

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 Stormater 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. ✓
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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. *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

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

Dec 2014

December 16, 2010 to December 16, 2013, and for a grant of the
~~revised tree removal permit~~ 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.

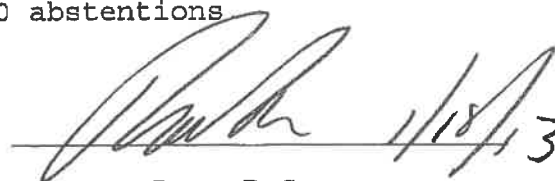
3. Condition number 1 (page 48) in Resolution No. ZB-08-37 is hereby deleted.
4. Condition number 10 (page 49) in Resolution No. ZB-08-37 is hereby deleted.
5. Condition number 12 (page 49) in Resolution No. ZB-08-37 is hereby modified to reflect that a detention basin will be installed instead of a 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

A handwritten signature in dark ink, appearing to read 'Rose DeSena', is written over a horizontal line. To the right of the signature, the date '1/18/13' is handwritten.

Rose DeSena

Board Secretary

**TOWNSHIP OF WEST ORANGE
AFFIDAVIT OF COMPLIANCE
MUST BE SIGNED BEFORE C.O. OR C.C.O. IS ISSUED**

Name: _____

Address: _____

Zoning Board of Adjustment/ Planning Board Application # _____

Property Address: _____

Block: _____, Lot: _____, Zone: _____

Date Resolution Adopted: _____

I, the applicant do hereby certify that all the conditions of the resolution stated in the above referenced application have been met. I do understand that if any of the foregoing is false, I will be subject to penalties and/or fines as per Township and State Ordinance. Furthermore, I understand I must contact the Township Zoning Official, Geniece Gary-Adams at (973) 325-4119, to review and approve that all conditions in the resolution have been satisfied.

Applicant's Signature

Date

Sworn to before me.

Notary Public Signature

Date and Seal

I have inspected this application and certify that all the work is in compliance with the conditions set forth in the resolution and the approved signed plans.

Approved by Zoning Official: _____

Signature (Geniece Gary-Adams)

Date

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-08-37 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

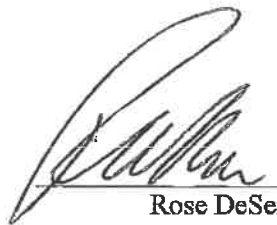
Seconded: Mr. Steinhart

Those in Favor: 6

Those Opposed: 0

Abstention: 0

Adopted: April 16, 2015

 4/17/15
Rose DeSena
Board Secretary

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

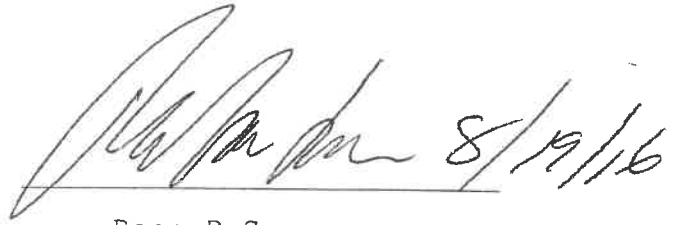
Those in Favor: 6

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

**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), cert. 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;

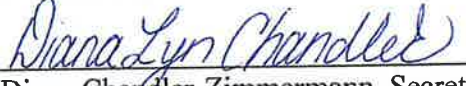
- ix. All interior lights within the proposed fitness center shall be turned off at night and equipped with motion sensors; and
 - x. The Applicant shall comply with the requirements of the New Jersey Noise Control regulations, as set forth by N.J.A.C. 7:29, and the Township of West Orange Noise Control 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