

no critical areas on the property. Most of the property drains to the rear where there is storm drainage pipe. All the drainage patterns that currently exist will be maintained. The eastern property line has an existing swale that discharges the water to the inlet in the rear. The Delaware Raritan Canal Commission deemed the proposal exempt, the Somerset County Planning Board had no comments and the Somerset Union Soil Conservation District will review the application and submit a letter.

Mr. Schmidt did a quick overview of the neighboring properties and found that the proposal is comparable with what currently exists in the neighborhood. The lot size is similar to the adjacent properties.

Mr. Schmidt referenced the architectural plans prepared by Ralph Finelli. The house will be a 4 bedroom 2.5 bathroom house that is 3,134 square feet. The height is 32' 6". The house is setback 77' from the right-of-way to maximize the usable rear yard area. There are two pine trees that will have to be removed but the house has been set on the lot to maximize the number of trees to remain. The applicant will work with Mr. Bartolone to save as many trees as possible. A reserve septic field is being provided on the western portion of the property. The applicant will plant 14 shade trees as required by the ordinance. A landscape plan will be provided at the time of building permit once the placement of the house is finalized. The applicant will post an inspection escrow for Mr. Bartolone's review. Mr. Schmidt read the variances and/or waivers listed in the Coppola and Coppola report dated May 10, 2012. The house shown on the building plans complies with the Township Building Codes. The property meets the use and setback requirements of the Township Ordinance. The proposed construction is similar to other homes in the neighborhood and provides adequate light air and open space.

Ms. Lamar discussed the negative criteria and read from the Coppola and Coppola memo. The applicant will comply with the conditions in the memo. Ms. Lamar discussed Mr. Bartolone's memo dated May 9, 2012. The applicant will comply with the conditions in the memo.

Ms. Lamar discussed the Open Space Committee memo dated May 11, 2012. The memo requests the applicant to provide sidewalk along the frontage of the lot. Mr. Schmidt did not feel the installation of the sidewalk was appropriate in this location. Sunset Road does not have sidewalk except for the three lots adjacent to the subject lot and in the area around Elm Drive. The ordinance requires the installation of sidewalk but the Board can waive the requirement if there is good cause shown. The new development under construction across the street (Westwinds) is not installing sidewalk along the Sunset Road frontage. The installation of sidewalk along the frontage of the subject lot will not create a link. There is a ditch along the common property line between Lots 20 and 21 so it would be difficult to install a sidewalk since there is no curbing. The frontage of the subject lot has vegetation that screens the property from the roadway which will have to be removed if the sidewalk is installed. The applicant requests that the installation of sidewalk not be required but it is ultimately the Board's decision.

Mr. Petraske asked questions about the sidewalk. Mr. Schmidt opined that the link will never be completed. Burnt Hill Road has a macadam pathway that goes from the parking lot of the Upper Middle School to the intersection of Sunset Road. Mr. Coppola said the internal roads of the Westwinds Development have sidewalk but the frontage roads do not.

Mr. Coppola discussed the history of the grandfathering clauses.

Chairman Walker noted that it looks like the old house was closer to the road than the new house so the setback is now being met. If the owner had decided to add on to the house he could have without zoning relief as long as it met the R-1 standards.

Mr. Cline showed the Board photos of the site that he took.

Mr. Drill and Mr. Schmidt discussed whether the waiver for the 205' circle is really a variance. Mr. Drill opined that it is a variance. The applicant will not object if it is noted in the resolution as a variance.

Mr. Cline asked Mr. Schmidt if the applicant would be willing to trim back the brush at the driveway entrance to increase visibility. The applicant agreed. Mr. Cline showed that there is enough room to install a sidewalk but noted there is a 1' to 1.5' grade difference at the end of the existing sidewalk which would require the removal of a tree to run a grade compliant sidewalk. Mr. Cline asked if the applicant would relocate the gas and water lines between exiting septic and driveway to prevent the water line and septic lines from crossing in the future. The applicant agreed.

Vice Chairman Gamache asked about tree removal. Mr. Schmidt said that the trees have been located on the lot. There are two pine trees that will be removed but the maples are being saved. However, he agreed to

mitigate if additional deciduous trees are removed at a 1:1 ratio. Mr. Bartolone agreed to work with Mr. Schmidt.

Chairman Walker opened the meeting to the public.

Anne Piehl, 188 Sunset Road, was sworn in. Ms. Piehl said she is concerned with stormwater runoff. There is a lot of regrading to build up the elevation of where the house will be. There is a downward slope toward her house and also to the house to the east. There are two storm drain collectors in the rear. In the heavy rain they get overwhelmed and need to be cleaned. She asked what the consequences of the grading and elevation will be and if there could be something done in the back drain area.

Mr. Schmidt said the house is only being raised about 1'. The water runs west to east on the property and shoots to the rear of the property to the inlet. The problem exists and this proposal will not exacerbate what is already happening. The basement floor is set 1' above the mottling. The existing drainage patterns will remain.

Mr. Drift agreed that there would be no change of water with the construction of this house. The water in both the rear of the houses and water that runs along Sunset Road has to cross Sunset Road. The water gets backed up because the pipe going under Sunset Road is too small.

Ms. Piehl testified that her son walks to the Lower Middle School every day along the sidewalk. The only way to improve walkability is to take opportunities when they are there. If the sidewalk was simpler to install and did not require the removal of the tree she would want it installed.

There being no further public comment, a motion to close the public hearing was made by Mr. Sugden, which was seconded by Mr. Petraske. This was carried on the following voice call vote: Ayes (7) Nays (0)

The Board agreed that without relief the lot becomes essentially unusable. The applicant is making improvements so that it conforms more to the zoning.

The applicant requested two years to get a building permit and two years to get a C/O.

A motion to approve the application subject to conditions was made by Mr. Sugden, which was seconded by Mr. Voitach. This was carried on the following roll call vote:

Ayes: Covello, Francolini, Gamache, Petraske, Sugden, Voitach and Walker

Nays: None

The Board took a five minute recess.

Case BA-12-01/BA-03-08

Applicant: Nassau Racquet and Tennis Club, Inc.

Block 20001 Lot 6

Submission Waivers and Modification to Previously Approved Site Plan

Expiration Date – 120 Days After Submission Waivers are Approved

Affidavit of Notification and Publication Required and Previously Found to Be In Order

Ms. Covello, Mr. Francolini and Mr. Petraske stepped down. Michael Fedun, Esquire represented the applicant. The application is for a modification to an approved site plan where the applicant granted a conservation easement to the Township. Circumstances changed regarding the operation of the site that require the applicant to request a modification to the conservation easement. The conservation easement is 4.854 acres and the proposed easement will be 4.7299 acres. The change totals 0.125 acres. The purpose of the conservation easement is to provide buffering for the neighbors so the proposal includes improved buffering for the neighbors. Mr. Fedun gave a history of the applications that have been before the Board. The subject application involves solar and when a solar system is installed there is a 1 to 3 savings as far as the environment is concerned. It takes 3 kilowatts of power to get 1 kilowatt of power to the site. When looking at putting the panels on the roof they realized that some of the trees in the conservation easement were hanging over the building which lessens the efficiency of the panels. The panels are running at about 80%. The conservation easement allows for adjustments by the Township Engineer as long as it served the purposes of the easement. The purpose of the easement is to preserve trees and nature, but in this case the easement was put into place so as to prevent the expansion of the business any further. Most of the easement is critical areas and the business can't expand in that area anyway. The easement allows for passive recreation and includes some of the buffer area on one side that has the overhanging trees. Anything done at this site is a D variance so the applicant has to deal with the D variance standards of proof. The question before the Board is whether they would have granted approval if the applicant included the solar panels in the original application with the conservation area reduced by 0.123 acres. If the Board would have granted it then, it follows that the change would have to be

granted now. The change that is being requested is so de minimis and the changes made to improve the easement are good.

The applicant's witnesses and Board professionals were sworn in. The witnesses for the applicant were Tom Stearns, the applicant's landscape architect and planner, Benton Camper, applicant and President of Nassau Racquet and Michael Ford, the applicant's engineer.

Mr. Benton manages the Nassau Racquet Club. The second building was constructed to expand the range of business and income. The buffer area to the side of the building is not encumbered with critical areas. A Shading Study was performed and indicated that the panels would only operate at about 80% of their potential efficiency. The system was sized based on the previous 12 months PSE & G bills to try to accomplish 100% replacement. They could not be installed on the original building roof because the building could not structurally hold the weight of the panels. They were not installed over the parking lots because the locations of the buildings would have caused even more shading.

Chairman Walker asked what direction the panels are facing. Mr. Camper said the panels face east and west. Chairman Walker asked if the most efficient alignment is to the south. Mr. Camper said it would be but the slope of the roof and the direction the sun follows makes it about 95% what they would have been if they were due south.

Mr. Sugden asked how the 80% is being measured and asked if there is a monitoring system on the installation. Mr. Camper said the solar installation company conducted a routine shading study and were able to determine the impact of the trees. Mr. Sugden asked if the shading study was done before the installation. Mr. Camper said the final study was done after the installation. Preliminary studies were done prior to the installation. Mr. Sugden asked if they knew there would be shading when the planning and installation was done.

Mr. Coppola referenced the Solar Access and Shade Report dated November 12, 2010 prepared by Geo Peak Engineering in Somerset, NJ. The report says that the annual performance will be 80%. The panels were installed in 2011. Mr. Coppola noted that the applicant was aware of the 80% before the panels were installed. Mr. Camper agreed but explained that he had already contracted for the panels to meet deadlines to take advantage of government subsidies before the analysis. Mr. Coppola also noted that tree clearing took place when the panels were installed and the applicant agreed to install 16 dogwood trees.

Mr. Drift asked how many more trees will be removed if the amendment is granted. Mr. Camper said 13 more will be removed and replaced with evergreen trees.

Mr. Bartolone said the dogwoods were planted because they are native understory trees. A conservation easement encourages planting of native species. The trees are meant to buffer the view of the building and a shorter denser tree would be more effective.

Mr. Coppola asked about the proposed landscape buffer easement prepared by Mr. Fedun. The easement as written gives carte blanche to the landowner to thin trees, top trees and remove trees. The removal of trees will impact the carbon imprint. He asked why the language is so permissive if the representation is that only 13 trees will be removed.

Mr. Fedun responded that the easement does not permit the removal of trees but the applicant will work with the Township to tighten up the language. The applicant will agree to get input from the Township Landscape Architect with regard to the maintenance of the trees.

Mr. Drift said he would like the replacement trees to be 2.5" caliper that will be able to exist in the conditions on the site as well as some evergreens.

Chairman Walker asked who made the decision on what trees were removed. Mr. Camper said he did but it was based on a recommendation from the solar company. Chairman Walker asked when the trees were removed. Mr. Camper said it was before he spoke to the Zoning Officer.

Vice Chairman Gamache asked the applicant what the ramifications would be if the request is denied. Mr. Fedun said the applicant would probably appeal the decision. No changes to the site can be made. The panels would perform at the same level and effectiveness they are now performing at. Vice Chairman Gamache asked if the request is approved does the applicant believe that the solar panels would operate at the designed efficiency of 100%. Mr. Fedun said it would not. When the application was first submitted the request was to remove even more trees to make it 100%. With the removal of the trees now proposed it will operate at between 95-100%.

Mr. Bartolone said there would be a potential mitigation plan. He did not approve any cutting in the existing conservation easement.

Mr. Coppola read from a letter report addressed to Mr. Camper from Robert Duva with Geo Peak Energy dated December 30, 2010. There is a second letter report dated January 11, 2011.

The timeline of events is: building approval granted in 2002, building constructed in 2009, Solar Access and Shade report November 12, 2010, tree removal December 2010, December 30, 2010 letter from Duva to Camper, January 11, 2011 letter from Duva to Camper.

Mr. Drill suggested that the applicant give some sort of letter submission explaining the trees including but not limited to the 16 trees that were removed, what trees the report is talking about, and what trees are proposed to be removed.

Chairman Walker opened the meeting to the public to question Mr. Camper. There were no questions.

Mr. Ford gave the Board his qualifications as an expert engineer. Mr. Ford described a plan entitled Use Variance Site Plan with various revisions. The portion of the conservation easement proposed to be altered totals 0.12 acres and the landscaping will be changed out in that area. The deciduous trees will be removed and replaced with evergreen plantings. The evergreen trees will buffer the area year round. The proposal advances the concern of the original 2002 approval to provide an effective screen between the new building and the residences to the south. The evergreens at the time of planting will be 12' – 14'.

Chairman Walker asked if the evergreens will do well in the shade. Mr. Bartolone said evergreens typically don't do well in the shade but the building is surrounded by evergreens as required by the approval. The spruce trees have done better than the white pine trees. Hemlocks and Holly trees do better in the shade but there are insect problems with Hemlocks and Holly trees grow very slow. The landscape buffer easement will preclude the applicant from expanding the facility into that area.

Mr. Drill asked the applicant to confirm that the landscape buffer easement will prevent any building expansion in that area, that it provides for buffering of Lot 7.11 and it will give the applicant the ability to trim the top of the evergreen trees if they get too tall. Mr. Fedun agreed.

Mr. Cheskis asked if the applicant could request permission to relocate the trees rather than change the conservation easement. Mr. Bartolone replied that the existing language of the conservation easement prohibits the removal of any existing vegetation. Mr. Cheskis asked why the Board couldn't recommend to the Township Committee that the language of the easement be changed to allow one time the removal of the trees while keeping the area the same within the conservation easement. It was noted that if that is the route the applicant takes, the applicant would not be able to top trees in the future.

Mr. Stearns gave the Board his qualifications and was accepted as an expert in landscape architecture and planning. Mr. Stearns explained that the area south of the building is the area where the 16 trees were removed and is where the dogwoods were planted. The house on Lot 7.12 is 300' away from the building, the house on 7.11 is approximately 350' and the house on Lot 7.10 is over 400'. The houses on Lots 19, 6.01 and 7.08 are over 600' away. Mr. Stearns showed the Board 5 photos of the site that he took on March 23, 2012. The photos were marked as Exhibits A-1 and A-3 to A-6. A-3 is looking south toward the house on Lot 7.12. A-4 is looking west toward Lot 6.01. The photo was taken when there are no leaves on the trees and the house can barely be seen. A-5 is looking southwest. The photo shows the existing area to be cleared. None of the neighboring houses can be seen. The character of the existing trees and wooded area can be seen. A-6 is looking north and shows the building and the existing evergreen screen. A-1 is looking south toward Lot 7.12 and shows that the fence is visible but that the house itself barely visible. Mr. Stearns showed a photo simulation of the view of the existing condition from Lot 7.11.

The applicant will email copies of the photos to the Zoning Officer and will include an index.

Chairman Walker asked questions about the photos and the trees to be removed.

Mr. Drill asked if the landscape buffer could be installed such that it is high enough to screen any glint and glare coming off the panels to the people in the homes. If the applicant doesn't want to buffer the panels a glint and glare study should be submitted to show that landscaping planted at that height is not needed.

Mr. Drift asked Mr. Camper if he and Mr. Bartolone could meet with him to walk the site. He would like to see if there might be a way to save some of the trees that have a good umbrella.

Mr. Bartolone asked the applicant to provide additional information about whether trees less than 6" in caliper are being removed and if any other trees are proposed to be removed even if they are outside of the easement.

A motion to approve the submission waivers was made by Mr. Cheskis, which was seconded by Mr. Sugden. This was carried on the following roll call vote:

Ayes: Cheskis, Drift, Gamache, Sugden, Voitach and Walker

Nays: None

The application was carried to the June 19, 2012 Zoning Board meeting. Notice was in order. No further notice will be sent.

IV. MINUTES

February 28, 2012 – Regular Meeting

A motion to approve the minutes was made by Mr. Sugden, which was seconded by Chairman Walker. This was carried on the following roll call vote:

Ayes: Walker, Gamache, Drift, Sugden, Voitach and Cheskis

Nays: None

March 20, 2012 – Regular Meeting

A motion to approve the minutes was made by Chairman Walker, which was seconded by Mr. Voitach. This was carried on the following roll call vote:

Ayes: Walker, Gamache, Drift, Sugden and Voitach

Nays: None

March 27, 2012 – Closed Session

A motion to approve the minutes was made by Chairman Walker, which was seconded by Mr. Sugden. This was carried on the following roll call vote:

Ayes: Walker, Drift, Sugden and Voitach

Nays: None

There being no further business to come before the Board, the meeting was adjourned at 10:55 p.m.