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MINUTES OF THE BOARD OF ADJUSTMENT
April 17, 2024

The meeting was broadcast live on Montclair TV34 and is available for on-demand viewing at the link below:

YouTube link: April 17, 2024, Meeting Link

The foregoing constitutes a verbatim record of the proceedings. Below is a summary:

ORDER:

The meeting was called to order at 7:30 pm by Assistant Secretary, Hussain Farwa. Ms. Farwa read the notice of compliance with the New Jersey Open Public Meetings Act and indicated that appropriate notice was forwarded to the officially designated newspaper of Montclair and posted outside the entry doors to the Municipal Building and on the Township website.

ROLL CALL:

Ms. Farwa called the roll. Attendance was as follows:

Table with 4 columns: Name, Present, Excused, Absent. Lists names of board members and their attendance status for the meeting.

Postponement Announcement: App. 2870: 5 Wheeler Street – 5 Wheeler Street LLC. (Block 4105, Lot 18) to be postponed until June 5, 2024, Zoning Board meeting.

1 **MINUTES:**

2
3 A motion was made to adopt the minutes of the March 20, 2024, meeting of the Board of
4 Adjustment as amended. The motion was seconded and carried as follows:

Name	Yes	No	Abstain
William Harrison, Chair	X		
John McCullough, Vice Chair	X		
Jay Church	X		
Angela Harris	X		
Jerry Simon	X		
Sebastian Vieira, First Alternate	X		
Jamena Grant, Second Alternate	X		

5
6 **RESOLUTIONS:**

7
8 **App. 2874: 6-10 Erie Street (Block 1302, Lot 7).** *Site-plan approval and a major subdivision*
9 *approval to subdivide the subject property to create two lots.*

10 A motion was made to adopt the resolution as presented. The motion was seconded and carried as
11 follows:

Name	Yes	No	Abstain
William Harrison, Chair	X		
John McCullough, Vice Chair	X		
Jay Church	X		
Angela Harris	X		
Jerry Simon	X		
Sebastian Vieira, First Alternate	X		
Jamena Grant, Second Alternate	X		

12
13 **NEW BUSINESS:**

14
15 **App. 2880: 10 Essex Avenue – Aubrey Sports Complex.** (Block 3301, Lot 61). Appeal of zoning
16 administrative decision.

17
18 Summary:

19 The zoning Board of Adjustment held a public hearing to discuss the appeal on the
20 Woodman Field project's zoning authorization. The Board determined it had jurisdiction
21 and heard arguments regarding the project's adherence to zoning requirements. Concerns
22 included setbacks, fencing, parking, and environmental impact. Despite the Board of
23 Education's claims of the project being an educational facility, and therefore exempt from
24 local zoning, the Board upheld the appeal, requiring the project to meet zoning standards
25 and appear in front of the Board with an application.

26
27 Robert Bullen, who spoke on behalf of the residents who filed the appeal, was sworn in.
28

1 Ms. Talley, Ms. Farwa, and Mr. Charreun were sworn in.

2

3 The following people participating in the appeal identified themselves:

4

Name	Role
Lori Reynolds	Representing Montclair Township
Ted J. Del Guercio	Representing the Board of Education
Bradley A. Harsch, Esq.	Counsel to Montclair Baseball Families

5

6 Mr. Sullivan gave a background to the matter and established that two components would need to
 7 be established in order to determine if the Board of Adjustment has jurisdiction to hear the matter.
 8 The first component determined that the appeal was timely filed within 20 days of the action taken
 9 by the zoning officer. The second component was that there was a complaint filed on this matter
 10 by the Board of Education against the Township of Montclair and Mr. Charreun which ended up
 11 in a stipulation of settlement. Mr. Sullivan established that there was no direct participation by
 12 neighbors in the settlement agreement and therefore, the neighbors were not precluded by the
 13 settlement from filing the appeal.

14

15 Mr. Church recused himself.

16

17 Mr. Charreun confirmed he acted on the revised plans on March 14th, 2024. The appeal was
 18 filed on April 1, 2024. A motion was made that the appeal was filed on time and that the Board
 19 has jurisdiction to hear the case. The motion was seconded and carried unanimously.

20

21 The Chair clarified that the hearing is not on the plans but on the question that has been raised by
 22 the appeal which was that the zoning permit should have been denied because the plans do not
 23 meet all the conditions of the conditional use. If it is established that the plans meet the conditions
 24 then the appeal should be denied, otherwise the appeal should be upheld.

25

26 Mr. Bullen presented the appeal on behalf of 14 neighbors residing on Champlain Terrace and
 27 Essex Avenue. Mr. Bullen shared that they support the notion that the baseball field should be
 28 rebuilt, however, a field should be built without variances and with minimal environmental damage
 29 on an already contaminated site. He added that the Board of Education should have followed the
 30 appropriate processes because this is a non-educational facility that is subject to zoning constraints.
 31 The settlement turned a blind eye to Municipal laws and by doing so violated the rights of an entire
 32 neighborhood. The aspects that are inconsistent with the requirements of the conditions of the
 33 conditional use are related to setbacks, fencing, parking/ traffic study, environmental damage,
 34 noise pollution, impervious surface, and stormwater run-off.

35

36 Ms. Reynolds representing the Township of Montclair pointed out that matters concerning
 37 impervious coverage and soil contamination are not referenced in the original appeal therefore, the
 38 Board shall stick with what has been referenced in the notice of appeal. Ms. Reynolds added that
 39 the proposed improvements at Woodman Field do not involve the expansion of the athletic
 40 facilities. The facility received site-plan approvals years ago and the plans need to be upgraded.
 41 Many issues being raised by the appellant have been dealt with previously to the satisfaction of
 42 the zoning officer and ultimately of the Township, which is reflected in the settlement.

1
2 Ms. Reynolds asked Ms. Talley if there were significant changes that the Board of Education
3 (BOE) agreed to concerning the setbacks. Ms. Talley said that significant changes were on Essex
4 Avenue and originally the fence and the retractable netting were on the property line. The BoE
5 agreed that the fence would be better located 30.5 feet from the property line which also provided
6 the ability to put excessive landscaping along Essex Avenue that intends to provide a visual screen
7 from all the activity on the field.
8

9 Ms. Reynolds asked if the concerned residents' residences were across the street. Ms. Talley
10 confirmed that both Champlain Terrace and Essex Street are separated by a roadway from the field
11 which provides a buffer between the field and the nearby residences.
12

13 Ms. Reynolds asked if a parking study was done originally when Woodman Field was built. Ms.
14 Talley said that it was done before her time, and she was unsure. She added that a parking study is
15 not required if it's an improvement such as this to an existing use. It is generally requested when
16 there is expansion or new uses, which is not the case with Woodman Field.
17

18 Ms. Talley added that this property is in the public zone which allows public schools in section
19 347-98 of the code to establish the standards of requirements for schools. It states that standards
20 and requirements for public schools of elementary and high school grades shall be the same as
21 specified for private schools in section 347-12. It does not cite the fence ordinance. It cites the
22 provisions that we had discussed earlier for schools as a conditional use. Therefore, there is no
23 requirement or standard or height for fences.
24

25 Ms. Reynolds asked to clarify whether the fence that has been implemented by the BOE is
26 described as an actual fence or netting. Ms. Talley clarified that it is a retractable netting that is up
27 during the day due to sports events and is not static 24/7.
28

29 Ms. Reynolds concluded that the sections of the ordinance that are referenced in this appeal do not
30 apply in this instance to the use of the fence as implemented by the BOE. Those are the only three
31 issues that have been raised under this appeal.
32

33 Mr. Sullivan, referring to Ms. Talley, said that a memo was sent to the Board on April 16th of the
34 revised plan which indicated that there were five areas of non-conformance. One of the conditional
35 use standards was that there must be a 50-foot setback for the outdoor play equipment. Two of
36 them deal with fences. One is a 40-foot-tall retractable located 30.55 feet from the Essex Avenue
37 property line. The other one is a 20-foot-tall retractable fence located on the property line along
38 Champlain Place. *Reading from the memo: There are two sets of nine-foot-tall bleachers*
39 *measuring 41 feet in length and 11.5 feet in length. And they're located 12 feet and 17 feet from*
40 *the Essex Avenue property line. And finally, part of the outfield is located within 50 feet of*
41 *Champlain Terrace. Those are the nonconformities with the conditional use standards that you*
42 *identified, correct? Ms. Talley confirmed.*
43

44 The Board asked if a parking study is not necessary because a precedent has already been set and
45 that there are no requirements for doing further studies of traffic because it's already a preexisting

1 condition. Ms. Talley said that it is at the discretion of the Board. Similar applications have been
2 reviewed, and a parking or traffic study was not required.

3 Mr. Harsch, working with David M. Eskew referenced the letter that was submitted to the Zoning
4 Board on behalf of Montclair Baseball Families. Mr. Harsch reiterated the premise of the letter in
5 which it is highlighted that the Woodman Field Project constituted “school facilities”, based on
6 the determination letter by the New Jersey Department of Education (NJDOE) dated September
7 1st, 2022. He added that since this matter was already settled, the Zoning Board must defer this
8 case to the State authority because townships are preempted when the state exercises its authority
9 to authorize a school facilities project to be built.

10
11 Mr. Harsch added that the appeal must be denied because this Board does not have the authority
12 to impose zoning conditions on the Woodman Appeal Project. He also pointed out that the
13 residents, although their motion to intervene was never actually granted in the litigation, were very
14 much adequately represented. The whole premise of the litigation was to try to get concessions
15 that would benefit the residents. The netting was moved further off the line, during the BOE
16 project. The size of the field was reduced as well. So, this idea that they haven't been somehow
17 adequately represented is incorrect.

18
19 The Chair commented that the letter Mr. Harsch referenced refers to funding eligibility that deals
20 with the cost the state would partially reimburse the Township's debt service for under the Bond
21 Act. One of the issues that was raised when that was before the voters was to what extent would
22 the State be reimbursing the interest payments on the debt and that was the purpose of the
23 submission which is addressed by the letter. The reimbursement of debt service includes several
24 facilities such as renovation to include the replacement of the natural grass field with a new
25 artificial turf field, new bleachers, pitchers bullpen, and batting cages. Those are some of the things
26 that are being said that are not within the required setbacks. Therefore, it is unclear how the letter
27 determines what is subject to the Zoning Board jurisdiction.

28
29 The Chair added that the letter states that one condition of the Department's approval was that all
30 needed outside agency approvals are required before the project may go to bid. If it were a school
31 facility project, it would have been required to go to the Planning Board for review before the
32 NJDOE ruled on it. The NJDOE does not have to adhere to the recommendations, but a process is
33 required to be followed both by the Municipal Land Use Law and the Educational Facilities Act.

34
35 Mr. Harsch responded that we are not discussing whether a Planning Board review is required
36 but it needs to be determined whether a Zoning Board review is required.

37
38 The Chair referring to the Board of Education of Clifton (BOEC) Appellate Division decision
39 commented that the BOEC applied to the Clifton Zoning Board and faced litigation for many years
40 for a school facility. No one contended that the Clifton Zoning Board did not have jurisdiction.

41 Mr. Bullen said that based on a conversation with Bernard E. Piaia at the NJDOE on October 27th
42 where he confirmed that Woodman Field is not an educational facility and that he would advise
43 Ms. Talley of that.

1 Anna Grossman, resident was sworn in. Ms. Grossman testified that she spoke to Mr. Piaia who
2 confirmed that the Woodman Field project should go through the proper process as it is a non-
3 educational facility.

4
5 John Osborne, resident was sworn in. Mr. Osborne said that he has been a construction manager
6 for a long time. The term non-conformances are not to be taken lightly and there are five non-
7 conformances.

8
9 Mr. Harsch commented that there was a settlement order in the case which applies here. The terms
10 of the settlement stated that no further land use requirements would be imposed on the Woodman
11 Field project. Proceeding with the appeal would be a violation of that order because the Township
12 and Mr. Charreun are bound by the settlement order therefore, they will not be able to enforce any
13 kind of determination that would be made by the Zoning Board.

14
15 The Board asked about the NJDOE requirement that certain conditions to be met. For instance,
16 there is a requirement that states that the property may be subject to environmental assessment and
17 environmental impact statement requirements of Executive Order 215. What does that require and
18 how does that apply or not apply?

19
20 Mr. Harsch responded that it might apply here but that is not the subject of the appeal due to which
21 it has not been addressed. However, even though it is a school facility project it does not contradict
22 the assertion that local Zoning Boards do not have the authority to impose zoning requirements.
23 He added that when the application was initially presented to the Planning Board in June 2022,
24 there was a statement in that application that said Woodman field facilities are being used by the
25 high school as part of the school physical education curriculum. That is a reference to this
26 exemption for the school facilities and it is quite likely that the reason that there were no zoning
27 requirements imposed at the time was because it was recognized that the BOE was claiming an
28 exemption for educational facilities.

29
30 The Board disagreed and said that if there was no final plan submitted to the Board that was also
31 inconsistent with zoning since it must get approval by the Board if it does not meet all the
32 conditions of the conditional use.

33
34 Mr. Harsch said that no final plan was needed because the whole thing was exempt from review
35 by the Zoning Board.

36
37 The Board disagreed with this argument.

38
39 Ms. Grossman commented on Executive Order 215 (EO215) and highlighted the preliminary
40 eligible cost signed by Mr. Piaia that stated, “school facilities, projects meeting certain state
41 assistance percentage, at least 20% of total project cost and cost thresholds and not otherwise
42 exempted are required to comply with EO 215, including the preparation and submission of an
43 environmental assessment or an environmental impact statement as applicable before site
44 preparation and or construction activity.” Ms. Grossman added that in her opinion the only reason
45 EO 215 was not done is because the architects labeled this project as a rehabilitation and not a new
46 construction.

1
 2 The Board commented that it was unfortunate that the matter was not resolved sooner and that the
 3 field needs to be fixed quickly. If the BOE had appealed the non-approval of the zoning permit to
 4 the Zoning Board, they would have gotten a quick answer and if they had applied in November,
 5 they would have been heard at the latest in January. The September 1st, 2022, letter from the BOE
 6 has nothing at all to do with the school facility, educational facilities, or other facilities distinction
 7 that the case law deals with. It was ruling on eligibility for reimbursement and eligibility to use the
 8 money.

9
 10 The BOE did not follow the correct procedures after they got a recommendation from the Planning
 11 Board. If the BOE felt that the facility was a school facility, they should have applied to the
 12 Planning Board for a courtesy review. The ordinance clearly states that public schools are to be
 13 treated the same as private schools and therefore, under the case law and the definitions in the
 14 Educational Facilities Act, the Zoning Board has jurisdiction over the Woodman Field
 15 improvements and not the Planning Board since all the conditions of the conditional use are not
 16 met.

17
 18 A motion was made to grant the appeal. The motion was seconded and carried as follows:

19

Name	Yes	No	Abstain
William Harrison, Chair	X		
John McCullough, Vice Chair	X		
Jay Church	X		
Angela Harris	X		
Jerry Simon	X		
Sebastian Vieira, First Alternate	X		
Jamena Grant, Second Alternate	X		

20

21 **ADJOURNMENT:**

22

23 A motion to adjourn was made and seconded and the meeting was adjourned at 9:40 p.m.

24

25 Respectfully submitted,

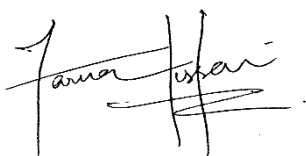
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31 Hussain Farwa

32 Assistant Planner

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