

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

Docket No. 17-08

Applicant: York Road-Bladco, LP
c/o Paul Aschkensay
300 Conshohocken State Road
West Conshohocken, PA 19428

Owner: Same.

Subject Property: Tax Parcel Nos. 51-003-089, located at 2059 York Road, and 51-003-089-002, located at 2029 York Road, in Warwick Township, PA.

Requested Relief: The Applicant proposes a 78 townhouse residential development pursuant to the Performance Standard Development requirements of the Warwick Township Zoning Ordinance (“Ordinance”) and requests the following variances in order to do so as proposed¹:

1. from §195-16.B.3.g.1.c, to permit a building coverage on an individual townhouse lot in excess of the permitted 50%;
2. from §195-16.B.3.k.1, to provide less than the required 5 acres of open active space;
3. from §195-16.B.3.k.2.f.i and §195-16.B.3.k.2.f.ii, to permit an impervious surface coverage ratio, prior to occupancy, of greater than 65% and, after occupancy, of greater than 75%;
4. from §195-16.B.3.1, to permit less than the required mix of 2 dwelling types within the proposed Performance Standard Development;

¹ During the hearing held January 2, 2018, Applicant was questioned regarding additional need for zoning relief. In response, the Applicant requested that the Zoning Hearing Board interpret the Ordinance such that an underground detention facility is not a structure prohibited under the open space required within the PRD. In the alternative, Applicant requested a variance to allow the underground detention facility described to be located under the active open space identified in the Zoning Plan.

5. from §195-60.D.2, to permit disturbance of greater than 20% of woodlands which are not located in environmentally sensitive areas;
6. from §195-60.C.1, to permit disturbance of greater than 40% of 8-15% steep slopes;
7. from §195-60.C.2, to permit disturbance of greater than 30% of 15-25% steep slopes; and
8. §195-60.C.3, to permit disturbance of greater than 15% of 25% or more steep slopes.

Hearing

History:

The application was filed in Warwick Township on November 6, 2017. The hearing was held on January 2, 2018 at the Warwick Township Administration Building, 1733 Township Greene, Jamison, PA 18929.

Appearances:

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

Additional Party: Warwick TVC-ARC, LP
329 South Main Street
Suite B
Doylestown, PA 18901

Mailing Date:

February 9, 2018

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 Owner of the Subject Property and therefore possessed of the requisite standing to make application to this Board. Technically, York Road-Bladco, LP is the Fee Simple Owner of Tax Parcel No. 51-003-089-002 and one-third Fee Simple Owner and two-thirds Equitable Owner of Tax Parcel No. 51-003-089 & 51-003-089-001.

3. The Subject Property is located in the C3, Commercial/Multifamily Zoning District of Warwick Township. It is presently not being completely utilized, but does continue to carry “improvements”, including manmade swales and mounds, and multiple greenhouse structures in various states of repair, as well as a smokestack structure with approved cellular telecommunications facilities located thereon (see ZHB Decision dated October 26, 2000, Exhibit A-21). The property is informally known as the “Fetzer Tract”.

4. The Zoning Hearing Board marked and admitted the following exhibits:

ZHB-1: Application dated November 6, 2017, received by Warwick Township on November 6, 2017, with attachments including an addendum identifying relief requested;

ZHB-1A: Zoning Plan, dated November 6, 2017, prepared by Bohler Engineering.

ZHB-2: Proof of publication and notice of hearing on two occasions in paper of general circulation;

ZHB-3: Proof of posting notice of hearing;

ZHB-4: Proof of mailing notice of hearing; and

ZHB-5: Warwick Township Zoning Ordinance.

Applicant Exhibits: A-1 through A-32, which will be addressed throughout this Decision.

5. Party status was requested and granted to Warwick TVC-ARC, LP, by and through Thomas Verrichia, Managing Partner. Warwick TVC-ARC, LP owns the adjacent

property immediately to the south of the Subject Property, located at 1937 York Road, Jamison, PA.

6. Applicant presented the testimony of Daniel S. Bleznak, President of American Development Company.

Mr. Bleznak is also a partner in York Road-Bladco, Owner of the properties at issue as indicated above (see Exhibits A-1 and A-2). Mr. Bleznak has been involved with the Subject Property since 2007. At that point in time, he initially proposed a large retail development for the 27 acre site (net lot area 27.266 acres) with frontage along State Route 263, also known as York Road in Warwick Township (see Exhibit A-26).

Between 2007 and 2012, Mr. Bleznak was attempting to develop the large retail development. After multiple efforts and plans, Mr. Bleznak indicates that he was requested to revisit the nature of the plans. In 2012 and 2013, York Road-Bladco evaluated how to redevelop the property using the B3 Performance Standards contained within the Warwick Township Zoning Ordinance. Mr. Bleznak has prepared various plans considering single-family homes, townhomes, and twin homes. He considers the plans generally consistent with Warwick Township Comprehensive Plan Update (2007) (see Exhibit A-3).

Mr. Bleznak initially developed a plan for a 149 unit residential development, which Mr. Bleznak considered consistent with the Comprehensive Plan (see Exhibit A-4). Staff reviewed the plan and did not recommend same (see Exhibit A-5). The Planning Commission further commented upon the plan (see Exhibit A-6).

Mr. Bleznak then prepared a plan for 102 townhouse units in May 2015 and alternatively 144 townhouse/apartment units (see Exhibits A-7 and A-8). While the mixed use plans did not meet the “dwelling mix” as required in the Ordinance, Township staff took “no exception to this variance.” (see Exhibits A-9 and A-10).

As a result of the additional Township comment, York Road-Bladco, LP further revised the plans to a 98 townhouse unit plan. Staff review of the plan found no objection with the lack of mixed dwelling unit use (see Exhibit A-12). The subsequent Planning Commission review in August of 2015 further indicated no opposition to all townhomes (see Exhibit A-13).

Applicant further revised the plans to provide for 80 townhomes (see Exhibit A-14, a Townhouse Sketch Plan, last revised November 14, 2016). Staff reviewed the revised plan (see Exhibit A-15). The Warwick Township Board of Supervisors reviewed the revised plan during a January 16, 2017 Township meeting (see Exhibit A-16). The Applicant further revised the Site Plan through a Zoning Plan prepared on November 6, 2017, identified as Zoning Plan. The Plan called for 78 units in response to the most recent request by the Township (see Exhibit A-17 and ZHB-1A).

Minutes from the November 20, 2017 Supervisors meeting reflected that the Board of Supervisors remained neutral with regard to Applicant's request for zoning relief, but asked for revisions to the Plans, especially with regard to access from York Road to the Subject Property (see Exhibit A-18).

Applicant again revised the Plan through Overall Site Plan dated December 21, 2017, depicting changes to the site access from York Road.

Mr. Bleznak further discussed the current site conditions which included the former Fetzer greenhouses in poor repair, boiler rooms, a smokestack/chimney structure adjacent to the boiler rooms, and rundown garages (see Exhibit A-20, photographs taken December 21, 2017).

Mr. Bleznak communicated his understanding of the cell tower use approved by the Warwick Township Zoning Hearing Board, on October 26, 2000, emphasizing that the cellular communications use may continue "only for so long as the chimney structure exists on the premises".

Mr. Bleznak did discuss the current physical features of the property including the farm pond, which is to be preserved; the overgrown fence rows; fences in disrepair or no longer identifiable; scrub trees and brush where the fence rows previously existed; and, manmade drainage swales and mounds.

7. Mr. John Hornick of Bohler Engineering, testified on behalf of the Applicant. Mr. Hornick is the Project Manager for the Subject Property, he is a Professional Engineer, licensed in the states of Pennsylvania and New Jersey. He has been licensed in Pennsylvania since 2005 (see Exhibit A-22).

Mr. Hornick identified an aerial photograph circa 1938, of the Subject Property. The photograph shows greenhouses, a few trees, but no woodlands or ponds (see Exhibit A-23).

Mr. Hornick compared the 1938 photograph to a 1971 aerial photograph. The 1971 aerial photograph showed more greenhouses, but also illustrated pronounced fence rows, scrub growth, and a pond area adjacent to Route 263 (see Exhibit A-24).

Mr. Hornick also identified an aerial photograph taken in March 2017, essentially representing existing conditions as previously described by Mr. Bleznak.

Mr. Hornick indicated that the revised plan identified as Exhibit A-26 reflects a single change from ZHB-1A; only with regard to change of location of the driveway providing access from York Road. Mr. Hornick testified extensively regarding Exhibit A-26, which he characterized as a revised plan based upon the most recent Supervisors Meeting in December 2017.

Mr. Hornick testified regarding technical aspects of the proposed plan and the proposal's relationship to the requirements of the Warwick Township Zoning Ordinance. Mr. Hornick emphasized that the proposed gross site area is 27.7 acres (21 acres net). The minimum site area required under the Performance Zoning Standards is 10 acres. The maximum number of dwelling units allowed under the B-3 Performance Standards for the Subject Property is 146 units. Applicant has proposed 78.

With regard to the required 5 acres of active open space, Mr. Hornick suggested that the sliding scale contained within the Ordinance with regard to active open space as it speaks to developments greater than 100 units, actually serves to the detriment of proposals under 100 units, because under 100 units does not have a sliding scale, and instead requires a flat 5 acres. With that observation made, Mr. Hornick described the Applicant's attempts at compliance with the active open space requirement and the non-active open space requirements. He further indicated that the property contains a considerable buffer yard which may be considered as part of the open space requirement, consistent with §195-63 of the Warwick Township Zoning Ordinance.

Mr. Hornick testified extensively regarding Exhibit A-27, the Open Space Plan. The Plan highlights common open space, active open space, and the 50 foot buffer. Mr. Hornick emphasized that the 50 foot buffer is on the order of 5.06 acres of the Subject Property including buffer adjacent to required open space. Mr. Hornick characterized the combination of active and common open space as equaling 9.6 acres, or 35% of the base lot area.

Mr. Hornick testified that the combination of active open space, common open space, and buffer, is 14.73 acres, representing 54% of the base lot area. In addition, an additional 1.4 acres represents above ground detention basins bringing the total theoretic or visual "open space" to 16.13 acres, or 59.17% of the gross property area.

Mr. Hornick discussed Exhibit A-29, the Applicant's "Woodland Removal Exhibit". Mr. Hornick characterized the areas identified as "woodlands" as scrub growth overgrown within the manmade fence rows. While the Applicant has requested relief from the "Other Woodlands" provisions of the Ordinance, the Applicant considers the areas identified as "woodlands" as manmade.

Mr. Hornick discussed the "steep slopes" through Exhibit A-30, Applicant's "Steep Slopes Exhibit" in short, Mr. Hornick opined that there are no "steep slopes", on site. All steep slopes identified as being on site are manmade drainage ditches, storage tank ditches, stockpiles of soil, and edges of ponds. The Applicant intends to remove the drainage ditches and stockpile mounds.

8. The discussion regarding active open space led to a further discussion regarding Applicant's proposal to place an underground stormwater management facility under the active open space. The Board inquired whether Applicant was seeking a further variance for such relief. Applicant indicated that it did not request a variance from that provision and saw no need for same. Nonetheless, at the Board's request, the Applicant

amended its application to include a request for variance from §195-9 (the definition of open space), to allow the underground detention facility to be placed under active open space, or in the alternative an interpretation that the underground stormwater management facility is not a structure requiring zoning relief.

9. Nearby property owners inquired of the Plan. Mr. Gary Schmidt, 2039 Meetinghouse Road, and Ms. Jane Scarborough, 1635 Yorktown Road, both spoke. Topics included the Meetinghouse Road exit directly across from the dwelling at 2039 Meetinghouse Road. Applicant indicated that land development details, including buffering and screening traffic impacts, would be addressed during the land development phase.

10. Warwick Township remained neutral with regard to the request for zoning relief, but did request certain conditions and plan changes, as further reflected through the present Decision.

CONCLUSIONS OF LAW:

1. The Subject Property has been developed and used for residential, commercial and agricultural uses, subject to the October 26, 2000 Warwick Township Zoning Hearing Board Decision (allowing a cellular telecommunications facility on site, with conditions).

2. Applicant has demonstrated a 10 year history of proposing plans for development, responding to Township feedback regarding proposed development, and most recently attempting to comply with the substantial provisions of the Warwick Township Zoning Ordinance, and the B-3 Performance Standards. Applicant currently requests multiple technical variances in conjunction with a proposed plan reflecting considerably less density than that allowed under the Ordinance.

3. 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. In fact, the Applicant has established that the proposed use is consistent with the Warwick Township Comprehensive Plan update of 2007 (Exhibit A-3).

4. The evidence establishes that the relief sought by the Applicant is the minimum variance necessary. The Board further acknowledges that Applicant has demonstrated, with regard to this particular property, that manmade features present the steep slopes and other woodlands requiring zoning relief.

5. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located. In fact, the proposed land development is generally consistent with the Warwick Township Comprehensive Plan.

6. The Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional and technical variances requested.

7. Accordingly, the Warwick Township Zoning Hearing Board determined, unanimously, to grant the Applicant's request for relief, as is set forth hereafter, subject to conditions.

ORDER

Upon consideration and after public hearing held, the Warwick Township Zoning Hearing Board hereby GRANTS the following variances from the Warwick Township Zoning Ordinance in order to permit the construction of a 78 townhouse residential development pursuant to the Performance Standard Development requirements of the Warwick Township Zoning Ordinance, as depicted in Exhibit ZHB-1A (Zoning Plan, dated November 6, 2017), as modified through Exhibit A-26 (Zoning Plan, revised December 8, 2017):

1. from §195-16.B.3.g.1.c, to permit a building coverage on an individual townhouse lot in excess of the permitted 50%;
2. from §195-16.B.3.k.1, to provide less than the required 5 acres of active open space;
3. from §195-16.B.3.k.2.f.i and §195-16.B.3.k.2.f.ii, to permit an impervious surface coverage ratio, prior to occupancy, of greater than 65% and, after occupancy, of greater than 75%;
4. from §195-16.B.3.l, to permit less than the required mix of 2 dwelling types within the proposed Performance Standard Development;
5. from §195-60.D.2, to permit disturbance of greater than 20% of woodlands which are not located in environmentally sensitive areas;
6. from §195-60.C.1, to permit disturbance of greater than 40% of 8-15% steep slopes;
7. from §195-60.C.2, to permit disturbance of greater than 30% of 15-25% steep slopes; and
8. from §195-60.C.3, to permit disturbance of greater than 15% of 25% or more steep slopes.
9. From §195-9, to allow the underground detention facility described by Applicant and identified on the Zoning Plans to be located beneath active open space.

The relief herein granted is subject to compliance with all other applicable governmental ordinances and regulations and the following specific conditions:

1. The driveway entrance, as reflected on ZHB-1A, will be moved to circumvent the parking lot. Applicant must also place landscaping around the parking lot to block the view from the driveway entrance.
2. The townhomes shall be limited to a maximum of two stories in height.
3. Except for the driveway change identified above, the submitted plan must be substantially similar to the plan prepared by Bohler Engineering, revised as of November 6, 2017, identified as ZHB-1A through the pending zoning application. The Zoning Hearing Board acknowledges that Exhibit A-26, the December 8, 2017 revised Zoning Plan, is Applicant's attempt at compliance, subject to review by the Township and its professionals.

**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.