



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0024
BEAVER COUNTRY DAY SCHOOL
791 HAMMOND STREET, BROOKLINE, MA

Petitioner, Beaver Country Day School, applied to the Building Commissioner for permission to construct a 22,000 s.ft. addition. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed April 21, 2016 at 7:15 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on April 7, 2016 and April 14, 2016 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

Notice of Hearing

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

791 HAMMOND ST – CONSTRUCT A 22,000 SQUARE FOOT ADDITION TO BE USED FOR A RESEARCH AND DESIGN CENTER in an S-15, Single-Family, residential

district, on April 21, 2016, at 7:30 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Beaver Country Day School) Precinct 15

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

- 1. Section 5.09.i: Design Review**
- 2. Section 6.02, Paragraph 1: Table of Off Street Parking Regulations**
- 3. Section 6.02.4.c: Off-Street Parking Regulations**
- 4. Modification, As Necessary, of BOA Case # 060034 May 25, 2006**
- 5. MGL 40A Section 3**
- 6. Any Additional Relief the Board May Find Necessary**

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.***

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Mark G. Zuroff and Board Members Johanna Schneider and Christopher Hussey. Deputy Building Commissioner Michael Yanovitch and Zoning Coordinator Jay Rosa were also present. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was representative for the Petitioner, Peter Hutton, along with project architect, Katie Faulkner, NADAAA, 1920 Washington St #2, Boston, MA 02118. Chairman Zuroff called the hearing to order at 7:15 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen presented to the Board a background of the Petitioner and the proposal stating: 791 Beaver Country Day is a co-education private institution located on the corner of Woodland Road and Hammond Street in Brookline. He stated that the Petitioners propose to construct a 22,000 s.ft. addition to facilitate handicap accessibility and provide new workspace for existing students. He stated that the project involves removing lines in some of the old classrooms to create new classrooms. The library will be a workspace to encourage a group work environment and collaboration.

Attorney Allen stated that this proposal can be accomplished "by-right." Attorney Allen stated that M.G.L. c. 40A, Section 3 provides:

No zoning ordinance or by-law shall ... regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned ... by a religious sect or denomination; ... however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

Attorney Allen stated that the local Building Commissioner has the authority to determine if M.G.L. c. 40A, Section 3 is applicable but this determination is often sent to the Board of Appeals in Brookline for the sake of transparency and thorough public review.

Attorney Allen stated that this entire proposal is aimed to enhance the educational use at Beaver Country Day School. Attorney Allen characterized the Petitioner's design review process with the Planning Board as voluntary. Attorney Allen stated that the Petitioners held a neighborhood meeting to review the proposal with town members. He stated that Beaver Country Day is indisputably an educational institution. As such, they are not subject to **Section 5.09.i** of the Zoning By-Law because design review cannot be regulated under M.G.L. c. 40A, Section 3.

He stated that nonetheless, in an effort to be transparent, the Petitioners reviewed the design review standards with the Planning Department.

Attorney Allen then described relief under Section 6.04.2.a of the Zoning By-Law. He stated that regulating parking in this instance would be inconsistent with precedential treatment of parking under MGL 40 A, Section 3. He stated that under Section 6.04.2.a of the Zoning By-Law, the Petitioners are required to supplement the existing 164 parking spaces with an additional 33 parking spaces. Mr. Allen stated that MGL 40 A, Section 3 requires the consideration of the characteristics of the school and the impact it would have on the overall school and community. He further stated that an undesirable resolution would be to increase parking by paving open space. He asserted that parking will not be an issue on the premises because the addition is driven by ADA accessibility and not by the intention of increasing enrollment.

Attorney Allen concluded his comments by again requesting that the Board find that no special permit zoning relief is required based on MGL 40 A, Section 3.

Zoning Board of Appeals Chairman Zuroff asked if there was anyone present who wished to speak in favor or in opposition to this application. No one spoke in favor or in opposition to the application.

Jay Rosa, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS:

Section 5.09.i – Design Review – Non-residential uses in a residential district with more than 5,000 s.f. or more than 10 parking spaces require a **special permit** subject to design review standards under Section 5.09.4(a-1). All conditions have been met. The relevant sections include:

- a. Preservation of Trees and Landscape – Existing trees and other landscape features will be preserved as much as possible, and additional trees and landscaping are proposed in the renovated courtyard.
- b. Relation of Buildings to Environment – Because of the large campus, the shadow impact on abutting properties appears to be non-existent.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The addition is set well back from the street and therefore will not negatively impact the streetscape.
- d. Open Space – All existing open space (landscaped and usable) will be continuously maintained. Improved accessible routes will be provided to open area on the building’s north side.
- e. Circulation— The existing vehicular, bicycle and pedestrian circulation, including entrances, ramps, walkways, drives, and parking will be maintained as they are not affected by the addition. During construction, there will be a temporary construction entrance off of Hammond Street.
- f. Storm Water Drainage - Storm water will continue to be removed from all roofs, canopies and paved areas and carried away in an underground drainage system. Surface water in all paved areas will be collected at intervals so that it will not obstruct the flow of vehicular or pedestrian traffic, and will not create puddles in the paved areas.
- g. Utility Service – Electric, telephone, cable TV and other such lines and equipment shall be underground from the source in the public way to all buildings on the site. The building upgrades include a fire suppression system; a new fire protection water line will be brought in from the south side of the building. This and other utility lines will be indicated on the site plan.
- m. Energy Efficiency – The building will be upgraded with new insulation, energy efficient lighting, and heating and cooling systems.

Section 6.02: Table of Off-Street Parking, Paragraph 1

Section 6.02.4.c- Off-Street Parking Regulations

Parking	Required	Existing	Proposed	Relief
Parking Spaces	Approx. 44 addtl.*	145	0	<u>Special Permit**</u>

*Under Section 6.02.4.a, only one-third of the parking spaces is required for students under 15, which would be grades 6, 7, and 8.

** Under Section 6.02.4.c, the Board of Appeals may waive requirements by special permit for educational uses.

Modification, as required, of BOA case #060034, May 25, 2006 (filed 8/11/06)

The Board of Appeals approved special permits to allow construction of a new gym subject to a

final site plan, including landscaping and parking layout, being approved by the Assistant Director of Regulatory Planning.

MGL 40A, Sec. 3

The state zoning act requires non-profit educational uses to be subject to reasonable dimensional requirements.

Mr. Rosa stated that the Planning Board is supportive of the project. They felt that the proposal is attractively designed, provides upgrades to the lighting, fire alarm, sprinkler systems and allows improved handicap accessibility throughout the school. He stated that the Planning Board determined that the project complies with the requirements for FAR, height, front, side, and rear yard setbacks, and usable and landscaped open space. Additionally, Mr. Rosa stated that the Planning Board noted that since the school is not planning to increase enrollment or staff, but rather provide up-to-date resources for its existing students, relief from parking is reasonable.

Therefore, the Planning Board recommends approval of the requested special permits for the plans entitled "Beaver Country Day School, R and D Center" prepared by NADAAA, dated January 8, 2016, subject to the following conditions:

1. Prior to the issuance of the building permit, the applicant shall submit a final site plan, floor plans, and elevations, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to review and approval by the Assistant Director for Regulatory Planning.
3. A construction management plan, including parking locations for construction vehicles, shall be submitted for review and approval by the Building Commissioner, with a copy to the Planning Department, before a building permit is issued.
4. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and elevations stamped and signed by a registered architect; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

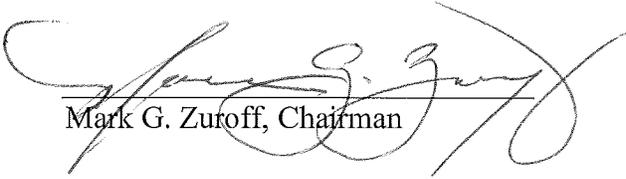
The Chairman then called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Mr. Yanovitch, stated that the Building Department has no objections to the relief sought under this application.

In deliberation, Zoning Board of Appeals Member Johanna Schneider stated that she is supportive of the application of MGL 40A. Zoning Board of Appeals Chairman Zuroff and Zoning Board of Appeals Member Hussey echoed her determination and stated their support.

The Board then determined, by unanimous vote, that the proposed improvements to Beaver Country Day School are protected under the provisions of the MGL 40A, Section 3 and therefore do not require zoning relief.

Unanimous Decision of
The Board of Appeals

Filing Date: 5/20/14


Mark G. Zuroff, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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