

MINUTES OF THE BOARD OF ADJUSTMENT
September 9, 2009

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

ABSENT: Vice Chair Fleischer (recused), Ms. Holloway, Mr. Burr (recused) 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 presented a revised plan. The plan depicts modifications to the proposed building footprint, building location, paved driveway/turnaround are for delivery and emergency use from Sears Place, floor plan, elevations, fences, and drainage plan. The footprint of the proposed building has been shifted to the north, towards Sears Place, and to the east, towards the playing field. The new location of the building would help to preserve more existing trees along the easterly property line. The trash enclosure was also relocated away from the property line and is located along the proposed driveway.

Marked into evidence were:

- A-21 Site Plan, sheet C-2, by BF Langan Consultants LLC, dated August 25, 2009
- A-22 Planning Department memorandum, dated September 4, 2009
- A-23 Review letter from Board Engineer, dated August 31, 2009
- A-24 Stormwater Management Report, prepared by Langan Consultants LLC, dated August 24, 2009

The Board questioned the witness extensively. Mr. Siller described the proposed driveway entrance from Sears Place further. The plan can be modified by providing a solid fence at least 5 feet tall to screen the loading area as required by ordinance. Chair Harrison called for questions from the public.

Milt Horowitz, 17 Madison Avenue, asked several questions about the shifting of the building footprint and the redesigned drainage basin.

Michael Manning, 16 Sears Place, asked several questions about the shifting of the building footprint, the trash area, the redesigned driveway entrance and site lighting.

Mark Janifer, 15 Madison Avenue, asked several questions about the fences, existing trees, and the detention basin near his property line. He also asked questions

about the possibility of relocating the proposed building to another location on the property.

Luther Flurry, 16 Madison Avenue, asked questions about the surveying of the existing conditions. Mr. Siller stated that Mr. Romano is the surveyor and that he is not present. Mr. Flurry also asked how many average sized cars could potentially park on the proposed driveway and turnaround area. Mr. Siller stated that 3 vehicles could potentially fit on that area, although no parking is proposed.

Melissa Guerra, 152 Lincoln Street, asked questions about the proposed detention basin and the pipes that carry the water away from the basin. She also asked about the impact of the basin on existing trees.

Michael Manning, 16 Sears Place, asked several questions about the proposed driveway and whether the Fire Department would require a wider driveway. He asked if the applicant approached the owner of the adjoining apartment complex about accessing the field house through the existing curb opening on that property. Mr. Siller stated that the owner of that property has stated to them that he does want to allow any access through his lot.

Milt Horowitz, 17 Madison Avenue, asked several questions about the accuracy of the location of the fences depicted on the plans and surveys.

Mark Janifer, 15 Madison Avenue, asked several questions about drainage basin and about the accuracy of the location of the fences depicted on the plans and surveys.

Leon Leach, 59 Madison Avenue, asked several questions about the maintenance of the detention basin.

The Board questioned Mr. Siller on the detention basin. He stated that the revised site plan is consistent with storm water report. The detention basin could be modified to avoid all of the existing vegetation along the southerly property line.

Mr. Lott recalled Joseph Haines, Architect who was still under oath. He described the revised Architectural plans, dated August 24, 2009. The floor area was reduced by 1,250 square feet, which amounts to almost a 25 percent reduction from the previous floor area. The field house proposed by the applicant contains a single story consisting of approximately 4,045 square feet with a height of 22 feet 9 inches from grade to the peak of the roof. The revised floor plan depicts two locker rooms with associated showers and rest rooms, a coach's office, a weight room, equipment room, training room, mechanical room, meeting room, two rest rooms accessible from exterior doorways and an enclosed concession area with a service window. The freestanding scoreboard has been eliminated, and the scoreboard is now proposed to be mounted on the westerly side of the roof, facing the playing field.

Marked into evidence was:

A-25 Architectural plans, prepared by Dassa Haines, dated August 24, 2009

The Board questioned Mr. Haines. He described several reasons why the building was shifted to the north and west. The revised building is 3 feet longer, but 23 feet narrower if you include the previous canopy. Mr. Siller stated that the building is now about 9 feet closer to the playing field. Chair Harrison called for questions from the public.

Luther Flurry, 16 Madison Avenue, asked questions about the proposed scoreboard.

Michael Manning, 16 Sears Place, asked if the height could be reduced further. He also asked several other questions about the design of the building.

Milt Horowitz, 17 Madison Avenue, asked questions about the scoreboard and asked several other questions about the design of the interior. He asked why a basement is not utilized to reduce the footprint further.

Mark Janifer, 15 Madison Avenue, asked why a basement if not utilized to reduce the footprint further. He also asked why a concession stand is necessary within the field house. He also asked why the existing building can't be utilized for some of the rooms within the proposed building.

Greg Whitaker, 111 Lincoln Street, asked if the proposal would have a negative effect on the storm or sanitation sewers on Lincoln Avenue, or if the proposal would increase the number of people attending the games.

The Planning Staff asked about the 2 central air conditioning units depicted on the plan. Mr. Haines stated that no more than the 2 depicted would be necessary for the building.

Virginia Cornue, 129 Lincoln Street, asked about the noise produced by the 2 central air conditioning units and if the any lighting would be a nuisance to any nearby property.

Mr. Lott stated that he had no further witnesses. Mr. Janifer and Mr. Horowitz had questions for the Board regarding the process, which were answered by the Chair and the Board Attorney. The Board took a short recess. Upon returning from the break, the Chair asked the applicant if the Board would be granted an extension of time on the application. Mr. Lott stated that the applicant would not grant the Board an extension of time and requested that the Board decide the application at this hearing with the 6 members present. Chair Harrison called for public comment.

Greg Whitaker, 111 Lincoln Street, was sworn, made several comments, and stated his opposition to the application.

Penny Bassett-Hackett, 5 James Street was sworn, made several comments, and stated her support for the application. Her son attends the school and plays on some of the sports teams of the school. Luther Flurry, 16 Madison Avenue questioned

the witness about her knowledge of the use of the field by the football team as a parent of a football player.

Leon Leach, 59 Madison Avenue, was sworn, made several comments, and stated his opposition to the application. The Board questioned Mr. Leach. He stated that the lack of maintenance of the property has affected his view of the current application negatively.

Diane Stewart, 7 Draper Terrace, was sworn and made several comments. The property is not maintained well, the current coach is not responsive to the neighbors' concerns, and the street parking is not monitored by the applicant at all.

Marked into evidence were:

O-1 through O-4 Photographs depicting the street parking on the street around Codey Field

The Board questioned the witness. She stated that the lack of maintenance of the property has affected her view of the current application negatively. Michael Manning, 16 Sears Place, questioned the witness asked if the applicant could be expected to comply with conditions imposed by the Board that require monitoring the activity of people using the field or field house. Luther Flurry, 16 Madison Avenue questioned the witness and asked if the applicant could be expected to comply with maintenance requirements that may be imposed by the Board.

Louise Brewington, 279 Orange Road, was sworn, made several comments. She stated that the lack of maintenance of the property has affected her view of the current application negatively. In the past she has requested that the school administration maintain the property better.

Marked into evidence was:

O-5 Letter and photographs of existing field house property, from Ms. Brewington to the school administration, dated March 9, 2005

The Board questioned the witness. She stated that the applicant would likely maintain the property better as a result of the complaints voiced at these public hearings. Michael Manning, 16 Sears Place, questioned the witness and asked if the maintenance issues could be expected to be transferred to the other side of the property as a result of the plan.

Mark Janifer, 15 Madison Avenue, was sworn, made several comments, and stated his opposition to the application. He stated that the field house is used on a short term basis and that it is not necessary to construct a large building in a new location. Based on its limited usage, a variety of less impactful and expensive options are available that have not been explored well enough. The Board questioned Mr. Janifer. Michael Manning, 16 Sears Place, questioned the witness. Luther Flurry, 16 Madison

Avenue questioned the witness and asked if the applicant had conducted community meetings.

Milt Horowitz, 17 Madison Avenue, was sworn, made several comments, and stated his opposition to the application. He stated that the lack of maintenance of the property has affected his view of the current application negatively. The proposed site changes will have a negative environmental impact and would hurt the neighborhood. The existing building can and should be reused. The proposed concession is an economic venture that could affect the non-profit status of the applicant.

Audrey Hawley, 17 Grenada Place, was sworn, made several comments, and stated her opposition to the application. The original change of use of the existing building from a dwelling to a field house on the property never received a variance and the applicant has been expanding the nonconforming use in a residential zone over the years without the proper approvals. No variances should be granted.

Robert Bainbridge, 268 North Fullerton Avenue, was sworn, made several comments, and stated his support for the application. He is on the Board of Trustees of the school. He is familiar with some of the issues brought up by the public, being that he resides near the Woodman Field house. He cited all of the positives that the proposed changes would provide to the public. Michael Manning, 16 Sears Place, questioned the witness. Milt Horowitz, 17 Madison Avenue, questioned the witness and asked about the donations received by the applicant by the various users the field. Mark Janifer, 15 Madison Avenue, questioned the witness about the negative impacts he has observed near Woodman Field. Jarvis Hawley, 17 Grenada Place, questioned the witness.

Michael Manning, 16 Sears Place, was sworn, made several comments, and stated his opposition to the application. The proposed driveway poses a hazard to his family. The proposed driveway will be located very close to his front yard area and he has concerns about delivery trucks driving that close to his front yard. He also stated that the applicants have not done their due diligence on the DEP regulations that may affect their plan.

Marked into evidence were:

O-6 through O-8 Photographs of Sears Place dead end, with the proposed driveway opening added in by Mr. Manning

Mr. Lott objected to the exhibits submitted by Mr. Manning and stated that the exhibits are not an accurate depiction of what is proposed and that there are written comments added on the photographs. The Chair reviewed the Exhibits, allowed them, and asked Mr. Manning to remove the comments attached to the photographs. The Board questioned the witness on the proposed driveway and safety issues.

Luther Flurry, 16 Madison Avenue, was sworn, made several comments, and stated his opposition to the application. He stated that the lack of maintenance of the property has affected his view of the current application negatively. The existing building can be renovated to provide for the needs of the applicant. Approving the application

would negatively impact the residential neighborhood. The Sears Place frontage of the subject property is insufficient and should not be allowed to be used as a driveway.

Mr. Lott summarized the application. The Board discussed the application. Approval of the requested use variance permitting replacement of the existing deteriorated and outdated field house with a modern visually attractive structure with greatly improved functionality at this location is consistent with the purposes of the Municipal Land Use Law. Approval of the use variance would be consistent with the intent and purpose of the 1985 Master Plan and 2006 Master Plan Reexamination Report and Zoning Ordinance. Approval of this unique application provides for the long term preservation of open space and protection of the stream buffer. The Board was cognizant of the concerns of the residents on Sears Place; however, based upon revisions to the plan, the Board determined approval of this application would result in a negligible increase in traffic on Sears Place and thus, would not result in substantial detriment to the neighborhood. Sears Place is currently used to access the parking lot of the existing apartment complex on Lincoln Street. Based upon the limitations imposed herein, the size and scale of the structure would not result in a substantial adverse visual impact on area property owners. The Board, however, determined it was appropriate for the applicant to explore the possibility of waivers and/or exceptions and set up a pre-application meeting with DEP to review the feasibility of alternate locations and access for the proposed field house. The Board determined it was not necessary to reach a determination as to whether or not the proposed field house constituted an "inherently beneficial use" in connection with its relation to a school use.

A motion by Mr. Whipple, seconded Mr. Kenney, to approve the use variance request subject to conditions that were being discussed did not pass as Ms. Cockey and Ms. English voted against the motion. Ms. English indicated that a condition limiting the footprint of a one-story building to no more than 3,700 square feet should be included. A motion by Mr. Kenney to approve the use variance request subject to the conditions as stated below was seconded by Mr. Whipple, and received 5 affirmative votes, with Ms Cockey voting against the motion:

1. This approval is subject to site plan approval at which time the Board will consider any bulk variance sought by the applicant.

2. The field house shall not exceed 3,700 square feet as a one story structure and 4,045 square feet as a two story structure. At the time of site plan review, the applicant shall submit alternate plans depicting a one and two story structure.

3. With the exception of the bathrooms that are accessible from the exterior of the building, use of the field house shall be limited to the school owner of the subject property.

4. The applicant shall conduct a pre-application meeting with the DEP to resolve the following issues:

a. Confirm the existing field house cannot be demolished and rebuilt in its current location, including the paved area located behind the existing field house.

b. Review the approximation method used by the applicant's engineer with DEP staff and seek guidance as to whether doing the full evaluation of the flood elevation that would otherwise be required by the Flood Hazard rules is likely to produce a result that would significantly lower the flood elevation on the western side of the field.

c. Can the access road be constructed from Orange Road pursuant to the Flood Hazard regulations if the Board denies the proposed access from Sears Place for public safety reasons?

Mr. Lott agreed to come back to the Board at the December 16, 2009 regular meeting to consider the request for site plan and any bulk variances. On motion by Mr. Whipple, seconded by Mr. Susswein, the application was carried to December 16, 2009. Mr. Lott granted the Board an extension of time on the pending relief requested. Chair Harrison announced that the application would be continued at the regular meeting of the Board on December 16, 2009 at 7:30 pm and that no further notice will be given. On motion by Mr. Whipple, seconded by Mr. Susswein the meeting was adjourned.