

**ZONING HEARING BOARD OF WARWICK TOWNSHIP
BUCKS COUNTY, PENNSYLVANIA**

Docket No. 19-03

Applicant: Costa Homes, Inc.
665 Amalie Court
Southampton, PA 18966

Owner: Adam and Karen Sailor
2429 Sunnyside Lane
Sarasota, FL 34239-4712

**Subject
Property:** Tax Parcel Nos. 51-001-007 and 51-001-007-001, which are located at 2195 and 2199 Warwick Road, Warrington, PA 18976.

**Requested
Relief:** Applicant has received conditional preliminary/final land development approval for a seven (7) lot subdivision on two (2) existing lots with combined base site area of 6.619 acres. The Warwick Township Zoning Ordinance (“Ordinance”), §195-16.B(1)(a)[4][a][iii] requires, that in “Subdivisions or land developments of five lots or less: The developer shall provide a contribution to the Township Park and Recreational Fund in the amount of \$5,000 per new building lot.” Applicant seeks an interpretation, from the Zoning Hearing Board, that this provision applies as opposed to applying §195-62.B(4), which allows a fee-in-lieu of preserving the open space, in the amount of 100% fair market value of the open space required, but not set aside. In the alternative, applicant seeks a variance from both provisions. Applicant further seeks a variance from §195-62.B(1)(a) to permit common open space to include more than 70 percent of natural resources protection area.

**Hearing
History:** The application was filed in Warwick Township on July 3, 2019. The hearing was held on August 6, 2019 at the Warwick Township Administration Building, 1733 Township Greene, Jamison, PA 18929.

Appearances: Applicant by: John A. Torrente, Esq.
Begley, Carlin & Mandio, LLP
680 Middletown Boulevard
P.O. Box 308
Langhorne, PA 19047

Mailing Date: September 20, 2019

DECISION

FINDINGS OF FACT:

1. The Zoning Hearing Board of Warwick Township met the requirements of the Zoning Ordinance, the Municipalities Planning Code, and other relevant statutes as to legal notice of the hearing held.

2. The Applicant is the equitable owner of the Subject Property, pursuant to an Agreement of Sale, dated November 21, 2018, and therefore possessed of the requisite standing to make application to this Board.

3. The Subject Property is located in the RR, Restricted Residential Zoning District of Warwick Township.

4. By decision circulated September 18, 2015, owner of the Subject Property obtained zoning relief to permit the 7 lot subdivision, converting 2 existing lots into 7, consistent with a Preliminary Subdivision and Land Development Plan prepared by Holmes Cunningham LLC, dated June 30, 2015.

5. On or about March 21, 2016, owner obtained conditional preliminary/final plan approval of the "Sailor Property Subdivision" dated June 30, 2015, last revised February 22, 2016, prepared by Holmes Cunningham LLC, subject to conditions.

6. Relevant to the present application, one of the conditions of preliminary final approval was "3. The Applicant shall contribute to the Township a fee-in-lieu of the required Active Open Space and Common Open Space in an amount required by the Township."

7. The Subject Property is currently under Agreement of Sale between the Owner (Sailor) and the Applicant (Alvaro Costa; "Costa").

8. Costa intends to develop the property consistent with the approved plan, but upon attempt to do so has identified additional areas of relief necessary as indicated in the "Request for Relief" section of the present decision.

9. Applicant's engineer, Kristin Holmes, PE, testified to confirm that the Applicant was pursuing development consistent with the approved plans, as revised. The revision speaks to how the open space is identified and characterized. The revised plan treats common open space as a separate lot.

10. The revised plan shows open space comprised of predominantly woodlands and a pedestrian easement. As a result, 92% of the open space is woodlands.

11. Applicant justifies placement of the open space within the woodlands as the most practical location on site. Further, placement provides for convenient access by residents for the pedestrian access from the cul-de-sac and separates the common area from each of the separate residential lot areas.

12. Applicant anticipates that the open space lot will be owned by a home ownership association (HOA).

13. Zoning Officer, Ashley Casey, testified that the Warwick Township Board of Supervisors reviewed the application and request at a public meeting on July 15, 2019, and suggested a fee-in-lieu of the required open space in the amount of \$7,500 for each of the 6 new building lots (not applied to the one existing residential lot remaining).

14. Nearby property owner Glenn VanFossen, 2161 Warwick Road, indicated that he is a 50 year resident and he is not in favor of the relief requested by the Applicant.

CONCLUSIONS OF LAW:

1. The Subject Property has been approved for subdivision and land development consistent with a March 21, 2016 preliminary/final approval.

2. Applicant requests additional relief in order to develop consistent with the approved plan, as revised.

3. Applicant's request for zoning relief, in the present matter, requires technical application of the fee-in-lieu of open space provisions of the Ordinance.

4. The Warwick Township Zoning Hearing Board has considered Applicant's interpretation of §195-16.B(1)(a)[4][a][iii] and concludes that the Applicant's requested interpretation shall not be applied. Instead, the Zoning Hearing Board considers §195-62.B(4) applicable to the present matter.

5. The Applicant has credibly established that strict application of §195-62.B(4) results in a fee greater than appropriate under the unique circumstances of this matter. In conjunction with Warwick Township, the Applicant has agreed that a fee-in-lieu

of providing 100% of the required open space, in the amount of \$45,000, for the creation of 6 new building lots, is fair and reasonable.

6. The Zoning Hearing Board further accepts the Applicant's representation regarding placement of the open space in natural resource area, and considers same practical and reasonable. Accordingly, the Zoning Hearing Board is convinced that a variance from §195-62.B(1)(a) shall be granted.

7. The competent evidence presented leads the Board to conclude that, if the variance relief is granted, there will be no negative impacts upon surrounding properties or uses.

8. The evidence establishes that the relief sought by the Applicant is the minimum variance necessary.

9. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located.

10. The Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variance requested.

11. Accordingly, the Warwick Township Zoning Hearing Board determined, unanimously, to grant in part and deny in part the Applicant's request for relief, as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Warwick Township Zoning Hearing Board hereby GRANTS in part and DENIES in part the Applicant's request for relief from the Warwick Township Zoning Ordinance:

1. The Warwick Township Zoning Hearing Board DENIES the interpretation that §195-16.B(1)(a)[4][a][iii] applies, instead of §195-62.B(4).

The Warwick Township Zoning Hearing Board GRANTS the following variances:

1. from §195-62.B(4), to allow fee-in-lieu of providing the maximum required open space in the amount of \$45,000 consistent with the July 31, 2019 memo prepared by the Township Zoning Officer;
2. from §195-62.B(1)(a), to permit the required common open space to be comprised of 92% natural resources protection area, as opposed to the 70% allowed.

The relief herein granted is subject to compliance with all other applicable governmental ordinances and regulations.

**ZONING HEARING BOARD OF
WARWICK TOWNSHIP**

/s/ Kevin J. Wolf
Kevin J. Wolf

/s/ Dave Mullen
Dave Mullen

/s/ Lorraine Sciuto-Ballasy
Lorraine Sciuto-Ballasy

IMPORTANT NOTE: Pursuant to §195-115 and §195-116 of the Warwick Township Zoning Ordinance, variances or special exceptions granted by the Zoning Hearing Board shall expire one (1) year from the date of the Decision, unless the applicant or owner or successor in interest has commenced construction within that time. Construction will be deemed commenced upon the issuance of a building and/or zoning permit for the approved use.