

**RESOLUTION  
TOWNSHIP OF PEQUANNOCK PLANNING BOARD  
IN THE MATTER OF DEL BALSIO REALTY, LLC  
DECIDED ON DECEMBER 17, 2018  
MEMORIALIZED ON JANUARY 7, 2019  
PRELIMINARY AND FINAL SITE PLAN APPROVAL  
WITH “C” OR BULK VARIANCE RELIEF**

**WHEREAS**, Del Balso Realty, LLC (“hereinafter “Applicant”) has filed an application with the Pequannock Township Planning Board, (hereinafter “Planning Board” or “Board”), seeking preliminary and final site plan approval with “c” or bulk variance relief in regard to property located at 421 Route 23 South, Pompton Plains, New Jersey and known and designated as Block 2008, Lot 11 on the Tax Assessment Map of the Township of Pequannock (hereinafter “Township”) which premises are located in the C-2 (Highway Commercial) Zone District, (hereinafter “C-2 Zone”); and

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

**WHEREAS**, the Applicant was represented by A. Michael Rubin, 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 preliminary and final site plan approval, as well as “c” or bulk variance relief for property known and designated as Block 2008, Lot 11 on the Tax Assessment Map of the Township of Pequannock, which premises are located at 421 Route 23 South, Pompton Plains, New Jersey in the C-2 Zone.

Submitted in support of the application were the following documents:

1. Completed Pequannock Township Application of Site Plan, signed and dated July 13, 2018.
2. Completed Pequannock Township Application for Flood Plain Development, signed and dated July 13, 2018.

3. Engineering/Environmental Report, prepared by Jeffrey A. Derosier, PE, LEED, AP, dated July, 2018.
4. Site Plan, consisting of 9 sheets, prepared by Jeffrey A. Derosier, PE of Derosier Engineering, LLC, dated June 29, 2018 with revisions through December 3, 2018.
5. Architectural Plan, consisting of 4 sheets, prepared by Scott Monro, RA, dated May 23, 2018 with revisions through July 4, 2018.

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

- a. Memorandum dated November 13, 2018 from Jill A. Hartmann, P.P., A.I.C.P., Planner to the Pequannock Township Planning Board.
- b. Report of Joseph R. Golden, P.E., P.P., CME, Pequannock Township Engineer dated December 17, 2018.

The Applicant proposes to construct a rear one-story addition to an existing one-story commercial building at this location.

Testifying on behalf of the Applicant was Dan Del Balso, a representative of Del Balso Realty, LLC. Mr. Del Balso testified that his company is the owner of the building. He further represented that since the time his company purchased the building, they have made significant improvements to both the building and the lot. Mr. Del Balso testified that the tenant at the site is Luxcraft Cabinets which he characterized as having a high-end cabinet business. Luxcraft sells new cabinetry for new kitchens and remodeling of kitchens. Mr. Del Balso stated that Luxcraft needs more room to expand its business, or they may consider relocating their business. Mr. Del Balso stated that Luxcraft has signed a lease to stay and occupy the additional space which is contingent upon the Planning Board approving this application.

Mr. Del Balso also stated that the Luxcraft business is a retail business and that there is no manufacturing performed on site. He stated that cabinets are manufactured off site, delivered to this site where they are inspected, repackaged and placed on a truck for delivery to customers.

The next witness to testify on behalf of the Applicant was Jeffrey A. Derosier, P.E., of Derosier Engineering, LLC. Mr. Derosier is a Licensed Professional Engineer in the State of New Jersey. Mr. Derosier stated that the Applicant originally submitted plans to the Board which depicted a 1,651 square foot addition to the rear of the building. However, the Applicant submitted revised plans with revisions through December 3, 2018, wherein the expansion was reduced in size to 1,468 square feet. Mr. Derosier stated that the existing building is 2,400 square feet and that with the 1,468 square foot addition, the new total size of the building would be 3,868 square feet.

Mr. Derosier provided an overall layout of the site. He stated that the site is located on Route 23 South at the intersection of Village Road. There are 3 curb cuts with 1 curb cut on Route 23 and 2 curb cuts on Village Road. He also stated that the area behind the site is a residential zone with a 10 foot buffer area.

Mr. Derosier stated that the Applicant intends to maintain the existing parking along the front which consists of 4 parking spaces as well as retaining one (1) additional parking space on the Village Road side of the property along with fourteen (14) forty-five degree angled parking spaces on the North side of the property for a total of nineteen (19) parking spaces. The Applicant testified that they will eliminate one curb cut on Village Road.

The Applicant is also proposing a loading space in the rear of the building which loading space is ten (10) feet by thirty-five (35) feet. However, the loading space is partially located in the front yard (Village Road) which requires variance relief under the Township Ordinances.

Mr. Derosier also testified in regard to site circulation and confirmed that the present operation of Luxcraft cabinets uses vans for its trucking operation. He also stated that the on-site circulation has been designed for single unit box trucks.

Mr. Derosier stated that the entire site is located in a flood hazard area and Mr. Derosier explained the flood elevations as it relates to the proposed new addition to the building.

The Applicant also requires ancillary “c” variance relief in connection with this application as follows:

1. Front yard setback to Village Road where the minimum required front yard setback is 50 feet, 23.75 feet is existing and 23.75 feet will be continued with the proposed building addition;
2. The loading zone is partially located in the front yard which requires variance relief; and
3. The Applicant is required to provide twenty (20) on-site parking spaces, and the Applicant is proposing nineteen (19) on-site parking spaces, thereby requiring variance relief.

The Board and the Applicant engaged in a discussion regarding the number of on-site parking spaces as well as the proposed location of the dumpster. The Board recommended and the Applicant agreed to accept a reduction in on-site parking spaces from nineteen (19) parking spaces to seventeen (17) parking spaces in order to provide additional space for the dumpster, dumpster enclosure and in order to provide better access to the dumpster area.

The Applicant provided testimony in support of the granting of “c” variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1) due to pre-existing nonconformities relative to lot size, lot width, and front yard setback.

The meeting was opened up to the public and 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.

The application before the Board seeks preliminary and final site plan approval, and “c” or bulk variance relief in order to permit the Applicant to construct a 1,468 square foot addition to an existing 2,400 square foot retail building in order to provide additional warehouse and show room space.

The subject property is located at 421 Route 23 South, Pompton Plains, New Jersey and is known and designated as Block 2008, Lot 11 on the Tax Assessment Map of the Township of Pequannock and located in the C-2 Zone.

The subject site is a 19,003 square foot corner parcel of land that is fully developed with a one-story commercial use building with ancillary off-street parking. The site is non-conforming in terms of its lot size, lot width and front yard setback. The Applicant proposes to construct a one-story 1,468 square foot addition to the rear of the building in order to permit the existing tenant, Luxcraft Cabinets, to have additional space for its warehouse and showroom associated with the business. The Applicant agreed to provide a landscaping plan which shall be subject to the review and approval of the Board Planner relative to items 6 and 7 in the Board Planner’s review report. Furthermore, the Applicant stipulated, that as a condition of approval, that if the fence behind the property is ever removed by the neighbor, the Applicant shall be obligated to install a new solid six-foot fence as indicated in Item 6 of the Board Planner’s review report. The Applicant also stipulated that it would enclose the dumpster pad with a solid fence as indicated in Item 8 of the Board Planner’s review report.

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 the following “c” or bulk variance relief:

1. Front yard setback to Village Road where a minimum of 50 feet is required, and 23.75 feet is existing and proposed;
2. The proposed loading space conforms to the Ordinance requirements as to size, 10 feet by 35 feet, but it is partially located in the front yard thereby requiring variance relief;
3. Variance relief for the number of on-site parking spaces where 20 parking spaces are required and 17 parking spaces are proposed as recommended by the Planning Board.

The Board has examined the request for variance relief under the MLUL pursuant to N.J.S.A. 40:55D-70c(1). The Board finds that the subject site is a 19,003 square foot corner parcel that is fully developed with a one-story commercial use building. The site is non-conforming in terms of its lot size where the minimum lot size in the C-2 zone is one acre and the existing lot is 19,003 square feet in area which is approximately half the size of the minimum lot area in the C-2 zone. In addition, the minimum lot width in the C-2 zone is 200 feet and the lot width is 100 feet to Route 23 and 160 feet to Village Road. Thus, the lot width is significantly deficient when compared to the minimum requirements under the C-2 zone. Furthermore, the front yard setback in the C-2 zone is a minimum of 50 feet to Village Road, and the existing commercial building is set back 23.75 feet to Village Road, and the Applicant intends to continue the same front yard setback with the new addition which will also be 23.75 feet to Village Road.

The Board finds continuing the encroachment into the front yard setback for the new addition along Village Road is due to the size and shape of the lot as well as the location of the existing building located thereon. Therefore, the Board finds that it is appropriate to grant “c” or bulk variance relief under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1): (a)

by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon. The Board finds that the entire site is also located in a flood hazard area. The Board notes that from a planning perspective, it makes better sense to permit the Applicant to maintain the existing front yard setback along Village Road to promote the uniformity and aesthetics of the existing building with the proposed addition. The Board concludes that the size of the lot and the width of the lot impact the request for variance relief, and together with the existence of the existing 2,400 square foot building on the site, makes it appropriate for the Board to grant c(1) variance relief in this instance.

The Board similarly finds with respect to the number of on-site parking spaces, that it makes better planning sense to grant “c” variance relief for the number of on-site parking spaces where 20 parking spaces are required, and the Applicant agreed to a reduction in the number of on-site parking spaces from 19 spaces to 17 spaces, thereby allowing for better circulation on the site and the avoidance of conflicts with traffic circulation and the dumpster area by enabling the Applicant to increase the size of the dumpster area and to provide a fence enclosure. The Board also finds that based upon the proofs presented that 17 parking spaces are sufficient for the use on this site.

As to the location of the loading zone partially in the front yard, the Board sees this as a de minimis encroachment and thus finds it is appropriate to grant “c” variance relief in regard to the location of the loading zone.

Thus the Board finds that the strict application of the Township Ordinances would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the



developer which thus enables the Board to grant variance relief. Furthermore, as to the negative criteria, the Board finds that “c” or bulk variance relief 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.

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 preliminary and final site plan approval and “c” or bulk variance relief.

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Township of Pequannock that the application of Del Balso Realty, LLC for premises known and designed as Block 2008, Lot 11 on the Tax Assessment Map of the Township of Pequannock and located at 421 Route 23 South, Pompton Plains, New Jersey in the C-2 Zone requesting land use relief is determined as follows:

- A. Preliminary site plan approval is granted under the Municipal Land Law pursuant to N.J.S.A. 40:55D-46.
- B. Final site plan approval is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-50.
- C. Ancillary “c” or bulk variance relief is granted under the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-70c(1).

**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 states that it specifically relied upon said stipulations and representations 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 December 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 the Board Planner, Jill A. Hartmann, P.P., AICP dated November 13, 2018.

5. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions contained in the report of Joseph R. Golden, P.E., CME dated December 17, 2018.

6. The granting of this application is subject to and conditioned upon the Applicant increasing landscaping on the site and submitting a landscaping plan which shall be subject to the review and approval of the Board Planner.

7. The granting of this application is subject to and conditioned upon if the fence is ever removed by the neighbor, the Applicant shall be obligated to install a new solid six-foot fence as required by Ordinance (as set forth in Item 6 of the Board Planner's review report).

8. The granting of this application is subject to and conditioned upon the Applicant enclosing the dumpster pad with a solid fence (Item 8 of the Board Planner's review report).

9. The granting of this application is subject to and conditioned upon the Applicant installing a four-foot high chain-link fence between the properties for the main sign through the rear of the property which shall be subject to the review and approval of the Board Engineer (northeasterly parking area).

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

11. The granting of this application is subject to and conditioned upon NJ Department of Environmental Protection approval, if required.

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

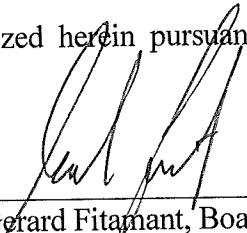
13. Payment of all fees, costs and escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board secretary.

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

15. Prior to the issuance of any construction permit, the Applicant shall file with the Board and Construction Official an Affidavit verifying that the Applicant is in receipt of all necessary agency approvals other than the municipal agency having land use jurisdiction over the application and supply to the Planning Board a copy of any approvals received.

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

The undersigned secretary certifies the within Resolution was adopted by this Planning Board on December 17, 2018 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on January 7, 2019.

 1/7/19  
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Gerard Fitamant, Board Secretary

In favor:

Against:

Abstained:

Board Members Eligible to Vote:

1540558\_1 PEQ-409E 2018 Del Balso Realty, LLC granting Preliminary and Final Site Plan Approval with c or bulk variance relief 1.7.19