

Resolution
Township of West Orange
Planning Board
PB 21-06 Montclair Golf Club/ 25 Prospect Avenue
Block: 151; Lot: 1,5,7,11,14,15.01,23,34,37,41,45.01 &49; Zone: R-2
Decided on August 11, 2021
Memorialized on September 1, 2021
C(2) Variance and Amended Site Plan Approval

WHEREAS, Montclair Golf Club (hereinafter the "Applicant") has made an application for C(2) Variance and Amended Site Plan approval in order to lengthen the golf netting previously approved under PB-19-11 at property located at 25 Prospect Avenue, also known as Block: 151; Lot: 1,5,7,11,14,15.01,23,34,37,41,45.01 &49, in the R-2 Zone; and

WHEREAS, a properly noticed public hearing was conducted on June 11, 2021; and

WHEREAS, the Applicant was represented by Robert A. Gaccione, Esq. of the firm Gaccione Pomaco P.C. ; and

WHEREAS, the Applicant provided testimony by Timothy B. Derrick, P.E., a professional civil engineer whose credentials were accepted by the Board; and

WHEREAS, the Applicant provided testimony by Roger Bacon, the General Manager of the Applicant; and

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

ITEM	SIGNED BY	DATE/REVISION
CS001 - COVER SHEET	MICHAEL FOWLER, P.E.	6/11/2021
CS100 - OVERALL SITE MAP AND TAX LOT PLAN	MICHAEL FOWLER, P.E.	4/30/2020
CS100 - OVERALL SITE PLAN	MICHAEL FOWLER, P.E.	6/11/2021
CS101 - PARTIAL SITE PLAN	MICHAEL FOWLER, P.E.	6/11/2021

WHEREAS, representatives of the public asked questions of the witnesses and had an opportunity to offer statements in regard to 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 amended site plan and c(2) variance approval in order to lengthen the golf netting, which was previously approved pursuant to PB-19-11, by an additional 140 feet at a height of up to 75 feet.

2. The property is located along Prospect Avenue near the boundary of West Orange and Verona. The surrounding area is primarily characterized by residential uses.

3. The application requires the following bulk variance relief from this Board:

Section/Requirement	Required	Existing	Proposed
25.8-4.a Maximum fence height	4 feet	100 feet	Additional fencing at 75 feet

4. N.J.S.A. 40:55D-46b and 50a are the focal points for consideration of amended preliminary and final site plan applications. N.J.S.A. 40:55D-46b provides that if “any substantial amendment in the layout of improvements proposed by the developer that have been subject of a hearing” is proposed, “an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development.” N.J.S.A. 40:55D-46b further provides that the Board “shall” grant amended preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. Similarly, 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 application complies with all ordinance requirements, the Board must grant approval. 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.

5. 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-70c. A “c(2)” variance may be granted where 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 applicant also 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 amended site plan approval:

Section/Requirement	Required	Existing	Proposed
25.8-4.a Maximum fence height	4 feet	100 feet	Additional fencing at 75 feet

2. The Municipal Land Use Law, at N.J.S.A. 40:55D-70(c) provides Boards with the power to grant variances from bulk and other Ordinance requirements when the Applicant satisfies certain specific proofs which are enunciated in the statute.
3. 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 that the benefits of any deviation will substantially outweigh any detriment.
4. These tests specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" variance relief, under Section (c)(2).
5. 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.
6. The proposal is limited to lengthening a golf netting that is meant to protect members of the public from being struck by golf balls.
7. The original netting approved under PB-19-11 proved insufficient from a safety point of view for screening golf balls from entering into areas where the balls could come into contact with members of the public.

NOW THEREFORE be it resolved by the Planning Board of the Township of West Orange that the amended application of Montclair Golf Club for property located at 25 Prospect Avenue, is determined as follows:

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

Section/Requirement	Required	Existing	Proposed
25.8-4.a Maximum fence height	4 feet	100 feet	Additional fencing at 75 feet

2. Amended site plan approval is granted along with the c(2) variance approval.

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, 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 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 successors 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 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 shall list all conditions of approval onto a final plan submission.
8. Applicant shall plant and maintain new foliage in the netting area closer to Prospect Avenue in order to improve the screening of the golf net.

The undersigned secretary certifies the decisions set forth herein was made by this Board on August 11, 2021, and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on September 1, 2021.

Diana L. Chandler-Zimmerman, Acting Board
Secretary

Vote on Action Taken by the Board on August 11, 2021:

BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Bagoff (Ch.)	X		X			
Guarino			X			
Smeraldo			X			
Klein			X			
Trenk			X			
McCartney			X			
McNair						X
Wilkes (V.Ch)		X				

Vote on Memorialization on August 11, 2021:

BOARD MEMBER	MOTION	SECOND	AYE	NAY	ABSTAIN	ABSENT
Bagoff (Ch.)						
Guarino						
Smeraldo						
Klein						
McCartney						
McNair					X	
Wilkes (V.Ch)						

