

**LOWER PAXTON TOWNSHIP
ZONING HEARING BOARD**

Meeting of July 23, 2009

Members in Attendance

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

Also in Attendance

James Turner, Solicitor
Dianne Moran, Planning & Zoning Officer

**Variance Via
Docket #1264**

Applicant: Gerald M. & Janel L. Miller

Address: 6405 Lyters Lane

Property: 6405 Lyters Lane

Interpretation: The minimum lot size for a lot with public sewer and/or public water is 39,000 square feet.
The applicant proposes 30,919.73 square feet for Lot 8 and 11,374.241 square feet for Lot 7.

Grounds: Section 307.A, of the Lower Paxton Township Zoning Ordinance pertains to this application.

Fees Paid: June 29, 2009

Property Posted: July 14, 2009

Advertisement: Appeared in The Paxton Herald on July 8 & 15, 2009

The hearing began at 7:02 pm.

Mr. Staub questioned Mr. Turner if a variance is required since both lots already do not meet the minimum lot size requirements. Mr. Turner stated that they will both still be undersized but a variance is necessary to move the lot line.

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

The following were sworn in: Gerald M. and Janel L. Miller, Applicants; Frank Grottola, Act One Consulting Engineers; and Dianne Moran, Planning & Zoning Officer.

Mr. Grottola stated the applicants wish to survey a portion of Lot 8 off, creating Lot 8A, to convey to the owner of Lot 7. The driveway is shared and straddles the property line. The lot line adjustment will give the entire driveway to Lot 7. the driveway has been there since the homes were built in the 1950's.

Mr. Dowling asked the dimensions of the property being conveyed. Mr. Grottola explained the portion being cut off is 15 feet wide at the widest point and 90 feet deep.

Mr. Staub stated that Lot 8 is already nonconforming and the adjustment will make it more nonconforming. Mr. Turner stated that technically a new lot is being created and added to Lot 7. Lot 7 is nonconforming, and will be made less nonconforming. He added that this type of variance is not uncommon.

Mr. Turner asked if the two homes will continue to share the access. Ms. Miller stated they have never shared it, they will give the entire driveway to the neighbor because they use it, but the Millers do not use it.

Mr. Turner asked about the access for the Miller's house. Ms. Miller stated that they have their own driveway in the center of the lot to the front of the house. On the plan it is marked "gravel".

Ms. Cate asked about a driveway on the plan that accesses Shatto Drive. Ms. Miller stated that is another driveway, but it is almost never used. It could be used to get to the Kinser's lot (Lot 7), but never has been.

Ms. Cate asked if the Kinser house has been sold. Ms. Miller stated it is sold. Mr. Staub asked if the sale is pending subject to this variance. Mr. Sirb suspected it was. Ms. Miller stated that it makes more sense for the driveway to be on the lot it serves, and it is more convenient. She added that they have had a great relationship with the Kinsers, and expect to have a great relationship with the new neighbors.

The Township had no position on the application. There was no comment from the audience.

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

The hearing ended at 7:16 pm.

**Variance Via
Docket #1265**

Applicant: Paul R. Herbert
Address: 4880 Pine Hill Road
Property: 4880 Pine Hill Road
Interpretation: The minimum lot frontage for a lot without public sewer or public water is 150 feet.
The minimum lot frontage for a lot with public sewer and public water is 90 feet.
The applicant proposes a lot with a width 58.90 feet.
Grounds: Section 307.A, of the Lower Paxton Township Zoning Ordinance pertains to this application.
Fees Paid: June 30, 2009
Property Posted: July 14, 2009
Advertisement: Appeared in The Paxton Herald on July 8 & 15, 2009

The hearing began at 7:17 pm.

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

The following were sworn in: Mr. Paul R. Herbert, 4880 Pine Hill Road, Applicant; Dr. Rex Herbert, 2401 Abbey Lane, brother of the Applicant; and Dianne Moran, Planning & Zoning Officer.

Mr. Herbert stated his property is 15 acres, and he proposes to subdivide it so that he has 10 acres and his brother will have 5 acres (Lot 2). Lot 2 will have a frontage of 58.90 feet with access to Hawthorne Road.

Mr. Dowling asked if the 15-acre lot has the pan handle now, or if that is a result of the subdivision. Dr. Herbert stated that the pan handle is currently the way the lot is shaped.

Dr. Herbert explained that the pan handle will be used as a utility access. The sewer easement is already there, and they may add water through there in the future. The pan handle may be used in the future as a driveway, but that portion would not be further subdivided. Mr. Freeburn asked if a driveway could be run through the panhandle in the

future if needed. Dr. Herbert answered yes. He added that a typical driveway is 12 feet wide, and that area is almost 60 feet. The reason to not do that now is because it would involve a stream crossing. The permit process for a stream crossing can take a very long time. He noted he lost his home to a fire and is in a rental home for one year, and cannot wait on a stream crossing permit at this time. Until a driveway is installed to Hawthorne Road, his brother will allow use of his driveway to get to the proposed house.

Ms. Cate asked about the surrounding land. Dr. Herbert explained that his sister owns the abutting land. The land has been in the family since the early 1950's. Mr. Staub asked if an access easement would be necessary, as it appears that the driveway crosses lands of the Twin Lakes Community Association, the sister, and Mr. Herbert's property to get to Dr. Herbert's property. Mr. Herbert stated Pine Hill Road is a public Township owned roadway up to the lake and his sister's property. At that point the road is signed "Private Drive".

Mr. Staub asked Mr. Turner if additional safeguards would be necessary. Mr. Turner stated it shouldn't be necessary, since Lot 2 has access to Hawthorne Road and is not land-locked. Mr. Dowling stated it is up to Mr. Herbert to record an access easement at the time they record the deed.

The Township had no position on the application. There was no comment from the audience.

Ms. Cate made a motion to grant the application as submitted. Mr. Dowling seconded the motion. Mr. Staub called for discussion on the motion. Mr. Sirb asked that a stipulation be put on Lot 2 preventing further subdivision. Ms. Cate and Mr. Dowling were agreeable to amending the motion. A role call vote followed: Mr. Freeburn-Aye; Mr. Dowling-Aye; Mr. Sirb-Aye; Ms. Cate-Aye; and Mr. Staub-Aye.

The hearing ended at 7:28 pm.

**Variance Via
Docket #1263**

Applicant: MLG Enterprises, Inc.

Address: 252 Bow Creek Road, Grantville, PA 17028

Property: 300 N. Mountain Road (Best Western)

Interpretation: The maximum impervious coverage allowed is 75% in the CG, Commercial General District.
The applicant proposes 89.52% on Lot 2.

The minimum side yard setback requirement is 15 feet in the CG District.
The applicant proposes a 3.8-foot setback.

Grounds: Section 307.A, of the Lower Paxton Township Zoning Ordinance pertains to this application.

Fees Paid: May 29, 2009

Property Posted: July 14, 2009

Advertisement: Appeared in The Paxton Herald on July 8 & 15, 2009

The hearing began at 7:28 pm.

Mr. Staub recused himself from this hearing as he has a business relationship with the applicant.

Ms. Cate stated it is customary for the Board to enter as exhibits the application and site plans. The applicant had no objection to its doing so.

The following were sworn in: Bo Patel, Vice President of MLG, Applicant; and Dianne Moran, Planning & Zoning Officer. Ron Lucas was present representing the applicant.

Mr. Lucas distributed a letter withdrawing the Special Exception portion of the application.

Mr. Patel has owned and operated the Best Western Hotel since 1998. It was an existing hotel. MLG leases out the restaurant. The hotel was expanded as approved by the Township in 1999 to the current configuration.

Mr. Lucas stated the Planning Commission reviewed the application and made a recommendation that the parking be studied to see if the needed parking could be attained by reconfiguring the parking lot. Mr. Patel stated that was done and 20 more spaces were added. Mr. Lucas presented Applicants Exhibit A-1, revised site plan showing the additional parking. He explained that the existing spots are in black, the reconfiguration is in purple. The property had more handicap spaces than required, and more than were actually used, so some of those were converted into regular spaces. Spaces were also added along the western boundary, and along the southeast portion with islands.

In 1999, the parking on the property exceeded the requirements, but under the current zoning ordinance, was 20 spaces short, but with the reconfiguration, will meet the requirements without the need for a special exception.

Best Western has taken the position that since the restaurant is physically attached to the hotel and located on the same parcel as the hotel, the restaurant is subject to renovations, furnishing requirements and inspections by Best Western at any time. Mr. Patel stated that the subdivision of the restaurant from the hotel will eliminate Best Western's influence on the restaurant. The lessee is required to keep up with Best Western's ever-changing requirements. That was the problem the prior tenant faced, and is the problem with getting the restaurant leased.

Mr. Lucas stated that years ago, the liquor control board required the restaurant and hotel to be connected to get a hotel liquor license. That is no longer a requirement, so the physical connection is not needed and will be removed with the approval of the subdivision.

The property is an odd shaped lot. The site constraints include steep slopes on the side along I-81, and along the rear of the property with a retaining wall behind the pool. The easiest division is a simple straight line.

The existing paving is more than allowed by the current zoning ordinance for impervious coverage, so a variance is needed.

The setback for the restaurant is less than called for by the current zoning ordinance. The line was set in such a way so that the hotel would not also require a variance.

The beige lines show setbacks that encroach, but were approved in 1999, and since there is no change proposed, the zoning officer determined that no variance is needed.

No new uses will be added as a result of the subdivision plan. The intensity of the existing uses will not increase either. Both existing uses are permitted uses. The parking reconfiguration will be accomplished by restriping and landscaping islands, but no new pavement.

MLG is in the process of constructing a hotel, Candlewood Suites, across Lockwillow Avenue. Mr. Patel stated that it is common and desired to have restaurants on out-parcels of a hotel property.

Mr. Sirb stated there is no hardship, other than Best Western's demands as the franchiser that the restaurant has to abide by the demands of the hotel chain.

Mr. Patel stated it is very difficult to enforce upon a tenant in the restaurant. Mr. Sirb agreed it would be difficult, or impossible. He suggested that Best Western amend that for this property. He stated it is ridiculous that the issue was brought to the Zoning Hearing Board instead of working it out between the franchisee and franchiser. The property was purchased in 1998 from Joe Laws, who leased back the restaurant for 25 years and they will not agree to the requirements because they are subleasing the restaurant to someone else.

Ms. Cate asked if the restaurant is presently being operated. Mr. Patel stated that this is the reason that Geo's left. Ms. Cate asked about the restaurant to the north of the hotel along Lockwillow Avenue. Mr. Patel stated that is a different hotel (Mikado).

Mr. Freeburn asked if Lot 2 will be landlocked when it is subdivided. Mr. Lucas stated that the area referred to as the driveway, is actually the original Mountain Road prior to the construction of the Interstate. That road is still a public street and is owned and maintained by the Township. When the Department of Highways constructed the interchange, they left that portion of the roadway to the Township in that current configuration. Mr. Patel added that the other restaurant and a residence have access to this street as well. As a part of the subdivision process, a cross easement agreement for access between lots 1 and 2, and for shared parking will be required and prepared.

Mr. Freeburn asked if the spaces will be marked for the restaurants use. Mr. Lucas stated the two uses will share all the parking spaces. Lot 1 would have sufficient parking spaces, but would not have access. The two uses combined require 271 spaces. The permanent easement is equivalent to a perpetual lease.

Mr. Freeburn asked about selling the properties individually. Mr. Patel stated the properties are shared.

Mr. Sirb asked if removing the physical connection would be sufficient, and why the additional lot has to be created. Mr. Patel stated that the franchise agreement calls for a copy of the deed, and the new deed will only include the hotel, and Best Western will have no say in the restaurant at all.

Mr. Dowling asked if Best Western must approve the subdivision of the land. Mr. Patel answered no.

Mr. Patel stated that Best Western gave 12 months for the restaurant to come into compliance with items such as furnishings, artwork, décor, in order for the hotel to retain its flagship status.

Ms. Cate asked where the check-in counter will be moved to. Mr. Patel stated that in 1999, the check-in was relocated to the south-facing wall of the hotel.

Ms. Cate asked if the Law brothers have to approve the subdivision. Mr. Patel stated they do not have a say unless it would impede their ability to operate a restaurant there. Mr. Lucas stated that the increase in parking would enhance the property.

Mr. Freeburn asked if the canopy will be removed. Mr. Patel answered yes. Mr. Freeburn asked about the driveway under the canopy. Mr. Patel stated that will continue to be used because it is a convenient exit for the restaurant guests so they do not have to drive all the way around the building.

There was no comment from the audience. The Township had no position on the application. Ms. Moran stated that the Planning Commission did review the application and found it to be unobjectionable, but asked that the parking be considered. The parking has been addressed with the revised plan.

Mr. Dowling made a motion to grant the application with the cross easement for parking. Mr. Freeburn seconded the motion, and a role call vote followed: Mr. Freeburn-Aye; Mr. Dowling-Aye; Mr. Sirb-Aye; and Ms. Cate-Aye.

The hearing ended at 7:59 pm.

Respectfully Submitted,

Michelle Hiner
Recording Secretary