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

IN RE: :
: **Docket No.: 2023-007**
RANDS GROUP LTD. : **Hearing Date: August 28, 2023**
Applicant, :
:
:
:

FINAL DECISION

AND NOW, this 28th day of August, 2023, after consideration and a hearing upon the application for two (2) variances of § 450-208.G and § 450-412.D of the Zoning Ordinance of Carroll Township filed by RAN DS Group Ltd., the Zoning Hearing Board of Carroll Township hereby conditionally grants the requested variances in relation to the required landscaping and screening requirements set forth more fully herein:

FINDINGS OF FACT

1. On August 4, 2023, RAN DS Group Ltd. (“Applicant”) submitted an application to the Zoning Hearing Board of Carroll Township (“Board”) requesting two (2) variances from § 450-208.G and § 450-412.D of the Zoning Ordinance of Carroll Township (“Ordinance”).
2. The Applicant owns and controls two parcels of land located to the east of York Road (UPI #: 20-000-OC-0122.A0-00000, 20-000-OC-0122.C0-00000) (hereinafter and collectively, the “Property”).
3. The Property is located in the Commercial Zoning District of Carroll Township.
4. Currently, the twenty-five acre Property does not have any improvements located thereon (undeveloped) and is vacant.
5. Parcel 122.A, the southernmost parcel, is approximately 10 acres in size, while Parcel 122.C, the northernmost parcel, is approximately 15 acres in size.
6. Applicant intends to develop primarily Parcel 122.A with a proposed fencing contractor facility.

7. A hearing upon Application 2023-007 (“Hearing”) was held before the Board on August 28, 2023, at approximately 6:45 PM.

8. The Board conducted the Hearing at the Carroll Township Municipal Building located at 555 Chestnut Grove Road, Dillsburg, PA 17019.

9. Present at the hearing were Chairman Reihart and Board Member Setlak, together constituting a quorum of Board members that attended the Hearing, participated in the proceeding, and voted on the Application.

10. The Applicant was not represented by legal counsel at the Hearing. Both Jason and Elisha Riggins of R & S Fence Co. were present on behalf of the Applicant. Applicant offered testimony and evidence exclusively through Chris Hoover, President of Hoover Engineering Services, Inc.

11. Accordingly, Applicant’s above-referenced representatives and Zoning Officer Slatt were duly sworn in at the beginning of the Hearing.

12. Zoning Officer Slatt 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.

13. Following Zoning Officer Slatt’s testimony, the Applicant called Mr. Hoover as its sole witness, who testified as follows:

- (a) R & S Fence is a fencing company located within the Borough of Dillsburg;
- (b) Recently, Mr. and Mrs. Riggins (as well as their business partner) purchased the Property, which constitutes a portion of what was formerly known as the “Fuss Farm”;
- (c) York Road is located directly to the west of the Property, Fisher’s Auto Parts is located to the south, vacant land owned by LOBAR Properties LLC is located to the east (which will likely be used for commercial development), and the remainder of the Fuss Farm is located to the north of the Property (owned by Harry Fox, Jr.);
- (d) Applicant is proposing two buildings on the Property, as set forth on Applicant’s Site Plan (Applicant’s Exhibit F);
- (e) These proposed buildings would be located primarily on the southernmost parcel of the Property (Parcel 122.A);
- (f) The smaller building located closer to York Road would be used for retail and office space, while the slightly larger building

- located to the east would be used for fabrication of fencing materials and storage;
- (g) The residential dwelling to the north is the closest, “unbuffered” residential dwelling to the proposed development and is located approximately 850 feet away from the proposed development;
 - (h) Under the Ordinance, Applicant is required to erect landscaping and screening buffers along the York Road frontage, as well as the entire northern property line of the Property;
 - (i) The location of the Property that is to be developed is approximately 18 feet higher in elevation than the Property’s northern lot line, rendering any landscaping or buffers to be installed at this location as not fulfilling its intended purpose;
 - (j) A landscape buffer is being proposed on the north side of the proposed driveway that would run along the driveway and beyond both of the proposed buildings;
 - (k) Applicant is also proposing to substitute out the landscaping buffer required under § 450-412.D with a fence; and
 - (l) Applicant does not have any current plans to further develop the northernmost parcel of the Property (Parcel 122.C).

14. Following Mr. Hoover’s testimony, Solicitor Wilson sought clarification from the Applicant regarding the “unbuffered” area along the southern lot line of the Property, as depicted on Applicant’s Site Plan. Applicant initially indicated that due to the neighboring commercial use to the south, no buffer was required by the Ordinance. However, upon further inspection, no such exception to the screening requirements exists solely due to a neighboring commercial use. In response, Applicant indicated that additional screening along this “unbuffered” area could be added, but the variances being requested would be whatever is needed based on the buffering proposed on Applicant’s Site Plan.

15. Board Member Setlak sought clarification from the Applicant regarding where and why a fencing buffer was being proposed, as opposed to landscaping buffer. Applicant indicated that the proposed fence would be located to the north and east of the proposed parking area, represented by a dashed line with “X”s on Applicant’s Site Plan. Applicant testified that the reason fencing was being proposed was for the purpose of enhanced security in relation to the proposed storage area.

16. Upon questioning by the Board, Applicant testified that no landscaping buffer was being proposed along the building front of the larger building towards the center of Parcel 122.A. Zoning Officer Slatt testified that the Township does not have any concerns regarding the buffering and screening being proposed by the Applicant.

17. At this time, the Board concluded testimony on the Application.

18. The following exhibits were admitted by the Board into the record at the conclusion of the Hearing:

- (a) Applicant's Exhibit A – Tax Map Parcel Image (Parcel 122.A);
- (b) Applicant's Exhibit B – Deed to Parcel 122.A;
- (c) Applicant's Exhibit C – Tax Map Parcel Image (Parcel 122.C);
- (d) Applicant's Exhibit D – Deed to Parcel 122.C;
- (e) Applicant's Exhibit E – Existing Zoning Information; and
- (f) Applicant's Exhibit F – Site Plan.

CONCLUSIONS OF LAW

19. Pursuant to § 450-208.G of the Ordinance, “[a] minimum twenty-foot wide landscape buffer shall be provided along all property lines, except the street frontage... Property line(s) bounded by a street right-of-way shall be provided with a minimum thirty-foot wide landscape buffer at the right-of-way line...”

20. Under the Ordinance, Applicant would be required to provide a twenty-foot wide landscape buffer along the south, east, and north boundary lines of the Property.

21. Applicant would also be required to provide a thirty-foot wide landscape buffer along the Property's western boundary line, as the boundary runs along the right-of-way line of York Road.

22. Applicant requires a variance from § 450-208.G of the Ordinance in order to provide landscape buffering as proposed on Applicant's Site Plan.

23. Pursuant to § 450-208.G of the Ordinance, “[c]ommercial buildings shall provide landscaping along the length of the building front between sidewalk or access drive and the building front. This landscaping shall be a mixture of shrubs, hedges, perennials, ground cover and trees...”

24. Applicant requires a variance from § 450-412.D of the Ordinance in order to provide landscape buffering as proposed on Applicant's Site Plan.

25. Under Pennsylvania land use law, when a property owner is seeking a “dimensional variance,” the property owner is asking only for reasonable adjustment of zoning regulations in order to utilize property in manner consistent with applicable regulations; thus, grant of dimensional variance is of lesser moment than grant of “use variance,” since latter involves proposal to use property in manner that is wholly outside zoning regulation. *Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh*, 554 Pa. 249, 257, 721 A.2d 43, 47 (1998).

26. Under the relaxed, *Hertzberg* standard for granting a dimensional variance from a zoning ordinance, when addressing the element of unnecessary hardship, the quantum of proof needed to establish an unnecessary hardship as would support an application for a variance is lower for dimensional variances, and courts may consider multiple factors, including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements, and the characteristics of the surrounding neighborhood. *Pequea Twp. v. Zoning Hearing Bd. of Pequea Twp.*, 180 A.3d 500 (Pa. Commw. Ct. 2018); *McCarry v. Haverford Twp. Zoning Hearing Bd.*, 113 A.3d 381, 385 (Pa. Commw. Ct. 2015).

27. Each of the variances requested by the Applicant is a dimensional variance, and thus, subject to the relaxed, *Hertzberg* mode of analysis.

28. For both of the requested variances, Applicant presented evidence and testimony sufficient to establish each of the criteria for obtaining a variance, as set forth in § 450-605.C of the Ordinance, including the following:

- (a) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the Property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the Ordinance, in the neighborhood or zone in which the Property is located;
- (b) Because of such physical circumstances or conditions, there is not possibility that the Property can be developed in strict conformity with the provisions of the Ordinance and that the authorization of a variance is therefore necessary to enable reasonable use of the Property;
- (c) Such unnecessary hardship has not been created by the applicant;
- (d) The variance, if authorized, will not alter the essential character of the zone or neighborhood in which the Property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
- (e) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue.

A motion was made by Board Member Setlak, and seconded by Chairman Reihart, to approve the variance request of Article II, § 450-208.G, allowing the Applicant to forego the screening requirement along the northern Property line of the development as proposed, with the condition that, should the northern parcel be developed, the Applicant would then be required to follow the landscaping and buffering requirements along this northern Property line, as per the Ordinance in § 450-208(G). The motion passed unanimously with a vote of 2-0.

A motion was made by Board Member Setlak, and seconded by Chairman Reihart, to approve the variance request of Article II, § 450-412.D to allow the proposed fence to provide the required screening along the building front along the northeast corner of the development instead of shrubs, hedges, perennials, ground cover and trees. The motion passed unanimously with a vote of 2-0.

BOARD SIGNATURES:



Gary Reihart, Chairman



Frank Setlak, Secretary

Dated: 10-6-23

Date of Mailing: 10-9-23

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.