

**LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD**

Meeting of February 4, 2010

Members in Attendance

Jeffrey Staub, Chairman
Sara Jane Cate, Vice Chairperson
David Dowling
Richard Freeburn
Gregory Sirb

Also in Attendance

Dianne Moran, Planning & Zoning Officer
James Turner, Solicitor

Docket #1272

Applicant: Szeles Real Estate Development Co.
Address: 945 East Park Drive, Suite 201
Property: Spring Hill/Falcon Ridge Developments
Interpretation: Maximum sign area of 32 square feet.
No sign shall be located within the sight distance triangle.
Grounds: Articles 714.A, and 705.A, of the Lower Paxton Township
Zoning Ordinance pertain to this application.
Fees Paid: January 6, 2010
Property Posted: January 26, 2010
Advertisement: Appeared in The Paxton Herald on January 20 & 27, 2010
The hearing began at 7:00 pm.

Mr. Staub stated it is customary for the Board to enter as exhibits the application and site plans. The applicants had no objection to its doing so.

The following were sworn in: Aleric James Busher, BL Companies, 213 Market Street, Harrisburg; and Dianne Moran, Planning & Zoning Officer. The applicant was represented by Attorney Susan Smith of Smith Cartright, 3009 Market Street, Camp Hill, PA 17011.

Ms. Smith stated that the original application included a request for relief from the 10' setback requirement, however it has since been confirmed that the proposed sign will not encroach into the setback area.

Ms. Smith directed the Board members to the photograph of the proposed sign, which includes a shared platform, for two signs: one for each separate development. The original application included a request from relief of sign area and both signs were proposed to be larger than permitted. The applicant is willing to reduce the total of the two signs' square footage to the allowable amount of combined square footage. One sign

may be larger than the other, but together they will not exceed the combined allowance. Ms. Smith explained that each sign is allowed to be 32 square feet, so together there is 64 square feet allowed, and while one sign may be larger than 32 square feet, the two together will not be more than 64 square feet. The proposed sign does not exceed the height requirement.

Mr. Dowling asked if there are two distinct neighborhoods. Ms. Smith stated there are two neighborhoods, and they are owned by two development entities. Article 714.A permits two neighborhood community identification signs at each entrance. The entrance is a shared entrance for both developments, so they would like the two signs on a shared base, with the ability to allocate the square footage. Mr. Turner stated that the proposal is that one sign may be 40 square feet while the other may be 24 square feet, total not to exceed 64 square feet.

Mr. Freeburn asked the Township's position on the sign area, specifically about two signs on a shared base. Ms. Moran stated this is the first request of its kind, but the ordinance does allow two identification signs at each entrance. She noted it does not seem objectionable to have the two signs sit next to each other. Mr. Freeburn asked if it is considered one sign or two if it is on a common platform. Ms. Smith noted that one sign has a platform which sits on top of the larger sign which has a foundation underground.

Mr. Freeburn did not have a problem with it, but noted the situation could be abused, it could also be separated by an inch. Ms. Moran stated there is no setback requirement between signs.

Ms. Cate questioned why one sign should be larger than the other. Ms. Smith stated it is designed to give a clear visual distinction between the two developments.

Mr. Staub asked if Ms. Moran agrees that the variance request for the 10' setback is not required. Ms. Moran answered yes.

Mr. Staub stated that the sign is to be located in a landscaped median. He suggested that a vehicle traveling on Lyters Lane could not see vehicles approaching the intersection from the development.

Ms. Smith introduced Al Busher, a professional engineer, licensed in the Commonwealth, who has practiced for about 10 years. Mr. Freeburn asked about Mr. Busher's experience, and if it included road design and building design. Mr. Busher stated he is a civil engineer, with a focus on land development, with a little bit of road design, and a lot of residential subdivisions and commercial developments. Mr. Freeburn asked if Mr. Busher has done work for PennDOT or designed public roadways. Mr. Busher stated he has not worked for PennDOT, but has done HOP permitting. He added that he has done public road design for commercial subdivisions in Susquehanna Township.

Ms. Smith distributed Exhibit 1, which is a two-page exhibit showing the detail of the area where the sign is proposed to be located, and photographs taken in recent weeks. Mr. Busher stated he is familiar with the area and with the development which it serves. He stated that the sign is at the intersection of Creek Crossing Road and Lyters Lane, and the residential development is a flag shaped lot with a 60-foot wide frontage onto Lyters Lane. Neither of the neighboring properties is owned by the applicant or part of the development. They are privately owned and occupied properties with mature landscaping, including evergreens and deciduous trees. The entrance to the development was intentionally designed as a boulevard with a median, with the intent of serving as a traffic calming measure. The two features intended for the median were landscaping and a sign. Creek Crossing Drive connects Lyters Lane in Hodges Heights to Jefferson Street in Rutherford Heights. There is a stop sign and a stop bar at the intersection. The stop bar is halfway up the radius or about 10 feet back from the edge of the cartway. The sign will be about 28 feet back from the edge of the cartway of Lyters Lane, which puts it about 18 feet behind the stop bar. There is room for one or more vehicles at the stop bar and still not at the median.

Mr. Busher stated that Lyters Lane connects Conway Road and Page Road, and much of the traffic on Lyters Lane is not entering or leaving the development. The posted speed limit is 35 mph.

Mr. Busher explained that there is a temporary sign identifying one of the two developments. Photos B and C show the temporary identification sign in the median, which is the proposed location for the proposed permanent sign.

Mr. Dowling asked if the proposed sign is in the sight triangle. Mr. Busher said it is. Mr. Dowling asked if Mr. Busher has done work for any municipalities. Mr. Busher answered that he has not. Mr. Dowling asked Mr. Busher to think of a situation where he would recommend to a municipal board to allow a developer to place a sign in the sight triangle on a road like this. Mr. Busher stated he thinks this situation has conditions that make it practical. If he were the municipal engineer, he would not argue against this proposal because there is no obstruction by the sign for vehicles sitting at the stop bar or approaching vehicles in both directions. He added that moving the sign into the sight triangle may allow approaching vehicles to see it sooner, so those vehicles that are entering the developments can react to it sooner.

Mr. Dowling questioned the purpose of the sight triangle. Mr. Busher stated it is to keep obstructions out of areas that would create an unsafe condition. Mr. Dowling suggested the remedy is to not have a sign in the sight triangle or reduce the sign so that it does not obstruct the sight triangle. Mr. Busher agreed the sign is in the sight triangle, but it is not creating an unsafe condition or blocking the view of the stopped vehicles.

Mr. Freeburn asked the name of the developer. Mr. Busher stated that Szeles Real Estate Development Company owns it. Mr. Freeburn suggested that someone involved in an accident at the intersection may have a claim against the developer if the accident was a result of an obstructed view. Ms. Smith explained that there is no obstruction, because of the layout. Mr. Freeburn stated that there may be a problem at

that intersection, regardless of Mr. Busher's testimony. Mr. Freeburn noted the Township has a responsibility for public safety. While he cannot speak to the private interests of a property owner, there is the reason for the ordinance which does not allow anything in the sight triangle. Ms. Smith suggested that additional testimony could help the Board understand the circumstances. There is no unsafe condition created by the relationship between the traveling public on Lyters Lane and the those attempting to make a safe turn on the 35-mph road. There is a need to identify the location of the neighborhoods so drivers can make the turn safely.

Mr. Freeburn stated that it seems to him that the applicant is saying that even though the ordinance says you cannot have something in the sight triangle, there are some circumstances under which you can have something in the sight triangle and it doesn't matter. Mr. Busher agreed. Mr. Freeburn did not think they could make that decision.

Mr. Freeburn stated they have not demonstrated a hardship. Ms. Smith stated she has begun to go down that path.

Ms. Smith stated that the applicant has never had control of either neighboring property, and there is only a 60-foot wide piece of property fronting Lyters Lane. There were designs put in place, including the landscape median, to operate as a traffic calming measure. The median functions to identify the intersection, slow traffic, alert drivers that there is a residential intersection there and a whole host of ways. It is part of the original design. The consequence is that the subdivision bows out at that point.

Mr. Freeburn asked if the outline shown on the drawing is where the sign would have to be to meet the requirements. Mr. Busher answered yes. Mr. Freeburn thought that it was the proposed location, which seemed like a good location. The current location is pretty bad, but the outlined area would be no problem.

Ms. Smith requested that Mr. Busher be allowed to continue his presentation to explain why that location is actually an unsafe location for a sign in this intersection arrangement. Mr. Freeburn assumed that the reason is that approaching vehicles cannot identify the Spring Hill development in enough time to make a safe turn. Mr. Busher noted that is essentially the idea, and added that there are mature trees there that do not belong to the developer, therefore, he cannot prune or cut down. This is illustrated in photo B.

Ms. Smith noted that in addition to the landscaping, if there was a vehicle entering the site, or more than one vehicle stacked to leave the site, those vehicles would obstruct the sign from the Lyters Lane traffic. Mr. Busher agreed the statement is true. Ms. Smith stated this is the key, the sign is so far into the site that other vehicles could block the sight of the sign, so that vehicles on Lyters Lane that need to see it and react to it and make a safe movement are going to have less than 100 feet to do that.

Mr. Freeburn stated that very smart people at PennDOT who do nothing but traffic and public street design have determined what a safe sight triangle is.

Ms. Smith asked if the sign as proposed meets PennDOT's standards. Mr. Busher stated it does. He explained that the standard is ten feet back from the edge of the cartway and 250 feet in either direction for a 35 mph condition. It is longer on Lyters Lane, but significantly shorter based on where the driver's eyes are when the vehicle is stopped.

Mr. Staub stated that "sight distance triangle" is not the same thing as a "clear sight triangle." A sight distance triangle is used to evaluate the safety of an intersection.

Mr. Staub asked if the applicant testified that the land development allowed for a sign in the median. Mr. Busher stated that, from what he understood, it is on the original drawing.

Mr. Staub stated that the street will be a public street, so it will be maintained by the Township's Public Works Department. He asked who will be responsible when the median requires maintenance. He questioned if a private developer build a neighborhood identification sign inside of a public right-of-way.

Ms. Smith stated she thinks the landscaping is maintained by the community, and it was part of the design for aesthetic purposes. It was discussed, and it is not atypical to have a sign maintained by the community. Mr. Staub stated it is not common in Lower Paxton Township to have neighborhood signs in a boulevard median.

Mr. Staub stated that the road is going to be Township owned and maintained, and if push comes to shove, that may include the median. He suggested that the Board of Supervisors and/or the Public Works Department should weigh in on the issue.

Mr. Sirb stated the boulevard entrance to Forest Hills has a sign in the median, but it is set back. He thought that a road with a speed limit of 35 mph provides ample time to see and react to the sign. At 35 mph in a residential area, Mr. Sirb did not buy the argument that the sign should be in the sight triangle. Even if the applicant can make an argument of why it is needed, he is not sure he would agree to put the sign in the sight triangle.

Mr. Sirb stated he could see a dangerous development occurring: an accident happens, why: I didn't see him; why: because the Zoning Board said the sign could be put in the sight triangle. Ms. Smith stated she could see that occur if the sign blocked the vehicle in the stop condition, however, there are photographs and illustrations that indicate that the vehicle in the stopped condition has an unimpeded view in both directions; he can see and he can be seen.

Mr. Freeburn did not know if he was qualified to make a ruling that this is okay when dealing with engineering standards and public safety. He suggested the Township Engineer could come to the Zoning Hearing Board to determine if this were okay or not. He admitted that he does not know the difference between a clear sight triangle and a sight distance triangle. This is an area where he would like to hear from an expert rather than an applicant's testimony. He explained that is why he questioned Mr. Busher's

qualifications. Ms. Smith stated that on a State Highway, this sign would not be objectionable.

Ms. Smith suggested the Board could table the hearing to request information from the Engineer.

Ms. Smith entered into the record that the design meets State design standards. Mr. Staub cautioned that they are two different things. It may meet PennDOT's sight distance criteria, but that is not the issue, the 75 foot clear sight triangle is the issue.

Mr. Freeburn could not vote in favor of something that could jeopardize public safety.

Mr. Dowling asked what the Engineer is going to tell the Board, and asked if it is enough to know that the sign is located in the sight triangle. Mr. Staub wanted to know if the Township Engineer agrees with Mr. Busher that even though the sign is in the clear sight triangle, that it does not obstruct the sight distance to the extent it is a safety concern.

Mr. Dowling asked about height requirements, and how that is a factor in the sight triangle. Ms. Smith stated that the photographs and illustrations demonstrate that height does not create a safety issue. Mr. Dowling asked if height does not create a safety issue, then what would. Ms. Smith stated it is the mere fact that the ordinance defines its own sight triangle twice the size of the State's regulation. She did not know what grounds that was established on. Mr. Staub stated there is a height standard within the sight triangle, but he did not recall the number. There is a threshold where an obstruction may be located within the clear sight triangle if is lower than a certain height. Mr. Staub stated that this sign is clearly higher than the threshold. Mr. Busher stated that it does not change the fact that it is not an obstruction.

Mr. Freeburn stated he is open to giving a property owner an opportunity to explain their case and if more time is needed, that is fine as well. He noted that the Board could vote no tonight, then the applicant could reapply and bring more testimony.

Ms. Smith did not know if she could approach the Township Engineer and have them incur costs without the Township asking for the guidance of the Engineer.

Mr. Staub asked Ms. Moran to instruct HRG to review the application. Ms. Moran stated that she will. She noted that Mr. Szeles did meet with her, Matt Miller, and Lori Wissler on site, where they spray painted the area to look at. She asked what HRG should focus on: if the sign location is safe? Mr. Freeburn asked if they would come to the meeting. Ms. Moran stated they might, but they may also write a statement explaining their review and determination. Mr. Freeburn stated he does not know what questions may arise. Mr. Sirb stated the question is if the signs are in the sight triangle, and if they are, does it cause an obstruction of the view. Mr. Staub wanted to know about the safety issues. Mr. Dowling asked that HRG determine if there are any set of circumstances under which the sign, as proposed, could pose a safety hazard. Mr.

Freeburn wanted to know why there is a triangle and why the proposal is not a violation of one of the reasons for having the standard. He noted that if it is okay to put stuff in it, why couldn't any stuff be placed in any sight triangle. Ms. Smith asked the Board to be open to comments from HRG regarding the safety of the exiting and entering motorists. Ms. Cate asked about the passing motorist as well.

Mr. Dowling asked if having the sign further back from the intersection is more unsafe than having no sign at all. Ms. Smith stated yes, because it would not allow anyone to know where the entrance is to a fairly substantial development.

Mr. Dowling asked how people find the development now. Ms. Smith stated there is a temporary sign there now. Ms. Cate stated that most people rely on street signs to find streets.

Mr. Staub asked how the existing sign shown in the photographs came to be located there. He asked if a permit was issued. Ms. Smith thought it was allowed to be there during construction with the intent to erect a permanent sign.

Mr. Freeburn stated that the depicted location of the sign, out of the clear sight triangle, seems to be extremely reasonable. He noted that photograph C does show the trees in the way, but there has to be a reason for the standard, and it has to be explained to him as to why this does not violate those reasons.

Mr. Sirb stated he would like to hear from the Engineer, and then have the opportunity to make his own opinion after that.

There was no comment from the audience.

The Township had no position on the application.

Mr. Sirb made a motion to table the application. Mr. Freeburn seconded the motion and a unanimous vote followed.

The hearing was tabled at 7:45 pm.

Ms. Moran asked if the upcoming meeting has been advertised yet. The next hearing is February 25, 2010. Mr. Turner asked if the applicant felt they would be ready for that hearing. Ms. Smith asked if the hearing has to be readvertised if it is a continuation. Mr. Turner stated that it does.

Mr. Freeburn was cautious to cause the Township more expense, but felt it was important to hear from the Engineer. Mr. Sirb did not think the Township should incur the expense. Mr. Freeburn did not want the Township's Engineer to be working for the applicant when his role is to represent the Township, regardless of who pays the bill.

Mr. Staub asked for Mr. Stine's interpretation on whether a privately owned sign can be placed in the public right-of-way in the clear sight triangle.

Special Exception # 10-01

Applicant: Susan & Duane Barrick
Address: 4332 Crestview Road
Property: 4332 Crestview Road
Interpretation: An in-home hair salon is a major home occupation, which requires special exception approval.
Grounds: Articles 306.B.1, of the Lower Paxton Township Zoning Ordinance pertains to this application.
Fees Paid: December 30, 2009
Property Posted: January 26, 2010
Advertisement: Appeared in The Paxton Herald on January 20 & 27, 2010
The hearing began at 7:51 pm.

Mr. Staub stated it is customary for the Board to enter as exhibits the application and site plans. The applicants had no objection to its doing so.

The following were sworn in: Susan Barrick, 4332 Crestview Road, applicant; and Dianne Moran, Planning & Zoning Officer.

Mr. Staub asked what the Planning Commission recommended. Ms. Moran stated they did not review it because they did not have a meeting in January. Mr. Staub asked if there is an issue with procedure. Ms. Moran answered no.

Ms. Barrick stated she has three active boys which are homeschooled. She would like to cut hair a couple evenings a week. There is a space in her house that was used by the previous owner for a business office. She stated they do meet the requirements for special exception. Mr. Turner asked Ms. Barrick to describe how the business will be conducted. Ms. Barrick stated there would be no employees, only herself. She does not have any customers right now, and would not work more than 10 hours a week. That equates to five customers a week, using only one chair.

Mr. Sirb asked about signage. Ms. Barrick stated the State requires her to have a sign, but it does not require a certain size, so she would use whatever is agreeable to the Township. Mr. Freeburn asked if something the size of address numbers would be enough. Ms. Barrick agreed it would, but prefers the sign be located close to the house as opposed to on the mailbox.

Mr. Sib asked if the separate entrance is to the right, opening directly into the salon. Ms. Barrick stated that is correct. Mr. Sirb asked if the customers would leave the same way. Ms. Barrick stated that is correct, they would leave from the door out to the

driveway. Mr. Sirb asked if the sign would be on or close to that door. Ms. Barrick said yes.

Ms. Cate stated the signatures that the applicant gathered in support of the application do not include the neighbor across, but not on the same street. Ms. Barrick stated she got the neighbors to each side (two to the left and one to the right) and the neighbor directly across the street. She stated those neighbors would be most affected, but noted that no one would really be affected. Traffic would never be an issue because she would only have one customer at her home at a time.

Ms. Cate asked if there would be only one chair and one bowl. Ms. Barrick stated she does not have anything yet, but yes. There will be no barber pole.

Mr. Freeburn asked if the previous owner had a special exception. Ms. Moran stated they did not have anything to her knowledge.

Mr. Sirb asked if the owners would have to get a special exception if it were some other type of business. Ms. Moran explained the difference between major home occupation and minor home occupation. A major home occupation would have customers coming to the home, advertisement/signs, employees, et cetera. A minor home occupation may not have any of those things.

Mr. Freeburn asked about the size of sign desired. Ms. Barrick did not know, but preferred it to be as small as possible. She does not want people to stop in without an appointment. Mr. Freeburn asked if the sign is required by the State to direct customers to the right door. Ms. Barrick stated she hopes to put something on the door, possibly one by two feet, that she can put up when she needs it and take down the rest of the time.

Mr. Sirb asked about advertising in the yellow pages or some other place. Ms. Barrick answered no.

Mr. Freeburn suggested imposing conditions on the approval that the sign be no larger than 1 foot by 2 feet and not lighted in any way. Ms. Barrick was agreeable to the condition.

Mr. Turner asked about parking. Ms. Barrick stated that her driveway is three cars wide, and two deep, accommodating parking for 6 cars.

Mr. Dowling stated he does not usually support businesses in homes. Ms. Barrick stated the salon is about 5% of the total square footage of her 4,000 square foot house. She also noted she can meet every requirement listed in the ordinance. Mr. Dowling stated that in-home businesses breed more in-home businesses. Ms. Barrick stated there are at least two other businesses on her street: a book business, and a radon testing business. Ms. Cate noted they do not have customers coming to the home. Ms. Barrick agreed.

Mr. Turner stated the standards for granting a special exception are set forth in Section 116. Ms. Moran added that the Zoning Hearing Board may require reasonable conditions and safeguards as it determines are necessary to implement the purposes of the ordinance, in granting a special exception. The ordinance states that conditions set by the Zoning Hearing Board automatically become conditions of the building permit.

Mr. Sirb stated that the Board can set conditions, but there is no one to police it.

Mr. Freeburn noted that the reason for not allowing businesses in a home in the R-1 District, or allowing reasonable conditions to satisfy the purpose of the ordinance, is to maintain the character of the neighborhood as residential and not mixed use. It is important that they can maintain the character of the neighborhood, and not create a commercial appearance. It would be reasonable to allow a sign, but on the condition that it is not at the street, it must be on the door, not be lit, and not bigger than a certain size, and there be no more than one barber chair. The conditions maintain the character of the neighborhood. The next business may come in and have some radical advertising that would change the character of the neighborhood.

Mr. Staub called for comments from the audience.

Kenneth Sutton, 4322 Valley View Road, was sworn in. His concern is changing of the neighborhood from strictly residential to commercial use. He did not oppose a family wanting to subsidize their income. He has heard answers to all of his concerns, such as the size of the business and on street parking. As long as the signage and parking conditions are enforced, he does not have any issue except if it creates precedence for the community.

Mr. Freeburn stated the ordinance permits a special exception, with the conditions Mr. Sutton is concerned about. There is no precedence being set if another business does not meet the same requirements and conditions. Mr. Sutton agreed that would satisfy his concerns.

Mr. Turner asked about the location of Mr. Sutton's house as it relates to Ms. Barrick's house. Mr. Sutton stated he lives on Valley View, two houses down from the intersection of Crestview and Valley View Roads.

Duane Barrick was sworn in. Mr. Barrick stated he would not have a sign if the State did not require it. He and his wife do not want a sign saying there is a shop there. They want it to look like a normal house. They have worked very hard on the appearance of the house for the last five years and do not want to change that. He noted that the State requires a sign, but does not require a certain size, so they would be fine with a static sticker that they can put on the door when people are coming, and take down when there is no one coming. He further noted that they can give the address or description of the house to a customer and they would not rely on the sign to direct someone there. He asked the Board to not put too much weight on the sign issue.

Mr. Barrick stated that the code sets forth the number of chairs based on available space, and they are only permitted one chair and one employee. These are regulations enforced by the State.

Mr. Barrick stated that Ms. Barrick has had salons in the past, and is familiar with the State requirements and has not had any problem with secret or surprise rules. He does not want people to see the sign from the street, or to know that there is a business there.

Linda Goldberg, 4328 Valley View Road, was sworn in. Ms. Goldberg appreciated the comments about the property and agreed they take good care of it and it is lovely. She understands they want to keep it that way. Her objection is that if they are successful, they will want to have a bigger sign or build a bigger beauty shop. If that happens, it would have an effect on the neighborhood. Mr. Freeburn stated the conditions would limit the growth of the business. If a neighbor reports that there is a larger than allowed shop, the Township would have the authority to shut down the business. Neither the current nor future property owners could do more than is permitted under the special exception.

Ms. Moran stated the ordinance (section 403.D) clearly calls out the limitations of the sign: one square foot and non illuminated. The ordinance also regulates the hours: 7:30am to 9:00pm. No non-resident employees are permitted.

Mr. Staub asked if the applicant has to go before the Planning Commission or the Board of Supervisors. Ms. Moran stated the Planning Commission may make a recommendation to the Zoning Hearing Board, but because of canceled meetings, they did not review this application. The applicant does not have to go before the Board of Supervisors.

The Township had no position on the application.

Mr. Freeburn made a motion to grant the application with the following conditions: no more than one sign, non-illuminated, no larger than one square foot; no on-street parking; no non-resident employees; a maximum of one chair; and the applicant must otherwise comply with Section 403.D.10, entitled Home Occupations. Ms. Cate seconded the motion and a roll call vote followed: Mr. Freeburn-Aye; Mr. Dowling-No; Mr. Sirb-No; Ms. Cate-Aye; and Mr. Staub-Aye.

The hearing ended at 8:21 pm.

Respectfully Submitted,

Michelle Hiner
Recording Secretary