

**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 it 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.

Respectfully Submitted,



Michelle Hiner  
Recording Secretary

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of March 25, 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  
Continuation**

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 continuation hearing began at 7:04 pm.

The applicant was not present for the hearing. Mr. Turner suggested the Board consider the next hearing before taking action in case the representative from Szeles was running late. The other members agreed and the hearing was tabled until later in the meeting.

The hearing was tabled at 7:05 pm.

The hearing reconvened at 8:05 pm.

Mr. Staub called for a representative of Szeles Real Estate. There was no one.

Mr. Turner stated the Board could hear the testimony of the Township Engineer since he is present. It would then have the option to table the hearing again or take action.

Mr. Staub stated that at the previous hearing, the Zoning Hearing Board wanted to know the Township Engineer's position regarding the location and placement of the sign, and what effect it would have upon public safety.

As listed in the memorandum dated February 16, 2010 from Robert Grubic to Dianne Moran, Mr. Fleming stated that the sign location cannot be supported as it is located within the legal right-of-way of a public street (Section 705.A.3). The sign location cannot be supported as it is located within the clear sight triangle and would present an obstruction to motorists entering or exiting the development (Section 705.A.2). The sign height of 5'6" exceeds the allowable height (<3' or >10') for any object within the clear sight triangle (Section 803.C).

Mr. Fleming explained that his comments are based upon the Township ordinance, but additionally on PennDOT's sight distance requirements. The existing sign is located within the clear sight triangle and within the right-of-way, but it is not a permitted sign. Ms. Moran agreed that no permit was issued for the temporary sign.

Mr. Turner marked Mr. Fleming's memo as Township Exhibit 1. He advised that the Board may now take action to grant, deny or table the application. Mr. Turner stated the applicant was mailed a copy of the notice of the hearing by his office. Counsel was copied on that notice. Ms. Moran stated she had a conversation with the applicant. The applicant was aware of the hearing time and date.

There was no comment from the audience.

The Township had no position on the application.

Ms. Cate made a motion to deny the application. Mr. Dowling seconded the motion and a roll call vote followed: Mr. Freeburn-Aye; Mr. Sirb-Aye; Mr. Dowling-Aye; Mr. Sirb-Aye; Ms. Cate-Aye; and Mr. Staub-Aye.

The application was denied. The hearing ended at 8:13 pm.

Respectfully Submitted,



Michelle Hiner  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
: TOWNSHIP ZONING HEARING BOARD  
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA  
:  
SZELES REAL ESTATE : DOCKET NO. 1272

### **DECISION DENYING VARIANCE**

The applicant seeks a variance from various regulations in connection with a proposed neighborhood identification sign. Hearings on the application were held on February 24, 2010 and March 25, 2010.

#### **Facts**

1. The applicant and owner of the property in question is Szeles Real Estate Development Company of 945 E. park Drive, Suite 201, Harrisburg, Pennsylvania 17111. Appearing on behalf of the applicant at the February meeting were B.L. Cos, consultant, and Alarick Butcher, Project Engineer. The applicant was represented at the February hearing by Susan Smith, Esquire. The applicant did not attend the March hearing.

2. The property in question is located at the intersection of Creeks Crossing Drive and Lyter's Lane in Lower Paxton Township. Creeks Crossing Drive serves as the primary point of access to two proposed new residential developments known as Spring Hill and Spring Creek Hollows.

3. The applicant proposes to erect an entry way sign in the center island of Creeks Crossing Drive, approximately 45 feet from the right of way of Lyter's Lane. This sign would be 19'4" long and 5'6" tall at its highest point. The sign would be of masonry construction.

4. At the request of the Board, the Township Engineer performed a sight evaluation. Their study revealed that the sign would be located within the clear sight

triangle and would obstruct motorists entering or existing the development. In addition, the side height would exceed the maximum height for any object within the clear sight triangle and its location is within the legal right of way of the street.

5. Notice of the hearing was posted and advertisement made as required by the ordinance.

6. No one other than the Township Engineer and the applicant's representatives appeared at the hearings.

### Conclusions

1. Article 705.A of the ordinance prohibits signs within the right of way or the sight triangle. Article 803.C prohibits any object between the height of 3 feet and 10 feet within the sight triangle. The proposed sign would violate these provisions of the ordinance.

2. Section 1137.04 of the ordinance gives the Zoning Hearing Board the power to authorize, in specific cases, variances from the terms of the ordinance and its supplements as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The ordinance further requires that the spirit of the ordinance shall be observed, public health, safety and general welfare shall be secured, substantial justice shall be done, and no appreciable diminution of the market value surrounding properties shall be caused by such variance.

3. The Board finds that no hardship exists to justify the variance requested. There are no irregular topographical features which restrict the reasonable use of the applicant's property.

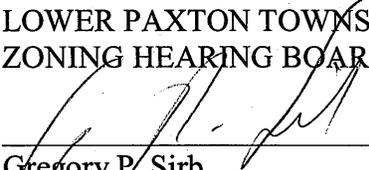
4. Granting the variance would be contrary to the public welfare. The sign creates a potential traffic hazard as testified to by the Township Engineer, which testimony the Board finds to be credible.

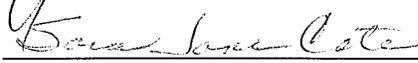
**Decision**

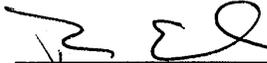
In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variance requested should be and is hereby denied.

Date: 4/22/10

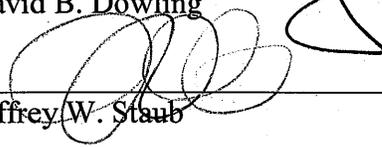
LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

  
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