

MINUTES OF THE BOARD OF ADJUSTMENT
July 8, 2009

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

ABSENT: Mr. Burr and Mr. Franco, Secretary

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

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 and described a revision to the site plan. The proposed parking area has been removed. The access from Sears Place is still proposed and would now provide access to a paved driveway and turn-around area on the property for emergency vehicles and deliveries only. The revised Site Plan, Sheet C-2, was marked as exhibit A-18. He also stated that since the last Board meeting, he had contacted the Flood Hazard Program of the DEP and submitted a small scale version of the Floodplain Plan, Sheet C-7, to them that depicts the proposed building located partially in the floodplain, which was marked as Exhibit A-19. The DEP informed him that the layout depicted on Exhibit A-19 would require a Flood Hazard permit, and that the building would either have to be flood-proofed or raised 1 foot above the flood elevation. He stated that these issues represent significant increases in the cost of construction and create other problems with construction and maintenance. He stated that the better option is to avoid construction in flood plain and utilize the area of the property that is located outside of the floodplain.

Marked into evidence were:

- A-18 Site Plan, sheet C-2, by BF Langan Consultants LLC, dated July 7, 2009
- A-19 Reduced size Floodplain Plan, sheet C-7, by BF Langan Consultants LLC, dated June 16, 2009 depicting the proposed building located partially in the floodplain

The Board questioned the witness extensively. Mr. Siller stated that he did not consider a revised building footprint that would fit into the area on the north side of the property to the east of the floodplain line. Mr. Lott stated that the applicant has stipulated that they would continue to park on the same streets which they have previously parked on, which did not include Sears Place. Mr. Siller stated that the owner of the adjoining apartment complex is not interested in allowing the applicant to utilize the existing driveway to access the subject property. Chair Harrison called for questions from the public.

Luther Flurry, 16 Madison Avenue, asked several questions about emergency access requirements and about the DEP permitting process.

Leon Leach, 59 Madison Avenue, asked several questions about either rebuilding or renovating the existing building.

Melissa Grace Hallock, 25 Madison Avenue, stated she had photographs of the street parking in the neighborhood that related to her questions. She was sworn and provided the details on the photographs. She asked questions about the impact of the proposal on street parking.

Louise Brewington, 279 Orange Road, asked how the proposal would impact stormwater flow in the area.

Michael Manning, 16 Sears Place, asked several questions about the DEP permitting process. He also asked about tree removal and the options in relocating the building.

Mark Janifer, 15 Madison Avenue, asked several questions about various design and location options and the differences in cost. He also asked how the applicant's stipulation on where they would park could be enforced.

Michael Manning, 16 Sears Place, asked if the Sears Place access could be eliminated completely and whether the DEP would allow the proposed emergency and service access through the regulated areas near Orange Road or Draper Terrace,

The Board questioned the witness. Mr. Siller stated that the applicant is not prepared to relocate the proposed building into the floodplain and that he is recommending that the proposed building be located outside of the floodplain.

Mr. Lott called Peter Steck, Professional Planner, who was sworn and stated his qualifications. Mr. Steck described the existing property and the proposed application in detail.

Marked into evidence was:

A-20 Planner's Exhibit consisting of several maps and photographs

Mr. Steck stated that the existing building was not designed for the use of a field house and described the proposed plan and the variances requested. The field house use has been there for a long time and that there has been no observed detriment to residential neighborhood. He stated that the lot is unusually shaped and should be treated as a through lot. He clarified how the side lot lines should be identified and that there is no rear yard or rear line on the lot. The zoning ordinance allows schools as a conditional use in the R-1 Zone. The proposal is not for a school building, but for a building that acts as a component of a school. It is typical in urbanized areas to have athletic facilities for schools in remote locations from the actual school building. A school is an inherently beneficial use providing a significant public benefit, and a component of

a school, such as the proposed field house, also qualifies as an inherently beneficial use. The use of the field and the level of operation of the property are not changing as a result of the proposed building. The additional traffic volume associated with the new access on Sears Place is extremely low since it is limited to emergency and service vehicles. The proposed field house is in the most appropriate location on property, adjacent to a parking lot for a multifamily use and outside of the floodplain. The proposed location is in keeping with what would be considered good common planning practices in terms of locating a building. Reasonable conditions can be imposed by the Board to mitigate certain impacts associated with the proposed changes to the site. The Master Plan Re-examination Report calls for the preservation of open space and for going above and beyond existing environmental regulations of the State. The application is consistent with these goals and should be approved.

The Board questioned the witness. Mr. Steck further described his opinions on the subject property being a through lot, how the property lines should be designated, and how to consider the appropriate minimum setbacks. He stated that due to the irregular shape of property, flood regulations on the property, and the low profile design of the field house, the proposed location and proposed setbacks are appropriate. The field and the proposed field house are fundamentally related to the school which is an inherently beneficial use. There are no substantial negative impacts associated with the application.

The Board took a short recess. Chair Harrison called for questions from the public.

Luther Flurry, 16 Madison Avenue, asked several questions about the Planner's testimony, the plans, any change in the use of the property, parking requirements, and the impacts to the neighborhood.

Milt Horowitz, 17 Madison Avenue, asked several questions about the Planner's testimony. He asked if the food concession stand requires a separate use variance.

Mark Janifer, 15 Madison Avenue, asked several questions about the Planner's testimony. He asked if the proposed field house is necessary in order to accommodate the schools athletic programs. He also asked what types of uses could potentially utilize the proposed building if the school was no longer the owner of the property in the future. He asked how the use would not expand considering the new and improved building.

Michael Manning, 16 Sears Place, asked several questions about the Planner's testimony. He asked if the project would have any negative impact on any other property in the area.

Leon Leach, 59 Madison Avenue, asked several questions about the Planner's testimony. He asked what would be considered a substantial negative impact by the Planner.

Audrey Hawley, 17 Grenada Place, asked several questions about the Planner's testimony. She asked if the increase in the use of the field over the years by outside

users with expanded hours should be considered an expansion of a nonconforming use. Mr. Steck stated that the Board can limit the outside users and hours of operation of the field and the proposed field house as part of an approved application.

Renee Baskerville, 371 Orange Road, asked several questions about the Planner's testimony and asked for a clarification on why the use of the field and the proposed field house is considered an inherently beneficial use. She also inquired about statements made by the Planner regarding open space preservation and traffic generated by the proposed building.

Jarvis Hawley, 17 Grenada Place, asked what time frame was considered in the statements made regarding the history of the use of the property.

Margaret McCray, 6 Carey Court, asked if the width of Sears Place would be adequate for emergency vehicle access.

Mark Janifer, 15 Madison Avenue, asked several questions about the frontage of the subject property on Sears Place.

Michael Manning, 16 Sears Place, asked several questions about the frontage of the subject property on Sears Place.

Luther Flurry, 16 Madison Avenue, asked how wide Sears Place is.

Chair Harrison announced that the application would be continued at a special meeting on September 9, 2009 at 7:30 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.