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May 13, 2024

Ms. Diana Chandler-Zimmerman
Board Secretary
Township of West Orange Zoning Board of Adjustment
66 Main Street
West Orange, NJ 07052

Re: **Planning Review Letter**
28 Prospect Place
Block #114, Lot #31
Application for D Variance, Conditional Use, Minor Site Plan & Soil
Removal Permit
ZB-24-05

Dear Ms. Chandler-Zimmerman,

This office has reviewed the application submitted by *the Police Athletic League of West Orange, Inc. ("Applicant")*. The Applicant filed an application with the West Orange Board of Adjustment for a conditional use approval for modifications to an existing athletic field located at 28 Prospect Place within the Township's R-1 District. Because the use does not meet all the conditions of the Township's Zoning Code, a D-3 conditional use variance is required. In addition, the Applicant requires a "C" Bulk Variance for fence height, as it proposes to replace an approximately seven-foot chain link fence with a new eight-foot chain link fence in the outfield boundaries. The applicant is also applying for a soil removal permit and minor site plan approval.

In preparation of this memorandum, the following documents were reviewed:

1. Transmittal letter from Cameron W. McLeod of Gibbons, P.C., dated April 3 2024.
2. Township of West Orange Application Form for the Planning Board or Board of Adjustment, dated March 11, 2024.
3. Project Description: Justification of Reasons for Variance Relief & Justification for Waivers from Submission Checklist Requirements, prepared by Gibbons,



- P.C., dated April 3, 2024.
4. Verification of Taxes & Sewer Charges Paid, dated March 6, 2024.
 5. List and Buffer Report Map of Property Owners to be Served Notice, dated March 6, 2024.
 6. Affidavit of Ownership & Consent, dated March 11, 2024.
 7. Corporate Ownership Disclosure for Police Athletic League of West Orange, Inc.
 8. Resolution of Approval, Planning Board of West Orange, dated May 5, 2010.
 9. Application for Soil Erosion and Sediment Control Plan Certification by the Hudson- Essex-Passaic Soil Conservation District, dated March 14, 2024.
 10. Planning Report, prepared by Marucci Engineering Associated, LLC, dated April 12, 2024.
 11. Site Plan, prepared by Gianforcaro Architects, Engineers & Planners, dated January 29, 2024, last revised March 19, 2024.
 12. Property Survey, prepared by RWC Surveying, dated August 29, 2023, last revised March 15, 2024.
 13. W-9, West Orange Police Athletic League, dated April 4, 2024.

Property Information

The property that is the subject of this Application is commonly known as 28 Prospect Place and identified as **Block # 114, Lot #31** in the municipal tax records for the Township of West Orange. The site contains a two-story office building, parking lot, and natural grass baseball field, with an asphalt path along the exterior perimeter of the field. The field is completely fenced and there are two dugout structures along the first and third baselines. The dugout along the third baseline contains a second story “press box”.

Prospect Place is a one-way street located between Main Street and Glennon Place, Past Glenning Place, roadway becomes Sayers Place before terminating at Llewellyn Ave. The surrounding land uses to the north and east are characterized by the residential dwellings in the Township’s R-T Zone. To the west and south of the site, the land is forested, creating a buffer to residential dwellings in the R-1 Zone. A site visit was conducted on May 13, 2024. All photos in this memorandum were taken on this date.



*Figure 1: Aerial Image of the site at 28 Prospect Place is outlined in yellow.
Source: NJ-GeoWeb*

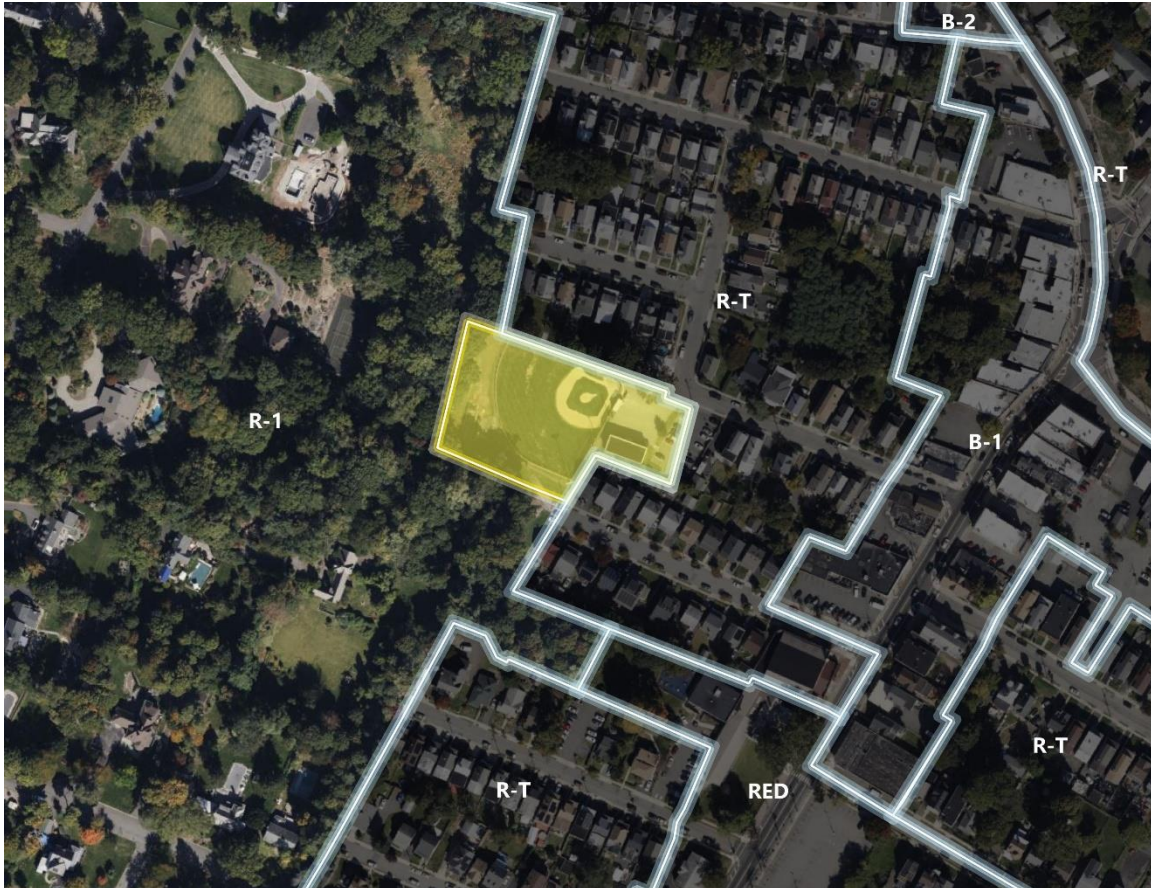


Figure 2: Zoning Map section depicting the subject property in the R-1 Zone shown in yellow.
Source: NJ-GeoWeb/Township of West Orange



Figure 3: Front of 28 Prospect Place viewed from the property entrance



Figure 4: View of Prospect Place facing east towards Main Street



Figure 5: View of Prospect Place towards Llewellyn Avenue



Figure 6: View of first base fence line and buffer to adjacent property



Figure 7: View of existing backstop



Figure 8: View of baseball field and outfield fence from behind center field



Figure 9: View of right fence line and asphalt paths behind right field



Figure 10: View of third base fence line and buffer to adjacent property to the south

Project Overview

The Applicant, the West Orange Police Athletic League, proposes to convert the existing grass baseball field to athletic turf, expanding the field footprint in the left field area, removing the asphalt path behind the outfield fence, replacing the existing fence along the outfield with a new eight-foot chain link fence, replacing the existing back stop, and constructing retaining walls outside the outfield fence in the right field and left field corners. No changes are proposed to the building structures.

The Applicant requests minor site plan application waivers for the following items:

#44. Lighting plan & details

#45. Landscape Plan & details prepared by a professional landscape architect

#46. Solid waste Management Plan.

Justification: *"Applicant does not propose any changes to existing lighting or landscaping, and is not proposing any modifications requiring a new solid waste management plan for the Property."* **COMMENT:** We have no objections to these waivers.

Zoning (§25-7.1)

This application is located within the Township's R-1 Zone, which is generally described as permitting one-family dwellings on 80,000 square foot lots. Permitted uses within the R-1 Zone include the following:

- One family, detached dwelling
- Water reservoir, well tower, filter bed
- Federal, state, county or township building
- Golf course and golf club house
- Farm, nursery, greenhouse and similar uses
- Hospital

Conditional Uses within the zone include:

- Commercial recreation
- Public school
- Private school
- Library

- Museum Park or playground
- Public utility building or structure
- Telephone exchange
- **Private club, other than a golf club**
- House of worship

This application is made for a Private Club facility, which is a conditionally permitted use within the R-1 Zone. Conditions associated with this use are found under **§25-24.2:**

(c) Private Club.

- (1) Parking lot entrances and exits shall be clearly visible from the public street and shall not be located within 75 feet of a street intersection.
- (2) There shall be a twenty-five-foot wide buffer adjacent to all residential property lines, within the required setback, which shall consist of natural vegetation and, if required by the Planning Board or Board of Adjustment, new vegetation to supplement the existing vegetation.
- (3) All structures shall be designed to be complementary to a residential neighborhood.
- (4) A landscape plan, which provides substantial buffering of the parking area, must be approved by the Planning Board or Board of Adjustment and kept on file in the Department of Planning and Development. All plantings shall be maintained in perpetuity and all plants must be replaced in kind when necessary.

Definitions (§25-4)

CONDITIONAL USE - Shall mean a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance; and upon the issuance of an authorization therefor by the Planning Board.

OPEN SPACE - Shall mean any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space; provided that such area may be improved with only those buildings, structures, streets and off-street parking and



other improvements that are designed to be incidental to the natural openness of the land.

PRIVATE CLUB - Shall mean a nonprofit or public building and related facilities owned or operated by a corporation, association or group of individuals established for the fraternal, social, educational, recreational or cultural enrichment of its members, which is not conducted as a business, and whose members pay dues and meet certain prescribed qualifications for membership.

SITE PLAN, MINOR - Shall mean any development plan of one or more lots that does not involve planned development, any new street, or the extension of any off-tract improvement, the cost of which is to be prorated pursuant to N.J.S.A. 40:55D-42; and proposes development that would require not more than five new parking spaces over and above the existing permitted spaces on the site, pursuant to the Township's zoning requirements; and proposes development of not more than 1,000 square feet of new building floor area.

Planning Comments

Conditional Uses

The proposed application is a **conditionally permitted use** within the R-1 Zone, subject to the conditions previously identified in this memorandum. Because the application fails to meet all the conditions for Private Club in the zone, a **D(3) Conditional Use Variance is required**.

N.J.S.A. 40:55D-70(d) permits a Board of Adjustment “in particular cases for Special Reasons” to grant a variance to permit “a use or principal structure in a district restricted against such use or principal structure.” This represents the Positive Criteria of the statute. In addition, a showing of the Negative Criteria is necessary to obtain a “d” variance. The applicant must demonstrate that the proposed variance can be granted “without substantial detriment to the public good and will not substantially impair the intent and the purpose” of the Master Plan and Zoning Ordinance.

When considering the granting of a “d” variance, an applicant must demonstrate that special reasons are satisfied by either showing that the proposed use “inherently serves the public good” or that it promotes the general welfare because the proposed site is particularly suited for that use. It was held in *Medici v. B.P.R. Co.*, 107 NJ 1 (1987) that the only “special reasons” which can be considered are

those which promote the general purposes of zoning, as listed in N.J.S.A. 40:55D-2. The court emphasized in *Burbridge v. Mine Hill Twp.*, 117 NJ 376 (1990), however, that the MLUL includes all the zoning purposes listed in N.J.S.A. 40:55D-2, not only the promotion of the general welfare. Therefore, each of these listed purposes may support an application for a “d” variance.

However, in the case of a D(3) or conditional use variance, the use is already permitted in the zone, with conditions. Therefore, the particular suitability requirement of the use does not apply. When considering a D(3) variance it is the *Coventry Square v. Westwood* case and not the *Medici* case that is utilized when analyzing the request for a variance. Instead of showing that the site is particularly suited for more “intensive” development the applicant must show that the site can accommodate the potential problems associated with the deviations from the code. In other words, can the problems that the ordinance, by restriction intended to address, be accommodated in this particular location?

In addition, a showing of the Negative Criteria is necessary to obtain a “d” Variance. The applicant must still demonstrate that the proposed variance can be granted “without substantial detriment to the public good and will not substantially impair the intent and the purpose” of the Master Plan and Zoning Ordinance.

Bulk “C” Variances

As previously noted, the applicant proposes to replace the existing outfield fence, which is approximately seven feet in height with a new eight-foot outfield fence. The Township of West Orange Zoning Code permits a maximum fence height of six feet under **§25-8.4 Walls and Fences**. This requires a C Variance.

N.J.S.A. 40:55D-70c sets forth the criteria for a planning board to grant variance from bulk requirements of zoning ordinance. Two types of “c” variances can be granted:

(c) 1: in cases of hardship, such as “exceptional narrowness, shallowness or shape of specific piece of property,” or by reason of exceptional or unique topographic conditions, physical features, or an exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

(c) 2: where the purposes of zoning would be advanced, and the benefits derived by the variance would outweigh any detriments.

The applicant must also meet the negative criteria of the statute for the granting of a "c" variance, wherein a variance can be granted only "without substantial detriment to the public good" and where it "will not substantially impair the intent and the purpose of the zone plan and zoning ordinance."

The applicant should be prepared to provide testimony to differentiate between this type of fencing and the fence regulations contemplated by the Township's Zoning Code.

Conclusions

From a land use planning perspective, we have no significant concerns with this application. We defer to the Board's engineer with regards to the use of artificial turf and the potential impact on stormwater.

Respectfully submitted,



George Wheatle Williams, PP, AICP
Principal, Nishuane Group, LLC.



Erik DeLine, PP, AICP, LEED AP
Associate, Nishuane Group, LLC.