

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of October 22, 2015

Members Present

David Dowling  
Jeff Staub  
Sara Jane Cate  
Greg Sirb  
Watson Fisher

Also in Attendance

James Turner  
Amanda Zerbe

**Docket 1375**

Applicant: Golden Valley Developers, LLC  
Address: 7075 Manlius Center Road  
Syracuse, NY 13057  
Owner: Hsiao-sheng Chen, Shau-Dong Wong and Jum-Huh Hwang  
5001 E. Trindle Road  
Mechanicsburg, PA 17050

Property: 4920 Jonestown Road  
Harrisburg, Pennsylvania 17109

Section 307 (A) Rear Yard Setbacks in the Commercial General District.

The applicant is seeking a variance to reduce the required rear yard setback of 30 feet in the Commercial General District. The applicant will encroach 25 feet into the required rear yard.

Fees Paid: September 29, 2015

Property Posted: October 13, 2015

Advertisement: Appeared in The Paxton Herald on October 7, 2015 and October 14, 2015

The hearing began at 7:58 p.m.

Mr. Dowling swore in Brian Evans, who explained that he lives in Fishing Creek Valley Road, but is the engineer for the project. He noted that the business address is 2793 Old Post Road, Harrisburg, Pennsylvania.

Mr. Dowling questioned if the owner of the property is present. Attorney Suhr answered no.

Mr. Dowling noted that Amanda Zerbe, Zoning and Planning Officer for Lower Paxton Township was previously sworn in.

Mr. Dowling questioned in respect to Docket 1375, has it been properly advertised and posted. Ms. Zerbe answered that the applicant paid the fee on September 29, 2015; posted on October 13, 2015, and advertised in The Paxton Herald on October 7, 2015 and October 14, 2015. She noted that 18 neighbors received a mailing on October 2, 2015.

Mr. Dowling requested Ms. Zerbe to provide a listing of the Township Ordinances that are at issue with this applicant.

Ms. Zerbe answered that it is Section 307 (A) Rear Yard Setbacks in the Commercial General District. The applicant is seeking a variance to reduce the required rear yard setback of 30 feet in the Commercial General District. The applicant will encroach 25 feet into the required rear yard.

Mr. Charles Suhr noted that he is an attorney with Stevens and Lee located at 17 N. Second Street in Harrisburg, Pennsylvania. He noted that he is present on behalf of the applicant, Golden Valley Development, LLC. He noted that they are the equitable owner of a one half acre parcel located at 4920 Jonestown Road, which is currently developed with the Susquehanna Ale House. He noted that the applicant is seeking to redevelop the site, to demolish the existing building and to put up a new 4,026 square foot building for retail sales for cellular phones.

Attorney Suhr noted that the variance that he is present for this evening, as Ms. Zerbe stated, is from Section 307 (A) Rear Yard Setbacks in the Commercial General District. He noted that there is a 30 foot required setback. He noted that the property is currently nonconforming as to the rear yard setback and also for other setbacks. He noted that he is increasing the nonconforming to add a five foot rear yard setback for a variance of 25 feet. He noted that he would go through the site plan and talk about the redevelopment.

Attorney Suhr noted that Brian Evans is the design engineer for the project. He distributed a packet which included the exhibits that he will go through. He noted the exhibits have been labeled noting that he included some full size sheets of the plan.

Attorney Suhr requested Mr. Evans to introduce himself to the Zoning Hearing Board. Mr. Brian Evans, Evans Engineering noting that he is the agent preparing the site plan for the application for relief.

Attorney Suhr questioned Mr. Evans if he is a professional engineer in Pennsylvania. Mr. Evans answered, yes I am.

Attorney Suhr questioned Mr. Evans if was familiar with the application that was filed. Mr. Evans answered, yes I am.

Attorney Suhr questioned Mr. Evans if was familiar with the properties subject to the application. Mr. Evans answered, yes I am.

Attorney Suhr questioned Mr. Evans if he was familiar with the zoning ordinance requirements for the CG District particularly related to the setbacks. Mr. Evans answered, yes I am.

Attorney Suhr questioned Mr. Evans if he was familiar with the needs of the applicant Golden Valley Developers LLC. Mr. Evans answered, yes I am.

Attorney Suhr questioned Mr. Evans if he was authorized to speak on their behalf. Mr. Evans answered, yes I am.

Attorney Suhr questioned Mr. Evans what Exhibit No. 1 was. Mr. Evans answered that it is the application request.

Attorney Suhr questioned Mr. Evans if this was partially prepared by him and also by Attorney Suhr. Mr. Evans answered yes.

Attorney Suhr questioned Mr. Evans what Exhibit No. 2 was. Mr. Evans answered that it is a copy of the deed of the property.

Attorney Suhr questioned Mr. Evans if it shows that the current owner is a series of four individuals with tenants in common. Mr. Evans answered yes.

Attorney Suhr questioned Mr. Evans to identify what Exhibit No. 3 was. Mr. Evans answered that it a real estate option agreement. Attorney Suhr questioned whom is it between. Mr. Evans answered that it is between the current property owners, the four names, and Golden Valley Developers, LLC.

Attorney Suhr questioned Mr. Evans if this is the agreement of sale for the property subject to the application. Mr. Evans answered yes.

Attorney Suhr questioned Mr. Evans, as far as he was aware, if the agreement is in full force and affect. Mr. Evans answered yes.

Attorney Suhr questioned Mr. Evans if it would make them the equitable owner of the property. Mr. Evans answered yes.

Attorney Suhr questioned Mr. Evans what Exhibit No. 4 was. Mr. Evans answered that it is the existing condition plan that was prepared by his office.

Attorney Suhr noted that he wanted to talk about the existing conditions and he requested Mr. Evans to identify where the property is. Mr. Evans answered that the property is centered within the site plan on the north side of Jonestown Road, west of the M&T Bank, and to the east of Tire Mart.

Attorney Suhr questioned how big the property is. Mr. Evans answered that it is over one half acre.

Attorney Suhr noted that there appears to be a building in the middle, is that correct. Mr. Evans answered yes. He noted that it is the Susquehanna Ale House.

Attorney Suhr questioned how large is the existing building. Mr. Evans answered that it is 3,273 square feet.

Attorney Suhr noted that the bank property is off to the right east of the site, is that correct. Mr. Evans answered, that is correct.

Attorney Suhr questioned what is in the building to the west. Mr. Evans answered that it is the Tire Mart.

Attorney Suhr questioned behind the property, away from Jonestown Road, what is located there. Mr. Evans answered the bank owns the property surrounding the current Susquehanna Ale House on both the east and north sides and most of it is used for parking.

Attorney Suhr noted that something is running through the middle which says an opened paper street, can you identify what that is. Mr. Evans answered in the old mapping of the Township, at one point in time, there was a paper street that ran parallel to Jonestown Road, it is an opened street, not being used, and to the west, it has been claimed by the owners of Tire Mart. He noted at this time, between his client's property and the bank to the north, the paper street still exists as a paper street and shows up as such even on the current M&T Bank property over to Devonshire Road.

Attorney Suhr questioned if the paper street is open for ingress and egress from Devonshire Road. Mr. Evans answered no. He noted that the bank has developed over it with decrease circulation driveways, sidewalks, and such. He noted the Susquehanna Ale House, currently has access from its property back to the parking lot north of the M&T Bank with access drives. He noted that the Susquehanna Ale House is currently using part of the property for tents, outside dinning, and other options for their operations.

Attorney Suhr questioned how to access to get to the property off of Jonestown Road. Mr. Evans answered that it is through two two-way access points both on the east and west side of the current Susquehanna Ale House.

Attorney Suhr questioned towards the rear, Mr. Evans mentioned the access to the parking lot, please describe what that is like. Mr. Evans explained there is a narrow connection on the western side of the property from the Susquehanna Ale House to the parking lot to the rear, there is also an obtained access from the eastern side; however, some of it has been blocked up with planters or parts of the islands and various sundry items that the Ale House has placed to prevent movement, but the actual pavement and surface in in tack to drive through.

Attorney Suhr requested Mr. Evans to look at the little box that was drawn as a setback box. Mr. Evans explained that the existing setbacks are identified on the plan about 50 feet from the front, 15 feet for each side and 30 feet from the rear.

Attorney Suhr noted for the front yard setback, is the current structure compliant with the front yard setback. Mr. Evans answered no, the current Susquehanna Ale House is about 9.2 feet into the front yard setback.

Attorney Suhr noted for the rear yard setback, how the building complies with the rear yard setback. Mr. Evans answered that the actual building is over three feet into the setback; however, there is also a cooler that is part of the structure to the northwestern corner which is 11 feet into the rear yard setback.

Attorney Suhr noted at this time there is a 19 foot setback to the rear property yard. Mr. Evans answered from the cooler that is correct.

Attorney Suhr questioned what is the item listed as bar. Mr. Evans answered that it is basically part of a prior approval of the property, a functioning outside bar that is covered with tents that allows outside dining activities. He noted that they put turf grass on top of the asphalt paving, with chairs and tents to have an area for outside dining and a series of other tents and tables throughout a series of post, pillars and fencing they constructed to the north side or rear of the property.

Attorney Suhr noted in the upper left hand corner there is a zoning table. Mr. Evans answered that is correct.

Attorney Suhr questioned if Mr. Evans prepared that. Mr. Evans answered that it identifies the zoning requirements for the Township and below that the current site coverage as existing conditions, and a chart of the proposed conditions pending approval of the site plan for development.

Attorney Suhr noted we currently have non-conformities as to the front yard and the rear yard setback, is that correct. Mr. Evans answered, that is correct.

Attorney Suhr questioned if it is also non-conforming as to pervious coverage. Mr. Evans answered for both the pervious coverage and lot size.

Attorney Suhr requested Mr. Evans to identify Exhibit No. 5. Mr. Evans answered that Exhibit No. 5 is the proposed site plan with the proposed structure on it and other site improvements that the client is proposing.

Attorney Suhr noted that there is another building shown, and he questioned if the current building will be torn down or renovated. Mr. Evans answered that it will be torn down.

Attorney Suhr noted that this involved a new building going up, how large it is. Mr. Evans answered that it is 4,020 square feet.

Attorney Suhr noted in relation to the setbacks, how is it related to the front yard setback. Mr. Evans answered with the new building he has corrected the front yard setback violation so it will be compliant for the front yard setback, and both side yard setbacks as well.

Attorney Suhr questioned how far back the building encroaches to the rear yard setback. Mr. Evans answered that the proposed building will be 25 feet in the rear yard setback leaving the remaining five foot separation to the property line. He noted that would be to the unopened paper alley.

Attorney Suhr questioned if there will be any improvements that are proposed for the driveways on Jonestown Road. Mr. Evans answered that the driveways on the Jonestown Road will not be modified as they will be left as is.

Attorney Suhr questioned what access would there be to the rear parking lot of the bank. Mr. Evans answered that he proposed improving the circulation using an easement agreement to work with the bank to open up and maintain full circulation around the property by utilizing the banks parking lot for full circulation, therefore providing full two-way circulation on the eastern drive and a one-way circulation on the western drive. He noted that patrons coming in to use the new building can come in, circulate fully around, and it will also allow the Township emergency services to get in from Jonestown Road, going out to the property passing back and forth, allowing for full circulation around the property.

Attorney Suhr questioned what if the current conditions to the rear will be scrapped. Mr. Evans answered yes.

Attorney Suhr questioned if it will all be cleaned up. Mr. Evans answered yes, properly curbed, green spaces provided, and proper storm water collection.

Attorney Suhr noted in the middle of the drawing, the unopened paper street, there is an area surrounded by curbing, is that correct. Mr. Evans answered yes, it will all be green space.

Attorney Suhr questioned if it would be landscaped. Mr. Evans answered that there will be nominal landscaping as far as trees, and or bushes and shrubs. He noted that will be identified in the land development plan, but not an overly large garden type, just enough to dress up the rear side of the property.

Attorney Suhr noted that it appears to be lining up with the improvements that were done to the east by Dauphin Deposit Bank. Mr. Evans explained that he is making it so it will look and flow as one functional area with curb lines, traffic flows to look in line with everything else that is currently there. He noted that the current M&T Bank building is only 3.3 feet off its rear property line and this will be five feet off the rear property line.

Attorney Suhr noted that this will be more consistent with the neighbor who is not compliant. Mr. Evans answered, that is correct.

Attorney Suhr noted that the zoning table is repeated at the upper left hand corner. Mr. Evans answered, that is correct.

Attorney Suhr questioned if it shows any improvements that are non-conforming. Mr. Evans answered yes, noting with the proposed new structure, we will also be improving pervious coverage. He noted that the current property is non-conforming, with 92.5% pervious coverage and when completed it will be 88% pervious.

Attorney Suhr noted that will be with the added greenspace on the lot. Mr. Evans answered that is correct.

Attorney Suhr noted that you are proposing added greenspace in the paper alley as well. Mr. Evans answered yes.

Attorney Suhr noted that more greenspace is being proposed. Mr. Evans noted that the chart addresses that which is on the property of the applicant and does not address that there will be improvements for greenspace in the alley as well.

Mr. Dowling questioned where the greenspace on the lot is and not in the alley. Mr. Evans answered between the front of the building and front curb line they are pushing the building back and making the building compliant, adding grass and greenspace between the building and the front curb line to give proper circulation and make it safe for people to walk across the front of the building. He noted additionally, behind the building, currently every square inch is asphalt up to beyond the property line.

Mr. Dowling noted that the greenspace behind the building is not the five feet. Mr. Evans noted that five feet of it is our greenspace and beyond that it is the unopened paper street. He noted that he is not counting that which is shown in the paper street in his calculations. Mr. Dowling requested Mr. Evans to approach the dais. Mr. Dowling point to the new greenspace. He requested Mr. Evans to tell him about the large area inside the curb at the rear. Mr. Evans answered, to the north of the property, directly behind the proposed building, there is five feet of green space between the back of the building and the property line. Mr. Dowling questioned if that is greenspace now. Mr. Evans answered that it is not as it is currently asphalt. He noted that the additional 16-foot wide unopened paper street will all be made greenspace with exception to where the two pass throughs would be provided. He noted that there is additional greenspace behind the open street to the completion of the circulation. Mr. Dowling noted what you are saying is the entire curbed area to the rear of the property will be greenspace. Mr. Evans answered that is correct.

Ms. Cate questioned who will be occupying the building. Mr. Evans answered that it is a cellular company, noting that is all the information that he has to speak to it. Attorney Suhr noted that it is an AT&T cellphone store. He noted that they will not be selling alcohol; rather it will be a retail store.

Ms. Cate questioned what the purpose of AT&T being there is. Mr. Evans stated that they are relocating from another location, a nice new freestanding store to meet their compliance.

Ms. Cate noted that they are trying to sell their... Attorney Suhr noted that it is their image, their stuff. He noted that there is a Verizon store nearby and it would be similar to that.

Attorney Suhr questioned if you anticipate that a land development plan would be filed with the Township. Mr. Evans answered yes as he is preparing a land development plan currently anticipating to submit it in November of this year.

Attorney Suhr questioned that it would be a process, a normal process. Mr. Evans answered that is correct.

Attorney Suhr wanted to talk about the justification as this is a small lot. Mr. Evans answered yes it is.

Attorney Suhr noted that it is undersized. Mr. Evans answered that it is undersized.

Attorney Suhr noted that it is currently developed with a building that is non-conforming for setbacks. Mr. Evans answered yes.

Attorney Suhr noted that Mr. Evans is proposing an improvement to that, how will the property be improved as to the setbacks that are non-conforming. Mr. Evans answered that he would improve the setbacks and impervious coverage, not bringing up to code.

Attorney Suhr noted within the setback box, is it your opinion that it is economically feasible to construct a new building there which would be usable. Mr. Evans answered no, noting that the box is too small, too shallow; because the lot is so small you can't get a practical building to work and function in the allowed shape.

Attorney Suhr questioned in Mr. Evans opinion, is this the best design for this type of small lot which is surrounded on both sides by existing buildings. Mr. Evans answered it is the best possible use if you would consider trying to redevelop the property in the Township that is already a non-conforming lot.

Attorney Suhr questioned if it would be consistent with the neighborhood, the proposal, particularly with the rear yard setback. Mr. Evans answered yes.

Attorney Suhr noted that he has no further testimony.

Ms. Cate questioned why this area was selected for that purpose. Attorney Suhr noted that the developer was looking for a general target area in this part of Harrisburg and it was a question of what was available, and this property became available to them. Ms. Cate suggested that there are other places that are available as well. Attorney Suhr noted that there may be other sites for sale but he was not involved with the negotiations for the sale; he noted that this is the proposal by the tenant.

Mr. Sirb noted that the property is already non-conforming. Mr. Evans answered yes. Mr. Sirb questioned if they will fix the front yard non-conformity. Mr. Evans answered yes.

Mr. Sirb noted that the backyard where you are encroaching; a little bit further abuts the parking lot. Mr. Evans answered that it abuts an alley, an unopened street that abuts a parking lot.

Ms. Cate questioned if they had permission from the bank to use that parking lot. Mr. Evans answered that we have an agreement to use it for circulation purposes; we are not using it for parking, only for circulation as shown on the plan; noting that we have adequate parking on site for our needs.

Attorney Suhr noted that he anticipates that the bank will sign off on the land development plan, as they will have to.

Mr. Turner noted that the rear yard that is in question, does it exist on either side of the property. Mr. Evans answered that is correct as both to the west the Tire Mart is up to the property line, and the M&T Bank is only 3.3 feet away from the property line. He noted that we are going to be further away from our property line even though it will be non-conforming. Mr. Turner noted that both the Tire Mart and M&T Bank are in effect developed from Route 22 all the way back to Orchard Street as though there was no property line in the middle of it. Mr. Evans answered that was correct.

Attorney Suhr noted that the intention was that the more important setback was the front yard setback to try to push the building back to allow better visuals and to also help the traffic move better.

Mr. Staub questioned if the easement agreement between AT&T and the bank allow you to do work on their parking lot, the curb, the grading, whatever, widening the access drives. Mr. Evans noted that he does not have all the details of the easement agreement but M&T Bank is aware that by granting the access to do improvements, the details of the improvements will have to sign off on the plan, so the plan will be provided to M&T Bank to review it to fully understand what will be done on their property as well as on his client's.

Mr. Staub questioned if they will be a party to the land development plan. Mr. Evans answered either a party to the plan or an easement agreement, noting that there will have to be some documentation giving permission. Attorney Suhr suggested that they will sign the plan. He noted that AT&T will be the tenant so they are not the owner of the property and it will be leased to AT&T. Mr. Evans noted that the actual client is Golden Valley Developers.

Mr. Staub noted that the parking on the Tire Mart parcel, south east corner, it looks like they are encroaching on this property a couple of feet. Mr. Evans answered yes. Mr. Staub questioned if that will be addressed. Mr. Evans answered that he was not going to deal with in any way, simply leaving the current edge of pavement as it is. Mr. Staub questioned if the new owner has an issue with that. Mr. Evans answered that the new owner has not raised a concern to this point as he is more concerned about the general approval of the use and the variance at this time.

Mr. Staub noted that the proposed parking on the east side of the new building, as the parking ordinance requires ten feet of separation between any non-residential parking space and a building, he did not think that was showing on the plan. Mr. Evans noted that the existing is a five-foot separation maintaining the existing non-conformity on the eastern side. Mr. Staub noted that you are adding another space. Mr. Evans answered yes. Mr. Staub noted that you are increasing the non-conformity and are you asking for a variance for that. Mr. Evans noted that if it is an issue he will remove the space. Attorney Suhr noted that he was not sure they were increasing the non-conformity on that as the non-conformity is in maintaining the separation distance, and it is being maintained there, whether there is an additional space or not. He noted that it is still the same thing, the separation we have there.

Mr. Turner noted that it is a different building. Attorney Suhr answered that is correct. Mr. Turner stated that he did not know that the non-conformity would carry over from if you demolish a building that it would continue to entitle you to continue that non-conformity. He suggested that the better approach would be, noting that you get into the advertising issues, but for this application he did not think it would matter that much, one way or the other. He suggested that it would be better if you would orally amend your application to request a variance from that particular issue.

Attorney Suhr questioned what section that would be. Mr. Staub answered that it is Section 603.I.

Attorney Suhr noted that he would like to officially amend the application requesting a dimensional variance for Section 603. I to allow minimum distance between parking and the building to be five feet. Mr. Staub noted that he only mentioned it because sometimes we have better things to do on a Thursday night, perhaps a Township engineer or Ms. Zerbe might pick up on that when they actually get the land development plan, and make them come back for another variance. Mr. Evans noted that he appreciates the help, he noted that he thought that with the existing five feet he would not have an issue with it. He noted that it was a great catch.

Mr. Dowling questioned if the Board had any other questions.

Mr. Dowling questioned if anyone in the audience had something new to add. Hearing no one, he questioned if the Township had any additional comments or concerns. Ms. Zerbe answered no.

Ms. Cate made a motion to approve Docket 1375 as amended. Mr. Fisher seconded the motion.

Mr. Staub questioned Mr. Turner how that will be handed regarding public notification of the amended request. He questioned if it needed to be advertised in the newspaper. Mr. Turner noted that technically it would, but given that the advertisements were made, he suggested that it is close enough that it doesn't matter and given the lack in interest in the application, he did not think that it matters. He suggested that we are good. He noted that it is the applicant's risk that if they proceed and someone challenged it on the basis that it had not been advertised, that it would be applicant's problem.

Mr. Dowling requested Mr. Turner to conduct a roll call vote: Mr. Fisher, aye; Mr. Staub, aye; Mr. Sirb, aye; Mrs. Cate, aye; and Mr. Dowling, aye. Mr. Dowling noted that the application was approved.

The hearing ended at 8:28 p.m.

Respectfully submitted,

Maureen Heberle  
Recording Secretary