



MEMORANDUM

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To: Montgomery Township Zoning Board of Adjustment

From: Michael Sullivan, ASLA, AICP
James Clavelli, PP, AICP

Re: **The Bedens Brook Club**
Use Variance and Minor Site Plan
240 Rolling Hill Road
Block 31001, Lots 38 & 39
R-5 Single Family Residential Zone

Date: May 22, 2023

1.0 Project & Site Description

1.1 Project Description: The applicant is seeking a use variance and minor site plan approval to construct nine (9) pole mounted lights around two (2) existing tennis courts known as Courts #4 and #5. Four (4) of the lights are single-arrangement lights, four (4) are twin-arrangement lights and one (1) is a quad-arrangement light. This is the only proposed development on the site per the submitted application and plan. The applicant is requesting relief from providing 14 trees per acre.

1.2 Existing Site Conditions – Entire Lot: The subject property is 175.769 acres on an irregularly shaped lot that contains frontage on Rolling Hill Road and Duncan Lane. The primary access to the site is from a driveway connecting to Duncan Lane at the southernly portion of the site. Development on the site consists of a clubhouse, parking lot, pool, cabana building, golfing pro shop, maintenance building, barn, a one-story frame dwelling, tennis courts, paddle ball courts, driving range, putting green and golf course. The vast majority of the site is utilized for the golf course, within which are cart paths. Fencing is located throughout the site.

The site contains various natural features, including wetlands, The Bedens Brook (and its associated stream corridor) and three (3) ponds. Two (2) sanitary sewer easements run through the site, one (1) of which is 30 feet wide and the other is 20 feet wide.

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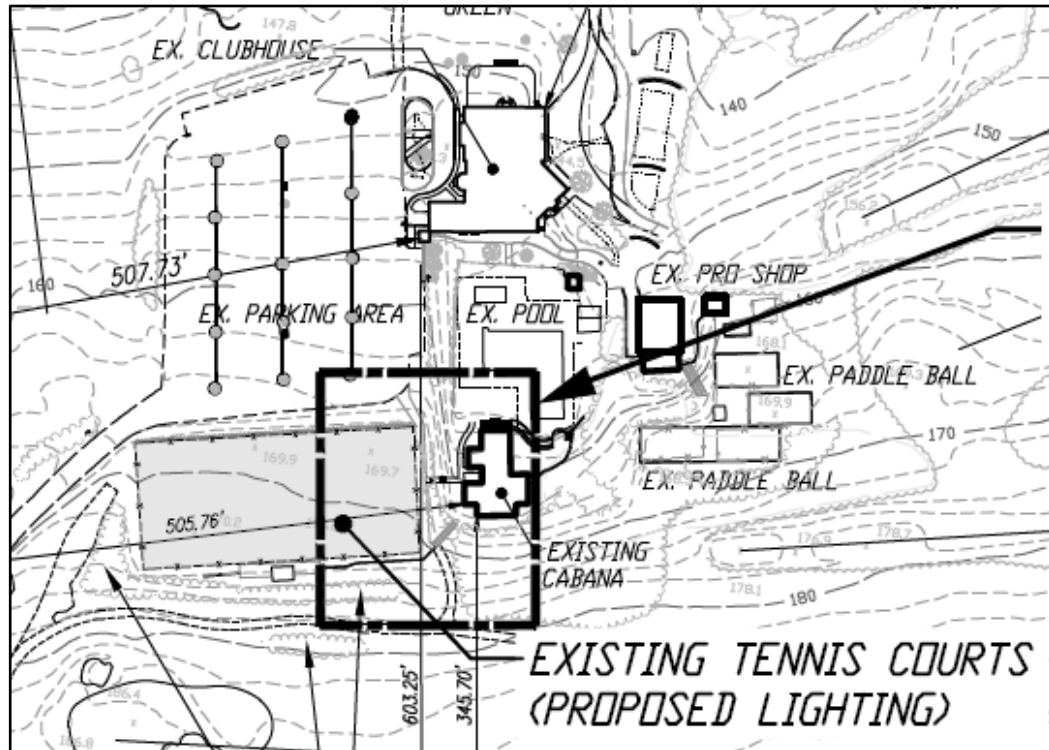


- 1.3 Existing Site Conditions – Project Area:** The project area consists of a relatively minor portion of the site. The following image, provided by the applicant as part of the overall site plan on Sheet 2, indicates the location of the tennis courts and proposed lighting. The tennis courts are south of the parking area, pool and clubhouse. The two (2) subject courts are part of a larger row of five (5) courts surrounded by an existing fence. To the south, west and north, the courts are surrounded by trees. Beyond the rows of trees to the south and west, which are where the closest adjacent properties are located, are two (2) golf holes, beyond which are wider rows of trees, beyond which are single-family homes. The distance of the proposed lights to the five (5) closest residential properties range between 332 feet to the south to 506 feet to the northwest and 749 feet to the southeast.



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- 1.4 **History of Approvals:** The club is a non-conforming use that was granted an initial “d(1)” use variance on June 10, 1963¹. The original variance approval states: “granted to use 308 acres, south of Bedens Brook Rd. and east of Province Line Rd. for a country club, swimming pool, tennis courts, golf course and riding facilities, subject to 3 conditions.” The application indicates that subsequent approvals have also been granted, though this office does not have records of those approvals. Due to the site being originally permitted by “-d(1)” use variance, additional expansion or intensifications of the site requires additional “-d(1)” use variances.
- 1.5 **Required Relief:** Use variance relief is required for any additions or changes to the use as it remains a prohibited use. Due to the site being originally permitted by “-d(1)” use variance, this use is not a preexisting non-conformity, thus expanding its use is cognizable pursuant to NJSA 40:55D-70.d(1) rather than “d(2)”. Additional relief includes a variance for the height of the proposed lights and design exceptions relating to trees and sidewalks.

¹ Per a “property card” provided to this office by the Montgomery Township Planning Coordinator.



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- 1.6 Site Context:** The Bedens Brook Country Club is located in the southwestern quadrant of the Township near the borders with Hopewell and Princeton. Neighboring properties to the south, west and north consist of single-family detached dwellings. To the east are additional single-family detached dwellings and a sanitary sewer plant. While the site as a whole is adjacent to several single-family properties, those areas closest to residences are a part of the golf course. The existing tennis courts and area of the proposed lights are 321 feet away from the nearest residential lot.



2.0 Use & Bulk Standards

- 2.1 Non-Permitted Principal Use.** *Use variance relief is required.* As indicated in 1.4, the Bedens Brook Country Club is a nonconforming use in the R-5 district, pursuant to §16-4.2a. **A use variance is required pursuant to §40:55D-70.d(1).**
- 2.2 Accessory Permitted Uses.** *Variance relief is required.* The proposed addition to the country club impacts the existing accessory buildings/structures that were permitted under previous approvals, the expansion of which requires variance relief.
- 2.3 Area & Yard Requirements.** §16-4.2d does not provide standards for country club uses, or any uses outside of what is permitted in the zone. As such, there are no



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standards for accessory structures or lights associated with country clubs in the R-5 zone.

3.0 Lighting

- 3.1 **Proposed Lighting:** The plan indicates nine (9) pole mounted lights around two (2) existing tennis courts known as Courts #4 and #5. Four (4) of the lights are single-arrangement lights, four (4) are twin-arrangement lights and one (1) is a quad-arrangement light.

The lights are Zone Large (ZNL) Outdoor Sports Lights. Per the manufacturer detail sheet, the lights are LEDs. There are options for 3,000k, 4,000k or 5,000k color temperature bulbs. There are options for integral louver and integral half louver options, which provide additional backlight control and shielding. **It is recommended**

that the plans specify the 3,000k option, as this provides a warmer light. The applicant should also utilize the louver shields for the lights around the perimeter of the tennis court facing inward.



- 3.2 **Impact of Lighting on Surrounding Properties.** The site plan includes a lighting plan which indicates the light spillage from the proposed lighting. The lighting plan extends to zero, indicating 0.00 footcandles approximately 100 feet in any direction resulting from the proposed lights. This office prepared two labeled photos that indicate the distance of the tennis court to the west and south where residential dwellings are closest. At 100 feet of light spillage, the lighting calculations indicate 0.00 footcandles at approximately 100 feet. Additionally, beyond that 100-foot marker are existing masses/groves of trees, though, based on a site visit performed by this office, they appear to be deciduous rather than evergreen which means they would provide more or less screening depending on the time of year. **The applicant should testify generally as to the impact of the lighting on nearby residential properties. The board may find the addition of evergreen plantings or other barrier may be a means of mitigating any impact of light spillage beyond the confines of the country club.**



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- 3-3 **Lighting Height of Pole Mounted Lights:** *Variance relief is required.* Pursuant to §16-5.4b.2(a), lighting fixtures are not to exceed 20-feet or the height of the closest major building, whichever is less. The proposed lights are 22 feet in height, which does not conform. The degree of nonconformity cannot be determined at this time, as the height of the nearest major building is not given. If the height of the nearest major building is less than 20 feet, the degree of relief required will increase. **Variance relief is required.**



- 3.4 **Required Lighting Specifications: *Additional information is required.*** Pursuant to §16-5.4b.2(b), lighting fixtures are to include non-glare lights with recessed lenses focused downward and with cut-off shields as appropriate in order to mitigate against adverse impacts upon adjacent and nearby properties, the safety of traffic along adjacent roadways and overhead skyglow. The proposed lights are LED and downward facing and the details indicate “Zero uplight.” **As indicated in 3.1, the applicant should specify the inclusion of the louver shield option on the plan.**
- 3.5 **Site Lighting at Ground Level: *Additional information is required.*** Pursuant to §16-5.4b.2(c), light intensity at ground level for walkways and parking areas shall average a minimum of 0.3 footcandles, though not more than 1.0 footcandle. The statistical area summary provided only provides calculation summaries for the tennis court. It does not indicate how, when considered with any other existing lighting on site, the overall lighting of the site as regards the parking area and nearby walkways will be impacted by the inclusion of the tennis court lights. The lighting diagram provided on sheet 3 of the plans indicates that light spillage onto the parking area at its nearest point (approximately 25 feet) is as high as 9.2 footcandles. **The plan should be updated to include a light plan for the nearby parking area and walkways and incorporate the proposed lighting and nearby existing lighting so that the Board can have a full understanding of how the proposed lighting impacts the parking area and nearby walkways.**
- 3.6 **Site Lighting at Ground Level - Intersections:** This does not appear to be relevant. Pursuant to §16-5.4b.2(c), light intensity at intersections shall average a minimum of 0.5 footcandles, though not more than 1.0 footcandle. The nearest intersection is the one between the parking area and driveway to the site, which is over 150 feet away from the nearest proposed light. The lighting diagram provided by the applicant shows the proposed lights reaching 0.0 footcandles at approximately 90 feet, which would not impact the nearest intersection.
- 3.7 **Circuit Timers: *Additional information is required.*** Pursuant to §16-5.4b.2(d), excepting any lighting determined by the Planning Board to be necessary and/or advisable for security purposes, all other lighting is to be controlled by circuit timers so that the lights are automatically turned off after business hours. There does not appear to be any notation on the plan regarding hours of operation for lighting. **The applicant should testify as to the hours of operation of the proposed lighting and add a note to the plan that indicates that information.**
- 3.8 **Performance Standard – Glare: *Additional information is required.*** Pursuant to §16-5.9b, no use shall produce a strong, dazzling light or reflection of a strong,



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dazzling light or glare beyond its lot lines. Exterior lighting shall be shielded, buffered and directed so that glare, direct light or reflection will not become a nuisance to adjoining properties, units, districts or streets. **The applicant should testify to any glare produced by the proposed lighting and its impact on adjoining properties, units, districts or streets. Additionally, the manner in which the lighting operates should be testified to, as to whether it will be constant or intermittent, pulsating, or otherwise distributed. The applicant should consider utilizing a professional standard for comparison purposes to indicate to the Board how glare, if it is visible, will be viewed by surrounding properties.**

4.0 Additional Site Plan Elements

- 4.1 **Trees. A design exception is required.** §16-5.6d.3, a minimum of 14 trees per acre of gross tract shall be planted throughout the tract in the case of nonresidential or multifamily development. At 175.769 acres, this section requires a total of 2,461 (175.769 x 14 = 2,460.766) trees to be planted on the site. However, the applicant's project is limited to an area of disturbance of approximately .42 acres (±18,000 square feet) in order develop the proposed lighting.

This section also states that “where the applicant has demonstrated to the satisfaction of the Board that it is impractical or undesirable to provide the required number of trees then the Board may require tree planting in the disturbed area only, which trees shall be of a substantially larger caliper – e.g., five-inch caliper measured 12 inches from the ground – as appropriate for the tree type and species, based on consultation with the Township Landscape Architect.” The applicant has identified the limit of disturbance as 0.42 acres (±18,000 square feet). If the Board grants an exception for tree plantings to reflect the area of disturbance only, then 6 trees would be required.

§16-5.6d.3(b) states that “where the applicant has demonstrated to the satisfaction of the Board that the availability of areas for the planting of trees as required by this section is such that it is impractical or undesirable to provide the required number of trees ..., then the applicant shall install the remaining number of trees on public property within the Township, as directed by the Township Landscape Architect; or contribute sufficient funds to the Montgomery Township Tree Replacement Fund for the installation of the remaining number of required trees on public property....” The Board may want to consider this as an alternative if new trees onsite are determined to be impractical.

- 4.2 **Sidewalks. A design exception may be required.** §16-5.14c.1(d) requires “sidewalks shall be provided along all existing streets upon which all residential and nonresidential



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development abuts, unless specifically waived in certain locations by the reviewing municipal agency based upon good cause shown by the applicant ...” A sidewalk does not currently exist along the frontage of the property on Rolling Ridge Road nor is a sidewalk proposed. The Land Development Ordinance indicates that the requirements of §16-5.14C.1(d) have been in place since at least 2007 and as such may not have been subject to the sidewalk requirement at any point in the last 16 years. The Board should determine if conditions on Rolling Ridge Road have changed such that sidewalks would be warranted at this time. **A design exception may be required.**

5.0 Miscellaneous

- 5.1 **Residential Development Fee for Affordable Housing. *Condition of Approval.*** The applicant is required to comply with the nonresidential development fee ordinance consistent with §15-24.

6.0 Consideration of the Use Variance

- 6.1 **Consideration of the Use Variance:** The “d(1)” designation is related to its codification in the NJ Municipal Land Use Law (NJ MLUL) at 40:55D-70.d(1). The applicant bears the burden of proof in the justification of the variances.

- a) **Consideration of the Positive Criteria.** To satisfy the criteria of a use variance, known as d(1) variance relief, the applicant may demonstrate there are sufficient “special reasons” for the grant of a (d)1 variance under two broad circumstances:
- (1) When the refusal to allow the project would impose on the applicant an undue hardship, and/or
 - (2) When the requested relief advances a purpose of zoning as articulated in NJSA 40:55D-2 because the property is particularly well-suited to such a use.
- b) **Consideration of the Negative Criteria:** Should the applicant satisfy the positive criteria, it must also be demonstrated that that the granting of the variance can be accomplished without resulting in substantial detriment to the public good and without substantial impairment of the intent and purpose of the zoning ordinance and zone plan (master plan). These factors are referred to as the negative criteria.



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In *Medici v. BPR Co.*, the Court explained the substantial detriment phrase as follows:

“the first prong of the negative criteria [requires] that the variance can be granted “without substantial detriment to the public good.” In this respect the statutory focus is on the variance’s effect on the surrounding properties. The board of adjustment must evaluate the impact of the proposed use variance upon the adjacent properties and determine whether or not it will cause such damage to the character of the neighborhood as to constitute “substantial detriment to the public good.””

In *Medici v. BPR Co.*, the Court articulated two aspects of a Board’s required findings in determining whether a proposal satisfies the criterion “without substantial impairment to the intent and purpose of the zoning ordinance and zone plan”, requiring that:

“in addition to proof of special reason, an enhanced quality of proof and clear and specific findings by the board of adjustment that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance. The applicants’ proofs and the boards’ findings [in this regard] must reconcile the proposed use variance with the zoning ordinance’s omission of the use from those permitted in the zoning district.” (Emphasis added)

Relevant policy language from the Master Plan is included in section 9 that may be helpful in consideration. However, it should not be taken as encompassing all relevant land use policies.

7.0 Considerations Relative to the Granting of the Use Variance

- 7.1 **Proof to be Supplied:** The previous section indicates what the applicant is required to prove or provide satisfactory evidence or testimony from expert and fact witnesses for the Zoning Board of Adjustment to make a decision. The following details of the use should be provided by the applicant under testimony so that the Board can understand the nature of the use and how the use may change with the proposed development:
- 7.2 **Operations:** The applicant should fully describe the existing use of the tennis courts.



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- **Hours of Operation:** The current schedule for the tennis courts including when they are open during the year and the hours of operation when in season. The applicant should testify as to whether the addition of tennis court lighting will impact the hours of operation or time of year in which the courts will be utilized.
- **Events:** The applicant should testify as to the types of events hosted at the tennis courts, such as tournaments or other events revolving around tennis. The applicant should testify as to whether this number will increase, or the intensity of such events in terms of number of patrons and automobiles present for such events will increase, as a result of the proposed lights.
- The applicant should testify as to the current number of staff required to operate and maintain the tennis courts and if this number will increase as a result of the proposed lighting.

7.3 Other Potential Concerns: The following are typical aspects of lighting that may create negative impacts on adjacent and nearby property. The Board may wish to explore these and other impacts with the applicant that may come to light from the applicant's and their professionals' testimony and public questions:

- **Noise:** The potential for noise from the facility at hours not previously associated with the site due to the proposed lighting.
- **Traffic and Parking:** How will traffic and parking be impacted by the addition of new lighting?
- **Waste:** The applicant should testify as to whether the proposed lighting will in any way impact the amount of waste generated by the site.

8.o Design Exceptions

The proposal includes design exceptions. The Municipal Land Use Law at N.J.S.A. 40:55D-51.b discusses the criteria for the granting of exceptions. While the burden of proof is lower than that of variances, the statute does provide a framework for decisions:

The planning board when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan



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approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

9.0 Relevant Policy

9.1 Master Plan Goals. The Township Master Plan includes several goals which are relevant to the Board's consideration of this application. The following goals can be found on pages 6 through 8 of the 2017 Master Plan Reexamination Report:

2. *The identity of the Township as a totality and the integrity of individual neighborhood areas should be preserved, enhanced and created to the maximum extent possible.*

As the neighborhood has contained this club for several decades, the Board should determine if the proposed lighting impacts its relationship to the neighborhood.

3. *The Development Plan should recognize the physical characteristics of the Township and acknowledge the inherent capabilities and limitations of the land to host different types of community development at appropriate densities and intensities.*

The Board may want to consider whether the proposed lighting creates any negative impacts that cannot be mitigated by the land as it currently exists.

10.0 Materials Reviewed

- 10.1 *Montgomery Zoning Board of Adjustment Application*, dated December 19, 2022, with attachments.
- 10.2 *Tennis Court – Lighting Minor Site Plan and Use Variance Plan*, 3 sheets, prepared by Michael K. Ford, PE, Van Cleef Engineering, dated January 16, 2023, revised to March 17, 2023.
- 10.3 *Lighting Letter*, prepared by Craig W. Campbell, General Manager, dated February 16, 2023.



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11.0 Applicant / Owner / Professionals

11.1 **Owner/Applicant:** the Bedens Brook Club, 240 Rolling Hill Road, Skillman, NJ 08558. Telephone: 609.466.2646. Email: ccampbell@bedensbrookclub.com.

11.2 **Attorney:** Michael P. O'Grodnick, Esquire, 56 East Main Street, Somerville, NJ 08876. Telephone: 908.526.0707. Facsimile: 908.725.8483.

11.3 **Engineer:** Michael K. Ford, PE, Van Cleef Engineering, 32 Brower Lane, P.O. Box 5877, Hillsborough, NJ 08844. Telephone: 908.359.8291. Email: mford@vancleefengineering.com.

12.0 Summary

12.1 The applicant is seeking a use variance, minor site plan approval and design exceptions for the addition of nine (9) pole-mounted lights to an existing tennis court in a Country Club that was approved by Use Variance in the 1960s.

The following variances and design exceptions are required (additional variances and design exceptions may be identified by other Board professionals):

- a) Variances
 - §16-4.2c Use Variance
 - §16-5.4b.2(a) Height of pole-mounted lights
- b) Design Exceptions
 - §16-5.6d.3 Trees
 - §16-5.14c.1(d) Sidewalks

Please contact this office with any questions you may have.

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