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October 16, 2025

VIA FEDERAL EXPRESS AND EMAIL

Ms. Diana Chandler-Zimmerman
Zoning Board Secretary
West Orange Zoning Board of Adjustment
66 Main Street
West Orange, New Jersey 07052

Re: Extension of Approval Request
Seton Hall Preparatory School
Amended Preliminary and Final Site Plan Approval with Variance Relief
700 Prospect Avenue; Block 82.01, Lot 1

Dear Ms. Chandler-Zimmerman:

This firm represents Seton Hall Preparatory School, the owner and applicant (the "Applicant"), with respect to their development of property located at 700 Prospect Avenue and designated as Block 82.01, Lot 1 in the Township of West Orange (the "Property") to swap the athletic facility with the maintenance facilities and expand the size of the athletic facility (the "Project").

The Project was approved by the Township of West Orange Zoning Board of Adjustment (the "Zoning Board" or "Board") on September 28, 2023 and memorialized by the Board through a resolution adopted on October 19, 2023 (the "Resolution"). A notice of decision of the adoption of the Resolution was published by the Zoning Board on October 26, 2023.

Section 25-48.10.a. of The Land Use Regulations of the Township of West Orange (the "Land Use Code") provides that building or construction permits must be obtained within two years and one day after the date of the granting of site plan and variance approval. The Board is permitted to extend such time period "[f]or good cause shown and upon written application". Similarly, pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the "MLUL"), the Project is protected against zoning changes for a period of two years after the grant of final site plan approval. The MLUL allows the Zoning Board to grant further extensions of the protection period. The Board is permitted to grant

a total of three (3) one-year extensions. See N.J.S.A. 40:55D-52(a). As a result, the protection period is set to expire on October 27, 2025.¹

Following the adoption of the Resolution, the Applicant has encountered delays in finalizing its construction drawings and obtaining all required outside agency approvals.

Therefore, the Applicant respectfully requests the Board grant a one-year extension of the protection period for the Project from October 27, 2025 to October 27, 2026 in accordance with N.J.S.A. 40:55D-52(a).

On behalf of the Applicant and in furtherance of this request, enclosed are the following documents:

- Township of West Orange Zoning Board Resolution (Case No. ZB-22-12) memorialized October 19, 2023; and
- Notice of Decision published by the Zoning Board in the West Orange Chronicle on October 26, 2023.

Kindly advise as to when this matter is expected to be placed on the Zoning Board's agenda for consideration and whether an appearance is required.

Thank you for the courtesies extended in this matter. Please feel free to contact me if you have any questions or require additional information.

Very truly yours,

Marc E. Leibman

Marc E. Leibman
Counsel

MEL:eap

¹ Section 25-48.10.c. states, "The time limits mentioned in paragraph a above, shall commence on the date of the publication of a notice of the granting of the conditional use, variance or site plan in the official newspaper of the Township of West Orange or a newspaper of general circulation in the Township" Due to the Zoning Board publishing notice on October 26, 2023, we have calculated the protection period to expire on October 27, 2025 (two years and one day following the notice of publication of the granting and memorialization of the approval). It appears a notice was published on October 5, 2023 indicating only that an approval was granted on September 28, 2023. However, as noted throughout this request, the Resolution was not adopted until October 19, 2023 and notice of such adoption was not published until October 26, 2023.

**ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF WEST ORANGE**

**SETON HALL PREPARATORY SCHOOL
Block: 82.01 - Lot: 1
700 Prospect Avenue, West Orange
Case No. ZB-22-12**

RESOLUTION

WHEREAS, SETON HALL PREPARATORY SCHOOL (the "Applicant" or "Seton Hall") has applied to the Zoning Board of Adjustment of the Township of West Orange (the "Board"), for amended final site plan approval and the following variance relief, in connection with its proposal to (i) construct an addition to an existing building and (ii) change the occupancy of another building, on property located within the R-1 (Residential) Zone, identified as Lot 1 within Block 82.01 on the Official Tax Map of the Township of West Orange, more commonly known as 700 Prospect Avenue, West Orange (the "Property" or the "Site"):

A variance pursuant to N.J.S.A. 40:55D-70(d)(2) (a "(d)(2) expansion of a preexisting nonconforming use variance"), to permit the expansion of the use of the athletic complex on the Property by way of the proposed addition, whereas the Applicant obtained prior approvals from the Board permitting the athletic complex use which use is not permitted in the R-1 Zone, pursuant to Section 25-7.1 of the Township of West Orange Land Use Regulations Ordinance (the "Ordinance"); and

WHEREAS, public hearings, on notice, were held on such application on June 22, and September 28, 2023, at which time interested citizens were afforded an opportunity to appear and be heard; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. The Board reviewed the application and deemed it to be complete.

2. Board Member Eben recused himself from the proceedings upon advice from the Board's Attorney.

3. The Property consists of a single 44.5-acre lot, located on, and fronting, the east side of Prospect Avenue, north of Northfield Avenue. The lot also fronts Ridge Road to the north and east. The Property constitutes the athletic complex of the Seton Hall Preparatory School and is accordingly improved with athletic fields, tennis courts, paved parking areas, a multitude of detached outbuildings, field houses, and other associated improvements. Surrounding land uses include single- and multi-family residences, religious institutions, private clubs, and commercial, industrial, office, and open space.

4. The Applicant proposes to construct a two (2) story addition to an existing one-story building that presently functions as a maintenance and storage space (the "existing maintenance/storage building"). Following the proposed addition, this building would feature a fitness room, offices, restrooms, a machine room, and a janitor's closet on the first floor, and a training area, office, storage rooms, restrooms, balcony, and a janitor's closet on the second floor (the "proposed fitness center"). Additionally, the Applicant proposes to replace the functions of the existing maintenance/storage building through the conversion and use of one of the existing field houses, particularly the 6,630 square-foot field house building situated on the south side of the Property (the "southern field house") for these purposes.

5. A public or private school is a conditionally permitted use in the R-1 (single family residential) Zone, but school athletic fields are not a principal permitted use in the R-1 Zone. As such, the Applicant received use variance relief from the Board, pursuant to N.J.S.A. 40:55D-70(d)(1), to permit the existing athletic complex use on the Property. Such relief is memorialized by way of Resolutions first adopted by the Board on December 16, 2010, and subsequently on

January 17, 2013 following a "Whispering Woods" hearing on the matter, under Application No. ZB-08-37 (the "2010 Approval"). The Applicant also received (d)(2) expansion of use variance relief from the Board under Application Nos. ZB-15-03 and ZB-16-05, respectively memorialized by way of Resolutions adopted on April 16, 2015, and August 18, 2016 (the "2016 Approval"). Because the Applicant proposes to expand the scope of the Property's athletic complex use, the presently requested expansion of a pre-existing non-conforming use variance is governed by the criteria of N.J.S.A. 40:55D-70(d)(2).

6. The Applicant's proposal is depicted on, and otherwise supported by the following items submitted with its application:

- A preliminary and final site plan set, prepared by Charles J. Stewart, P.E., P.L.S., of E 2 Project Management, LLC, dated October 13, 2022, last revised January 31, 2023, same consisting of eight (8) sheets;
- An architectural plan set, prepared by Donald R. Fiore, R.A., of Heintz & Fiore, LLC, dated August 30, 2022 without revision, same consisting of three (3) sheets;
- A boundary survey, prepared by Charles J. Stewart, P.E., P.L.S., of E 2 Project Management, LLC, dated October 13, 2022 without revision, same consisting of one (1) sheet;
- A Planning Evaluation, prepared by John McDonough, L.A., A.I.C.P., P.P., of John McDonough Associates, LLC, dated December 23, 2022; and
- Copies of prior Resolutions of Approval pertaining to the Property, under the following Application Nos. and adopted by the Board on the following dates:
 - i. ZB-08-37, adopted December 16, 2010;
 - ii. ZB-08-37, adopted January 17, 2013;
 - iii. ZB-15-03, adopted April 16, 2015; and
 - iv. AB-16-05, adopted August 18, 2016.

7. Paul Grygiel, A.I.C.P., P.P., the Township/ Board Planner, and John J. Hess, P.E., P.E., C.M.E., the Board Engineer (the "Board Professionals"), were duly sworn according to law.

8. John P. Wyciskala, Esq., of Inglesino, Webster, Wyciskala & Taylor, LLC, having a business address of 600 Parsippany Road, Suite 204, Parsippany-Troy Hills, entered his appearance on behalf of the Applicant and provided an overview of the application, relief sought, and witnesses to be presented.

9. The Applicant offered testimony from the following witnesses who were duly sworn according to law:

- a. Donald R. Fiore, R.A., of Heintz & Fiore, LLC, having a business address of 508 Millburn Avenue, Short Hills;
- b. Charles J. Stewart, P.E., P.L.S., of E 2 Project Management, LLC, having a business address of 87 Hibernia Avenue, Rockaway; and
- c. Alexander Dougherty, P.P., of John McDonough Associates, LLC, having a business address of 101 Gibraltar Drive, Suite 1A, Morris Plains.

10. Mr. Fiore, Mr. Stewart, and Mr. Dougherty provided their credentials and were accepted by the Board as experts in the fields of architecture, civil engineering, and professional planning, respectively.

Testimony Offered at the June 22, 2023 Hearing

11. Mr. Fiore introduced into evidence: (i) as **Exhibit A-1**, a colorized rendering of the first floor of the interior of the proposed fitness center, dated June 22, 2023; and (ii) as **Exhibit A-2**, a colorized rendering of the interior of the second floor of the proposed fitness center, dated June 22, 2023.

12. Mr. Fiore, in explaining the impetus behind, and general considerations of, the proposal, testified that: (i) the proposal is intended to swap the functions of the existing storage/maintenance building and southern field house on the Property; (ii) the existing storage/maintenance building was originally intended to serve as a hub for the Applicant's Property maintenance program but, currently, only a limited amount of athletic equipment is

stored there; (iii) the southern field house hosts the existing weight room and fitness center, though the structure is situated relatively far from the sports fields and other amenities on the Property, making it inefficient for use by Seton Hall's athletic programs; (vi) the Applicant proposes to renovate and construct an addition to the existing maintenance/storage building and use the structure as an athletic fitness and training facility, and use the southern field house for the storage of athletic and other forms of equipment; and (v) the existing maintenance/storage building is situated about 900' from Prospect Avenue, 1250' from the nearest single-family dwellings to the south, 485' from Ridge Road, 975' from the nearest single-family residences to the north, and 820' from the northern Property line.

13. Mr. Fiore, in explaining the architectural considerations behind the proposal, testified that: (i) the existing maintenance/storage building has a 2,468 square-foot footprint and the existing southern field house has a 3,139 square-foot footprint; (ii) with the proposed addition to the existing maintenance/storage building, the structure would serve as the proposed fitness center with floor area totaling 9,596 square feet and a footprint of 7,684 square feet; (iii) the first floor of the proposed fitness center would feature a fitness/weight room, offices, restrooms, a machine room, and a janitor's closet; (iv) the second floor of the proposed fitness center would feature, a training area, office, storage rooms, restrooms, balcony, and a janitor's closet; (v) the proposed fitness center would feature entry and exit vestibules on its north and south facades, as well as three (3) overhead, garage-style doors on its west façade; (vi) the proposed fitness center would have two (2) stairwells, each respectively protruding from the building's north and south sides; (vii) the exterior of the proposed fitness center would feature brick veneer on the outside of its proposed stairwells, as well as metal siding and a significant amount of glazing on each façade; (viii) the proposed fitness center would be 30' tall, as measured from the top of the

proposed stairways, and 28' tall, as measured from the top of proposed rooftop parapets, while the existing maintenance/storage building is 21' tall; (ix) by way of relocating the athletic training activities occurring within the southern field house to the proposed fitness center, which is located to the interior of the Property, on-site activity would have less of an impact to surrounding properties than it has presently; and (x) after taking sound readings from six (6) different points around the Property, and considering the noise generated by current training activities occurring within the southern field house, he is confident that no on-site activity would exceed permissible decibel thresholds.

14. On questioning by members of the Board and Board Professionals, Mr. Fiore testified that: (i) the Applicant plans to install solar panels on the roof of the proposed fitness center but cannot commit to doing so until a design is put together, (ii) the Applicant does not, as of the June 22, 2023 hearing, propose to add any further landscaping to the Property; (iii) the proposed fitness center likely will not be visible from the residences located about 1250' south of that location; (iii) the proposed fitness center would have about 9,596 square feet of floor area; (iv) because of poor water pressure, the Applicant would likely be unable to efficiently install sustainable water appliances on-site; (v) the proposed fitness center would feature a flat roof with parapets that would effectively screen any roof-mounted HVAC equipment; (vi) the proposed fitness center would feature overhead doors only on its west façade; (vii) lawn maintenance equipment, if any, is stored in the existing storage/maintenance building and would be stored in the southern field house; (viii) the height of the backstop on the nearby baseball field would prevent any wanton baseballs from hitting the proposed fitness center's glazing; (ix) egress from the proposed fitness center would be provided via doors next to both proposed stairwells; (x) the second floor balcony of the proposed fitness center will likely host a variety of activities, but be

rendered safe by way of proposed perimeter railings; (xi) no showers or locker rooms would be located within the proposed fitness center and, instead, such amenities would continue to be provided within the central field house on the Property; (xii) the central field house is located approximately 175' from the existing maintenance and storage building; (xiii) the Applicant has no current plans to alter the structure of the southern field house; (xiv) no kitchen or food service space is proposed within the proposed fitness center; and (xv) the proposed fitness center's first floor men's bathroom would feature two (2) stalls and two (2) urinals, its first floor women's bathroom would feature three (3) stalls, and two (2) single-use bathrooms would be provided on the second floor.

15. On questioning by Kevin Malanga, a member of the Public, having an address of 57 Ridge Road, West Orange, Mr. Fiore testified that: (i) the proposed fitness center would feature a significant amount of glazing on the exterior of all of its sides; (ii) the Property is situated near a ridge line; (iii) he is unaware of bird migratory patterns or anti-bird strike building materials; (iv) the Applicant has no plans to use the proposed fitness center, other than the second-floor balcony as a "VIP" or party space, or to play music while the proposed overhead doors are open; (v) the proposed fitness center would not serve any classroom or band-related functions; and (vi) the Applicant is not proposing anything that would be contrary to the conditions of the 2010 and 2016 Approvals.

16. Mr. Stewart, in explaining the existing conditions on the Property, testified that: (i) the Property is surrounded by a variety of uses; (ii) the Property features practice sports fields, a main stadium athletic field with bleachers and a wrap-around track, two (2) baseball fields, and a variety of outbuildings; (ii) the Property features extensive drainage improvements, including two (2) detention ponds and about one (1) mile of drainage pipes; (iii) stormwater runoff generated

on the Property is routed to storm sewerage drains along Prospect Avenue to the west and Northfield Avenue to the east; (iv) no part of the Property is within a floodplain; (v) there exists a total of 677 parking stalls on the Property; (vi) there exists a landscaping island just west of the existing storage/maintenance building; and (vii) the Property is mostly screened by perimeter landscaping, with a larger landscape buffer being located within the north end of the lot.

17. Mr. Stewart, in explaining the proposed conditions on the Property, testified that: (i) with the proposed improvements, the Applicant would be required to, and will, supply a compliant total of 679 parking stalls, with two (2) additional stalls being added near the existing caretaker's building on the west side of the Property; (ii) utility lines running to the existing storage/maintenance building would be restricted during construction of the proposed improvements and would be reconnected to the building following construction; (iii) the footprint of the landscaping island west of the existing storage/maintenance building would be reduced by about 2' from its eastern edge, without affecting existing trees or shrubs, in order to accommodate the footprint of the proposed addition; (iv) an existing stormwater drainage line located within close proximity to the existing storage/maintenance building would be rerouted to a newly proposed inlet and tied back into other existing drainage lines; (v) one (1) tree may be disturbed during construction of the proposed improvements, but said tree would either be relocated or replanted following the end of construction; (vi) the proposal poses a compliant amount of impervious coverage, attributed to the fact that most of the proposed improvements would be constructed atop existing paved surfaces; (vii) the proposal poses an approximately 1/10th (.1) acre increase in impervious coverage, which would have a *de minimus* impact on existing drainage conditions; (viii) a dumpster enclosure situated to the south of the existing maintenance/storage building would be relocated to the north side of that building and same will

be reflected on a revised plan.

18. Mr. Stewart addressed the comments raised in Board Engineer Hess's January 20, 2023 and June 1, 2023 review memoranda pertaining to the application, to the satisfaction of Mr. Hess. In so doing, Mr. Stewart testified that: (i) no exterior lighting fixtures are proposed; (ii) no steep slope disturbance is proposed; and (iii) the Applicant would be amenable to adding additional landscape screening to the south of the southern field house on the Property.

19. No member of the Public asked questions of Mr. Stewart.

Testimony Offered at the September 28, 2023 Hearing

20. On questioning by members of the Board and Board Professionals during the September 28, 2023 hearing, Mr. Fiore testified that: (i) the existing field house would be used for the storage of primarily athletic equipment and not landscaping equipment, because the Applicant employs an outside landscaping contractor to maintain the grounds of the athletic complex; (ii) the proposed fitness center would not be equipped with an internal speaker system; and (iii) the proposed fitness center would pose less of an impact to surrounding properties than the existing field house as the proposed fitness center would be more centrally located within the Site.

21. No member of the Public asked questions of Mr. Fiore during the September 28, 2023 hearing.

22. Mr. Dougherty testified that, in his professional opinion, the Applicant has sufficiently demonstrated the "positive criteria" for the grant of its requested (d)(2) expansion of use variance. In so doing, Mr. Dougherty opined that the existing, and would-be-expanded, athletic complex constitutes an inherently beneficial use, because (i) schools are specifically recognized in the Municipal Land Use Law (the "MLUL") as "inherently beneficial uses"; (ii) the existing and would-be-expanded athletic complex is accessory to a school use; and (iii) thus, the

athletic complex itself is an "inherently beneficial use."

23. Mr. Dougherty testified that, in his professional opinion, the Applicant has sufficiently demonstrated the "negative criteria" for the grant of its requested (d)(2) expansion of a use variance, by satisfying the four (4) prong test set forth in Sica v. Board of Adjustment of Tp. of Wall, 127 N.J. 152 (1992). In so doing, Mr. Dougherty opined that: (i) the public interest at stake is quality education, with fitness, athletics, and necessary facilities being critical components in providing same; (ii) the proposal poses minimal detrimental impacts as, with the exception of the proposed expansion of the non-conforming athletic complex use, the Applicant does not propose any other zoning deficiencies, and the proposed fitness center's activities would be located further from nearby residences than the existing field house which currently hosts such activities; (iii) the relatively minimal detriments wrought by the proposal can be effectively mitigated by way of the conditions stipulated-to by the Applicant, including the restrictions on outdoor activities and noise, the continued application of conditions that were part of prior approvals pertaining to the Property, and the inclusion of bird strike-resistant window features; and (iv) the public interest benefits yielded by the proposed expansion of use, particularly including the benefit wrought by promoting quality education, outweigh the relatively modest detriments associated with same.

24. On questioning by members of the Board and Board Professionals, Mr. Dougherty testified that: (i) the proposal represents a slight expansion of the existing storage building/proposed fitness center on the Property; (ii) the proposal would not lead to any change to existing buffers on the Property; (iii) by way of enhancing existing landscaping and moving the activities that currently take place in the fieldhouse to the proposed fitness center, the proposal represents less of a detrimental impact to surrounding properties than current conditions on the Property; and (v) in his professional opinion, the proposal poses no substantial detriment to the public good.

25. No member of the Public asked questions of Mr. Dougherty.

26. Kevin Malanga, a member of the Public, having an address of 57 Ridge Road, West Orange, was duly sworn according to law and provided testimonial commentary on the application.

27. Mr. Malanga testified that the Applicant has been a "good neighbor" in operating the existing athletic complex and he indicated that he would be supportive of the proposal, if the Board were to impose the following conditions: (i) no music would be played when the overhead garage doors of the proposed fitness center are open; (ii) no music would be played on the second-floor balcony of the proposed fitness center; (iii) only current students and faculty would be permitted to use the proposed fitness center; (iv) all proposed exterior-facing glazing would be equipped with bird strike-resistant technology or features; and (v) any interior lights within the proposed fitness center would be equipped with motion sensors.

28. Mr. Malanga also presented expert witness testimony from Dr. Christine Shepherd, Director of the American Bird Conservancy, having a business address of 431 Savage Farm Drive, Ithica, New York. Dr. Shepherd was duly sworn according to law, provided her credentials, and was accepted by the Board as an expert in ornithology, with particular expertise regarding bird strikes.

29. Dr. Shepherd testified that: (i) the expanded use of glass building facades over the past decade has lead to approximately one million bird strike deaths per year, according to studies; (ii) birds are generally unable to recognize the presence of glass barriers; (iii) in her expert opinion, the proposal would cause a substantial number of bird deaths, in the absence of preventative measures; (iv) there are various types of bird-safe features that can be implemented on exterior glazing, including ultraviolet light screens, etching, and pattern screens; (v) etching and pattern screens are the most effective forms of bird-strike resistance, as UV light screens are ineffective

at nighttime; (vi) almost 50% of bird-building collisions occur on one (1) to three (3) story buildings; (vii) interior lights attract birds and so may contribute to bird collisions with buildings and other structures; and (viii) as an expert in the field, she recommends that the Applicant integrate motions sensors on internal lighting fixtures and glazing features to minimize bird collisions with the proposed athletic center.

30. On questioning by members of the Board and Board Professionals, Dr. Shepherd testified that: (i) birds can be injured while flying at any speed and colliding with a building; (ii) studies show that birds can collide with buildings while flying from any direction, not just north or south; (iii) she is unaware of any existing statute or regulation in New Jersey that requires the use of bird-strike resistant building materials, though various other States do have such rules; (iv) bird strike-resistant building materials are relatively inexpensive; and (v) she believes that the Applicant would be making a good attempt at mitigating the potential for bird collisions by agreeing to integrate anti bird strike features on the proposed fitness center's glazing.

31. Except for Mr. Malanga and Dr. Shepherd, no member of the Public commented on the Applicant's proposal; no member of the Public objected to this application.

32. Mr. Grygiel advised that (i) the proposal does not require bulk variance relief and (ii) the Board's prior findings that the existing athletic field was an inherently beneficial use and that the Sica test was satisfied are material to the Board's consideration of the current application.

33. The Applicant, through its various witnesses and representatives, stipulated to the following conditions of approval, if so granted by the Board:

- i. All athletic training activities related to the proposed fitness center must take place indoors;
- ii. Additional/enhanced landscape screening shall be added to the area south of the existing field house, to the satisfaction of the Board Professionals;

- iii. The Applicant shall install minimal outdoor nighttime security lighting to the proposed fitness center, subject to the review and approval of the Board Professionals;
- iv. An occupancy of no greater than ninety-six (96) persons shall be permitted on the proposed fitness center's second-floor balcony;
- v. The Applicant shall abide by all conditions of the 2010 and 2016 Approvals, to the extent not modified or rendered inconsistent by the grant of relief herein;
- vi. No amplified music shall be played on the second-floor balcony of the proposed fitness center;
- vii. Only current students and faculty of Seton Hall Preparatory School shall be permitted to use the proposed fitness center;
- viii. All proposed exterior-facing glazing of the fitness center shall be equipped with bird strike-resistant technology and features, consistent with the guidelines of the American Bird Conservatory and subject to the review and approval of the Board Professionals;
- ix. All interior lights within the proposed fitness center shall be turned off at night and equipped with motion sensors; and
- x. The Applicant shall comply with the requirements of the New Jersey Noise Control regulations, as set forth by N.J.A.C. 7:29, and the Township of West Orange Noise Control Ordinance, as set forth in Section 4-4 of the Ordinance.

DECISION

34. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicant has satisfied its burden of proving an entitlement to the requested amended preliminary and final major site plan approval and (d)(2) expansion of pre-existing non-conforming use variance relief.

Amended Site Plan Approval

35. As it relates to the Applicant's request for amended preliminary and final major site plan approval, the Board first notes that, in evaluating such a request, the MLUL requires a

land use board to consider the development plan provided by an Applicant, and to grant site plan approval if the detailed drawings, specifications, and estimates of the application conform to the standards established by ordinance for final approval, pursuant to N.J.S.A. 40:55D-50(a).

36. Here, the Board finds that the Applicant has demonstrated compliance with the Township's Major Site Plan requirements, as set forth in Section 25-51.7 *et seq.* of the Ordinance, and that good cause exists to grant the Applicant amended preliminary and final major site plan approval, with the requested variance relief detailed below.

(d)(2) Expansion of Pre-Existing Non-Conforming Use Variance Relief

37. Regarding the Applicant's request for (d)(2) expansion of use variance relief, the Board first notes that a proposed expansion, or intensification, of a lawfully created, preexisting, nonconforming use, which also includes the expansion of a building in which a lawfully created preexisting nonconforming use is to be carried on, requires variance relief pursuant to 40:55D-70(d)(2). See Burbridge v. Mine Hill Tp., 117 N.J. 376, 384-385 (1990); Kohl v. Mayor and Council of Fair Lawn, 50 N.J. 268 (1967); Black v. Montclair, 34 N.J. 105 (1961); Conselice v. Borough of Seaside, 358 N.J. Super. 327, 333 (App. Div. 2003); Anfuso v. Seeley, 243 N.J. Super. 349, 353- 357 (App. Div. 1990); Alpine Tower v. Mayor & Council, 231 N.J. Super. 239, 246-247 (App. Div. 1989); Kingwood v. Board of Adjustment, 272 N.J. Super. 498, 502 (Law Div. 1993).

38. The Board also notes that, to establish an entitlement to any form of variance relief under N.J.S.A. 40:55D-70, an applicant must demonstrate the "positive" and "negative" criteria applicable to the type of relief requested. In the case of (d)(2) expansion of use variances specifically, while an applicant for such relief need not show that it would have been entitled to a variance for the initial nonconformity, it nevertheless must satisfy the same positive and negative

criteria test as other subsection (d) variance applicant. See Fin. Serv. v. Little Ferry Zon. Bd. of Adj., 326 N.J. Super. 265, 275-276 (App. Div. 1999).

39. Accordingly, the Board notes that the positive criteria for (d)(2) expansion of use variance relief is established by a showing of "special reasons" to permit "an expansion of a nonconforming use." New Jersey Courts recognize three circumstances in which such "special reasons" may be found: (1) where the proposed use inherently serves the public good, such as a school, hospital or public housing facility; (2) where the property owner would suffer "undue hardship" if compelled to use the property in conformity with the permitted uses in the zone; and (3) where the use would serve the general welfare because "the proposed site is particularly suitable for the proposed use." See Saddle Brook Realty, LLC v. Twp. of Saddle Brook Zoning Bd. of Adj., 388 N.J. Super. 67, 76 (App. Div. 2006).

40. The Board further recognizes that when a proposed use is held to be an "inherently beneficial" use, the positive criteria for use variance relief is presumptively satisfied. Smart SMR v. Fair Lawn Bd. of Adj., 152 N.J. 309, 323 (1998), citing Burbridge v. Mine Hill Tp., 117 N.J. 376, 394 (1990); Accord, Cell v. Zoning Bd. of Adjustment, 172 N.J. 75, 90 (2002); Salt & Light Co. v. Willingboro, 423 N.J. Super. 282, 287 (App. Div. 2011), certif. den. 210 N.J. 108 (2012); House of Fire v. Clifton Bd. of Adj., 379 N.J. Super. 526, 535 (App. Div. 2005); Med. Ctr. v. Princeton Tp. Zoning, 343 N.J. Super. 177, 200 (App. Div. 2001). An "inherently beneficial" use is defined at N.J.S.A. 40:55D-4 (emphasis added) as:

"[...] a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to, a hospital, school, child care center, group home, or a wind, solar or photovoltaic energy facility or structure."

41. Additionally, the Board recognizes that the "negative criteria" for all forms of variance relief pursuant to N.J.S.A. 40:55D-70 *et seq.*, including (d)(2) expansion use variances,

is shown by an applicant demonstrating that the proposed deviation(s) from the requirements of the Ordinance will neither pose a "substantial detriment" to the public good, nor "substantially impair" the intent and purpose of a municipality's master plan and zoning ordinance. However, within the context of a request for a (d)(2) expansion of use variance where the proposed use is an "inherently beneficial" one, New Jersey Courts have applied a different standard for evaluating the negative criteria. As per the Supreme Court in the Sica case, in evaluating the negative criteria for use variance relief within the context of a proposed "inherently beneficial" use, a board of adjustment must (i) "identify the public interest at stake;" (ii) "identify the detrimental effect that will ensue from the grant of the variance"; (iii) consider "reduc[ing] the detrimental effect by imposing reasonable conditions on the use;" and (iv) "weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good." Id. at 165-166.

42. Here, the Board finds that the Applicant has satisfied the positive criteria required for the grant of its requested (d)(2) expansion of use variance, because it has demonstrated that the proposed-to-be expanded use is an inherently beneficial one. In this regard, the Board concurs with the unrefuted expert opinion of the Applicant's Professional Planner, Mr. Dougherty, in that the existing, and to-be-expanded, athletic complex use constitutes an inherently beneficial use because the athletic complex is exclusively used to further the athletic program of Seton Hall, a school. As schools are specifically recognized by the MLUL as "inherently beneficial uses," and use of the to-be-expanded athletic complex is accessory to a school use, the Board thus concurs with Mr. Dougherty in finding that the athletic complex is also itself an "inherently beneficial use."

43. The Board also concurs with Mr. Dougherty's unrefuted expert testimony in finding that the Applicant has satisfied the negative criteria for (d)(2) expansion of use variance relief

under the basis for same set forth in Sica.

44. As per the Sica test, the Board concurs with Mr. Dougherty's unrefuted expert opinion in finding that: (i) the public interest at stake is quality education, with fitness, athletics, and necessary facilities being critical components in providing a quality education; (ii) the proposal poses minimal detrimental impacts as, with the exception of the proposed expansion of the non-conforming athletic complex use, the Applicant does not propose any other zoning deficiencies, and the proposed fitness center's activities would be located further from nearby residences than the existing field house which currently hosts such activities; (iii) the relatively minimal detriments wrought by the proposal can be effectively mitigated by way of conditions stipulated-to by the Applicant, including the restrictions on outdoor activities and noise, continued application of conditions that were part of prior approvals pertaining to the property, and inclusion of bird strike-resistant window features; and (iv) the public interest benefits yielded by the proposed expansion of use, particularly including the benefit wrought by promoting quality education, outweigh the relatively modest detriments associated with same.

45. Thus, based upon the foregoing, the Board hereby finds that the Applicant has demonstrated an entitlement to the requested amended preliminary and final major site plan approval and (d)(2) expansion of pre-existing non-conforming use variance relief.

WHEREAS, the Board took action on this application at its meeting on September 28, 2023 and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of West Orange, that the application of **SETON HALL PREPARATORY SCHOOL**, for amended final site plan approval and (d)(2) expansion of use variance relief, as aforesaid, be

and is hereby granted, subject to the following conditions:

- (1) The Applicant shall post sufficient funds with the Township to satisfy any deficiency in the Applicant's escrow account;
- (2) The Applicant shall comply with the comments and recommendations set forth in Board Engineer Hess's, memorandum pertaining to the application, last revised August 10, 2023, to the extent not already satisfied or otherwise inapplicable;
- (3) The Applicant shall comply with the comments and recommendations raised in Board/Township Planner Grygiel's review memorandum pertaining to the application, last revised August 4, 2023, to the extent not already satisfied or otherwise inapplicable;
- (4) The Applicant shall comply with all conditions stipulated to during the proceedings, including, but not necessarily limited to, the following:
 - i. All athletic training activities related to the proposed fitness center must take place indoors;
 - ii. Additional/enhanced landscape screening shall be added to the area south of the existing field house, to the satisfaction of the Board Professionals;
 - iii. The Applicant shall install minimal outdoor nighttime security lighting to the proposed fitness center, subject to the review and approval of the Board Professionals;
 - iv. An occupancy of no greater than ninety-six (96) persons shall be permitted on the proposed fitness center's second-floor balcony;
 - v. The Applicant shall abide by all conditions of the 2010 and 2016 Approvals, to the extent not modified or rendered inconsistent by the grant of relief herein;
 - vi. No music shall be played on the second-floor balcony of the proposed fitness center;
 - vii. Only current students and faculty of Seton Hall Preparatory School shall be permitted to use the proposed fitness center, except for the second-floor balcony which may be used by alumni and others, subject to the restriction contained in Condition 4(vi) above;
 - viii. All proposed exterior-facing glazing of the fitness center shall be equipped with bird strike-resistant technology and features, consistent with the guidelines of the American Bird Conservatory to reduce the incidences of bird strikes with buildings and subject to the review and approval of the

Board Professionals;

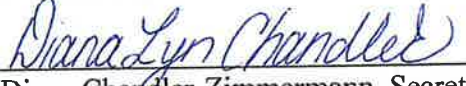
- ix. All interior lights within the proposed fitness center shall be turned off at night and equipped with motion sensors; and
 - x. The Applicant shall comply with the requirements of the New Jersey Noise Control regulations, as set forth by N.J.A.C. 7:29, and the Township of West Orange Noise Control Ordinance, as set forth in Section 4-4 of the Ordinance at all times, including when the overhead doors to the center are opened.
- (5) The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, to the extent same are not inconsistent with the terms and conditions set forth herein;
 - (6) The Applicant shall comply with all Federal, State, County and Township statutes, ordinances, rules, regulations and requirements affecting development in the Township, County and State;
 - (7) Pursuant to Section 21-48.10, *et seq.*, of the Ordinance, the relief granted herein shall expire within the requisite time frames imposed by the Ordinance, unless such construction or alteration permitted by the site plan approval and variance(s) has actually commenced;
 - (8) The Applicant, in proceeding with development of the Property, is bound by the testimony and evidence presented on their behalf during the public hearings; and
 - (9) These conditions shall be printed on the cover sheet of the Site Plan Drawings to be submitted for signatures by the required municipal officials.

ROLL CALL VOTE:

Those in Favor: Dannemiller, Ricci, Scalora, Scott, Neuer

Those Opposed: -

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of West Orange at its meeting of October 19, 2023.


Diana Chandler-Zimmermann, Secretary
ZONING BOARD OF ADJUSTMENT
OF THE TOWNSHIP OF WEST ORANGE,
COUNTY OF ESSEX,
STATE OF NEW JERSEY

Dated: October 19, 2023

West Orange Chronicle

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Thursday, October 26, 2023

Notice Content

WEST ORANGE Results of the West Orange Zoning Board of Adjustment Regular Virtual Meeting held on October 19, 2023 for the following: Announcements: - Future Meetings: October 26, 2023 (Whispering Woods Settlement Meeting) November 16, 2023 (Regular Meeting) December 21, 2023 (Regular Meeting) - Application ZB-22-13 / MPB Realty LLC (470 Eagle Rock Avenue) is carried to the December 21, 2023, Regular Meeting. Resolutions: - ZB-22-12 /Seton Hall Preparatory School (Approved 9/28/2023 & Adopted 10/19/2023) Block: 82.01; Lot: 1; Zone: R-1 700 Prospect Avenue Application seeking amended site plan and d variance approvals for the expansion of a non-conforming use was approved with conditions at the September 28, 2023 Special Meeting. The Resolution was adopted at the October 19, 2023, Regular Meeting. Applications: - ZB-23-05/Red Barn Dog OPS NJ LLC (Approved 10/19/2023) Block: 152.01; Lots: 1445 and 1445.05; Zone: P-C and R-5/IHO-1 235 Prospect Avenue Application seeking use variances and minor site plan approval for dog daycare facility was approved with conditions at the October 19, 2023, Regular Meeting. E125655 WOC October 26, 2023 (\$15.48) NEWARK LINK COMMUNITY CHARTER SCHOOL BOARD OF TRUSTEES NOTICE OF MEETING WHEREAS, Compliance is required with P.L. 1975, c. 231, with regard to the posting and publication of meeting notices; THEREFORE, BE IT RESOLVED, that notice is hereby given that the Board of Trustees of the Link Community Charter School has postponed the open, public Board Retreat Meeting on Saturday, October 28, 2023, until Saturday, December 2, 2023. The meeting will be in person only, at 230 Halsey St, Newark, and will begin at 9am. Action may be taken. The Board reserves the right to retire into Closed Session, and to exclude the public from such portions of the meeting in accordance with the P.L. 1975, c.231, upon adoption of a conforming Board Resolution for Executive Session. E125512 WCN October 26, 2023 (\$18.72)

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