



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0088
DEXTER SOUTHFIELD SCHOOL
20 NEWTON STREET, BROOKLINE, MA

Petitioner, Dexter Southfield School, applied to the Building Commissioner for permission to construct a field house attached to an existing rink. 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 February 2, 2017, at 7:00 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 January 19, 2017 and January 26, 2017 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: 20 Newton Street (Dexter Southfield School) to Construct a field house attached to existing ice rink in a S-40 (Single-Family) Residence District, on February 2, 2017 at 7:10 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Dexter Southfield 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 5.08.2: Exceptions to Dimensional Requirements for Uses 9 and 10
2. Section 5.09.i: Design Review
3. Section 5.31.2: Exceptions to Maximum Height Regulations
4. Section 5.43: Exceptions to Yard and Setback Regulations
5. Section 5.70: Rear Yard Requirements
6. Section 6.02.4.c: Off-Street Parking Space Regulations
7. Section 6.06, Table 6.02: Table of Off-Street Loading Regulations
8. Section 6.06.7: Off-Street Loading Regulations
9. Section 8.02.1 Alteration and Extension
10. Modification, as necessary, of BOA cases 3326 October 1996, 3326A November 1997, 3620 September 2000
11. MGL 40A Section 3
12. 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 programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at llgellineau@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 Jesse Geller and Board Members Johanna Schneider and Jonathan Book. Michal Yanovitch, Deputy Building Commissioner, and Ashley Clark, Planning and Zoning Coordinator, were also present at the hearing. 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, Laurence Koehrsen, Architectural Resources Cambridge, 501 Boylston St

#4101, Boston, MA 02116, and Robert Weidknecht, Beals + Thomas, 144 Turnpike Road, Southborough, MA 01772. Chairman Geller called the hearing to order at 7:20 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen presented to the Board a background of the Petitioner stating: 20 Newton Street, Dexter Southfield School, is a co-educational institution located atop one of the highest hills in Brookline, Mount Walley. He stated that the school maintains a former estate house and out buildings. Attorney Allen continued that the school has made various changes to the site including building multiple classroom buildings, a gymnasium building and other recreational facilities, including a pool, ice skating/tennis facility, and athletic field, and a science center. Attorney Allen stated that the property is bounded by Boston to the east and the Brandegee Estate and Allendale Farm to the south and west. He further stated that the property faces Larz Anderson Park. Attorney Allen told the Board that the project involves demolishing an existing indoor ice rink (Thorndike Rink) and constructing a new 48,020 square foot multi-use field house building to be attached to the existing adjacent indoor athletic/ice rink building.

Mr. Koehrsen reviewed the proposed plan. He stated that the Thorndike Rink depicted in the presentation will be removed and that the field house addition will support other sports such as field hockey, basketball and tennis for students on campus. Mr. Koehrsen noted that the terracotta elements and Spanish architectural style of existing structures on campus will be incorporated into the proposed structure.

Mr. Weidknecht reviewed the site planning aspects of the proposal. Mr. Weidknecht stated that shifting the building location will increase access circulation around the perimeter of the building and that the new building will include a 50 ft. front yard setback. Mr. Weidknecht indicated that because of the grade change on the property, a retaining wall must be located

within the front yard setback. He stated that the proposed parking, which will accommodate 371 vehicles, is in excess of the 276 spots required under the Zoning By-Law.

Attorney Allen stated that the Town's Preservation Commission has reviewed and approved the request to demolish the existing secondary skating rink (Thorndike Building) and that the Conservation Commission has issued an order of conditions in connection with the proposed project.

Attorney Allen stated that Dexter Southfield is categorized under the Zoning By-Law, Table 4.07, Use #10, as an educational use. As such, Attorney Allen continued, the proposal is governed by M.G.L. c. 40A, Section 3, "Dover Amendment." Attorney Allen stated that the local Building Commissioner has the authority to determine if M.G.L. c. 40A, Section 3 is applicable, and although this proposal can be accomplished "by right," this determination is often sent to the Zoning Board of Appeals in Brookline for the sake of transparency and thorough public review.

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 educational purposes on land owned...by a nonprofit education or educational corporation;...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."

Regulations are deemed unreasonable if to apply them would substantially diminish or detract from the usefulness of the project without appreciably promoting the [town's] legitimate concerns. Trustees of Boston College v. Board of Alderman of Newton. 58 Mass. App. Ct. 794. November 19, 2002 - August 8, 2003. Attorney Allen stated that in this case: the proposal will comply with FAR and required parking; and the proposal will be located further away from the

property line and the relief needed for the retaining wall will increase safety. Finally, Attorney Allen stated, the proposed height is needed to provide adequate clearance for the anticipated athletic activities. Attorney Allen argued that strict application of the By-Law would limit the building from its intended use as a sports facility and its intended primary educational purpose. Attorney Allen went on to state that case precedent has established that the protection of the Dover Amendment is not limited to traditional or conventional educational regimes. To qualify as an educational use two elements must be satisfied, (1) there must be a bona fide goal which can reasonably be described as "educationally significant" and (2) the educationally significant goal must be the "primary or dominant" purpose for which the land or structures will be used. Attorney Allen opined that for the reasons stated above, the criteria for an educational use has been satisfied.

Board Member Book asked whether the proposal would exacerbate any setback conditions on the property. Attorney Allen responded that the front yard nonconformity is an existing condition, but that the proposed driveway curves in a manner different than the existing driveway, triggering the need for front yard relief.

Chairman Geller asked for clarification pertaining to the requested height relief. Mr. Allen stated that the requested height is 48 feet.

Mr. Weidknecht stated that the Conservation Commission reviewed the stormwater drainage plan and that the Town of Brookline Engineering Department is currently reviewing the stormwater drainage plan.

Chairman Geller asked whether anyone wanted to speak in favor of, or in opposition to the proposal. No one spoke in favor of or in opposition to the proposed relief.

Ms. Clark then 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 square feet of gross floor area or with 10 or more parking spaces require a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*. All the conditions have been met, and the most relevant sections of the design review standards are described below:

a. **Preservation of Trees and Landscape**—Existing trees and other landscape features will be preserved in their natural state, insofar as practicable. The proposed development will be set back further away from the property line than the current ice rink building, allowing for the installation of additional landscaping. The proposed grading changes will be primarily where there is already paved area, and will create areas for safer pedestrian and vehicular circulation.

b. **Relation of Buildings to Environment**—Proposal will relate harmoniously to the existing terrain, trees, landscape, and natural features. The proposed multi-purpose athletics building will be located where there is already an existing building (Thorndike Rink, to be removed), and it will be attached to an existing athletics building, creating a modern, cohesive athletics complex serving the Dexter Southfield campus. The massing and materials of the building will be attractive and relate architecturally to the School's other buildings. The proposed building is located some distance from structures on neighboring properties, and it is not expected to have a significant shadow impact.

c. **Relation of Buildings to the Form of the Streetscape and Neighborhood**—Proposed project is consistent with the use, scale, massing, height, footprint, siting, yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area. The development will modernize the School's athletic facilities, improve pedestrian and vehicular access, and create a stronger connection between the School's indoor athletic facilities and outdoor athletic fields.

d. **Open Space**—All existing open space shall be continuously maintained. Improved routes to the athletic fields will be created with this proposal. Some small areas of grass near St. Paul's Avenue will need to be removed to provide adequate width for bus parking and a new sidewalk, but new landscaped space will be created along the lot's perimeter in several areas.

e. **Circulation**—The proposal will improve both pedestrian and vehicular circulation around the indoor athletic facilities. The proposal will better separate pedestrian and vehicular traffic by creating clear designated drop off locations, installing pedestrian sidewalks, and modifying the grades of the site's interior drives. The School will continue to provide sufficient parking on site.

f. **Stormwater Drainage**—Special attention will be given to proper site surface drainage so that storm water runoff will not adversely affect neighboring properties or the public storm drainage system. Storm water will continue to be removed from all roofs, canopies and paved areas and carried away in an underground drainage system to a subsurface infiltrative 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 will be underground from the source in the public way to all buildings on the site. The location of transformers will not change. No dumpsters are proposed within this area. All solid waste will be transported to a central location on the campus. All utility lines will be indicated on the site plan.

h. **Advertising Features**—This standard is not applicable. The School may decide to name the building, and if so, the size, location, design, color, texture, lighting and materials of any identifying signage will not detract from the use and enjoyment of the building and surrounding properties.

i. **Special Features**— The proposal does not anticipate having exposed storage areas or machinery. Any loading will occur at off-peak hours along the St. Paul’s Avenue façade where bus parking is also located.

j. **Safety and Security**— Building is expected to meet all code requirements with respect to safety and security. With respect to personal safety, all open and enclosed spaces will be designed to facilitate building evacuation and maximize accessibility by fire, police, and other emergency personnel and equipment.

k. **Heritage**— The School has received a Certificate of Non-Significance for the Thorndike Ice Rink to allow its removal.

l. **Microclimate**— The proposal will endeavor to minimize any adverse impact on light, air and water resources, or on noise and temperature levels of the immediate environment. The project will comply with the provisions of the Noise Control By-law.

m. **Energy Efficiency**—Proposed project will maximize, to the extent possible, energy-efficient technology.

Section 5.30 – Maximum Height of Buildings

	Maximum	Existing	Proposed	Finding
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Height of Proposed Field House	35 feet	44 feet (ice rink)	32.6 ft. (average grade around building) or 44.6 ft. (5.30.1.c)	Variance / Special Permit*
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* Under Section 5.08.2, the Board of Appeals may grant a special permit to modify the dimensional requirements in Article 5 of the Zoning By-law for uses #9 (religious) and #10 (educational) to the extent necessary to allow reasonable development of such a use in general harmony with other uses permitted and as regulated in the vicinity.

Section 5.52 – Fences and Terraces in Front Yards

Dimensional Requirements	Required	Existing	Proposed	Finding
Retaining Wall/Fence	≤6 ft.	n/a	7 ft. + railing	Special Permit*

* Under Section 5.08.2, the Board of Appeals may grant a special permit to modify the dimensional requirements in Article 5 of the Zoning By-law for uses #9 (religious) and #10 (educational) to the extent necessary to allow reasonable development of such a use in general harmony with other uses permitted and as regulated in the vicinity.

Section 5.70 – Rear Yard Requirements

Setback Requirements	Required	Existing	Proposed	Finding
Rear Yard	60 ft.	~30 ft.	50 ft.	Special Permit*

* Under Section 5.08.2, the Board of Appeals may grant a special permit to modify the dimensional requirements in Article 5 of the Zoning By-law for uses #9 (religious) and #10 (educational) to the extent necessary to allow reasonable development of such a use in general harmony with other uses permitted and as regulated in the vicinity.

Section 6.04 – Design of All Off-Street Parking Facilities

Setback Requirements	Required	Existing	Proposed	Finding
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Driveway	40 ft.	11 ft.	10.6 ft.	Special Permit*
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* Under Section 6.02.4.c, the Board of Appeals may permit modification in the requirements specified in this Article as applied to Use #10 (educational) and Use #15 to the extent necessary to allow reasonable development of such a use in general harmony with other uses permitted and as regulated in the vicinity.

Section 8.02.1 Alteration and Extension

A special permit is required to alter a nonconforming structure.

Modification of BOA Cases #3326, #3326A and 3620

No modification of these BOA cases is needed.

Ms. Clark stated that the Planning Board supports the construction of this new multi-purpose field house at the Dexter School. The building will replace the existing Thorndike Rink (there are currently two ice rinks on site) and will offer a new modern facility and greater variety of recreational uses for the students. The Planning Board feels that the proposed building is attractive and a significant distance from any surrounding residences. The closest abutters are institutional uses, the Daughters of Saint Paul in Boston and the Brandegee Estate on Allandale Farm. Ms. Clark stated that the Planning Board felt that the visual impact will be minimal. The proposal also includes other improvements that will benefit the school campus including better circulation around the athletic buildings, site grading for better pedestrian access and new drop-off areas for buses and cars. Therefore, the Planning Board recommended approval of the architectural plans, entitled “Dexter Southfield School, Athletic Fieldhouse” prepared by ARC and dated 12/15/16 and the site plans, entitled “Dexter Southfield School Athletic Complex,” prepared by Beals + Thomas and dated 12/14/16, subject to the following conditions:

1. Prior to issuance of a building permit, final elevations with material specifications shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to the review and approval of the Assistant Director of Regulatory Planning.

3. Prior to the issuance of a building permit, the applicant shall submit to the Zoning Administrator 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 building elevations, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman 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. He commended the Petitioner for following the Town process notwithstanding a project that could proceed by right. He stated that the Building Department will require the Petitioner to seek approval from Peter Ditto prior to the issuance of a building permit.

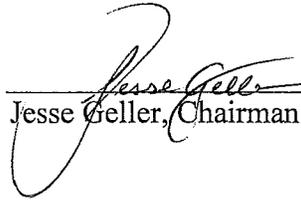
The Board then determined, by unanimous vote that the proposal for Dexter Southfield School is protected by M.G.L. c. 40A, Section 3 and therefore does not require zoning relief though is subject to the following reasonable restrictions:

1. Prior to issuance of a building permit, final elevations with material specifications shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the Applicant shall submit a storm water drainage plan, subject to the review and approval of the Director of Engineering & Transportation.
3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan to the Building Commissioner for review and approval.
4. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to the review and approval of the Assistant Director of Regulatory Planning.

Prior to the issuance of a building permit, the applicant shall submit to the Zoning Administrator 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 building elevations, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

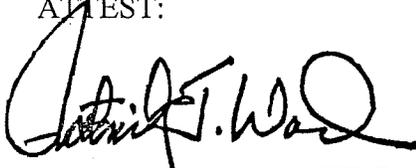
Unanimous Decision of
The Board of Appeals

Filing Date: 3/3/2017



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals