

RESOLUTION

Township of West Orange

Planning Board

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

Decided on April 17, 2024

Memorialized on May 1, 2024

**Application for Amended Final Site Plan Approval to Modify Existing Golf Course
Facilities**

WHEREAS, Essex County Country Club (Hereinafter the “Applicant”) has made an application for Amended Final Site Plan Approval to modify its existing golf course facilities, specifically to construct a new “halfway” house 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 February 7, 2024, March 6, 2024, April 3, 2024 and April 17, 2024; and

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

WHEREAS, the Applicant provided testimony of John Del Mauro, President of the Essex County Country Club, Paul Calabrese, P.E. as a civil engineering expert and Michael Pessolano as a professional planner; (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 Micaela 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, and the Tree Permit Removal/ Replacement Application the Applicant submitted the following plans, reports and documentation to the Board as part the application package:

ITEM	SIGNED BY	DATE/REVISION
Half-way house Site Plan (7 sheets)	Paul T. Calabrese, P.E.	1/11/2024
Half-way house architectural plans (2 sheets)	Frank J. Rawding, A.I.A.	1/16/2024
Stormwater Management Report	Paul T. Calabrese, P.E.	11/10/2023
Property Survey	Charles P. Stewart, P.L.S.	10/27/1978
Letter in Support of customary nature of half-way house with	Lisa A. John-Basta, Esq.	1/25/2024
Affidavit of Publication and Service	Blanca Saccomanno, legal assistant	1/26/2024

WHEREAS, representatives of the public were provided with an opportunity to pose questions of the Applicant’s Witnesses, provide testimony from the Objector Planner 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, the Objector Planner and members of the public, as well as the exhibits marked into evidence during the course of the hearings ;and

WHEREAS, the Board also considered the testimony and filed review letters of its professionals at the hearing including a planning report dated January 22, 2024 by Paul Grygiel, AICP, PP, Township Planning Board Planner and engineering reports by John Hess, PE, PP, CME, Township Planning Board Engineer dated January 29, 2024 and February 26, 2024; and

WHEREAS, during the course of the hearings the Applicant's attorney and Ms. Micaela Bennett, Esq. filed multiple letter briefs with the Board in support of their respective legal positions including: (a) Lisa A. John-Basta, Esq. letter brief dated February 23, 2024; (b) Micaela Bennett, Esq. letter brief dated March 5, 2024; and (c) Lisa A. John-Basta, Esq. letter brief dated March 22, 2024; and

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 to construct a new 620 square foot halfway house near the southern end of the Applicant's property.
2. The Board affirmatively finds that the proposed halfway house is a customary accessory feature for a golf course based on the totality of the evidence presented during the course of the hearings.. The halfway house is located on the same lot as the principal golf course use and is incidental thereto in that it is a 620 square foot structure to be placed on an over 176-acre parcel of land that provides an amenity to the members and guests of the golf course inclusive of restroom facilities and a small walk-up snack/beverage bar. The Applicant submitted documentation of at least seven other golf courses within fifteen to twenty miles of the Applicant's golf course in the State of New Jersey with similar halfway houses to the one proposed

by the Applicant (with liquor licenses,) including another country club also located in West Orange. The Board also notes that the Board's professional planners Mr. Paul Grygiel and Mr. Gerard Haizel provided their professional expert planning testimony that the proposed halfway house is a customary accessory use/structure to the golf course. The Board was not persuaded by Objector Planner'' (Peter Steck) position that information on all golf courses within the State were required to be explored.

3. The Board also does not accept the logic of Mr. Steck's testimony related to the accessory nature of the proposed halfway house. Mr. Steck believed the halfway house was not a permitted accessory structure/use to the golf course due to the potential sale of alcohol from the structure and its proposed location on the Property but at the same time opined that the halfway house may be a permitted accessory/use structure if it was relocated to a different location on the Property where his client Ms. Bennett requested it be relocated to.
4. 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.
5. 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.

6. Surrounding the Property are single family residential properties, institutional, office and public buildings, and the Francis J. Byrne golf course, owned by Essex County.
7. There are no variances required for the application.
8. The proposed halfway house has two restrooms, one for men and the other Unisex/ADA compliant along with an approximate 105 square foot walk-up snack/beverage bar.
9. The current golf course set up has no restrooms on the course and the location of the halfway house was selected because it is a combination of the furthest and safest point from the existing clubhouse.
10. The proposed structure will have an overhang to protect golfers from the sun, lightening, storms, and golf balls.
11. No chairs or tables will be allowed at the halfway house as the only persons utilizing the halfway house are golfers who are required to keep a quick and efficient pace of the game.
12. Food consisting of pre-packaged items will be available along with water and soft drinks from the halfway house; however, no alcohol will be sold or served unless and until a specific alcohol beverage license is obtained for the halfway house.
13. There will be no cooking, grilling, or other food preparation at the halfway house.
14. The halfway house will be open only when the golf course is open for play (approximately 8AM to 7:30PM or less depending upon sunrise and sundown).
15. The proposed structure is 620 square feet and is located near the 14th fairway which is 65 feet to the nearest property line (45 feet is the minimum required setback to

the property line under the Code and therefore the proposed structure exceeds the minimum setback requirement by 20 feet) and 175 feet from the nearest house located at 8 Margulis Court (Block 156, Lot 29.03), which property owner did not appear or object at the hearings. The Board finds the proposed structure meets and exceeds the required minimum setback and that the structure will not have a detrimental impact on the surrounding property owners. Yet to minimize any impact that may be caused, the Board conditions the approval on planting and maintaining screening approved by the Township Forester on the side of the building that faces Old Indian Road.

16. The height of the accessory structure is 14'7" (which is less than the maximum permitted height for accessory structures in the zone of 15 feet).
17. The only utilities at the halfway house will be electricity, water and sewer.
18. Applicant will seek a New Jersey Department of Environmental Protection ("NJDEP") Freshwater Wetlands Letter of Interpretation (LOI) for the construction of the halfway house to confirm the presence/absence of wetlands and the required wetlands buffer. The site plans filed with the Board illustrated the limit of the wetlands transition area, and that the halfway house was proposed to be located outside of the regulated wetlands area buffer. The Board finds that the Applicant's receipt of a Letter of Interpretation from the NJDEP/approval for construction of the halfway house will adequately address the issues raised by Ms. Bennett and the public related to the potential encroachment of the halfway house into alleged regulated wetlands areas. The Board finds that the NJDEP is the appropriate governmental entity to make such a determination. The Board does not

provide any weight to Mr. Steck's testimony regarding the existence of wetlands and/or the potential encroachment therein since Mr. Steck is admittedly not an expert in wetlands or a civil engineer.

19. The Applicant also submitted an existing conditions and site clearing plan as part of its site plan set along with a tree removal application that indicated two trees were proposed to be removed in order to construct the halfway house. To address Ms. Bennett's and the public's concerns that additional trees may be removed or damaged in the construction of the halfway house, the Board conditions approval of the application on the Township Forester's review and approval of the tree removal plan, and also on the condition that any trees removed or damaged in order to construct the halfway house be replaced in kind on the Property. This condition shall not apply to trees located at a distance greater than 75 feet from the property boundary line that are exempt from the Township's Tree Removal Ordinance pursuant to Code Section 25-27.4.c.5.
20. Only interior lighting will be used and a single light for decorative accent will be placed over each of the restroom doors. This lighting will be shielded and pointed down so there is no spillage of light onto neighboring property.
21. For the safety of the golf course members and guests, the Applicant shall install an AED defibrillator machine on the exterior of the halfway house and train the employees working within the halfway house in the use of the machine. The Applicant shall also install an emergency 911 call box on the exterior of the halfway house.

22. To abate any concerns related to potential litter and/or trash generated from the halfway house the Applicant agreed to perform property maintenance at the end of the day and remove any trash, bottles, cans or other debris that is disbursed in or around the halfway house.
23. Applicant's planner and Board planners testified that the halfway house is an incidental, customary and subordinate structure common to golf courses.
24. There are seven other golf clubs located within 15 miles of the Essex County Country Club that have halfway houses (that sell alcohol) and offer the same proposed amenities as the application presented.
25. The halfway house will not be open to the general public for service of any food or beverage. The halfway house is an amenity to the members and guests of the golf course only.
26. The Board finds that any stormwater runoff from the vicinity of the halfway house will remain on the Property and will not discharge offsite.
27. 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 is an exception when there is an application that 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.

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

The proposed application complies with and meets all the standards of the Township ordinance and N.J.S.A. 40:55D-50a .

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Township of West Orange grants approval for an amendment to the Final Site Plan; 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

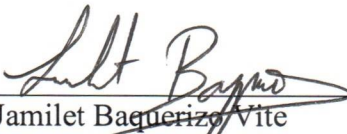
municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successor or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, 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. All garbage will be disposed of and removed from the halfway house at the end of each day.
8. No cooking/grilling permitted at the halfway house.
9. No chairs, tables or seating at the halfway house.
10. No music or public announcements to emanate from the halfway house

11. Should the applicant seek to serve alcohol from the halfway house they must first obtain approvals from the Township Council/ABC Board for the sale/distribution of that alcohol.
12. Site plan approval is contingent upon Applicant demonstrating that necessary approvals and/or directives from the NJDEP have been met and satisfied.
13. An AED defibrillator machine shall be placed and maintained on the exterior of the halfway house and all persons who work at the halfway house must be trained in the use of the AED defibrillator machine.
14. A remote 911 call box must be installed and maintained on the exterior of the halfway house in close proximity to the AED e.
15. Applicant must comply with the comments and recommendations set forth in the Planning Board Engineer's January 29, 2024 letter by John Hess of CME Associates.
16. Applicant shall plant and maintain evergreen screening which has been approved by the Forester on the side of the building that faces Old Indian Road.
17. Any trees removed or damaged for or by construction of the halfway house must be replaced in kind and maintained in perpetuity.
18. The halfway house hours are limited to the hours that the golf course is in use, approximately 8AM to 7:30PM.
19. Any tree which is to be removed must be shown on the plan and such removal must first be approved by the Township Forester.

20. Property maintenance must be done at the end of each day to remove any trash, bottles, cans or other debris that is disbursed in or around the halfway house.
21. 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 April 17, 2024, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 1, 2024.


 Jamilet Baquerizo Vite
 Planning Board Secretary

Vote Action Taken by the Board on April 17, 2024:

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

Vote on Memorialization on May 1, 2024:

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