

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Saint Joseph’s University,	:	
Appellant	:	
	:	No. 2207 C.D. 2009
v.	:	No. 2208 C.D. 2009
	:	
Lower Merion Township Zoning	:	Submitted: July 1, 2011
Hearing Board, Lower Merion	:	
Township and Merion Community	:	
Coalition	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge<sup>1</sup>  
HONORABLE P. KEVIN BROBSON, Judge  
HONORABLE PATRICIA A. McCULLOUGH, Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: March 9, 2012

Saint Joseph’s University (Landowner) appeals the October 19, 2009, order of the Court of Common Pleas of Montgomery County (trial court) denying Landowner’s appeal of the decisions of the Lower Merion Township (Township) Zoning Hearing Board (Board) and affirming the Board’s decisions. We affirm.

On August 31, 2005, Landowner filed an application with the Board for a special exception<sup>2</sup> based on its planned expansion to convert the Maguire Campus,

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<sup>1</sup> This case was assigned to the opinion writer before January 7, 2012, when Judge Pellegrini became President Judge.

<sup>2</sup> Section 155-114.A. of the Township’s zoning ordinance states:

- A. An applicant for a special exception shall have the burden of establishing both:

**(Footnote continued on next page...)**

which was property owned by the Episcopal Academy and used as a day school, into part of the university. The Maguire Campus comprises 356-476 North Latches Lane, 480 North Latches Lane, 35 Berwick Road, and 39 Berwick Road in the R AA<sup>3</sup> and R A<sup>4</sup> zoning districts of the Township. It is improved with 21 buildings, 347 accessory parking spaces, and six outdoor athletic playing fields. Three hearings were held on the application.

On March 16, 2006, the Board issued a decision granting the application. The Board approved Landowner's uses of the buildings on the Maguire Campus for educational, administrative, and maintenance uses essential to the same uses by the prior owner. The Board permitted the playing fields to continue to be used for varsity and intramural grass sports such as baseball, softball and soccer. The Board conditioned the grant of relief on Landowner's adherence to the plans and testimony it submitted at the hearing; required the restriping of one of the parking lots to add 28

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**(continued...)**

- (1) That his application falls within the provision of this chapter which accords to the applicant the right to seek a special exception; and
- (2) That allowance of the special exception will not be contrary to the public interest.

<sup>3</sup> Section 155-11(S)(2) of the zoning ordinance permits an "accredited educational institution" use as a use authorized by special exception in the R AA zoning district. Section 155-4.B. of the ordinance defines "accredited educational institution" in pertinent part as "[a] degree-granting college or university which has obtained total institutional accreditation from appropriate accrediting agencies recognized by the federal government and Pennsylvania State Board of Education or approved by the Pennsylvania State Board of Education to grant degrees."

<sup>4</sup> Section 155-15.A. of the Township's zoning ordinance permits as a use in the R A district "[a] use permitted in the R AA Residence Districts."

spaces, and reserving an additional 78 spaces to be constructed if needed at a later time.

On April 18, 2008, in accordance with the Township's subdivision and land development ordinance, Landowner filed an application for tentative sketch plan approval which set out a proposed reconfiguration of the existing playing fields for intercollegiate use as follows: (1) combining two fields on Latches Lane into one below-grade baseball field and adding bleachers, dugouts, a press box, 35-foot high protective netting, and a permanent public address system; (2) installing a retaining wall, stairs, and ramps for the below-grade baseball field; (3) converting the existing football field into a softball field and adding bleachers, dugouts, and a press box; (4) converting two fields on City Avenue into a hockey field and an intramural field and adding bleachers; and (5) installing artificial turf on the baseball, softball, and hockey fields. Subsequently, on May 7, 2008, the Township's Board of Commissioners approved the application. By letters dated August 26, 2008, and September 10, 2008, the Merion Community Coalition (Objectors) objected to the application and asserted that Landowner must seek another special exception because the uses as proposed in the sketch plan constitute "expanded uses" beyond those granted by the special exception.<sup>5</sup>

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<sup>5</sup> Section 155-11.X. of the zoning ordinance provides that "[a]ny use permitted in any residential zoning district by special exception or conditional use can only be expanded in like manner." In turn, section 155-4.B. of the ordinance defines "expanded use" as follows:

The enlargement of the use of a property evidenced by any of the following: the construction of or addition to a building, a parking lot or outdoor recreation structure or equipment; the construction of a new athletic field, a new playground or a new hard-surfaced area designed or intended to be used for sporting or other physical recreation activities; the extension of the use of property beyond the permitted parameters established by the [Board], or beyond those

**(Footnote continued on next page...)**

On September 16, 2008, the Township's zoning officer issued a letter opinion stating that the following constituted expanded uses and required another special exception from the Board: (1) the press box, dugouts, bleachers, and public address system for the below-grade baseball field; (2) the press box, dugouts, and bleachers for the softball field; and (3) the bleachers for the hockey field. The letter indicated that all of the other proposed development was permitted under the prior special exception. Both Landowner and Objector filed appeals of the zoning officer's decision with the Board; on December 8, 2008, the Board held a hearing on both appeals.

On March 26, 2009, the Board issued two decisions disposing of Landowner's and Objectors' appeals. The Board rejected Landowner's appeal, determining that the planned improvements to the playing fields listed by the zoning officer constitute an expanded use under the ordinance. The Board also rejected Objectors' appeal to the extent that it sought to include other improvements to the

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parameters established in the record of testimony presented to the [Board] in support of an approved application; an increase in five persons or 10%, whichever is greater, in the student and faculty or participant population associated with the use as it was authorized by a previously granted special exception or, if not so authorized, as it had been historically used; and increase of five persons or 10%, whichever is greater, in the student and faculty or participant population of driving age associated with the use as it was authorized or, if unauthorized, as it historically experienced; or a change in the days or hours of normal operation.

Maguire Campus not listed by the zoning officer as beyond the scope of the special exception. Landowner appealed both of the Board's decisions to the trial court.<sup>6</sup>

On October 16, 2009, the trial court heard argument on Landowner's appeals, and on October 19, 2009, the trial court entered an order denying Landowner's appeals and affirming the Board's decisions. Landowner then filed the instant appeals of the trial court's order.<sup>7,8</sup>

On June 10, 2009, while the instant appeal was pending, Landowner filed another application for a special exception with the Board to construct the improvements to the Maguire Campus listed in the zoning officer's letter as outside the scope of the prior special exception. On November 18, 2010, following a number of hearings, the Board granted Landowner the special exception to construct the improvements subject to a number of conditions. As a result, on March 25, 2011, Objectors filed a motion to dismiss the appeals as moot. However, this Court denied the motion by order dated May 4, 2011, noting that the restrictions imposed by the Board in its most recent grant of a special exception would be invalid if we were to determine in this appeal that the Board erred in requiring Landowner to obtain the new special exception.

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<sup>6</sup> The Township filed a notice of intervention in the appeal in the trial court and a stipulation was entered which agreed to permit Objectors to intervene as well.

<sup>7</sup> Landowner's appeals were consolidated by this Court by order dated January 12, 2010.

<sup>8</sup> When the trial court takes no additional evidence, our scope of review is limited to determining whether the zoning board committed an error of law or a manifest abuse of discretion in rendering its decision. In re Heritage Building Group, Inc., 977 A.2d 606, 611 (Pa. Cmwlth. 2009). In addition, "[a]s the party charged with administering a zoning ordinance, a zoning hearing board possesses unique knowledge and expertise; therefore, a zoning hearing board's interpretation of its own ordinance is afforded great weight and deference." Morrell v. Zoning Hearing Board of Borough of Shrewsbury, 17 A.3d 972, 977 (Pa. Cmwlth. 2011) (citation omitted).

The Statement of Questions Involved portion of Landowner’s appellate brief lists the following claims for our review:

1. Whether the Court below erred as a matter of law in affirming the Board’s decision which required further zoning relief by the University as a precondition to installing otherwise code-compliant site improvements necessary to convert playing fields to a previously approved intercollegiate athletic use.

2. Whether the court below erred as a matter of law in disregarding an uncontroverted admission in the record by an expert for objector Merion Community Coalition that site improvements proposed by the University were “integral to” and “part of” a previously approved use – and therefore not an expansion of such use – by (i) adopting the Board solicitor’s ultra vires competency determination made after-the-fact, and (ii) recasting a legal decision as a factual determination subject to a substantial evidence standard of review.

3. Whether the court below erred as a matter of law by affirming the Board, which used an appeal process to exercise plenary review authority over the University’s previously approved use of its campus by re-interpreting the record of its prior decision to impose a new condition prohibiting the University from outfitting the playing fields for the previously approved use and requiring further zoning relief.

Brief of Appellant at 4.

With regard to the claims of error raised by Landowner in this appeal, we conclude that the trial court thoroughly and correctly analyzed these issues and this matter was ably disposed of in the comprehensive and well-reasoned opinion of the Honorable Arthur R. Tilson. Accordingly, we affirm on the basis of his opinion in In re: Appeal of Saint Joseph’s University from the March 29, 2009 Decisions of

the Lower Merion Township Zoning Hearing Board (Appeal Nos. 4166 and 4167),  
(Nos. 09-11927, 09-11928, filed December 30, 2009).<sup>9</sup>

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PATRICIA A. McCULLOUGH, Judge

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<sup>9</sup> Cf. In re: Appeal of Baldwin School, 932 A.2d 291, 297-98 (Pa. Cmwlth. 2007) (holding that a private school was entitled to a special exception to expand its athletic facilities by new construction under the same provisions of the Township's ordinance, sections 155-11.X. and 155-4.B., where the new facilities would not violate the parking and loading/queuing area requirements of the ordinance because they would not draw significant additional participants or spectators and they would serve existing programs).

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**ORDER**

AND NOW, this 9<sup>th</sup> day of March, 2012, the October 19, 2009, order of the Court of Common Pleas of Montgomery County is affirmed.

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PATRICIA A. McCULLOUGH, Judge