

**TOWNSHIP OF WEST ORANGE
APPLICATION FORM FOR THE
PLANNING BOARD OR ZONING BOARD OF ADJUSTMENT**

A. APPLICANT INFORMATION

Full Legal Name: Seton Hall Preparatory School
Mailing Address: 120 Northfield Avenue ^(Last) West Orange ^(First) New Jersey 07052
Telephone Number: 973 325 7737 ^(Street) ^(City) ^(State) ^(Zip) Email: mgallo@shp.org

Is the Applicant an: ☐ Individual, ☐ Corporation, ☐ Partnership, ☒ Other Parochial Non Profit High School

If the Applicant is a corporation or partnership, a list of the names and addresses of persons having a 10% interest or more in the corporation or partnership must be attached.

Relationship of the applicant to the property: ☒ Owner, ☐ Tenant or Lessee, ☐ Purchaser under contract
(with consent of owner, ☐ Other (please specify) _____)

If the applicant is not the owner of the property in question, the applicant must submit an affidavit with the owner(s) authorization to proceed with this process.

B. PROPERTY OWNER INFORMATION

☒ Check here if same as applicant. If the owner is not the applicant, please complete the following:

Owner's Name: _____
Address: _____
Telephone Number: (____) _____ Email: _____

C. PROPERTY INFORMATION

Street Address: 700 Prospect Avenue, West Orange, New Jersey 07052
Block Number(s): 82.01; Lot Number(s): 1
Tax Plate: _____; Zone of Property: R 1
The location of the property is approximately 1,750 feet from the intersection of Prospect Avenue
_____ and Northfield Avenue (closest intersection.)

Has there been any previous Zoning Board of Adjustment or Planning Board hearings involving this property?

☒ Yes, Date(s): 12/16/2010, 1/17/2013, 4/16/2015 and 8/18/2016; ☐ No

If yes, please attach copies of the written decisions adopted by the Board to each application.

Please attach a list of all contiguous or adjacent property owned by the applicant or owner. ☒ None

Is this property listed in "The Historic Sites Survey" prepared by Robert Guter 7/9/1992 ☐ Yes ☒ No

D. TYPE OF APPLICATION

Indicate the type of application being submitted, check all boxes that apply. Note that more than one variance may be necessary, please indicate the number of each type needed:

- 1) ☐ Interpretation of ordinance or map.
- 2) ☐ Appeal of action of Zoning Officer.
- 3) ☒ Variance "C1" Reason: ☐ shape of property; ☐ physical features; ☐ exceptional situation.
- 4) ☒ Variance "C2".
- 5) ☒ Variance "D".
- 6) ☐ Subdivision without variances: ☐ major; ☐ minor; ☐ preliminary; ☐ final; ☐ preliminary and final.
- 7) ☐ Subdivision with variances: ☐ major; ☐ minor; ☐ preliminary; ☐ final; ☐ preliminary and final.
- 8) ☒ Site Plan: ☐ preliminary; ☐ final; ☒ preliminary and final; ☒ with variances; ☐ without variances.
- 9) ☐ Amended Site Plan.
- 10) ☐ Conditional Use.
- 11) ☐ Conceptual.
- 12) ☐ Home Professional Office.
- 13) ☐ Home Occupation.
- 14) ☐ Soil Removal Permit.

Please list the specific Sections of the Ordinance for which a variance is sought. If additional space is required, please attach a list.

Section: Conditional; Proposed: 25-24.2(d); Description: Public/Private Schools
Section: uses; Proposed: _____; Description: _____
Section: Zoning District; Proposed: 27-7.1; Description: Bulk Regulations - Building Coverage
Section: Regulations; Proposed: _____; Description: _____

E. DESCRIPTION OF PROPERTY

Existing Use of the Property

Briefly describe the major elements of your proposal: (a more detailed description is required in Section G.)

Conversion of existing maintenance shed into a health and fitness building at the
currently existing Kelly Athletic Center

The property is 1,938,496 (square feet); 44.50 (acres)

Impervious Surface Coverage: Present: 18.9%; Proposed: 18.9%

Building Coverage: Present: 0.78%; Proposed: 1.03%

Is the property located:

Within 200 feet of another municipality?	☐ Yes	☒ No
Adjacent to an existing or proposed county road?	☒ Yes	☐ No
Adjacent to other county land?	☐ Yes	☒ No
Adjacent to a state highway?	☐ Yes	☒ No

F. EXPERTS

The following information is respectfully requested to enable the Board to facilitate the processing of this application:

APPLICANT'S ATTORNEY: Elnardo J. Webster II

Telephone Number: (973) 947-7111 Email: ewebster@iwwt.law

Address: 600 Parsippany Road, Suite 204, Parsippany, New Jersey 07054

APPLICANT'S ENGINEER: Charles J. Stewart Jr.

Telephone Number: (973) 299-5200 Email: charles.stewart@e2pm.com

Address: 2517 Route 35, Building 1, Suite 201, Manalapan, New Jersey 08736

APPLICANT'S ARCHITECT: Donald Fiore

Telephone Number: (973) 467-1240 Email: hfaia@aol.com

Address: 508 Millburn Avenue, Short Hills, New Jersey 07078

APPLICANT'S PLANNER: John McDonough

Telephone Number: (973) 222-6011 Email: jmcDonoughpp@gmail.com

Address: 101 Gibraltar Drive, Suite 1A, Morris Plains, New Jersey 07950

OTHER EXPERT(S):

Telephone Number: () Email:

Address:

If necessary, please list any additional experts below, including address, telephone number and email address.

G. REQUIREMENTS FOR VARIANCES

- 4A) Please attach a written statement labeled **"PROPOSAL"**, describe the major elements of your proposal, and describe in detail the physical and use changes proposed.
- 4B) Please attach a written statement labeled **"REASONS FOR RELIEF"**, which fully answers 4C-1, 4C-2 or 4D (Special Reasons) AND part 4E (Negative Criteria).
- 4C-1) (*For C1 variances only*) The strict application of the provisions of the Zoning Ordinance would result in the peculiar and exceptional practical difficulties or exceptional undue hardship under *N.J.S.A. 40:55D-70c(1)*. List in detail wherein this case conforms to this requirement, including, if applicable, reference to the exceptional narrowness, shallowness, or shape of the property, or the exceptional topographical conditions affecting the property which applicant contends warrants the granting of the variance.
- 4C-2) (*For C2 variances only*) State how the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment according to *N.J.S.A 40:55D-70c(2)*. Please list all benefits of the deviation to the Township and any adverse effects. State how the benefits of the deviation would substantially outweigh any detriment to the Township.
- 4D) (*For D variances only*) State the special reasons under *N.J.S.A 40:55D-70d* affecting this property.
- 4E) The granting of this variance will not be substantially detrimental to the public good and will not substantially impair the intent of the zone plan and zoning ordinance. List in detail the reasons, among others, why the variance can be granted without being materially detrimental to the welfare of the community or injurious to the property or improvements of others in the neighborhood and zone.

H. PLAT SUBMISSION

- 4F) Please list all maps and other exhibits accompanying this application. Attach an additional sheet if necessary.

ITEM	SIGNED BY	DATE/REVISION
Civil Drawings	E 2 Project Management, LLC	10/13/2022
Architectural Plans and Elevations	Heintz & Fiore Architects	08/30/2022

I. NOTICE

Applicant is responsible to publish and serve notice of this application in accordance with Zoning Board of Adjustment/Planning Board requirements; however, notice may not be served until this application is certified as complete and the administrative officer has assigned the applicant a public hearing date.

G. REQUIREMENTS FOR VARIANCES

PROPOSAL

The Applicant, Seton Hall Preparatory School ("Seton Hall"), is the owner of the property located at 700 Prospect Avenue, and designated as Block 82.01, Lot 1 in the official tax map of the Township of West Orange ("Property"). The Property is located in the R-1 zone.

On December 16, 2010, Seton Hall received site plan approval with variance relief from the Township of West Orange Zoning Board of Adjustment ("Board") to add additional playing fields and new related facilities on the Property. Thereafter, Seton Hall received amended approvals on January 17, 2013, April 16, 2015 and August 18, 2016.

Seton Hall submits this application to the Board seeking preliminary and final site plan approval, with a D variance for an expansion of a conditional non-conforming use and C variance relief for a diminimus increase in building coverage to reconfigure the Property. Seton Hall wishes to swap the athletic facility with the maintenance facilities and expand the size of the athletic facility. Additional parking spaces will be added to accommodate the increased size of the facility.

G. REQUIREMENTS FOR VARIANCES

REASONS FOR RELIEF

4(C-1) and 4(C-2) Positive Criteria

With respect to the positive criteria, the proposed reconfiguration with variance relief for building coverage promotes the zoning purposes set forth in N.J.S.A. 40:55D-2, including “subsection (a)” (to encourage municipal action to guide the appropriate use or development in a manner which will promote the public health, safety, morals and general welfare), and “subsection (i)” (to promote a desirable visual environment through creative development techniques and good civic design and arrangements).

4(D) Positive Criteria

A (d) variance per N.J.S.A. 40:55D-70(d) must promote the general welfare by being “particularly fitted to the particular location for which the variance is sought.”

4(E) Negative Criteria

The granting of this variance will not be substantially detrimental to the public good and will not substantially impair the intent of the zone plan and zoning ordinance.

N.J.S.A. 40:55D-70(c)(2) sets forth the criteria by which a variance can be granted from the bulk requirements of a zoning ordinance. The C(2) variances criteria is based on the purpose that the Municipal Land Use Law (MLUL) would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation outweigh any of the detriments.

The Board may not exercise its power to grant a “d(1)” variance otherwise warranted, however, unless the so-called “negative criteria” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: “No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.”

The variance on this Property advances the purpose of the MLUL by efficiently utilizing the use of the Property and preventing further deviations from the zoning ordinance. Relocating the athletic facility to the middle of the site will allow for an expansion of the facility that will not encroach upon the requisite setbacks and buffering on the site. It also creates a desirable visual environment, which is consistent with the community, as the proposed reconfiguration will not change the change the site visually. Finally, although the building coverage increases by less than 1%, the impervious coverage remains unchanged, thereby not negatively impacting neighboring properties.

A professional planner will be present at the hearing to provide testimony on the request for deviations.

J. VERIFICATION AND AUTHORIZATION

SIGNATURE IS REQUIRED FOR ALL OF THE FOLLOWING:

APPLICANT'S VERIFICATION

I hereby certify that the above statements made by me and the information contained in the papers submitted in connection with this application are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Applicant's Signature: Michael J. Sella Date: December 6, 2022

CONTINUANCE

Should the Planning Board/Zoning Board of Adjustment have a full and heavy agenda, or discussion and meeting regarding this application requiring carrying the matter past the statute time limit, the applicant grants permission for such an extension.

Applicant's Signature: Michael J. Sella Date: December 6, 2022

OWNER'S AUTHORIZATION - MUST BE SIGNED

I hereby certify that I reside at 120 Northfield Avenue
in the County of Essex and the State of New Jersey;
and that I am the owner of all that certain lot, piece or parcel of land known as Block(s) 82.01;
Lot(s) 1 on the Tax Map of West Orange which property is the subject of the above
application, and that said application is hereby authorized by me. Furthermore, I authorize inspection of the site
which is the subject of this application.

Owner's Signature: Michael J. Sella Date: December 6, 2022

THIS APPLICATION DOES NOT RELIEVE THE APPLICANT FROM COMPLYING WITH OTHER TOWNSHIP ORDINANCES SUCH AS THE TREE REMOVAL ORDINANCE AND OBTAINING THE NECESSARY APPROVALS AND PERMITS UNDER SUCH ORDINANCES.

CHECK LIST OF REQUIRED ITEMS
"C" AND "D" APPLICATIONS
INTERPRETATIONS AND APPEALS

APPLICATIONS FOR MAJOR/MINOR SITE PLAN OR SUBDIVISION MUST REFER TO THE SITE PLAN/SUBDIVISION CHECKLIST -52 ITEMS. 20 Total (original and 19 copies).

All checked items are required; please complete and submit to Board Secretary:

- ✓ **Completed Application Form, 20 Total** (original and 19 copies), including:
 - ✓ the written proposal;
 - ✓ list of variances being requested;
 - ✓ property information;
 - ✓ applicant and owner information;
 - ✓ statement or legal brief which clarifies why the variance should be granted and the specific reasons or hardship that pertain to the proposal, or
 - ✓ in the case of an appeal or interpretation, a statement or legal brief that clarifies the position of the applicant.
- ✓ **Survey** – original signed and sealed by New Jersey licensed Land Surveyor, **20 Total** (original and 19 copies).
- ✓ **Site Plan, all dimensions**, including setbacks, must be shown and prepared by New Jersey licensed Professional except for an owner occupied, single family home, in which case the property owner may prepare the site plan, **20 Total** (original and 19 copies).
- ✓ **Floor plans, all dimensions** must be shown-prepared by New Jersey licensed Architect except for an owner occupied, single family home, in which case the property owner may prepare the floor plan, **20 Total** (original and 19 copies).
- ✓ **List of property owners** within 200' certified by the Municipal Tax Assessor (original).
- ✓ **Proof that taxes have been paid**, certified by the Municipal Tax Collector (original).
- ✓ **A 200' radius map**, **20 Total** (original and 19 copies).
- ✓ **Application fee** (non-refundable) also a **Digitizing Fee**.
- ✓ **Elevations of three sides**, in the case of an existing structure with no proposed structural changes, photographs may be used, **20 Total** (original and 19 copies).
- ✓ **Height dimensions** to be included on all elevations, **20 Total** (original and 19 copies).
- ✓ **All plans and documents** for West Orange COAH requirements.
- ✓ **For all Major Subdivision applications**, major site plan applications and all applications applying for a "D" variance, a Planner's report prepared by a New Jersey licensed Planner must be submitted, **20 Total** (original and 19 copies).
- ✓ **For all Major Subdivision applications**, and major site plan applications, a Traffic Study prepared by a New Jersey licensed Engineer must be submitted, **20 Total** (original and 19 copies).
- ✓ **All Site Plan applications** must submit a tree removal application and a tree replacement plan and provide a report according to Chapter 31 of the West Orange general ordinances, **20 Total** (original and 19 copies).

Due to Covid-19

5 Paper Copies + 1 Digital emailed to
PlanningBoard@westorange.org
and/or ZonningBoard@westorange.org

Your application will not be deemed complete unless all these items are included. It is absolutely necessary that all dimensions and elevations be shown on the site plan and floor plan.

Please note: other materials may be requested by the Planning Director or Board Members.

TOWNSHIP OF WEST ORANGE

Site Plan/Subdivision Checklist

ALL DOCUMENTS MUST BE PREPARED,
SIGNED AND SEALED BY NEW JERSEY
LICENSED PROFESSIONAL

APPLICANT: *Ston Hall Preparatory School*

Item Number	Description	Pre-Application - Concept Plan	Minor Application		Major Application						COMPLETE	INCOMPLETE	WAIVER REQUESTED	
			Subdivision	Site Plan	General Development Plan	Subdivision		Site Plan						
						Preliminary	Final	Preliminary	Final					
1. Item: Name, address of owner and applicant.		X	X	X		X		X		X		X		
2. Item: Name, signature, license number, seal and address of engineer, land surveyor, architect, professional planner, and/or landscape architect, as applicable, involved in preparation of plat.		X	X	X		X		X		X		X		
3. Item: Title block denoting type of application, tax map sheet, county, name of municipality, block & lot, and street location.		X	X	X		X		X		X		X		
4. Item: A key map at specified scale showing location of tract with reference to surrounding properties, streets, municipal boundaries, etc., within 500'.		X	X	X		X		X		X		X		
5. Item: A schedule of required and provided zone district(s) requirements including lot area, width, depth, yard setbacks, building coverage, open space, parking, etc.		X	X	X		X		X		X		X		
6. Item: North arrow and scale.		X	X	X		X		X		X		X		
7. Item: Proof that taxes are current.		X	X	X		X		X		X		X		
8. Item: Signature blocks for Chairman, Secretary and Municipal Engineer.		X	X	X		X		X		X		X		
9. Item: Appropriate certification blocks as required by Map Filing Law.		X	X	X		X		X		X		X		
10. Item: Monumentation as specified by Map Filing Law.		X	X	X		X		X		X		X		
11. Item: Date of current property survey.		X	X	X		X		X		X		X		

ALL DOCUMENTS MUST BE PREPARED, SIGNED AND SEALED BY NEW JERSEY LICENSED PROFESSIONAL		Pre-Application - Concept Plan	Major Application						COMPLETE	INCOMPLETE	WAIVER REQUESTED	
Item Number	Description		Minor Application		General Development Plan	Subdivision		Site Plan				
			Subdivision	Site Plan		Preliminary	Final	Preliminary				Final
12.	Item: One (1) of four (4) standardized sheets: 30" x 42", 24" x 36", 15" x 21", 8.5" x 13" Comment: Required by Map Filing Law for minor and major subdivisions.		X	X			X	X			X	
13.	Item: Metes and bounds description showing dimensions, bearings, curve data, length of tangents, radii, arcs, chords and central angles for all centerlines and right-of-way, and centerline curves on streets		X				X				X	
14.	Item: Affidavit of ownership. Comment: Map Filing Law for minor and major subdivision.	X	X	X	X		X	X			X	
15.	Item: Acreage of tract to the nearest tenth of an acre (for GDP--to nearest acre).		X	X	X		X	X			X	
16.	Item: Date of original and all revisions. Comment: Item necessary for continuity-history of project.		X	X	X		X	X			X	
17.	Item: Size and location of any existing or proposed structures with all setbacks dimensioned. Comment: Item important for detailed planning.	X	X	X	X		X	X			X	
18.	Item: Location and dimensions of any existing or proposed streets (for GDP and pre-application- concept plan -- general locations). Comment: Item important for detailed planning.	X	X	X	X		X	X			X	
19.	Item: All proposed lot lines and area of lots in square feet.		X	X			X	X			X	
20.	Item: Copy and/or delineation of any existing or proposed deed restrictions or covenants. e	X	X	X	X		X	X			X	
21.	Item: Any existing or proposed easement or land reserved for or dedicated to public use. e	X	X	X	X		X	X			X	
22.	Item: Development stages or staging plans (for GDP--general staging). Comment: Not applicable at pre-application- concept plan stage; minor plans usually not built in stages.				X						X	

ALL DOCUMENTS MUST BE PREPARED, SIGNED AND SEALED BY NEW JERSEY LICENSED PROFESSIONAL		Pre-Application - Concept Plan	Minor Application		Major Application						COMPLETE	INCOMPLETE	WAIVER REQUESTED	
Item Number	Description		Subdivision	Site Plan	General Development Plan	Subdivision		Site Plan						
						Preliminary	Final	Preliminary	Final					
31.	Item: Existing and proposed contour intervals based on U.G.S. & G.S. datum. Contours to extend at least 200' beyond subject property as follows: up to 3% grade - 1' 3% + grade - 2' Comment: Major site plan and subdivision requires level of detail of Item 31 as opposed to Item 30.					X	X		X			X		
32.	Item: Boundary, limits, nature and extent of wooded areas, specimen trees, and other significant physical features (detail may vary). Comment: Basic for good planning.	X	X	X	X	X	X		X			X		
33.	Item: Existing system of drainage of subject site and of any larger tract or basin of which it is a part. Comment: See Item 31. Extensive level of detail required only for major subdivision and site plan.					X	X		X			X		
34.	Item: Drainage Area Map. Comment: Necessary for major application; inapplicable at GDP stage.					X	X		X			X		
35.	Item: Drainage Calculations. Comment: Required for minor applications if deemed necessary by Planning Board; not required at GDP stage because storm water management evaluated at major subdivision and site plan stage.		X	X		X	X		X			X		
36.	Item: Proposed utility infrastructure plans, including sanitary sewer, water, storm water management, telephone, electric & cable TV. Comment: Information necessary for minor site plan because of potential effect on utility systems. Only general location for electric, telephone and cable TV required.		X	X		X	X		X			X		
37.	Item: Proposed utility infrastructure plans, including sanitary sewer, water, storm water management, telephone, electric and cable TV. Comment: Information necessary for minor site plan because of potential effect on utility systems. Only general location for telephone, electric and cable TV required.			X			X		X			X		

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Item Number	Description	Pre-Application - Concept Plan	Minor Application		General Development Plan	Subdivision		Site Plan		COMPLETE	INCOMPLETE	WAIVER REQUESTED
			Subdivision	Site Plan		Preliminary	Final	Preliminary	Final			
38. Item:	Soil Erosion and Sediment Control Plan. Comment: Required for soil disturbance over 5,000 sq. ft.			X		X	X	X	X	X		
39. Item:	Spot and finished elevations at all property corners, corners of all structures or dwellings, existing or proposed first floor elevations. Comment: Not required for minor subdivision because not involving construction of buildings.			X	X	X	X	X	X	X		
40. Item:	Construction details as required by ordinance. Comment: Such level of detail necessary only for major applications.						X	X	X	X		
41. Item:	Road and paving cross-sections and profiles. Comment: See Item 40.					X	X	X	X	X		
42. Item:	Proposed street names. Comment: Applicable only when new road is proposed.						X	X	X	X		
43. Item:	New block and lot numbers confirmed with local assessor or municipal designee. Comment: Needed whenever a new lot is created.					X	X	X	X	X		
44. Item:	Lighting plan & details. Comment: Not applicable for minor subdivision because just creating lots.		X				X	X	X	X		
45. Item:	Landscape plan & details prepared by a professional landscape architect Comment: Required for site plans because of magnitude of required landscaping.			X				X	X	X		
46. Item:	Solid waste management plan. Comment: Site plan consideration only; see Item 44.			X				X	X	X		
47. Item:	Site identification signs, traffic control signs, and directional signs. Comment: See Item 44.			X				X	X	X		

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Item Number	Description		Subdivision	Site Plan	General Development Plan	Subdivision		Site Plan					
						Preliminary	Final	Preliminary	Final				
48. Item: Sight triangles Comment: Necessary even for minor applications because sight triangle easement created.			X	X		X	X	X	X		X		
49. Item: Vehicular and pedestrian circulation patterns (less detail necessary for pre-application-concept plan and GSP stages) Comment: See Item 44.		X		X	X	X	X	X	X		X		
50. Item: Parking plan showing spaces, size and type, aisle width, curb cuts, drives, driveways, and all ingress and egress areas and dimensions. Comment: See Item 44.				X		X	X	X	X		X		
51. Item: Preliminary architectural plan and elevations. Comment: Not required where building is not proposed.				X							X		
52. Item: Plans and legal documents for compliance with West Orange COAH Ordinances.			X	X	X	X	X	X	X		X		

€ Proposed restrictions or covenants do not have to be included for pre-application-concept plan and GDP.
 ¢ Conditional approval may be granted subject to other regulatory approvals.

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REVISED: 8/30/05 aw

F:\Forms & Awards\PB-ZBAPP.FRM\CHECKLIST\CHECKLIST.FRM

SUSTAINABILITY CHECKLIST FORM

SUSTAINABLE BUILDING AND DESIGN STANDARDS	APPLICANT - PRINT OR TYPE - ALL SECTIONS TO BE COMPLETED:	TOWNSHIP OK (Date)
Name of LEED Accredited Professional working on project:		
List of Energy Star and WaterSense appliances, fixtures and construction techniques:		
List of green and recycled building materials in new construction, renovation, and maintenance:		
Waste Management Plan for recycling and/or reuse of 60 percent of all construction and demolition of waste generated in projects larger than \$25,000:		
Use of any water efficient landscaping:		
Use of any on-site renewable energy systems such as: (i) Solar (ii) Wind (iii) Geothermal		
Details of roofing materials designed to reduce the urban heat island effect such as: (i) Construction of roof top gardens to reduce solar gain in summer and insulate in winter (ii) Use of roofing materials that are no darker than a light gray or demonstrate how alternate roofing materials reduce the urban heat island effect		
Details of any sustainable stormwater systems employed such as: (i) Bioswales/raingardens (ii) Permeable surfaces (iii) Grey water systems (iv) Retention and detention facilities (v) Continuous trenching		
A list of native and well adapted species used in landscaping to eliminate the need for fertilization and pesticides:		

Note: Please indicate for each of the sustainable building/design items listed, the extent to which the measure is being incorporated in the project or, alternatively, indicate the reason(s) why it is not being incorporated in the project.

FEE SCHEDULES (i)

25-55 ESCROW DEPOSITS FOR APPLICATIONS.

The Planning Board and/or Zoning Board of Adjustment shall require fees and escrow deposits in accordance with the provisions of this chapter. Such funds shall be utilized to pay the cost of professional fees, including for engineering, legal, planning and/or traffic experts, and certified shorthand reporting fees incurred for review of and/or testimony concerning an application for development submitted by an applicant. (Ord. No. 2357-12 § 25-55)

25-55.1 Escrow Schedule.

- a. Subject to the provisions of paragraph b. hereof, each applicant shall prior to the application being ruled complete pursuant to the provisions of the Municipal Land Use Law, submit the following sum(s) to be held in escrow in accordance with the provisions hereof:

1. Residential and Nonresidential Dwelling Units or Lots

3-25	\$ 3,000.00
26-100	3,500.00
101-500	5,500.00
501-1000	8,000.00
1000 +	10,000.00

2. Commercial/Industrial

1,250-2,500 square feet gross floor area	\$1,500.00
2,501-20,000 square feet gross floor area	2,500.00
20,000-50,000 square feet gross floor area	5,500.00
Over 50,000 square feet gross floor area	\$.05 each additional square feet

3. Preparation of Resolution of Approval or Denial: up to \$750.00.

When deemed necessary the Planning/Zoning Board may require an escrow for minor development matters.

- b. Within thirty (30) days after the filing of an application for development the Planning Board and/or Zoning Board of Adjustment as the case may be, shall, in conjunction with appropriate representative of the staff of the Township, review the application for development to determine whether the escrow amount set forth in paragraph a. above is adequate. In conducting such review the Board shall consider the following criteria.

1. The presence or absence of public water and/or sewer servicing the site.
2. Environmental considerations, including but not limited to geological, hydrological and ecological factors.
3. Traffic impact of the proposed development.
4. Impact of the proposed development on existing aquifer and/or water quality.

Upon completion of the review and within the thirty (30) day period the Board shall adopt a Resolution specifying whether the escrow amount specified in paragraph a. is sufficient, excessive or insufficient. In the event the Board shall determine that the amount is excessive it shall in the Resolution specify the amount that shall be deemed sufficient. In the event the Board shall determine the amount specified in paragraph a.

FEE SCHEDULES (ii)

is insufficient it shall so specify and shall further set forth the amount required to be posted in light of the criteria specified herein.

- c. This paragraph adopts and creates a payment schedule for consultants and/or employees for special Planning Board or Zoning Board meetings paid out of escrow funds paid by the applicant who is heard at said special Planning or Zoning Board Meeting. The schedule is as follows:

1. Schedule.

- (a) Attendance/all meeting preparation, post-meeting duties/minutes for Secretary: \$225.00
- (b) Attendance for Public Advocate: \$250.00
- (c) Attendance of transcriber: \$225.00
- (d) Attendance of Board Attorney: \$500.00
- (e) Attendance of Planner: \$500.00
- (f) All other expenses such as newspaper notices: \$60.00
- (g) The Board also has the right to hire other consultants if deemed necessary by the Board for regular or special meetings such as traffic or environmental consultants. If the Board deems additional work is needed that is not part of the preparation, meeting and post duties an hourly rate will be paid. The following is the hourly rate: Secretary— \$33.82/hr; transcriber—\$50.00/ hr.; any other professionals—\$125.00/hr.

2. A ten (10) day written notice with a breakdown of the expenses shall be given to the applicant before funds are removed.
(Ord. No. 2357-12 § 25-55.1)

25-55.2 Posting of Escrow Funds.

No major application for development shall be deemed complete until such time as the applicant shall have posted with the Township in cash or certified check the amount of escrow deposit determined by the Planning Board and/or Board of Adjustment to be required in accordance with the provisions of this chapter.

All such escrow funds shall be utilized by the appropriate Board to pay the cost of professional services, including certified shorthand reporting fees, incurred by the Board for review and/or testimony in connection with the particular application for development. All sums not actually so expended shall be refunded to the applicant within thirty (30) days after the final determination by the appropriate Board with respect to such application. (Ord. No. 2357-12 § 25-55.2)

25-55.3 Deposit of Escrow Fund - Interest Bearing Account.

The Township shall deposit all funds pending completion and review of the development application. The money shall be placed in an interest bearing account. In the event that a refund is to be made to the applicant, the municipality shall refund with pro rated interest the amount within thirty (30) days from the date of final approval. (Ord. No. 2357-12 § 25-55.3)

FEE SCHEDULES (iii)

25-56 APPLICATION FEES.

25-56.1 Minor Subdivision Application Fees.

	<i>Fee</i>	<i>Escrow</i>
a. Resubdivision where no new lots are created	\$50.00	N/A
b. <i>Other</i>		
Base fee	\$100.00	N/A
Plus per lot fee	25.00	

(Ord. No. 2357-11 § 25-56.1)

25-56.2 Major Subdivision Application Fees.

a. <i>Sketch/Plat Concept Application</i>		
Base fee	\$100.00	N/A
Plus per lot fee	25.00	
b. <i>Preliminary Application</i>		
Base fee	\$200.00	(1)
Plus per lot fee	50.00	
c. <i>Final Application</i>		
Base fee	\$250.00	(1)
Plus per lot fee	25.00	

(Ord. No. 2357-11 § 25-56.2)

25-56.3 Site Plans - Nonresidential Application Fees.

a. <i>Sketch Plat/Conceptual</i>		
Fee	\$350.00	N/A
b. <i>Preliminary Application</i>		
Base fee (minimum)	\$300.00	(1)
Plus floor area fee	.02/sq. ft.	
Plus parking space fee	.50/space	
Plus acreage fee	\$50.00/acre	

The preliminary fee shall be calculated by adding to the base fee one (1) of the three (3) remaining sub-fees. The total fee shall represent the maximum fee possible.

c. Final Application	1/2 of preliminary fee	(1)
----------------------	------------------------	-----

(Ord. No. 2357-11 § 25-56.3)

FEE SCHEDULES (iv)

25-56.4 Site Plans - Residential Application Fees.

a. *Sketch Plat*

Fee	\$75.00	N/A
-----	---------	-----

b. *Preliminary Application*

Base fee	\$200.00	(1)
Plus unit fee	50.00	

c. *Final Application*

Base fee	\$100.00	(1)
Plus unit fee	25.00	

(Ord. No. 2357-11 § 25-56.4)

25-56.5 Variances and Conditional Use Application Fees.

a. *"D" Variances*

Nonresidential	\$350.00	(1)
----------------	----------	-----

Residential

1-2 family (owner occupied)	\$ 75.00
1-2 family (non- owner occupied)	125.00
Other	150.00
Public/Quasi public	100.00

b. *"C" Variances*

Nonresidential	\$250.00
----------------	----------

Residential

1-2 family (owner occupied)	\$ 75.00
1-2 family (non- owner occupied)	125.00
Other	250.00
Public/Quasi public	100.00

c. *Interpretations and Appeals*

Fee	\$150.00
-----	----------

d. *Conditional Uses*

Fee	\$300.00
-----	----------

Separate fee(s) shall be required for each application type. Therefore, if an application package consists of a "D" variance, "C" variance and site plan, the total fee shall be the sum of the fees for each separate application. The escrow charge shall be the maximum for any one type of application.

Where disbursements from the escrow account leave less than ten (10%) percent of the original deposit, the applicant shall replenish the account in an amount equal to the original deposit. (See

FEE SCHEDULES (v)

Section 25-55, Escrow Deposits for Applications. If less than ten (10%) percent remains in escrow account, applicant shall post additional escrow in amounts equal to original deposit.) (Ord. No. 2357-12 § 25-56.5)

25-56.6 Fee for Digitizing Zoning Board of Adjustment and Planning Board Applications, Exhibits and Drawings.

a. Residential Site Plan and Subdivision Fees.

Concept Plan:	0-20 lots/units:	\$100.00 per lot or unit
	21+lots/units:	\$2,000.00 + \$50.00 per lot/unit in excess of 20
Minor Subdivision:		\$200.00 + \$100.00 per lot
Site and/or Major Subdivision:		
Preliminary:	0-10 units or lots:	\$500.00 + \$100.00 per lot or unit
		\$1,000.00 + \$75.00 per lot or unit
	11-30 units or lots:	\$2,500.00 + \$50.00 per lot or unit
	31 or more units or lots:	
Final:	0-10 units or lots:	\$200.00 + \$75.00 per lot or unit
		\$300.00 + \$50.00 per lot or unit
	11-30 units or lots:	\$1,000.00 + \$40.00 per lot or unit
	31 or more units or lots:	

b. Commercial/Industrial Development Application.

Concept Plan:	0-3 lots:	\$300.00 + \$100.00 per lot
	4 or more lots:	\$2,000.00 + \$250.00 per lot

If an application involves ten (10) or more acres, an additional \$100.00 for each acre, or fraction thereof, in excess of ten (10) acres.

c. Commercial/Industrial Development Application Involving New Building Area:

Concept Plan:	\$1,000.00
Preliminary Site Plan:	
0-1,999 square feet:	\$1,000.00
2,000-19,999 square feet:	\$1,000 + \$150.00 per each 1,000 square feet of gross floor area
20,000+ square feet:	\$2,500.00 + \$50.00 per each 1,000 square feet above 20,000 square feet of gross floor area
Final:	

FEE SCHEDULES (vi)

0-1,999 square feet:	\$500.00
2,000-19,999 square feet:	\$2,500.00
20,000+ square feet:	\$1,000 + \$0.12 per square foot

d. *Other Submissions.*

Conditional use approval:	\$750.00
Appeals under N.J.S.A. 40:55D-70a:	\$100.00
Interpretation or special questions under N.J.S.A. 40:55D-70b:	\$100.00
One or two family residences-hardship variances under N.J.S.A. 40:55D-70C:	
(decks, home addition)	\$35.00
All other hardship variances under N.J.S.A. 40:55D-70c:	\$750.00
Single Family Residence:	\$200.00
Multi-family Residence:	\$200.00 + \$100.00
	per unit
All other use variances N.J.S.A. 40:55D-70d:	\$500.00

e. *Amended Submissions.*

Revised or amended plans or submission for single or two family dwellings:	An amount not to exceed 50% of the original fee requirement
Revised or amended plans or submission in all other categories:	An amount not to exceed 50% of the original fee

*A separate check payable to the Township of West Orange shall be submitted for all the above application types.
(Ord. No. 2357-12 § 25-56.6)*

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: ☐ Individual/sole proprietor or single-member LLC ☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ ☐ Other (see Instructions) ▶ ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.	
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)	
	5 Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number								
				-				
or								
Employer identification number								

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign
Here

Signature of
U.S. person ▶

Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)

- Form 1099-C (canceled debt)

- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding?* on page 2.

By signing the filled-out form, you:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.



TOWNSHIP OF WEST ORANGE

66 MAIN STREET, WEST ORANGE, N.J. 07052

PLANNING & DEVELOPMENT

ROBERT D. PARISI

Mayor

ROSE DESENA

Zoning Board Secretary

Tel: (973) 325-4108

Fax: (973) 325-6359

Email: zoningboard@westorange.org

ZONING BOARD OF ADJUSTMENT 2021 MEETING DATES

January 21, 2021
February 18, 2021
March 18, 2021
April 15, 2021
May 20, 2021
June 17, 2021

July 15, 2021
August 19, 2021
September 23, 2021
October 21, 2021
November 18, 2021
December 16, 2021

ADOPTED: November 19, 2020



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TOWNSHIP OF WEST ORANGE

66 MAIN STREET, WEST ORANGE, N.J. 07052

PLANNING & DEVELOPMENT

ROBERT D. PARISI

Mayor

SEAN MCCAULEY

Planning Board Secretary

Tel: (973) 325-4111

Fax: (973) 325-6359

Email: Planningboard@westorange.org

WEST ORANGE PLANNING BOARD 2021 ANNUAL MEETING NOTICE

In order to comply with the Open Public Meetings Act, Chapter 231, Public Law 1975, the following is the Annual Notice of the Public Meetings of the Township of West Orange Planning Board during the year 2021.

PLANNING BOARD PUBLIC MEETING

January 6, 2021
February 3, 2021
March 3, 2021
April 7, 2021
May 5, 2021
June 2, 2021
July 7, 2021
August 4, 2021
September 1, 2021
October 6, 2021
November 3, 2021
December 1, 2021

SITE PLAN REVIEW ADVISORY BOARD

January 12, 2021
February 9, 2021
March 9, 2021
April 13, 2021
May 11, 2021
June 8, 2021
July 13, 2021
August 10, 2021
September 14, 2021
October 12, 2021
November 12, 2021
December 7, 2021

Action may be taken by the Planning Board on matters listed on the agenda prepared on the date of each scheduled meeting listed above, and/or on such other matters as may require consideration by the Board.

PUBLIC MEETING generally held on the 1st Wednesday of the month in the Council Chambers, 66 Main St., West Orange, NJ, 7:30 P.M. For more information, please contact the Board Secretary at (973) 325-4111.

SITE PLAN REVIEW ADVISORY BOARD generally held on the 2nd Tuesday of the month in Conference Room 109, 66 Main St., West Orange, NJ, 8:30 A.M. Please contact the Board Secretary to confirm meeting prior to attending.

Adopted: November 17, 2020



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TOWNSHIP OF WEST ORANGE **TREE REMOVAL APPLICATION PROCEDURE**

STEP 1 **THE APPLICANT:**

1. Completes application **Section A**, including block and lot numbers in the upper right hand box at engineering office.
NOTE: Agent is the entity actually removing the tree(s).
2. Provides a survey or sketch showing approximate location of tree(s) proposed for removal.
3. Marks trees proposed for removal with bright colored spray paint or ribbons.
4. Provides written proof they have notified the adjacent property owners of the pending removals.
5. Provides a sketch or plan showing replacement trees and/or landscaping if applicable which shall include a listing of quantities, sizes and species of all replacement plant material.

STEP 2 **THE FORESTER:**

1. Inspects property and determines whether the tree or trees can be removed.
2. Determines whether replacement will be required.
3. Determines whether other precautionary measures will be needed such as the installation of a construction fence to create a protected root zone, pruning, deep root feeding and mycorrhizae inoculations, the creation of tree wells, approval of grading materials, etc.

STEP 3 **THE APPLICANT:**

1. Returns completed application to the Engineering Department.
2. Pays the tree removal permit fee:
Basic Permit Fee - \$25.00
Development Application Fee - \$300.00
3. Obtains the permit.
4. Displays the permit in a location clearly visible from the street.

EXCEPTION – TREE EMERGENCY

Property owners may remove hazardous trees under emergency conditions prior to obtaining a tree removal permit providing:

1. The tree is declared a hazard; proof in writing by a New Jersey Certified Tree Expert or International Society of Arboriculture Certified Arborist.
2. Following the emergency removal of the tree or trees, the property owner shall apply for a tree removal permit at the Engineering Department within five (5) business days of the removal and shall provide written proof of the hazard by the tree expert or certified arborist at that time.

ADDITIONAL QUESTIONS?

Please leave a message for the Forester at (973)325-4015.



Township of West Orange

Application for Tree Removal and Replacement Permit

ALL questions must be answered for the Applications to be considered COMPLETE.

Application Date: _____

This Application for a Tree Removal and Replacement Permit is made with reference to and the intent to comply with all applicable laws, rules, and regulations, including the General Revised Ordinances of the Township of West Orange.

1. Name of Applicant: _____
Street Address: _____
City/State/Zip: _____
Home Phone: _____ Work/Cell Phone: _____
Email: _____
2. Location of Property Subject to Proposed Tree Removal Activity
Street Address: _____
Block: _____ Lot: _____
3. Property Owner(s) of Record
Name of Owner: _____
Street Address: _____
City/State/Zip: _____
Home Phone: _____ Work/Cell Phone: _____
Email: _____
4. Status of Applicant (Check One)
☐ Tenant ☐ Owner ☐ Contract Purchaser ☐ Other: _____
If the Applicant is not the owner, attach hereto the notarized consent of the owner.
5. Has this property been the subject of an application and/or otherwise involved in a matter before the West Orange Planning Board and/or Board of Adjustment?
Yes ☐ No ☐ If yes, please state the dates and action taken or pending, identify the Township Agency who or is handling the matter, and enclose a copy of the resolution conserved by the Agency, if applicable: _____
6. Has the property received a construction permit and/or is there a construction permit pending?
Yes ☐ No ☐ If yes, please state the reason for and the date of application or the date of the issuance of the permit: _____

Permit No: _____
Date Issued: _____

7. Describe or attach the landscaping replacement planting plan, if applicable, including the number, size and species of trees to be replaced. Attach additional sheets if necessary: _____

8. Describe or attach grading plan if more than six (6) inches of soil will be removed or added within the drip line of a tree or trees on the site:

9. Map, drawing or diagram must be attached hereto. List the names, address, phone number and email of the preparer of the map drawing or diagram attached:

10. List the number, species, and diameter of each tree to be removed: _____

11. State reason for tree removal: _____
12. Identity contractor who will be providing tree removal services:
Name: _____
Address: _____
City/State/Zip: _____
Work Phone: _____ Cell Phone: _____
Email: _____
13. Proposed dated to commence tree removal: _____
Proposed dated to complete tree removal: _____

It is understood that the undersigned may be subject to statutory penalties for each violation of the terms and conditions of the West Orange Tree Preservation, Removal and Replacement Ordinance. The undersigned agrees to post a copy of the Tree Removal Permit on the site and to present a copy for review upon request.

Applicant's Signature

Print Name Legibly

Date

Permit No: _____
Date Issued: _____

For Administrative Purposes Only:

Numbers of trees approved for removal: _____ (living) _____ (dead/dying)

Number of trees replaced: _____

Additional replacement /preservation requirements: _____

Circle One: Basic Permit Fee: \$25.00 Total Development Application Fee: \$300.00 Total

Signature of Forester: _____ Date: _____

West Orange Ordinance #2177-08 defines a tree as "a self-supporting single stem perennial woody plant having a diameter of at least four inches measured at a point of 4.5 feet (or 54 inches) from the ground at the base of the tree on its uphill side.

Up to three (3) live trees may be removed on an improved residential lot within any 365-day period without the necessity of obtaining a tree removal permit.

AN ORDINANCE AMENDING CHAPTER 25, SECTIONS 4, 51.6, 51.7, 51.8, 51.9, 51.10,
AND 51.15, OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF
WEST ORANGE
(REVISION OF VARIOUS ZONING ORDINANCES)

BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF
WEST ORANGE, NEW JERSEY that Chapter 25 of the Revised General Ordinances of the
Township of West Orange be and are hereby amended as follows:

I. PURPOSE

The purpose of this ordinance is to overhaul and revise the Township of West Orange
Code governing various aspects of zoning and planning consistent with recommendations
provided from the West Orange Planning Board and adopted by the Township of West Orange
Council.

II. CHAPTER 25-4 SHALL BE AND HEREBY IS AMENDED AND
SUPPLEMENTED TO INCORPORATE THE FOLLOWING DEFINITIONS AS
FOLLOWS:

25-4 Definitions.

b. *Specific Definitions*

Site plan shall mean a development plan of one or more lots or parcels meeting the
requirements of this chapter and the Municipal Land Use Law.

Site plan, major shall mean any development plan for one or more lots that does not
meet the definition of a minor site plan, as defined herein.

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.

Site Plan Review Advisory Board shall mean the Board established pursuant to
N.J.S.A. 40:55D-39f and Section 25-51.15 as amended and supplemented.

Site plan approval shall not be required for a change in use or modification of an
existing use that does not change the size of an existing building or propose any
modifications to existing site improvements such as sidewalks, driveways, parking areas,
fences and walls.

III. CHAPTER 25-51.6 SHALL BE AND HEREBY IS AMENDED AND SUPERCEDED TO READ AS FOLLOWS:

25-51.6 Minor Site Plan Requirements.

A complete application for a minor site plan shall include all applicable administrative requirements as delineated in subsection 25-51.2, any data that cannot be mapped, attached to the application form and the following information on one (1) or more maps:

- a. The zoning district in which the subject property is located as well as all zoning district boundaries within two hundred (200) feet.
- b. Key Map showing a sufficient number of natural and man-made features so that the subject property can be located in the field.
- c. Lot, block and property owner information.
- d. Zoning district dimension, setback and area requirements and the relationship of the subject proposal to those requirements.
- e. Bearing and distance data for all lot lines.
- f. North arrow, signature block, graphic scale, title block, name of individual preparing the map together with the individual's raised seal and signature.
- g. Date of map preparation and any revision dates.
- h. All existing structures and wooded areas within the subject property.
- i. The location and design of all new or expanded buildings, sidewalks, driveways and parking areas.
- j. The location of all easements within the subject property.
- k. Four (4) copies of a map, referred to as a "Run Card", depicting the location of all fire hydrants within the subject property, and depicting the surrounding streets, based on a scale of one (1) inch equaling four hundred (400) feet, and contained on an eight and one-half by eleven (8.5 x 11) inch paper within an area not to exceed seven and one-half (7.5) inches in width and eight (8) inches in height.

IV. CHAPTER 25-51.7. SHALL BE AND HEREBY IS REPEALED AND DELETED

V. CHAPTER 25-51.7.1. SHALL BE AND HEREBY IS AMENDED AND SUPERCEDED TO READ AS FOLLOWS:

25-51.7.1 Major Site Plan Requirements - Preliminary Stage.

A complete application for a preliminary major site plan shall include all applicable

administrative requirements as delineated in subsection 25-51.2, data that cannot be mapped attached to the application form and the following information on one (1) or more maps.

a. *Basic Data.*

1. Name of the project.
2. A Key Map showing the general location of the project within the community, tax map sheet number, block number and lot numbers.
3. Zone district lines within five hundred (500) feet of the project.
4. Graphic scale not to exceed one (1) inch equals fifty (50) feet of the project.
5. The limits of the total site together with the acreage to the nearest 1/100th of an acre.
6. Date of the original plan and any subsequent revisions.
7. Appropriate places for the signature of the Planning Board Chairman, Secretary and Engineer.
8. A site data box comparing ordinance requirements to actual site plan proposals.
9. Name of individual preparing the site plan together with an embossed engineer's or architect's seal, applicable signature and license number.
10. The location of all structures, property owners and utility poles within two hundred (200) feet of property.
11. Reference to property survey or other information used in preparing map.
12. Bearing and distance information together with property dimensions.
13. Soil survey data indicating soil type, general constraints and depth to bedrock.

b. *Building Data.*

1. Size, heights, location of all existing and proposed buildings, including all proposed setback dimensions from property lines. Existing buildings to be removed should be so noted.
2. A preliminary floor plan of all buildings.
3. Architectural elevations of the front, side and rear of all buildings and perspective sketches or three (3) dimensional models where appropriate.
4. The location and design details of all sidewalks showing connections between buildings, parking areas, and public areas along all expected paths of pedestrian travel.
5. Parking spaces and access plans for the handicapped which shall be in addition to the parking required by ordinance.
6. Circulation plans and loading areas for all expected truck and tractor-trailer traffic.
7. A proposed lighting plan identifying the fixtures to be used as to height, location, luminosity and the lighting pattern in relationship to the other features of the site plan.

c. *Grading, Landscaping and Environmental Data.*

1. Existing and proposed grading at two (2) foot contour intervals or five (5) foot intervals if the grade is more than fifteen (15%) percent with spot elevations at all building corners and critical locations.
2. The finished floor elevation of all building floors with direct access to the outside.
3. All existing wooded areas and individual specimen trees greater than six (6) inches in diameter indicating what is to be removed and what is to remain.
4. A proposed planting plan and planting schedule indicating the location, the species' common and botanical names, size, quantity and planting instructions for all plant material to be installed including trees, shrubs and ground covers prepared by a professional landscape architect.
5. All areas to be seeded and/or sodded.
6. The location and construction details of all proposed retaining walls, fencing and earthen berms.
7. All buffer areas proposed to separate land uses and to screen unsightly areas.
8. The location and all proposed construction details for all proposed and existing signs.
9. The location and identification of all proposed open spaces, parks or recreation areas and facilities.
10. Environmental impact study.
11. A copy of a tree removal permit or application for same if applicable.

d. *Utilities and Drainage Data.*

1. The location, size and capacity of all existing storm drainage facilities, including catch basins which are directly impacted by the proposed development, whether on or off-site and the limits of any flood hazard area affecting the site.
2. All proposed storm drainage facilities, transmission lines, fire hydrants, etc., as well as calculations showing their adequacy.
3. The location and size of all proposed water supply facilities including wells, storage facilities, transmission lines, fire hydrants, etc., as well as calculations showing their adequacy.
4. The location and size of all proposed sanitary sewer mains as well as the location and construction details and calculations to indicate adequacy.
5. Plans for the storage and collection of all solid waste.
6. All off-site and on-site easements which may be required together with copies of legal documentation to support the grant of such easements.
7. The location and type of all other underground utilities.

VI. CHAPTER 25-51.7.2 SHALL BE AND HEREBY IS AMENDED AND SUPERCEDED TO READ AS FOLLOWS:

25-51.7.2 Major Site Plan Requirements - Final Stage.

A complete application for a final major site plan shall include all applicable administrative requirements as delineated in subsection 25-51.2 and the following information on one (1) or more maps or attached to the application form if it cannot be mapped.

- a. Verification that all of the conditions of the preliminary approval have been met.
- b. A map or maps which comply with this chapter depicting that portion of the project for which final approval is being requested.
- c. A developer's agreement if required by the preliminary approval.
- d. A statement indicating the reasons for any deviations from approved preliminary site plan.
- e. Any off-tract improvement contributions if required.
- f. Four (4) copies of a map, referred to as a "Run Card", depicting the location of all fire hydrants within the subject property, and depicting the surrounding streets, based on a scale of one (1) inch equaling four hundred (400) feet, and contained on an eight and one-half by eleven (8.5 x 11) inch paper within an area not to exceed seven and one-half (7.5) inches in width and eight (8) inches in height.

VII. CHAPTER 25-51.8 SHALL BE AND HEREBY IS AMENDED AND SUPERCEDED TO READ AS FOLLOWS:

25-51.8 Conditional Use Requirements.

No conditional use application shall be considered complete unless it fully conforms with Subsections 25-51.2, 25-51.6 and 25-51.7.1 as well as the following requirements:

- a. A notation indicating the section of this chapter that allows the conditional use as proposed.
- b. A listing of the conditional use standards that apply to the subject proposal.

VIII. CHAPTER 25-51.9 SHALL BE AND HEREBY IS AMENDED AND SUPERCEDED TO READ AS FOLLOWS:

25-51.9 "C" Variance Requirements.

No "c" or bulk variance application shall be considered complete unless it fully conforms with subsection 25-51.2 as well as the following requirements:

- a. A map, either in conformance with subsections 25-51.3, 25-51.4, 25-51.5, 25-51.6 and 25-51.7.1 or if the application is to be bifurcated, a separate map, signed and sealed by an architect, engineer, planner or surveyor which provides sufficient data (i.e., setbacks, lot

area, existing and proposed structures, etc.) upon which a decision can be based.

- b. A statement or legal brief which clarifies why the "c" variance should be granted. Particular attention should be paid to the contents of N.J.S.A. 40:55D-70c, applicable case law and relevant Township Ordinances and N.J. Statutes.

IX. CHAPTER 25-51.10 SHALL BE AND HEREBY IS AMENDED AND SUPERCEDED TO READ AS FOLLOWS:

25-51.10 "D" Variance Requirements.

No "d" or use variance application shall be considered complete unless it fully conforms with subsection 25-51.2 as well as the following requirements:

- a. A map, either in conformance with subsection 25-51.3, 25-51.4, 25-51.5, 25-51.6 or 25-51.7.1 or if the application is to be bifurcated, a separate map, signed and sealed by an architect, engineer, planner or surveyor which provides sufficient data (i.e. setbacks, lot area, existing and proposed structures, etc.) upon which a decision can be based.
- b. A statement or legal brief which clarifies why the "d" variance should be granted and the "special reasons" that pertain to the subject proposal. Particular attention should be paid to the contents of N.J.S.A. 40:55D-70d, applicable case law and relevant Township Ordinances and N.J. Statutes.
- c. A planning report prepared by a licensed Professional Planner and a traffic report prepared by a licensed Professional Engineer. The Board may waive the provision of such reports at its discretion.

X. CHAPTER 25-51.15 SHALL BE AND HEREBY IS AMENDED AND SUPERCEDED TO READ AS FOLLOWS:

25-51.15 Site Plan Review Advisory Board.

- a. *Establishment.* There is hereby established a Site Plan Review Advisory Board to assist the Planning Board, the Zoning Board of Adjustment and site plan applicants. This Committee shall be comprised of:
 - 1. Director of Planning
 - 2. Township Engineer
 - 3. A Class IV member of the Planning Board who shall hold no other municipal office, appointed by the Planning Board
 - 4. A member of the Zoning Board of Adjustment appointed by the Zoning Board of Adjustment
 - 5. Zoning Official
 - 6. Construction Official
 - 7. Representatives of the Building Department, Fire Department, Health Department

and Police Department.

- b. *Review.* The Site Plan Review Advisory Board shall review all applications that require major site plan approval. The applicant shall be notified, in writing not less than seven (7) days before, of the date on which the application shall be reviewed by the Site Plan Review Advisory Board. The applicant shall be invited to attend, either alone or accompanied by an attorney, architect, engineer and any other experts the applicant chooses. The Site Plan Review Advisory Board shall issue its recommendations on every application, in writing. These recommendations shall be filed with the secretary of the proper board and a copy shall be mailed to the applicant.
- c. *Post Approval Review.* A request by an applicant to change one or more aspects of a site plan previously approved by the Planning Board or Zoning Board of Adjustment shall be reviewed by the Site Plan Review Advisory Board to determine whether such changes are considered substantial. Any changes determined to be substantial shall require amended site plan approval from the Board that granted the original approval.
- d. *Time for Decisions.* Referral of an application to the Site Plan Review Advisory Board shall not extend the time within which the Planning Board or Board of Adjustment must act upon such application pursuant to the MLUL.

XI. REPEAL OF CONFLICTING ORDINANCES

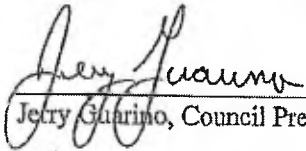
Any Ordinances of the Township which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

XII. SEVERABILITY

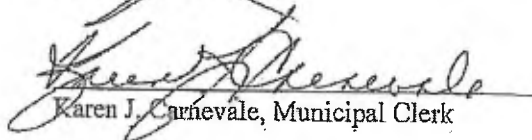
If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereof shall not affect the remaining parts of this Ordinance.

XIII. EFFECTIVE DATE

This Ordinance shall take effect upon final passage and publication in accordance with the law.


Jerry Guarino, Council President


Robert D. Parisi, Mayor


Karen J. Carnevale, Municipal Clerk

Introduced: January 6, 2015

Adopted: February 10, 2015

Legislative History

This ordinance is drafted as part of an overhaul of the Municipal Code governing the process and procedures for application to the Township of West Orange Planning Department and the Township of West Orange Planning Board and Zoning Board of Adjustment. This ordinance follows a series of recommendations made by the Township of West Orange Planning Board to the Township of West Orange Council for consideration and implementation. This overhaul creates two (2) separate categories of site plan review for: (1) Minor Site Plan Requirements and (2) Major Site Plan Requirements. In addition, the ordinance transforms the previously established Technical Advisory Committee to a "Site Plan Review Advisory Board," as enabled by the Municipal Land Use Law.

AN ORDINANCE AMENDING CHAPTER 25, SECTIONS 51.16, OF THE REVISED
GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE
(REVISION OF ZONING ORDINANCE)

BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF WEST ORANGE, NEW JERSEY that Chapter 25 of the Revised General Ordinances of the Township of West Orange be and are hereby amended as follows:

I. PURPOSE

The purpose of this ordinance is to incorporate a Sustainability checklist as part of the major/minor site plan, subdivision application process in an effort to create a more sustainable community and further the objectives of the Sustainability Plan included in the Township's Master Plan Updated adopted by the Township of West Orange Planning Board in 2010. The Sustainability checklist shall incorporate and encourage green building and sustainability measures for various aspects of zoning and planning, but zoning and planning approval shall not be conditioned upon any particular rating.

II. CHAPTER 25-51.16. SHALL BE ADDED AND READ AS FOLLOWS:
25-51.16 Sustainable Building and Design Standards.

All applicants for major and/or minor site plan and/or subdivision approval shall complete a Sustainability checklist form as a completeness item.

- a. The Township shall incorporate the current version of "Leadership in Energy & Environmental Design Rating System," which includes rating systems for LEED for New Construction and Major Renovation promulgated by the US Green Building Council.
- b. The Sustainability checklist form shall incorporate proposed green energy and water conservation measures including:
 1. The name of any LEED Accredited Professionals working on the project.
 2. A list of appliances, fixtures and construction techniques which meet U.S. EPA's Energy Star and WaterSense standards.
 3. A list of green and recycled building materials used in construction, renovation, and maintenance.
 4. A Waste Management Plan for recycling and/or reusing 60 percent of all construction and demolition waste generated in projects larger than \$25,000 outlining where waste will be sent for recycling, reuse, reprocessing, or disposal, together with a letter from each of the recipient facilities.
 5. Use of any water efficient landscaping.
 6. Use of any on-site renewable energy systems such as:
 - i. Solar
 - ii. Wind
 - iii. Geothermal

7. Details of roofing materials designed to reduce the urban heat island effect such as:
 - i. Construction of roof top gardens to reduce solar gain in summer and insulate in winter
 - ii. Use of roofing materials that are no darker than a light gray or demonstrate how alternate roofing materials reduce the urban heat island effect
 8. Details of any sustainable stormwater systems employed such as:
 - i. Bioswales/ raingardens
 - ii. Permeable surfaces
 - iii. Grey water systems
 - iv. Retention and detention facilities
 - v. Continuous trenching
 9. A list of native and well adapted species used in landscaping to eliminate the need for fertilization and pesticides.
- c. For each of the items listed on the Sustainability checklist form applicants must indicate the extent to which they are incorporating such a measure in the project or, alternatively, indicate the reason(s) why the measure is not being incorporated in the project.

III. REPEAL OF CONFLICTING ORDINANCES

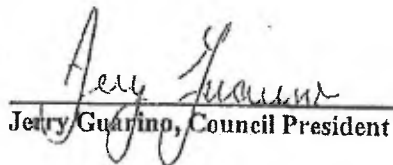
Any Ordinances of the Township which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

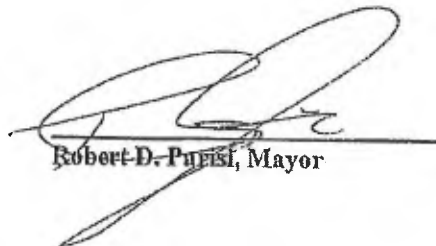
IV. SEVERABILITY

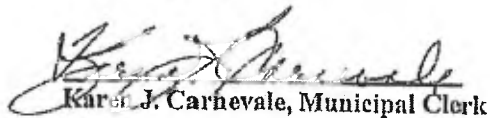
If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereof shall not affect the remaining parts of this Ordinance.

V. EFFECTIVE DATE

This Ordinance shall take effect upon final passage and publication in accordance with the law.


Jerry Guarino, Council President


Robert D. Purisi, Mayor


Karen J. Carnevale, Municipal Clerk

Introduced: April 14, 2015

Adopted: May 12, 2014

As of April 2, 2015

Legislative History

The purpose of this ordinance is implement measures to further the objectives of the Sustainability Plan included in the Township of West Orange's Master Plan Update adopted by the Township of West Orange Planning Board in 2010. Specifically this ordinance incorporates a Sustainability checklist as part of the minor site plan, subdivision and/or major site plan, subdivision applications process whereby applicants will have to disclose whether certain efforts have been made to utilize sustainability measures and obtain a rating accordingly. The ratings systems is adopted from the current version of the "Leadership in Energy & Environmental Design Rating System," which includes rating systems for LEED for New Construction and Major Renovation promulgated by the US Green Building Council. While the submission of a Sustainability checklist shall be mandatory for the zoning and planning approval, zoning and planning approval shall not be conditioned upon a specific rating under LEED. A proposed Sustainability checklist shall resemble the following:

**AN ORDINANCE AMENDING CHAPTER 25, SECTIONS 8.4, 9.9, 9.10, and 11.10 and
CHAPTER 32, SECTION 3, OF THE REVISED GENERAL ORDINANCES OF THE
TOWNSHIP OF WEST ORANGE
(REVISION OF VARIOUS ZONING ORDINANCES)**

BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF WEST ORANGE, NEW JERSEY that Chapter 25 of the Revised General Ordinances of the Township of West Orange be and are hereby amended as follows:

I. PURPOSE

The purpose of this ordinance is to make additional revisions as part of the overhaul and revision of the Township of West Orange Code governing various aspects of zoning and planning consistent with recommendations provided from the West Orange Planning Board and adopted by the Township of West Orange Council.

II. CHAPTER 25-8.4 SHALL BE AND HEREBY IS AMENDED AND SUPERCEDED TO READ AS FOLLOWS:

25-8.4 Walls and Fences.

Walls and fences are permitted under the following conditions:

- a. Walls and fences which are not more than fifty (50%) percent solid are permitted anywhere on the property, in all districts, provided they are not higher than four (4) feet.
- b. Solid walls and fences not higher than six (6) feet are permitted in the rear yard and on the side property line up to the rear line of the applicant's house. If the distance on each side of such a fence is more than five (5) feet to each adjacent house, such solid fence may be located in the side property up to the front of the applicant's house.
- c. In all nonresidential districts, fences or walls not exceeding six (6) feet in height shall be permitted in the side and rear yards provided the fence or wall is not closer than five (5) feet at any point to a principal building in a residential district.
- d. In all nonresidential districts, a fence or wall to be used for screening may not exceed six (6) feet in height.
- e. In all districts the finished side of the fence must face away from the applicant's property.
- f. The use of barbed and/or razor wire is prohibited in all districts.
- g. Electrical wire fence is prohibited in all districts.
- h. No fence as described in this section may be constructed in any district without a written application being made to the Zoning Officer who shall issue a permit after compliance with the following fee schedule:
 1. A fifty (\$50.00) dollar fee for erection in any residential district.
 2. A one hundred (\$100.00) dollar fee for erection in any nonresidential district.

III. CHAPTER 25-9.9 SHALL BE AND HEREBY IS AMENDED AND SUPERCEDED TO READ AS FOLLOWS:

25-9.9 Home Occupations.

No home occupation may be conducted in a legal owner-occupied one (1) family residence unless the following conditions are met:

- a. A simplified site plan indicating the location of the use on the premises within the principal structure and written description of the occupation to be conducted shall be submitted to the **Building Department and Zoning Official**. A Certificate of Continued Occupancy, Certificate of Occupancy, or Certificate of Habitability shall be required for home occupations.
- b. The proposed activity shall comply with the following:
 1. Only one such activity shall be permitted on the premises within the principal structure; and such use must not be incompatible with or disturb the adjacent residential neighborhood.
 2. The activity shall be conducted solely by a person or persons, and members of his/her immediate family, all of whom shall be residing full-time and permanently on the premises, and by no other person or persons living off the premises.
 3. Not more than twelve and one-half (12.5%) percent or one-eighth (1/8) of the floor area of the principal structure shall be used for such activity.
 4. No display or advertising of products or services shall be visible from outside of the principal structure in which the activity takes place.
 5. No outside storage any way related to the activity shall be visible from outside of the principal structure in which the activity takes place.
 6. No pick-up or delivery or materials to or from the premises in which the activity takes place shall be made, except by private passenger vehicle, licensed package delivery service, or US Postal Service.
 7. The activity, including deliveries as described in paragraph 6, shall be conducted only between the hours of 8:00 a.m. and 8:00 p.m.
 8. The activity shall not give rise of the need for on-street parking which shall interfere with the residential parking on the street adjacent to the principal structure in which the activity is permitted.
- c. The following activities related to home occupations are prohibited:
 1. Any activity which creates noise, smells or sights, which are ascertainable outside of the principal structure in which the activity takes place;
 2. Any activity which causes interference with electrical or electronic equipment off the premises in which the activity takes place;
 3. A retail or wholesale salesroom(s) or showroom(s);
 4. Any activity which involves the use or storage of hazardous materials as defined by law.

IV. CHAPTER 25-9.10. SHALL BE AND HEREBY IS AMENDED AND SUPERCEDED TO READ AS FOLLOWS

25-9.10 Home Professional Office.

A home professional office must meet the following conditions:

- a. The home must be located on one of the following streets or roadways: Pleasant Valley Way, Mount Pleasant Avenue, State Highway 10, Northfield Avenue, Main Street, Prospect Avenue, Gregory Avenue, Old Short Hills Road, Eagle Rock Avenue, Park Avenue, Washington Street, Harrison Avenue, Valley Road or South Valley Road.
- b. The professional use must be located on the entry level, and shall not occupy (i) more than fifty (50%) percent of the entry level and (ii) shall not exceed one thousand (1,000) square feet.
- c. A site plan indicating the part of the premises, with square footage, to be used shall be submitted to the Planning Board for approval. A Certificate of Continued Occupancy, or Certificate of Occupancy, shall be required. Amended site plan approval and a new Certificate shall be required for any change of the profession practiced on the premises.
- d. The applicant shall submit evidence that he or she has the degree, certificate or license of the profession for which the premises are to be used.
- e. Not more than three (3) people, including the resident of the home and staff, can work in the professional activity on the premises.
- f. A sufficient number of spaces shall be provided for off-street parking for residents of the home and staff personnel.
- g. A name plate, not exceeding one (1) square foot in area, may be used after obtaining a sign permit from the Planning Department. No interior illuminated lighting in the sign shall be permitted; and only the name of the professional and the profession shall appear on the sign which shall be within the property lines not more than five (5) feet high, and shall be located within the property lines of the site. No signs shall be posted in windows.
- h. If a home is located on a corner lot, and one of the adjacent streets is listed in paragraph a, a home professional office, otherwise subject to the requirements of this ordinance is permitted.

V. CHAPTER 25-11.10. SHALL BE AND HEREBY IS AMENDED AND SUPERCEDED TO READ AS FOLLOWS:

25-11.10 Outdoor Cafes in the B-1, B-2 and PC Districts.

Outdoor cafes shall be permitted subject to the standards and conditions of Section 5-10 of Chapter V, General Licensing, of the Revised General Ordinances of the Township of West Orange and in conjunction with the following conditions:

- a. Adequate access for emergency response personnel must be allowed to the main entrance of the serving establishment from the outdoor serving area as defined by Township fire regulations.
- b. Adequate sidewalk access (at least four (4) feet) must be maintained for easy passage of pedestrians on any public sidewalk or right-of-way.
- c. Some form of formal space delineation, such as a removal fence, may be required during cafe business hours to define sidewalk space from cafe space.
- d. Outdoor or patio type furniture must be used; upholstered furniture is prohibited.

- e. Street furniture (seating, tables, fencing, etc.) must be moved into the serving establishment when the outdoor cafe is not open for business.
- f. Cleanliness of the outdoor serving area is the responsibility of the serving establishment.
- g. Signage, in addition, to that permitted for the serving establishment pursuant to Section 25-15, is prohibited.
- h. A sketch showing the proposed location of tables, chairs and umbrellas shall be prepared and submitted to the Director of Planning and Development for approval prior to the use of the sidewalk area.
- i. The use of the described locations shall be authorized by a sidewalk cafe permit issued by the Director of Planning upon compliance by the applicant with the requirements of this paragraph and the payment of an annual fee of fifty (\$50.00) dollars.
- j. Any permit issued by the Director of Planning shall designate the hours of operation of any sidewalk cafe but in no event may a sidewalk cafe remain open after 11:00 p.m. on Sunday through Thursday or after 12:00 midnight on Friday, Saturday and legal holidays.
- k. Nothing herein shall be deemed to be a waiver of the provisions of any health and/or licensing ordinance regulating the operation of a sidewalk cafe.

VI. CHAPTER 32-3 SHALL BE AND HEREBY IS AMENDED AND SUPERCEDED TO READ AS FOLLOWS:

32-3 Approving Agency; Administration.

The approval provisions of this chapter shall be administered by the Planning Board or Zoning Board of Adjustment in accordance with Sections 25-46.7b and 25-47.8d of Chapter XXV, Land Use Regulations.

VII. REPEAL OF CONFLICTING ORDINANCES

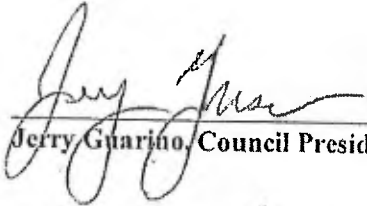
Any Ordinances of the Township which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

VIII. SEVERABILITY

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereof shall not affect the remaining parts of this Ordinance.

IX. EFFECTIVE DATE

This Ordinance shall take effect upon final passage and publication in accordance with the law.


Jerry Guarino, Council President


Robert D. Parisi, Mayor


Karen J. Carnevale, Municipal Clerk

Introduced: September 29, 2015

Adopted: October 27, 2015

Approved as to form on the basis of the facts provided:

Legislative History

This ordinance is drafted as an additional part of the overhaul of the Municipal Code governing the zoning for the Township of West Orange. These revisions are another set of revisions approved and proposed by the Township of West Orange Planning Board and Zoning Board of Adjustment.

Resolution ZB-08-37

December 16, 2010

RESOLUTION ZB-08-37

ZONING BOARD OF ADJUSTMENT

TOWNSHIP OF WEST ORANGE

RESOLUTION GRANTING SITE PLAN APPROVAL WITH VARIANCES AND
CONDITIONS TO SETON HALL PREPARATORY SCHOOL

WHEREAS, the Seton Hall Preparatory School ("the Applicant" or "Seton Hall") made Application to the West Orange Zoning Board of Adjustment 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 the Subject Property is situated in the R-1 zone; and

WHEREAS the Applicant presented proof that adequate notice of the hearing was published in the West Orange Chronicle, one of the official newspapers of the municipality; and

WHEREAS the Applicant submitted proof of notice of the hearing upon all property owners within 200 feet of the Subject Property and all others required to receive notice; and

WHEREAS the Application was heard at a public meetings of the Board held on 11/6/08, 3/12/09, 4/23/09, 5/14/09, 5/28/09, 6/11/09, 7/9/09, 9/10/09, 10/29/09, 11/5/09, 11/19/09, 12/3/09, 1/14/09, 1/21/10, 2/4/10, 3/4/10, 4/1/10 4/15/10, 5/6/10,

6/3/10, 6/17/10, 6/24/10, 7/21/10, 9/1/10, 10/7/09, and 11/8/09;
and

WHEREAS the Applicant was represented by Robert C. Williams, Esq., and

WHEREAS the Applicant offered the testimony of Monsignor Kelly, headmaster of Seton Hall Preparatory School who testified about the history of the school and its rental and then ownership of the Subject Property since 1987, the importance of athletics to the school's core mission and overall education of its students, the Applicant's current and proposed future use of the Subject Property as an integral part of its operation of its school, the academic building for which is located on a non-contiguous site on Northfield Avenue, less than one mile away from the Subject Property, and specifics about enrollment, athletic programs, and current athletic field arrangements; and

WHEREAS the Applicant offered the testimony of Charles J. Stewart, P.E., a licensed professional engineer of the State of New Jersey, who was recognized by the Board as such, who testified at the hearings of 11/6/08, 3/12/09, 4/23/09, 5/14/09, 7/9/09 and 9/1/10 about the plans and revisions submitted to the Board by his office, the tree survey completed by his office, the design and redesign of the location of the ball fields and drainage facilities to address concerns raised by the Board, objectors, and members of the public, and further testified that in his opinion there will be no adverse impact to the public from an engineering prospective if this development is approved

and that the proposed development will not exasperate any current off site drainage conditions; and

WHEREAS the Applicant offered the testimony of Robert Heintz, a licensed professional architect of the State of New Jersey, who was recognized by the Board as such, Mr. Heintz testified about the architectural plans for the locker room, training faculty, field house, food concession, storage building, press box, and bathroom facilities, including a revised bathroom layout to accommodate Board concerns about having adequate provision of facilities; and

WHEREAS the Applicant offered the testimony of Joseph R. Cairone, a licensed landscape architect in the State of New Jersey, who was recognized by the Board as such, Mr. Cairone testified about the proposed landscape plan, new plantings planned, the variety of species planned, the tree replacement plan, and the concurrence of his office with the Tree Removal Plan prepared by Mr. Stewart's office and offered by the Applicant; and

WHEREAS the Applicant offered the testimony of Joseph Staigar, P.E. a licensed professional traffic engineer in the State of New Jersey, who was recognized by the Board as such, who testified about the ingress and egress to and from the Subject Property both on normal traffic days and on football game days, about the compliance with parking space requirements with the provision of temporary overflow parking for football games, the proposed overflow parking and the likely on street parking, about pedestrian safety and traffic flows on football

game days, about the Applicant's willingness to employ parking personnel and off-duty police officers on football games days to provide parking direction and pedestrian and traffic safety, and about proposed turning restrictions out of the existing parking lot; and

WHEREAS the Applicant offered the testimony of Dennis Galway, a tree expert and certified and approved forester pursuant to the Society of American Foresters and the New Jersey Forest Service, who was recognized by the Board as such, Mr. Galway testified about the West Orange Tree Ordinance, his review of the tree removal plan prepared by Mr. Stewart's office, as well as the tree replacement plan prepared by Mr. Cairone's office, and various reports proffered by the Objector Malanga about an "old growth forest," he concluded that the methodology used by the Applicant to determine the number of trees was appropriate, that the existing forest is not a healthy one and removal and replanting of some trees will be beneficial to the Subject Property, and that the tree replacement plan is adequate; and

WHEREAS the Applicant offered the testimony of Peter G. Steck, a licensed professional planner of the State of New Jersey, who was accepted by the Board as such, Mr. Steck testified about the proposed use of the Subject Property from a planning prospective, highlighting the substantial proposed buffer on the northerly property line, the open space aspect of the proposal in that building coverage will be less than 1% and impervious coverage will 15.937%, his examination of the West

Orange zone plan and ordinances, Master Plan and Re-Examination report and its classification of the Subject Property, the permitted uses on the Subject Property as per the zoning ordinance, the history of the Applicant's first application to the Planning Board and the determination of the Planning Director, as affirmed by the Zoning Board that the Applicant needs a D-1 variance for the use and is properly before the Zoning Board of Adjustment, the other variances sought, his opinion that the use of the Subject Property as school athletic fields is an inherently beneficial use, despite not being on the same property where the academic building sits, that the inherently beneficial use would satisfy the positive criteria, that the Applicant also satisfies the four prong negative criteria analysis, as set forth in Sica v. Board of Adjustment of Wall Township, 127 N.J. 152, 156 (1992), that the use is a high priority use in that education is important to society, that any detriments have been identified and ameliorated with conditions that the Board is considering, and that it would be appropriate for the Board to find, as he opines, that the benefits of the proposal outweigh the detriments, and that it would be poor planning to build permanent parking capacity for football games that are estimated to encompass about 20 hours over a year, and that all of the bulk variances could be granted because their benefits outweigh any perceived detriments; and

WHEREAS the Applicant offered the testimony of Richard E. Poltan, Real Estate Appraiser, who was accepted as the Board as such, Mr. Poltan testified that that impact of the proposed

development on the value of adjoining properties is so minimal to be de minimus and that it cannot be reasonably calculated; and

WHEREAS the Applicant offered the testimony of Phillip A. Hayden, a cultural resource consultant who was recognized by the Board as an expert in that field, he testified that he inspected the current Subject Property, researched the Subject Property at many venues, including the New Jersey Historic Preservation Office, State Library and State Archives in Trenton, the Essex County Courthouse, Newark Public Library, Library of Congress in Washington, D.C. and the Olmsted National Historic Site in or near Boston, and examined a host of listed materials therein, he mapped the Subject Property to determine the location of past structures, that despite noted past property owners, nothing on the Subject Property is or would qualify to be eligible for recognition under National Historic Register Standards, that the Subject Property was used only as a summer home for General McClellan for approximately two years before his death, that the Subject Property was then subsequently owned by the Delanos which family hired the Olmsteds to prepare certain landscape designs, which designs, if in fact they were the ones that were implemented, transformed the previous property, but have been left to fallow for over 70 years, and finally that of three remaining structures, which are remains of a greenhouse, a caretaker's cottage and the foundation of the Carteret School for Boys, none possess the significance required to meet the general threshold for National Register eligibility nor do they

currently have the integrity that is required to convey that significance; and

WHEREAS the Applicant offered the testimony of William Kehoe and Edwin Johnson, the Director and an employee of the West Orange Recreation Department who testified about the schedule of current use of West Orange Township owned ball fields by the High School, Middle Schools, and two private schools in town and the various town recreational leagues; and

WHEREAS Township Engineer Leonard Lepore was called to testify by objector Loren Svetvilas, and was asked about the conditions he observed over the years when called by adjoining property owners to inspect a basement flooding condition they have experienced since the construction of the first set of improvements by the Applicant, and that he sees the problem as a groundwater problem, not a run-off problem, and suggesting that thus that the current application should rely heavily on recharged ground water, he also indicated an open pipe discharging onto Mountain Drive should be capped and that the town would like to receive an easement on Mountain Drive to address drainage issues on Mountain Drive; and

WHEREAS the Applicant offered Exhibits marked A-1 through A-63 and Linson 1 and Linson-2, the following which were admitted into evidence by the Board:

- A-1 Revised Cover Sheet
- A-2 Soil Sheet
- A-3 Engineering Site Plan(Sheets 1-11)

A-4	Color Coordinated
A-5	Colored Rendering Landscape Plan A
A-6	Original Site Plan (Initial Submission)
A-7	Revised Parking Calculations
A-8	Overflow Parking Exhibit
A-9	Prototype Score Board
A-10	Landscape Improvements
A-11	Landscape Improvements
A-12	Variance List
A-13	Site Plan
A-14	Phase II Detailed Utility & Grading Plan (Sheet 8 of 11)
A-15	Landscape Improvements Master Plan
A-16	Revised Site Plan (11 sheets)
A-17	Reduced Landscape Improvements Master Plan
A-18	Field House Elevations (Sheet A-2)
A-19	1 st & 2 nd Floor Plans-Field House (Sheet A-1)
A-20	Floor Plan/Elevations-Storage Building(Sheet A-3)
A-21	Floor Plan/Elevations-Food Concession & Press Booth
A-22	Dugout Plan
A-23	Letter Response from GC Stewart
A-24	Batting Cage Tunnel Details (5 Sheets)
A-25	Hooded Back Stop

A-26	Scoreboard Plan
A-27	Picture of Poles & Netting
A-28	Overall Clearing & Grading Plan
A-29	Tree Removal Plan
A-30	Visual Analysis of Existing Landscape
A-31	Site Improvement Plan
A-32	Landscape Details Revised 5.4.09
A-34	Revised Architectural Floor Plans Food Concession and Press Box 4.28.09
A-35	Revised Sheet A-4 of Architectural Plans - Concession Stand with Bathrooms/Plumbing Code
A-36	2 nd Sheet A-4 Revised Press Box Plan Eliminating Elevator
A-37	Seton Hall Letter Re: Use of Press Box
A-38	Copies of Foresters Certifications NJDEP-Certified Tree Expert Membership Society of American Foresters
A-41	Panorama of Ridge Line (5 Pictures & Map)
A-46	Proposal of Amy S. Greene Environmental Consultants, Inc
A-48	Letter of Schoor DePalma(now CMX) by Jillian L. Weber to US Fish & Wildlife Service Request for Information Regarding Endangered Species
A-49	Letter of Reply to Schoor DePalma (now CMX) from Fish & Wildlife Service re: Tree Survey
A-50	Tree Removal Plan, Photos of Existing Conditions
A-51	Letter of Reply to Schoor DePalma from Fish & Wildlife Service Regarding Approval Conditioned to Protection of the Indiana Bat

- A-52 Existing Conditions Map Highlighting
Gen. McClellan Property and Greenhouse
- A-53 Aerial Photograph of area in 1931
- A-54 Detailed Layout & Dimensioning Plan
- A-55 Detailed Utility & Grading Plan
- A-56 Tree Removal Plan
- A-57 Phase II Utility & Grading Plan
- A-58 Utility & Grading Plan
- A-59 Utility & Grading Plan
- A-60 Utility & Grading Plan
- A-61 Overall Clearing & Grading Plan
- A-62 Existing Conditions Map
- A-63 Site Improvements Plan (Sheet 2 of 3)
- Linson-1 letter
- Linson -2 letter

WHEREAS objector Kevin Malanga, an adjacent property owner, was represented by Herbert Waldman, Esq.; and

WHEREAS objector Kevin Malanga introduced the testimony of Amy Greene, an environmental scientist, certified wetlands delineator, certified senior ecologist with the Ecological Society of America, certified ornithologist and aquatic ecologist with the NJDEP and also certified in habitat evaluation procedures by the U.S. fish and Wildlife Service, who was accepted, by the Board, over objection, as an expert in the field of environmental science, Ms. Greene opined that the Applicant had not complied with the Township ordinance's

requirements to provide an Environmental Impact Statement (hereinafter "EIS"), in the areas of tree counting (the counting by the Applicant of only trees having a circumference of 6 inch in diameter or greater instead of trees of diameters of 4 inches or greater), that one of the purposes of the required EIS and Tree Ordinance is to preserve the maximum number of trees as possible, and to encourage innovative design and grading for storm water management, and that the Board might be criminally liable if it approves a project that might have an impact on an endangered species or its breeding ground (pertaining to the Indiana Bat); and

WHEREAS objector Kevin Malanga offered the testimony of Sally Malanga of 57 Ridge Road, Ms. Malanga testified about her finding of fill dirt after the last construction by the Applicant, about hiring Bruce Kirshner to do a tree survey, and about her correspondence with Msgr. Kelly regarding the Application; and

WHEREAS objector Kevin Malanga testified that the reason for his objections to the project are due to the impact it will have on his privacy, property values and the environment as a whole, and his concern regarding the possible use of illegal fill in the last phase of construction; and

WHEREAS objector Kevin Malanga offered the testimony of Brian Friedlich, P.E., a licensed professional engineer of the State of New Jersey, who was accepted by the Board as such, Mr. Friedlich testified that a better idea for the project would be for an underground facility for storm water management, possibly

under the proposed parking lot, which would eliminate the need to take down 133 trees and would reduce or eliminate need for a detention basin and that in his opinion the Applicant did not properly calculate its points system to evaluate the project's utilization of nonstructural methods of storm water management and that in order to cure same a permanent conservation easement of the northern portion of the Subject Property would be required; and

WHEREAS objector Kevin Malanga offered the testimony of John Linson, an approved forester and New Jersey certified tree expert, and West Orange Township Forester who was recognized by the Board as a certified forester, he testified that there were many old trees on the Subject Property but there was no "old growth forest" on the Subject Property, that the four largest trees on Subject Property should be preserved and that the Applicant's Tree Removal Application was complete and qualified for disposition by the Zoning Board; and

WHEREAS objector Kevin Malanga offered the testimony of Carl Popolizo, a representative of the United States Department of Fish and Wildlife Service to discuss the Indiana Bat, Mr. Popolizo, testified that he did not write the Fish and Wildlife Service letter but there has been a determination by his office that project activities may proceed as long as trees are not taken down from April 1 to September 30, and that his office recommends that a bat survey be conducted by a Certified Indiana Bat Surveyor to determine if the species is present on the Subject Property; and

WHEREAS objector Kevin Malanga offered the testimony of Steven Lydon, a licensed professional planner, who was recognized by Board as such, Mr. Lydon testified that the proposed use of the Subject Property is not an inherently beneficial use, as the Applicant can deliver its mission without the proposed improvements, and that the Applicant has therefore not established the positive criteria as most of the proposed improvements will not provide a direct public benefit and they serve no public need; and

WHEREAS Objector Kevin Malanga offered the testimony of Joseph Fagan, a former resident of West Orange and self-described expert in West Orange history, who authors a historical column in the West Orange Chronicle and has collected postcards and other West Orange artifacts, who although not a historian by training, the Board accepted his testimony for his expertise in West Orange history, but not as a historical expert, Mr. Fagan testified about maps he attempted to introduce, photographs that he took of remnants of the greenhouses and gates on the Subject Property, and attempted to introduce evidence given to him by a prior resident of the caretaker's cottage on the Subject Property, whom he visited and interviewed out of state, which the Board rejected on hearsay grounds; and

WHEREAS objector Kevin Malanga offered the testimony of Kathleen P. Galop, an attorney with a background in historical preservation, and principal of the firm Preservation Possibilities, she testified about the remains of some Olmsted

installed plantings on the Subject Property and opined that the property may be eligible for historic designation because it contains the designs of a master in the field, namely the Olmsted Brothers landscape architects; and

WHEREAS Objector Kevin Malanga offered Exhibits marked M-1 through M-81, the following of which were admitted into evidence by the Board:

- M-4 aerial photograph from Greene report
- M-5 photographs A-E of site taken by K. Malanga 3/25/07
- M-6 Set of approved plans from 1999 application before planning board
- M-7 Letter from New Jersey Dept. of Environmental Protection regarding "Report of forested plot owned by Seton Hall Prep School, West Orange, NJ"
- M-9 Cairone site improvement plan January 26, 2009
- M-16 Amy Greene site plan
- M-17 Linson Memo November 5, 2009
- M-18 Linson Memo October 28, 2009
- M-30 letter from Kevin Malanga to Leonard Lepore, April 9, 2001
- M-31, M-42 (same document) Letter from Lepore to John Murray (accepted for sole purpose of the Board's consideration in connection with a request for a condition of special construction monitoring)
- M-34 Chart, NJDEP Nonstructural Strategies Points System (NSPA)
- M-35 Stormwater Management Rule FAQ'S
- M-36 report of Steve Lydon

- M-37 letter from U.S. Fish & Wildlife Service to Philip Neuer, received November 30, 2009
- M-38 letter from Herb Waldman to Zoning Board dated December 18, 2008 with exhibits
- M-40 Summons to Seton Hall Prep School, West Orange Municipal Court, March 20, 2007 (for sole purpose of the board's consideration in connection with a request for a condition of special construction monitoring)
- M-41 Letter from Leonard Lepore, to Msg. Kelly, December 8, 2006
- M-43 NJDEP report re violations on Seton Hall site
- M-44 letter from Herb Waldman to Alice Beirne, March 5, 2010, re: cross examination
- M-45 letter from Alice Beirne to Herb Waldman, March 26, 2010 response re cross-examination
- M-46 current conditions map depicting old growth trees and historic remains
- M-47 A-G documents pertaining to 1988-89 potential rezoning
- M-48 photo of door frame
- M-49 photo of panels, identified by Philip Hayden as probably from greenhouse
- M-50 Fagan Report
- M-57 photo of Turkey Gage; present-day
- M-60 photo of remains of Pelican Gate
- M-61 photo of destroyed Pelican Gate
- M-63 current photo of interior of greenhouse
- M-64 current photo of greenhouse with yews before destruction
- M-65 current photo of iron fence
- M-66 current photo of item found partially buried on site

M-71 blow up of existing conditions depicted in M-46
M-72 current photo of greenhouse
M-73 current photo of greenhouse
M-74 current close-up photo of greenhouse
M-79 current photo showing uprooted yew
M-83 tree removal citation

WHEREAS objector Gerald Carp, Esq., an adjoining property owner represented himself pro se, and eventually his wife, as well, and

WHEREAS Mr. Carp cross-examined witnesses and offered the following Exhibits:

C-1 page 5 of Mr. Stewart's 4/18/07 plan, colored by Mr. Carp.
C-2 sheet 1 of 1
C-4 11 photographs
C-5 Asphalt Millings Guidance Document

WHEREAS the following members of the public posed questions to the various witnesses:

Lawrence Svetvilas 699 Prospect Avenue¹

Victoria Owens, 6 Korwel Court

Rhea Seagull 662 Prospect Avenue

Christian Lopez , 61 Woodland Avenue, Maywood, NJ

Ellen Carp, 63 Ridge Road

Elaine Lehmert, 666 Prospect Avenue

¹ Address is in West Orange, unless otherwise noted.

Catherine Nadie, 448 McCoy Road, Franklin Lakes, NJ
Sally Malanga, 57 Ridge Road
Barry Schusterman, 21 Benvenue Avenue
Ronni Strell, 354 Prospect Avenue
Robert Alvarez Northfield Avenue
Joseph Arambulo Northfield Avenue
Sydell Demaio 25 Kenz Terrace
Mike Sheppard, 28 Kaiser Lane
Taylor Lanzet 20 Cannon Street
Alyza Go 5 Normandie Terrace
Gerald Gurland, 294 Arnaeo Terrace

WHEREAS, Gerald Gurland and Brian Fenney of the West Orange Preservation Commission petitioned the Board for either a referral of the matter to the West Orange Preservation Commission or time for the opportunity for the West Orange Historical Preservation Commission to undertake analysis of the Application, said request was denied by the Board as not statutorily required and untimely and cumulative, but advised the Board members that comment would be received from individual Historic Preservation Board Members during the public comment portion of the Application; and

WHEREAS, during the course of the hearings, numerous e-mails and letters were received by the Board secretary from members of the public both from West Orange and other places making comment on the Application, all such letters and e-mails were placed in the Board's file but were not read or considered by Board members; and

WHEREAS the following members of the Public made a statement regarding the Application:

Loren Svetvilas, 699 Prospect Avenue, who spoke about student safety, and who offered Exhibits LS-1 through LS-5, which were photographs of students walking along Prospect Avenue and also expressed concerns about loss of trees and use of asphalt millings;

Nirva Singh, 230 Crescent Lane, Cliffside Park, NJ, who was a designated spokesperson for a group of Bergen County Community College students following the hearings, who testified that her group has generalized environmental concerns about the project; and

Joseph P. Brennan, Jr., 13 Harvard Terrace, who stated that Seton Hall is a wonderful neighbor;

Paul Tractenberg, 11 Tuft Lane, who testified he was involved in the drafting of the tree removal ordinance and that he would like the spirit and intent of that ordinance to be followed in this application;

Thomas R. Farley, 67 Ridge Road, who stated that he is a member of the Board of Trustees of Seton Hall Prep, and a contiguous property owner, and he supports the application;

Danielle Blake, 45 Lennox Terrace, a West Orange High School Student;

Austin Glover , 17 Winding Way, and member of the Prep community who support the building of additional fields for the Prep;

Terry Cunningham, 44 Maple Avenue who spoke in support of the Application because it would free up more township baseball diamonds in town if Seton Hall didn't have to use township ball fields;

Daniel Yennion, 6 Essex Street, Bellville, New Jersey, who was granted permission to speak on behalf of the Sierra Club;

James Quinn, 15 Koewing Place, who spoke in support of the Application;

Jerome Eben, 26 Walker Road, who indicated he thought the objector's engineer had a better plan and that he Board lacked enforcement authority; and

Peter J. Degnan, 26 Benvenue Avenue, who spoke in favor of the Application; and

Robert Alvarez, 293 Northfield Avenue, which is situated just east of the property at the bottom of a steep ridge, Mr. Alvarez presented RA-1, RA-2 and RA-3 which were photographs of runoff from the Subject Property, and advised the Board of lacrosse balls coming over the fence and down onto his property and into his yard from above, which presented a danger to anyone in his yard; and

Paul Ianiro, 5 Mountain Drive, who spoke in favor of the Application; and

Taylor Lanzet, 20 Cannon Street,

Judith Caden, 21 Glen Road, spoke about the importance of recognizing General McClellan;

Joyce Ridin, 38 Woodland who stated she did not believe the Tree Ordinance was being adhered to;

Narisa Svetvilas, who was concerned about public safety and traffic and pedestrians near the Subject Property and introduced photographs she took as Exhibits NS-1 through NS-5, depicting pedestrian traffic patterns;

Sally Malanga, 57 Ridge Road, who spoke about preserving the historical remains;

Elaine Lehmert, 666 Prospect Avenue who doesn't think the fences on prospect will have an impact; and

Ronnie Strell, 654 Prospect Avenue, who spoke of her basement flooding and the raised height of the existing soccer field; and

Rhea Seagull 662 Prospect Avenue, who was worried about drainage onto her property; and

Nancy Warshowsky, 4 Dogwood Road, who testified that she has been a resident since 1987, and highlighted the importance of trees in our world; and

Terry Schwartz, 36 Colony Drive East, who has lived here since the 1960's and has experienced the parking conditions at the Seton Hall Northfield Avenue campus; and

Warren Maspeizer, 30 Edgemont Road, a resident since 1966; and

Gerald Carp, Esq. 63 Ridge Road, who requested a permanent buffer between fields and his property and stated his preference regarding the location of the cross-country track; and

Brian Mauerer, 2 Yale Terrace who advised the Board of a resolution of the West Orange Historical Preservation Commission; and

WHEREAS, Public Advocate Harvey Grossman questioned the various witnesses and made closing remarks; and

WHEREAS the members of the Board questioned the witnesses and the Applicant's attorney and Mr. Waldman, the objector's attorney; Mr. Carp and certain members of the public; and

WHEREAS, the Board considered the report and testimony of Susan Borg, Township Planner; and

WHEREAS the Board considered the various reports and letters and testimony and proposed conditions to approval prepared by Eric Keller, P.E., specially appointed engineer to the Board for the project; and

WHEREAS Board members individually visited the Subject Property on one or more occasions and on June 17, 2010, placed on the record the observations they made when visiting the Subject Property; and

NOW THEREFORE, the Board hereby makes the following Findings of Fact:

1. The Applicant is the owner of the Subject Property located at 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, on the Tax Map of the Township of West Orange and located in the R-1 zone.

2. The Applicant has requested site plan approval for the installation of additional playing fields and 3 new structures. The Subject Property is an integral part of its operation of a

private school, the academic portion of which is operates on a non-contiguous site on Northfield Avenue, less than one mile away from the Subject Property.

3. The Applicant requires the following variances: (1) a "D" 1 use variance for athletic fields, not permitted in the residential zone; (2) a parking variance for relief from requirement of the ordinance requirement of 663 spaces, by providing 84 existing, 220 additional and 372 new, non-permanent spaces for a total of 676 spaces provided (3) a variance for construction of 2 free standing signs when none are permitted in the residential district; (4) a variance from the requirement of no disturbance of vegetation within 100' of ridge line or disturbance of steep slope exceeding 25% permitted, 0 foot setback from ridge line for proposed disturbance and disturbance of steep slope exceeding 25%; (5) a variance for construction of chain link fence and netting exceeding 4 feet around tennis courts and baseball fields, to a minimum of eight to twelve feet with a 24' backstop for baseball fields and protective netting around interior ball field of 50 feet; (6) a height variance from 35' allowed maximum in residential zone for bleachers with press box not to exceed 40'. The Applicant is also need a soil removal permit and a tree removal permit.

4. During the Application, the Application was amended to include a height variance for a fence by the lacrosse field to prevent errand lacrosse balls from going over the cliff into the backyards of homes on Northfield Avenue.

5. The Subject Property is approximately 45 acres in size. The Zoning Board has heard extensive testimony over the course of 26 meetings or hearings that commenced in November 2008.

6. Seton Hall is a private non-profit high school that is accredited by the New Jersey State Department of Education.

7. Seton Hall first leased the Subject Property in question in 1987 and purchased it in 1993. The Subject Property was previously the location of the Carteret Boys School. Seton Hall is a well-respected neighbor in Town. The Subject Property is situated in the R-1 zone and is private, not public, property. Across Prospect Avenue from the Subject Property is a golf course, and the Shillelagh Club, certain private homes and a church abut portions of the Subject Property.

8. Seton Hall seeks numerous variances in order to expand existing athletic facilities and fields and a field house at the Subject Property, with the construction of a football field, bleachers, a press booth, a concession stand, a storage room/athletic facility, five tennis courts, two baseball fields, practice fields, parking lots and required drainage facilities needed in connection with the further development of the Subject Property and a sign.

9. Seton Hall currently maintains certain practice fields and a field house at the Subject Property which were previously approved by the Township Planning Board. Seton Hall has demonstrated, by the testimony of Monsignor Kelly and Peter Steck, its planner, of its need to expand the athletic

facilities and how the athletic facilities directly relate to Seton Hall's core curriculum. Sports and athletic programs, especially in an all-boys high school such as Seton Hall, are a very important part of the education process and integral to the core function and curriculum of a high school such as Seton Hall Prep. Further, testimony demonstrated that Seton Hall also intends to use the Subject Property to conduct ecology classes and drivers' education classes, which are part of the school's curriculum.

10. The Subject Property is well suited for the expansion of the athletic facilities sought, and it is important to note that the athletic facilities are in reasonably close proximity to the Seton Hall school building, which is located on Northfield Avenue.

11. Various public and private schools in West Orange are in residential zones and have athletic or ball fields such as the Mt. Pleasant Elementary School, Gregory Elementary School, Hazel Elementary School, Liberty Middle School, Stag Field adjacent to St. Cloud Elementary School, Redwood Elementary School, Pleasantdale Elementary School, Roosevelt Middle School, West Orange High School and the Solomon Schechter lower school and high school, plus of course Seton Hall Preparatory School on Northfield Avenue. Thus, it is clear that it is common for athletic fields and facilities to be built in connection with schools.

12. Seton Hall owns no other land in the Township of West Orange suitable for use for the construction of additional

athletic fields. Seton Hall has no additional space at its Northfield Avenue main campus to add additional athletic fields. The fact that Seton Hall already has athletic fields and a field house at the Subject Property, and the Subject Property is located near major roads in town, demonstrates that the Subject Property is well suited for an expansion of the existing athletic facilities.

13. The Subject Property is located in the R-1 zone. Seton Hall could, by right, develop single-family homes in the R-1 zone or a golf course and golf club house. Seton Hall, as a non-profit private high school, is not in the business of developing and selling single-family homes.

14. As noted, Seton Hall currently has been using the Subject Property for years for athletic fields and a field house. The R-1 zone has various permitted conditional uses such as public and private schools and parks or playgrounds. See Township Ordinance 25:24.2. Clearly, both public and private schools have, as part of their facilities, athletic fields as do parks and playgrounds. Thus, it is clear that the West Orange master plan contemplated at the R-1 zone would logically include athletic fields in connection with public and/or private schools or parks which are conditional uses at the Subject Property.

15. Similarly, while athletic fields are not listed in the West Orange zoning code as permitted conditional uses in the R-1 zone, there can be no question that the Township has intended athletic fields go in tandem with public and private schools, parks and playgrounds. A number of the Township's parks and

playgrounds have athletic fields in conjunction with them, such as O'Connor Park, Degnan Park near the high school, and Stag Field, among others. Thus, the proposed use will not substantially impair the Township's master plan and zoning ordinances.

16. Seton Hall's proposed construction of the athletic facilities will have a *de minimus* effect on the value of neighboring properties, as the Board accepts the unrebutted testimony of Richard E. Polton taken on May 6, 2010 at page 115.

17. Since at least the late 1800's, when the Subject Property was the site of General McClellan's summer home, the Subject Property has, in fact, been developed and redeveloped many times over. The prior owners and/or the Olmsteds on their behalf cleared the Subject Property, built houses, tore down houses such as General McClellan's, built gardens and planted numerous non-native trees and shrubs. The testimony clearly demonstrated that the Olmsteds or others introduced many non-native species of trees and plants to the Subject Property. A photograph of the Subject Property (Exhibit A 53) clearly shows large sections of the northerly portion of the Subject Property with effectively no trees, demonstrating that the trees at that point in time were removed by humans and that there was no growth of trees in those locations. Likewise, testimony about the work of the Olmsteds and the Delanos demonstrate large sections of the Subject Property were cleared to plant non-native species of trees, flowers and shrubs (such as Japanese yews, which are not native to West Orange), clearly changing the

fundamental character of the original site, demonstrating that the Subject Property has been developed over the years and continued development is not inappropriate at the Subject Property.

18. The remains of parts of fences and the damaged metal shell of a greenhouse, which has been clearly abandoned for over half a century, based on the credible testimony of Mr. Hayden, are not a basis upon which to deny the Application.

19. Further, as the testimony has noted, the original McClellan house was destroyed many, many years ago, well before Seton Hall ever came on to the Subject Property, and that the gardens which may have been planted by the Olmsteds starting in the late 1930's or 1940's on the northern portion of the Subject Property have become overgrown and are no longer maintained.

20. The southern portion of the Subject Property has developed and was used as a school prior to Seton Hall's use of the Subject Property.

21. Concerning the historic significance of the Subject Property, Mr. Hayden's testimony was most credible. His written report and testimony demonstrated that none of the remaining structures, which clearly are in a state of disrepair or are partially destroyed, are eligible for or are on the National Historic Register because they lack historic significance and historic integrity. Nothing on the Subject Property qualifies for a designation under the National Historic Register.

22. The objector's proffered historical expert Kathleen Galop lacked the same credibility. She primarily testified with

regard to the landscape architecture of the Subject Property, but admitted she was not a landscape architect. Most importantly, she admitted only being on the Subject Property for at most 10 to 15 minutes. Considering that she walked all the way to the location of the remaining metal frame of a greenhouse, which takes approximately 5 minutes to walk from where cars park based on Board member's visits to the Subject Property, she was barely on the Subject Property and therefore had no real ability to determine what was there. Further, unlike Mr. Hayden who performed extensive background research on the prior property owners and the Olmsted brothers, Ms. Galop did not. As noted by Ms. Galop, it has also not been adequately demonstrated whether any of the Olmsted plans pertaining to the Subject Property were ever implemented.

23. Seton Hall's construction on the Subject Property of additional athletic fields will free up the use of the Township's fields for other Township uses, as there is much competition for the use of the public fields in West Orange. The testimony of Bill Keogh, the Township's recreation director, and Mr. Edwin Johnson of the Township's Recreation Department, demonstrated that the expansion of the Seton Hall fields will have the positive effect of freeing up use of the fields at the Township's parks and schools for Township residents and children, thus providing a further benefit to the Township and the public good.

24. The use of the Subject Property for the proposed expansion of athletic fields and the field house is justified

and reasonable. The proposed use, as demonstrated by the testimony of Monsignor Kelly and Mr. Steck, is integral to the core function of Seton Hall as a school. The specific location of the Subject Property is key, as it is in close proximity to Seton Hall's academic facilities and other fields located on Northfield Avenue, and Seton Hall owns no other property in close proximity available for it to expand upon. Furthermore, there is no additional large tract of land in close proximity to the Seton Hall School building on Northfield Avenue available for Seton Hall to build the proposed athletic facilities.

25. This Application poses no threat or potential harm to either the Indiana bat or its breeding habits or sites. No witness testified that they were aware of Indiana bats actually being on the Subject Property. For example, Amy Green, the objector's environmental science witness, testified that she had no actual knowledge of Indiana bats at the Subject Property. Green testimony of November 5, 2009 at page 130. Ms. Green further testified that a significant part of North Jersey includes habitats for the Indiana bat. Green testimony from December 3, 2009 at page 58. The U.S. Fish and Wildlife Service further advised that if the removal of trees at the Subject Property occurred during non-breeding season, the months of September through March, it would be acceptable to remove trees without any impact to the Indiana bats' breeding habits. Seton Hall agreed that the removal of any trees would occur during this time period, and same will be made a condition of approval. In addition, Seton Hall actually performed at bat mist net

survey in accordance with U.S. Fish and Wildlife Services guidelines and the results of that survey was that no Indiana bats were found. Thus, any testimony that the removal of trees might negatively impact the breeding habits and habitat of the Indiana bat is without basis and this is a non-issue in this Application.

26. There was much conflicting testimony and public comment concerning whether the Subject Property contains an old growth forest. Despite all the back and forth, the Township's Forester, who one of the objectors called as his own witness, Mr. Linson, testified, "There are old trees. But there is no old growth forest." November 5, 2009 transcript at page 64. Mr. Linson further testified that there was really no forest at this location until some 50 or 60 years ago when the Subject Property was abandoned and natural growth resumed. Id. at 74. Mr. Linson was the only individual with the appropriate qualifications who testified before the Board as the Township Forester to make this determination. The Board finds his testimony to be very credible. Many of the other people who testified simply were not experts in this area or effectively were attempting to quote hearsay from articles written by other people or provide a net opinion. Ms. Green testified that she is not a certified tree expert. Green testimony of November 5, 2009 at page 25. In addition, the Applicant has clearly made numerous revisions in the Application to save a number of the older or champion trees on the Subject Property. Thus, the

Board concludes that there is no old growth forest present at the Subject Property.

27. The removal of the trees at the Subject Property and their replacement by a greater or equal number of new trees is clearly appropriate. The majority of the older trees are only present in the northern section of the Subject Property. Many of the trees in that section are dead, dying, have fallen or are in various states of decline. The clearing of the older trees and their replacement with new trees that will grow over their lifetime is part of the natural cycle of trees dying and growing. This is not an example of where the Applicant simply is looking to clear-cut property and not replace the number of trees removed with new trees. Seton Hall proposes to replace the trees, which is part of the cycle that occurs in connection with trees throughout the United States and the world.

28. The tree survey done by the Applicant and the conditions that will be placed upon tree removal with oversight by a monitor, the Township Planner or the Township Forester will ensure that only those trees that should be removed will be removed, and thus comply with the intent and purpose of the Township's tree ordinance. The Township Forester, Mr. Linson, testified that the Applicant's plan has complied with the appropriate regulations and that the issuance of a tree removal permit is appropriate, and the Board so finds.

29. None of the wooded area east of Ridge Road, the steepest portion of the Subject Property, will be disturbed by the proposed construction.

30. Seton Hall has proposed leaving the cross-country track in its existing location, a condition that was supported by the objectors' environmental expert, Amy Green. At closing argument, counsel for two objectors stated that they wish the path to be moved further to the south which would result in the destruction of approximately 37 additional trees. The Board finds that the proper place for the running track is in its current location but will require as a condition that it be resurfaced on the top and sides so that it is solid.

31. With regard to the use of asphalt millings, objectors provided Exhibit Carp 5 which are the Asphalt Millings Guidance Document issued by the New Jersey Department of Environmental Protection with a revision date of September 10, 2009. Clearly, these revisions are not applicable because the path in question predates this Guidance Document and there was no testimony as to the exact composition of the path that exists on the Subject Property that has been there for many years. Further, section F of the Guidance Document notes that "several uses of asphalt millings are fully appropriate in accordance with the regulations for recycling and beneficial use and, therefore, asphalt millings may be used as follows below." One of the permitted uses set forth in subsection F 3 is as surfacing materials if an appropriate binder is applied to keep the asphalt millings in place. Subsection F 4 notes that asphalt millings may be used to construct or repave a roadway or parking lots and used for a walking or running path likewise appear to be clearly appropriate under these regulations. The pathway is

so utilized. Further, the concerns about the asphalt millings on the path is an existing condition and one that would continue to exist in place with no change whatsoever if the Application were denied. Therefore, this is a non-issue in this Application.

32. The Board accepts the testimony of Joseph Staigar, the Applicant's traffic expert, whose credibility is accepted and who has testified before the Board in numerous other Applications. The revisions made by Seton Hall to the plans to deal with public safety are acceptable. The biggest concern raised was when home football games are played which will occur no more than six or so times during the year. The duration of each football game with both pre- and post-football activities will be no more than approximately four hours, or a maximum of some 24 or so hours per year, which clearly cannot have a substantial detrimental impact on the neighboring community. While people will have to park in neighboring areas, that is no different than at West Orange Public High School where at home football games the parking lot at West Orange High School is clearly inadequate to provide parking. Whenever home football games are played at West Orange High School, numerous people park on the neighboring streets and walk to the football field. The conditions imposed by the Board will require the Applicant to hire off-duty police officers along Prospect to maintain traffic flow as well as to stop traffic to allow pedestrians to cross the street and gain access to the Subject Property to attend football games. Likewise, the conditions will require

that during home football games that parking monitors be utilized for the on-site parking in order to maintain the flow of traffic and safety. Mr. Staigar opined that there was safe ingress and egress to the Subject Property, and the Board so finds.

33. The Board finds that the practice of Seton Hall students walking from the school building to the athletic fields will likely continue even if the Application is denied. The Board finds it cannot require Seton Hall to install sidewalks on property it does not own to enable students to walk from the Seton Hall Prep school to the Subject Property, although Seton Hall is encouraged to take these issues to heart and instruct its students on how to walk properly to avoid any problems and to utilize sidewalks where they exists. This pre-existing issue of students walking to and from the Subject Property does not negate Mr. Staigar's conclusion that there is safe ingress and egress from the Subject Property

34. With regard to the site plan itself, with the various revisions made by Seton Hall, and the relocation of certain of the baseball fields, the practice field on the northerly portion of the Subject Property will now be at least 380 feet from the boundary of the Carp and Malanga properties, and that buffer area will be heavily wooded with the exception of the path which is used for people to walk and cross-country track. Such a buffer is more than adequate, especially in light of Seton Hall's agreement not to do any further development in this northern portion for 30 years (assuming it continues to own the

land). Further, Mr. Steck testified that the impervious coverage on the Subject Property with the proposed construction would be less than 1%. Steck testimony of September 10, 2009 at page 37.

35. The Board adopts the conclusions of its engineer, Mr. Eric Keller, that the revised specifications and design drawings by Seton Hall regarding the drainage and storm water management design were appropriate and adequate. Thus, the Board accepts the drawings and studies done by Mr. Stewart as confirmed by Mr. Keller as being acceptable and demonstrating that there is no adverse impact to the public and that any drainage issues will not be exasperated by the proposed construction.

36. There is no basis to consider the objector's engineer Brian Freidlicht's "proposal" to relocate the bio-retention basin. When pressed, Mr. Freidlich stated that he had not done any design specifications for such an underground bio-retention basin at the Subject Property and he did not know if it would work or fit in the location. His attempt to make a proposal and state that the Board should adopt it, and when pressed conceded that he had not done any of the design specifications or work to know whether it would actually work demonstrated that Mr. Freidlicht's opinions were unsupported by any studies or data and, therefore, are disregarded. It should be noted that Mr. Stewart, Seton Hall's engineer, met with Mr. Freidlich in an attempt to resolve many of the issues discussed with regard to the bio-retention basins and other drainage issues. As a result, Seton Hall made additional changes to the site plan

during the Application, leading to the final proposal, accepted by Mr. Keller, the Board's engineer, and adopted by the Board.

37. The Parking variance should be granted with the Applicant providing for 372 non permanent spaces for overflow parking for home football games, as it is not good planning to provide for an impervious parking area that will only be used 4-6 times per year.

NOW THEREFORE, the Board hereby makes the following Conclusions of Law:

1. "Zoning boards may choose which witnesses, including expert witnesses, to believe." Board of Education v. Zoning Board, 409 N.J. Super. 389, 434 (App. Div. 2007). The board's choice must be reasonable. Id. The board "cannot rely upon opinions that are unsupported by any studies or data." Id. at 435. Thus, certain of the conclusions that were made by witnesses in this matter were, based upon the Board's assessment of the witnesses who testified in this application, not credible or supported.

2. The fact that Seton Hall is a private school, and not a public school, is irrelevant. N.J.S.A. 40:55 D-66(b) states:

No zoning ordinance governing the use of land by or for schools shall, by any of its provisions, or by any regulation adopted in accordance therewith, discriminate between public and private non-profit day schools of elementary or high school accredited by the State Department of Education.

3. Thus, any attempt to distinguish or discriminate between Seton Hall as a private school and what may be permissible for a public school cannot be permitted.

4. The fact that the Seton Hall educates only a small number of West Orange residents is irrelevant. The Board's review of an Application should not simply stop at the Township's borders because many uses serve a larger, more regional purpose. Examples are hospitals, nursing homes, assisted living facilities, and various forms of manufacturing, businesses or commercial uses such as shopping centers or supermarkets. Each such use serves not only the residents of a particular township such as West Orange, but also the broader, larger community outside of West Orange.

5. The New Jersey Supreme Court in two separate decisions has likewise held that the fact that a particular Application to a zoning board will serve the larger community and not solely that township itself is not a negative or relevant factor. In Andrews v. Ocean Township Board of Adjustment, 30 N.J. 245 (1959), the Supreme Court was faced with reviewing an application that permitted the use of residential premises for a parochial school as living quarters for the teachers. The Supreme Court noted, "plaintiffs complain the school will serve the entire parish of which the township is not a part. No infirmity inheres in that circumstance. A municipality may provide cooperatively for the needs of neighboring communities as well as its own." Id. at 251. Likewise, in Township Committee of Denville v. Board of Education, 59 N.J. 143

(1971), in reviewing an Application for the construction of a vocational school, the Court held that "Nor should the fact that a vocational school will serve a regional need rather than solely a municipal need, of itself, support a total or a limited zoning bar." Id. at 150.

6. Athletic fields are permitted and expected conditional or accessory uses to a school. See Shim v. Washington Township Planning Board, 298 N.J. Super. 395 (App. Div. 1997), wherein the Court stated:

We note, for example, that public playgrounds and public and parochial schools and colleges are permitted in the R-1.5 zone. We doubt that the municipality intended that lighting for playgrounds or athletic fields for the schools are prohibited because lighting and athletic fields are not among the twelve specified enumerated items as permitted accessory uses in the zone. Id. 401-402.

7. In order to grant a D variance, the Applicant must prove both the positive and negative criteria to obtain a use variance. Smart SMR of New York, Inc. v. Borough of Fairlawn Board of Adjustment, 152 N.J. 309, 323 (1988). "In general, the positive criteria require that an applicant establish 'special reasons' for granting the variance," and "the negative criteria require proof that the variance can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan and the zoning ordinance." Id. at 323, citing Sica v. Board of Adjustment of Wall Township, 127 N.J. 152, 156 (1992). If the proposed use is inherently beneficial, an applicant's burden is

significantly lessened because "an inherently beneficial use presumptively satisfies the positive criteria." Smart SMR, 152 N.J. at 323. The Sica court explained that with an inherently beneficial use, satisfaction of the negative criteria does not depend upon an enhanced quality of proof, but rather upon balancing the positive and negative criteria. Sica, 127 N.J. at 160-63.

8. In this case, much has been made as to whether the proposed expansion of the athletic fields is an inherently beneficial use given its connection to Seton Hall, a non-profit parochial school. In looking at this, all of the parties have repeatedly cited the Zoning Board to the Appellate Division's decision in Medical Center at Princeton v. The Township of Princeton Zoning Board of Adjustment, 343 N.J. Super. 177 (App. Div. 2001). What is fascinating is that the Medical Center decision at page 204 cites two very relevant decisions in connection with schools that have an impact on whether the proposed development to the Subject Property is in fact an inherently beneficial use. Cited in Medical Center is the Appellate Division's decision in Scholastic Bus Co., Inc. v. Zoning Board of the Borough of Fairlawn, 326 N.J. Super. 49 (App. Div. 1999). In Scholastic Bus Co., the applicant sought review of the zoning board's denial of a use variance to locate a school bus parking lot and maintenance facility in an industrial zone. The school bus company provided school bus services to a number of school systems located in the regional area. The Appellate Division stated:

We hold that the proposed use is inherently beneficial. Scholastic operates a bus business for the transportation of school children, fulfilling the public obligation to transport children. A school bus facility is a use necessarily accessory to the school buildings themselves, and as such, it is clearly inherently beneficial in the zoning sense. Even if not an inherently beneficial use, the evidence before the Board clearly established that the proposed site is clearly suitable for the proposed use and, therefore, satisfied the positive criteria.

Id. at 55 (internal citations omitted).

9. Thus, the Appellate Division reversed the denial of the variance. While in Scholastic Bus the Appellate Division cited to the New Jersey Constitution that transporting children fulfills a public obligation, in today's age when various municipalities with the support of government are actively advancing charter schools, school vouchers for private schools and other related items, education, whether by the public or private system, is inherently beneficial. All of the objectors appear to agree that if Seton Hall were proposing constructing its school at the Subject Property, it would be inherently beneficial. As noted above, if transportation of children makes a school bus maintenance depot and parking lot for school buses an inherently beneficial use due to its relationship to the education of children, given that athletic facilities are an integral part of the high school experience and curriculum in both public and private high schools provide, not only in New Jersey, but throughout the United States, then the expansion by

Seton Hall of its existing athletic facilities and field house at the Subject Property clearly are inherently beneficial.

10. Likewise, the Law Division in Rolf v. Borough of Emerson, 141 N.J. Super. 341 (Law Division 1976), the plaintiff sought to locate a school bus garage business in the Borough of Emerson. The Borough denied the applicant's request for a variance. The court noted that the first question was "whether the use of the property for a school bus garage facility serving a regional need is so inherently beneficial to the general welfare as to constitute a special reason within the intendment of N.J.S.A. 40:55-39(d), thus warranting the grant of a use variance provided only that the negative criteria of the statute are met." Id. at 345. Judge Pressler, then sitting in the Law Division, found that the school bus facility was "necessarily accessory to the school buildings themselves" because transportation of students was an intrinsic part of the government's obligation to educate them. Id. at 355. Judge Pressler stated:

It is this court's conclusion, based on the facts above recited, the plaintiff has so clearly borne his ultimate burden of proof of particular suitability of the premise in question for the use sought that any contrary finding by the board of adjustment is arbitrary and unsustainable and that, as a further consequence, it is immaterial to this Application whether the use is an inherently beneficial one, although for the reasons herein stated, it is concluded that it is.

Id. at 353.

11. Further, even assuming *arguendo* that the fields themselves are not inherently beneficial, the Applicant has met both the positive and negative criteria. The proposed construction can be done without substantial detriment to the public good and it clearly does not substantively impair the intent or purpose of the Township's zoning plan and zoning ordinances for the reasons stated herein. Further, because the R-1 zone clearly permits playgrounds and parks and public and private schools as conditional uses, and athletic fields go with each of these uses, it clearly must have been intended, evidenced by the fact that when the Township master plan was last redone, there was no question with regard to the fact that Seton Hall was already operating athletic facilities and fields at the current site. Thus, there is no substantial impairment of the Town's zoning plan and ordinances by the granting of the proposed variances.

12. It should be noted that prior decisions of courts have expressly permitted private schools to do similar types of construction. In Burton v. Town of Montclair, 40 N.J. 1 (1963), the New Jersey Supreme Court dealt with an application by the Montclair Academy Foundation to construct a new school building and gymnasium on a nearby tract of land to where its existing facility was located. The board approved and granted the variance subject to a number of conditions. The Supreme Court affirmed the granting of the variance in part noting that the "educational and cultural use to be achieved thereby (by

construction of both the school building and gymnasium) is in furtherance of the welfare of the community." Id. at 4.

13. Under the New Jersey Administrative Code section 7:7A-4.3(b)(5), because the Board has found that nothing on the Subject Property is listed on or eligible for listing on the National or New Jersey Register of Historic Places, that granting the variances sought would not be violative of the New Jersey Administrative Code. Seton Hall has clearly addressed the historic significance of the Subject Property.

14. To the extent that on appeal an issue is raised with the Board's decision to not permit the West Orange Historic Preservation Commission to participate in the application, Chairman Neuer previously noted on the record during the hearing this application has received widespread notice and coverage in the local press, online at various websites in addition to the required notices. The Historic Preservation Commission waited until approximately mid-2010 to even approach the Board, which was too late given how much time had gone by and how far this application has progressed. Further, N.J.S.A. 40:55D-110 and 55D-111 do not instruct or require otherwise, although it is very questionable whether either of these statutes are applicable to this matter. It is clear under section 110 that a simple failure to refer to a matter to the Historic Preservation Commission will not void the Board's approval. The legislative language does not sanction a wholesale ignoring of historic issues in reviewing an application, which was clearly not done in this case. Seton Hall and certain objectors presented

extensive historic evidence of the site in connection with the Board's decision to grant a variance. In order for the Board to determine if there was any detriment to the public good, the Board heard testimony on the record about the historic nature of the property in question. Thus, the Board was not required to seek referral or an opinion from the Historic Preservation Commission, or have a member of the Historic Preservation Commission give testimony, although this was permitted in this case. Neshanic Coalition for Historic Preservation v. Hillsborough Township Planning Board, unpublished opinion dated July 19, 2010 in the Law Division, Somerset County, Docket No. SOM-L-1437-08, at page 8. Thus, the Board's decision not to permit the Historic Preservation Commission to weigh in on this matter is clearly appropriate. Most importantly, when the Historic Preservation Commission submitted its August 18, 2010 letter to the Board attaching its resolution passed on August 4, 2010, it is clear that the Historic Preservation Commission did not take testimony, but simply made certain net conclusions which were not based upon the historical record provided during the public hearings before the Zoning Board. Thus, it is respectfully submitted that the decision of the Board not to formally permit the Historic Preservation Commission to reach a decision for the Zoning Board was clearly not erroneous as a matter of law and as the facts of this case demonstrate.

15. Based on the foregoing, and in conclusion, Seton Hall is entitled to the D and C variances sought in its Application as amended during the course of the hearings. While the Board

has determined that the proposed use of the Subject Property is inherently beneficial, even assuming, *arguendo*, that it is not inherently beneficial, nonetheless, Seton Hall has demonstrated the positive criteria because it has established special reasons for the granting of the variances, as set forth herein. Likewise, Seton Hall has demonstrated the negative criteria because variances can be granted without substantial detriment to the public good and it will not substantially impair the intent and purpose of the Township's Zoning Plan and Zoning Ordinance. Seton Hall's revisions to its plan during the course of its Application have been done in large part to address the issues raised by the objectors especially in the area of storm water management and runoff, preservation of trees and certain safety issues. Accordingly, the Board will approve of the Application subject to a number of conditions that deal extensively with storm water maintenance issues, the bio-retention basins, insuring that the construction phase of the project is properly supervised and managed to prevent anything illegal, inappropriate or not approved by the Board happens and, to properly oversee the removal of the trees and the replanting of new trees, and to deal with some of the ongoing issues with regard to the use of the athletic fields in the future, such as the requirements with regard to use of police and parking attendants at home football games, the prohibitions of any lights on fields, the prohibition of a marching band, certain limitations on the use of the Subject Property, the requirement that Seton Hall enter into a maintenance agreement with the

Township subject to the approval of the Township engineer for maintenance of the entire site, and most crucially, storm water management in the future, and requirement that any soil brought onto the Subject Property be properly checked to make sure it is appropriate for use. Based on the testimony and documents admitted into evidence during the course of the hearings, Seton Hall has complied with the Township's ordinances concerning the Environmental Impact Statement and Tree Removal. The Board's decision is without prejudice to the action against Seton Hall pending in the West Orange Municipal Court.

WHEREAS, a motion was made by Mr. Buechler to grant the Application and variances as aforesaid, based on the findings of fact and conclusions of law and with numerous conditions for approval and voted upon as follows:

	Ayes	Nays	Abstentions
Buechler	Aye		
Bullock	Aye		
Quentzel	Aye		
Steinhart	Aye		
Sussman	Aye		
Weiss	Aye		
Neuer	Aye		

NOW THEREFORE, be it resolved by that the Zoning Board of Adjustment of the Township of West Orange, based upon the Findings of Fact and Conclusions aforesaid, and upon the laws established in the State of New Jersey hereby grants the Application by Seton Hall Preparatory School for amended

preliminary and final site plan approval with the following variances:

- (1) a "D" 1 use variance for athletic fields, not permitted in the residential zone;
- (2) a parking variance for relief from requirement of the ordinance requirement of 663 spaces, by providing 84 existing, 220 additional and 372 new, non-permanent spaces for a total of 676 spaces provided
- (3) a variance for construction of 2 free standing signs when none are permitted in the residential district;
- (4) a variance from the requirement of no disturbance of vegetation within 100' of ridge line or disturbance of steep slope exceeding 25% permitted, 0 foot setback from ridge line for proposed disturbance and disturbance of steep slope exceeding 25%;
- (5) a variance for construction of a chain link fence and netting exceeding 4 feet around tennis courts and baseball fields, to a minimum of eight to twelve feet with a 24' backstop for baseball

fields and protective netting around interior ball field of 50 feet;

(6) a height variance from 35' allowed maximum in residential zone for bleachers with press box not to exceed 40'.

(7) A soil removal permit;

(8) Tree removal permit.

(9) a height variance for a fence by the lacrosse field to prevent errand lacrosse balls from going over the cliff into the backyards of homes on Northfield.

BE IT FURTHER RESOLVED that the grant of said variances shall be conditioned upon the Applicant's full and complete satisfaction of the following conditions:

1. All sheets in the site plan drawing must be revised to reflect the site plan changes shown on Sheets 5 & 7 of the site plans last revised May 24, 2010.

2. For any future development Applications for the Subject Property, the existing land surface conditions to be used in any future non-structural point system are to be based upon the proposed land surface conditions as shown on the approved 1999 site plans.

3. Gradation analyses are to be submitted for any imported soil used for storm water basins/infiltration basins and trenches with permeability rates; after placement of materials in field, in-field permeability tests are to be performed prior to covering and/or planting.

4. The storm sewer pipe must be videotaped from the existing basin on the east side of the Subject Property to Northfield Avenue to determine the condition of this pipe. Repair any damage or defects in this storm sewer.
5. The existing roof drains at the existing field house are to be connected to the storm sewer system.
6. Add an inlet near the caretaker house to minimize Subject Property runoff from flowing onto the Shillelagh Club and adjacent residential homes and connect it to the existing storm sewer west of the practice field.
7. Revise the detention/bio-retention basin grading to show graded accesses into each basin.
8. Modify the sequence of construction to provide additional procedures for the bio-retention basin to reduce/prevent impacts during construction on its ultimate operation.
9. The site plan must denote which storm drain structures are oversized and details provided accordingly.
10. Add subbase outlet drains to Inlets 206, 207, 208, 209 and 210 to pick up any subsurface water flow.
11. Revise the plans to change the perforated HDPE pipe to solid HDPE pipe from Inlet 311 to Inlet 313 and add sub base outlet drains at each of these three (3) inlets. Trench to be backfilled with clean stone, wrapped in filter fabric. Further, the trench should extend to the lower of the top of rock or elevation 596 (bottom of existing detention basin).
12. The bio-retention basin soil mix is to be inspected and certified by a licensed professional engineer prior to installation.
13. Lightweight construction equipment is to be used on the two baseball fields to minimize over compaction of the soils; a root zone soil mix, 10 inches in thickness is to be provided in accordance with approved specifications.
14. An oil/water separator is to be provided for the floor drain(s) in the proposed storage building. The roof drains are to be directed to the existing detention basin. The site plans are to be revised accordingly.

15. Vacate the existing sanitary sewer easement adjacent to Prospect Avenue and replace with a new utility easement, 20 feet in width that is centered about the existing pipe.

16. On-site sanitary sewers are to remain private with maintenance the responsibility of the Subject Property owner.

17. Show the dimension of the fence heights on the JV baseball field and the tennis courts on the plans.

18. Clear and regrade the sight lines at the existing and proposed driveways to achieve requisite sight lines (to limit of Subject Property). A note is to be added to the site plans denoting this requirement.

19. Additional right of way is to be dedicated along Mountain Drive to provide a 25 foot half width from the centerline of the existing pavement of Mountain Drive.

20. The bleachers at the football field are to be limited to 2500 linear feet of seating space (which is equivalent to 1500 people, as per the ordinance).

21. Install a construction fence along the limit of disturbance where no silt fence is provided. These locations must be shown on the site plans.

22. Implement tree protection measures as directed by the Township Forester and/or Township Planner and provide appropriate details of such on the site plans.

23. In accordance with Galway report dated October 15, 2009 undertake the actions listed in Subpart A. This section relates to the 4 specimen trees identified as the largest trees on Subject Property, to "improve their health and hopefully extend their life span". A note to be placed on the plans should indicate that "the treatment will include removing competing and encroaching trees in the immediate vicinity of their crown; removal of all large dead branches; light thinning of live branches; cutting and/or chemically treating vines on the trees; and insect, disease and fertilizer treatment (integrated pest management), all as recommended by a certified tree expert or as directed by the Township Forester.

24. Provide deep root feeding for trees to remain along Prospect Avenue and the Shillelagh Club property line where impacted by construction activities as directed by the Township Forester or monitor who is a certified tree expert.

25. The plantings in the bio-retention basin are to be revised to provide a terrestrial forested community in accordance with the BMP Manual or the soil media thickness is to be increased from 18 inches to 24 inches.

26. Install additional shrubs and/or trees along the west side of the existing practice field (north of the existing field house).

27. Access to the overflow parking areas on the two existing practice fields is to be provided through the existing field house parking lot.

28. Add a note to the site plans that any existing wells to be abandoned are to be closed and capped in accordance with Health Dept. requirements.

29. As built drawings of the Subject Property improvements are to be provided to the Township at the completion of construction. The as-built plans shall include the location, rims/grates, inverts and pipe sizes of all storm and sanitary sewers installed as part of this project; locations and general depths of the water, gas and other underground facilities; spot grades on the fields, tennis courts and parking lots to affirm general compliance with the approved site plans.

30. Review comments on the soil removal application are to be made to the satisfaction of the Board Engineer and Township Engineer.

31. Plan revisions as discussed in G. C. Stewart letter dated April 22, 2009 (responding to OEA letter dated April 20, 2009) as follows:

- a. Add a handicapped space in the existing parking lot by the existing field house.
- b. Dusk-to-dawn lighting fixtures in the proposed parking lot are subject to review by the Township Police Dept.
- c. All the fencing must be black clad vinyl (posts, mesh and all fittings).
- d. Provide additional spot grades at the field house and storage building.
- e. Add a note that the existing sanitary sewer is to be videotaped, providing copies to the Township

and Board Engineers. Add a note that any buried structures are to be uncovered and raised to grade.

- f. Redesign the sanitary sewer from San. MH #1 to San. MH#4 to reduce depth of excavation and minimize impact on existing trees.
- g. The handicapped spaces at the proposed field house to indicate flush concrete curb with the signs in bollards.
- h. Revise the outlet structure details to provide trash racks for all orifices and provide additional dimensioning including top and bottom of structure elevations.
- i. Add details for the flared end section, batting cages and scoreboard and revise other details to address some minor items (class of concrete, size of trench grate and handicapped ramp details).
- j. Provide drains for the dugouts to storm sewer or to basin(s).
- k. Landscape plans are to be revised to show utilities, lights and fencing with any conflicts with these features to be resolved. Compliance with the parking lot tree requirements to be verified and calculations provided on the plans.
- l. A note is to be placed on the site plans that Basin 200 is classified as a Class IV dam and appropriate details are to be provided for its construction in accordance with the Dam Safety standards.
- m. Discrepancies between the storm sewer profile and plan are to be corrected.

32. Selective clearing of dead and diseased trees is to be done under supervision of certified tree expert or the Township Forester.

33. Prior to Seton Hall commencing any tree removal at the Subject Property, it must prepare and submit to the Township Planner and monitor and implement a woodland/forest management plans for the remaining wooded areas to ensure their health and vitality.

34. Install a higher fence on the east end of the existing practice field (east of the existing field house) used for lacrosse practice to prevent lacrosse balls from impacting the residences on Northfield Avenue.

35. Seton Hall will comply with the U.S. Fish and Wildlife Service's conditions with regard to the timing of the removal of trees and any other requirements of the U.S. Fish and Wildlife Service. Tree removal on the entire Subject Property is only permitted between October 1 and March 31, or other time periods sanctioned by the US Fish and Wildlife Service.

36. During the months of June, July and August, the athletic fields can only be used directly by Seton Hall Prep and its own students or athletes and not by Seton Hall coaches or third parties to conduct other athletic or sports sessions or training camps (whether for pay or not).

37. There shall be no installation of any field lights on any of the fields, whether on a permanent or temporary basis.

38. Applicant shall remove any existing field lights, which must be accomplished by no later than December 31, 2010.

39. No marching bands can practice on the Subject Property.

40. Seton Hall Prep can have no more than eight home football games per school year at the Subject Property, excluding games played by another school using the Subject Property in the event of a necessity.

41. At the Subject Property, Seton Hall Prep can conduct no more than one athletic event at the same time (with the exception of tennis and baseball), and to the extent that two or more events are scheduled at the Subject Property on the same date, there must be at least a 1.5 hour time period between the conclusion of one game of any sport and the commencement of the next game of any sport.

42. The existing path running through the northerly portion currently used as a running track shall remain in its current location, but Seton Hall must resurface the path and the side edgings to prevent any deterioration of the pathway.

43. The consolidation of the various lots into a single lot by deed filed with the Recorder of Deeds of Essex County is to be completed no later than 60 days after a final non-appealed decision of the Township Council or 60 days after the last

permissible appeal of a court with jurisdiction over the Zoning Board decision, whichever is earlier.

44. The recordation of a deed restriction on any further development of the existing undisturbed buffer of approximately 400 feet on the northern portion of the Subject Property, as the Applicant has consented to, prohibiting any further development in this area through December 31, 2040 only if Seton Hall or its affiliate or successor in interest is owner of the Subject Property. Said deed restriction must be filed no later than 60 days after a final non-appealed decision of the Township Council or 60 days after the last permissible appeal of a court with jurisdiction over the Zoning Board decision, whichever is earlier.

45. The Applicant must submit to the Township funds for the Township to hold in escrow adequate for the Township to retain an independent monitor to ensure compliance with the Board's resolution approving of Seton Hall's Application and all approved plans. The Applicant shall submit an engineer's estimate for all Subject Property improvements, including earthwork and retaining walls. This estimate shall break out the landscaping and tree removal as separate items, as these items shall be monitored by a certified tree expert. The calculation of engineering inspection fees (including the certified tree expert) will be calculated in accordance with the MLUL. The monitors, in consultation with the Township Planner and Township Engineer, shall determine how often the monitors need to be on site to provide and insure complete compliance with all approved plans and Board conditions. A pre-construction meeting shall be held among the Applicant's representatives, the Township and their consultants and contractor(s) prior to any construction and/or clearing activity on the Subject Property.

46. The Essex County Baseball Tournament shall not be played at any field located on the Subject Property. No countywide football tournaments shall be played at the Subject Property. No county or state cross-country or outdoor track tournament or championship will be conducted at the Subject Property. No county or state soccer, lacrosse or tennis tournament or championship, which does not directly involve Seton Hall, will be conducted at the Subject Property.

47. The Applicant shall coordinate with the West Orange Police Department to hire off-duty police officers to control traffic during all home football games. Said police officers shall be required to be at their posts at least 1.5 hours prior

to the commencement of each game and shall be required to remain at their posts on the Subject Property for at least 1 hour after the conclusion of the game.

48. ~~X~~ The Applicant shall place a memorial plaque in the area behind center field in the proposed junior varsity baseball field acknowledging that the Subject Property was the former residence of General George McClellan. Said memorial plaque and the language contained thereon shall be subject to the approval of the West Orange Planning Director.

49. The Applicant shall implement the activities contained in the approved Operations & Maintenance Manual prepared for the project. The Applicant shall submit its annual report to the Township Engineer regarding these activities on or before January 31 of each calendar year for the prior calendar year.

50. Before the Applicant can commence any work at the Subject Property, the Applicant must obtain a Letter of Interpretation from the New Jersey Department of Environmental Protection delineating any wetlands on the Subject Property and/or transition areas on the Subject Property or, alternatively, the Applicant agrees to submit to the New Jersey Department of Environmental Protection any Applications to obtain any required wetlands permits.

51. The Application is subject to approval of the Essex County Planning Board.

52. The Application is subject to the approval of the Hudson Essex Passaic Soil Conservation District.

53. The Applicant agrees to offer the use of the baseball and football fields located at the Subject Property for use by the townships of West Orange, Livingston and South Orange for their high school varsity teams in the case of an emergency.

54. In addition to hiring police officers during home football games, the Applicant shall also provide parking lot attendants to assist with the overall parking during home football games, and specifically on the field that is to be used as a temporary parking lot.

55. During home football games, no left turn shall be permitted out of the north driveway onto Prospect Avenue unless directed by a police officer at that location.

56. The path running in the northerly portion of the Subject Property shall not be used by construction vehicles or

construction equipment unless essential and authorized by the Township Engineer or the monitor retained by the Township to supervise the construction.

57. All stockpiling and storage of soil, materials, construction equipment, or other materials shall be restricted to areas far enough away from trees in order not to cause damage to the root systems. Any questions as to the storage of any soil, material, construction equipment or other materials shall be determined by the Township Engineer, Township Planner or the monitor retained by the Township.

58. Any fill material brought to the Subject Property during construction shall be certified as clean and suitable for use on athletic fields. Certification must be provided to the Township Engineer and monitor at least three business days prior the transport of fill to the Subject Property. Representative soil samples of the proposed fill material are to be delivered to a NJDEP certified analytical laboratory for the analysis of the chemical parameters covered under a Priority Pollutant +40 screening.

59. Revised site plans and drawings are required to be submitted to the Planning Department before a construction permit is issued.

60. The Applicant shall record a permanent conservation easement as agreed to by the Applicant for the property below Ridge Road which is to be completed no later than 60 days after a final non-appealed decision of the Township Council or 60 days after the last permissible appeal of a court with jurisdiction over the Zoning Board decision, whichever is earlier.

61. The use of a public address system at the Subject Property shall be limited to (i) during football games and/or (ii) isolated individual events held at the Subject Property, and only at normal and customary decibel levels.

Moved: Bruce Buechler

Seconded: Phil Neuer

Those in Favor: Bruce Buechler, Gregory Bullock, William Steinhart, Mark Sussman, Phil Neuer

Those Opposed: None

Abstentions: None

I hereby certify that the foregoing Resolution was adopted by the Zoning Board of Adjustment of the Township of West Orange at its meeting of December 16, 2010 and that said Resolution memorializes the action of the Zoning Board taken at a special meeting held on November 8, 2010 granting the approval, with conditions by a vote of 7 in favor and 0 against.

December 16, 2010

Elizabeth Rochette
Elizabeth Rochette
Board Secretary

Amended Resolution ZB-08-37

January 17, 2013

RESOLUTION

ZONING BOARD OF ADJUSTMENT

TOWNSHIP OF WEST ORANGE

RESOLUTION ZB-08-37 Amendment

WHEREAS, the Seton Hall Preparatory School ("the Applicant" or "Seton Hall"), applied to the West Orange Zoning Board of Adjustment ("the Board") and received 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"), on the Tax Map of the Township of West Orange and located in the R-1 zone, and said approvals having been memorialized in Resolution ZB-08-37 dated December 16, 2010; and

WHEREAS, the Board's resolution of approval was appealed by Kevin Malanga, by the filing of a suit in the Superior Court of New Jersey, Law Division, bearing docket No. ESX-L-1037-11, which named Seton Hall, the Board and the Township Forester as defendants and sought to overturn the decision of the Board; and

WHEREAS, in an effort to resolve the matter the Applicant submitted another plan for the same site to the Board for approval; and

WHEREAS, in accordance with Municipal Land Use Act and the decision of the court in Whispering Woods v. Middletown Township, 220 N.J. Super. 161 (Law Div. 1987), the Applicant

filed a New Application on or about October 2, 2012, and

WHEREAS, the Applicant presented proof that adequate notice of the hearing on the New Application was published in the West Orange Chronicle, one of the official newspapers of the Board; and

WHEREAS, the Applicant submitted proof of notice of the hearing upon all property owners within 200 feet of the property and all others required to receive notice; and

WHEREAS, the New Application was heard at a public meeting of the Board held December 6, 2012;

WHEREAS, the Applicant was represented by attorney Robert C. Williams, Esq.; and

WHEREAS the Applicant presented the testimony of Charles Stewart, a licensed professional engineer, surveyor and planner in the State of New Jersey, who was accepted by the Board as an expert in the field of civil engineering, Mr. Stewart outlined the changes to the originally approved plans that resulted in no additional variances, and consisted primarily of the relocation of the Bio-Retention Basin located on the southwest side of the property adjacent to the Shillelagh Club to the area outside center field on the JV Baseball Field, resulting in the Bio-Retention Basin becoming a Detention Basin, and resulting in the saving of additional trees, and leaving an additional part of the property in a natural state, necessitating lowering of the JV baseball field by 4 feet, reducing the need to bring fill to the site, and installation of a new retaining wall, the

installation of a new rain garden, and an increase in the underground storage capability of the drainage under the practice field; and

WHEREAS, the Applicant offered the testimony of Joseph Ciarone, licensed landscape architect, who was recognized as an expert in the field of landscape architecture, Mr. Ciarone testified that he prepared the Plan marked A-7 and same includes the changes that were highlighted by Mr. Stewart; and

WHEREAS, John Linson, the Township Forester, appeared at the hearing and testified he is pleased with the new plan because it saves more trees, he also indicated that he does not want to see overcrowding of new trees so he will work with applicant to develop a species that will work best to implement the plan and that the tree permit should be granted; and

WHEREAS, the Applicant offered and the Board accepted into evidence the following Exhibits:

A-1 Overall Clearing and Grading Plan Revised through 5/25/10;

A-2 Previously Approved Tree Removal Plan Revised through 5/24/10;

A-3 Overall Clearing and Grading plan Revised through 9/23/12;

A-4 Tree Removal Plan revised through September 23, 2012;

A-5 Detailed Utility and Grading Plan revised through 9/23/12;

A-6 Detailed Layout Plan and Dimension plan dated 9/23/12;

A-7 Landscape improvement Master Plan, Sheet 1, dated 12/5/12; and

WHEREAS the Board marked the following exhibits into evidence:

Board-1 Linson Letter dated December 5, 2012;

Board -2 Settlement Agreement; and

WHEREAS, members of the Board questioned the Applicant's attorney and its witnesses; and

WHEREAS, Mr. Malanga's attorney, Herbert Waldman was present and requested two additional conditions which were regarding notice to his client, said conditions were considered by but not accepted by the Board, and otherwise indicated his client's consent to the New Application; and

WHEREAS, the West Orange Public Advocate Harvey Grossman was present for the hearing; and

WHEREAS no members of the public questioned the witnesses or made public comment; and

NOW THEREFORE, the Board hereby makes the following Findings of Fact and Conclusions of Law:

- A. The applicant is the owner of the property located 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 on the Tax Map of the Township of West Orange and located in the R-1 zone.

- B. The applicant was granted site plan and variance approval on December 16, 2010 to add additional playing fields and new structures on its property.
- C. A Lawsuit challenging the Board's grant of said approvals was filed by Kevin Malanga in the Superior Court of New Jersey, Law Division, and bearing docket No. ESX-L-1037-11, which named Seton Hall, the Board, and the Township Forester as defendants and sought to overturn the decision of the Board.
- D. In accordance with Municipal Land Use Act and the decision of the court in Whispering Woods v. Middletown Township, 220 N.J. Super. 161 (Law Div. 1987), the parties to the suit have entered into Settlement Agreement which called for the Applicant to file a New Application with the Board.
- E. The New Application requires no additional variances and represents an improvement to the original plan as it preserves additional trees by moving the Bio Retention Basin.
- F. The reasons for the grant of the original approvals are still present and the New Application should be granted with minor revisions to the conditions set forth in the original approval which are necessitated by the changes in the New Application.

A motion to grant the New Application as set forth above, as well as a one year extension of the approvals, granted on

2019

December 16, 2010 to December 16, 2013, and for a grant of the revised tree removal permit was made by Mr. Buechler and seconded by Chairman Neuer and voted upon as follow:

Buechler	Yes
Bullock	Yes
Quentzel	Yes
Steinhart	Yes
Sussman	Yes
Weiss	Yes
Chairman Neuer	Yes

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Adjustment of the Township of West Orange, based upon the findings and conclusions aforesaid, and upon the Laws established in the State of New Jersey hereby reaffirms the grant of the variances in its December 16, 2010 resolution and approves the amended site plan dated September 23, 2012.

BE IT FURTHER RESOLVED that the grant of said variances shall be conditioned upon the Applicant's full and complete satisfaction of the following conditions:

1. All conditions contained in the Resolution No. ZB-08-07 are hereby reaffirmed, unless specifically altered, modified or deleted herein.
2. The deed for merging of the lots will be prepared and filed with the Essex County Register (with a copy of the Zoning Board) within 90 days from the date of the hearing which was December 6, 2012.

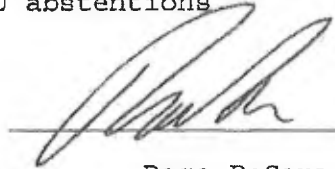
3. Condition number 1 (page 48) in Resolution No. ZB-08-37 is hereby deleted.
4. Condition number 10 (page 49) in Resolution No. ZB-08-37 is hereby deleted.
5. Condition number 12 (page 49) in Resolution No. ZB-08-37 is hereby modified to reflect that a detention basin will be installed instead of a Bio-retention basin.
6. Condition number 25 (page 51) is no longer applicable and is hereby deleted.
7. Condition number 48 (page 55) in Resolution No. ZB-08-37 is hereby modified to reflect that the plaque may be located in any appropriate place.
8. The Applicant will comply with the recommendations of Mr. Linson in his letter of December 5, 2012 (Board Exhibit 1).
9. The Applicant will work with Mr. Linson to identify a species for the new plantings.

Those in Favor: 6
Those Opposed: 0
Abstention: 0

I hereby certify that the foregoing Resolution was adopted by the Zoning Board of Adjustment of the Township of West Orange at its meeting of January 17, 2013 and that said Resolution memorializes the action of the Zoning Board taken at its meeting

held on December 6, 2012 granting the application with the by a
vote of 7 in favor, 0 against and 0 abstentions

January 17, 2013



1/18/13

Rose DeSena

Board Secretary

Resolution ZB-15-03

April 16, 2015

RESOLUTION
ZONING BOARD OF ADJUSTMENT
OF
THE TOWNSHIP OF WEST ORANGE

ZB-15-03 SETON HALL PREPARATORY SCHOOL

WHEREAS, Seton Hall Preparatory School, with an address at 120 Northfield Avenue, West Orange, New Jersey 07052 (the "Applicant"), owner of the property located at 700 Prospect Avenue, Block 82.01, Lot 1 on the Tax Map of the Township of West Orange, located in the R-1 Zone, filed with the Zoning Board of Adjustment of the Township of West Orange (the "Board") an application for an amendment to previously granted final site plan approval to change the surface of two of the approved ball fields in their approval dated December 16, 2010, as amended by Resolution ZB-O8-37 dated January 17, 2013; and

WHEREAS, the Applicant presented proof that adequate notice of the hearing on the application was published in the West Orange Chronicle, one of the official newspapers of the Board; and

WHEREAS, the Applicant submitted proof of notice of the hearing upon all property owners within 200 feet of the property and all others required to receive notice; and

WHEREAS, the Applicant was heard at a public meeting of the Board held on March 19, 2015; and

WHEREAS, the Applicant was represented by attorney Robert C. Williams, Esq.; and

WHEREAS, the Applicant offered the testimony of Charles J. Stewart, , P.E., a licensed professional engineer, who was recognized by the Board as such, Mr. Stewart testified that at the request of the Applicant, the plans have been amended to upgrade the varsity baseball field and the practice field from grass to artificial turf, and that upon doing same, the Applicant has increased the size of the underground storm water detention basin under the practice field by adding two more rows of pipe in the system to catch any increased run-off that may result from the change in the surface of the fields; and

WHEREAS, the following exhibits were marked for identification and all were accepted as evidence except where indicated:

A-1 Approved plan with highlights

A-2 New plan with highlights; and

WHEREAS, the Board considered the comment letter from Omland Engineering, Township Consulting Engineer, dated March 13, 2015 and the testimony of Eric Keller, P.E.,; and

WHEREAS, members of the Board questioned the Applicant and its witness; and

WHEREAS, no member of the public asked questions or made comment to the application.

NOW, THEREFORE, the Board hereby makes the following Findings of Fact and Conclusions of Law:

1. The Applicant is Seton Hall Preparatory School, with an address at 120 Northfield Avenue, West Orange, New Jersey 07052, is the owner of the property located at 700 Prospect Avenue, Block 82.01, Lot 1 on the Tax Map of the Township of West Orange, located in the R-1 Zone
2. The Applicant requires amended final site plan approval to upgrade two of the approved ball fields from grass to artificial turf.
3. The Board finds that the revised plans make no essential change to the overall approved site plan other than field surface, and the Applicant has upgraded the underground detention basin to accommodate any additional runoff occasioned by the change in surface.
4. All other conditions of the previous approvals contained in Resolution ZB-08-37, dated December 16, 2010, as amended by Resolution dated January 17, 2013 shall remain in full force and effect.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of West Orange, that the within application of Seton Hall Preparatory School for amended final site plan approval is hereby approved.

A motion to grant the Application as set forth above was made by Mr. Neuer and seconded by Mr. Quentzel and voted upon as follows:

	Ayes	Nays	Abstentions
Neuer	Yes		
Quentzel	Yes		
Schwarzbaum	Yes		
Steinhart	Yes		
Sussman	Yes		
Buechler	Yes		

I hereby certify that the foregoing Resolution was adopted by the Zoning Board of Adjustment of the Township of West Orange at its meeting of April 16, 2015 and that said Resolution memorializes the action of the Zoning Board taken at its meeting held on March 19, 2015 granting the application by a vote 6 in favor, 0 against and 0 abstentions.

Moved: Mr. Neuer

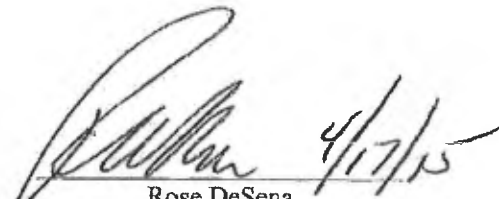
Seconded: Mr. Steinhart

Those in Favor: 6

Those Opposed: 0

Abstention: 0

Adopted: April 16, 2015


Rose DeSena
Board Secretary

Resolution ZB-16-05

August 18, 2016

RESOLUTION
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF WEST ORANGE
SETON HALL PREPARATORY SCHOOL
RESOLUTION: ZB-16-05

WHEREAS, Seton Hall Preparatory School, with an address at 120 Northfield Avenue, West Orange, New Jersey 07052 (the "Applicant"), owner of the property located at 700 Prospect Avenue, also known as Block 82.01 Lot 1 on the Tax Map of the Township of West Orange and located in the R-1 zone filed an application with the Zoning Board of Adjustment of the Township of West Orange (the "Board") for amended site plan approval, with a D variance for an expansion of a conditional non-conforming use and a "C" variance for number of required parking spaces, and for site revisions and the addition of two free standing signs all being amendments to the initial approval dated December 16, 2010, as amended by Resolution ZB-08-37 dated January 17, 2013, as further amended by Resolution ZB-15-03 dated April 16, 2015, all for the construction of a high school athletic facility; and

WHEREAS, the Applicant presented proof that adequate notice of the hearing on the application was published in the West Orange Chronicle, one of the official newspapers of the Board; and

WHEREAS, the Applicant submitted proof of notice of the hearing upon all property owners within 200 feet of the property and all others required to receive notice; and

WHEREAS, the Application was heard at public meetings of the Board held on June 16, 2016 and July 21, 2016; and

WHEREAS, the Applicant was represented by attorney Robert C. Williams, Esq.; and

WHEREAS, the applicant presented the testimony of Charles J. Stewart, P.E., a licensed professional engineer in the State of New Jersey, who was recognized as such, Mr. Stewart testified that the plans have been amended to upgrade the football field from grass to artificial turf, to replace the existing scoreboard, to revise the location of proposed batting cages and the shot-put area, to add retaining walls and walks, to add bleachers and walkways to the varsity baseball field area, to add utility poles to revise the proposed concrete walk and wall layout, to add walkways by the tennis courts, to revise the sewer, water and electric utility layout, to replace the proposed rain garden with a manufactured treatment device, to add a type "A" inlet and HDPE pipe to discharge into detention basin P-200 and to replace the proposed curb island with a painted island, and further explained that these site changes were desired by the Applicant as construction of the already approved improvements was ongoing and as dictated by field conditions; and

WHEREAS, it appears that several of the requested changes were already completed before approval of the amended site plan was sought, to wit, the sidewalk that ties to the stairs, 400 feet of walkway to and from the tennis courts, the concrete slab for the new bleachers, the relocation of a sanitary sewer line, the addition of a sidewalk to the island curb, a sidewalk to spectator area which is 35-40 feet long and 6 feet wide, partial construction of a walkway to baseball field area, the relocation of the batting cages to be closer to tennis courts, and the addition of a new 4-5 foot high wall, 245 feet in length and the relocation of the shot put area; and

WHEREAS, the Applicant offered the testimony of Carl P. O'Brien, P.E., a licensed professional engineer in the State of New Jersey, who was recognized by the Board as such, Mr. O'Brien testified as to the changes to the football field from grass to artificial turf as well as the installation of the new track, and the specifications for the new scoreboard; and

WHEREAS, the applicant presented the testimony of John D. Sadlon, a licensed landscape architect in the State of New Jersey, who was recognized by the Board as such, Mr. Sadlon testified about the requested changes to the previously approved landscape plan, and the necessity and reasons for same; and

WHEREAS, the applicant presented the testimony of Donald R. Fiore, RA, a licensed professional architect in the State of New Jersey, who was recognized by the Board as such, Mr. Fiore testified about the requested additional bleachers for the football and baseball field and the addition of two toilets at the concession stand; and

WHEREAS, the Applicant presented the testimony of Peter Steck, a licensed professional planner in the State of New Jersey who was accepted by the Board as such, Mr. Steck testified that the athletic fields of a school are an inherently beneficial use (as found by the Board in the previous applications) and that the requested changes and variances required for the expansion of the conditional non-conforming use should be judged under a Sica standard which includes the four part weighing of the public benefit and negative impacts which have been addressed by the engineer and landscape architect, and that in his opinion, the Board has sufficient evidence to conclude that the application can be granted without substantial detriment to the public good and without substantial detriment to the West Orange Master Plan Update and Land Use Ordinance; and

WHEREAS, the Applicant offered the following Exhibits:

A-1 Amended Detailed Utility and Grading Plan dated 5/6/16, revised to 5/12/16;

A-2 Original Detailed Utility and Grading Plan dated 9/10/08, and revised to 7/31/14;

A-3 Construction Plan for Football field and Tack, sheet 4 of 9, dated 2/12/16;

A-4 Drainage Plan for Football field and Track, sheet 5 of 9 dated 2/12/16;

A-5 Proposed Scoreboard Rendering and Specifications for Football field;

A-6 Landscape Plan dated 4/19/16;

A-7 Original Detailed Utility and Grading Plan dated 9/10/08 and revised to 7/5/16;

A-8 Proposed signage; and

WHEREAS, the Board considered the testimony of Eric Keller, of Bowman Consulting, West Orange Township Consulting Engineers and Mr. Keller's reports dated June 13, 2016, June 14, 2016 and July 14, 2016; and

WHEREAS, the Board considered the testimony of Paul Grygiel, West Orange Acting Planning Director and Mr. Grygiel's report dated June 13, 2016; and

WHEREAS, Public Advocate Harvey Grossman, Esq. was present during the Application; and

WHEREAS, members of the Board questioned the Applicant's attorney and its witnesses; and

WHEREAS, the following members of the public questioned the witnesses:

Kevin Malanga, Ridge Road questioned the engineer about the plans and how the changes came about;

Gerry Karp, Ridge Road questioned the witnesses about the scoreboard lighting and whether it would have audio capability; and

Rhea Seagull, 662 Prospect Avenue, questioned the engineer about the addition of two public toilets; and

Robert Rashkes, 35 Oakcrest Road, questioned the witnesses about adding sidewalks along Prospect Avenue; and

WHEREAS the following persons were sworn under oath and made comments about the Application:

Kevin Malanga, 57 Ridge Road,

Gerry Karp, Ridge Road

Lauren Svetviles, 699 Prospect Avenue, who noted his dismay that the Applicant has not been punished for its deviation from the approved plans;

Mr. Robert Rashkes, 35 Oakcrest Road, who noted his concern about lack of sidewalks for public access to the site;

Sally Malanga, 57 Ridge Road, who noted concern that the Applicant made changes without approvals and frustration about lack of enforcement for applicants which deviate from plans;

Marty Berman, 59 Cobane Terrace, a teacher at Seton Hall Preparatory School who urged approval;

Ronnie Strell, 654 Prospect Ave. who indicated the Applicant took down trees it said it would not.

NOW THEREFORE, the Board hereby makes the following Findings of Fact and Conclusions of Law:

1. The Applicant is the owner of the property located at 700 Prospect Avenue, also known as Block 82.01 Lot 1 on the Tax Map of the Township of West Orange and located in the R-1 zone.
2. The Applicant requires amended site plan approval, with a D variance for an expansion of a conditional non-conforming use and a "C" variance for number of required parking spaces and for site revisions and the addition of two free standing signs all as amendments to the initial approval dated December 16, 2010, as amended by Resolution ZB-08-37 dated January 17, 2013, as further amended by Resolution ZB-15-03 dated April 16, 2015, all for the construction of a high school athletic facility.

3. While the Board does not condone the deviations from the original approved plans, the requested changes do not have any substantial impact on the surrounding neighboring properties and the amended site plan represents an improvement to the original site plan.
4. The Applicant has satisfied the statutory criteria for the grant of an amendment to its previously approved plans.
5. All of the conditions of the previous approvals contained in Resolution dated January 17, 2013 and April 16, 2015 will remain in full force and effect.
6. The variances can be granted without substantial detriment to the public good, the West Orange Master Plan and Update and the West Orange Zoning Ordinance, and that the purposes of the Municipal Land Use Law will be advanced by the granting of this variance application.

A motion to grant the Applicant's request for amended site plan approval, with a D variance for an expansion of a conditional non-conforming use and a "C" variance for number of required parking spaces, and for site revisions and the addition of two free standing signs to the initial approval dated December 16, 2010, as amended by Resolution ZB-08-37 dated January 17, 2013, as further amended by Resolution ZB-15-03 dated April 16, 2015, but excluding the request to change the

location of the batting cages and shot put area was made by Chairman Neuer and seconded by Mr. Schwarzbaum, and voted upon as follows:

	Aye	Nay	Abstentions
Buechler		Nay	
Nash	Aye		
Quentzel	Aye		
Schwarzbaum	Aye		
Steinhart	Aye		
Sussman	Aye		
Neuer	Aye		

A second motion was made by Mr. Neuer and seconded by Mr. Steinhart which would allow the change of placement of batting cages and the shot put area, as shown on the amended plans, and voted upon as follows:

	Aye	Nay	Abstentions
Buechler		Nay	

Nash Aye

Quentzel Aye

Schwarzbaum Aye

Steinhart Nay

Sussman Nay

Neuer Aye

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Adjustment of the Township of West Orange, based upon the findings of fact and conclusions of law aforesaid, and upon the Laws established in the State of New Jersey, hereby grants the applicant the following variances and approvals:

1. A "D" variance for expansion of a conditional use that does not meet the conditional use standards of the ordinance variance for construction of athletic fields
2. A "C" variance for 677 parking spaces (with 372 overflow spaces) when 699 are required by the ordinance.

3. A "C" variance for two (2) free standing signs which have been revised for size and color.
4. Amended final site plan approval subject to the conditions and provisions stated below.

BE IT FURTHER RESOLVED that the grant of said variances and preliminary and final site plan approval shall be conditioned upon the Applicant's full and complete satisfaction of the following conditions:

1. All conditions of the prior approvals as set forth in the initial approval dated December 16, 2010, as amended by Resolution ZB-08-37 dated January 17, 2013, as further amended by Resolution ZB-15-03 dated April 16, 2015, with the exception of 1, 6-13, 17, 19, 21, 25, 28, 30, 31a, 31d, 31f-31m, 43, 44, 50-52 and 60, which are moot.
2. All conditions stated in the Memorandum of Bowman Consulting dated July 14, 2016, attached hereto and made part of this Resolution, are to be complied with by the Applicant.
3. The Applicant will revise the existing Operations & Maintenance (O&M) Manual for the water quality facility, deleting the rain garden and adding the manufactured treatment device. This document is to be recorded superseding the previously recorded O&M

Manual.

4. The Applicant will straighten out the painted median of the entrance drive to be perpendicular to Prospect Avenue.
5. The Applicant will perform a video inspection of the sanitary sewer line into which it is tapping from its current terminus on the Shillelagh Club to the manhole in Prospect Avenue. The video inspection and associated report are to be provided to the Board and Township Engineers for review. Should this inspection find any deficiencies in the existing pipe corrective actions are to be implemented.
6. The area by the football bleachers will be re-Graded in a manner which does not disturb the existing trees to be preserved.
7. The millings of the old track will be disposed of off-site in accordance with applicable regulations and will not be re-used on site.
8. Construction vehicles shall not be permitted to travel over the cross-country track near and within the natural buffer.

9. There shall be no playing of amplified music during baseball practice, however, the applicant shall be permitted to play the Star Spangled Banner at the beginning of Varsity baseball games and music for one and one half minutes between innings at Varsity baseball games, at normal and customary decibel levels.

10. The proposed signs at the site driveways are not To be illuminated.

Moved: Neuer

Seconded: Schwarzbaum

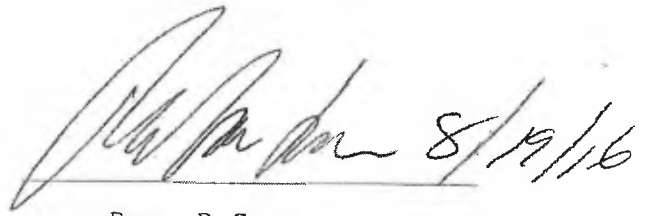
Those in Favor: 6

Those Opposed: 0

Abstentions: 0

I hereby certify that the foregoing Resolution was adopted by the Zoning Board of Adjustment of the Township of West Orange at its meeting of August 18, 2016 and that said Resolution memorializes the action of the Board taken at its meeting held on July 21, 2016 granting the application by the votes as stated above.

Adopted: August 18, 2016

A handwritten signature in dark ink, appearing to read 'Rose DeSena', followed by the date '8/19/16'. The signature is written over a horizontal line.

Rose DeSena
Board Secretary