sign with a sign face of 21 square feet, which is a reduction in the sign face from that which

previously existed. The free-standing sign will be located on top of a brick support and thus the total sign area will be 42.6 square feet. The maximum sign area for a free-standing sign is 15 square feet. The proposed monument sign will be set in the same location as the existing sign.

The Board and the Applicant engaged in a discussion in regard to illuminating the monument sign 24 hours a day, 7 days per week. Section 189.13.060(B)(1)(f) prohibits signs from being illuminated between 11:00 p.m. and 6:00 a.m. However, the Applicant represents there is an ATM on site and for safety reasons the Applicant is requesting that a variance be granted to permit the Applicant to provide illumination for the sign 24 hours a day.

The Board and the Applicant also discussed the brightness of the sign and the Applicant agreed that it will reduce the brightness of the sign if requested to do so by Pequannock Township officials.

There were no members of the public present who expressed an interest in this application.

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

M&T Bank is the Applicant for premises known and designed as Block 4102, Lot 9 on the Tax Assessment Map of the Township of Pequannock, and located at 150 Newark-Pompton Turnpike, Pompton Plains, New Jersey 07444. The subject property is located in the C-1 Zone.

The site contains an existing M&T Bank building. The Board notes that there is an existing free-standing sign which is going to be replaced with a monument sign. The Board further notes that the existing free-standing sign has a sign area of 28 square feet and the proposed free-standing sign will have a sign area of 21 square feet. However, the proposed sign will be located on a brick support which thereby increases the sign area to 42.6 square feet where the maximum sign area for a free-standing sign is 15 square feet thus requiring “c” variance relief pursuant to

§189.13.060(B)(1)(c). The Board also notes that the Applicant requires “c” variance relief from §189.13.060(B)(1)(f) which prohibits signs from being illuminated between the hours of 11:00 p.m. and 6:00 a.m.

The Board notes that the Applicant requires two (2) “c” variances under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c. 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 has examined the request for variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(2). 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 Municipal Land Use Law pursuant to N.J.S.A. 40:55D-2 and its subparts.

The Board reviewed the purposes of the Municipal Land Use Law that would be advanced by the approval of this application pursuant to N.J.S.A. 40:55D-2. The Board finds that with the approval of this application 2(a) will be advanced which is to promote the public health, safety and general welfare. The Board also finds that 2(g) would be advanced by the approval of this application which is to provide sufficient space in appropriate locations for a variety of commercial uses.

In regard to the request for “c” variance relief for maximum sign area where a maximum of 15 square feet is permitted and 42.6 square feet is proposed, the Board finds that the proposed sign area is appropriate to enable motorists to identify the location of M&T Bank and to safely access the

site. The Board also notes that there is an existing M&T Bank sign with a sign area of 28 square feet and the actual sign area is being reduced to 21 square feet although the brick support is included in regard to the sign area which increases the sign area to 42.6 square feet.

Next, in regard to the request for “c” variance relief in order to permit the sign from being illuminated 24 hours per day, the Board finds that for safety and security reasons it is appropriate to grant relief from the Ordinance section that prohibits signs from being illuminated between the hours of 11:00 p.m. and 6:00 a.m. The Board notes that the bank has an ATM whereby patrons of the bank may access the ATM during the overnight hours. Thus, the Board finds for safety and security reasons it is appropriate to grant “c” variance relief from this section of the Ordinance. The Board also notes that the Applicant has stipulated as a condition of approval that if the lighting is too bright, the Applicant will reduce the brightness of the sign if requested to do so by Township officials.

The Board finds that the Applicant has satisfied the positive criteria with respect to the granting of “c” variance relief.

Turning next to the negative criteria, the Board finds that for the reasons set forth herein, the granting of this application will not be substantially detrimental to the public good. Furthermore, the granting of this application will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The Board further finds that the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements, and the benefits of the deviation substantially outweigh any detriment.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Pequannock with regard to the application of M&T Bank for property known and designated as Block 4102, Lot 9 on the Tax Assessment Map of the Township of Pequannock and located at 150

Newark-Pompton Turnpike, Pompton Plains, New Jersey 07444 and located in the C-1 Zone requesting sign approval is determined as follows:

- A. "c" variance relief is granted from Pequannock Township Code §189.13.060(B)(1)(c) to permit a monument sign with a sign area of 42.6 square feet; and §189.13.060(B)(1)(f) to permit illumination of the sign 24 hours per day, 7 days per week.

IT IS FURTHER RESOLVED, as follows:

1. The monument sign shall be installed in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this application.

2. The Applicant represents that all of its representations and stipulations made 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 approval. If any representation or stipulation is false, this approval is subject to revocation.

3. The installation and maintenance of the monument sign shall comply with all relevant sections of the Pequannock Township Code on signs.

4. The Applicant shall comply with all terms and conditions set forth in the review report dated December 2, 2020 of Jill A. Hartmann, P.P., AICP, Planner to the Pequannock Township Planning Board.

5. The granting of this application is subject to and conditioned upon the Applicant reducing the brightness on the sign if requested to do so by Pequannock Township officials.

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

7. 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 December 7, 2020 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on January 11, 2021.

Gerard Fitamant, Board Secretary

In favor:

Against:

Abstained:

Board Members Eligible to Vote:

1930925_1 PEQ-426E M&T Bank Resolution Granting Approval of Ground Sign and "c" Variance Relief 1.11.21