



TOWN OF NORTH CASTLE
WESTCHESTER COUNTY
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PLANNING BOARD
Christopher Carthy, Chair

RESOLUTION

Action: Denial of Site Plan and Tree Removal Permit
Application Name: 26 Chestnut Ridge Road Site Plan [2022-016]
Owner/Applicant: Anthony and Melanie Marino
Designation: 94.04-1-39
Zone: R-2A (Residential Two-Acre) District
Acreage: 1.7-acres
Location: 26 Chestnut Ridge Road
Date of Denial: January 30, 2023

WHEREAS, the Residential Project Review Committee (RPRC) referred to the Planning Board the legalization application for the placement of fill on the property, tree removal and patio construction without the benefit of a permit; and

WHEREAS, the application consists of the following plans:

- Plan labeled “C-000,” entitled “Cover Sheet,” dated March 28, 2022, last revised November 30, 2022, prepared by JMC Planning Engineering Landscape Architecture & Land Surveying, PLLC.
- Plan labeled “C-100,” entitled “Existing Conditions Map,” dated March 28, 2022, last revised November 30, 2022, prepared by JMC Planning Engineering Landscape Architecture & Land Surveying, PLLC.
- Plan labeled “C-200,” entitled “Site Plan,” dated March 28, 2022, last revised November 30, 2022, prepared by JMC Planning Engineering Landscape Architecture & Land Surveying, PLLC.
- Plan labeled “C-900,” entitled “Construction Details,” dated March 28, 2022, last revised November 30, 2022, prepared by JMC Planning Engineering Landscape Architecture & Land Surveying, PLLC.
- Plan labeled “C-901,” entitled “Construction Details,” dated March 28, 2022, last revised November 30, 2022, prepared by JMC Planning Engineering Landscape Architecture & Land Surveying, PLLC.
- Soil manifest from Phoenix Environmental Laboratories, dated June 23, 2021.
- Stormwater report dated February 18, 2022, last revised May 19, 2022, prepared by JMC Planning Engineering Landscape Architecture & Land Surveying, PLLC.
- Technical Report, dated May 9, 2022 regarding the on-site soil testing prepared by Advanced Environmental.

WHEREAS, the applicant is proposing to import 1,550 c.y. of fill to be placed within the rear yard to level and improve the backyard; and

WHEREAS, a portion of the fill has already been imported to the site and graded; and

WHEREAS, the Applicant was issued a violation on November 24, 2021 for bringing in fill to the site without obtaining a permit; and

WHEREAS, the Applicant was issued a violation on November 24, 2021 for constructing a patio without obtaining a permit; and

WHEREAS, improvements would include a new patio and walks within the rear yard, totaling 1,800 s.f. of impervious surface; and

WHEREAS, work will be limited to the rear and side yard and result in 0.4 acres of disturbance; and

WHEREAS, the applicant is proposing a stormwater detention system to mitigate increased runoff from the property; and

WHEREAS, Green Giant Arborvitae are proposed along the easterly property line to help mitigate the visual impact of the fill on the neighboring property; and

WHEREAS, the existing rear yard fill pad is several feet high and is visible from the adjacent Property; and

WHEREAS, the Applicant did not provide a plan that reconfigured the fill to be more naturalistic; and

WHEREAS, the Applicant did not propose a screening wall to retain the fill and provide a more aesthetic condition; and

WHEREAS, three Town-regulated trees were removed when fill was imported to the site; and

WHEREAS, the Applicant did not propose a tree replacement plan for the Town-regulated trees removed (separate from the evergreen green giant arborvitae fill screening); and

WHEREAS, the applicant has submitted laboratory data reports from Phoenix Laboratories, Inc., which appear to represent tests performed on fill stockpiles for Thalle Industries; and

WHEREAS, laboratory data from Phoenix Laboratories, Inc. indicates that certain soil parameters were present within samples taken; and

WHEREAS, parameters include detectable levels of arsenic, barium, cadmium, copper, mercury, manganese, nickel, lead, trivalent chromium, zinc, volatiles – tetrachloroethene, pesticides – 4.4'-DDT, semivolatiles – anthracene, benz (a) anthracene, benzo (a) pyrene, benzo (a) fluoranthene, benzo (b) fluoranthene, benzo (ghi) perylene, benzo (k) fluoranthene, chrysene, dibenz (a, h) anthracene, fluoranthene, indeno (1, 2, 3 – cd) pyrene, phenanthrene and pyrene; and

WHEREAS, the Planning Board referred the laboratory data to the Town's hydrogeologist for review and report; and

WHEREAS, Hydro Environmental Solutions, Inc. (HES) was retained by the Town of North Castle, to review the 26 Chestnut Ridge Road application; and

WHEREAS, the imported fill material was not approved nor properly documented prior to importation; and

WHEREAS, consequently, the Town requested that the Applicant and their consultant characterize the imported material in accordance with NYSDEC Regulations and Standards; and

WHEREAS, the applicant has submitted a Technical Report, dated May 9, 2022 regarding the on-site soil testing by Advanced Environmental; and

WHEREAS, the Applicant's consultant, JMC Planning Engineering Architecture and Land Surveying, PLLC (JMC), submitted a Soil Sampling Work Plan to the Town of North Castle on July 21, 2022; and

WHEREAS, the Work Plan was approved in August 2022 by HES and the Town shortly after submission; and

WHEREAS, JMC, on behalf of the Applicant, implemented the approved Soil Sampling Work Plan on August 8, 2022, and provided a site plan of soil sampling locations, a soil laboratory analytical results summary table, the raw laboratory analytical results, and resubmitted the original approved July 21, 2022 Scope of Work; and

WHEREAS, all the collected soil samples were compliant with Restricted Residential Use Soil Cleanup Objectives (RRUSCOs) as noted on the attached Soil Laboratory analytical results summary tables; and

WHEREAS, the results indicate that the fill material is not impacted by any of the parameters analyzed for including volatile organic compounds (VOCs), semi-VOCs, Metals (except nickel), Pesticides and Poly Chlorinated Biphenyls (PCBs); and

WHEREAS, only nickel exceeded Unrestricted Use Soil Cleanup Objectives (UUSCOs) UUSCOs at three of the composite soil sampling locations, all other sampling locations were compliant with UUSCOs; and

WHEREAS, the concentrations of nickel detected in the three composite samples ranged from 36 to 68 parts per million (ppm {mg/Kg}) and the results slightly exceed the UUSCO of 30 ppm for nickel, the strictest soil cleanup objective; and

WHEREAS, HES states that these results represent slightly above background levels for nickel concentrations in soil in a suburban area and as per Part 375 Table 373-6.8(b), protection of human health (140 ppm) and groundwater (130 ppm) criteria are met in the imported fill material as the highest concentration of 68 ppm is well below both NYSDEC promulgated criteria; and

WHEREAS, HES recommends that the imported fill material remain in place since only nickel slightly exceeded UUSCOs; and

WHEREAS, HES recommends the installation of a demarcation layer such as orange polyethylene construction fencing or a comparable geotextile membrane over the top of the entire fill area and following the placement of the demarcation layer, a 24-inch topsoil layer should be placed atop the demarcation layer across the entire fill area; and

WHEREAS, HES confirmed with the Region 3 Office of the NYSDEC on October 20, 2022 that the soil can remain in place with a 24-inch clean topsoil cap; and

WHEREAS, the cap is required since nickel exceeded UUSCOs; and

WHEREASs, HES does not recommend removal of the imported fill given the results of the soil sampling, as the concentrations of nickel do not pose a threat to groundwater or the surrounding environment; and

WHEREAS, when reviewing requested fill permits, the Town only permits fill importation meeting Unrestricted Use Soil Cleanup Objectives (UUSCOs); and

WHEREAS, the nickel concentrations in the imported fill do not meet UUSCO standards; and

WHEREAS, the Planning Board expressed concern that the required two-foot clean soil cap over the existing fill would exacerbate visual impacts of the fill pad; and

WHEREAS, the Planning Board debated how future homeowners would be alerted to the fact that soil exceeding UUSCOs standards is located on the property; and

WHEREAS, the Planning Board debated whether it would be appropriate for a covenant explaining the nickel concentrations should be implemented; and

WHEREAS, the 1.7-acre property is located in the R-2A (Residential two-acre) district and is designated on the Tax Maps of the Town of North Castle as lot 94.04-1-39; and

WHEREAS, the proposed action is a Type II Action under the State Environmental Quality Review Act (SEQRA); and

WHEREAS, Type II Actions have been determined not to have a significant impact on the environment do not require any further processing pursuant to SEQRA; and

WHEREAS, a duly advertised neighbor notification meeting was held on said application before the Planning Board on November 28, 2022, December 12, 2022 and January 30, 2023 at which time all those wishing to be heard were given the opportunity to be heard; and

WHEREAS, the Planning Board has requested, received and considered comments from the Town Attorney, the Consulting Town Engineer and Consulting Town Planner regarding the proposed development; and

NOW, THEREFORE, BE IT RESOLVED, that the site plan and tree removal permit is denied; and

BE IT FURTHER RESOLVED, that the Planning Board finds that the nickel concentrations in the imported fill do not meet the Unrestricted Use Soil Cleanup Objectives (UUSCOs) required for fill to be imported onto residential properties in the Town of North Castle; and

BE IT FURTHER RESOLVED, that the Planning Board finds that the grading of the existing fill pad is too steep, appears unnatural and negatively impacts adjacent properties; and

BE IT FURTHER RESOLVED, that the Planning Board finds that the Applicant has not adequately mitigated Town-regulated tree removal by not proposing new trees for trees removed on the site; and

BE IT FURTHER RESOLVED, that the Planning Board requires the removal of all imported fill on the property; and

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BE IT FURTHER RESOLVED, that the Planning Board requires the submission of a plan that will depict the removal of fill and restoration of the site; and

BE IT FURTHER RESOLVED, that the Planning Board will entertain a plan for the construction of a patio at the same time as the restoration plan; and

APPLICANT, agreed and understood as to contents and conditions, including expiration, contained herein

Date

Anthony and Melanie Marino

NORTH CASTLE PLANNING OFFICE,
as to approval by the North Castle Planning Board

Date

Valerie Desimone, Planning Board Secretary

KELLARD SESSIONS CONSULTING
As to Drainage and Engineering Matters

Date

Joseph M. Cermele, P.E.
Consulting Town Engineer

STEPHENS BARONI REILLY & LEWIS LLP
As to Form and Sufficiency

Date

Roland A. Baroni, Jr. Esq., Town Counsel

NORTH CASTLE PLANNING BOARD

Date

Christopher Carthy, Chair