

Covington Township Zoning Hearing Board
Unofficial Summary for Nammo Pocal, Inc. Variance Hearing
August 26, 2020

Members present: Chairmen Adelaide White, Vice Chairman Glenn Khoury, Roslyn Davis, Thomas Quinnan (alternate), Attorney Brian Yeager. Absent: Charles Raziano (alternate)

Also present: Secretary Melinda Musso, Court Stenographer Michelle Smolskis

Public attendance: Joseph Heppding, General Manager at Nammo Pocal, Inc.; Randy Carter, R&D Manager at Nammo Pocal, Inc.; Daniel Barone, Operations Manager at Nammo Pocal, Inc.; George W. Parker, PE/PLS, consultant to Nammo Pocal, Inc.; Jesus E. Cruz; Dominick Esoro; Ronald Donati, Zoning Officer; David Lamm, Building Inspector (Name as per sign in sheet.)

The August 26, 2020 public hearing of the Covington Township Zoning Hearing Board was called to order with the Pledge of Allegiance at 6:34 p.m. by Chairman Adelaide White at the Covington Township Pavilion, 20 Moffat Drive, Covington Township, PA 18444.

Chairman White announced that her family has a small building business in which approximately five or six years ago they did a purchase order with Nammo Pocal for \$10,000.00. They had completed their work and received payment on time. There has been no further business since then. Attorney Yeager asked if anyone had any problems with what was announced, and no one replied.

Attorney Brian Yeager gave a brief explanation of the hearing and asked Melinda Musso, Secretary, to read all Board exhibits into the record as follows:

1. Application for Hearing, dated 7-13-2020, with the following attached documents:
 - Zoning Permit Application - date of application 7-10-2020 (unsigned)
 - Zoning Permit Application – dated 2-28-2020, denied on 3-11-2020 & referred to Zoning Hearing Board
 - Letter from George W. Parker, Registered Engineer to Covington Township Supervisors - dated 5-15-2020
 - Letter from George W. Parker, Registered Engineer to Covington Township’s Zoning Hearing Board, Zoning Officer, Planning Commission and Supervisors, dated 5-15-2020, with attachments A through G listed in the letter, but there is no Attachment F included.
2. Map dated 1-22-2020, Final Lot Consolidation Plan for Land of Nammo-Pocal, Inc. stamped by Mendola & Associates P.C. This map is unsigned and is the same as Attachment A to the letter of 5-15-2020, but it is a larger and clearer copy.
3. Letter of Authorization dated August 19, 2020 from Joseph Heppding, General Manager at Nammo Pocal.

4. Zoning Permit #20-2018, Approved on 8-14-2018
5. Notice to applicant, Nammo Pocal, Inc., dated August 11, 2020, with an attached copy of the public notice.
6. Proof of Publication - Legal Advertisement as requested in The Tri-County Independent on August 13, 2020 & August 20, 2020.
7. Notice to adjacent property owners, dated August 11, 2020.
 1. John M. Murphy
 2. Dominick Esagro, Jr.
 3. Ralph & Norma Reyes
 4. Octavio Collado & Keila Figueroa
 5. Julio A. & Kathryn B. G. Ramos
 6. Mark D. & Deborah A. Oristaglio
 7. Jesus Cruz
 8. John W. & Randi B. Schlotterer
 9. Parvez & Shaeesta Khan
 10. Covington Lakes Estates, LLC
 11. Elsie M. & William J. Shaffer
 12. Williams Garden Center, Inc.
 13. Daryl E. & Dana Timek
 14. David A. & Martha R. Osborn
 15. Dolores L. & Deborah A. Marcell
 16. FR E2 Property Holding, LP
First Industrial Realty Trust
8. Property posting Thursday, August 13, 2020 by Township employee, John Bauman.
9. Letter from Zoning Board Solicitor emailed to all members – dated August 21, 2020.
 - This letter describes multiple Exhibits that were sent to the Board.
 - The only Exhibit, that is not mentioned in the above list, is Exhibit D to this letter which is a copy of the First Industrial Minor Subdivision filed in the Office of the Recorder of Deeds for Lackawanna County on November 13, 2009 in Book 6AM page 6630.

Attorney Yeager asked if anyone would like to look at the Board exhibits or make any objections. No one responded.

George Parker, sworn in, and presented the Board with a large map that Attorney Yeager advised would be marked as Applicant Exhibit #1. Attorney Yeager advised that Board Exhibit #3 authorizes Mr. Parker to speak on behalf of Nammo Pocal, Inc. at this hearing.

Mr. Parker advised Nammo Pocal is the company name that is comprised of two companies that joined together. Properties owned by both companies are trying to join two deeds. They intend to submit a subdivision plan and construct buildings but has been curtailed temporarily until the Zoning Officer get a decision from the Zoning Hearing Board tonight.

Mr. Parker pointed out the Pocal property and the property purchased by Nammo. Once they are joined, it will be known as Nammo Pocal, Inc. He advised permits were submitted to construct three buildings, one is an assembly building with the others are being utilized for storage. Mr. Parker advised the building being spoken about for the hearing is identified as building 3E on the map where part of the building is within the setback area.

Mr. Parker explained during construction of building 3E, issues with grade, ground, and foundation. At that time, it was decided in the field to move the building. Upon moving the building, those didn't know where the actual property lines were since it was not set by the surveyors, however, it was not done intentionally. Once the discovery was made, they attempted to join the properties together and at that time, the zoning officer would not approve the application due to intrusions on the setbacks. The intrusion into the setback area is 14 feet and the setback line is 75 feet away from the property line. The building does not go onto anyone else's property.

Ms. Davis asked what will be stored in this building. Mr. Parker advised fuses for military ammunition will be stored there. Ms. Davis asked if they are flammable to which Mr. Parker advised yes and explained some protocols governed by the Department of Defense.

Vice-Chairman Khoury asked if the size of the structure stayed the same when the building was moved. Mr. Parker advised the building size was the same and explained they were prefabricated and shipped to the site.

Chairman White asked how far the building was moved. Mr. Parker stated 14 feet.

Mr. Parker is asking for permission to leave the building where it is at since a concrete foundation was poured, the steel structure is erected, however, there isn't any electric in it yet because they stopped construction as directed.

Ms. Davis asked what the difference in lot coverage was notated on the two applications, one says less than 10% and the other states 50%. Mr. Parker was not able to answer that question since the original application was not submitted by him. Ms. Davis asked why the structure was not moved to a different area within the 50-acre parcel. Mr. Parker advised the company wanted to keep the three buildings together.

Chairman White asked if their problem was due to rocks or was it the incline and Mr. Parker advised that both were issues. White asked why the engineer did not know that before construction and Mr. Parker advised the spot was not really looked at until the trees were cleared.

Mr. Parker referred to the adjacent property owned by FR E2 First Industrial, shown as attachment B to his letter. He pointed out the PPL distribution line and the Amazon building. He advised the Amazon building is at a 50 foot higher elevation and advised that due to this elevation, no one can build near that property line due to the 150-foot setback at the powerlines, therefore, there is a distance from their building.

Mr. Parker referred to Exhibit D. and pointed out the area in blue as a total of 115 acres that can not be developed as per the approved subdivision plan on the adjoining property, therefore the likelihood of any other building coming close would not happen.

Mr. Parker advised it is only one corner of the building and not the entire side that intrudes on the setback area. Ms. Davis asked Mr. Parker to identify where the front and rear areas were of the building on the map.

Chairman White asked when the building was partially constructed. Mr. Parker replied approximately one year ago.

White asked Mr. Parker that if the setback is 100 feet and originally, the drawings submitted showed this building to be at least 150 feet away from the property line, according to the application in 2018, then you are now 61 feet from property line? Mr. Parker replied yes. Chairman White stated the building moved almost 100 feet and not just 14 feet. Mr. Parker said if you move the setback line then you would need to add another 25 feet. Chairman White said this was from 2018 and at that time there are two different parcels of land. She stated that all the drawings are proposed by Pocal. Chairman White asked if she went to the recorder of deeds office right now, what would she see. Mr. Parker advised she would see two different deeds for these parcels. Ms. White stated she understands what the stated intention is, but right now we have a parcel with a setback of 100 feet and the building is over 39 feet in that area than should be.

Khoury asked when the lands will be joined and Mr. Parker stated since technically Nammo Pocal is one company that owns the land, there is not a formal deed combining them as one tax payment or identification number. Khoury asked if there is a timeframe to combine the two parcels and Mr. Parker advised as soon as they can go back and get them to combine them. White asked what has been holding it up. Mr. Parker responded this issue is due to the zoning officer denying the application for not having the proper setbacks. White asked if the company is one legal entity that owns both parcels and Mr. Parker answered yes.

Mr. Parker stated if they do not get relief, then they either have to dismantle the building or cut part of the building away and is asking to grant them this variance. Chairman White asked if anyone looked at the estimated cost of correcting the issues and Mr. Parker advised the estimated cost is \$30,000 to remove a portion of the building.

Attorney Yeager asked how tall the building is and Mr. Parker advised at the peak it is approximately 23 feet.

Ms. Davis advised she had questions for Mr. Donati. Ronald Donati, Zoning Officer was sworn in. Ms. Davis asked him if on the date of application 2-28-2020, it was filled out with setbacks listed and it was denied for not meeting setbacks and yet these are the proper setbacks listed for M1 and asked where the discrepancy is. Mr. Donati stated that when the paperwork came across his desk, it was previously filled out by the former zoning officer and he just started recapping everything back to November. He saw it was set up for a 100-foot setback, however when it came in he couldn't approve it because there was only a 75 foot setback being shown in the drawings. Mr. Donati advised after numerous phone calls with engineers and everyone else, the land behind this building was originally offered to Covington Township for nothing because it is a conservation area and First Industrial didn't want anything to do with it. He stated that because of this, the chance of building in that area behind the building is slim to none.

Ms. Davis questioned there is no clear application or documentation that clearly states what the setbacks currently are? Mr. Donati advised they are on the plan but not the application.

Chairman White clarified that there are two separate lots with an approved permit that shows a rear setback 100 feet. Mr. Parker confirmed. Chairman White stated there's also a proposal to combine these two lots from Nammo Pocal that shows this area as a side setback & therefore, the setback would be changed 75 feet. Mr. Parker confirmed.

Mr. Quinnan questioned a 10 acres piece of property on the map (attachment E) is not a buildable area because it is conservation area? Mr. Donati said it is a SC Zone. Mr. Parker confirmed. Mr. Donati then

stated that land was never deeded over to Covington Township by First Industrial due to issues with the Lackawanna County Corridor and flooding from what he understands.

There were no further questions. Board recessed at 7:35 p.m.

Hearing resumed at 8:18 p.m. Attorney Yeager advised there were issues the Board found they needed to resolve as the result of this hearing:

1. If building 3E is a principal permitted use of the storage building
2. The property line presently part of the Pocal lot with a bearing of S 53° 57'34 is a rear property line for the parcel with a setback of 100 feet.
3. Should a variance be granted for the 39 feet for building 3E

The vote on these three issues:

Glenn Khoury: Votes to grant the variance, building 3E is a permitted storage building and the property line is a 100-foot setback.

Roslyn Davis: Advised she would like to say something. You cannot come to the Zoning Hearing Board with documentation that you present as facts when actually it's a proposal. The building in question, when looking at everything, was 200 feet originally and it is now 61 feet. You tried to present that it was only moved 14 feet when it's actually 139 feet. I am not comfortable with the subterfuge of prior documentation, the discrepancies in your paperwork, and the clear disrespect of the Zoning Office by trying to circumvent the process. I therefore vote no on all three issues.

Addelaide White: I vote that it is a 100 foot setback, it's a principal permitted use, and on the premise that I trust we will not see Nammo Pocal in here again for violations of Zoning Ordinances after the fact, and I vote to allow the variance of building 3E 39 feet.

Attorney Yeager advised he has 45 days to process the written decision. The written decision is the final binding decision. After the written decision is given, anyone can appeal that decision for 30 days. It is not final until these two steps are taken.

Motion to adjourn (Davis), seconded (White) and carried at 8:22 p.m.

Respectfully submitted,
Melinda Musso, Secretary

This is not the official record of the public hearing.
The stenographer's record is the official record.

APPROVED: _____

Date: _____