

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of February 28, 2008

Members in Attendance

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

Also in Attendance

James Turner, Solicitor  
Lori Wissler, Planning & Zoning Officer

**Docket # 1238**

Applicant: Olympic Realty and Development Ltd. Partnership of Harrisburg

Address: 424 E 52<sup>nd</sup> Street, Suite 15, New York, NY 10022

Property: 5101 Jonestown Road  
35-043-032

Interpretation:

Home Depot: **307.A** Minimum lot width of 200 feet at building setback line along an arterial street.  
The applicant is proposing 34 feet from Jonestown Rd  
**307.A** Impervious surface coverage of 75%.  
The applicant is proposing 87.70%.  
**601.C** Number of parking spaces required is 551 spaces. The applicant is proposing 438 spaces.  
**804.C.1** Number of street trees required is fifteen.  
The applicant is proposing 10 trees.

Wendy's:

**307.A** Minimum lot width of 200 feet at building setback line along an arterial street.  
The applicant is proposing 90.90 feet.  
**307.A** Impervious surface coverage of 75%.  
The applicant is proposing 75.52%.  
**601.C** Number of parking spaces required is 54.  
The applicant is proposing 43 spaces.  
**603.I** Minimum of ten feet parking setback from building.  
The existing building has existing parking spaces within 4.74 feet.

Grounds: Sections 307.A, 601.C, 603.I, 804.C.1, of the Lower Paxton Township Codified Ordinances pertain to this application.

The following were sworn in: David Schwartz, President and General Partner of Olympic Realty, 424 E 52<sup>nd</sup> Street, Suite 1B, New York, NY; and Lori Wissler, Lower Paxton Township Planning and Zoning Officer.

Also in attendance was Ron Lucas, attorney for the applicant.

The applicant had no objection to entering the application, site plans and attachments as exhibits.

Ms. Wissler testified that the appropriate fees were paid on August 3, 2007. Proper advertisements were made in The Paxton Herald on February 13 & 20, 2008. The property was posted February 21, 2008.

Ms. Wissler noted that all of the variances requested are existing conditions.

Mr. Lucas stated that the site is 12 acres, and was originally developed as Builders Square, which became Home Depot. They later built the Wendy's Restaurant. The property is subject to a ground lease to Home Depot, back to the owner through a sub-lease and then a sub-sub-lease to Wendy's for that area.

Mr. Lucas stated that they would like separate lots for Home Depot and Wendy's for tax purposes. Currently they are taxed together which is cumbersome for the paperwork. They would also like separate lots for financing purposes.

Mr. Lucas stated that sheet 1 is the existing conditions plan, showing what is there now. It also shows Arby's, which is on a separate lot. Home Depot is to the rear of the property, and Wendy's is to the front. The access to Route 22 is between Arby's and Wendy's. There is also access to Parkchester Road.

Mr. Lucas stated that there is no proposal to add impervious coverage, no development, no expansion of the buildings. They would like to subdivide the lots, and the variances are needed for that purpose.

Mr. Lucas stated that sheet 2 shows the site plan, and presented a corrected copy. The site plan shows the sub-lease and the sub-sub-lease.

The chart on sheet 1 summarizes the existing conditions. The minimum lot width at the building setback line is to be 200 feet. It is currently 163 feet.

The maximum allowed impervious coverage is 75%, and the land currently has 87%.

The parking requirements are 551, plus 54, and there are 438 plus 43 spaces existing.

The number of street trees required on Jonestown Road is 4, and 15 on Parkchester Road. There are 7 existing trees on Parkchester and none on Jonestown Road.

The minimum parking setback is also not met: to the rear of the Wendy's there is parking within the 10 foot setback.

These are existing conditions that were on previously approved plans. When the new zoning ordinance was adopted in 2006, these conditions became nonconforming. As a result of the proposed subdivision, the parcel will split the nonconformities between the two lots.

Home Depot wants to retain ownership of the access drive and the piece of frontage that includes the freestanding sign. Home Depot will have a width of 34 feet at the setback line, even though it will be more at the actual frontage. Wendy's will have a width of 91 feet. Both have the same dimensional requirements.

The exiting impervious coverage is 87% total, and when split, Home Depot will have just under 88% and Wendy's will have just over 75% impervious coverage. They will both be nonconforming.

The parking will not change. Wendy's has 43 spaces, and Home Depot has 438.

There are currently no street trees on Jonestown Road. There are 2 proposed on the Wendy's lot and none on Home Depot's, because their portion is either access drive or sign area. Four street trees are required on Jonestown Road.

There are 15 street trees required on Parkchester Road. There are seven there now, and it is proposed to add three more, for a total of 10.

Mr. Lucas noted that the property conditions were valid and legal at the time of approval, and is now nonconforming under the new ordinances. The existing uses will be continued as they exist today.

Mr. Schwartz confirmed that Mr. Lucas' statements were true and accurate.

Mr. Lucas asked if the tenants have ever complained with regard to the parking situation. Mr. Schwartz stated they have not, and noted that they have more than enough parking. He noted that there is ample parking even on the busiest of days.

Mr. Schwartz confirmed that the ownership will not change. He noted that they also own the Arby's lot, and Olympic is a long-term owner. There will be no physical construction or change to what is there as a result of the variances.

Mr. Dowling asked why the Township shouldn't see this as a clever way to avoid the ordinances in effect. He stated that even if it were in conformance as a whole, the subdivided parcels would not be. Mr. Lucas stated that if it were in conformance today, and it were subdivided, each lot would have to conform. He further noted that the lot is nonconforming today because the Township changed its regulations. If the subdivision had taken place prior to July 2006, it might have been able to be done without variances.

Mr. Dowling stated this is not an uncommon request, and asked what would stop a developer from developing several buildings on a tract and then later subdividing them. Mr. Lucas stated that these conditions are existing nonconformities. Mr. Lucas stated that for a property that has nonconformities, seeking dimensional variances, there are two standards to meet: is it consistent with the neighborhood and is it the minimum variance to afford relief. He stated it is consistent because there will be no change, so no more impact on other properties. It is the minimum variance because they are not asking to increase anything or do anything differently.

The impervious coverage regulations did not exist at the time this parcel was developed, only building coverage, which it met.

Mr. Dowling asked if the land could have been subdivided in 1993 without variances. Mr. Lucas stated that the impervious coverage regulation had been in effect at that time, but not at the time of development.

Mr. Dowling asked about minimum lot width at that time. Ms. Wissler did not think there was such a regulation at that time.

Mr. Schwartz stated that when Home Depot took over Builders Square, the plan was to pave what is now Wendy's for parking. They elected not to because of how far it was from the store. Home Depot released the front lot (now Wendy's lot) back by virtue of a sublease. It was not subdivided at that time. The owner then sub-sub-leased that piece to Wendy's.

Mr. Schwartz stated that they financed the Home Depot portion and that financing encompasses the Wendy's lot. The developer wants to exclude Wendy's from the financing.

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Mr. Schwartz stated that they also owned the Colonial Commons shopping center, and did a similar thing for the Service Merchandise store (now Dick's) and created a separate lot to sell the land to Service Merchandise, and at that time also needed variances.

There are agreements in place to share common areas to allow for sharing of utilities, vehicle access, pedestrian access and maintenance costs.

Mr. Freeburn asked about the eastern property line, at the Wendy's. He noted that there is a parking and grading and landscape easement to service the Wendy's. He noted that in order to utilize the parking shown, an easement is required as opposed to ownership. Mr. Schwartz stated that is a perpetual easement, and a variance was granted to allow that parking. He stated that Paxton Towne Centre needed grading easements from Olympic, and they in turn gave an easement for the little strip of land that they do not use anyway. Mr. Lucas stated that the perpetual easement runs with the property.

Ms. Wissler stated that parking is allowed to be on an adjoining property, if they are in common ownership.

Mr. Dowling called for comments from the audience. There were none.

Ms. Wissler stated that the Township has no problem with the variances requested in this application.

Mr. Freeburn made a motion to grant the variance application as submitted. Mr. Sirb seconded the motion. A role call vote followed: Mr. Freeburn-Aye; Mr. Sirb-Aye; Mr. Dowling-Aye; and Ms. Cate-Aye. The variance was granted.

The hearing ended at 7:30 pm.

Respectfully Submitted,

Michelle Hiner  
Recording Secretary