

**MINUTES OF THE BOARD OF ADJUSTMENT**  
**June 17, 2009**

PRESENT: Chair Harrison, Ms. Cockey, Ms. English, Vice Chair Fleischer, Mr. Kenney, Mr. Susswein and Mr. Whipple; also, Mr. Sullivan, Esq. and Mr. Charreun, Assistant Secretary

ABSENT: Mr. Burr, Ms. Holloway, and Mr. Franco, Secretary

Assistant Secretary Charreun called the roll and announced the regular meeting of the Montclair Board of Adjustment. Notice had been given in accordance with the Open Public Meetings Act.

On motion by Mr. Whipple, seconded by Ms. English, the **Minutes of the April 22, 2009** special meeting were adopted as modified, Mr. Fleischer abstaining.

On motion by Mr. Fleischer, seconded by Mr. Whipple, the following Resolution memorializing the Board's decision on the application of **Zeus Realty Corp., 120 Watchung Avenue** was adopted, as modified:

**WHEREAS**, Zeus Realty Corp., as owner, did make application, as amended, to the Board of Adjustment of the Township of Montclair in connection with the above-captioned property designated as Lot 22 in Block 2506 on the Township Tax Map and located in the N-C Neighborhood Commercial Zone as follows:

1. A request for certification under N.J.S.A. 40:55D-68 that the use of the property is a "nonconforming use" as defined in N.J.S.A. 40:55D-5 (incorrectly designated as N.J.S.A. 40:55D-3).

2. An appeal pursuant to N.J.S.A. 40:55D-70a of the Township Attorney's decision dated October 20, 2008 that the introduction of a retail convenience store on the property would require application to the Board of Adjustment for a variance pursuant to N.J.S.A. 40:55D-70d.

3. A request for a decision upon special questions pursuant to N.J.S.A. 40:55D-70b as follows:

a. Did the 1931 use variance result in the property become a conforming, permitted use or a nonconforming use?

b. Does the introduction of a retail convenience store use require a use variance application before the Board of Adjustment?

c. Does the Township's Ordinance prohibit mixed uses of a given property?

d. Does the introduction of a retail convenience store use on the property violate the Zoning Ordinance?

e. Is the introduction of a retail convenience store use “customary and accessory” to the gasoline filling station use?

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on May 20, 2009, at which time it was established that notice was properly published and that the property owners within 200 feet of the subject property had been properly served with notice; and

**WHEREAS**, the Board carefully reviewed the application and supporting documentation submitted by the applicant, as well as testimony presented at the public hearing and established the following findings:

1. The subject property located at the corner of Watchung Avenue and Park Street consists of 9,800 square feet and is improved with a one-story gasoline service station building and two gasoline pump islands under a canopy.

2. The subject property has been subject to a number of development applications as follows:

a. By resolution adopted June 30, 1931, the Board of Adjustment granted a use variance to demolish an existing building and construct a gasoline filling station in the Business Zone which allowed “any uses permitted for business trades” other than the following nine uses per the Township’s 1928 Zoning Ordinance: (1) bag cleaning, (2) blacksmith, horse-shoeing, (3) coal or lumber yard, (4) garage or group of garages for more than five motor vehicles, (5) motor vehicle service station, (6) milk bottling or distribution station, (7) storage or bailing of scrap paper, rags, old iron or junk, (8) any kind of manufacturing and any (9) trade, industry or use prohibited in an industrial zone.

b. By resolution adopted May 4, 1932, the Board of Adjustment granted a use variance to modify the size of the building footprint previously approved.

c. By resolution adopted November 21, 1935, the Board of Adjustment granted a use variance to allow construction of an addition to the existing building.

d. By resolution adopted June 28, 1951, the Board of Adjustment recommended a use variance/special exception to permit the installation of an additional 2,000 gallon gasoline storage tank which was approved by the Board of Commissioners by resolution adopted July 24, 1951.

e. By resolution adopted October 6, 1955, the Board of Adjustment recommended that a use variance/special exception be granted to replace the existing building and erect a new one-story building.

f. By resolution adopted November 19, 1970, the Board of Adjustment granted a use variance/special exception to permit lease and rental of passenger motor vehicles.

g. By resolution adopted January 21, 1987, the Board of Adjustment denied a use variance to allow the sale of not more than four vehicles.

h. By resolution adopted April 19, 1989, the Board of Adjustment denied a use variance to allow the sale of a maximum of four vehicles.

i. By resolution adopted December 6, 1989, the Board of Adjustment granted a use variance and site plan approval to allow the construction of a canopy and signs.

j. By resolution adopted May 17, 2006, the Board of Adjustment denied a use variance to allow demolition of the existing facility and construction of a retail bank with two drive-through windows.

3. Motor vehicle and gasoline service stations are not permitted uses in the N-C Neighborhood Commercial Zone. The applicant requested a certification pursuant to N.J.S.A. 40:55D-68 which provides in pertinent part: "The prospective purchaser, prospective mortgagee, or any other person interested in any land upon which a nonconforming use or structure exists may apply in writing for the issuance of a certificate certifying that the use or structure existed before the adoption of the ordinance which rendered the use or structure nonconforming". (emphasis added) A "nonconforming use" is defined by N.J.S.A. 40:55D-5 as "a use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment". Despite filing the aforementioned request for certification, the applicant in the application form conceded "[b]ecause the Property was granted its first use variance in 1931 to allow the Filling Station use, the Applicant does not believe that the Filling Station use is a statutory 'non-conforming use' and does not believe that, as a matter of law, the Board is legally able to issue a D-68 Certificate that the present Filling Station use is a statutory nonconforming use". The Board agreed with the applicant that the use was created by variance in 1931 as outlined in paragraph 2a above and is not a "nonconforming use" as defined in N.J.S.A. 40:55D-5 since it was not a lawful use prior to the adoption of an amendment to the Zoning Ordinance which fails to conform to the Zoning Ordinance by reason of such adoption. Consequently, the applicant is not entitled to a certification pursuant to N.J.S.A. 40:55D-68.

4. By virtue of the 1931 use variance, the Board determined the property is not a permitted use and is not a "nonconforming use" as defined by N.J.S.A. 40:55D-5. As stated in *Puleio v. Board*, 375 N.J. Super. 613, 619-621 (App. Div. 2005):

A use granted by variance has characteristics similar to both permitted and nonconforming uses. Indeed, there is limited case law suggesting that because a board votes on a variance and determines that the use is not offensive to the broad context of the ordinance, the use, in essence, becomes a conforming use. See *Industrial Lessors, Inc. v. City of Garfield, supra*, 119 N.J. Super. at 183, 290 A.2d 737. This suggests that a variance is much like a permitted use. A variance is generally allowed because, although not in compliance, it is not offensive to the zoning ordinance. *Funeral Home Management, Inc. v.*

*Basralian*, 319 N.J. Super. 200, 207, 725 A.2d 64 (App. Div. 1999). A zoning board may grant a variance to accommodate individual situations that require relief from restrictions otherwise applicable to the zone. *Ibid.* A variance relaxes the general rule of the ordinance to alleviate conditions specific to the particular piece of property. *Moriarty v. Pozner*, 21 N.J. 199, 210-211, 121, A.2d 527 (1956). Such an accommodation balances public and private interests and is in keeping with the principles of zoning principles. See *id.* at 211, 121 A.2d 527.

Nevertheless, there is also case law suggesting a variance is more like a nonconforming use. Specifically, “there exists a ‘strong legislative policy favoring land use planning by ordinance rather than by variance.’ ” *Funeral Home Management, Inc. v. Basralian*, *supra*, 319 N.J. Super. at 207, 725 A.2d 64 (quoting *Elco v. R.C. Maxwell Co.*, 292 N.J. Super. 118, 126, 678 A.2d 323 (App. Div. 1996); See Also *Kohl v. Mayor and Council of Fair Lawn*, 50 N.J. 268, 275, 234 A.2d 385 (1967) (use variance should be granted “sparingly and with great caution since they tend to impair sound zoning.”) This is similar to the principle that nonconforming uses “should be reduced to conformity as quickly as is compatible with justice.” *Town of Belleville v. Parrillo’s Inc.*, 83 N.J. 309, 315, 416 A.2d 388 (1980). A variance permits a use that avoids an “undue invasion of the right of private property by compelling conformance to an unsuitable permissible use, a burden upon the individual landowner that would be disproportionate to the common need.” *Moriarty v. Pozner*, *supra*, 21 N.J. at 211, 121 A.2d 527. Likewise, allowance of a nonconforming use derives from the principle that it is inequitable to strip a person’s vested property rights retroactively. Therefore, a nonconforming use is permitted to continue so long as the use does not substantially change. *Bonaventure Intern, Inc. v. Borough of Spring Lake*, 350 N.J. Super. 420, 432, 795 A.2d 895 (App. Div. 2002).

Although a variance has characteristics similar to both a permitted and a nonconforming use, a use permitted by variance is clearly distinct. Therefore a legal use may fall into one of three different and distinct categories: (1) a permitted use – one permitted under the zoning ordinance that is conforming in every way; (2) a use granted by variance – one not permitted by the terms of the zoning ordinance because it does not conform to the listed permitted uses in the zone, but one that the Municipality has voted upon and allowed despite its non-conformance; and (3) a nonconforming use – one that was legal and permitted prior to an ordinance change, but that no longer conforms with the current zoning ordinance.

The applicant's use of the property is limited to the parameters set forth in the various use variance approvals previously granted by the Board. Although there is no per se prohibition to mixed uses in the N-C Neighborhood Commercial Zone, that fact is not material to the issues at hand. Since none of the previously approved use variances authorized a retail convenience store in association with the approved motor vehicle service station, the introduction of a retail convenience store to the site requires a variance pursuant to N.J.S.A. 40:55D-70d.

5. The Board determined that the replacement of the service bays with a convenience store would require a variance pursuant to N.J.S.A. 40:55D-70d since the gasoline service station use would remain. The Board determined it was not appropriate or necessary to respond to the applicant's request for a decision on special questions relating to "mixed uses" on the property since the Board's determination that a use variance is required would remain irrespective of how the Board ruled on those questions.

6. As discussed above, the Board determined the use of the subject property created by variance is distinct from both a permitted use as well as a nonconforming use as defined in N.J.S.A. 40:55D-5. Nevertheless, the Supreme Court, in dicta, has referred to uses or structures created by variance as "nonconforming." See e.g. *Grundlehner v. Dangler*, 29 N.J. 256, 269 (1959) and *Pieretti v. Bloomfield*, 35 N.J. 382, 387 (1961). This is, of course, perfectly reasonable as the grant of a variance does not make such a use or structure conforming, it still does not conform to the zone's requirements, but it is permitted subject to the conditions and limitations attached to the approval. Thus, in *Grundlehner*, the Court made clear that the analysis to be employed upon a subsequent application to expand a use created by variance is the same as that employed in considering the expansion of a prior nonconforming use. And see *Stop & Shop v. Bd. of Adjustment*, 162 N.J. 418, 439-440 (2000), making clear that a use created by way of variance cannot be unduly expanded or changed without further application to the zoning board of adjustment. See Cox, New Jersey Zoning and Land Use Administration (2008) p. 327.

This determination is also consistent with the mandate of the Montclair Township Zoning Ordinance. Section 347-2 defines a nonconforming use as "one that does not conform to the regulations of the zone in which it is situated". Section 347-112 provides "the nonconforming use . . . shall not be expanded, increased or enlarged." Section 347-113 further provides that "a nonconforming use in existence at the time of the passage of this chapter shall not be permitted to be changed to any use other than a conforming use". Pursuant to the Montclair Township Zoning Ordinance, it is clear the introduction of a retail convenience store at the subject property would require application to the Board of Adjustment for a variance pursuant to N.J.S.A. 40:55D-70d since the gasoline service station would remain."

7. The applicant asserted the proposed retail convenience store use is customary and accessory to the gasoline filling station use and relied on the unreported opinion in *Belkin v. Zoning Board of Adjustment of the Borough of Highland Park*, Docket No. L-6580-97 (App. Div. 1998). The Board found the Court in *Belkin* did not rule as a matter

of law that a retail convenience store is a permitted accessory use to a gasoline service station. Rather, the Court deferred to the Zoning Board's factual findings and held that based on the specific facts of that case, the Zoning Board's determination that the convenience store was an accessory use to a gasoline service station was not arbitrary or capricious. Such a determination is a mixed question of law and fact and the Board found the applicant failed to present sufficient testimony to establish the introduction of a retail convenience store at this location would not require a variance pursuant to N.J.S.A. 40:55D-70d. *Sun Company, Inc. v. Zoning Bd. of Adj. of Borough of Avalon*, 286 N.J. Super. 440 (App. Div. 1996).

8. Based upon the foregoing, the Board determined that the Township Attorney's October 20, 2008 conclusion that the introduction of a retail convenience store at the subject property requires a use variance is correct.

9. The applicant initially filed a request to direct the issuance of a permit pursuant to N.J.S.A. 40:55D-35, however, at the public hearing the applicant's attorney conceded the request was improper and withdrew the request.

**WHEREAS**, the Board, based on the aforementioned findings concluded that the applicant (1) was not entitled to a certification under N.J.S.A. 40:55D-68 and did not present sufficient evidence to (2) overturn the determination by the Township Attorney dated October 20, 2008 or (3) establish through a request for a decision on special questions that the introduction of a retail convenience store on the property would not require application to the Board of Adjustment for a variance pursuant to N.J.S.A. 40:55D-70d.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Adjustment of the Township of Montclair, that the within application of Zeus Realty Corp. is hereby denied and dismissed in its entirety.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that a copy of this resolution be transmitted to the applicant, Township Manager, Township Council and Township Clerk.

On motion by Mr. Fleischer, seconded by Mr. Whipple, the following Resolution memorializing the approval of the application of **Chris Noble, 245 Midland Avenue** was adopted:

**WHEREAS, Chris Noble**, as owner, did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA 40:55D-70c for a front yard setback less than required pursuant to **Montclair Code Section 347-45B(1)** in connection with a proposed roof over an existing uncovered front porch on his single-family dwelling on property designated as Lot 56 in Block 2407 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey dated September 23, 2005, and a plot plan, floor plan, and elevations, prepared by SKM Design Inc., dated April 13, 2009; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on May 20, 2009 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

**WHEREAS**, the Board carefully reviewed the testimony presented and established the following findings:

1. The subject property is an interior lot located in the R-1 One Family Residential Zone and contains a 2½-story single-family dwelling and a detached garage at the rear of the lot. The subject property measures 55 feet in width along its frontage and contains 11,979 square feet in lot area.

2. A roof supported by columns is proposed to cover an existing uncovered front porch that is the full width of the dwelling. The applicant testified that based on information he obtained from the previous owners of the property, that a roof had existed over the uncovered front porch, which was removed sometime in the late 1970s. This is also supported by the fact that the front wall of the house has a door at the second level that would have provided access to a balcony atop the previous roof.

3. The average front yard setback of the 4 nearest dwellings, 2 on either side of the subject property, is 64.5 feet, which is the required front yard setback for the subject property. The proposed covered front porch would have a front setback of 50 feet, as measured from the southerly front corner of front porch and a variance is requested. The proposed construction would meet all other zoning requirements.

4. The Board determined that the requested variance could be granted. The dwelling located at 239 Midland Avenue is located approximately 100 feet from the front property line which is not a characteristic front setback on Midland Avenue and skews the front setback requirement for the subject property. If not for the unusually large setback of the dwelling at 239 Midland Avenue, the applicant's proposal would conform to the zoning requirements. The proposed roof over the existing uncovered front porch conforms to all other zoning requirements and is in keeping with character of the dwellings in the neighborhood; and

**WHEREAS**, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

**WHEREAS**, the Board, based on the aforementioned findings, concluded that the applicant did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance could be granted without substantial detriment to the public good and would

not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the within application of **Chris Noble** is hereby approved; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that a copy of this resolution be transmitted to the applicant, Township Manager, Township Council, Township Clerk, Township Engineer and Construction Code Official.

On motion by Mr. Fleischer, seconded by Mr. Whipple, the following Resolution memorializing the approval of the application of **Frank Vilardi, 123 Gordonhurst Avenue** was adopted:

**WHEREAS, Frank Vilardi**, as owner, did make an application to the Board of Adjustment of the Township of Montclair for a variance pursuant to NJSA 40:55D-70c from **Montclair Code Section 347-45A(2)** to permit a third story in connection with the construction of a dormer addition in the roof at the rear of his single-family dwelling on property designated as Lot 59 in Block 3502 on the Township Tax Map and located in the R-1 One-Family Zone; and

**WHEREAS**, the applicant submitted a property survey dated March 25, 1993 and a plot plan, floor plans, and elevations prepared by Chris Blake Architect, dated March 6, 2009; and

**WHEREAS**, this matter came on to be heard at a meeting of the Board of Adjustment held on May 20, 2009 at which time it was established that notice was properly published and the property owners within 200 feet of the property in question had been properly served notice; and

**WHEREAS**, the Board carefully reviewed the testimony presented and established the following findings:

1. The subject property is an interior lot located in the R-1 One-Family Zone. The property contains a 2½-story, single-family dwelling with a detached garage in the rear yard. The property measures 50 feet in lot width and contains 8,270 square feet in lot area.

2. A dormer addition is proposed in the roof at the third floor at the rear of the dwelling. The ordinance permits within a half story, dormers that do not exceed 50 percent of the width of the façade. For the subject property, approximately 14.25 feet of dormer width would be permitted in the roof at the rear of the dwelling without a variance and the proposed dormer addition measures 19 feet in width.

3. The proposed dormer would allow for the creation of a guest bedroom on the third floor and the expansion of an existing third floor powder room into a bathroom. The dwelling has existing smaller dormers on the front and sides of the dwelling's hip

roof that are in compliance with the ordinance. The existing dwelling has a conforming height of 34.5 feet measured to the ridgeline of the existing roof and the proposed dormer would match the ridgeline height of the dwelling.

4. The Board determined that the variance requested could be approved as submitted. The proposed dormer can not be reduced in size any further and still provide the reasonable utility of the interior plan. The dwelling would remain in keeping with the size, scale, and character of the existing dwellings in the neighborhood. The overall height of the dwelling would not be increased; and the proposed dormer addition would not be visible from the street or have a negative impact on nearby properties.

**WHEREAS**, the Board, based upon the foregoing findings, concluded that the applicant proved peculiar and exceptional practical difficulties and exceptional and undue hardship and did prove that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and the zoning ordinance pursuant to NJSA40:55D-70C(1); and

**WHEREAS**, the Board, based on the aforementioned findings, concluded that the applicant did prove that the purpose of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, and proved that the benefits of the deviation would substantially outweigh any detriment and proved that the variance could be granted without substantial detriment to the public good and would not substantially impair the intent and purpose of the zone plan and zoning ordinance pursuant to the requirements of NJSA40:55D-70C(2); and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Adjustment of the Township of Montclair that the within application of **Frank Vilardi** is hereby approved; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that a copy of this resolution be transmitted to the applicant, Township Manager, Township Council, Township Clerk, Township Engineer and Construction Code Official.

Chair Harrison was recused and Vice Chair Fleischer called the application of **Omnipoint Communications, Inc., 153 Park Street** for the purpose of scheduling special meeting dates. James Pryor, Esq., attorney for the applicant, was not present. Mr. Sullivan stated that Mr. Pryor had indicated to him several dates to consider for a special meeting. Terry Thornton, Esq., resident of 160 Park Street, and objector to the application was present. She provided some information regarding the situation with the Township public works property and potential meetings between the representatives of the Township and Omnipoint. After some discussion, a special meeting date of July 29, 2009 was selected to continue the application. No further notice would be given. The Board had been granted an extension of time on the application by Mr. Pryor.

The continuation of the application of **Joseph & Holly Christovao, 22 Macopin Avenue** was postponed to the July 15, 2009 regular meeting of the Board, at the applicants' request. No further notice would be given. The Board was granted an extension of time on the application. The continuation of the application of **Steve**

**Marshall, 200 Claremont Avenue** was also postponed to the July 15, 2009 regular meeting of the Board, at the applicant's request. No further notice would be given. The Board was granted an extension of time on the application. The application of **Wallwood Gardens, Inc, 400 Orange Road** requested a postponement of the continuation of the application until the September 17, 2009 regular meeting of the Board. On motion by Ms. Cockey, seconded by Mr. Whipple, the request was approved, subject to the condition that the applicant completes public notice for the September 17, 2009 date. The Board was granted an extension of time on the application.

Chair Harrison called the application of **Mark Haefeli, 129 Llewellyn Road**. Mr. Whipple recused himself for this application. Mark Haefeli, and John Collins, Architect, were sworn. Mr. Collins described the application for variances to allow a westerly side yard setback less than required and a rear yard setback less than required in connection with the proposed construction of a detached garage in the rear yard of the property. He stated that the subject property is located in the R-0 Mountainside Zone and measures 57.17 feet in width across its frontage and 55.67 feet in width across the rear yard. The lot is relatively small in size for the R-0 Zone, particularly in width. In the R-0 Zone, accessory structures, such as detached garages, require minimum side yard setbacks of 12 feet and 18 feet, and a minimum rear setback of 10 feet. He stated that there is presently no garage on the property and the existing driveway from Llewellyn Road does not extend into the rear yard. On December 10, 2003, the Board approved a variance application for a westerly side setback and a rear yard setback of 4 feet for a detached garage. The proposed garage from 2003 was not constructed and the variances granted in 2003 have since expired. The previously approved plan for a detached garage depicted a 20 foot by 20 foot garage and the height of that proposed garage was 16 feet 9 inches. The current proposal is also for a 20 foot by 20 foot garage, however, the westerly side yard and rear yard setbacks have been increased from 4 feet to 6 feet and the height of the proposed garage has been reduced to a zoning compliant 15 feet. The driveway would be extended up to the proposed garage. These changes in the plan were made in response to certain zoning amendments that have occurred since the previous approval. The Board questioned the applicant and Mr. Collins.

The Board discussed the application. The relatively small size of the property in the R-0 Zone, limits the ability of the applicant to provide the required setbacks for the proposed detached garage. Maps of the property depict that a detached garage previously existed in the same area of the rear yard and the proposed plan calls for a shorter height and larger setbacks than what was previously proposed in 2003. Based upon the Board's particular knowledge of local conditions, the proposed detached garage is consistent with the character of the neighborhood and will not adversely impact the public good. On motion by Mr. Fleischer, seconded by Ms. Cockey, the application was approved.

Chair Harrison called the continuation of the application of **Immaculate Conception High School, Codey Field - 267 Orange Road**. James Lott, Esq. appeared as attorney for the applicant. He recalled George Siller, Professional Engineer, who was still under oath. Mr. Siller described sheet C-7, Floodplain Plan which was marked as an exhibit. Mr. Lott also recalled Joseph Romano, Licensed

Surveyor, who was still under oath. Mr. Romano described the revised property survey with flood zone information from the FEMA Flood Insurance Rate Maps depicted, which was also marked as an exhibit.

Marked into evidence were:

A-14 Floodplain Plan, sheet C-7, by BF Langan Consultants LLC, dated June 16, 2009

A-15 Revised property survey, by Langan Engineering and Environmental Services with flood zone information depicted

Mr. Siller stated that Exhibit A-14 depicts the 100 year flood line in green based on cross-section information from FEMA maps. The red line on the exhibit depicts the floodway line on the FEMA maps. The DEP 100 year flood line is depicted in blue and was plotted by using the approximation method allowed by the DEP for unstudied streams, which adds 1 foot in elevation to the FEMA 100 year flood line shown in green. The floodway area on the site is located between front property lines and the red line. No fill is permitted in the floodway area. The floodplain is located between the red and blue lines and pursuant to DEP regulations any construction in this area has to be 1 foot above grade, including access to the structure. They are seeking to avoid construction in the floodplain which involves DEP permitting and impractical construction methods with significantly increased costs. The area outside of floodway on the property does not accommodate a field house easily and the floodway area prohibits the construction of access to the site from Orange Road or Draper Terrace. The proposed location of the field house on the site plan is not located in a floodplain and would be the best location from an engineering perspective. Access from Sears Place does not involve environmental permitting from the DEP. The Board questioned the witness extensively. Mr. Siller stated that a detailed stream study may produce a different 100 year flood line than the FEMA cross-sections, since there would be more detailed information involved. He also stated that the DEP rules contain a number of exceptions relating to construction of a private residence that may not pertain to the proposed structure. The DEP can also grant certain hardship allowances for other uses that are not private residences. He has not had extensive contact with the DEP regarding the project. Chair Harrison called for questions from the public.

Leon Leach, 59 Madison Avenue, asked several questions about either rebuilding or renovating the existing building. Mr. Siller stated that the existing building is located in the floodway. Reconstruction of a building in the same location would be problematic due to DEP regulations. Renovations, depending on the scope and code issues that could arise, may also trigger DEP regulations.

Luther Flurry, 16 Madison Avenue, asked several questions about the methodology used in creating the Exhibit A-14 Floodplain Plan and the requirements for access to a building in the floodplain.

Michael Manning, 16 Sears Place, asked several questions about the alternatives available for access to the site from Orange Road through the depicted floodway as opposed to the proposed access from Sears Place.

The Board questioned the witness. He stated that the access road is only subject to DEP review if the proposed field house or the access itself is in the floodplain.

Mr. Lott called Joseph Haines, Architect, who was sworn and stated his qualifications.

Marked into evidence were:

A-16 Sheet A-1, Floor Plan, prepared by Dassa Haines Architects, revised to February 6, 2009

A-17 Sheet A-2, Elevations, prepared by Dassa Haines Architects, revised to February 6, 2009

Mr. Haines described the subject property, the existing field house, and the proposed field house. The existing building was built over 90 years ago as residence and is not suitable for use as a field house for a number of reasons, including the size of the rooms, the unsuitability of the restrooms and other facilities, the arrangement of the rooms over 2 stories, the accessibility of the building and the interior spaces, and several and code issues. The proposed building was designed to accommodate the use and address code and accessibility issues. The original plan redesigned in order to incorporate a more residential design than previously proposed. He described the floor plan in detail. The Board questioned the witness. Mr. Lott stated that the owner of the adjoining garden apartment has no interest in getting involved in an arrangement in which the applicant could share the existing driveway and/or the parking area used by the apartments. Mr. Haines stated that location of the existing playing field prevents the field house from being shifted closer to the field. He could look into changing the shape of the building in order to preserve existing trees in the vicinity of the proposed building. He stated that the building has been designed for the functions needed by the applicant and for the number of people that would utilize it. Chair Harrison called for questions from the public.

Luther Flurry, 16 Madison Avenue, asked several questions about the program requirements used in the design of the building.

Virginia Cornue, 129 Lincoln Street, asked several questions about the program requirements and the potential renovation of the existing building as well as the architectural design of the proposed building. She also asked whether proper facilities were proposed in the field house for female student athletes.

Leon Leach, 59 Madison Avenue, asked several questions about the program requirements and the potential renovation of the existing building.

Jarvis Hawley, 17 Grenada Place, asked several questions about the program requirements and the design of the proposed building and site. He also asked where referees would park on game days and inquired how code issues with the existing building could be rectified.

Michael Manning, 16 Sears Place, asked several questions about the program requirements, the potential renovation of the existing building, and the design of the proposed building.

The Board took a short recess.

Milt Horowitz, 17 Madison Avenue, asked several questions about the program requirements and the potential renovation of the existing building as well as the design of the proposed building. He asked if the height of the building could be reduced.

Clinton Taylor, 123 Elm Street, made several statements and did not ask a question.

Mark Janifer, 15 Madison Avenue, asked several questions about the potential renovation of the existing building and the use of the existing building in its current condition. He also inquired about various design options that would reduce the size of the proposed building.

Virginia Cornue, 129 Lincoln Street, asked about the elevation drawings and the various design options that would reduce the size of the proposed building or improve its appearance. She also asked if any energy conservation methods are incorporated into the design.

Audrey Hawley, 17 Grenada Place, asked about the interior layout, the height of the proposed building, and whether the height of the building could be lowered. She also asked if there is a specific code or rule that requires separate bathroom facilities for coaches, spectators, and student-athletes.

Michael Manning, 16 Sears Place, asked if a temporary type of facility was considered instead of the proposed building since the field is not used the entire year.

Chair Harrison announced that the application would be continued at a special meeting on July 8, 2009 at 8:00 pm and that no further notice will be given. The Board was granted an extension of time. On motion by Mr. Whipple, seconded by Mr. Susswein the meeting was adjourned.