

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

SETON HALL PREPARATORY SCHOOL

Block: 59.04 Lot: 1.01

120 Northfield Avenue, West Orange

Case No. ZB-23-09

WHEREAS, SETON HALL PREPARATORY SCHOOL (the "Applicant") has applied to the Zoning Board of Adjustment of the Township of West Orange (the "Board"), for amended preliminary and final site plan approvals, in connection with its proposal to construct a two-story addition to the existing school building, on the property, identified as Lot 1.01 within Block 59.04 on the Official Tax Map of the Township of West Orange, more commonly known as 120 Northfield Avenue, West Orange (the "Property") and the following variance relief:

1. A "d(2)" expansion of a preexisting nonconforming use variance; and
2. A "d(3)" conditional use variance, pursuant to Section 25-7.1 of the Township of West Orange Land Use Regulations Ordinance (the "Ordinance"); and
3. A "c(2)" variance to permit a 28.3 square foot sign, whereas one square foot is permitted, pursuant to Section 25-15.3b.2 of the Ordinance; and
4. A "c(2)" variance to permit 124 parking spaces, whereas 1,042 spaces are required; and

WHEREAS, a public hearing, on notice, was held on such application on April 18, 2024, 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 and presentations and questions by interested parties has made the following factual findings and conclusions:

1. The Board and the Board's Professionals reviewed the application and deemed it to be complete.
2. The subject property is located on the south side of Northfield Avenue, a short

distance to the west of Rollinson Street, in the R-6 zone. Seton Hall Preparatory School is a private high school. The lot is 10.2 acres in area and developed with Seton Hall Prep's academic building and related facilities, including an athletic field and parking areas. The site has frontages and driveways on Northfield Avenue, Rollinson Street and Glen Road.

3. A mix of land uses is located in the surrounding area, including single-family residential, multifamily residential and office uses. The proposed site modifications are limited to the north end of the school building, beyond the front setback of the building. The area of the proposed addition is located approximately 100 feet from the closest property line, Northfield Avenue.

4. The Applicant proposes to construct a two-story addition to the existing school on the Property. The proposed addition would require the following variances:

- A "d(2)" expansion of preexisting nonconforming use variance; and
- A "d(3) conditional use variance, pursuant to Section 25-7.1 of the Township of West Orange Land Use Regulations Ordinance (the "Ordinance"); and
- A "c(2)" variance to permit a 28.3 square foot sign, whereas one square foot is permitted, pursuant to Section 25-15.3b.2 of the Ordinance; and
- A "c(2)" variance to permit 124 parking spaces, whereas 1,042 spaces are required.

5. These proposed deficiencies require variance relief governed by the criteria of N.J.S.A. 40:55D-70(d)(2), d(3) and (c)(2).

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

- i. A site plan prepared by Charles Stewart, P.E., P.L.S. dated September 7, 2023, revised January 3, 2024, consisting of nine (9) sheets;
- ii. An architectural plan set prepared by Donald Fiore, Architect, dated

November 23, 2022, consisting of two (2) sheets;

- iii. A Boundary and Topographic Survey prepared by Charles Stewart, P.E., P.L.S., dated July 25, 2022, consisting of one (1) sheet; and
- iv. A planning report prepared by John McDonough, L.A., P.P., A.I.C.P. dated September 3, 2023, consisting of five (5) pages.

7. Christopher Dochney, A.I.C.P., P.P., the Township/Board Planner, and Zayibeth Carballo, P.E., the Assistant Township Engineer (the "Board Professionals"), were duly sworn according to law.

8. The Board further relied on the report of the former Township/Board Planner, Paul Grygiel, A.I.C.P., P.P. dated January 19, 2024, consisting of six (6) pages.

9. The Board further relied on the report of Board Engineer John J. Hess, P.E., C.M.E. dated February 27, 2024, consisting of three (3) pages.

10. The Applicant offered testimony, in support of the application, from the following witnesses:

- a. Donald Fiore, Architect., having a business address of 508 Millburn Avenue, Short Hills, NJ;
- b. John McDonough, P.P., having a business address of 101 Gibraltar Drive, Suite 1A, Morris Plains, NJ; and
- c. Charles J. Stewart, P.E., having a business address of 2517 Route 35, Building 1, Suite 201, Manalapan, NJ.

11. The Applicant submitted two additional Exhibits which were marked for identification during the proceedings:

- Exhibit A-1 – Series of five (5) photographs taken September 16, 2021.
- Exhibit A-2 – Artistic Rendering dated April 18, 2024; and

Testimony Offered at the April 18, 2024 Hearing

12. Mr. Fiore was duly sworn according to law, provided his credentials, and was

accepted by the Board as an expert in the field of architecture.

13. Using Exhibits A-1, A-2, and the site and architectural plans, Mr. Fiore testified about the proposed project. He testified that: (i) the building and the entrance to the school face Northfield Avenue; (ii) the area of the building addition is tucked between the original West Orange High School building and the Tracey Gymnasium; (iii) the northernmost point of construction will be 100-feet from the Northfield Avenue curb line; (iv) the Applicant will be replacing the sloped walkway from the Northfield Avenue side to the gym entrance that was demolished in 2022 due to deterioration/safety concerns; (v) the entrance to the gym will be reestablished and the vestibule will be replaced; (vi) residential scale carriage lanterns lighting the walkway will remain; (vii) lighting in the brick steps will be added; and (viii) there will be no other substantial lighting features other than appropriate lighting around the base of the American flag.

14. Mr. Fiore further testified that: (i) the first floor will consist of an 1140 square foot classroom and a 310 square foot storage/mechanical room below the vestibule; (ii) the second floor will consist of an 1140 square foot classroom and the vestibule leading to the gym lobby; (iii) there will be monumental stairs lined on either side with planters for beautification; (iv) all classrooms will be accessible from interior corridors; (v) the addition will provide for cutting edge courses and provide competitive programming; (vi) there will be no increase in the student body; (vii) the gym and corridor walls are being replaced to increase energy efficiency; and (viii) sustainable air conditioning will be installed and natural gas will be discontinued and removed, resulting in significantly increased energy efficiency.

15. On questioning by the Board, Mr. Fiore testified that: (i) the addition fits in at a lower height than either of the existing adjacent structures; and (ii) the estimated construction

start date is Fall 2024 with a one-year construction period.

16. Responding to questions from the public, Mr. Fiore testified that: (i) all construction activities will be subject to the municipal ordinances; and (ii) there will be no security lighting facing out towards the residential neighborhood.

17. Mr. Stewart was duly sworn according to law, provided his credentials, and was accepted by the Board as an expert in the field of civil engineering.

18. Mr. Stewart testified that: (i) this is only a small area of the Property; (ii) he re-surveyed the Property and provided updated mapping; (iii) there is no increase in impervious coverage and no stormwater management will be required; (iv) the plans will be revised to address an area of disturbance discrepancy; and (v) the Applicant will merge lots 1.01 and 1.04 and fill in the pool per the requirements of an earlier 2012 Board approval.

19. Mr. McDonough was duly sworn according to law, provided his credentials, and was accepted by the Board as an expert in the field of planning.

20. Mr. McDonough testified that: (i) this is infill development on an established school site; (ii) private schools are a permitted conditional use in the zone; and (iii) this application provides for an inherently beneficial use.

21. Mr. McDonough further testified as to the Sica balancing test that: (i) the public interest includes quality education and necessary facilities to fulfill the academic mission of the school; (ii) there are minimal if any detrimental effects, as this is infill development, adds to the visual quality of the site, and has no impact on surrounding land uses; (iii) no reasonable conditions are needed to accommodate the school addition; and (iv) on balance, this is an extremely positive application as it enhances the inherently beneficial school use without adding intensity to the site.

22. As to the signage related “c(2)” variance, Mr. McDonough testified that: (i) the addition adds to the aesthetic of the building and helps identify the school; (ii) the sign is remote from residential uses; and (iii) it adds to the ambience of the building and creates a sense of space.

23. As to the parking related “c(2)” variance, Mr. McDonough testified that: (i) the addition provides no added intensity of use; (ii) the addition will provide for an enhanced learning environment; and (iii) there will be no increase in student or faculty population.

24. On questioning by the Board Planner, Mr. McDonough confirmed that the application also satisfies the “d(3)” conditional use variance standards, since all deviations relate only to existing conditions and there is no intensification.

DECISION

25. After reviewing the evidence submitted, the Board, by a vote of seven (7) to zero (0), finds that the Applicant has satisfied its burden of proving an entitlement to the requested expansion of a nonconforming use, conditional use, sign, and parking variances, pursuant to N.J.S.A. 40:55D-70(d)(2), (d)(3) and (c)(2), respectively.

26. The Board first notes that, to establish an entitlement to any 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.

27. In the case of (d)(2) expansion variances, the positive criteria is established by a showing of “special reasons” to permit “an expansion of a nonconforming use.” New Jersey Courts recognize such “special reasons” may be found where the proposed use inherently serves the public good. See, Saddle Brook Realty, LLC v. Twp. of Saddle Brook Zoning Bd. of Adj., 388 N.J. Super. 67, 76 (App. Div. 2006). Likewise, such special reasons for a d(3) conditional use variance may also be found where the proposed use is inherently beneficial.

28. The Board further recognizes that when a proposed use is held to be an "inherently beneficial" use, the positive criteria for (d)(2) and (d)(3) variance relief is presumptively satisfied. See Smart SMR v. Fair Lawn Bd. of Adj., 152 N.J. 309, 323 (1998), citing Burbridge v. Mine Hill Tp., 117 N.J. 376, 394 (1990); Accord, Cell v. Zoning Bd. of Adjustment, 172 N.J. 75, 90 (2002); Salt & Light Co. v. Willingboro, 423 N.J. Super. 282, 287 (App. Div. 2011), certif. den. 210 N.J. 108 (2012); House of Fire v. Clifton Bd. of Adj., 379 N.J. Super. 526, 535 (App. Div. 2005); Med. Ctr. v. Princeton Tp. Zoning, 343 N.J. Super. 177, 200 (App. Div. 2001). An "inherently beneficial" use is defined at N.J.S.A. 40:55D-4 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.

29. Additionally, as it pertains to all variance relief pursuant to N.J.S.A. 40:55D-70, an applicant must also demonstrate the negative criteria, by 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.

30. The Board also recognizes that, within the context of a request for a (d)(2) or d(3) 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 Sica decision, in evaluating the negative criteria for (d)(2) or (d)(3) 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. Sica v. Board of Adjustment of Tp. of Wall, 127 N.J. 152, 165-66 (1992); *see also* Homes of Hope, Inc. v. Eastampton Tp. Land Use Planning Bd., 409 N.J. Super. 330 (App. Div. 2009).

31. As it relates to the "negative" criteria for the Applicant's requested items of (d)(2) and (d)(3) variance relief, the Board finds that the Applicant has sufficiently demonstrated same, by way of satisfying the four (4) part balancing test set forth in the Sica case. In this regard, the Board finds that: (i) the public interest at stake is the provision of quality education and necessary facilities to fulfill the academic mission of the school; (ii) there are minimal or no detrimental effects as this is infill development which adds to the visual quality of the site and has no impact on surrounding land uses (iii) the Applicant is amenable to all reasonable conditions that the Board may seek to impose upon any ultimate approval; and (iv) on balance, the public interest benefits to be reaped from granting the requested items of (d)(2) expansion variance relief substantially outweigh the relatively modest, if any, detriments associated with the proposal.

32. The "positive" criteria for bulk variance relief sought under subsection (c)(2) of N.J.S.A. 40:55D-70 is established by a showing that (i) the granting of an application for variance relief would advance the purposes of the Municipal Land Use Law (the "MLUL"), as set forth in N.J.S.A. 40:55D-2, and (ii) the benefits to be reaped from the proposal will substantially outweigh any detriments associated therewith. The "negative" criteria for bulk variance relief sought under subsection (c)(2) of N.J.S.A. 40:55D-70 is established by the Applicant demonstrating that the proposed deviations (i) will not pose a "substantial detriment" to surrounding properties, and (ii) will not "substantially impair" the purpose and intent of a municipality's zoning ordinance and master plan. The focus of the "substantial detriment" prong of the negative criteria is on the

impact of the variance on nearby properties. The focus of the “substantial impairment” prong of the negative criteria is on whether the grant of the variance can be reconciled with the zoning restriction from which the applicant intends to deviate.

33. Here, the Board finds that the Applicant has satisfied the "positive" criteria in a manner sufficient to establish an entitlement to the requested items of bulk variance relief, pursuant to N.J.S.A. 40:55D-70(c)(2), by demonstrating that (i) the proposal promotes the purposes of the MLUL enumerated in subsections (a) and (i) of N.J.S.A. 40:55D-2, (ii) the proposed use is inherently beneficial, and (iii) the benefits of approving the proposal will substantially outweigh any detriments associated therewith. Specifically, the Board finds that the proposal promotes the public health, safety, and general welfare, as the addition will provide for enhanced educational opportunity and quality in the Borough. Additionally, the Board finds that, because the proposed addition will have an appearance that will be aesthetically pleasing, the proposal would promote a desirable visual environment. The Board further finds that these benefits would substantially outweigh the relatively modest, if any, detriments, associated with permitting the proposed signage and parking nonconformities.

34. The Board further finds that the Applicant has satisfied both prongs of the "negative" criteria in a manner sufficient to establish an entitlement to the requested items of bulk variance relief, pursuant to N.J.S.A. 40:55D-70(c)(2). In this regard, as to the signage variance, the Board finds that the sign will not pose a "substantial detriment" to surrounding properties, because the proposed sign adds to the aesthetic of the building and identify of the school; (ii) is remote from residential uses; and (iii) the sign will add to the ambience of the building and create a sense of space. As to the parking variance, there will be no “substantial detriment” to surrounding properties because (i) the condition currently exists; and (ii) there will be no increase

in student or faculty population. The Board further finds that the proposed sign and parking variances will not "substantially impair" the purpose and intent of the Borough's Master Plan and the Ordinance for the same reasons.

35. A Board may consider preliminary and final site plans simultaneously pursuant to N.J.S.A. 40:55D-51. The Board's authority is limited to whether the site plan conforms to the zoning ordinance and the applicable provisions of the site plan ordinance. See Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216 (1994). Here, the Board finds that, subject to the grant of the variances and the conditions imposed herein, the Applicant has satisfied the requirements for preliminary and final major site plan approval.

WHEREAS, the Board acted on this application at its meeting on April 18, 2024, 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, on the 16th day of May, 2024, that the application of **SETON HALL PREPARATORY SCHOOL**, for the aforementioned relief, be and is hereby GRANTED, subject to the following conditions:

- (1) The Applicant shall merge lots 1.01 and 1.04 and the deed of merger shall be subject to the review and approval of the Board Attorney and recorded in the County Clerk's office by the Applicant;
- (2) The Applicant shall fill in the existing pool subject to the review and approval of the Engineering Department;
- (3) 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;
- (4) 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;

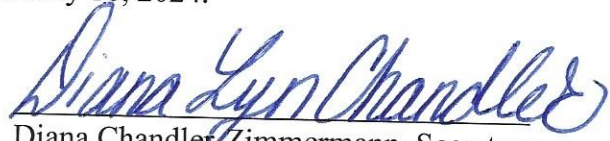
- (5) The Applicant shall be bound by all the evidence, including documents and testimony presented by the Applicant at the Public Hearing;
- (6) Pursuant to Sections 25-48.10(a) and 25-48.10(c), of the Ordinance, the variance relief granted by the Board and identified herein shall expire within two (2) years and one (1) day from the date of publication of a notice of the granting of such relief in either the official newspaper of the Township of West Orange or a newspaper of general circulation in the Township, unless, before the expiration of said two (2) year and one (1) day period, either (i) a building or construction permit is secured and issued or (ii) the actions authorized hereby have been taken; and
- (7) These Conditions shall be clearly printed on the engineering drawings submitted for filing in the official records of the Board.

ROLL CALL VOTE:

Member	Motion to Grant the Application Date: April 18, 2024						Resolution of Memorialization Date: May 16, 2024					
	Motion	2nd	Aye	Nay	Abstain	Absent	Motion	2nd	Aye	Nay	Ineligible	Absent
Neuer	X		X				X		X			
Schwarzbaum			X					X	X			
Barbee			X									X
Eben		X	X						X			
Ricci			X						X			
Scott			X									X
Weiss			X						X			
Dannemiller												
Scalora												
Sussman												

CERTIFICATION

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 May 16, 2024.



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

Dated: May 16, 2024