

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of April 28<sup>5</sup>, 2013

Members Present

Richard Freeburn  
David Dowling  
Sara Jane Cate  
Greg Sirb  
Jeffrey Staub

Also in Attendance

James Turner  
Dianne Moran

**Docket 1336**

Applicant: Dwayne Gilbert  
Address: 823 Roberts Valley Road  
Harrisburg, PA 17110  
Property: 4914 Killington Drive  
Harrisburg, PA 17112

Interpretation: Section 307.a – Dimensional Requirements in the R-1 Low Density Residential District. The minimum rear yard setback requirement shall be 30 feet. The Applicant proposes an addition to the home that will encroach into the rear yard setback

Grounds: Section 307.A  
Fees Paid: March 28, 2013  
Property Posted: April 16, 2013  
Advertisement: Appeared in The Paxton Herald on April 10, 2013 and April 17, 2013.

The hearing began at 7:02 p.m.

Mr. Freeburn swore in Dwayne Gilbert, 823 Roberts Valley Road, Harrisburg, Pennsylvania who is the general contractor. Mr. Freeburn questioned if the applicant was present. Mr. Gilbert answered yes. Mr. Freeburn questioned if the applicant would be providing testimony. Mr. Bob Scomack answered no.

Mr. Freeburn swore in Ms. Dianne Moran who stated that she is the Planning and Zoning Officer for Lower Paxton Township.

Ms. Dianne Moran advised that the appropriate fees were paid on March 28, 2013. The proper advertisements appeared in The Paxton Herald on April 10, 2013 and April 17, 2013. The hearing notices were posed on April 16, 2013.

Ms. Moran noted that this application concerns Section 307.a – Dimensional Requirements in the R-1 Low Density Residential District. The minimum rear yard setback requirement shall be 30 feet and the applicant proposes an addition that will encroach into the rear yard setback.

Mr. Gilbert explained that he proposes a first floor bedroom for access without the use of steps for future use. He noted that the applicant wants to put a bedroom on the first floor so he would not have to use steps. He noted that it will also include a bathroom and a recreational area off of the two rooms. He noted that the plan calls for shrubs and bushes to provide a barrier between the addition and the neighboring property. He noted that the neighbors in the area signed a paper stating that they had no issues with the addition. He explained that he understood that the purpose was to provide a bedroom for future needs on the first floor level.

Mr. Gilbert noted that the setbacks are within the guidelines and only a corner variance is needed as most of the addition would be within the allowed setbacks.

Mr. Freeburn questioned how much distance is there from the back of the applicant's structure and the structure on the property to the rear. Mr. Gilbert answered from the new addition to the neighboring home it is 41 feet. He noted that the neighbor is 14 feet from their property line for the addition that they installed. He noted that the Scமாக's would be 20 feet from their property line with their addition. He noted that, currently, the neighbor's home is roughly 80 feet from the Scமாக's home.

Mr. Freeburn questioned if Mr. Gilbert had any renderings of the proposed addition. Mr. Gilbert answered no, noting that he found out that they needed a variance and he did not go to the expense of doing drawings until they secured the variance.

Mr. Sirb noted the one plan is listed as preliminary, what is meant by the wording for home garage. Mr. Gilbert noted that it is the existing home and garage, showing the proposed addition with the current swimming pool off to the side and the small square is an existing shed. Mr. Sirb questioned if the proposed addition will consist of a bedroom and recreation room. Mr. Gilbert answered yes. He noted that Mr. Scமாக has an elderly aunt and they are also getting up in age and they wanted access to a bedroom on one floor without having to move to a new home.

Mr. Sirb questioned if the addition would be used for any business purposes, only a living space. Mr. Gilbert answered that it is for a bedroom and recreational area, with a walk in closet and bathroom.

Mr. Dowling questioned who lives in the house now. Mr. Gilbert answered Bob and Cindy Scமாக. Mr. Dowling questioned if anyone else lives there. Mr. Gilbert answered that is all at this time.

Mr. Dowling questioned, what about the elderly aunt. Mr. Gilbert answered that she is in a nursing home in Philadelphia area. He noted that the Scமாக's want to relocated her to their home. Mr. Dowling questioned if it was Mr. Gilbert's testimony that it is the purpose of the

addition. Mr. Gilbert answered no; it is for the Scomack's to use as they get older and to have a bedroom on the first floor.

Mr. Freeburn swore in Bob Scomack, the property owner who resides at 4914 Killington Drive.

Mr. Scomack explained that his aunt lives in a nursing home and has issues with Medicare not paying, so he wants to have the addition ready in the event she is forced to move as she has no place to move to. He noted if that does not occur, then he will use the area for him and his wife.

Ms. Cate questioned Mr. Scomack what type of work he does. Mr. Scomack answered that he is a dry cleaner. Mr. Dowling questioned if he would be using this area for his business. Mr. Scomack answered that he uses a current bedroom for his office. Mr. Dowling questioned if the house has a recreation room now. Mr. Scomack answered yes but it only has two bedrooms with a recreation room downstairs. He noted that it is a split level home and you must use stairs to access all the levels.

Mr. Freeburn noted that he does not know the layout for the house, but he questioned if the addition was shifted to the east side of the house there would be less of an intrusion into the setback. Mr. Gilbert explained that the well and wiring systems are located in that area. He noted that the plumbing is located on the other end for the sewer hookup. Mr. Scomack noted that the living room and kitchen are in that area with a step down into the garage with the sewer system being near the kitchen area and it branches off to the two bathrooms.

Mr. Freeburn questioned if the house is on public water. Mr. Gilbert answered that it uses a well and has public sewer. He noted that the well is on that east side and he would not want to locate the addition over the well and utilities.

Mr. Turner questioned what the actual distance is from the closest corner of the addition to the property line. Mr. Gilbert answered that the back of the property line is 16 feet and from the other corner it is 18.9 inches. He noted that it is 41 feet from the far corner, the one that is closest to the well.

Mr. Dowling questioned what the square footage is for the addition. Mr. Gilbert answered 1,100 square feet. Mr. Dowling questioned what the square footage of the house is. Mr. Gilbert answered that it is 1,500, including the basement. He noted that the home sits back 4.5 feet from the front setback beyond the 25 foot setback. He noted that the sidewalk is within at the 25 foot setback that is required for the front yard and the home actually sets back 30 feet.

Mr. Dowling questioned if the applicant has any drawings. Mr. Gilbert answered that he only has the preliminary drawings for the variance and the roof, noting that the new hip roof will look like it was always there. He noted that the siding would be the same as the rest of the house. Mr. Dowling noted that conceptually it is enough to look at but it would be easier for the Board if we knew what it looked like. Mr. Gilbert questioned if you would want an architectural

rendering. Mr. Dowling noted that a builder's rendering would be good. Mr. Gilbert noted that he did not make one as it would have been an additional cost for the homeowner.

Ms. Cate requested Mr. Gilbert to describe what it would look like. Mr. Gilbert answered that it would look like the home, with a hip roof like the house; in fact he is putting a new roof on the house. Ms. Cate questioned if the brick would be up to a certain height. Mr. Gilbert answered that the brick is to the front of the home and both sides and back will be siding.

Mr. Freeburn questioned who owns the home to the rear of het property. Mr. Gilbert answered that it would 985 Ethan Court. Mr. Freeburn questioned if everyone around Mr. Scomack signed the paperwork. Mr. Scomack answered yes.

Mr. Staub noted for a corner lot, hasn't the Township, in the past, taken a position that the rear yard is opposite of where you take access to the property. He suggested that the Township has used that rule in the past and he was wondering, the rear yard is where they are showing it because of the way the house is oriented on the lot. He suggested that the area that they are talking about is a side yard and not a rear yard. Ms. Moran noted that their address is Killington Drive and not Marmore Drive. Mr. Turner questioned if wherever the driveway is located is the access. Ms. Moran noted that it was her understanding that it was whatever your address it is the Township's discretion's for making that determination.

Mr. Gilbert presented a Google Map of the property. Mr. Freeburn questioned Mr. Gilbert if he had any objections to adding the site plan and maps as Township exhibits. Mr. Gilbert answered no.

Mr. Freeburn questioned if the Board had any questions for the applicant.

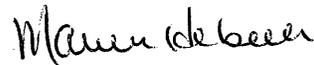
Mr. Freeburn questioned if anyone in the audience wished to be heard on this application. No response was given.

Mr. Freeburn noted that the Board has 45 days to take action on the variance and he questioned if the Board wanted to take action at this time.

Mr. Staub made a motion to accept Docket 1336 as presented. Ms. Cate seconded the motion. Mr. Turner conducted the following roll-call vote: Mr. Staub, aye; Mr. Dowling, aye; Mr. Sirb, aye; Mrs. Cate, aye; and Mr. Freeburn, aye.

The hearing ended at 7:20 p.m.

Respectfully submitted,



Maureen Heberle  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
: TOWNSHIP ZONING HEARING BOARD  
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA  
:  
DWAYNE GILBERT for : DOCKET NO. 1336  
BOB AND CINDY SCOMACK :

**DECISION GRANTING VARIANCE**

The applicant seeks a variance from rear yard setback requirements. A hearing on the application was held on April 25, 2013.

**Facts**

1. The applicant is Dwayne Gilbert of 823 Roberts Valley Road, Harrisburg, Pennsylvania 17110. The applicant is the proposed contractor for the improvements. The property in question is owned by Bob and Cindy Scomack of 4914 Killington Drive, Harrisburg, Pennsylvania 17112.

2. The property in question is located on the northeast corner of Killington Drive and Marmore Drive and consists of an irregularly shaped parcel with a total lot area of 0.29 acres. The parcel is zoned Residential, R-1.

3. The property is improved with a single family dwelling known as 4914 Killington Drive. The house is oriented toward Killington and accessed by a driveway from Marmore Drive.

4. The applicant proposes to erect an L-shaped addition to the rear of the house. Because of the angular rear lot line and the L-shape at its closest point the addition will be 15 feet from the rear property line. The addition will be constructed of materials and in a style to match the exiting home.

5. The applicant has discussed his proposal with his neighbors who indicated their approval of the addition.

6. The location of the well for the property prevents locating the addition further to the east where the lot is deeper.

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

8. No one other than the applicant appeared to testify either in favor of or against the proposed variance.

### Conclusions

1. Article 307.A of the ordinance requires a rear yard setback of thirty feet. The proposed construction would violate this section of the ordinance.

2. Article 111.D.3 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 the property is burdened by a hardship not created by the owner consisting of its irregular shape and limited lot area. These factors are further compounded by the location of the well which limits the developable area to the northwest corner of the lot, which is the narrowest area..

4. Granting the variance will not alter the essential character of the neighborhood nor impair surrounding property values. The majority of the improvement

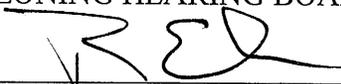
is outside the setback area and the applicant proposes to landscape the property line to the north to further diminish the impact of the variance.

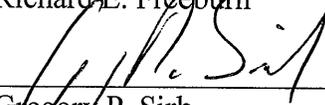
**Decision**

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 granted allowing the construction of an addition with a minimum rear yard setback of 16 feet in strict conformity with the plans and testimony submitted to the Board.

Date: 5/23/13

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

  
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Richard E. Freeburn

  
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Gregory P. Sirb

  
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Sara Jane Cate

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David B. Dowling

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Jeffrey W. Staub

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of April 25, 2013

Members Present  
Richard Freeburn  
Watson Fisher  
Sara Jane Cate  
David Dowling  
Greg Sirb

Also in Attendance  
James Turner  
Dianne Moran

**Docket 1337**

Applicant: Benjamin Slotznick  
Address: P.O. Box 23  
Mt. Gretna, PA 17064  
Property: Tax Parcel 35-060-306  
Harrisburg, PA 17109

Interpretation: Section 307.a – Dimensional Requirements in the R-2 Low Density Residential District. Minimum Lot Width Measured at the Minimum Building Setback Line. With Township approved central water and Township approved central sewage services the minimum lot width measure at the minimum building setback line shall be 90 feet. The Applicant proposes a re-subdivision that will result in three new lots. All lots will have the minimum lot area for R-1 and a width greater than the minimum lot width, however, not measured at the minimum building setback line.

Grounds: Section 307.A  
Fees Paid: April 1, 2013  
Property Posted: April 16, 2013  
Advertisement: Appeared in The Paxton Herald on April 10, 2013 and April 17, 2013.

The hearing began at 7:21 p.m.

Mr. Staub requested to reclude himself from the application as he has a business relationship with the applicant. Mr. Freeburn recognized that Mr. Staub was reclusing himself

from the application. Mr. Freeburn requested Mr. Watson Fisher, alternate member, to come forward and take his place as a member of the Zoning Hearing Board.

Mr. Freeburn swore in Benjamin Slotznick, 507 Third Street, P.O. Box 23, Mount Greta, Camp Meeting, Pennsylvania. Mr. Slotznick explained that his relationship to the application is that the property is owned by the Trust that his mother set up years before she died and it has passed onto him as one of the trustees along with his brother.

Mr. Freeburn noted that it is customary for the Board to enter the application and site plan as Township exhibits. He questioned Mr. Slotznick if he had any objection to doing so. Mr. Slotznick answered no.

Mr. Freeburn noted that Ms. Dianne Moran, Planning and Zoning Officer for Lower Paxton Township, was previously sworn in.

Ms. Dianne Moran advised that the appropriate fees were paid on April 1, 2013. The proper advertisements appeared in The Paxton Herald on April 10, 2013 and April 17, 2013. The hearing notices were posted on April 16, 2013.

Ms. Moran noted that this application concerns Section 307.a – Dimensional Requirements in the R-2 Low Density Residential District. Minimum Lot Width Measured at the Minimum Building Setback Line. With Township approved central water and Township approved central sewage services the minimum lot width measure at the minimum building setback line shall be 90 feet. The Applicant proposes a re-subdivision that will result in three new lots. All lots will have the minimum lot area for R-1 and a width greater than the minimum lot width, however, not measured at the minimum building setback line.

Mr. Freeburn questioned Mr. Slotznick if he was accompanied by counsel. Mr. Slotznick answered yes. Mr. Freeburn requested counsel to identify himself. Mr. Jim Clippinger introduced himself and explained that he belongs to the law firm of Caldwell and Kearns, 3631 North Front Street, Harrisburg, Pennsylvania.

Mr. Clippinger explained that he did not know the size of the plan that was provided to the Zoning Hearing Board members. He noted that the members do have the large site plan. He noted that the left side of the plan represents the three lots that are currently legal lots pursuant to an old but still in-place subdivision. He noted that they are lots 168, 169 and 170 of the Colonial Farms Extended subdivision. He noted that Mr. Slotznick's family bought these lots and adjoining lots in the late 1940's and built the family home at that location. He noted that they lived at the family home located at 301 Rutherford Street until his mother passed away in 2010.

Mr. Clippinger presented to the Board a copy of the original subdivision plan of Colonial Farms that included quite a number of lots. He noted that portions have been re-subdivided but not the three lots that he is discussing this evening. He noted that the three lots are shown in yellow. He noted that the unopened road is depicted on the original plan. He pointed on the map to where the family homestead was located as it fronted on Rutherford Road.

Mr. Clippinger noted that the unopened road shown on the original plan was never opened and now it is subject to being designated a wetland and the chances of it being opened are very remote. He noted that two of the three lots are landlocked, with the only access to them by way of Hillside Road. He noted that Hillside Road is not quite extended to the three lots, but the subdivision plan that he proposes will show an extension of that road.

Mr. Slotznick stated that it was his sense that it is public road right of way to the edge of the property but the last few feet were never paved, although the Township has been collecting the gas mileage tax from the State for it.

Mr. Clippinger noted that the initial thought without having the subdivision extend Hillside Road was to use the private roadways and the utility easements would utilize the three lots as they now exist; however, upon discussion with United Water PA, it was found that their tariff currently prohibits connecting to lots unless they have some frontage on a public roadway. He noted that the engineer informed him that private easements would not be satisfactory for two lots as they did not front a public roadway.

Mr. Sirb questioned who owns the unimproved roadway. Mr. Slotznick answered that his parents always treated it as their land so they have ownership through adverse possession. Mr. Clippinger answered that there was never any acceptance of the road by the Township that we are aware of and it has not been improved or used at any point in time.

Mr. Clippinger noted that the next thought was do a cul-de-sac for the three lots to ensure that they had access to public water and sewer. He noted that he had an engineer do an overlay with a cul-de-sac according to the Township ordinance. Mr. Turner noted that he would identify this plan as Exhibit 2. Mr. Clippinger noted that the initial subdivision plan that shows the unopened road would be Exhibit 1A.

Mr. Clippinger noted that Exhibit 2 shows the tract with the cul-de-sac and it also shows the topography with intervals of the slope of the lot. He noted that each broken line depicts a drop of 1 foot. He noted that the number of intervals in the cul-de-sac alone is a 15 foot drop. He noted that it is reasonably severe. He noted if a cul-de-sac was installed according to the Township ordinance there would be substantial cut and fill throughout the lot, and due to the increase of the pervious coverage, a surface water drain basin above the wetlands would be needed. He noted that at least two of the homes would need retaining walls; therefore it was not a reasonable solution due to the sensitivity of the area.

Mr. Clippinger noted that now we will turn to what is found on the right portion of the plan which includes an index, chart and schedule that shows the three mentioned variance requests for the building setback line. He noted that the variance would be needed for the roadway that would be private after reaching the property line. He noted with this relief there would be no other variance or waivers required to utilize the tract of 1.7 acres for three lots as it currently exists as three lots. He noted that the three lots meet or exceed the requirements for the R-1 district and as noted on the plan, many or most of the lots surrounding these lots are zoned R-2. He noted that the somewhat smaller lots have a 15,000 square foot requirement whereas the

R-1 has a 20,000 square foot lot. He noted that a number of the lots are significantly less than 20,000 square feet.

Mr. Dowling questioned if what you are proposing for where each lot meets the setback line, it would only be 13 feet. Mr. Clippinger noted that there are varying dimensions and they are all noted besides the "A" and then there is a chart here showing the varying widths at the setback line. Mr. Slotznick noted that each lot would have approximately 13 feet of frontage at the street right-of-way but the ordinances are defined for the setback line.

Mr. Freeburn noted that the 40 foot street right-of-way would be divided into three. Mr. Slotznick answered three. Mr. Freeburn noted that it would be 13 feet per driveway. Mr. Slotznick noted that it would be a common area with a cross easement. Mr. Freeburn noted that this is to provide some road frontage for each lot. Mr. Clippinger noted that it is important to service the properties by public water, there will be road frontage and United Water PA will service all three lots. He noted that they will accept servicing the three lots with public water and public sewer when it is available. Mr. Dowling questioned why not make it two lots. Mr. Clippinger noted that there is ample space for three lots and it meets the ordinance for lot sizes.

Mr. Dowling questioned when the subdivision was put in, what was the plan for accessing these lots. Mr. Slotznick answered that the unopened road ran from Rutherford Road... Mr. Dowling questioned why you can't use it, he noted that we have no testimony that the road is in wetlands. He noted that you show it but do you have an engineered... Mr. Clippinger answered yes, noting that it was delineated by... Dauphin Engineering had it delineated by... the name is somewhere in the paperwork. Mr. Dowling questioned how much of the roadway is in the wetlands. Mr. Slotznick noted the road was 25 foot wide and almost the entire area is in wetland and you need the setback from the wetlands, and you have further setback from the stream... and then there is another setback for environmental areas. Mr. Freeburn noted that what Mr. Slotznick is saying is that almost the entire private road is in the wetlands. Mr. Slotznick answered yes.

Mr. Dowling questioned why Mr. Slotznick doesn't move the road back into the three lots, out of the wetlands. Mr. Slotznick answered if he would attach this road to Hillside then he would not get three lots. Mr. Dowling noted that you would get two lots that would be smaller. Mr. Slotznick noted with the cul-de-sac, which is significantly shorter, we are just at the minimum of 20,000 square feet. He noted if we had a greater impervious surface from the road mostly likely, we have not drawn it out... Mr. Clippinger noted that the land to the west is owned by a private owner and if we put a road in abutting the lots, it would only deal with the lots, there would still have to be right-of-way acquired to get to Rutherford Road. He noted that there are other properties and dwellings down the way that would prohibit the roadway from being functional. Mr. Dowling noted that there is no road on the property owned by Christina Zarek. Mr. Clippinger answered that is correct. He noted that Christina Zarek owns the property east of the paper road. Mr. Dowling questioned if she owned the right-of-way. Mr. Slotznick noted when he deeded the land to Christina Zarek; we gave her a quick claim for the roadway. He noted that the Slotznick's acquired the roadway by adverse possession and no there is no road in existence on abutting properties.

Ms. Cate questioned what kinds of homes are expected to be built on these lots. Mr. Slotznick noted that he couldn't answer that question because he does not intend to build the homes. He explained that he has a builder, Dan Snow, who is building a small two-story colonial home on an adjacent lot, who has expressed some interest in building on the lots but nothing is defined at this time. He suggested that due to the adjacent homes, they will not be very big homes as it is a lower middle class neighborhood, and if there is new home construction in scattered lots like this, they tend to be at the lower end of construction. He noted that they are very nice lots for a small home. He noted that there is enough room for setbacks to build and have a nice little stream in their backyard. He noted that it would be appropriate for a starter home with a nice lot; maybe even nicer than the existing homes in the neighborhood.

Mr. Turner questioned if there is enough room on the lots that there will be no issues for relief for the front, side or rear setbacks. Mr. Clippinger answered that was correct. He noted that he will be able to meet all the setbacks as the lots are well-sized.

Mr. Dowling noted that he is troubled by the 13 foot access and he questioned if the Zoning Hearing Board has ever approved lots that had a 13 foot access onto one road for three properties. He noted that we have divided it twice but not three times. Mr. Freeburn noted when we have had flag shaped lots; we have done that before as well as for a pan handle lot. Mr. Dowling noted that it was usually for two lots but he did not remember doing it for three lots.

Mr. Slotznick noted that the interesting thing about the two lots, the bottom and top lots, is that often, when you think of a flag or pan handle lot, that goes way back and then it spreads out, these spread out right away and don't have frontage on the street. He noted that they are very close to being rectangular and appearing as an ordinary shaped lot, they have the width of a regular lot, but they don't have a width at the entranceway. He noted that he was told that the convention for the Township is when you determine the lot width at the end of the dead end street like this, you project where the road would continue to go and then you make it go back as far as the setback and take the measurement from there; however, if we measure the full lot with two of these lots, what they really have is much larger, the bottom lots have a width of, on a chart... Mr. Clippinger noted that Lot 169 has a 134 frontage and Lot 170 has 150 foot frontage. Mr. Slotznick noted that the frontage is with the lot but it is not the width as the Township defines it.

Mr. Clippinger noted that the lots are quite large when you take into consideration the surrounding lots. Mr. Slotznick noted that one lot is really like most flag lots. Mr. Clippinger stated that is the largest lot.

Mr. Freeburn noted due to the shape and topography and the unique physical features of the land, it precludes the use of those lots in any other way. He noted that the applicant has gone out of his way to try to figure a solution to the problem without having to do this and this seems like the minimum relief the Board can provide.

Mr. Clippinger answered that he believes so. Mr. Slotznick noted that it is the least environmental way to impact and develop the lots.

Mr. Sirb suggested that it is the best plan for a bad situation if you want to keep three lots. Mr. Clippinger answered that is correct as there are three lots now in an R-1 district which is an island in an R-2 district. He noted that two lots would make it substantially larger, and three times as large as the surrounding lots.

Mr. Freeburn noted that there is no legal obligation for the ZHB; because you are the owner of three lots; we look at it as properties; and there is no requirement to make you consolidate two properties together as they are each a unique property.

Mr. Slotznick noted before we sold off the other parcels, we consulted with Mr. Stine, Township Solicitor, because it has been recorded so long ago, whether they would be considered separate properties for the record.

Mr. Freeburn questioned if the Township had a position on this application. Ms. Moran answered it makes better sense to building one driveway off of using a stub road with everyone sharing it. Mr. Freeburn noted that shared driveways are nothing but problems. Ms. Moran noted that it makes good sense especially since she learned and was not aware of the requirements from United Water PA to provide water.

Mr. Sirb noted if someone would have claimed the unapproved road early on and put the road in we wouldn't be in this situation. Mr. Clippinger noted that there were other re-subdivisions of other portions of the Colonial Heights further to the west, noting that there had to be one in order to put in Hillside Road as it was not in the original plan.

Mr. Freeburn questioned if anyone in the audience wished to be heard on this application. No response was provided.

Mr. Freeburn questioned if the Board had any questions for the applicant.

Mr. Slotznick noted that he spoke to two of the neighbors, Mr. Beinhour who owns the parcel on the other side of the road, and Christina Zarek who borders the back the three lots and they have no problems with it.

Mr. Clippinger presented to the Board a copy of the plan.

Mr. Freeburn noted that the Board has 45 days to render a decision and he questioned if a member of the Board wished to do so at this time.

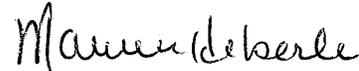
Mr. Sirb made a motion to accept Docket 1337 as presented. Mr. Freeburn seconded the motion. Mr. Dowling noted that he does not like the plan and putting three driveways from this location is terrible but he did not know how else you could do it. He noted that the fact that the wetlands take up so much of the road right-of-way, noting that the thought about moving the road up into the lots.. Mr. Freeburn noted that he thought it was a good idea and they explained why they didn't want to do that. He suggested that it is the best you will get. Mr. Freeburn noted that is the definition of a variance.

Mr. Sirb noted that the hardship is not caused by the applicant. Mr. Dowling noted that it occurred over time. Mr. Sirb noted that no one claimed the road and over time someone figured out that there was no other access to these lots. Mr. Dowling noted that 30 years ago the proposed roadway was not a wetland. Mr. Sirb noted at that time no one cared as you would have filled them in.

Mr. Turner conducted the following roll-call vote: Mr. Fisher, aye; Mr. Dowling, aye; Mr. Sirb, aye; Mrs. Cate, aye; and Mr. Freeburn, aye.

The hearing ended at 7:50 p.m.

Respectfully submitted,



Maureen Heberle  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
: TOWNSHIP ZONING HEARING BOARD  
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA  
:  
BENJAMIN SLOTZNICK : DOCKET NO. 1337

### **DECISION GRANTING VARIANCE**

The applicant seeks a variance from minimum lot width requirements. A hearing on the application was held on April 25, 2013.

#### **Facts**

1. The applicant and owner of the property in question is Benjamin Slotznick of PO Box 23, Mt. Gretna, Pennsylvania 17064. The applicant was represented at the hearing by James Clippinger, Esquire.

2. The property in question is located on the east end of a stub street known as Hillside Road which consists of a 1.737 acre undeveloped parcel. The property is zoned R-1 low density residential. The property has access to both public sewer and water.

3. The property's only street frontage is at the end of Hillside Road and consists of 40 feet. The property is bordered on the south by a paper street on the original subdivision plans but the street has never been opened and cannot be opened today due to wetlands and obstructions on other people's properties.

4. The applicant proposes to subdivide the parcel into three lots which would share 40 feet of available street frontage. There would be cross-easements for access. Each newly created lot would have a building envelope which could accommodate a single family dwelling while meeting setback requirements. Lot areas would be 20,000 square feet for two of the lots and 35,665 square feet for the rear lot.

5. The applicant has considered extending the street and creating a cul de sac; however, the steepness of the grade makes it not feasible.

6. The proposed new lots are larger than most of the surrounding lots which were developed under different zoning regulations.

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

8. No one other than the applicant appeared to testify either in favor of or against the proposed variance.

### **Conclusions**

1. Article 307.A of the ordinance requires a minimum lot width of 90 feet measured at the front building setback line. The proposed lots will violate this section of the ordinance.

2. Article 111.D.3 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 the property is burdened by a hardship not created by the owner consisting of the lack of width. This factor makes subdivision of the property impossible without variance even though the total lot area would accommodate three lots.

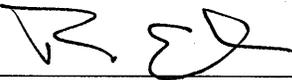
4. Granting the variance will not alter the essential character of the neighborhood nor impair surrounding property values. The proposed lots are larger than most of the surrounding lots and adequate setbacks are maintained. The lack of lot width will have no practical offset impact.

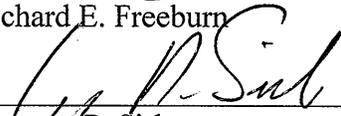
**Decision**

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 granted allowing the subdivision of the property in accordance with the plans and testimony submitted to the Board subject to the applicant otherwise complying with the subdivision approval process.

Date: 5/23/13

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

  
Richard E. Freeburn

  
Gregory P. Sirb

  
Sara Jane Cate

David B. Dowling  
  
Watson Fisher