

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

Applicant: Shihadeh Contracting, LLC
2357 Tohickon Lane
Warrington, PA 18976

Owner: Same.

Subject Property: Tax Parcel No. 51-003-062 and 51-003-072-001, which is located at 1549 Stony Road in Warwick Township.

Requested Relief:

Applicant seeks to construct 13 (thirteen) B-1 single-family custom homes on the subject site. The site is currently comprised of two separate parcels with a combined total site area of 20.40 acres. In order to facilitate the project as proposed, applicant seeks the following variances from the Warwick Township Zoning Ordinance (“Ordinance”):

1. from Article III, §195-16.B(1)(a)[4][a][i], to permit a variance from the requirement of active open space for subdivisions of 10 or more B1 Single Family Dwelling lots;
2. from Article VIII, §195-31.B, to permit the C9 Municipal use (proposed pump station) to be constructed on a lot containing 0.48 acres, or 20,875 sq. ft., where the minimum lot size requirement is 1.0 acre, to permit a lot width of 130 feet where the minimum lot width requirement is 150 feet, to permit a front yard setback of 35 feet where 50 feet is required, and to permit a rear yard setback of 35 feet where 50 feet is required;
3. from Article XIX, §195-60.C.(1), C.(2), and C.(3), to permit disturbance of: more than 40% of the 8%-15% steep slopes on the property, more than 30% of the 15%-25% steep slopes on the property, and more than 15% of the steep slopes greater than 25% on the property;
4. from Article XIX, §195-60.D.(1), to disturb more than 10% of the “woodlands located in environmentally sensitive areas” on the property, than permitted by the Ordinance;

5. from Article XIX, §195-60.D.(2), to disturb more than 20% of “other woodlands areas” on the property, than permitted by the Ordinance;
6. from Article XIX, §195-61.A(1), to permit the minimum individual lot buildable area to encroach into natural resources areas to a greater extent than would be allowed by §195-60, if variances (3), (4), and (5) above were not granted, or, in the alternative, to confirm that §195-61.A.(1) does not impose any natural resource protection standards applicable to individual lots as distinguished from the site as a whole;
7. from Article XIX, §195-62.B(1)(a), to permit common open space to include more than 70% natural resource protection areas;
8. from Article XIX, §195-62.B(2)(a), to permit a variance from the requirement of active open space where the Ordinance requires that active open space be generally flat, dry and clear of any trees or other vegetation;
9. from Article XIX, §195-62.B(3)(c), to permit private ownership of open space that is not used for agriculture.

Hearing

History:

The application was filed in Warwick Township on May 18, 2020. The hearing was held on August 4, 2020 at the Warwick Township Building, 1733 Township Greene, Jamison, PA 18929.¹

Appearances:

Applicant by: John A. VanLuvanee, Esq.
Eastburn and Gray, PC
60 E. Court Street
P.O. Box 1389
Doylestown, PA 18901

Mailing Date:

September 18, 2020

¹ Applicant was provided with an Act 15 notice, among other things, notifying Applicant that the hearing timeframes under MPC §908(1.2) were tolled or suspended as a result of the COVID-19 emergency declaration. Applicant further signed a waiver of the first hearing timeframes to accommodate the stay at home orders and social distancing protocols of the COVID-19 health emergency.

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 following exhibits were marked and admitted during the hearing held:

ZHB Exhibits:

ZHB-1: Original application filed May 18, 2020 with attachments.

ZHB-2: June 26, 2020 amendment with revised addendum, revised site plan (Cornerstone Consulting Engineers, May 14, 2020, last revised June 16, 2020) and “blowup view of pump station”.

ZHB-3: Legal advertisement (proof of publication; posting; mailing).

ZHB-4: Act 15 Notice and Waiver of MPC §908(1.2) 60 day hearing timeframes agreeing to August 4, 2020 hearing date.

ZHB-5: Warwick Township Zoning Ordinance.

ZHB-6: Letter drafted by Warwick Township Solicitor, Mary Eberle, Esquire, dated June 30, 2020, proposing three conditions in the event the Zoning Hearing Board grants relief.

Applicant Exhibits:

A-1: Letter dated June 26, 2020 from John VanLuvanee, Esquire to Warwick Township Zoning Hearing Board (same as ZHB-2).

A-2: Deed dated October 23, 2018 in favor of Shihadeh Contracting, LLC.

A-3: Deed dated October 14, 2004 in favor of Yorkfield Construction Company, Inc.

- A-4: Affidavit of Richard Skuzinsky (Principal of Yorkfield Construction identifying an August 4, 2020 Agreement of Sale in favor of Shihadeh Contracting, LLC).
- A-5: Excerpt from Act 537 Plan-Summary of Waste Water Treatment Needs.
- A-6: Letter dated June 30, 2020 from Mary C. Eberle, Esquire (Solicitor to Warwick Township) to Thomas E. Panzer, Esquire (Solicitor to Warwick Township Zoning Hearing Board) with copy to John A. VanLuvanee, Esquire (counsel to Applicant), and others.
- A-7: Existing features plan.
- A-8: Google Earth aerial photo, February 2019.
- A-9: Google Earth aerial photo, April 1992.
- A-10: Google Earth aerial photo, December 2002.
- A-11: Site plan overlay on 2002 aerial.
- A-12: Site plan overlay on 2019 aerial.

3. The Applicant is the Owner of Lot 1, Tax Map Parcel 51-003-062 (Exhibit A-2), the equitable Owner of Lot 2, Tax Map Parcel 51-003-072-001 (Exhibit A-3), and therefore possessed of the requisite standing to make application to this Board.

4. The Subject Property is located in the RR, Restricted Residential Zoning District of Warwick Township. The total site area is 20.40 acres. Of that acreage, a total of 16.04 acres is in one of the resources for which a protection ratio is required. Of the remaining 4+ acres that are not characterized by one or more natural resources, those areas are scattered throughout the site. The property gradually slopes from Stony Road on the north to the south. The southern portion of the site is predominantly woodlands.

5. Applicant seeks to construct 13 (thirteen) B-1 single-family custom homes on the Subject Property. The plan includes providing means for connecting multiple properties, off site, to public sewer, at the Applicant's expense. Other improvements include expanding Breton Hill Drive, which connects to Bristol Road, essentially parallel to Stony Road, to the Subject Property terminating in a cul-de-sac sufficient to support emergency vehicles. 8 of the 13 homes are proposed to take access from the Breton Hill Road extension and cul-de-sac the other 5 lots are to take access directly to Stony Road. In order to reduce curb cuts along Stony Road, Applicant has proposed that four of the lots share two driveways, and the fifth lot driveway is located as far as practicable from the nearest driveway supporting the proposed development.

6. The majority of the existing homes on Breton Hill Drive (between Bristol Road and the Subject Property) have failing on-lot sewage systems (9 of 13 are failing). As part of the proposed development, the Applicant has been in consultation with Warwick Township regarding sanitary sewage needs. The Applicant represents that Warwick Township prefers a pump station to support the proposed 13 lot development, and a gravity system to support the existing Breton Hill properties (located on the current stub street which is to be extended).

7. The existing Breton Hill Drive stub street is a dedicated road with a 17-19 foot cart way (it varies). Applicant will widen and improve the stub street as part of the development, and while acknowledging the Township's proposed condition of widening the street by four (4) feet, would like to make the resulting road width uniform.

8. In order to facilitate the project as proposed, Applicant seeks the aforementioned variances from the Warwick Township Zoning Ordinance.

9. In addition to the testimony offered by John Shihadeh, Principal of Shihadeh Contracting, LLC, Applicant presented the testimony of Anthony T. Brunkan, P.E., Engineering Project Manager for Cornerstone Consulting Engineers and Architectural, Inc. Mr. Brunkan has general land development experience and has been a licensed professional engineer for the past 9 years. Mr. Brunkan provided testimony as to the technical aspects of the aforementioned land development plan and commented upon the plans prepared by Cornerstone Consulting Engineers and Architectural, Inc., including revisions dated June 16, 2020. Mr. Brunkan spoke in terms of the 20.40 gross site area, and the 19.48 acres base site area. He also spoke regarding the natural resource areas which cover a considerable portion of the Subject Property.

10. Mr. Brunkan referred to the existing features plan in discussing the areas of the site covered by natural resources and thereby requiring protection and zoning relief. (See Exhibit A-7). Mr. Brunkan also explained how the Google Earth aerial photographs from April 1992 through December of 2002 reflect the previous use of the property for cultivation, thereby representing previous earth disturbance of some of the natural resource areas.

11. Applicant requests a variance from §195-16.B(1)(a)[4][a][i], requiring a minimum of 5 acres of open space for each 100 units or fractional percentage thereof, where the subdivision is 10 lots or more. The section further provides for not less than 2.5 acres of open space. Applicant requested a variance in that the site does not contain a portion of 2.5 acres that is free of natural resources which satisfies the requirements of active open space as set forth in 195-62.B(2)(a).

12. Applicant requests a variance from §195-31.B to permit a pump station (Use C9), which will be owned and operated by the Warwick Township Water and Sewer Authority, to be constructed on a lot containing 0.48 acres, or 20,875 square feet, where the minimum lot size requirement is 1.0 acre, to permit a lot width of 130 feet, where the minimum lot width requirement is 150 feet, to permit a front yard setback of 35 feet, where 50 feet is required, and to permit a rear yard setback of 35 feet, where 50 feet is required. Applicant suggests that the property supporting the pump station is a

response to request by Warwick Township to provide the sanitary sewer for not only the proposed development, but also the failing existing on-lot systems along Breton Hill Drive. Further, Applicant points to the subject tract being predominantly covered by protected natural resources, thereby driving the reduced lot size and dimensional variance requests.

13. Applicant requests variances to permit disturbances of the various steep slopes, woodlands, and other woodland areas. Applicant argues that the slopes in question, especially those less than 15% have been historically used for agricultural purposes, and have therefore have been altered and disturbed on a regular basis, thereby mitigating the significance of the “natural resource”. In addition, Applicant asserts that the steeper slopes represent manmade slopes, and thereby mitigate the significance of the “natural resource”.

14. With respect to woodland variances, the Applicant suggest that the variance requested with respect to “environmentally sensitive woodlands” is *de minimis* because the woodlands at issue comprise only 0.1 of an acre. Other woodland disturbance is necessitated by the pump station located in consultation with the Warwick Township Water and Sewer Authority.

15. Applicant seeks variances from the open space requirements. Applicant asserts that no portion of the site meets the criteria for the active open space requirement. As such, Applicant is unable to provide an amount not less than 6.40 acres of open space in one contiguous parcel.

16. Nearby property owner John Sinisi, 1465 Stony Road, expressed concerns regarding the driveway proposed in closest proximity to his property. Mr. Sinisi indicated that the driveway may pose a safety issue in that it is in close proximity to a bend in Stony Road. Mr. Sinisi also expressed concern regarding stormwater drainage from the property. He also expressed concern regarding a walking trail shown on the subject plans. Mr. Sinisi was advised that his comments were best directed to the planning process which follows.

17. Mary McCoog, 1451 Breton Hill Drive, expressed concerns regarding the street widening along Breton Hill Drive, the responsibility for maintaining the pump station property, and the maintenance and location of the stormwater basins. Ms. McCoog was advised that those issues are best addressed during the planning process which follows.

18. Zoning Hearing Board Members expressed concern regarding lack of a home ownership association to manage the stormwater facilities, as well as the integration of the stormwater management into private lots, and the wooded open space being incorporated into one of the private lots. The ZHB expects these issues to be vetted during the planning process.

19. No one requested party status.

20. Warwick Township took a position with regard to this application by way of the letter authored by Township Solicitor Mary C. Eberle, Esq., dated June 30, 2020.

CONCLUSIONS OF LAW:

1. The Subject Property has been developed and used consistent with the requirements of the Ordinance.

2. Applicant has requested multiple variance requests to support the proposed development.

3. The ZHB concludes that Applicant has failed to meet the legal standard for granting a variance from Article XIX, §195-62.B(3)(c), which prohibits private ownership of required open space which is not used for agriculture. That variance request is denied.

4. The ZHB concludes that, with regard to the other requests for relief, Applicant has presented sufficient evidence to warrant the grant of the variances requested, subject to the attached conditions and order. To this end, the ZHB concludes that the need for zoning relief is driven largely by the physical features of the property at issue, including the volume and nature of “steep slopes”, and the location of the existing “woodlands”.

5. 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. To this end, the ZHB is mindful that Applicant must proceed through the land development process where issues including final lot layout, open space parameters, driveway access, stormwater management, and related issues will be addressed.

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

7. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located. Surrounding uses are predominantly single family residential. The proposed use is of similar residential character.

8. Accordingly, the Warwick Township Zoning Hearing Board determined, unanimously, to grant the Applicant’s request for relief, in part with conditions, as set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Warwick Township hereby GRANTS the Applicant's request for relief from the Warwick Township Zoning Ordinance to construct 13 (thirteen) B-1 single-family custom homes on the Subject Property generally consistent with the Zoning Site Plan prepared by Cornerstone Consulting Engineers and Architectural, Inc., dated May 14, 2020, last revised June 16, 2020, in part, and DENIES in part.

The following requested relief is GRANTED:

1. from Article III, §195-16.B(1)(a)[4][a][i], to permit a variance from the requirement of active open space for subdivisions of 10 or more B1 Single Family Dwelling lots;
2. from Article VIII, §195-31.B, to permit the C9 Municipal use (proposed pump station) to be constructed on a lot containing 0.48 acres, or 20,875 sq. ft., where the minimum lot size requirement is 1.0 acre, to permit a lot width of 130 feet where the minimum lot width requirement is 150 feet, to permit a front yard setback of 35 feet where 50 feet is required, and to permit a rear yard setback of 35 feet where 50 feet is required;
3. from Article XIX, §195-60.C.(1), C.(2), and C.(3), to permit disturbance of: more than 40% of the 8%-15% steep slopes on the property, more than 30% of the 15%-25% steep slopes on the property, and more than 15% of the steep slopes greater than 25% on the property;
4. from Article XIX, §195-60.D.(1), to disturb more than 10% of the "woodlands located in environmentally sensitive areas" on the property;
5. from Article XIX, §195-60.D.(2), to disturb more than 20% of "other woodlands areas" on the property;
6. from Article XIX, §195-61.A(1), to permit the minimum individual lot buildable area to encroach into natural resources areas to a greater extent than would be allowed by §195-60;
7. from Article XIX, §195-62.B(1)(a), to permit common open space to include more than 70% natural resource protection areas; and
8. from Article XIX, §195-62.B(2)(a), to permit a variance from the requirement of active open space where the Ordinance requires that active open space be generally flat, dry and clear of any trees or other vegetation.

The following requested relief is DENIED:

1. from Article XIX, §195-62.B(3)(c), to permit private ownership of open space that is not used for agriculture.

The relief granted is subject to conditions:

1. The Applicant shall construct a sewage pump station; capable of accommodating sanitary sewer flows from the proposed new dwellings as well as the existing houses on Breton Hill Drive.
2. The Applicant shall construct a gravity-fed sewer main to serve all existing houses on Breton Hill Drive, and shall provide individual laterals, stubbed at each residence on Breton Hill Drive.
3. The Applicant shall widen the existing Breton Hill Drive by four (4') feet, shall perform base repairs as determined by the Township Engineer, and shall perform a full-width mill and paving overlay of Breton Hill Drive.
4. Applicant shall comply with all other applicable governmental ordinances and regulations.

**ZONING HEARING BOARD OF
WARWICK TOWNSHIP**

By: /s/ Kevin J. Wolf
Kevin J. Wolf

/s/ Dave Mullen
Dave Mullen

/s/ Lorraine Sciuto-Ballasy
Lorraine Sciuto-Ballasy