

PEQUANNOCK TOWNSHIP BOARD OF ADJUSTMENT  
MEMORIALIZING RESOLUTION  
JAR Fence LLC  
d/b/a JAN FENCE, INC.  
4 INDUSTRIAL ROAD, PEQUANNOCK, NEW JERSEY  
Block 4402 Lot 6

**WHEREAS**, K&G CORPORATION, a wholly-owned subsidiary of Bel-Art Products is the owner of the subject property located at 4 Industrial Road, Pequannock, New Jersey 07444, Block 4402, Lot 6, located in the I-1 Industrial zone district; and

**WHEREAS**, the applicant, JAR Fence LLC d/b/a JAN FENCE, INC., is the contract purchaser of the subject property; and

**WHEREAS**, the applicant proposes to use the property as a headquarters for its fence sales and installation business which is a use permitted in this zone, but also proposes approximately 35,000 square feet of outside storage of fencing materials and vehicles, which is not permitted in this zone district; and

**WHEREAS**, testimony was taken at a public hearing on June 3, 2010, at which time the Board took sworn testimony and applicant and the public were afforded the opportunity to be heard and participate in the application and to make comments; and

**WHEREAS**, the Board has reviewed and considered all of the evidence and the testimony at the public hearings from which the Board makes the following factual findings:

1. All proper public notice has been given in accordance with the municipal land use law.
2. The subject property is a flat, irregularly shaped parcel consisting of 167,781 square feet (3.85 acres) located in the industrial (I-1) zone district. It has 200 feet of frontage on Industrial Road, approximately 150 feet south of the intersection of Industrial Road and the Newark-Pompton Turnpike. The parcel is presently improved with 4 commercial buildings, one of which is an administration building closest to Industrial Road and the remaining 3 are shed type industrial buildings.
3. The south property line of the site is bounded by the New York-Susquehanna and Western Railroad right-of-way, a non-operational railroad. At one time in the past, this site was serviced by a rail siding which appears to have been either removed or covered over. The applicant produced a photograph marked A-1 at the June 3, 2010 meeting showing the site in the 1940s or early 1950s. The photograph depicts multiple rail cars stored on the site, which at that time was used as a lumber yard.
4. The key geologic feature of the property in addition to its flatness is its proximity to the Pompton River to the east and a large lake on the south side of the railroad right of way. The site is located in the designated flood hazard area regulated by NJAC 7:13 "Flood hazard area

control act rules.” The majority of the site is between an elevation of 174 feet and 175 feet, whereas the base flood elevation in this area is 182 feet.

5. There is an existing 4,590 square foot commercial building closest to Industrial Road which the applicant proposes to convert from an existing machine shop to an office building. To the rear of the site are an existing 2,820 square foot warehouse building and an existing 1,683 square foot building both of which are proposed to be used for storage of materials and fence parts. There is a 10,300 square foot building which is proposed to be used for storage and assembly of fencing. The applicant proposes to use a portion of the exterior for the storage of trucks and automobiles. The remainder of the site, approximately 35,000 square feet is proposed to be used for the outdoor storage of materials used in the applicant’s fence construction and installation business.

6. The application forms filed by the applicant present this application as a request for a use variance to expand a pre-existing, non-conforming use pursuant to NJSA 40:55D-70(d)1. Both the applicant’s planner’s report and the Board’s planner’s report address the application from that standpoint. However, the Board does not find that there is an existing use of the property for the outside storage of any materials used in connection with the operation of the owner’s business.

7. The very sketchy history of this property presented by the applicant suggests that in the late 1940's or early 1950's the property was used as a large lumber yard, in conjunction with the adjoining property. That lumber yard was serviced by a railroad siding which appears in the photograph marked A-1 at the June meeting and shows a railroad siding traversing almost the entire length of the property. There were several shed-type buildings adjacent to the railroad. The photograph also shows stacks of lumber in the middle of the yard and along the perimeter. Presumably, the sheds were also used for the storage of lumber because they are immediately adjacent to the railroad siding. There are railroad cars depicted in the photograph immediately adjacent to the shed-type buildings.

8. However, no evidence was produced regarding the date on which K&G Corporation became the owner of this site. Presumably on that date the lumber yard operation ceased . There was no testimony of any use of the property by K&G Corporation for anything other than the parking of vehicles. There is a resolution of the Planning Board adopted November 15, 1993 in which the Planning Board approved the enlargement of the parking area for the parking of motor vehicles by the Bel-Art employees. There was also a reference to a Board of Adjustment Resolution adopted November 5, 1992, which approved the application of K&G Corporation to use a portion of the property for the storage of a maximum of ten (10) recreational vehicles owned by employees of the on-site business operation.

9. The record is devoid of any reference whatsoever either by document or testimony as to the use of any portion of the property for the outside storage of materials or any other business equipment or vehicles. Consequently, the evidence presented does not support a finding for the expansion of a pre-existing, non-conforming use, rather a straight use variance under NJSA 40:55D-70(d)1.

10. Visual inspection of the site reveals no current storage of anything other than four (4) or five (5) trailers. There is no authority for the storage of those trailers.

11. The applicant is a company which was founded in 1955 and has continued since that date to assemble and install fences made of chain-link with metal poles, PVC and wood, The materials arrive in standard stock size and condition and the applicant shapes and assembles the pieces into fences and gates. There are no substances applied to the materials at the site, such as paint or preservatives.

12. The applicant has an existing sales location and storage yard on Route 23 in Wayne, New Jersey. However, the business has outgrown the size of that property and the applicant intends to move the storage and assembly portion of the business to the subject property and retain its primary sales location in Wayne.

13. There would be no large machinery or vehicles on-site. The applicant does not own a tractor trailer truck, although it has approximately 6 flat bed trucks with 14' to 16' cargo beds. Operations at the site would be conducted during normal business hours, Monday through Saturday. There would be no Sunday operations at this site. The work hours fluctuate somewhat, being greater in the good weather months and lesser in the winter months. The applicant receives deliveries of approximately four (4) to six (6) truck loads per week during the busy season. It attempts to confine deliveries to after 9 a.m. and before 4 p.m. That is because the trucks must be unloaded by the applicant's employees. From approximately 7 a.m. to 8:30 a.m., those employees are loading contractors for the day and, therefore, receiving deliveries during that time would interfere with the applicant's work schedule.

14. The applicant provides installation of fencing primarily through subcontractors. The applicant has a number of subcontractors with whom it contracts on a regular continuing basis for installation services. Some of those contractors leave their vehicles on the applicant's property overnight. However, there would be no storage of vehicles or equipment unrelated to the applicant's business. The applicant uses only fork lifts for the loading and unloading of vehicles. The only other equipment on site are the saws and other shaping equipment which the applicant uses in the fabrication and assembly of fences. All assembly and fabricating activities will take place within the buildings. Other than storage, there would be no business activity outside the buildings other than the loading and unloading of vehicles.

15. The applicant proposes to convert the 4,590 square foot building nearest to Industrial Road from a machine shop an office building. Two (2) structures, one an existing 2,860 foot warehouse and an existing 1,683 square foot building would be used for the storage of fencing materials which are the most sensitive to the elements. The 10,300 square foot building would be divided into separate workshops for PVC, metal and wood assembly. The balance of that building would be used for the storage of fencing materials and products.

16. The applicant proposes to use approximately 35,000 square feet of the southerly portion of the property for the outdoor storage of fencing materials. The materials would be stored on racks which would be permanently and securely affixed to the ground. Testimony indicated that

if buildings were built in this area, they would require flood-proof construction or to be built with the first floor above the base flood elevation of 182 feet. However, since the property is, for the most part, at an elevation of 174 to 175 feet, that is approximately 8 feet below the base flood elevation. It is highly unlikely that in this industrial zone, any permitted use of the property could justify the cost of construction which would comply with flood hazard area construction requirements.

17. The applicant has met with the professional staff of NJ DEP at a pre-application meeting. The applicant was advised that the conclusion of that meeting, that the proposed plan would be entitled to a "permit by rule." This is an expedited process recently adopted by NJ DEP to provide a prompt approval to sites which raise minimal concern.

18. The land in the vicinity of the property includes to the north a lumber yard with outdoor storage and retail uses, to the east industrial uses and industrial uses to the south. The south property line is bounded by a inactive railway line. On the far side of the railway line is a large lake. The site itself is entirely enclosed in a 6 foot high chain like fence. There is a significant stand of mature trees on the adjacent property along the west side of that property.

19. The site is substantially in the center of an industrial block. Between most of the subject property and Industrial Road is another industrial/commercial building presently occupied by Bell Art. Consequently, nearly the entire property is shielded from adjacent uses, except the current machine shop which is intended to be converted to an office building.

20. No members of the public appeared at either public hearing to testify in connection with this application.

Based upon the above factual findings, the Board has reached the following conclusions:

1. The applicant has sustained its burden under N.J.S.A. 40:55D-70d(1) to permit outdoor storage as described in the application and documents submitted therewith and the testimony at the public hearing. Although the proposed use is not one which inherently benefits the public good, the subject property is particularly suited to the proposed use. It is particularly suited because of the existence of the industrial facility on site, its proximity to major commercial roadways and the benign nature of the proposed outdoor storage as described at the public hearing.

2. The proposal for outdoor storage is consistent with the requirements of the site itself which is located in a flood hazard area. Because the base flood elevation is nearly 8 feet above the existing ground level, construction on this site would be extremely costly and in all probability not justified for industrial use. Moreover, with an adequate racking system, properly affixed to the ground, this is an ideal use for the south end of this property. In addition, the parking of a minimum number of vehicles is also a good use for the property

3. It is also important that the nature of the products are particularly suited to this flood hazard area. There are no chemicals involved in the products and there is nothing hazardous proposed to be stored on site.

4. The applicant has also produced the enhanced quality of proof required by the opinion in the *Medici v. BPR Co.*, case in that the grant of this variance is not inconsistent with the intent and purpose of the master plan or the municipal zoning ordinance. The applicant has satisfactorily reconciled the grant of this variance with the omission of this particular use from the ordinance. The particular site characteristics of the subject property including its elevation approximately 8 feet below the base flood elevation and its long, narrow shape justify the use of outdoor storage. The nature of this applicant's business and the specific materials sought to be stored outside are also key factors in the granting of this variance. The fact that nothing hazardous will be stored on the property and that there are no coatings or other treatments of the products to be stored outside which would adversely affect the environment add to the suitability of the use for this site.

5. The site plan as submitted was insufficient for this Board to adequately evaluate whether this variance can be granted, or not. In order to permit outdoor storage on this site it is absolutely essential that the storage be adequately secured to the ground, that the nature and design of the racking system be adequate during floods of the property and, therefore, no authority granted hereunder should be allowed to go into effect until a complete and detailed site plan is reviewed and approved by the Township's professional staff and this Board.

6. Subject to the presentation and approval of an acceptable site plan, the requested variance to permit outdoor storage on the subject property can be granted without substantial detriment to the zone plan, zoning ordinance or the public good.

**NOW THEREFORE BE IT RESOLVED** by the Board of Adjustment of the Township of Pequannock this 1st day of July, 2010 that it now memorializes, ratifies and adopts the action taken at its meeting on June 3, 2010 granting the use variance application of JAR Fence LLC d/b/a JAN FENCE, INC. for approximately 35,000 square feet of outdoor storage, subject to the following condition:

1. No relief granted herein shall be effective unless and until the applicant receives site plan approval from this Board within twelve (12) months from the date hereof.

I hereby certify that the above is a true copy of a resolution adopted by the Board of Adjustment of the Township of Pequannock at its regular meeting on July 1, 2010, by a vote of 3 to 0.

  
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Linda Zacharenko, Secretary