

**RESOLUTION**

**Township of West Orange**

**Planning Board**

**PB 22-14 Crest Ridge Realty, LLC / 200 Mount Pleasant Avenue**

**Block: 80.3 Lot:36; Zone: R-G Garden Apartments**

**Decided on April 12, 2023**

**Memorialized on April 26, 2023**

**C (2) Variance and Minor and Amended Site Plan Approval**

**WHEREAS**, Crest Ridge Realty, LLC (Hereinafter the "Applicant") has made an application for a c (2) Variance and Minor Site Plan and Amended Site Plan approval in order construct a two-story accessory building in the interior of a property developed with a garden apartment complex and for approval of two trash enclosures (Confirming the Building Department's administrative approval) as an amendment to the site plan, located at 200 Mount Pleasant Avenue, also known as Block: 80.3; Lot 36, in the R-G Zone; and

**WHEREAS**, a properly noticed public hearing was conducted on April 12, 2023; and

**WHEREAS**, the Applicant was represented by Jeffrey Chang., Esq.; and

**WHEREAS**, the Applicant provided testimony by Paul W. Anderson, P.E., P.P. a Civil Engineer and Planner licensed in the State of New Jersey whose credentials were accepted by the Board; and

**WHEREAS**, the Applicant provided testimony by Brent Porter, R.A. an Architect licensed in the State of New Jersey whose credentials were accepted by the Board; and

**WHEREAS**, the Applicant provided testimony by Tal Steinberg, manager of Crest Ridge Realty, LLC; and

**WHEREAS**, the Applicant submitted the following documents to the Board in the form of the application package:

| ITEM                                     | SIGNED BY             | DATE/REVISION |
|------------------------------------------|-----------------------|---------------|
| ALTA Survey                              | Brad Joshnick, PLS    | 4/25/2022     |
| Topographic Survey                       | Jeffrey S. Grunn, PLS | 8/27/2022     |
| Survey (Location of one trash enclosure) | Jeffrey Grunn, PLS    | 2/14/2023     |

|                                                                   |                          |           |  |
|-------------------------------------------------------------------|--------------------------|-----------|--|
| Site Plan (SP-1, SP-2, SP-3, SP-4, SP-5)                          | Paul Anderson, P.E, P.P. | 4/3/2023  |  |
| Architectural Plans (A000-PB, A100-PB, A101-PB, A200-PB, A201-PB) | Brent M. Porter, RA      | 11/3/2022 |  |

**WHEREAS**, representatives of the public asked questions of the witnesses and had an opportunity to offer statements regarding the application; and

**WHEREAS**, the Board reviewed and considered the application, testimony and documents submitted therewith; and

**WHEREAS**, the Board also considered the input of its professionals at the hearing; and

**NOW THEREFORE**, the Board makes the following findings of fact, based upon the evidence presented at its public hearings, at which a record was made:

1. The Applicant is requesting minor site plan approval for the construction of a two-story accessory building adjacent to an existing pool house building and the addition of two dumpster enclosures to be an amendment to the site plan (To establish a record of the location of the dumpsters and as further confirmation of the previously granted approval issued by the Building Department).
2. Testimony established that the proposed accessory structure is intended as a workout room/gym/changing room on the second floor for the exclusive use by tenants of the garden apartments and on the ground level for administrative offices and kitchenette for the complex (As the current office is now located in the basement of one of the apartment buildings).
3. The property is located on Mount Pleasant Avenue and is comprised of a garden apartment complex on approximately twelve acres made up of two- and three-story buildings and accessory uses (Such as a pool and pool house at the interior of the complex.)
4. The surrounding area outside of the garden apartment complex is comprised of single-family residential dwellings.
5. A few years ago, the Applicant was administratively granted leave to add two dumpster locations because the complex covers a very large area such that some tenants, rather than use the one large dumpster area, used cans buried in the ground locally to their buildings that created bad odors and did not work well.
6. The two added dumpster enclosures are to the West and East sides of the complex and have gates enclosing the dumpsters that are surrounded by masonry walls.
7. The new accessory structure will result in the removal of two trees and the addition of a concrete walkway.
8. The new accessory structure is located adjacent to the pool which is open Weekends from Memorial Day to July 1 and then everyday from 10AM to 6PM until Labor Day.

9. The proposed accessory structure is opposite the cliff wall in an area that is graded and to the left of the pool house.
10. The addition will not have any new utilities, only a roof with leaders connecting into the existing inlet, and minimal grading without the need for sediment control approval.
11. The Applicant will add two new trees to replace the trees that are being removed.
12. The proposed accessory structure is not visible from the road and is buffered by two story apartment buildings which are the same height as the proposed structure.
13. The evidence demonstrated that there was an area between the fence bordering the rockface and the existing pool house that would make another appropriate area for dumpster/refuse collection without any detriment to the rockface structure or stability.
14. Currently there are no ADA compliant parking spaces in the complex (As it was built before the Codes were enacted) and Applicant agrees to install one ADA approved parking space and a second space for visitors to park when using the gym/office or pool facility.
15. The application requires the following bulk variance (c (2)) relief from the Board:

| Section                                                            | Permitted/Required   | Existing | Proposed                     |
|--------------------------------------------------------------------|----------------------|----------|------------------------------|
| 25-7.1 Maximum lot coverage                                        | 40%                  | 42.6%    | 42.8%                        |
| 25-8.1f Maximum height of accessory building in a residential zone | 1 ½ stories/ 15 feet | 1 story  | 2 stories/ 24 feet, 8 inches |

16. N.J.S.A. 40:55D-46a. and b. and N.J.S.A. 40:55D-50a. govern the Board's review of the preliminary and final site plan application. N.J.S.A. 40:55D-46a provides that an "ordinance requiring site plan review and approval shall require the developer submit to the administrative officer a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for preliminary site plan approval have been met." N.J.S.A. 40:55D-46a further provides that "The site plan and any engineering documents to be submitted shall be required in tentative form for discussion purposes for preliminary approval. If any architectural plans are required to be submitted for site plan approval, the preliminary plans and elevations shall be sufficient." N.J.S.A. 50:55D-46b provides that "if the planning board required any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development" and "the planning board shall, if the proposed development complies with the ordinance and this act, grant preliminary site plan

approval." N.J.S.A. 40:55D-50a. provides that final site plan approval "shall" be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such if the applicant meets the standards set forth in the ordinances, the planning board lacks the authority to deny approval of the site plan and subdivision. N.J.S.A. 40:55D-50a; PRB Enters., Inc. v. S. Brunswick Planning Bd., 105 N.J. 1, 7 (1987); Dunkin' Donuts of N.J., Inc. v. Twp. of N. Brunswick Planning Bd., 193 N.J. Super. 513, 515 (App. Div. 1984).

Conversely, if the application does not comply with all ordinance requirements, the Board must deny approval. Cortesini v. Hamilton Planning Board, 417 N.J. Super. 201, 215 (App. Div. 2010). However, there are two exceptions: (1) The first exception is where an application does not comply with all ordinance requirements but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance requirements and grant approval if the application complies with all such remaining requirements.

17. N.J.S.A. 40:55D-60 permits a planning board to grant variances from the bulk regulations of a zoning ordinance and other zoning deviations that do not require a "d" variance as part of site plan or subdivision review. The variance proofs are the same as for "c" variances as set forth in N.J.S.A. 40:55D-70. A c (2) variance may be granted when the purposes of zoning are advanced and the benefits of deviating from the ordinance requirements outweigh any detriments. The benefits derived from granting a "c (2)" variance must include benefits to the community as a whole, not just the applicant or property owner. A "c" variance must address the "negative criteria," and affirmatively demonstrate that the variance can be granted "without substantial detriment to the public good" and "without substantial impairment to the intent and purpose of the zone plan and zoning ordinance" of the municipality.

**NOW, THEREFORE,** based upon the foregoing findings of fact, the Board reaches the following conclusions of law:

1. This application requires the following variance relief, as well as site plan approval:

| Section                                                            | Required             | Existing | Proposed                     |
|--------------------------------------------------------------------|----------------------|----------|------------------------------|
| 25-7.1 Maximum lot coverage                                        | 40%                  | 42.6%    | 42.8%                        |
| 25-8.1f Maximum height of accessory building in a residential zone | 1 ½ stories/ 15 feet | 1 story  | 2 stories/ 24 feet, 8 inches |

2. Testimony established that the height of the proposed new accessory structure with two stories is the same as the surrounding apartment buildings which are also two

stories which will reduce lot coverage and minimize impervious coverage relief while providing a beneficial amenity by the addition of more recreation space on the site.

3. With respect to the negative criteria under the MLUL, the Board finds that the proposed accessory structure is not visible from the road and is buffered by the other surrounding two-story buildings and the 0.2% increase in impervious coverage is minimal and as the property is flat in that area and the storm drains will be tied into the existing drainage, no expected drainage issues are anticipated.
4. The project meets the goals of the Master Plan as it fulfills the goals and objectives including, creating a more efficient use of space and will promote a desirable visual environment through creative development.

**NOW THEREFORE** be it resolved by the Planning Board of the Township of West Orange that Minor Site Plan and Amended Site Plan approval in order construct a two-story accessory building in the interior of a property developed with a garden apartment complex and for approval of two trash enclosures (Confirming the Building Department's administrative approval) as an amendment to the site plan, and C2 variance relief for property located at 200 Mount Pleasant Avenue, also known as Block: 80.3; Lot 36, in the R-G Zone, is determined as follows:

1. The Board grants the following bulk variance relief pursuant to N.J.S.A. 40:55D-70 c (2):

| Section                                                            | Required             | Existing | Proposed                     |
|--------------------------------------------------------------------|----------------------|----------|------------------------------|
| 25-7.1 Maximum lot coverage                                        | 40%                  | 42.6%    | 42.8%                        |
| 25-8.1f Maximum height of accessory building in a residential zone | 1 ½ stories/ 15 feet | 1 story  | 2 stories/ 24 feet, 8 inches |

2. Minor Site Plan and Amended Site Plan approval is granted to Crest Ridge Realty in order construct a two-story accessory building in the interior of a property developed with a garden apartment complex and for approval of two trash enclosures (Confirming the Building Department's administrative approval) as an amendment to the site plan.
3. Waivers granted include Application Item numbers as set forth in the report of John Hess, PE dated April 11, 2023: Item 28 (Existing street, watercourses, flood plains, wetlands, or other environmentally sensitive areas on and within 200' of site), #29 (Existing right-of-way and/or easements on and within 200' of tract), #30 (Topographical features), #32 (Boundary, limits, nature and extent of wooded areas etc.), #35 (Drainage calculations), #37 (Proposed utility infrastructure plans), #39 (Spot and finished elevations at all property corners), #46 (Solid waste management plan), #47 (Site identification signs etc.), #48 (Sight triangles), #49 (Vehicular and pedestrian circulation patterns), #50 (Parking plan showing spaces, etc.) §25-51.6(k) which requires the

submission of a Run Card depicting the locations of all fire hydrants within the subject property and §25-27.4 which requires the submission of a tree removal exemption report.

**AND IT IS FURTHER RESOLVED** that the above approval is subject to the following terms and conditions:

1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local, state and federal approvals and/or permits. Without limitation of the foregoing, prior to the signing of the approved site plans, and prior to the commencement of any land disturbance or construction but excluding interior renovations, the Applicant shall submit to this Board, with a copy to the Board Engineer, proof that it has obtained all required governmental approvals.
2. If another governmental entity or agency grants a waiver or a variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate.
3. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successor or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.
4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.
5. The Applicant shall pay all outstanding taxes, tax liens, application fees and technical review fees, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of the notification or this approval shall be deemed withdrawn.
6. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution.
7. Applicant agrees to comply with the recommendations and directives set forth in the reports of the Township Engineer and Planner.
8. Applicant shall list all conditions of approval onto a final site plan submission.

9. Gates to the two dumpster enclosures will be in place within 30 days from the date herein and maintained in good repair thereafter.
10. Applicant will plant and maintain four (4) additional trees and will further comply with the tree ordinance.
11. The new roof on both the modified pool house and the new accessory structure shall be white to decrease the heat island.
12. The sidewalk lighting at the perimeter of the accessory structure shall be illuminated from dusk until dawn.
13. The wooden fence that surrounds the entire pool and recreation area shall be replaced, including the area to the right side of the pool house, regardless of whether a new dumpster area is added in that location.
14. The fire lanes must be repainted throughout the entire complex within a reasonable time set by the Code official.
15. Applicant must create one ADA compliant parking space and one visitor space to be located by the new office to be housed in the new structure.
16. An AED (Defibrillator device) shall be located within the second-floor facility.
17. The Public Advocate shall work with management for a practical solution to accommodate persons with disabilities who may want to use the second-floor amenities.
18. A system such as rain barrels or other approved method to reclaim as much rainwater runoff that can practically be recaptured shall be installed.

The undersigned secretary certifies the decision set forth herein was made by this Board on April 12, 2023, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on April 26, 2023.



Jamilet Baquerizo Vite, Planning Board

Secretary

Vote Action Taken by the Board on April 12, 2023:

| Board Member | Motion | Second | Aye | Nay | Abstain | Absent |
|--------------|--------|--------|-----|-----|---------|--------|
| K. Alper     |        |        | X   |     |         |        |
| J. Guarino   |        |        | X   |     |         |        |
| L. Klein     |        |        | X   |     |         |        |
| S. McCartney |        | X      | X   |     |         |        |
| C. Morgan    |        |        | X   |     |         |        |
| P. Smeraldo  |        |        | X   |     |         |        |
| W. Wilkes    |        |        |     |     |         | ----   |
| T. Williams  |        |        | X   |     |         |        |
| S. Jensen    |        |        | X   |     |         |        |
| J. Cardoza   |        |        |     |     | ----    |        |
| R. Bagoff    | X      |        | X   |     |         |        |

Vote on Memorialization on April 26, 2023:

| Board Member | Motion | Second | Aye | Nay | Abstain | Absent |
|--------------|--------|--------|-----|-----|---------|--------|
| K. Alper     |        |        | X   |     |         |        |
| J. Guarino   |        |        | X   |     |         |        |
| L. Klein     |        |        | X   |     |         |        |
| S. McCartney |        |        | X   |     |         |        |
| C. Morgan    |        |        |     |     |         | ----   |
| P. Smeraldo  |        | X      | X   |     |         |        |
| W. Wilkes    |        |        | X   |     |         |        |
| T. Williams  |        |        | X   |     |         |        |
| S. Jensen    |        |        | X   |     |         |        |
| J. Cardoza   |        |        |     |     |         | ---    |
| R. Bagoff    | X      |        | X   |     |         |        |