



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: March 11, 2024

1.0 Project & Site Description

1.1 Project Description: The applicant is seeking a use variance and minor site plan approval to construct a tennis hut along the southern boundary of the existing tennis courts, and a new pump station in the northern central portion of the golf course. Both buildings are replacing existing buildings. 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.

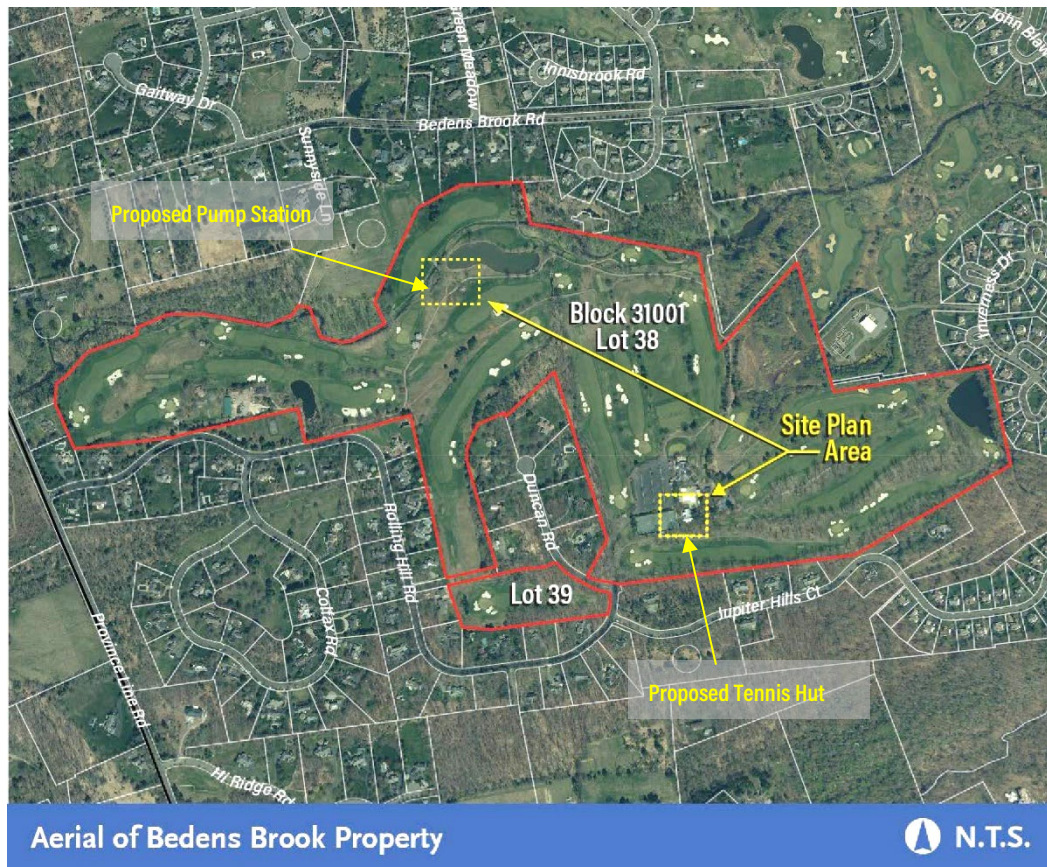
The site contains various natural features, including wetlands, The Bedens Brook (and its associated stream corridor) and three ponds. Two sanitary sewer easements run through the site, one of which is 30 feet wide and the other is 20 feet wide.

John Hatch, FAIA
George Hibbs, AIA
Brian Slaugh, AICP
Michael Sullivan, AICP
Michael Hanrahan, AIA
Mary Beth Lonergan, AICP



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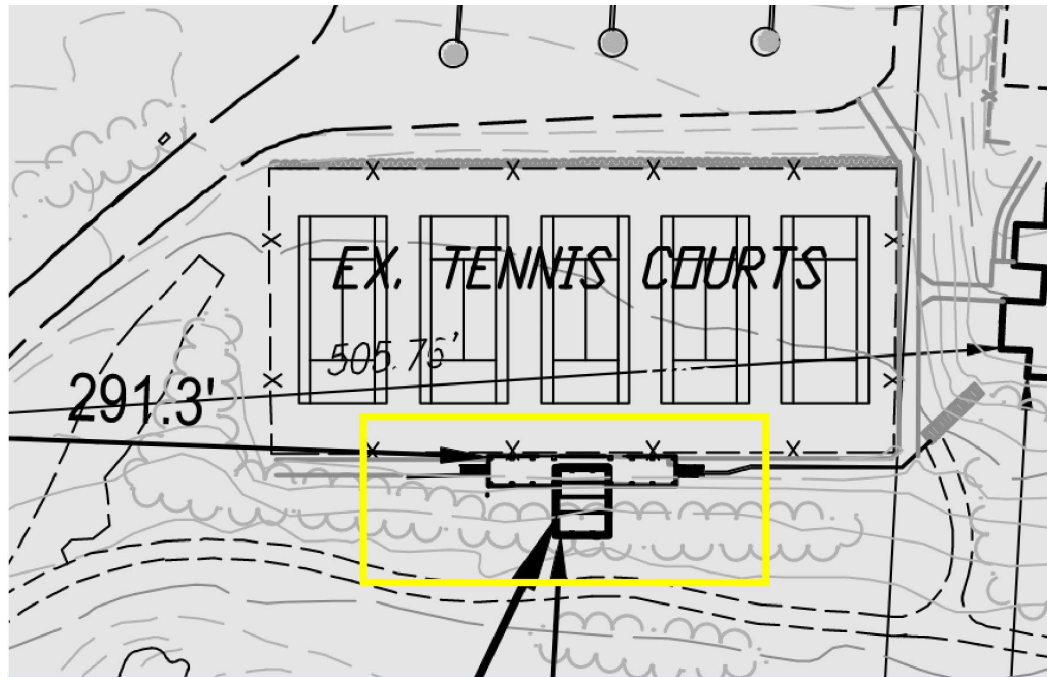
- 1.3 Existing Site Conditions – Tennis Hut Project Area:** The first project area consists of a relatively minor portion of the site. The main site entrance from Rolling Hill Road leads to a driveway which accesses the main complex on the property, consisting of a club house, pool, pro shop, a cabana, paddle ball courts, tennis courts, and a large parking area that serves the complex. The tennis courts are the southernmost of these features, and the tennis hut is proposed on the southern side of the courts. This area contains trees and a cart path. The following aerial indicates this location on the site, and a close up of the proposed plan is indicated in the first image on the following page.
- 1.4 Existing Site Conditions – Pump Station Project Area:** The proposed pumped station is located in the northern central portion of the site in close proximity to the Bedens Brook and a pond. The site is just outside of the 100 year flood plain, but within the Township stream corridor. The overall aerial indicates this location on the site, and a close up of the proposed plan is indicated in the second image on the following page.





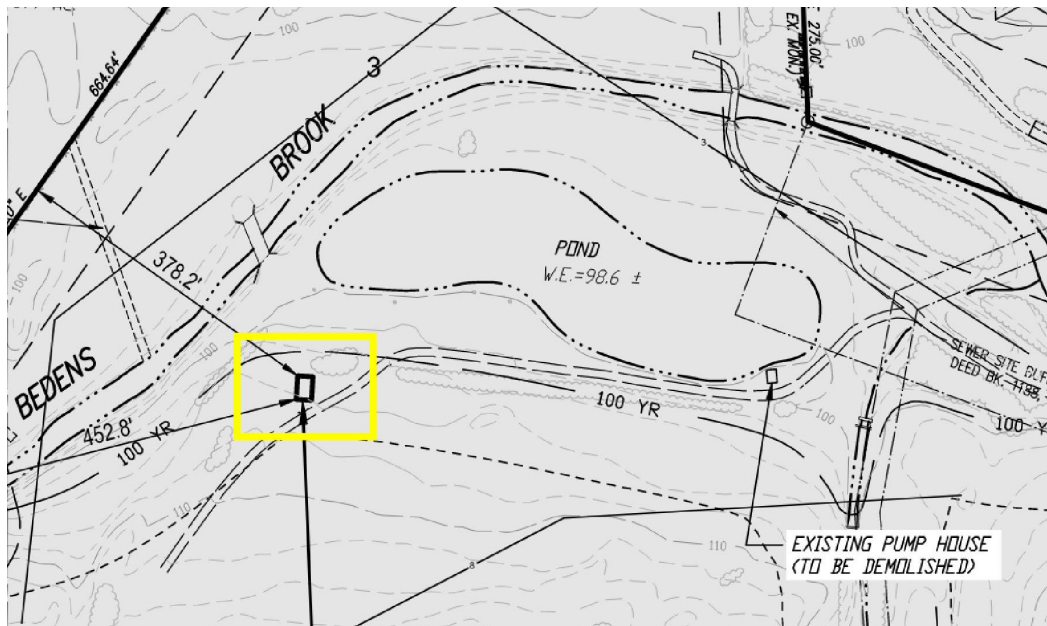
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Area of Proposed Tennis Hut (In Yellow)

N.T.S.



Area of Proposed Pump Station (In Yellow)

N.T.S.



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Existing Tennis Hut and Site of New Tennis Hut



Approximate Location of Proposed Pump House



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- 1.5 History of Approvals:** The club is a 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 with the exception of the most recent approval for tennis court lighting pursuant to *Montgomery Township Zoning Board of Adjustment Resolution #2023-05* adopted on May 25, 2023. 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.
- 1.6 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 design exception relating to trees.
- 1.7 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 proposed tennis hut is ±300 feet away from the nearest residential lot. The proposed pump station is 378.2 feet from the nearest property line, and ±500 feet to the nearest residential property boundary.

2.0 Use & Bulk Standards

- 2.1 Non-Permitted Principal Use. *Use variance relief is required.*** As indicated in 1.5, 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 additions to the country club impact the existing accessory buildings/structures that were

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



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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 standards for accessory structures associated with country clubs in the R-5 zone. The exception is for height and location, which are part of general accessory building regulations in §16-5.1.
- 2.4 Accessory Building Height – Tennis Hut:** The maximum permitted height of an accessory building pursuant to §16-5.1.d is 25 feet. The proposed tennis hut is 25 feet in height. The plan and environmental impact statement indicate that there will be no changed to the existing grade, as such, the building height does not have to be modified to account for grade changes, and the plan complies.
- 2.5 Accessory Building Location – Tennis Hut:** §16-5.1. regulates the location of accessory buildings based on “required front yards,” for which there are none for this use in this zone. As such, these regulations do not apply.
- 2.6 Accessory Building Height – Pump Station:** The maximum permitted height of an accessory building pursuant to §16-5.1.d is 25 feet. The proposed pump station is ±12 feet and nine inches in height. The plan and environmental impact statement indicate that there will be no changes to the existing grade, as such, the building height does not have to be modified to account for grade changes, and the plan complies. The specific building height is not indicated on the plan and should be clearly indicated. Based on the scale provided by the applicant, it is apparent that the height complies, but the specific height should be provided.
- 2.7 Accessory Building Location - Pump Station:** §16-5.1. regulates the location of accessory buildings based on “required front yards,” for which there are none for this use in this zone. As such, these regulations do not apply.

3.0 Tennis Hut

- 3.1 Proposed Tennis Hut:** The proposed tennis hut has a building footprint of approximately 1,529 sf² inclusive of two exterior staircases, which includes a deck

² This calculation was determined by this office using the provided scale in combination with a software called Bluebeam.

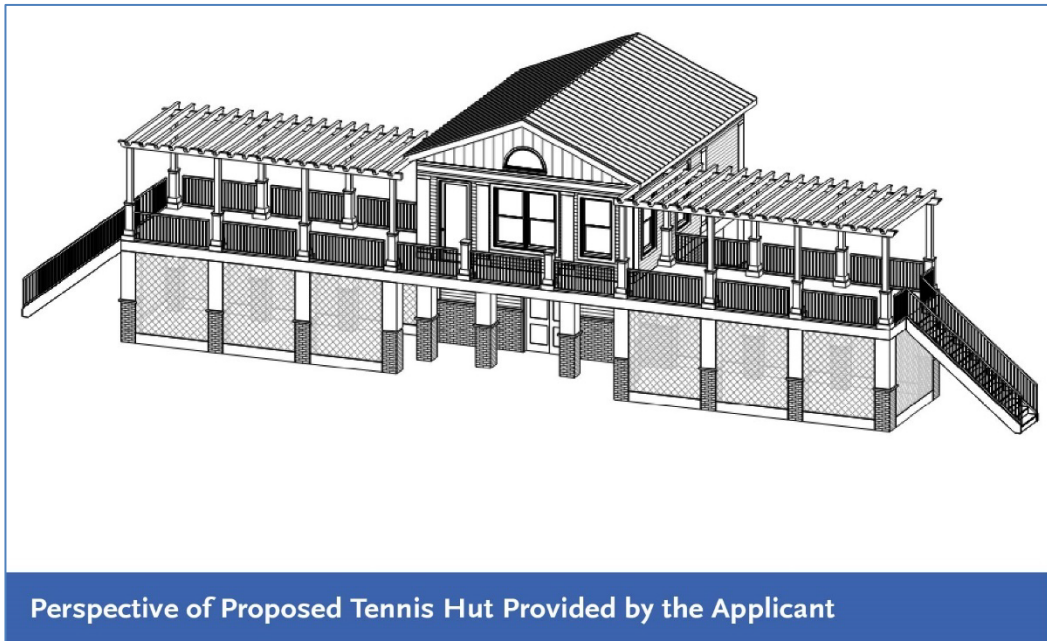


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with a pergola. The building contains two levels. The ground floor contains a storage/mechanical room and ADA accessible bathroom. The second floor contains an office, kitchenette, walk-in closet and “tennis viewing room” which consist of a room with furniture and a view of the courts. The majority of the footprint consists of exterior deck space and the support structures for the deck.

The exterior of the building is composed of a brick veneer base on the bottom of the structural components. The façade is sheathed with vinyl siding, and the roof is composed of metal. There is a lattice between the support columns that is not identified on the plan. The deck contains metal railings and is capped by pergolas on either side of the roofed portion of the upper level.

Access to the hut will be from an existing paved walkway which connects to, and wraps around, the tennis court, and leads to other facilities on the property.



- 3.2 **Lighting:** The plans do not indicate any exterior lighting proposed on the building. The applicant should testify as to whether any lighting is envisioned or proposed for the tennis hut. **If any lighting is proposed, it should comply with §16-5.4.b.**

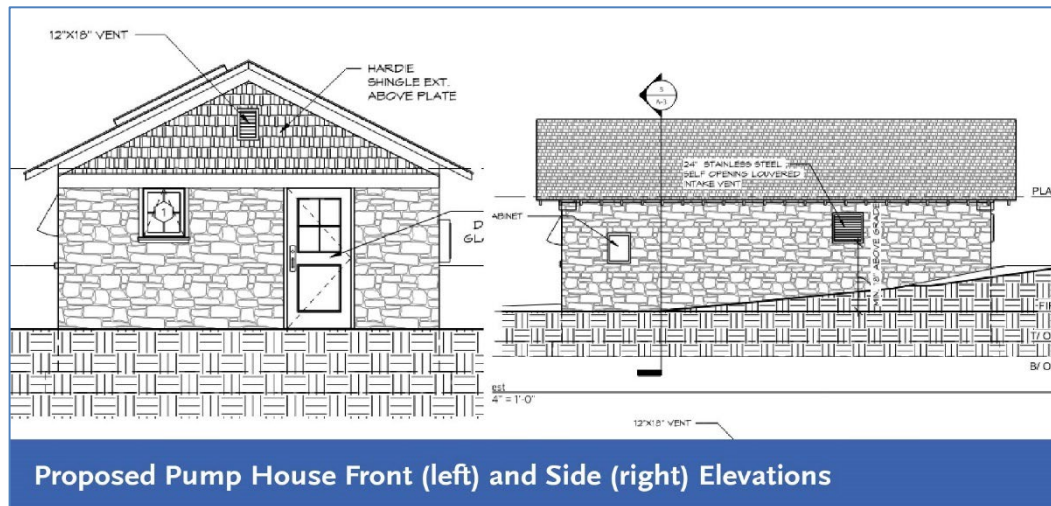


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- 3.3 **Accessibility:** The tennis hut does not appear to be barrier-free or accessible, with the exception of the ground floor rest room which is an ADA bathroom. **It is recommended that the building be configured in a manner that is accessible to all users.**

4.0 **Pump Station**

- 4.1 **Proposed Pump Station:** The proposed pump station has a footprint of 504 sf. As indicated previously, the building is just under 13 feet in height. It is composed of a stone veneer siding and a cedar shake pitched roof. The building will sit on top of a concrete well. The well connects to a pipe which runs for approximately 1,000 ft. and will be used to irrigate portions of the golf course.



- 4.2 **Lighting:** The plans do not indicate any exterior lighting proposed on the building. The applicant should testify as to whether any lighting is envisioned or proposed for the pump station. **If any lighting is proposed, it should comply with §16-5.4.b.**

5.0 **Additional Site Plan Elements**

- 5.1 **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. The limit of disturbance



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for the proposed pump house, piping, and demolished pump house is 8,720 sf. The limit of disturbance for the tennis hut is not indicated. The footprint of the proposed tennis hut is $\pm 1,529$ sf., which added to 8,720 sf. totals 10,249 sf. **The applicant should testify as to the exact limit of disturbance for the tennis hut.**

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 limit of disturbance calculated by this office is .24 acres ($\pm 10,249$ square feet). If the Board grants an exception for tree plantings to reflect the area of disturbance only, then 4 trees would be required. If this exception is granted, the proposed trees are required to be planted at a five inch caliper measured 12 inches from the ground.

§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.

- 5.2 **Sidewalks.** A *design exception was previously granted*. §16-5.14c.1(d) requires “*sidewalks shall be provided along all existing streets upon which all residential and nonresidential 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. A design exception was granted for this condition pursuant to Montgomery Township Zoning Board of Adjustment Resolution #2023-05 adopted on May 25, 2023

6.0 **Miscellaneous**



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

7.0 Consideration of the Use Variance

- 7.1 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.

- 7.2 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.

- 7.3 Consideration of the Negative Criteria:** Should the applicant satisfy the positive criteria, it must also be demonstrated 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.

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



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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 10 that may be helpful in consideration. However, it should not be taken as encompassing all relevant land use policies.

8.o Considerations Relative to the Granting of the Use Variance

8.1 **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:

8.2 **Operations:** The applicant should fully describe the proposed use of the tennis hut. As a use variance was recently granted for lights on the tennis court, and many of these same questions applied to that use, the applicant may wish to indicate whether the responses are identical to those provided during the last hearing for a use variance for this site.

- **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



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intensity of such events in terms of number of patrons and automobiles present for such events will increase, as a result of the proposed tennis hut.

- 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 tennis hut.

8.3 Other Potential Concerns: The following are typical aspects of gathering spaces 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 become known 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 tennis hut.
- **Traffic and Parking:** How will traffic and parking be impacted by the addition of the new tennis hut?
- **Waste:** The applicant should testify as to whether the proposed tennis hut will in any way impact the amount of waste generated by the site.

8.4 Pump Station: Information regarding noise, traffic, and waste, as indicated in 8.3 in regard to the tennis hut, should be provided for the pump station

9.0 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 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.

10.0 Relevant Policy



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10.1 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 tennis hut and pump station 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 tennis hut or pump station creates any negative impacts that cannot be mitigated by the land as it currently exists.

11.0 Materials Reviewed

- 11.1** *Montgomery Zoning Board of Adjustment Application*, dated October 6, 2023, with attachments.
- 11.2** *Pump House & Tennis Hut –Minor Site Plan and Use Variance Plan*, 4 sheets, prepared by Michael K. Ford, PE, Van Cleef Engineering, dated October 9, 2023, revised to January 8, 2024.
- 11.3** *Environmental Impact Statement*, prepared by Michael K. Ford, PE, Van Cleef Engineering, dated November 8, 2023.
- 11.4** *New Tennis House Architectural Drawings*, 2 sheets, prepared by William J. Dorin, dated September 28, 2023.
- 11.5** *New Pump House Architectural Drawings*, 4 sheets, prepared by Eric Holterman, HMR Architects, dated January 10, 2023, revised to August 21, 2023.



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- 11.6** *Irrigation Pump Station Progress Drawing*, 2 sheets, prepared by Jeffrey J. Sartorio, PE, Barone Engineering Associates, dated June 10, 2022, revised to November 3, 2023.

12.0 Applicant / Owner / Professionals

- 12.1 Owner/Applicant:** the Bedens Brook Club, 240 Rolling Hill Road, Skillman, NJ 08558. Telephone: 609.466.2646. Email: ccampbell@bedensbrookclub.com.
- 12.2 Attorney:** Michael P. O'Grodnick, Esquire, 56 East Main Street, Somerville, NJ 08876. Telephone: 908.526.0707. Facsimile: 908.725.8483.
- 12.3 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.

13.0 Summary

- 13.1** The applicant is seeking a use variance, minor site plan approval and design exceptions for the addition a tennis hut and pump station 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
- b) Design Exceptions
§16-5.6d.3 Trees

Please contact this office with any questions you may have.