

**RESOLUTION
TOWNSHIP OF PEQUANNOCK PLANNING BOARD
IN THE MATTER OF
BARRASSO, LLC D/B/A BARDI'S BAR & GRILL
DECIDED ON SEPTEMBER 17, 2018
MEMORIALIZED ON OCTOBER 15, 2018
MINOR SITE PLAN APPROVAL
WITH ANCILLARY "C" VARIANCE RELIEF
TO CONSTRUCT AN OUTDOOR SEASONAL
DINING AREA**

WHEREAS, Barrasso, LLC d/b/a Bardi's Bar & Grill (hereinafter "Applicant") has filed an application with the Pequannock Township Planning Board (hereinafter "Planning Board" or "Board"), seeking minor site plan approval and ancillary "c" variance relief to construct an outdoor seasonal dining area for property located at 149 Newark Pompton Turnpike, Pompton Plains, New Jersey, and known and designated as Block 4401, Lot 26, on the Tax Assessment Map of the Township of Pequannock (hereinafter "Township"), which premises are located in the C-1 Community Business District (hereinafter "C-1 Zone"); and

WHEREAS, a public hearing was held on September 17, 2018, after the Planning Board determined it had jurisdiction; and

WHEREAS, the Applicant was represented by Lindsay R. Janel, 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 minor site plan approval and ancillary "c" variance relief to construct an outdoor seasonal dining area in regard to property known and designated as Block 4401, Lot 26, on the Tax Assessment Map of the Township of Pequannock, which premises are located at 149 Newark Pompton Turnpike, Pompton Plains, New Jersey, in the C-1 Zone.

Submitted in support of the application were the following documents:

1. Completed Pequannock Township Application for Site Plan, with original signature and date on file with the Township.
2. Completed Pequannock Township Flood Plain Development Application, with original signature and date on file with the Township.

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

- A. Memorandum dated September 16, 2018 from Jill A. Hartman, P.P., A.I.C.P., Planner to the Pequannock Township Planning Board.

Testifying on behalf of the Applicant was James P. Cutillo, a Licensed Professional Architect and Planner in the State of New Jersey. Mr. Cutillo provided the Board with an overview of the site, as well as the surrounding properties in the area. The site is fully developed with a one-story restaurant and bar establishment. Mr. Cutillo represented that the Applicant seeks to construct a permanent twenty-two (22) seat outdoor seasonal dining area. Mr. Cutillo also represented that there is currently outdoor dining in the front of the establishment which outdoor dining will be eliminated and replaced with the proposed outdoor seasonal dining area. Mr. Cutillo oriented the Board to the site and confirmed that the Applicant would eliminate two (2) parallel parking spaces adjacent to the area of the new proposed outdoor dining area. The two (2) existing handicapped accessible spaces, existing loading area and existing parking spaces will remain.

Mr. Cutillo represented that there would be no increase in impervious surface because the proposed outdoor patio will be constructed over existing impervious area.

Mr. Cutillo discussed stormwater management and represented that the area is relatively flat and runoff currently flows to the rear of the property. Thus, there are no changes contemplated in this regard. Mr. Cutillo testified that the new outdoor seating patio is approximately 12 feet by 48 feet in area. The Applicant proposes a retractable awning that will

cover the proposed dining area. The patio will be separated from the sidewalk by a 3 foot, 6 inch high masonry wall with an 18 inch decorative railing on top of it. Adjacent to the patio is a 3 foot 8-1/2 inch sidewalk. There is also a 24 foot 3-1/2 inch common access aisle driveway. Mr. Cutillo also testified that the patio area would be constructed of new brick pavers. The Applicant also proposes the installation of bollards to protect both the pedestrian walkway and proposed new patio.

The Board and the Applicant discussed lighting and the Applicant is proposing landscaped lights on the wall that would shine down on the sidewalk. The Applicant also agreed to install lights no higher than 8 feet in order to prevent spillover lighting onto adjoining properties and to prevent interference with neighboring residential second floor apartments.

Mr. Cutillo also represented that this section of Newark Pompton Turnpike has a unique parking scenario with five (5) parking spaces, a 12-foot by 35-foot loading area and two (2) handicapped accessible spaces located on the lot. However, behind the subject property, there are additional parking spaces which are shared in common with the adjoining properties on Newark Pompton Turnpike. Mr. Cutillo stated that access to the restaurant/bar will continue to be from the front and rear entrance. However, the existing side door will provide access from inside the restaurant to the outdoor dining area.

Mr. Cutillo reviewed with the Board the variances that are required in connection with this application. The Applicant requires a front yard setback variance where a minimum of 25 feet is required and 13.49 feet is proposed. Mr. Cutillo stated that the front yard setback for the proposed new seasonal outdoor dining area would be consistent with the front yard setback from the existing building. Thus, the front yard setback would just be continued and maintained as it currently exists.

Secondly, the Applicant also requires a side yard setback variance where a minimum of 17.75 feet is required (both side yards) and 4 feet 8-1/2 inches is proposed. Mr. Cutillo stated that the Applicant is providing a 3-foot 8½-inch side walk adjacent to the proposed new outdoor seasonal dining area along with the installation of bollards to enhance safety, all of which is adjacent to the macadam access driveway which also leads to the parking in the rear of this building as well as the adjoining buildings.

Mr. Cutillo also addressed the request for variance relief due to the elimination of two (2) parallel parking spaces being removed. Mr. Cutillo represented that there is still ample parking to make up for the loss of the two (2) parking spaces. He represented that there is parking available on the street and through a shared parking arrangement. The peak use for the proposed operation is during the evenings and there is no overnight parking associated with this business. Thus, he concluded that there is sufficient on-site parking to address the addition of the seasonal outdoor patio with a loss of two (2) parallel parking spaces.

The next witness to testify on behalf of the Applicant was Joseph Gruzdis, who is the owner of the business. He testified that he has been operating the business for approximately eight (8) years. Mr. Gruzdis testified that he is losing business to other local bar/restaurants in the area who have seasonal outdoor dining. He stated that he was seeking to add the seasonal outdoor dining to enhance the liability of his bar/restaurant business. He also stated that he is attempting to have more families come to the bar/restaurant for dining.

Mr. Gruzdis also discussed with the Board entertainment at his establishment. Mr. Gruzdis stated that inside the bar/restaurant, he typically has a band or a DJ which starts at approximately 10 p.m. or 12 a.m. He stipulated that he is not proposing any live entertainment for the seasonal outdoor dining area. Mr. Gruzdis stated that he may possibly install speakers

with dinner music for the patrons. He stated that the dinner music would be discontinued at 10:00 p.m.

Mr. Gruzdis also discussed deliveries of alcohol and he represented that the beer deliveries occur in the front and the liquor deliveries occur in the back or the side door. He stated the deliveries are usually in the morning between 9:00 and 10:00 a.m.

The meeting was opened up to members of the public and the Board was addressed by Mr. Robert Van Varick, 19 Rockledge Terrace, Pompton Plains, New Jersey. Mr. Van Varick testified that he is the owner of an adjoining property. He stated his building has two (2) residential apartments on the second floor. Mr. Van Varick stated that he receives complaints from his tenants regarding lack of parking, beer truck deliveries taking place in the access driveway, thus impeding traffic. He also stated that deliveries should take place in the street and not in the fire lane. Mr. Van Varick also represented that lighting would be acceptable if its under the canopy and lower in height.

The next member of the public to testify was Shreyans Shah, the owner of 155-157 Newark Pompton Turnpike. Mr. Shah represented he is a Dentist who operates his business at the Pequannock Dental Facility. Mr. Shah testified that as a property owner in the area, he is concerned about the sufficiency of parking in the area.

The Applicant represented that he leases parking spaces. The Applicant did admit that he does not have exclusive use of all other parking spaces beyond his property. He has a non-exclusive lease for parking spaces.

With respect to the deliveries, Mr. Gruzdis represented that the deliveries are earlier in the morning and that they would not impede access through the driveway.

There were no other members of the public present who expressed any 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 minor site plan approval and ancillary "c" variance relief. The subject site is located in the C-1 Zone. The subject site is designated as Block 4401, Lot 26, on the Tax and Assessment Map of the Township of Pequannock and located at 149 Newark Pompton Turnpike, Pompton Plains, New Jersey.

The subject site is a 7,682 square foot parcel that is fully developed with a one-story restaurant and bar establishment. It presently has 30 bar seats and 50 indoor restaurant seats. The Applicant seeks permission to construct a permanent 22 seat outdoor seasonal dining area. The proposed outdoor seasonal dining area will be located on the western side of the property adjacent to the 24-foot 3½ inch common access aisle driveway that leads to the rear parking lot. The Board notes that the rear parking area is shared in common with other adjoining properties.

The Applicant is proposing the outdoor seasonal dining area to be constructed in an area approximately 12 feet in width by 48 feet in length. A retractable awning across the seating area is proposed. The patio will be separated from a 3-foot 8½-inch sidewalk by a 3-foot 6-inch high masonry wall with an 18-inch decorative railing on the top of the wall. Low lighting is proposed to be located on the top of the support pillars at regular intervals for the length of the patio. The Applicant is also installing bollards at regular intervals which are proposed to be located between the access driveway aisle and the sidewalk. Access to the restaurant/bar establishment will continue to be from the front and rear entrance. The existing side door will provide access from inside the restaurant to the outdoor seating area.

The Board finds that the Applicant is proposing a permitted use in the C-1 Zone but the application does require “c” or bulk 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 Applicant requires ancillary “c” variance relief in regard to front yard setback where 25 feet is required and 13.49 feet is proposed. The Board notes that the existing bar/restaurant building has a front yard setback of 13.49. The Applicant proposes to install the new seasonal outdoor patio in order to maintain the 13.49 front yard setback. The Applicant also requires a side yard setback variance where the minimum required side yard setback (both) is 17.75 feet and the Applicant’s proposing a side yard setback variance of 4 foot 8½ inches. Adjacent to the proposed new seasonal outdoor dining area is a pedestrian walkway, as well as a macadam driveway. These factors serve to mitigate the effects of a non-conforming side yard setback. The Board notes that the Applicant also seeks “c” variance relief for the elimination of two (2) parking spaces.

The Board finds that this is a long term existing bar/restaurant business. The Applicant is required to have 79 parking spaces. The Board notes that the elimination of two (2) parking spaces is *de minimis*. The Board is satisfied that there is available on-street parking, as well as the fact that there is a non-exclusive shared parking arrangement with other property owners for parking spaces in the rear of the building which would enable the Board to grant the variance relief. Furthermore, the Board determines that the peak hours for the bar/restaurant are primarily in the evening and thus, there will be no overnight parking associated with this use, thereby freeing up overnight parking in the rear of the building for the residential tenants in the area.

The Board first reviewed this matter under the criteria pursuant to N.J.S.A. 40:55D-70c(1). The Board finds that by reason of the irregular shape of the property and the exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing

thereon, the strict application would result in peculiar and exceptional difficulties to or exceptional and undue hardship upon the Applicant due to the size of the lot and the existing building located thereon.

The Board also finds that “c” variance relief can be granted pursuant to N.J.S.A. 40:55D-70c(1) without being substantially detrimental to the public good and without substantial impairment of the intent and purpose of the Zone Plan and Zoning Ordinance.

The Planning Board has reviewed the request for ancillary c or bulk variance relief under the c(2) criteria. In Kaufman v. Planning Board for Twp of Warren, 110 N.J. 551, 563 (1988) the New Jersey Supreme Court held:

“By definition then no c(2) variance should be granted when merely the purposes of the owner will be advanced. The grant of approval must actually benefit the community in that it represents a better zoning alternative for the property. The focus of a c(2) case, then, will be not on the characteristics of the land that, in light of current zoning requirements, create a hardship on the owner warranting a relaxation of standards, but on the characteristics of the land that present an opportunity for improved zoning and planning that will benefit the community.”

The Board finds that “c” or bulk variance relief will benefit the community in that it represents a better zoning alternative for the property. More specifically, the Board determined that under the MLUL pursuant to N.J.S.A. 40:55D-2 certain purposes of the MLUL would be advanced by granting c or bulk variance relief. More specifically, the granting of c or bulk variance relief would (a) encourage municipal action to guide the appropriate use or development of all lands in this state, in a manner which will promote the public health, safety, morals and general welfare; and (g) to provide sufficient space in appropriate locations for commercial uses; (i) is satisfied by providing a desirable visual environment through creative development techniques and good civic design and arrangement; and (m) is satisfied by resulting

in a more efficient use of land by constructing the seasonal outdoor patio area. The Board also finds that the improvement to the aesthetics of the site also benefits the community.

Having satisfied the positive criteria, the Board next turns to the negative criteria. The Board concludes that it is appropriate to grant ancillary “c” or bulk variance relief under the c(2) analysis because the purposes of the MLUL would be advanced by the deviation from the zoning ordinance requirement. Furthermore, the variances can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance. Finally, the benefits of the deviation would substantially outweigh any detriment.

Upon consideration of the plans, testimony and application, the Board determines that the Applicant has submitted sufficient information so as to enable the Board to render an informed decision. The Board also determines that the Applicant has met the minimum requirements of the Municipal Land Use Law, case law and Township Ordinances to a sufficient degree so as to enable the Board to grant the relief being requested inclusive of minor site plan approval and ancillary “c” or bulk variance relief.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Pequannock that the application of Barrasso, LLC d/b/a Bardi’s Bar & Grill for premises commonly known and designated as Block 4401, Lot 26, on the Tax and Assessment Map of the Township of Pequannock and located at 149 Newark Pompton Turnpike, Pompton Plains, New Jersey, in the C-1 Zone District requesting land use relief is determined as follows:

- A. Minor site plan approval is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-46.1;
- B. Ancillary “c” or bulk variance relief as set forth herein is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1) and (2).

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 any representation or stipulation is 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 September 17, 2018.
4. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions contained in the report of Jill A. Hartmann, P.P., A.I.C.P., dated September 16, 2018, Planner to the Pequannock Township Planning Board and as testified to during the hearing process.
5. The granting of this application is subject to and conditioned upon the dumpster being enclosed, the details of which shall be subject to the review and approval of the Board Planner and Township Engineer.
6. The granting of this application is subject to and conditioned upon the Applicant submitting a current survey to the Planning Board, which survey shall include spot

elevations regarding the area of the site where the handicapped parking spaces are located which shall be subject to the review and approval of the Township Engineer.

7. The granting of this application is subject to and conditioned upon the Applicant installing a concrete sidewalk between the bollards and the proposed seasonal outdoor patio.

8. The granting of this application is subject to and conditioned upon the Applicant providing signage for the ADA handicapped parking spaces which shall be subject to the review and approval of the Township Engineer.

9. The granting of this application is subject to and conditioned upon the Applicant striping the fire lane, as well as providing a thermoplastic stop bar and the word "Stop" which shall be subject to the review and approval of the Pequannock Township Fire Chief/Official.

10. The granting of this application is subject to and conditioned upon the Applicant installing thermoplastic arrows in the accessway as shown on the plan which shall be subject to the review and approval of the Township Engineer.

11. The granting of this application is subject to and conditioned upon the Applicant submitting revised plans with details for the bollards which shall be subject to the review and approval of the Township Engineer.

12. The granting of this application is subject to and conditioned upon the Applicant providing signage indicating parking for Bardi's in the parking lot behind the Bardi's building which shall be subject to the review and approval of the Board Planner and Township Engineer.

13. The granting of this application is subject to and conditioned upon the Applicant extending the retractable awning beyond the outside edge of the bollards.

14. The granting of this application is subject to and conditioned upon the Applicant submitting revised plans to include the corrections for the Zoning Table, corrections for any other errors on the plans, as well as adding additional details as set forth on the record during the hearing. The revised plans shall also include the locations of the shed and refrigerator being depicted thereon.

15. The granting of this application is subject to and conditioned upon the Applicant providing landscaping type lights relative to the installation of the seasonal outdoor patio area, and as well as the installation of lights under the canopy which shall be no higher than 8 feet. The lights shall also be on a timer such that the lights are shut off when the outdoor seating on the patio ends at 11:00 p.m.

16. The granting of this application is subject to and conditioned upon there being no live entertainment outside of the building and within the seasonal outdoor patio area.

17. The granting of this application is subject to and conditioned upon any speakers being utilized to provide music to the outdoor seasonal dining area, shall be shut off at 10:00 p.m.

18. The granting of this application is subject to and conditioned upon the seasonal outdoor dining area closing at 11:00 p.m. In the event the Township of Pequannock receives complaints regarding the use and operation of the seasonal outdoor dining area, the Pequannock Township Zoning Officer shall review and attempt to address the complaints. The Zoning Officer in the Zoning Officer's sole discretion shall have the ability to require the

Applicant to return to the Planning Board regarding the hours of operation of and any other issues related to the seasonal outdoor patio area.

19. The granting of this application is subject to and conditioned upon the existing seasonal outdoor seating in the front of the establishment being removed and replaced with the proposed new seasonal outdoor dining area in the patio.

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

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

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

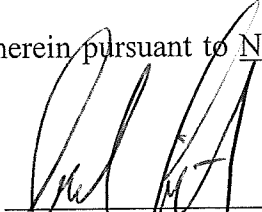
23. Payment of all fees, costs and escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.

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

25. 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.

26. All terms and conditions of the Planning Board's previous Resolutions remain in full force and effect except as satisfied or amended and not in conflict with this approval.

The undersigned Secretary certifies the within Resolution was adopted by this Planning Board on September 17, 2018, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on October 15, 2018.

 10/15/18

Gerard Fitamant, Board Secretary

In Favor:

Against:

Abstained:

Board Members Eligible to Vote: