

RESOLUTION

Township of West Orange

Planning Board

PB 23-09 Essex County Country Club/350 Mount Pleasant Avenue

Block: 156 Lot: 1; Zone: R-2

Decided on November 29, 2023

Memorialized on December 6, 2023

**Application for Amended Final Site Plan Approval with Bulk Variance and Soil Moving
Permit to Modify Existing Golf Course Facilities**

WHEREAS, Essex County Country Club (Hereinafter the “Applicant”) has made an application for Amended Final Site Plan Approval and a Soil Moving Permit to modify its existing golf course and facilities located at 350 Mount Pleasant Avenue, also known as Block: 156; Lot 1 (the “Property”); and

WHEREAS, the Property is located in the R-2 Zoning District which permits golf courses as a principal use along with customary and incidental accessory structures associated therewith; and

WHEREAS, a properly noticed public hearing on the application was conducted on November 29, 2023; and

WHEREAS, the Applicant was represented by Lisa John-Basta, Esq. of the firm Chiesa, Shahinian & Giantomasi, P.C.; and

WHEREAS, the Applicant provided testimony of John Del Mauro, President of the Essex County Country Club, and Paul Calabrese, P.E. as a civil engineering expert; (the “Applicant’s Witnesses”); and

WHEREAS, the Board heard questions and comments from the public, along with testimony from Peter Steck, PP (the “Objector Planner”) who was presented as a witness in opposition to the application by Ms. Bennett, Esq., a property owner within 200 feet of the Property; and

WHEREAS, in addition to the Development Application and Checklists, prior resolutions of approval, the Tree Permit Removal/ Replacement Application and the Soil Moving Permit Request, the Applicant submitted the following plans to the Board as part he application package:

ITEM	SIGNED BY	DATE/REVISION
Site Plan (18 sheets)	Paul T. Calabrese, P.E.	11/10/2023
Golf Course Plan (3 sheets)	Hanse Golf Course Design, Inc.	Undated
Soil Erosion & Sediment Control Plan (2 sheets)	Paul T. Calabrese, P.E.	9/6/2023
Property Survey	Charles P. Stewart, P.L.S.	10/27/1978
Cart barn architectural plans (2 sheets)	Frank J. Rawding, A.I.A.	7/25/2023
Comfort station architectural plans (2 sheets)	Frank J. Rawding, A.I.A.	7/25/2023
Storm Water Management Report	Paul T. Calabrese, P.E.	11/10/2023
Construction Detail Packet (11 sheets)	Hanse Golf Course Design	11/10/2023

WHEREAS, representatives of the public were provided with an opportunity to pose questions of the Applicant’s Witnesses and also had an opportunity to offer statements in regard to the application; and

WHEREAS, the Board reviewed and considered the application and the documents submitted therewith, the testimony of the Applicant’s Witnesses and members of the public, including the testimony of Peter Steck, PP; and

WHEREAS, the Board also considered the testimony and filed review letters of its professionals at the hearing; and

WHEREAS, during the course of the hearing, the Applicant requested that the portion of the application pertaining to a proposed comfort station be continued to a future meeting of the Planning Board in light of comments made at the hearing, and that the balance of the application be decided by the Board. The balance of the application included improvements to an existing parking lot area near the clubhouse, the demolition of an existing cart barn/pro shop and replacement with a new cart barn, modification of the entrance driveway area, and soil movement required for upgrades to the existing golf course

WHEREAS, the consideration of the proposed comfort station was bifurcated and carried to the Planning Board's January 3, 2024 regular meeting for consideration and was not part of the Board's November 29, 2023 findings.

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

1. The Applicant is requesting approval for Amended Final Site Plan and a Soil Moving Permit to renovate the existing golf course and to construct new improvements associated with the golf course.
2. Physical changes proposed as part of the application include improvements to the existing parking area near the clubhouse along with the creation of additional parking spaces, widening a driveway entrance, demolishing an existing building housing golf carts and a pro shop and construction of a new golf cart barn.
3. The Property is located on the southwestern corner of the intersection of Mt. Pleasant Avenue and Prospect Avenue and has been developed with a golf course since 1887.

It was represented by the Applicant that it is the oldest golf course in New Jersey and one of the oldest in the country.

4. The area of the Property is 176.83 acres and it is occupied by a golf course, a clubhouse building, tennis courts, a pool house, two (2) swimming pools, a golf cart barn/pro shop, several maintenance building and a number of other accessory structures.
5. Surrounding the Property are single family residential properties, institutional, office and public buildings, and the Francis J. Byrne golf course, owned by Essex County.
6. The parking lot area near the clubhouse is proposed to be repaved and restriped. The lower portion of the parking area although paved is parked on but not presently striped. The Applicant proposes to stripe the area to create 33 additional parking spaces . The total number of parking spaces within the parking area will result in a total of 236 parking spaces whereas 658 spaces are required based on the gross floor area of the clubhouse measuring 29,589 square feet (one space required per 45 square feet of gross floor area). The proposal therefore resulted in an increase of 33 parking spaces above the existing conditions and a previous parking variance granted by the Board in 2014.
7. In 2014 the Applicant applied for site plan approval to among other things expand the clubhouse and in connection with that application, the Applicant requested, and the Board granted, a parking variance to permit 203 parking spaces within the subject parking area whereas 699 parking spaces were required at the time of the application. The details of the approval and the granting of the parking variance are set forth in Planning Board Resolution PB-14-04.
8. Additionally, the Applicant proposes new lighting fixtures within the parking area nearest to the clubhouse and along the site entrance driveway. Thirty-three (33) fixtures

are proposed in total, including 23 poles with a mounting height of 16 feet and 10 bollards that would be 3.5 feet in height.

9. The parking area near the clubhouse currently contains no parking islands. The Applicant proposes to create three (3) bio-retention areas to capture rainwater within the parking area, which will be planted and function as parking islands. The creation of the parking islands will reduce the impervious coverage of the parking area by approximately 3,000 square feet and will reduce the heat island effect.
10. Ten (10) parking spaces on the Property are also proposed to be EV ready.
11. The driveway entrance to the parking lot is proposed to be widened, with a new paver sidewalk proposed adjacent to the driveway. The widening of the driveway will allow for better sight lines when entering and exiting the parking area nearest to the clubhouse and will enhance safety.
12. The existing structure housing golf carts and the former pro shop is beyond its useful life and will be demolished. It will be replaced with a new golf cart storage building measuring 6,144 square feet in area and 14' 11 ³/₄" in height. The height of the building will be less than the 15 foot height limitation for accessory structures. The new building will have room for 72 golf carts, and will allow for the Applicant to store all of its golf carts within the building. This is an important feature for the Applicant in order to facilitate the conversion of all its golf carts to electric. The new golf cart barn will also house recycling filtration equipment to wash the golf carts.
13. The golf cart storage structure is proposed at 70 feet from the property line and complies with the ordinance setback regulations.

14. The Applicant also proposes a cart path from the driving range to the first tee which will provide safe passage to those golfers who previously had to cut across the parking lot area.
15. A soil erosion and sediment control plan was sent by the Applicant to the Hudson-Essex-Passaic Soil Conservation District for the soil moving activities proposed on the Property to upgrade the golf course. The Soil Conservation District determined that the plan met the standards for Soil Erosion and Sediment Control in accordance with the NJ Soil Erosion and Sediment Control Act and issued permits for: (a) the regrading of approximately 20.16 acres of the course on September 19, 2023; and (b) the site improvements which would disturb approximately 1.30 acres on October 4, 2023. Both of these approvals were filed with the Board.
16. The Applicant also stipulated that it would comply with the West Orange Ordinance requirements for a soil movement permit.
17. During the course of the hearing, a variance was identified in connection with the application from Code Section 25-12.1.o, which provides that in parking areas with 30 or more parking spaces, there shall be a minimum of one tree plus ground level planting for each 10 parking stalls, which may be provided within and/or on the perimeter of the parking area. The maximum length of a single row of parking spaces shall be 20 spaces, at which point a landscaped area with a minimum width of eight feet shall be provided. In this instance the Applicant proposes to restripe an existing parking area and to construct 33 additional parking spaces within parking without providing a parking island between every 20 spaces although the Applicant originally proposed three (3) new parking islands in the parking area and agreed to construct an additional parking

island at the request of the Board, which may result in the reduction of one or more parking spaces.

18. 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.

19. 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. The Applicant requires the following variance relief as well as an amendment to final site plan approval and soil moving permit for modifications to the existing golf course and its facilities:

SECTION/REQUIREMENT	PERMITTED/REQUIRED	PROPOSED
25-12.1.o. Landscape area within parking areas	In parking areas with 30 or more parking spaces, there shall be a minimum of one tree plus ground level planting for each 10 parking stalls, which may be provided within and/or on the perimeter of the parking area. The maximum length of a single row of parking spaces shall be 20 spaces, at which point a landscaped area with a minimum width of eight feet shall be provided	4

2. The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Planning Boards with the power to grant variances from bulk and other Ordinance requirements when the Applicant satisfies certain specific proofs enunciated in the statute.
3. Under the c(1) criteria, the Applicant must demonstrate that by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property.
4. Under the c(2) criteria, the Applicant must demonstrate that in a particular instance relating to a specific piece of property, the purposes of the Act would be advanced by

allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment.

5. The Board finds that a parking variance is not needed. The Applicant was previously granted a variance for parking in 2014 to allow 203 parking spaces and this application improves on the parking deficit which has already been approved by prior variance. In this instance, the Applicant adequately demonstrated that its proposal to demolish the existing pro shop/golf cart barn and replace it with a new golf cart barn would not generate additional or new traffic to the golf course. Moreover, the Board recognizes that variance relief runs with the land, and that the Applicant proposed to increase the number of parking spaces above the parking variance relief that was granted in 2014. Therefore, the Board finds that there is no need to reestablish the parking variance that was already granted.
6. The Board finds that a technical variance is needed from Section 25-12.1.o. with respect to the number of landscape islands in the parking area, but notes that the existing parking area does not contain any landscape areas. In connection with the proposal the Applicant proposes a total of four (4) parking islands and seven trees along the paved parking area. The creation of the parking islands will also reduce the impervious coverage and function as bio-retention areas within the parking area to capture rainwater and will reduce the heat island effect creating an overall better condition within the area than exist today.
7. These tests specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” variance relief, under Sections c(1) and c(2). The Property and parking area in question are presently in existence and the Property is fully

developed. Therefore, and as a result of the structures lawfully existing thereon, compliance with the Code provisions would result in an undue hardship upon the Applicant. Additionally, the creation of additional parking islands, bio-retention and additional plantings will advance the purposes of the Municipal Land Use Law to prevent flood and to promote a desirable visual environment through creative development techniques and good civic design.

8. Also, an Applicant for these variances must show that the proposed relief sought will not cause a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The burden of proof is upon the Applicant to establish that these criteria have been met. The Board finds that the Applicant has demonstrated that the variance will not cause a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance since the proposal creates provides more landscaping than what exists within the parking area to today and has added benefits of creating bio-retention and reducing the heat island effect.
9. The Board further finds that the benefits of the overall proposed project significantly outweigh the detriments as the project advances the purposes of the MLUL (N.J.S.A. 40:55D-1 et. seq.) by promoting the general welfare. It decreases the existing parking deficit, reduces impervious coverage, creates more landscaped areas, provides electric vehicle parking where none had previously existed, and enhances safety by widening the driveway entrance.
10. With respect to the negative criteria under the MLUL, the Board accepts the testimony that the proposed changes will not have any negative effect on the public

good, on the zone plan or zoning ordinance. The Board finds that the detriments of the application are significantly outweighed by the many benefits.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Township of West Orange that approval for an amendment to the Final Site Plan with a variance and Soil Moving Permit to demolish the existing golf cart storage/pro shop building and to build a new golf cart building, modify and improve the parking lot, widen the driveway, create and to move soil to upgrade the golf course along with ancillary improvements is granted; and

IT IS FURTHER RESOLVED that the approval granted to Essex County Country Club, is subject to the following terms and conditions:

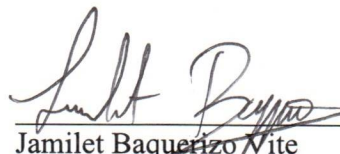
1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations, and directives, including without limitation, obtaining all applicable local, state, and federal approvals, or permits. Without limitation of the foregoing, prior to the signing of the 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 land use 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 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. The Applicant shall comply with the Township ordinance regarding soil movement requirements.
8. The Applicant will comply with all comments and recommendations set forth in the Planning Board Engineer's November 28, 2023 letter by John Hess of CME Associates except those related to the comfort station.

9. The Applicant shall construct an additional planting island in the parking lot, bringing the total to four (4) planting islands.
10. The plants proposed for the parking lot islands shall be non-invasive plants and be approved by the Township Forester.
11. The Applicant shall list all conditions of approval onto a final site plan submission prior to the submission of the building permit.

The undersigned secretary certifies the decision set forth herein was made by this Board on November 29, 2023, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on December 6, 2023.



Jamilet Baquerizo Vite
Planning Board Secretary

Vote Action Taken by the Board on November 29, 2023:

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

Vote on Memorialization on December 6, 2023:

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