

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

Docket No.	16-03
Applicant:	Prime Development Group 1670 Meetinghouse Road Hartsville, PA 18974
Owner:	Prime Development Group 1670 Meetinghouse Road Hartsville, PA 18974
Subject Property:	Tax Parcel No. 51-15-24, which is vacant lot located in the RR, Rural-Residential Zoning District of Warwick Township.
Requested Relief:	The Applicant has received variances in order to construct a single-family home on the Subject Property but requests an additional variance from §195-64 of the Warwick Township Zoning Ordinance (“Ordinance”) in order to be relieved of the tree replacement provisions of that section.
Hearing History:	The application was filed in Warwick Township on January 8, 2016. The hearing was held on February 2, 2016 at the Warwick Township Administration Building, 1733 Township Greene, Jamison, PA 18929.
Appearances:	Applicant by: Michael J. Savona, Esq. Eastburn and Gray, PC 60 E. Court Street P.O. Box 1389 Doylestown, PA 18901
Mailing Date:	February 23, 2016

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.

3. The Subject Property is located in the RR, Rural-Residential Zoning District of Warwick Township. It is 29,520 square feet in size.

4. The Subject Property was created as a lot, identified as Block G, Lot 3 on a Subdivision Plan of Germinal Colony Association, dated November 7, 1931, received into evidence as Exhibit B-1.E. It has been held in single and separate ownership since then. The evidence establishes that lots within the Germinal Colony Subdivision have been developed, since their creation, as single-family homes on lots of varying sizes.

5. The Applicant proposes to construct a single-family home on the Subject Property. In addition to construction of the home on this property, it will be constructing homes on two adjacent and/or nearby tax parcels, namely TPN 51-15-13 and TPN 51-15-22, along with roadway improvements and stormwater management facilities in the area that contains these three properties.

6. The area for development by Prime, depicting these three lots, was received into evidence as Exhibit B-1.D.

7. On September 18, 2015, in its Decision received into evidence as Exhibit B-1.E, the Warwick Township Zoning Hearing Board granted a number of variances to enable development of the Subject Property as a single-family detached dwelling.

8. The relief granted included the following:

- a. a variance from §195-9, to permit the creation and existence of a lot that does not have frontage on a public street;
- b. a variance from §195-16.B.1.a.2, to permit the construction and use of the property as a single-family dwelling on a lot that is less than 1 acre in size;
- c. a variance from §195-60.C.1, to permit disturbance of up to 100% of steep slopes in the 8-15% range, instead of the maximum permitted disturbance of 40%;

- d. a variance from §195-60.C.2, to permit disturbance of up to 61% of steep slopes in the 15-25% range, instead of the maximum permitted 30%; and
- e. a variance from §195-60.D.2, to permit disturbance of up to 75.7% of the woodlands on the property, instead of the maximum permitted 20%.

9. The Applicant's land development testimony was presented by Larry Byrne, PE, who was qualified to testify as an expert in civil engineering. He was retained by the Applicant to prepare the plans presented to the Board in this and the other two related applications.

10. Byrne established that since obtaining the zoning relief set forth above, he identified an additional zoning provision from which relief is necessary, specifically, Ordinance §195-64, which mandates reforestation requirements when an owner proposes to remove more than 20% of woodlands on a property.

11. This Ordinance section contains the formula necessary to determine the number of trees to be reforested, specifications for replacement trees, and their location.

12. Specifically related to this application, §195-64.F requires that "Replacement trees may be dispersed throughout the proposed development only when approved by the Board of Supervisors."

13. The word "development" is defined at Ordinance §195-9 as: "Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, ...filling, grading, paving, excavation..."

14. Additionally, §163-11.B of the Warwick Township Subdivision and Land Development Ordinance defines a "development" as: "any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, ...streets and other paving, utilities, ...filling, grading, excavation..."

15. Byrne testified that, on October 26, 2015, he and Bryan McAdam, the Township Engineer from CKS Engineers, met at the site and investigated the woodlands on the Subject Property. They agreed that, pursuant to Ordinance §195-64, 585 caliper inches of trees would be removed, requiring 118 replacement trees.

16. The calculations to determine that number of replacement trees are set forth in Exhibit A-1, a report prepared by Mr. Byrne, dated October 27, 2015.

17. That report establishes that the total number of replacement trees is based on a representative area applied to the maximum permitted disturbed woodland area from the Zoning Hearing Board Decision, as agreed between he and the Township Engineer.

Byrne further states, in that report that: “The final number of replacement trees may be based on the actual area of woodland disturbance and the location of individual trees. For example if the final disturbed area is less or existing trees that were assumed to be removed can be saved then the number of replacement trees will be less.”

18. Byrne testified that it is not physically possible or feasible to replace the number of required trees on the Subject Property and that, therefore, an agreement with the Township Board of Supervisors per Zoning Ordinance §195-64.F will be required in regards to the location and number of replacement trees.

19. Byrne could not testify, with any degree of certainty, as to the number of replacement trees that may be replanted on the Subject Property and, accordingly, this Board determines that any relief granted to the Applicant in this matter shall be conditioned upon compliance with a tree replacement plan as to the number and location of trees to be determined by the Board of Supervisors pursuant to §195-64.F.

20. Kyle Seckinger, the Warwick Township Assistant Manager and Zoning Officer, testified that the Township expressed no opposition to the variance request provided that the Board of Supervisors determine the number and location of replacement trees to be dispersed.

CONCLUSIONS OF LAW:

1. The Subject Property is lawfully nonconforming to the minimum lot area requirement of 40,000 square feet set forth at Ordinance §195-16.B.1.a.2. It is 29,520 square feet in size.

2. The proposed use of the Subject Property is as a single-family detached dwelling, a use that is permitted by right in the RR Zoning District.

3. The Subject Property has been held in single and separate ownership since its creation on the Subdivision Plan of Germinal Colony Associates, dated November 7, 1931.

4. The Subject Property is virtually covered in woodlands and the Applicant has evidenced that the proposed development limits woodlands disturbance as much as is possible, given required compliance with other applicable ordinances and regulations.

5. The Applicant proposes to construct single-family dwellings on two adjacent and/or nearby lots in the Germinal Colony Subdivision, identified as TPN 51-15-13 and TPN 51-15-22.

6. Based upon the evidence received, the Board concludes that the construction of the single-family homes on the three lots proposed constitutes a development as defined in both Ordinances.

7. The natural features that burden the Subject Property create a hardship that precludes permitted development.

8. The disturbance of woodlands that exist on the Subject Property is necessary to enable construction of a home that is comparable in size, and consistent with, other homes in the neighborhood.

9. Ordinance §195-64 requires reforestation and, based upon the competent evidence presented by the Applicant's engineer, the number of replacement trees requires is 118 trees.

10. The evidence presented was unclear as to the number of trees that can be replanted on the Subject Property or in Prime's related development of it to other parcels.

11. Accordingly, this Board is unable to determine the number of trees that should be replanted and determines that decisions regarding the number and location of the necessary replacement trees lie within the jurisdiction of the Warwick Township Board of Supervisors pursuant to Ordinance §195-64.F.

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

13. Once the Board of Supervisors determines the number and location of trees to be replaced, the Board concludes that the relief sought by the Applicant is the minimum variance necessary.

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

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

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

ORDER

Upon consideration and after hearing, the Warwick Township Zoning Hearing Board hereby GRANTS a variance from §195-64 of the Warwick Township Zoning Ordinance in order to reduce the number of trees required to be replaced on the condition that the Applicant prepare and submit a tree replacement plan acceptable to the Warwick Township Board of Supervisors as to the number and location of replacement trees required. Said relief is further subject to all conditions of approval imposed in Exhibit B-1.E (Township Docket No. 15-08).

Lastly, the relief herein granted is subject to compliance with all other applicable governmental ordinances and regulation.

ZONING HEARING BOARD OF WARWICK TOWNSHIP

/s/ Dave Mullen

Dave Mullen

/s/ Lorraine Sciuto-Ballasy

Lorraine Sciuto-Ballasy

/s/ Joseph Thiroway

Joseph Thiroway

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.