



LOWER NAZARETH TOWNSHIP

ZONING HEARING BOARD

623 MUNICIPAL DRIVE
NAZARETH, PA 18064
TELEPHONE: 610-759-7434
FAX: 610-746-3317

Zoning Hearing Board

Manouel Changalis, Chairman
Steven Nordahl, Vice Chairman
Michael Gaul, Board Member
Brian Fenstermaker, Alternate

April Cordts, Esq., Solicitor

Zoning Hearing Board Minutes December 21, 2021

Chairman Manny Changalis called the meeting to order at 6:30 p.m. Board Member Steven Nordahl; Alternate, Brian Fenstermaker; Zoning Hearing Board Solicitor, April Cordts; and Lori Seese, Planning & Zoning Administrator were all in attendance. Board Member Mike Gaul was not present.

MINUTES

Approval of the December 16, 2021, minutes is tabled to the next meeting.

HEARINGS

ZA2021-01 – Peoples Property, LLC

All parties who were not sworn at the previous hearing were sworn.

Present for the Applicant: Attorney Joseph Piperato and Applicant, Adam Pooler.

On behalf of the Township: Attorney James Preston, Lori Stauffer, Township Manager, and Christopher Noll, Township Sewage Enforcement Officer.

Attorney Piperato stated their intention to complete case #ZA2021-01 regarding the location of the septic system and then move over to case #ZA2021-04 to discuss the location of the house, and then incorporate all of the testimony into case #ZA2021-05, pointing out the differences as it is a different lot, and incorporate all the expert testimony.

Attorney James Preston agreed, and it was agreed Attorney Preston had the right to cross-examine the Applicant's witnesses.

Zoning Hearing Board Solicitor April Cordts suggested the attorneys submit findings of fact, conclusions of law, and brief at the conclusion of the testimony and the vote would occur at another meeting.

Roger Lehmann, All-County & Associates, provided testimony. Roger is a Sewage Enforcement Officer (SEO) and owns All-County Consulting. Roger stated a response from Chris Noll, Township SEO has been prepared since the last meeting regarding the septic system application.

Exhibit #A-2, letter from Christopher Noll was introduced. Roger reviewed Chris's letter.

Mr. Lehmann believes Chris's statements about zoning deficiencies should not be included in Chris's review letter. Mr. Lehmann stated they could appeal the decision of Chris's letter to the Township Board of Supervisors; however, the Board of Supervisors can't make zoning decisions, that's the Zoning Hearing Board.

Attorney Preston cross-examined Mr. Lehmann regarding his previous testimony.

Roger Lehman believes if the zoning relief is not granted the applicant may need to appeal to the PA Environmental Hearing Board for that portion of the Lower Nazareth Township Floodplain Ordinance which is preventing him from constructing a sewage disposal system. Attorney Preston questioned Mr. Lehman's testimony: If the relief is granted; would the township appeal to the PA Environmental Hearing Board?

Attorney Piperato confirmed with Mr. Lehmann that they are here because a denial letter has been issued by the Floodplain Administrator. Pursuant to the Floodplain Ordinance, any person aggrieved may appeal to the Zoning Hearing Board.

Adam Pooler provided testimony regarding right-to-know requests he filed with the Township.

Exhibit #A-4, 543 Georgetown Road regarding construction of a pond in the floodplain and variances received to do construction in a floodplain. There was no relief granted for this property to construct a detention pond in the floodplain.

Exhibit #A-5, Appraisal Engagement Letter - Mr. Pooler stated he became aware of the Township's interest at meeting with the township. The Appraisal Engagement Letter is dated 8/23/19, which is prior to Mr. Pooler's ownership of the lot. Mr. Pooler stated he was under agreement at the time the appraisal was prepared. The appraisal states that according to the Township Manager and the Zoning Officer the site is not compatible with residential development due to it being situated in the flood plain. Each lot was valued at \$3,500 each. Adam Pooler received an offer of \$10,000 for the three lots.

Exhibit #A-6 – Open Record Request #21-048 re: detention basin: Mr. Pooler read an email from Lori Stauffer to Township Engineer Al Kortze. Mr. Pooler also noted a cost estimate for the Georgetown Road/Ash Drive stormwater basin. Total cost estimate: \$332,200.

Attorney Preston asked how many right-to-know requests Mr. Pooler filed with Lower Nazareth Township? Mr. Pooler stated he had filed approximately 38 record requests.

Exhibit #A-3 – Attorney Preston question Mr. Pooler about this record request which is relative to relief to get a detention pond in the floodplain.

Attorney Preston questioned Adam Pooler about due diligence. Mr. Pooler acknowledged that all (5) lots were on one deed. Adam stated he spoke to Mr. Erney briefly. Mr. Pooler did not know that Mr. Erney had offered the land to the Township.

Attorney Preston asked if Mr. Pooler checked property records? Mr. Pooler stated he looked at Northampton County's records and he consulted with an attorney and engineer. Mr. Pooler assumed his consultants looked at the county records, looked for easements, tax liens, deed restrictions. These things are done by a title company prior to closing. Mr. Pooler stated his consultants verified these lots were part of a recorded subdivision. Ridgeview Estates, Phase II. Aware of any easements of record with respect to the subject property? Aware of any recorded deeds? Plan notes which restrict the property? Mr. Pooler responded No to all.

Attorney Preston questioned Mr. Pooler about Exhibit #A-5 regarding the appraisal. Mr. Pooler believes the statement on the appraisal is a false statement. Mr. Pooler wants to know why the land was appraised as non-buildable.

Attorney Preston asked Mr. Pooler about public improvements. Adam stated he is not familiar with Developer Agreements as he buys leftover lots. Mr. Preston noted that public improvements such as roads are included in a Developer's Agreement which also includes a cost estimate.

Mr. Piperato redirected questions to Mr. Pooler.

Exhibit #A-5: Mr. Pooler stated there was no mention of the ability to acquire a special permit or variance to build within the Appraisal.

Attorney Piperato asked Mr. Pooler about the number of record requests filed with the Township. Mr. Pooler responded it was 40 plus.

Adam stated he was given a copy of the Floodplain Ordinance and FEMA information at his first meeting with the township. Mr. Pooler stated he has not received any information regarding plan notes restricting construction on the subject property.

Manny Changalis commented about Applicant's Exhibit #A-3, Zoning Hearing Order. Manny stated that hearing was for a height variance and no earth moving was involved. There wasn't any activity in the floodplain.

Engineer Jeremy Madaras provided testimony.

Exhibit #A-7: Mr. Madaras evaluated the development of Lot 1B-8 in accordance with the floodplain ordinance. Mr. Madaras explained his exhibit in detail. Mr. Madaras noted that the floodplain is delineated as elevation 353. There are two channels, the East Branch of the Monocacy Creek and a channel labelled Zone A. Mr. Madaras spoke about an area of ineffective flow. This area is for expansion and contraction of the floodplain. It gets flooded due to its topographic location – it sits below the floodplain. Water gets trapped and has no way of getting out.

Mr. Madaras reviewed historical aerial photography. At least 50-70 years ago this area may have been a contributing portion of the floodplain. Mr. Madaras stated the construction of Georgetown Road segregated the water from one side to the other. The water gets constrained and has to overtop Georgetown Road.

Mr. Madaras believes the East Branch of the Monocacy does not use the lot for any storage or flow. Mr. Madaras believes the basin created by Georgetown Road and Ash Drive operates the same regardless of the fill placed on Lot 1B-8. Lot 1B-8 is a slack water area that gets filled up in storms. Its one of the last areas east of Georgetown Road to drain and dry out.

Attorney Piperato asked if construction on this lot would present any danger to health, safety and welfare of people of Lower Nazareth Township? Mr. Madaras stated it would not.

Attorney Piperato asked if there would be any risk to the home or septic system? Mr. Madaras stated it would not in his opinion.

Manny Changalis asked for clarification about a 100-year storm, Manny asked what it's called when it crests over Georgetown Road and it's not a 100-year storm – just an ordinary rainfall? Mr. Madaras stated his task is to specifically look at the 100-year storm. He did not look at the 2-year or 5-year storm and does not feel it is germane to this discussion.

Attorney Preston cross-examined Mr. Madaras. Attorney Preston asked about the terminology: "ineffective flow area". "Ineffective flow area" is not defined in the Floodplain Ordinance. Mr.

Madaras stated there are intricate aspects of examining the floodplain and some technical nomenclature does not get captured in an ordinance.

Attorney Preston noted that the Floodplain Administrator has to look at the areas within the floodway and floodplain as prescribed in the Flood Ordinance.

Mr. Madaras stated the development would not change the base flood elevation.

The top of the septic mound is at 353.5. It will be slightly above the floodplain surface. The house is proposed at 355. The house is proposed as a slab with no basement. Mr. Madaras would not recommend a basement for a house in this location. It's a low area and it will be wet.

Mr. Madaras explained how water flows during a 100-year storm. Attorney Preston asked if the water would stay there on Lot 1B-8? Mr. Madaras stated that once the water recedes on the creek side of the East Branch, it will drain out. The culverts are undersized, and they are undersized due to the low elevation of Georgetown Road. This may happen in the 5, 10 and 50 year storm. He did give some consideration to lower level storms due to discussion about it being used for a basin. Mr. Madaras said it makes sense for this to be used as a basin in low level storms; however, it all goes out the window in a 100-year storm.

Attorney Piperato asked Mr. Madaras if he evaluated the risks to determine there is no risk to public health, safety and welfare or to the residents living on the property. Mr. Madaras said there would not be.

Attorney Piperato reviewed the restrictions as outlined in the Floodplain Ordinance.

Attorney Preston asked Mr. Madaras how many 100-year storms we've had in the last 12 years? Mr. Madaras stated approximately 3-4 storms. Mr. Madaras stated we can get events that mimic the effects of a 100-year storm.

Steve Nordahl inquired about elevation 351. The floodway delineation line is at 351 and goes all over the property. Anywhere there is an elevation of 351 means there will be water all over the property. Steve asked where the floodway is restricted from the property?

Mr. Madaras stated there is no way the floodway of the EBM extends on to the property. The floodway is generally consistent with the creek itself.

Mr. Nordahl stated that water is going to run where it's going to run. Mr. Madaras has stated that 351 is data line where the floodway elevation goes. There is no reason to believe that 351 will not see water.

Manny Changalis asked, being that the property floods regularly regardless of the type of storm, does Mr. Madaras think that affects the safety of the building or the residents of that lot? Manny stated it floods several times a year and traffic can't get by.

Mr. Madaras stated that it does flood and will continue to get wet. He said he would not make a recommendation that would put anyone in any danger from the 100-year storm. The yard will be very likely to be wet in heavy rains; however, it is not in any area of active flow. There may be water surrounding the house. Will anyone's life be at risk – no. The driveway access point will be in the floodplain.

Attorney Preston questioned Mr. Madaras about his testimony regarding life, safety, health, and welfare.

Manny Changalis stated it was getting late.

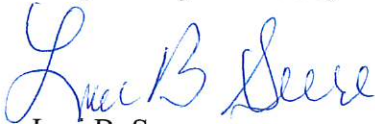
Attorney Piperato moved to admit Exhibits A-1 thru A-7 and reserve right to call witnesses in rebuttal in response to anything the township presents to the Board.

Manny asked if they could take the hearing up at the next meeting, January 25, 2022. Attorney Piperato and Attorney Preston were in agreement.

The motion to adjourn was moved by Steve Nordahl and seconded by Brian Fenstermaker. The motion carried unanimously.

The meeting adjourned at 9:30 p.m.

Respectfully submitted,



Lori B. Seese
Planning & Zoning Administrator

/lbs

**** Note: These minutes are only a brief summation of the actual hearing. All Zoning Hearing Board hearings are officially transcribed by a professional stenographer. Should any parties wish to view these transcripts, please contact the Zoning Officer. If an official copy has not been requested, the requestor must pay for the transcript.***