



LOWER NAZARETH TOWNSHIP

ZONING HEARING BOARD

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Zoning Hearing Board

Manouel Changalis, Chairman
Daniel Cortright, Vice Chairman
Michael Gaul, Board Member
Robert Stocklas, Alternate

Zoning Hearing Board Minutes February 25, 2020

Chairman Manny Changalis called the meeting to order at 6:30 p.m. Board Members Mike Gaul and Daniel Cortright; Zoning Hearing Board Solicitor, April Cordts; and Lori Seese, Planning & Zoning Administrator were in attendance. Alternate, Robert Stocklas was not present.

MINUTES

The motion for approval of the January 28, 2020 minutes was moved by Dan Cortright and seconded by Michael Gaul. The motion carried unanimously.

CORRESPONDENCE

ZA2020-01 - Lehigh Valley Health Network Realty Holding Company – Manny Changalis read Attorney David Berger's February 25, 2020 letter into the record. This letter requests a continuance of their application until March 24, 2020. Mike Gaul made a motion to accept the continuance. The motion was seconded by Dan Cortright and continued unanimously.

HEARING

ZA2020-02 - JW Development Partners III, LLC

The advertisement for the hearing was read aloud and all parties who would testify in the hearing were sworn. Present for the Application: Joseph Zator, Esq.; Rick Roseberry, P.E., Maser Consulting, and Craig Halverson, Watson Land Company.

Township Solicitor Gary Asteak entered his appearance, along with the Township Engineer, Albert Kortze, in opposition to the variance request from Article 11, Section 1108.J, Building Height.

No one else announced interest to enter party standing.

Attorney Joseph Zator stated an objection to Mr. Asteak's appearance before the Zoning Hearing Board. As a procedural matter, the Board of Supervisors are required to vote to direct the Township Solicitor to appear on behalf of the Township. Since the Applicant appeared before the Planning Commission just 24 hours before, he did not believe Board of Supervisors approval was granted.

Gary Asteak stated he has appeared at the direction of the Township Manager, Lori Stauffer. The height variance request is contradictory to the representations made at the Conditional Use Hearing. Mr. Asteak requested a continuance to obtain the Board of Supervisor's approval if the Zoning Board would find in favor of Mr. Zator's objection.

Board Member Mike Gaul stated he understands why Mr. Asteak is present and does not believe a continuance is necessary. The motion to proceed was moved by Michael Gaul and seconded by Dan Cortright. The motion carried.

April Cordts inquired if the transcript from the Conditional Use Hearing is available. Gary Asteak confirmed the transcript is available.

Mr. Zator waived his previous objection considering Mr. Gaul's motion and conference with his client.

A package of Exhibits was provided to the ZHB by Attorney Zator, numbering A-1 thru A-15. Mr. Zator reviewed the presentation made at the Planning Commission and the reason for their appearance relative to the Special Permit. Regarding the height variance request, Mr. Zator stated that the Applicants are not engaged in a "bait and switch" as suggested by Attorney Asteak. He stated their architects have just recently been secured for this project and brought the matter to light.

Mr. Zator reviewed the requirements for diminimus variance.

Rick Roseberry provided testimony using Exhibit #A-4, Site Plan. The stormwater for the site will be held in a detention basin and then distributed using an irrigation system. The irrigation pipe will cross the tributary to the Schoeneck Creek, which is within the Floodplain. Mr. Roseberry noted that the only residential properties adjacent to the property are directly to the south of the development.

Exhibit #A-7, Sight Line Diagram was used to demonstrate the visibility of the warehouse buildings from the second story of the closest residential property on Ruben Court. Mr. Roseberry testified it would impossible for anyone in the dwelling to see Warehouse Building A due to the view obstruction of Warehouse Building B.

Regarding the stormwater irrigation line, the proper DEP permit has been obtained. Mr. Roseberry noted site disturbance will be minor. There will be multiple crossings for sanitary line, irrigation line and the communication line. The sanitary line does not require special approval. The disturbance will be completed very quickly, approximately 1 week. There is no fill proposed in the flood zone. Mr. Zator referred the Zoning Hearing Board to Exhibit #A-3.

Section 5.02, Standards and Criteria for Special Permits of the Floodplain Ordinance were reviewed individually.

Manny Changalis inquired about the size of pipe. Mr. Roseberry explained the procedure to install the pipe, noting that the creek is very small, enough to jump across.

Mr. Roseberry noted a single Peregrine Falcon was the only species found (at Essroc) when they conducted a PNDI Study (PA Natural Diversity Inventory).

Sedimentation and Soil Erosion Controls have been approved by PADEP. The work was included in the approved NPDES permit package. Mr. Roseberry feels all (15) criteria of Section 5.02 have been met.

Attorney Asteak inquired if Rick Roseberry part of the project from the onset and Mr. Roseberry confirmed that was correct.

Gary Asteak allowed Mr. Roseberry to read the transcript from the Conditional Use hearing, beginning on page 44 running thru page 45.

Rick Roseberry noted the testimony was regarding sight line calculations identifying location of trees. The decision was made to reduce the height of Building B to 36 feet. Attorney Asteak confirmed with Mr. Roseberry that this was done because the Board of Supervisors were concerned about visual impacts.

Attorney Asteak explained that Lower Nazareth Township would not grant Conditional Use approval until the Applicant provided all the information. Testimony was provided based upon the Conditional Use application they submitted.

Attorney Zator stated they did not need to provide testimony about the warehouse because it is a permitted use within a Planned Business Development. Attorney Asteak rebutted stating Lower Nazareth Township granted approval on the assumption they will be building a warehouse in compliance with the Zoning Ordinance. Now the Applicant is asking for a zoning variance. Mr. Asteak stated the Conditional Use approval will not apply to this application because it does not represent the buildings that were approved.

Attorney Zator asked Mr. Roseberry to identify the uses surrounding the proposed project. Mr. Roseberry confirmed Exhibit A-14 from the Conditional Use application was a line of sight exhibit between the residential properties and Building B. Mr. Roseberry confirmed nothing has changed between the residences and Building B. The only thing that has changed is the proposed height change in Building A.

Discussion about the reference to "36 feet" in the transcript and whether they were speaking about 36' clear height.

Michael Gaul noted that the photographs on Exhibit A-5 don't show any equipment and inquired if there would be equipment on top of the building, in addition to the 50-foot building height. Mr. Zator stated that question would be answered by another witness.

MaryEllen Jenzer, 683 Ruben Court: Mrs. Jenzer stated that she lives next to the house used for demonstration. She is offended that they are only referring to the neighbor's house and no others. The warehouses will take away from the view from her property. Mrs. Jenzer is very opposed to the application.

Mr. Roseberry stated that the Farmer house was used because it represented a worst-case scenario.

Manny Changalis inquired how the situation would have changed if they had come in with a 50-foot height building from the start.

Attorney Asteak stated that the township has regulations and requires that they comply with the Zoning Ordinance. The Applicant would not have gotten their Conditional Use approval if they had stated the building would be taller than what the ordinance requires.

Township Engineer Albert Kortze stated he has reviewed applications for warehouses in Lower Nazareth Township totaling 7.8 million s.f. None of them are over 45 feet in height.

*** A break was taken at 7:52 p.m. Hearing resumed at 8:04 p.m. ***

The next witness, Craig Halverson, Sr. Vice President with Watson Land Company provided his credentials. Pursuant to Attorney Asteak's questions, Mr. Halverson confirmed he has worked in California for 30 years and he lives in CA. Mr. Halverson stays in Pennsylvania in a company apartment when he is in the area. Mr. Halverson stated his company was looking to

geographically diversify approximately 5-6 years ago. Watson Land decided the Lehigh Valley would be great place for development. They have a project in Lower Macungie, Lehigh County and in Allen Township, Northampton County. Mr. Halverson stated that he is not personally familiar with ordinances in eastern Northampton County, that he relies on his consultants to assist with that information.

Attorney Asteak objected to Mr. Halverson being presented as an expert witness. He stated Mr. Halverson is a fact witness, not an expert.

Attorney Zator queried Mr. Halverson about his experience and area of expertise. Discussion followed about whether Mr. Halverson could be considered an expert or fact witness.

Mr. Halverson stated the partnership between Watson Land and Jaindl Land Company formed because the companies are similar, being family owned. Watson was not part of the project during the Conditional Use hearing. Watson joined the team to be part of the vertical construction.

Exhibit #A-5, a rendering of proposed Building A, was used for Mr. Halverson's testimony. Mr. Halverson stated they intend to be long-term owners. The building was designed to be as flexible and functional as possible. The reasons for choosing this site are that it is properly zoned, an excellent location for industrial development, a clear shot to Route 33, and there are minimal residential properties along on Route 248.

Mr. Halverson stated there is a very good workforce in the Lehigh Valley - that's why there is a lot of industrial development here.

Exhibit #A-9 was next used for testimony. Exhibit #A-9 was a Bar Chart showing industrial market for Southern California, 1960-2020, showing changes in clear height over the years.

Exhibit #A-8 was displayed showing the racking layout of the building and the differences between 36 & 40-foot clear height. Mr. Halverson explained the increased height provides 14-20% more cubic storage in a building with 40-foot clear height. This height also increases the marketability of the site. Mr. Halverson stated Broker Joe Lockard would be providing testimony later regarding the real estate market for 40-foot clear height buildings. Mr. Halverson stated that if they built the building at 45 feet in lieu of 50 feet they would not be as competitive.

Manny Changalis inquired how many buildings has Mr. Watson has built with 40-foot clearance. Mr. Halverson stated that two of the buildings proposed in Allen Township are planned for 40-foot clearance; however, at this time Mr. Halverson has not built any buildings with 40-foot clearance.

In response to Attorney Asteak's question, Mr. Halverson stated he got involved with the project approximately one year ago, in July 2019. At the time he joined the project, he did not tell anyone or give thought to a 50-foot building. Mr. Halverson stated they did not employ architect until early July and did not focus on the clear height at that time. Mr. Asteak posited that given Mr. Halverson's expertise in the field, shouldn't that be one of the first things he considered? Discussion followed about building height trends.

*** Due to the hour, testimony was paused to choose a future meeting date. Announcement was made that we would finish with this witness and the meeting would be continued to March 23, 2020, at 6:30 p.m. ***

Attorney Asteak asked if the building height is increased, doesn't that also increase the building volume as well? Mr. Halverson confirmed it would increase. Attorney Asteak asked if that also increases the volume of traffic bringing the goods to and from the facility? Mr. Halverson stated he does not know the answer.

Matthew Mikol, 3966 Hollo Road inquired if any blasting will be done to move rock. Mr. Halverson stated they have not determined how much blasting will be required. Mr. Mikol stated concern for viability of 200-year old barn and pond on his property. Blasting and the changing strata of the limestone are a concern for Mr. Mikol. Mr. Halverson stated he cannot be sure if they will be affected.

Attorney Zator confirmed with Mr. Halverson that excavation does not change regardless of the height variance requested.

In response to Attorney Zator's question, Mr. Halverson stated the Architect did not tell him a variance was necessary until approximately October 2019.

Attorney Asteak asked if purchasing the local zoning ordinance wasn't one of the first things you do when considering development of a piece of property? Mr. Halverson stated yes; however, he relies on his consultants for that information.

Mike Gaul asked when did they decide they want 40-foot clearance, and did they always intend to have a 40-foot clear building? Mr. Halverson stated that he did not know and could not say specifically.

Mike Gaul asked if it is possible to get 40-foot clearance with the 45-foot building height? Mr. Halverson stated it is possible.

MaryEllen Jenzer, 683 Ruben Court objected to any implication that the inability to build a 50-foot tall building would be a hardship for the Applicant. Mrs. Jenzer stated the hardship is on the residential properties next to these warehouses. The increased volume is adding up to money for the developer and that is not what matters to the people of Lower Nazareth Township.

An announcement was made that this hearing would be continued to March 23, 2020 6:30 p.m.

The motion to adjourn was moved by Michael Gaul and seconded by Dan Cortright. The motion to adjourn was moved unanimously. The meeting adjourned at 9:15 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.***