



LOWER NAZARETH TOWNSHIP

ZONING HEARING BOARD

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Zoning Hearing Board

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

Zoning Hearing Board Minutes **March 23, 2021**

Chairman Manny Changalis called the meeting to order at 6:30 p.m. Board Members Mike Gaul and Steven Nordahl were present in person; Alternate, Brian Fenstermaker attended virtually; Zoning Hearing Board Solicitor, April Cordts; and Lori Seese, Planning & Zoning Administrator were all in attendance.

Lori Stauffer, Township Manager; James Preston, Alternate Township Attorney, and Christopher Noll, Township Sewage Enforcement Officer were present on behalf of Lower Nazareth Township.

MINUTES

Approval of the January 26, 2021 minutes was moved by Michael Gaul and seconded by Steven Nordahl. The motion carried unanimously.

HEARINGS

ZA2021 – Peoples Property, LLC

The advertisement for the hearing was read aloud and all parties who would testify in the hearing were sworn. Present for the Application: Attorney Joseph Piperato; Applicant, Adam Pooler; and Consultants, Roger Lehmann, and Jason Bailey of All-County Associates.

Adam Pooler provided testimony.

The first exhibit presented was the deed for Peoples Property, LLC. Mr. Pooler stated he reached out to the Township for information about the property and to discuss intentions. He stated the initial discussions were that he should not purchase because they are not buildable lots. He stated Lori Seese would not recommend buying the property because the lots would not perc. Mr. Pooler purchased all five lots and perc tested all 5 lots. He has secured building permits for 2 of the lots.

Mr. Pooler testified that he had additional conversations with Lower Nazareth Township to discuss the possibility of purchasing three of the lots. The Township had already conducted an independent appraisal of the lots. The Township offered \$10,000 for all three properties. Mr. Pooler believes this value was determined due to the Township telling the appraiser the lots are not buildable.

Mr. Pooler was cross examined by Attorney James Preston, representing Lower Nazareth Township.

Mr. Pooler stated he is a general contractor doing mostly residential work and does not typically get involved with the subdivision process.

Attorney Preston question Mr. Pooler about non-conforming lots and what that means.

Attorney Preston asked Mr. Pooler if he was aware of the merger provision in the Zoning Ordinance. The merger provision addresses lots that are undersized and owned by one person must be merged.

Testimony was provided and exhibits presented for the township regarding the deeds and ownership of the (5) adjoining lots. Attorney Preston stated that these (5) properties owned in a single deed and were separated into (5) lots. He suggested Mr. Pooler is not entitled to the requested relief. Discussion followed.

Attorney Preston question Mr. Pooler regarding due diligence before he purchased the lots. Attorney Preston presented Exhibit #T-11, a letter from Lori Seese dated September 25, 2017. Mr. Pooler was questioned on the letter. It was noted that Mr. Pooler did not appeal the determination of this letter.

Exhibit #T-12, a deed for 381 Truman Lane, was initially presented and then withdrawn.

Attorney Preston question Mr. Pooler on a lot he purchased in the Colts Run subdivision. Mr. Pooler sold a lot/house package for \$550,000. The purchase price for the land was \$167,000 with on-lot septic.

Attorney Piperato questioned Mr. Pooler about any existing improvements on the properties, which were none. Mr. Pooler stated each lot has a power hook-up and water stubs. Permits issued to date were outlined.

Mr. Pooler sated he found out about Township's interest when he closed on the property.

A 10-minute recess was taken at 7:50 p.m.

Testimony was provided by Roger Lehmann, of All-County Associates, Owner and SEO for 33 years. Mr. Lehmann was retained to do soil testing and prepare a design.

Soil testing was done in July 2020 in conjunction with Chris Noll, Lower Nazareth Township Sewage Enforcement Officer (SEO). They identified (2) areas for the lot, a primary and secondary bed. Mr. Lehmann explained the requirements for submission pursuant to PA Title 25 Chapter 72.

Mr. Lehmann stated he is aware of septic systems in the floodplain, particularly the Delaware River. Sewage disposal systems are not permitted in a floodway but are allowed in a floodplain pursuant to PA Title 25 Chapter 72.

Mr. Lehmann stated the proposed absorption area is an elevated bed. It will go under water if the flood waters cover it. When the water recedes, the septic system will still operate. He stated there are no issues with the system operating on this particular lot.

Manny Changalis questioned whether the septic system would be compromised if the mound is a foot under water for a few days. Mr. Lehmann stated it would be compromised and there would not be any leakage.

Steve Nordahl question whether there would be a back charge into the home due to the surcharge of the water on top of the drain field.

Mr. Lehmann stated there would not be any back charge due to pressure distribution of the system. Mr. Nordahl pointed out that during a flood the whole property is under water and is saturated. It will be mixing and discharging into the flood water.

Manny Changalis noted that this property floods a few times a year. The water lakes there sometimes for days on end.

Michael Gaul asked who hears the appeal of a decision made by an SEO? Mr. Lehmann stated it would be heard by the Local Agency- Board of Supervisors. Mike inquired if there is a consequence if the time period is not complied with? Mr. Lehmann there is no deemed approval. An applicant would appeal a denial to a local agency.

Mike Gaul question if this is not the proper forum to a get a reversal, then what is to be done about it? They are here for an appeal from the Floodplain Ordinance.

Attorney Preston cross-examined Mr. Lehmann.

Mr. Preston asked Mr. Lehmann about the water quality classification of the Delaware River, which he did not know. Mr. Lehmann did agree some water systems have higher water quality value.

Testimony about the floodplain, the two lots under construction, and the subject lot was provided. The two lots under construction are not within the floodplain. However, Lot L6-10-1B-8 and the proposed septic system are in the floodplain.

Mr. Lehmann stated it is his opinion as an SEO that the Township must accept the application even if the local ordinance precludes it. He does not believe you can adopt regulations more stringent than DEP.

Manny Changalis announced the intention to adjourn at 9:00 p.m.

Civil Engineer Jason Bailey provided testimony.

Mr. Bailey provided testimony regarding this knowledge of the Floodplain Ordinance and the requirement for variances. He stated the mound for the septic system is 2700 cu feet of material which will cause a small impact in consideration of the overall picture. He stated the septic system will have a minimal effect on the base flood elevation.

Manny Changalis asked Mr. Bailey if he knew how deep the water is on that lot when it floods. Mr. Bailey stated it is a little over 2 feet. Manny stated he knows it's more than that.

Mr. Bailey stated it doesn't matter since the FEMA floodplain elevation is 353 feet.

Discussion followed regarding the size of the proposed sand mound and flood elevations.

Steve Nordahl questioned those heights with regard of the street elevations. He questioned where the flood can get to with the house itself.

Mr. Bailey stated he was only present to discuss the septic system, so he does not have any of that information.

Steve Nordahl stated that the elevations are average, but they can be a lot higher.

Discussion continued about the flood elevations, the proposed septic and house. Steve Nordahl questioned wouldn't that raise the floodplain substantially? Mr. Nordahl questioned how that would affect the drain field and mound?

Mr. Bailey stated that the mound is separated from the rest of the system by a pump.

Jim Preston questioned Mr. Bailey regarding the size of the mound and its volume. Mr. Preston questioned the intent of a septic system and what it would serve.

Michael Gaul pointed out that a septic system is accessory to something else – it is not a primary use.

Attorney Piperato stated that they do not deny that they will have to go thru the approval process for a Building Permit. He suggested the Township allow the SEO to review the septic design.

Attorney Preston that the Township cannot expect the SEO to review a permit application for a use that is not permitted. It is an inane request.

Extensive discussion followed regarding procedures.

Attorney Preston stated that the use prohibition is in the Floodplain Ordinance not the Zoning Ordinance. The relief must be sought from the Floodplain Ordinance.

It was agreed to continue the hearing to April 6, 2021. Attorney Piperato agreed to waive all time frames according to the PA Municipalities Planning Code or the Zoning Ordinance.

The meeting adjourned at 9:20 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.***