

RESOLUTION

Whereas, the Seton Hall Preparatory School (the “Seton Hall”) made application to the West Orange Zoning Board of Adjustment (“Zoning Board”) on various dates for site plan approval with variances to add additional playing fields and new structures on its premises off of Prospect Avenue, also known as Block 81.01, Lots 1.01, 1.04, 1.05 and 1.06 and Block 82.01, Lots 1, 7, 7.01, 7.02, and 7.05 (the “Subject Property”) and collectively (the “Application”); and

WHEREAS, Seton Hall’s Application was heard at public meetings of the Zoning Board held on November 6, 2008, March 12, 2009, April 23, 2009, May 14, 2009, May 28, 2009, June 11, 2009, July 9, 2009, September 10, 2009, October 29, 2009, November 5, 2009, November 19, 2009, December 3, 2009, January 14, 2010, January 21, 2010, February 4, 2010, March 4, 2010, April 1, 2010, April 15, 2010, May 6, 2010, June 3, 2010, June 17, 2010, June 24, 2010, July 21, 2010, September 1, 2010, October 7, 2010, and November 8, 2010, and December 16, 2010; and

WHEREAS, on November 8, 2010, the Zoning Board issued a decision granting the Application with variances and conditions; and

WHEREAS, on November 24, 2010, the Township Clerk for the Township of West Orange received from Herbert I. Waldman, Esq., of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, on behalf of Kevin Malanga, a Notice of Appeal to the Township Council pursuant to N.J.S.A. 40:55D-17 and Township of West Orange Ordinance 25:50-1 alleging that the “Zoning Board erroneously found that the intended use is an inherently beneficial use, that the Zoning Board erroneously found that the project’s benefits outweigh its detriments, that the Zoning Board failed to take into account the parking and safety issues relating to the site”; and

WHEREAS, on November 29, 2010, the Township Clerk for the Township of West Orange received from Rhea Seagull, Ronni Strell, Barry Schustermann, and Loren Svetvilas (along with Kevin Malanga collectively referred to as “Appellants”) Notices of Appeal to the Township Council pursuant to N.J.S.A. 40:55D-17 and Township of West Orange Ordinance 25:50-1 alleging, among other things, that the “Zoning Board erroneously found that the intended use is an inherently beneficial use, that the Zoning Board erroneously found that the project’s benefits outweigh its detriments, that the Zoning Board failed to take into sufficient account the flooding, parking and safety issues relating to the site, and that the decision was written with knowledge that it cannot be adequately enforced as the Township has insufficient means to support the legislature (the “Appeal”)”; and

WHEREAS, on December 16, 2010, the Zoning Board adopted Resolution ZB-08-37, the resolution memorializing the granting of site plan approval with variances and conditions to Seton Hall (the “Resolution”); and

WHEREAS, the Resolution was published in the West Orange Chronicle on December 23, 2010; and

WHEREAS, N.J.S.A. 40:55D-10(g) provides that the date of the adoption of the memorializing resolution constitutes the date of the decision for purposes of the mailings, filings, and publications required by law; and

WHEREAS, N.J.S.A. 40:55D-17 (the “MLUL”) sets forth the procedures that govern an appeal made to the governing body following any final decision of a zoning board of adjustment approving an application for development pursuant to N.J.S.A. 40:55D-70(d); and

WHEREAS, the MLUL provides that an appeal is initiated by the filing of a Notice of Appeal with the clerk of the municipality in which the board is located; and

WHEREAS, the MLUL requires that within five (5) days of service of the Notice of Appeal the appellant must either (i) arrange for a transcript for use by the governing body and pay a deposit of \$50.00 or the estimated cost of such transcript, whichever is less or (ii) within thirty five (35) days of service of the Notice of Appeal submit a transcript to the municipal clerk or the appeal may be dismissed by the governing body for failure to prosecute; and

WHEREAS, the MLUL states that the governing body must make a review of the record below and issue a decision by no later than ninety five (95) days from the date of publication of the notice of the zoning board of adjustment's decision or the governing body's lack of action may be viewed as a decision affirming the action of the zoning board of adjustment; and

WHEREAS, at the meeting of the governing body all parties are afforded the opportunity to submit oral and written argument on the record; and

WHEREAS, per the MLUL the governing body may either reverse, remand or affirm with or without certain conditions the final decision of the zoning board of adjustment, however, an affirmative vote of a majority of the full authorized membership of the governing body shall be necessary to either reverse, remand to the zoning board of adjustment, to impose conditions on approval, or to alter conditions on approval, and once decided the governing body must adopt a resolution identifying its findings and reasons for any disagreement; and

WHEREAS, the Town Council for the Township of West Orange now desires to establish the procedures that will govern the instant Appeals;

NOW THEREFORE, BE IT HEREBY RESOLVED by the Township Council of the Township of West Orange as follows:

1. Within five (5) days of service of the Notice of Appeal, or by no later than December 28, 2010 the Appellants shall either (a) pay a deposit and arrange for a transcript to be used by the governing body or (b) within thirty five (35) days of service of the Notice of Appeal, or by no later than February 4, 2011, submit a transcript to the Township Clerk. For economy of cost and to minimize copying, the Appellants shall scan the various transcripts from the hearings and place them on electronic discs and submit ten (10) copies of the discs to the Township Clerk. Appellants' submissions on the discs shall include any and all evidence submitted by Appellants to the Zoning Board. The Zoning Board shall provide all of Applicant's evidence.

2. The Township Council shall conduct its hearing on this appeal and issue its decision no later than ninety five (95) days after the date of publication of the notice of the Zoning Board's decision, which was December 23, 2010. As such, the Township Council shall hold its hearing on Thursday, March 10, 2011 at 5:00 p.m. and Tuesday, March 15, 2011 at 5:00 p.m. (the "Hearing"). If needed, and at the sole discretion of the Township Council, the Hearing may be continued to another date. Thereafter, the Township Council shall deliberate and issue its decision by no later than March 25, 2011.

3. Thirty (30) days prior to the Hearing, or no later than February 7, 2011, Appellant may submit a brief or memorandum to the Township Council consisting of no more than twenty (20) pages setting forth his/her position with respect to the Appeal.

4. No later than February 21, 2011, Applicant may submit a brief or memorandum

to the Township Council consisting of no more than twenty (20) pages setting forth Applicant's position with respect to the Appeal.

5. During the Hearing, Appellant Malanga, represented by Mr. Waldman, shall have no more than thirty (30) minutes to present oral argument. Every other Appellant shall be afforded no more than fifteen (15) minutes to present oral argument. Applicant shall have thirty (30) minutes to present oral argument. The Township Council shall have the opportunity to ask any questions that it may have of any party.

6. Pursuant to N.J.S.A. 40:55D-17, the Municipal Clerk shall forward copies of this Resolution via certified mail and regular postage prepaid to Appellants Rhea Seagull, 662 Prospect Avenue, West Orange, NJ 07052, Ronni Strell, 654 Prospect Avenue, West Orange, NJ 07052, Barry Schustermann, 21 Benvenue Avenue, West Orange, NJ 07052, Loren Svetvilas, 699 Prospect Avenue, West Orange, NJ 07052, Kevin Malanga, c/o Herbert I. Waldman, Esq., Javerbaum Wurgaft, Hicks, Kahn, Wikstrom & Sinins, 201 Washington Street, Newark, NJ 07102, and the Zoning Board at least ten (10) days prior to the date of the Township Council's hearing on the appeal, or by no later than February 26, 2011. Additionally, the Municipal Clerk shall notice the Hearing in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6. The Municipal Clerk shall also provide a copy of this Resolution to the Director of Planning and the Zoning Board Attorney.

KAREN J. CARNEVALE, MUNICIPAL CLERK

SAL M. ANDERTON, COUNCIL PRESIDENT

ADOPTED: JANUARY 18, 2011