

**BEFORE THE ZONING HEARING BOARD OF CARROLL TOWNSHIP  
YORK COUNTY, PENNSYLVANIA**

**IN RE:**

**APPLICATION FOR VARIANCES OF  
INCH'S PROPERTIES, LLC**

*Applicant.*

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**DOCKET NO.: 2022-010  
HEARING DATE: SEPT. 26, 2022**

**FINAL DECISION**

**AND NOW**, this 25 day of October, 2022, after consideration and hearing upon the application for multiple variances of Inch's Properties, LLC ("Applicant"), the Zoning Hearing Board of Carroll Township ("Board") hereby denies all of the requested variances in relation to the proposed mixed-use development to the northeast of the West Siddonsburg Road and Ore Bank Road intersection of Carroll Township.

**FINDINGS OF FACT**

1. The following persons appeared personally at the hearing and requested to be given party status for purposes of this application for variances:

- (a) Donald Keller of 105 Spring Road, Dillsburg, PA 17019;
- (b) Linda Hagenbuch of 821 West Siddonsburg Road, Dillsburg, PA 17019;
- (c) Cynthia Snoke of 823 West Siddonsburg Road, Dillsburg, PA 17019;
- (d) Scott Vance of 104 Stone Bridge Drive, Dillsburg, PA 17019; and
- (e) Brian Mackalonis of 132 Stone Bridge Drive, Dillsburg, PA 17019.

The Applicant raised no objections on the basis of standing for any of the above-referenced persons, and accordingly, each person was duly sworn in to provide testimony and granted party status to this application by the Board.

2. Brandon Slatt, Zoning Officer of Carroll Township (“Zoning Officer”), was duly sworn in and provided the following testimony:

- (a) the Property was posted and notice was provided to the appropriate parties in accordance with the law;
- (b) the hearing was advertised in accordance with the Ordinance; and
- (c) the application fee was paid by the Applicant.

3. The Applicant for the requested variances in relation to the proposed mixed-use development is Inch’s Properties, LLC.

4. The following persons appeared personally at the hearing on behalf of the Applicant:

- (a) Joseph Eisenhower of Inch’s Properties, LLC;
- (b) Jeffrey Esch McCombie, Esquire of McNees Wallace & Nurick LLC;
- (c) Justin Kuhn of Integrated Development Partners; and
- (d) Craig Mellott of Traffic Planning and Design, Inc.

Each of the above referenced persons were duly sworn in to provide testimony at this hearing.

5. The follow exhibits were introduced by the Applicant and admitted by the Board:

- (a) Exhibit A-1 – Aerial Image of the Area Around the Property;
- (b) Exhibit A-2 – Preferred Site Plan (Apartment Buildings Consolidated), Landscaping Plan, and Lighting Plan; and
- (c) Exhibit A-3 – Site Plan Without Requested Relief (Apartment Buildings Separated).

6. The Applicant requested, and the Board permitted, the incorporation of the Applicant's application materials, inclusive of all exhibits and narrative, into the Applicant's testimony.

7. The Applicant is the equitable owner of approximately 39 acres of land located to the northeast of the West Siddonsburg Road and Ore Bank Road intersection of Carroll Township ("Property").

8. The Property is comprised of two lots: UPI #s: 20-000-PC-0048.00-00000 (15 Ore Bank Road) and 20-000-PC-0055.U0-00000 (Ore Bank Road).

9. Applicant's Property is located within the Mixed-Use 1 Zoning District ("MU-1") of Carroll Township.

10. The Applicant intends to develop the Property as part of a mixed use development that includes a mixture of businesses and residential dwellings, including single-family detached dwellings and multiple-family dwellings (*i.e.* apartment buildings).

11. The variances being requested by the Applicant are as follows:

- (a) § 450-350(C)(1), to allow the fronts of parallel apartment buildings to be separated by distances less than 60% of their average length;
- (b) § 450-350(D), to allow apartment buildings to be separated from parking lots by distances less than 25 feet;
- (c) § 450-412(C), to allow the depth of parking lot landscape buffer strips to be less than 15 feet along the side and rear walls of the apartment buildings;
- (d) § 450-412(I), to allow sidewalks to be located longitudinally with the parking lot landscape buffer strips along the apartment buildings;
- (e) § 450-416(E), to allow less than 570 parking spaces; and

- (f) § 450-604(B)(4), to extend the timetable beyond the relevant deadlines imposed by § 450-604(B)(1)-(3) of the Ordinance.

12. The Applicant characterized its application as a “tale of two plans,” indicating that one of two site plans would be presented to Carroll Township’s Board of Supervisors at a future conditional use hearing, depending on whether the variances being sought were granted.

13. If the variances being sought were granted, Applicant would propose the construction of seven apartment buildings towards the southwest portion of the Property and would preserve the open space located to the southeast of the US-15 and Ore Bank Road intersection.

14. However, if the variances being sought were denied, the Applicant would propose the construction of five apartment buildings towards the southwest portion of the Property and two more apartment buildings along US-15 adjacent to the US-15 and Ore Bank Road intersection.

15. Testimony was provided by Joseph Eisenhauer regarding the Property, including:

- (a) Approximately 60% of the Property’s perimeter is adjoining three separate street rights-of-way (US-15, Ore Bank Road, and West Siddonsburg Road).
- (b) 190 apartment units are being proposed within this application.
- (c) 369 parking spaces are being proposed to serve the 190 apartment units.
- (d) There will be two points of access to the proposed mixed-use development, one on Ore Bank Road and the other on West Siddonsburg Road.
- (e) Regarding the frontage on the west side of the Property, a landscape buffer is being proposed that would include a minimum of 37 trees, as well as shrubbery for coverage closer to the ground.
- (f) The Township and the Applicant have engaged in discussions regarding possible future traffic developments of the US-15/Ore Bank Road

intersection, and the impact this could have on Applicant's proposed development.

- (g) The purpose of seeking the zoning relief requested is so that: (1) the proposed buildings can be located closer together (front to front); (2) the parking lots can be located closer to the proposed buildings; (3) the proposed landscape buffer between the parking lot and frontage need not mean the required 25 feet; and (4) the parking spaces to be provided correspond with the actual parking demand of the proposed use.
- (h) Applicant's Exhibit A-3, the Site Plan Without the Requested Zoning Relief, sets forth a plan for the proposed development that complies completely with the Township's Zoning Ordinance, inclusive of open space requirements.

16. After this testimony, the Board provided an opportunity for parties with standing to ask questions of the Applicant and Zoning Officer, including:

- (a) Objector Scott Vance asked a question of the Zoning Officer and expressed concern regarding the proximity of the Applicant's proposed apartment buildings and how this could exacerbate an emergency situation.
- (b) Objector Cynthia Snoke asked how many bedrooms were being proposed within the proposed apartment buildings. The Applicant indicated that the proposed apartment buildings would contain a mix of 1, 2, and 3-bedroom apartment units, but primarily one to two bedroom units.

- (c) Objector Brian Mackalonis sought clarification as to which plan of the Applicant required variances, and whether the Applicant had considered submitting a plan with lower density that did not require any variances.
- (d) Objector Linda Hagenbuch asked the Applicant whether any other variances were needed for the preferred concept plan. When the Applicant responded in the negative, Objector Linda Hagenbuch asked the Applicant about § 450-350(I) specifically, which requires that “One-half of the open spaced... shall be spread throughout the development.”

17. Testimony was then provided by the Applicant through its witness Justin Kuhn regarding the Property, including:

- (a) The uniqueness of the Property, in that, 60% of the Property’s perimeter is located along street rights-of-way.
- (b) The existence of over 35,000 square feet of leisure private passive recreation area in and among the seven apartment buildings proposed in the preferred plan, in addition to the open space along US-15 and open space outside of leisure area.
- (c) The requested variances primarily pertain to interior dimensional requirements that do not impact adjoining property owners and would entail less impervious coverage than the plan to be proposed if the zoning relief is not granted.
- (d) The variances being requested would not prevent emergency vehicles from being able to access the proposed apartment buildings.

- (e) 1.9 parking spaces per dwelling unit within an apartment building is a reasonable amount of parking spaces to serve the dwelling unit.
- (f) Each of the criteria for the grant of a variance are satisfied with respect to the Applicant's requested variances.

18. Testimony was provided by the Applicant through its witness Craig Mellott regarding the Property, including:

- (a) The Applicant retained Craig Mellott to analyze the parking requirements set forth in the Zoning Ordinance, namely the 3 parking space per dwelling unit requirement.
- (b) The Applicant is proposing the provision of 369 parking spaces, or, approximately 1.9 parking spaces per dwelling unit.
- (c) The proposed reduction in parking spaces is necessary in order to: (1) preserve the open space along US-15; (2) reduces impervious coverage with respect to stormwater management; and (3) reduces impacts to wooded and stream area towards northwest corner of Property.

19. The Board provided an opportunity for parties with standing to ask questions of the Applicant and Zoning Officer at this time, including:

- (a) Objector Donald Keller expressed concern, as a downstream property owner, that the proposed stormwater management facilities would be insufficient to serve the Applicant's proposed use. Witness Justin Kuhn responded that during the Land Development Phase, the Applicant would be required to comply with all of the relevant stormwater and SALDO provisions regarding the same.

- (b) Objector Brian Mackalonis asked witness Craig Mellott whether the buildings analyzed within the aforementioned Arcona Strand study were at 100% capacity when the study was conducted. Witness Craig Mellott responded that the buildings were not at 100% capacity, but the parking calculation generated was based on the occupancy at that time.

20. Following these questions from the Objectors, Board Member Heishman made several comments regarding the application, including the fact that the “hardship” being alleged appears to be caused by the density of the proposed use, and not the Property itself.

21. Next, Board Member Weaver sought clarification as to whether the Applicant satisfied the 40% common open space requirement. The Applicant responded that stormwater facilities were not included towards the calculation of this amount and that, pursuant to the Applicant’s preferred plan, the Applicant would actually be providing 59% open space.

22. Then, the Zoning Officer offered several comments and asked some questions, including:

- (a) The Township interprets the Zoning Ordinance differently from the Applicant and takes the position that the variance of § 450-350(C)(1) is necessary in this case.
- (b) In light of the variance request to § 450-350(D), whether the sidewalk in front of the proposed apartment buildings would comply with ADA requirements and still be able to satisfy the requirement that buffers include trees, shrubs, and ground cover.
- (c) Whether the proposed trees to be planted between apartment buildings, as well as the completely surrounding parking lots, would potentially impact emergency vehicle access to and between the apartment buildings.

(d) The Applicant is able to develop its land without any variances.

23. Next, Solicitor John Wilson asked several questions of the Applicant, including:

(a) What is the “hardship” being alleged, and what is the causal connection between the unique physical characteristics of the Property and the hardship?

The Applicant responded that the hardship is the ability to develop the Property with these unique physical characteristics within the MU-1 Zoning District of Carroll Township.

(b) How is the hardship being alleged caused by the unique physical characteristics of the Property, and not self-created due to the density being proposed? The Applicant responded that the unique physical characteristics of the Property were not created by the Applicant, and therefore, the hardship is not self-created.

(c) Whether each of the variances being sought were dimensional in nature? The Applicant responded that each of the variances being sought were dimensional in nature.

24. Chairman Gary Reihart asked the Applicant how the variances were necessary if the Applicant has conceded, by virtue of Applicant’s Exhibit A-3, that the proposed mixed-use development could be accomplished without any variances.

#### **CONCLUSIONS OF LAW**

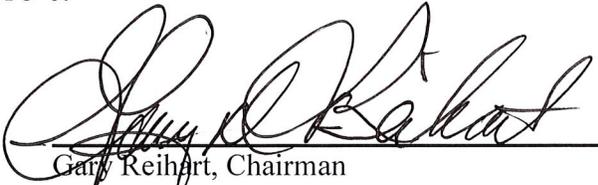
25. The Board finds that the Applicant has failed to present sufficient evidence and testimony in this case to warrant the grant of the requested variances under § 450-605(C) of the Code of the Township of Carroll.

26. The Board finds that the Applicant has failed to demonstrate compliance with each of the criteria set forth in the Municipalities Planning Code, 53 P.S. § 10910.2.

A motion was made by Alternate Weaver, and seconded by Alternate Heishman, to deny each of the requested variances of the Code of the Township of Carroll.

The motion passed unanimously with a vote of 3-0.

**BOARD SIGNATURES:**

  
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Gary Reihart, Chairman

  
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Deana Weaver, Voting Alternate Member

  
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Mark Heishman, Voting Alternate Member

Dated: 10-25-22

Date of Mailing: 10-25-22

**Note:** Any party aggrieved by this decision may appeal to the Court of Common Pleas of York County within thirty (30) days of the date of this written decision.