

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

<b>IN RE:</b>	:		
	:		
<b>APPLICATION FOR VARIANCES OF MATTHEW SIMMONS</b>	:	<b>Docket No.:</b>	<b>2022-011</b>
	:	<b>Hearing Dates:</b>	<b>September 26, 2022</b>
	:		<b>December 13, 2022</b>
<i>Applicant.</i>	:		
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**FINAL DECISION**

**AND NOW**, this 13<sup>th</sup> day of December, 2022, after consideration and hearings upon the application for variances brought by Matthew Simmons, the Zoning Hearing Board of Carroll Township hereby grants each of Applicant’s requested variances in relation to various landscape screening and parking requirements for a proposed Rita’s store franchise located to the northeast of the U.S. Route 15 and West Harrisburg Street intersection in Dillsburg, Pennsylvania 17019.

**FINDINGS OF FACT**

1. The applicant for the requested variances is Matthew Simmons (“Applicant”), who resides at 217 East Walnut Street, Shiremanstown, PA 17011.
2. The 0.45-acre tract of land for which Applicant requests the above-referenced variances is located to the northeast of the U.S. Route 15 and West Harrisburg Street intersection in Dillsburg, Pennsylvania 17019 (UPI #: 58-000-OC-0041.B0-00000) (“Property”) and is owned and controlled by Dusan and Kathleen Bratic (“Owners”).
3. Applicant is the contract purchaser of the Property from the Owners, who authorized Applicant to request these variances for the Property and executed the application.
4. Applicant’s Property is divided by the Carroll Township/Dillsburg Borough line, with approximately 10,000 square feet (~ 0.23 acres) being located in Carroll Township and the remainder being located in Dillsburg Borough.

5. Applicant's Property is located in the Commercial Zoning District of Carroll Township.

6. Applicant is requesting seven variances ("Application") from the Carroll Township Zoning Ordinance ("Zoning Ordinance"); specifically, Applicant seeks relief from:

- (a) § 450-208.G (Landscaping and screening) requiring, *inter alia*, a 30' landscape buffer along property lines bounded by a street right-of-way;
- (b) § 450-412.B (Landscaping requirements) requiring, *inter alia*, a 30' landscape buffer along the front lot lines of all uses in the Commercial Zoning District;
- (c) § 450-412.C (Landscaping requirements) requiring, *inter alia*, a 15' landscape buffer surrounding parking lots;
- (d) § 450-412.F (Landscaping requirements) requiring, *inter alia*, a 20' landscape buffer along all side and rear lot lines in the Commercial Zoning District;
- (e) § 450-412.I (Landscaping requirements) prohibiting, *inter alia*, parking lots and overhead utilities from encroaching into landscape buffers;
- (f) § 450-416.E (Parking requirements) requiring, *inter alia*, a minimum of one parking space per two seats at every drive-through restaurant, plus one space per employee on the two largest shifts; and
- (g) § 450-419.E (Setback modifications) prohibiting, *inter alia*, parking lots from being located within landscape screens and buffers.

7. A hearing upon the Application commenced before the Zoning Hearing Board of Carroll Township ("Board") on September 26, 2022, at approximately 6:05 P.M.

8. The Board conducted this hearing at the Carroll Township Municipal Building located at 555 Chestnut Grove Road.

9. Due to the absence of certain Board members, Chairman Reihart appointed Alternates Weaver and Heishman to join Chairman Reihart as the voting Board members for this Application.

10. 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 Zoning Ordinance; and
- (c) the application fee was paid by the Applicant.

11. During this hearing, the Board raised concerns regarding the parking proposed by Applicant to the west of the Rita’s store, specifically the proximity of the seating to the U.S. Route 15 right-of-way line (~18 feet) and the underlying safety concerns.

12. Furthermore, due to uncertainties discovered throughout the course of this hearing regarding the precise location of the right-of-way lines abutting the Property (along U.S. Route 15 and West Harrisburg Street), a request was made by the Applicant (and approved by the Board) to continue this hearing until the Applicant was able to conduct a survey and verify the dimensions of these rights-of-way.

13. The hearing upon the Application was then concluded, rescheduled, and reconvened before the Board on December 13, 2022, at approximately 6:05 P.M.

14. The Board once again conducted this hearing at the Carroll Township Municipal Building located at 555 Chestnut Grove Road.

15. Given the prior appointment with respect to this Application, Alternates Weaver and Heishman were once again designated by Chairman Reihart as voting Board members for this Application.

16. This hearing was also attended by Board members Setlak and Gensler, who were involved in discussions and deliberations but did not vote.

17. Once again, the Zoning Officer was 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 Zoning Ordinance; and
- (c) the application fee was paid by the Applicant.

18. Applicant appeared personally at the hearing, and was also represented in a legal capacity by Attorney John M. Coles (“Attorney Coles”) of Barley Snyder LLP, and by Scott Debell of Site Design Concepts, Inc., who provided evidence and testimony in support of the Application.

19. The following exhibits were introduced by Applicant and admitted by the Board:

- (a) Exhibit 1 – Schematic Site Plan Zoning Exhibit;
- (b) Exhibit 2 – November 9<sup>th</sup> Letter of Rita’s Senior Director of Development;
- (c) Exhibit 3 – Site Plan Layout Zoning Exhibit;
- (d) Exhibit 4 – Buffer Yard Zoning Exhibit; and
- (e) Exhibit 5 – Application Narrative of Site Design Concepts.

20. The Applicant provided the following general testimony regarding the Applicant’s proposed use of the Property:

- (a) Applicant is proposing a Rita’s store franchise (drive-through restaurant use) with a 1,050 square foot building and 12 parking spaces;

- (b) The restaurant will have one access point on the east side of the Property off of North 3<sup>rd</sup> Street, and the existing curb cut-out located along West Harrisburg Street will not be used for Applicant's proposed use;
- (c) Landscape buffers will be located on the Property along the right-of-way lines for Route 15 and West Harrisburg Street, and Applicant will also erect a four-foot high solid fence located between the proposed parking lot and West Harrisburg Street;
- (d) The southwest portion of the Property is subject to a utility easement, and as such, the Applicant's proposed landscape buffer will not extend into the easement area;
- (e) The maximum permitted area of impervious coverage within the Commercial Zoning District is 50%, and the amount of impervious coverage for the Property (located within Carroll Township) is 38%;
- (f) The proposed use will provide limited outdoor seating to clientele immediately adjacent to the west of the proposed Rita's store (shielded from U.S. Route 15 by the proposed landscape buffer and proposed drive-through); however, the interior of the proposed building will have no seating and will not be accessible to guests;
- (g) The Applicant is proposing 12 parking spaces, with five being located in Carroll Township and the remainder in Dillsburg Borough;

21. With respect to the seven variance requests, Applicant is specifically requesting:

- (a) A variance from the requirement of a 30' foot landscape buffer along street right-of-ways and all front lot lines to allow landscape buffering as proposed on Applicant's exhibits and with no less than a 10.3' landscape buffer;
- (b) A variance from the requirement of a 20' landscape buffer along all side and rear lot lines to allow landscape buffering as proposed on Applicant's exhibits and with no less than a 12' landscape buffer; and
- (c) A variance from the requirement of 14 parking spaces for Applicant's proposed use that would allow Applicant to provide, at minimum, 12 parking spaces (5 of which are to be located in Carroll Township).

22. With respect to the required findings of § 450-605.C with respect to variances, Applicant provided the following testimony:

- (a) The Property has unique physical characteristics that inflict unnecessary hardship upon the Applicant. Specifically, the Property is divided by the boundaries of Carroll Township and Dillsburg Borough, making compliance with different (and contrary) zoning regulations burdensome; the Property is fronted by street rights-of-way on three different sides (which ushers in enhanced setback and landscape buffering requirements); the Property is approximately 20,000 square feet total, which is the minimum lot size permitted in Carroll Township's Commercial Zoning District; and the Property has an irregular trapezoidal shape, which renders maximum effective use of the already-small tract of land virtually impossible;

- (b) There is no possibility of development in strict conformity with the Zoning Ordinance, as Applicant cannot increase the size of its lot or reduce the size of the proposed building. Therefore, these variances are necessary for the reasonable use of the Property;
- (c) The above-referenced hardship has not been self-created, as it was Carroll Township that approved the size and location of the Property within its Commercial District pursuant to subdivision plans recorded in 1993. Furthermore, neither the irregular shape of Applicant's lot, nor its location along three different street rights-of-way, is of Applicant's own doing; and
- (d) Applicant's proposed use will not have any adverse impact on the adjacent uses and will not alter the essential character of the surrounding neighborhood.

23. With respect to parking, Alternate Heishman asked Applicant what percentage of the Rita's clientele at franchises of similar nature were drive-through customers vs. walk-up patrons, to which Applicant responded there is a "fair mix" of both.

24. With respect to parking, Alternate Weaver noted the availability of off-street parking in the area surrounding Applicant's proposed use, and indicated that parking would not likely be an issue for Applicant's proposed use.

25. With respect to any future use of the Property, the Zoning Officer observed that, notwithstanding an expansion of the M&T Bank located to the north of the Property, he was not aware of any other use that could fit on this tract of land other than what is being proposed.

26. Gregory Katshir, owner of 203 West Harrisburg Street, provided comment generally in support of Applicant's proposed use, indicating (1) that the proposed use will not have

any adverse impact on the surrounding neighborhood; (2) that Mr. Katshir is the landlord of a separate property upon which a Rita's franchise is located; and (3) Mr. Katshir's experience with having a Rita's franchise as a tenant has been a highly-positive experience.

### CONCLUSIONS OF LAW

27. The Board finds that each of the requested variances are dimensional in nature, and as such, the relaxed, *Hertzberg* mode of analysis is appropriate in this case.

28. The Board finds that the Applicant has offered sufficient evidence and testimony to warrant the grant of the requested variances in this case.

29. The Board finds that the Applicant has offered sufficient evidence and testimony to establish that there are unique physical circumstances or conditions peculiar to the Property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the Ordinance.

30. The Board finds that the Applicant has offered sufficient evidence and testimony to establish that because of these unique physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the Ordinance and that the authorization of variance is necessary to enable the reasonable use of the Property.

31. The Board finds that the Applicant has offered sufficient evidence and testimony to establish that the unnecessary hardship was not created by the Applicant.

32. The Board finds that the Applicant has offered sufficient evidence and testimony to establish that these variances, if authorized, will not alter the essential character of the neighborhood, nor substantially impair the appropriate use of adjacent property, no be detrimental to the public welfare.




33. The Board finds that the Applicant has offered sufficient evidence and testimony to establish that these variances, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations at issue.


34. The Board finds that the Applicant has demonstrated each of the criteria for the warrant of a variance, which are outlined in § 450-605.C of the Zoning Ordinance, for each of the variances requested in this case.


**A motion was made by Alternate Weaver to grant each of the variances requested by the Applicant – namely, from § 450-208.G, § 450-412.B, § 450-412.C, § 450-412.F, § 450-412.I, § 450-416.E, and § 450-419.E of the Zoning Ordinance. The variances being granted are only granted to the extent necessary to accommodate Applicant’s use as proposed at the hearing.**

**This motion was seconded by Alternate Heishman. The Board passed this motion unanimously with a vote of 3-0.**

**BOARD SIGNATURES:**

  
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Gary Reihart, Chairman

  
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Deana Weaver, Alternate

  
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Mark Heishman, Alternate

Dated: 1-4-2023

Date of Mailing: 1-4-2023

**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.**