

CHESTERFIELD TOWNSHIP PLANNING BOARD

December 13, 2011

The meeting of the Chesterfield Township Planning Board was called to order by Vice Chairman Malison at 7:30PM. The Open Public Meetings Act statement was read and compliance noted.

Roll call was taken showing present: Donald Coover, Lawrence Durr, Richard LoCascio, Glenn McMahon, Joseph Malison, John Nunziato, Brian Wilson, Jeremy Liedtka and Mary Acevedo. Absent: F. Gerry Spence and Lido Panfili. Professional staff present: Douglas Heinold, Solicitor; Christopher Trebisky, Township Engineer.

MINUTES

November 8, 2011 Minutes

A motion was made by Mr. Wilson, seconded by Mr. McMahon to approve the November 8, 2011 minutes. All were in favor with the exception of Mr. Durr and Mr. Nunziato who abstained. Motion carried.

RESOLUTIONS

Resolution #2011-08 was approved on a motion by Mr. Coover and seconded by Mr. McMahon. Roll Call Vote: Mr. Coover – Yes; Mr. LoCascio – Yes; Mr. McMahon – Yes; Mr. Wilson – Yes; Mr. Liedtka – Yes; Ms. Acevedo – Yes; Mr. Malison – Yes. Motion carried.

RESOLUTION NO. 2011-08

**RESOLUTION OF THE PLANNING BOARD
OF THE TOWNSHIP OF CHESTERFIELD
GRANTING MINOR SITE PLAN, CONDITIONAL USE
APPROVAL, WAIVERS, AND BULK VARIANCES TO
SHADYREST BIBLE CHURCH,
187 CHESTERFIELD-CROSSWICKS ROAD, BLOCK 502, LOT 17**

WHEREAS, Shadyrest Bible Church (the “Applicants”) have applied to the Planning Board of the Township of Chesterfield for Minor Site Plan as a permitted Conditional Use, with Waivers and Bulk Variances for property (“the Property”) located at 187 Chesterfield-Crosswicks Road, known as Block 502, Lot 17, in order permit an approximately 3,900 SF solar array to provide energy to the existing church building; and

WHEREAS, the Property is approximately 9.9+/- acres and is located within the Agricultural (AG) Zoning District; and

WHEREAS, the Applicants submitted their application pursuant to Chapter 130-144 governing solar uses and N.J.S.A. 40:55D-70.c governing Bulk Variances; and

WHEREAS, the Application is dated October 14, 2011, received on October 14, 2011, and included the following:

1. A Completed Application Form and Checklist (marked administratively by the Board as Application 2011-02);

2. A Survey of Lot 17, Block 502, prepared by French & Parello Associates, P.A., and dated September 30, 2011; and

3. A Minor Site Plan of Ground Mounted Solar Installation for Shadyrest Bible Church, Block 502, Lot 17, dated October 13, 2011; and

WHEREAS, a November 1, 2011 review letter was issued by Christopher M. Trebisky, P.E., Board Engineer; and

WHEREAS, the Applicants appeared before the Planning Board on November 8, 2011 for a public hearing on its application, which hearing was duly noticed by the Applicants in accord with the certified list; and

WHEREAS, the Applicant requested certain Waivers from submission requirements, which were outlined and recommended in the Engineer's Review Letter of November 1, 2011, and the Board, on motion by Board Member McMahon and seconded by Board Member Wilson, voted to grant said Waivers and deem the Application Complete; and

WHEREAS, the Applicants were represented by Clint B. Allen, Esquire; and

WHEREAS, throughout the course of the testimony the following additional Exhibits were entered into the record and referred to by Applicant:

A-1: Site Photographs (1-9)

A-2: Overall Site Plan

A-3: Enlarged Site Plan

A-4: Aerial Photograph of Site

A-5: Photo Location Plan

A-6: Solar Array Rendering; and

WHEREAS, the Applicants experts and representatives were sworn and testified as follows:

A. Denis F. Keenan, P.E., French & Parello Associates, P.A.

1. Mr. Keenan was qualified as an expert in the field of engineering before the Board.
2. Mr. Keenan testified as to the overall existing site conditions and proposed solar array, including a 120' x 80' fenced area.
3. The proposed solar array will include three 12' x 120' rows of panels, and the total surface area of the panels will be approximately 3900 SF.
4. The solar array will be mounted on metal posts in a racking assembly, which will provide for a limited area of disturbance as each post is approximately 6" and will be individually installed.
5. There will be no change to the grade, and storm water will not be altered. All areas disturbed in connection with the solar facility construction will be reseeded. The Easement area will be reseeded.
6. With regard to the rear yard setback a 65' setback is proposed. Testimony was provided with respect to the aerial photo and an overlay of the proposed solar array. Reference was made to an existing wooded area on both the subject property and neighboring properties, as well as a sloping terrain, that buffer the residential lots on the primary road frontage and Waln Road.
7. To the back of the property there is an existing nursery business including some trees across the property line on the subject property, and the trees are approximately 6' high.
8. Reference was made to exhibit A-1 and A-5 relative to photos of the site and a photo location map. Testimony was provided that the setbacks as stated in the current ordinance are 175' as to all sides. It was noted that upon referral from the Township committee, the board acted earlier in the evening to deem an ordinance consistent with the master plan that would reduce the setbacks.
9. The applicant requires a 103' side yard setback and a 65' rear yard setback. Testimony indicated that the pending ordinance would permit the 50' setback as to both rear and side yards, and as such the proposed site would shortly be conforming assuming ordinance passage.
10. Testimony was provided relative to the applicant's meeting of all of the conditions associated with conditional accessory use. Specifically the applicant: (1) proposed no roof structure; (2) the applicant is not exceeding accessory structure height limitations of 15' within the zone; (3) the proposed site is not a single-family dwelling, and testimony was provided that the energy provided to the church from the solar array

will be approximately 97% of the yearly energy consumption. Testimony also indicated that elsewhere in the solar ordinance farm uses within the Agricultural Zone are permitted up to 110% of the peak energy use; and (4) 10' ground mounted arrays are permitted and the Applicant proposes a height of only 6'.

11. The Applicant, during the course of testimony and questions regarding the fencing and location, agreed as a condition of approval to resolve a landscape buffer plan with the Township Engineer or designated official.

B. Mark Radcliffe, Project Manager, Dynamic Solar

1. Mr. Radcliffe testified that the sound from the cooling fans on the system will be approximately 70 dB at the location of the system. He further testified that the fans should not be heard at the property line, and the fans will not be running at night as there is not energy production when the sun is down.

2. Testimony was provided that the sole purpose of the array was to off-set other energy needs of the church facility. A brief explanation was provided relative to the Power Purchase Agreement between his company and the Applicant.

3. Testimony indicated that Dynamic Solar and the Applicant are aware of the provisions of the Township's solar ordinance with regard to solar facilities no longer in use and agreed to comply with all requirements for timely removal should that occur.

4. Applicant will maintain the fenced area, including trimming and mowing, including the gaps in between the panels of approximately 13' each.

5. The fence is required to meet electrical code requirements so that the panel circuitry is not readily accessible to unauthorized individuals, and the gate will be padlocked. A 6' black vinyl-coated chain link fence is proposed. The fence further meets the requirement of the Township's solar ordinance to secure the electrical connections and prevent a potentially unsafe condition.

6. The system was described as a 54 KW system, with the historic church use of 68,006 KW hours per year and a proposed output of 69,861 KW hours per year (equaling 97%).

7. Mr. Radcliffe advised that he had documentation that there was no significant glare associated with the panels, and stated that it is akin to a newly black-topped surface, and the Applicant agreed to produce that documentation as a condition of approval.

C. William J. Boer, P.P., A.I.C.P., French & Parello Associates, P.A.

1. Mr. Boer was qualified as an expert in the field of planning before the Board.

2. Mr. Boer testified as to each item of the accessory conditional use being met (as previously set forth above under Mr. Keenan's testimony).

3. With regard to the C(2) Bulk Variances for the rear yard and side yard setback, Mr. Boer testified that this was the ideal location for the solar array on the site because of the existing visual barriers, and that the positive criteria was met because solar energy is an inherently beneficial use under the MLUL, the purposes of the MLUL are advanced, and the proposed use is consistent with the Township's solar ordinance and pending setback amendment. Further, the location created a desirable visual environment and did not encroach or impair upon the existing historic house sitting at the front of the site. Finally, no removal of trees is required or proposed.

4. With regard to the negative criteria, Mr. Boer testified that there is no traffic, drainage or noise associated with the solar accessory use. The space is sufficient and the pending Township Ordinance will permit 50' setbacks. Further, there is existing significant vegetation to shield the array from the residential neighbors. He concluded that there was no substantial negative impact and that the Applicant has satisfied the negative criteria.

D. Stanley "Bud" Lochen, President, Shadyrest Bible Church

1. Mr. Lochen testified only briefly with regard to his role with the church and the church's longstanding good relationship with the neighbors and the community; and

WHEREAS, following close of direct testimony, the Board reviewed Mr. Trebisky's review letter of November 1st, and determined that all issues had been satisfactorily addressed by the Applicant thus far, except as to concerns with regard to buffering; and

WHEREAS, the application was opened to public comment at approximately 8:58 p.m. and public comment was received from:

1. Robert Brock, Chesterfield Tree Farm, 193 Chesterfield-Crosswicks Road Road, testified that he was not opposed to the solar use, but was concerned about the buffer to the rear and side yard. Discussion was held with regard to a provision in the solar ordinance regarding a 50' visual buffer of berms, trees, or otherwise, but determined that the buffer is only as to residential zones. Mr. Brock's Tree Farm includes visiting public during the holiday season for selection of Christmas trees, and he desired to

preserve the visual appeal of the overall site. Discussion regarding the potential for 6' high landscape buffering was held.

2. Robert Bogart, 91 Waln Road, indicated that he can see the temporary posts created to show the outline from his back deck, is not opposed to the solar array, but does not want to see it and requests visual buffering.

3. Christine Olschewski, for her father Leonard Olschewski, 93 Waln Road, indicated that they do not oppose the solar array as proposed and that even if trees were removed from their property, there are existing trees on the subject church property that would maintain the buffer. She further felt that a fence was essential to safety in order to prevent children from the church's programs or others from accessing the system; and

WHEREAS, the Board closed the public hearing at approximately 9:24 p.m. and further discussed the issues of fencing and buffering, with the applicant agreeing to resolve a buffering plan with the Township's Certified Landscape Architect, Clark, Caton & Hintz, in sufficient time that the plan would be provided to Aggie Napoleon, Board Secretary, three calendar days prior to the date of the next hearing (i.e. – December 9, 2011); and

WHEREAS, the Board after carefully considering the evidence presented by the Applicant in support of its application, and after the meeting was opened to the public for questions, comments and input, has made the following findings of fact:

1. The proposed use is a permitted conditional accessory use in the Agricultural (AG) Zoning District.

2. The Applicants' testimony was that they would construct an 120' x 80' fenced solar array, 6' high by ground mount, and the fencing would be black vinyl coated chain link, in order to provide energy to the church at 97% of the church's need during peak use.

3. With regard to the bulk variances, the Applicant testified that there was adequate visual buffering due to sloping and existing vegetation.

4. The Neighbors' testimony primarily related to the issue of buffering and sought to have some level of plantings established to soften and buffer the site lines in question.

5. The Applicant agreed to certain conditions in order to meet the stated concerns of the Board and the Neighbors.

6. The taxes on the Property are current as the property is tax exempt.

7. The Applicant has paid and/or posted all required fees and agreed to keep its review escrow current.

AND WHEREAS, based upon the above factual findings, the Planning Board has come to the following conclusions:

1. The Chesterfield Township Planning Board has jurisdiction over this application pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.

2. The Applicants' sought Minor Site Plan, Waivers, and Bulk Variances pursuant to N.J.S.A. 40:55D-70.C(2).

3. The positive criteria requires a showing that the deviation promotes the general welfare and the purposes of the MLUL. In this instance, the applicant met the positive criteria through testimony and exhibits to demonstrate that the location of the solar array is an inherently beneficial use, existing buffers from the primary road frontage and residential neighbors are in place, and purposes of the MLUL are advanced.

4. The negative criteria requires the Applicants to show that relief can be granted without substantial detriment to the public good. In this instance, the Applicant agreed to address the sole negative impacts raised by the Neighbors by agreeing, as a condition to any approval, to negotiate and institute a landscape plan with the Board's Certified Landscape Architect.

5. As such the positive outweighs the negative as the Applicant, by agreeing to added buffering, has mitigated the negative impact, and the Application should be granted.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Chesterfield, by motion of Mr. McMahon, seconded by Mr. Malison following close of the public hearing on the 8th day of November, and memorialized by this Resolution on the 13th day of December, 2011, that the application of Shadyrest Bible Church for Minor Site Plan, Waivers, Conditional Accessory Use Approval, and

Bulk Variances for the Property at 187 Chesterfield-Crosswicks Road, known as Block 502, Lot 17, in order permit an approximately 3,900 SF solar array to provide energy to the existing church building be and is hereby GRANTED, subject to the following CONDITIONS OF APPROVAL:

1. The Applicant agrees to resolve a landscape buffering plan with the Township's Certified Landscape Architect, Clark, Caton & Hintz, in sufficient time that the plan would be provided to Aggie Napoleon, Board Secretary, and the Neighbors three calendar days prior to the date of the next hearing (i.e. – December 9, 2011), and to thereafter institute same; and

2. The Applicant agrees to the removal of the solar array if it should become abandoned or inactive in accord with the terms of the Township's Solar Ordinance as they exist at the time of the hearing; and

3. The Applicant will provide documentation that the solar panels do not produce significant glare.

BE IT FURTHER RESOLVED that a certified copy of memorialization be sent via regular mail to the Applicants within ten (10) days of the date of adoption, and a copy of this Resolution shall be filed with the Township Clerk, Tax Assessor, Construction Official, and Zoning Officer. A brief notice of this decision shall be published in the official newspaper of the Township.

Resolution #2011-09 was postponed until later in the meeting.

APPLICATION FOR ACTION

Shady Rest Bible Church Inc.: Block 502, Lot 17; 187 Chesterfield-Crosswicks Road; Revised Site Plan.

Mr. Nunziato stepped down from the Board because he has worked with the Applicant's Attorney. Clint Allen of Archer & Greiner the attorney for Shadyrest Bible Church explained the revised application. The applicant was granted approve to use a chain link fence. However, if they use a chain link fence then buffering will be required. Under the resided plan, the applicant proposed a 6 foot vinyl fence. This is acceptable to the construction official for security. The applicant is willing to maintain the fence. Screening is required as per the ordinance and the fence meets this standard. Mr. Allen stated the neighbors Mr. Bruch and Mr. Bogart are ok with the revision. Mr. Allen stated that Mr. Bruch recommended softening with 18" holly bushes and the fence color will match Mr. Bruch existing barn.

Ms. Acevedo asked if the neighbors could see the panels with the proposed fence. Mr. Allen explained that the 6 foot fence will screen the panels. Mr. Malison stated an 18” holly bush doesn’t do much to soften a fence. A motion was made by Mr. Wilson and second by Mr. Coover to open the meeting to public comment.

Robert Bruch – 193 Chesterfield-Crosswicks Road: Mr. Bruch stated his idea of softening is three-gallon size bushes in groups of 5-6 and mulched.

Hearing no further comments from the public, the meeting was closed to public comment on a motion by Mr. McMahon and second by Mr. Wilson.

Mr. Allen stated the application has no problem with 7-9 bushes on each corner. The bushes will be 3-gallon size.

Mr. Coover made a motion seconded by Mr. McMahon to approve the application. Roll Call Vote: Mr. Coover – Yes; Mr. Durr – Yes; Mr. LoCascio – Yes; Mr. McMahon – yes; Mr. Wilson – Yes; Mr. Liedtka – Yes; Ms. Acevedo – Yes; Mr. Malison – Yes. Motion carries.

RESOLUTION

A motion was made by Mr. McMahon and seconded by Ms. Acevedo to approve resolution 2011-09. All were in favor.

RESOLUTION NO. 2011-09

RESOLUTION OF THE PLANNING BOARD OF THE TOWNSHIP OF CHESTERFIELD AMENDING CONDITION TO PRIOR GRANT OF MINOR SITE PLAN, CONDITIONAL USE APPROVAL, WAIVERS, AND BULK VARIANCES TO SHADYREST BIBLE CHURCH,

187 CHESTERFIELD-CROSSWICKS ROAD, BLOCK 502, LOT 17

WHEREAS, Shadyrest Bible Church (the “Applicant”) was previously granted approval with conditions by approval on November 8, 2011 and memorialized by Resolution 2011-08 on December 13, 2011; and

WHEREAS, the Applicant thereafter submitted an Amended Application by letter of December 2, 2011 to seek an Amendment to the prior condition of approval relating to landscape buffering, and proposing a vinyl fence in its place; and

WHEREAS, the prior approval on page 7 of 8, under Conditions of Approval stated:

The Applicant agrees to resolve a landscape buffering plan with the Township’s Certified Landscape Architect, Clark, Caton & Hintz, in sufficient time that the plan would be provided to Aggie Napoleon, Board Secretary, and the Neighbors three calendar days prior to the date of the next hearing (i.e. – December 9, 2011), and to thereafter institute same;

WHEREAS, the Amended Application included the following:

1. Site Plans entitled “Shadyrest Bible Church, Lot 17, Block 502, Township of Chesterfield, Burlington County, New Jersey,” prepared by French & Parrello Associates, P.A., dated October 13, 2011, last revised November 29, 2011, consisting of four (4) sheets; and
2. Color photograph of the Proposed Vinyl Fence; and
3. Solar Module Reflectivity Technical Bulletin, prepared by SolarWorld.

WHEREAS, on December 7, 2011 review letter was issued by Christopher M. Trebisky, P.E., Board Engineer; and

WHEREAS, the Applicants appeared before the Planning Board on December 13, 2011 for a public hearing on its application, which hearing was duly noticed by the Applicants in accord with the certified list; and

WHEREAS, the Applicants were represented by Clint B. Allen, Esquire; and

WHEREAS, the Applicants experts and representatives were sworn and testified with respect to the proposed amendment, specifically to install vinyl fencing in lieu of a landscape buffer; and

WHEREAS, the Board reviewed Mr. Trebisky’s review letter of December 7th; and

WHEREAS, the application was opened to public comment and public comment was made with respect to the proposed fencing and buffer issues.

WHEREAS, the Board closed the public hearing and further discussed the issues of fencing and buffering; and

WHEREAS, the Board after carefully considering the evidence presented by the Applicant in support of its application, and after the meeting was opened to the public for questions, comments and input, has finds that the application, as amended, is acceptable; and

1. The taxes on the Property are current as the property is tax exempt.
2. The Applicant has paid and/or posted all required fees and agreed to keep its review escrow current.

AND WHEREAS, based upon the above factual findings, the Planning Board has come to the following conclusions:

1. The Chesterfield Township Planning Board has jurisdiction over this application pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.
2. The Applicants' sought an Amendment to its prior Approval for Minor Site Plan, Waivers, and Bulk Variances pursuant to N.J.S.A. 40:55D-70.C(2).
3. The Amendment from a landscape buffer to the fence as proposed and resolved, is adequate to address the concerns of the neighbors, and the Board is in turn satisfied with the vinyl fence.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Chesterfield, following close of the public hearing on the 13th day of December, and memorialized by this Resolution on the 13th day of December, 2011, that the application of Shadyrest Bible Church to amend a condition to its previously approved Minor Site Plan, Waivers, Conditional Accessory Use Approval, and Bulk Variances for the Property at 187 Chesterfield-Crosswicks Road, known as Block 502, Lot 17, in install vinyl fencing as a condition of approval is hereby GRANTED, subject to the following amended CONDITION OF APPROVAL:

1. The Applicant agrees to install a tan colored vinyl fence as indicated in its Amended Application submission, along with 8-10 holly shrubs as indicated on the record, which condition replaces the prior condition number "1" of the Board's original Resolution of Approval; and
2. The prior Resolution and all other Conditions set forth therein remain unchanged are in full force and effect.

BE IT FURTHER RESOLVED that a certified copy of memorialization be sent via regular mail to the Applicants within ten (10) days of the date of adoption, and a copy of this Resolution shall be filed with the Township Clerk, Tax Assessor, Construction Official, and Zoning Officer. A brief notice of this decision shall be published in the official newspaper of the Township.

DISCUSSION

Mr. Trebisky advised the Board that Chesterfield Greene II is now complete and performance bonds released. Also, Chesterfield Downs and Cross Creek I will probably be 100% complete sometime next month.

CORRESPONDENCE

None

INVITATION FOR PUBLIC TO SPEAK

Hearing none, Mr. Heinold advised the Board of the need to go into executive session to discuss litigation. Mr. McMahon made a motion seconded by Mr. Wilson to go into executive session at 7:55 PM.

Mr. Wilson made a motion seconded by Mr. McMahon to return to regular session at 9:10 PM.

The 2012 Budget was discussed: All amounts will remain the same with the exception of the following:

Legal	increase to \$20,000
Education	decrease to \$ 1,000
Planner	decrease to \$ 2,500

Mr. Malison stated there were three responses to the RFP's for Planning Board Attorney. They were reviewed. Mr. Wilson made a motion seconded by Mr. Nunziato to appoint Doug Heinold as Planning Board Attorney. All were in favor. Motion carried.

Mr. Malison stated there were four responses to the RFP's for Planning Board Engineer. After review, Mr. Coover made a motion seconded by Mr. Liedtka to appoint Environmental Resolutions Inc., Chris Trebisky as Planning Board Engineer. All were in favor. Motion carried.

Mr. Malison stated there were four responded to the RFP's for Planning Board Planner. After review, Mr. Coover made a motion to appoint Clarke Caton Hintz as Planning Board Planner. There was no second. Mr. Durr made a motion seconded by Mr. Liedtka to appoint Environmental Resolutions Inc as Planning Board Planner. All were in favor except Mr. Malison. Motion carried.

Mr. Malison suggested the Board do an RFP for an Architect. He stated a lot of hours went into the planning of Old York Village and the focal point of that development will be the entrance and shops which have only preliminary approval.

ADJOURNMENT

There being no further business, a motion was made by Mr. Wilson seconded by Mr. Coover to adjourn. All were in favor, meeting adjourned at 9:30 PM.

Respectfully submitted,

Caryn M. Hoyer