

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

Docket No. 19-04

Applicant: Foxlane Homes at Warwick Mill, LLC
1243 Easton Road, Suite 205
Warrington, PA 18976

Owner: Same.

Subject Property: Tax Parcel No. 51-010-024-031, which is located at 10 Pettit's Bridge Road, Jamison, PA.

Requested Relief: Applicant seeks to erect a fence within a storm drainage easement on the Subject Property. Fences are prohibited within storm drainage easements by §195-16.B(12)(f)(5) of the Warwick Township Zoning Ordinance ("Ordinance"). Applicant seeks a variance accordingly.

Hearing History: The application was filed in Warwick Township on July 8, 2019. The hearing was held on August 6, 2019 at the Warwick Township Administration Building, 1733 Township Greene, Jamison, PA 18929.

Appearances: Applicant by: Gia Raffaelli, Esq.
Foxlane Homes
1243 Easton Road, Suite 205
Warrington, PA 18976

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, Foxlane Homes at Warwick Mill, LLC, is the Owner of the Subject Property and therefore possessed of the requisite standing to make application to this Board.

3. The Subject Property is located in the O, Office Zoning District of Warwick Township, under a present B3 Village House Use.

4. The Subject Property is known as Lot 31 of the Warwick Mill subdivision, 10 Pettit's Bridge Road, Tax Parcel No. 51-010-024-031.

5. The Warwick Mill subdivision is a 40 lot development.

6. Mr. Joe Morrissey, testified in support of the application. Mr. Morrissey is experienced in land development, marketing and building. He has been involved in the building and land development business for 20 years. He is a principal in Foxlane Homes which is a residential developer.

7. Mr. Morrissey provided some history of the Warwick Mill subdivision. Mr. Morrissey indicated that the plan was originally developed and constructed by Ryan Homes. Ryan completed 13 homes, then Foxlane Homes bought the remaining 27 lots. A home ownership association is in place for common area maintenance.

8. Mr. Morrissey discussed a plan prepared by Van Cleef Engineering, titled Owner's Acknowledgement Plan for Warwick Mill, dated June 6, 2017, last revised March 13, 2019. Mr. Morrissey referred to the plan as the "Easement Plan". The plan illustrates the stormwater management for the subdivision, including wetlands, basins and drainage easements, among other stormwater practices.

9. Lot 31 of the plan is an interior lot within the subdivision. On the lot is a portion of the storm sewer easement. The easement protects an underground stormwater drainage system with surface grates. The drainage system collects storm surface water from the surrounding properties and allows the water to flow along the rear lot lines of the Subject Property and adjacent properties, then along side lot lines, eventually running under Ryans Mill Road to a wetland basin identified on the plan.

10. Mr. Morrissey characterizes Lot 31 as unique in that it is the seventh smallest lot in the subdivision and does include the storm grate and easement in the rear corner of the lot.

11. The purchasers of Lot 31, Mr. and Mrs. Taylor, prefer to have a fenced rear yard. The proposed fence conflicts with the easement in the rear corner of the lot.

12. In order to address the conflict, Foxlane Homes has proposed a 4 foot high faux wrought iron removable fence placed diagonally across the easement portion of the rear lot. The easement area in question is 10 feet in depth and 19.12 feet in width as measured from the rear lot line and side lot line respectively. The length of the diagonal piece of fencing is on the order of 20 feet. The removable 20 foot section is not to be affixed to the ground within the easement area.

13. Despite the testimony of Mr. Morrissey, the Zoning Hearing Board finds that the property at issue does not present unique physical features justifying a structure within the storm sewer easement area. The storm sewer easement is designed to collect stormwater from multiple properties, including the Subject Property, and the storm sewer easement runs along several of the properties throughout the subdivision.

14. The Board acknowledges Mr. Morrissey's testimony regarding the challenges in designing a marketable single-family dwelling. However, the Zoning Hearing Board is not convinced that the marketing efforts would be substantially hindered by the easement in the corner of the rear yard, or the inability to fence the entire rear yard. Further, the consideration of the builder's business model is not determinative of the hardship issue.

15. In that the storm sewer and storm sewer easement on Lot 31 are located at the originating point of the storm sewer collection system at issue, the Board finds that allowing a structure within the easement may reduce the effectiveness of the system.

16. The Board finds that the Applicant may construct a fence within the rear yard without encroaching on the 10' x 19.12' easement in the rear corner.

17. The Board does not consider the diagonal, removable fence section a viable alternative. In fact, the Board does not believe that a 20 foot suspended, removable section will function properly.

18. Warwick Township took no formal position with regard to this application.

CONCLUSIONS OF LAW:

1. The Subject Property is a lot which supports a single-family dwelling within a 40 lot subdivision known as Warwick Mill.

2. The Owner's Acknowledgement Plan for Warwick Mill (Easement Plan) illustrates the stormwater management plan and facilities for the Subject Property and the development in general.

3. A note on the plan reads as follows, "no person should place any structure, ...within a drainage easement which would limit or alter the functioning of the stormwater facility or BMP without the written approval of the Township."

4. §195-16.B(12)(f)(5) of the Ordinance reads as follows:

Drainage swales/easements. No fence, retaining wall or other structure shall be erected or maintained upon any drainage easement, swale...Fences may be erected in sewer easements or easements for underground storm sewer facilities only with written permission of the holder of the easement...

5. Applicant requests a variance from §195-16.B(12)(f)(5).

6. Warwick Township is the holder of the easement.

7. The Zoning Hearing Board concludes that the variance relief requested will alter and substantially or permanently impair the effectiveness of the stormwater drainage system designed and approved as part of the Subdivision and Land Development Plan.

8. The Zoning Hearing Board concludes that no hardship has been presented to justify the request for zoning relief.

9. The Zoning Hearing Board concludes that a fence may be constructed, enclosing the rear yard of the Subject Property, in conformity with the provisions of the Ordinance, and therefore the variance requested is not necessary to enable the reasonable use of the property.

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

ORDER

Upon consideration and after hearing, the Warwick Township Zoning Hearing Board hereby DENIES Applicant's request for a variance from §195-16.B(12)(f)(5) of the Warwick Township Zoning Ordinance to permit placement of a fence within a drainage easement.

**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