



BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zurroff
Johanna Schneider

Town of Brookline Massachusetts

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TOWN CLERK'S OFFICE
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-0011
BEAVER COUNTRY DAY SCHOOL
791 HAMMOND STREET, BROOKLINE, MA

Petitioner, Beaver Country Day School, applied to the Building Commissioner for permission to construct a pool shed. 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 14, 2022 at 7:00 p.m., virtually as the 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 March 31, 2022 and April 7, 2022 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 on the following petition:

Address: **791 Hammond Street**
Petitioner: **BEAVER COUNTRY DAY SCHOOL INC,**

Zoning District: **S-15 Single Family District**
Precinct: **15**
Description: **Construct a pool shed at Beaver Country Day School**

Date, time, and location of the public hearing are as follows:

Date: **4/14/2022**
Time: **7:00 pm**
Location: **Virtual Meeting (see below)**

Register for this virtual hearing:

<https://bit.ly/35bsbrn>

After registering you will receive a confirmation email containing information about joining the hearing.

Our Virtual Meeting Guide for Applicants and the Public can be found here: <https://bit.ly/30wRoY3>

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:

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.53 - ACCESSORY BUILDINGS IN FRONT YARDS

§8.02 - ALTERATION OR EXTENSION

QUESTIONS, PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:

*Advanced submissions of files and presentations are strongly encouraged. In an effort to ensure the Board has adequate time to review materials we ask that any additional documents such as written comment letters, photos, files, or presentations or questions be sent before the hearing to **Polly Selkoe** (pselkoe@brooklinema.gov).*

*All plans and submissions may be found at: <https://aca-prod.accela.com/Brookline/Default.aspx>. An account is **NOT REQUIRED** to access materials. Public testimony will be taken during the hearing as normal.*

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

The Town of Brookline does not discriminate in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.

*If you have any questions regarding **Assistive Listening Devices**, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.*

Jesse Geller, Chair
Mark Zuroff
Johanna Schneider

Publish: 3/31/2022 & 4/7/2022

At the time and place specified in the notice, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing was Chair Jesse Geller and Board Members Mark Zuroff and Neil Wishinsky. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. RLAW P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance were Kim Sampson, Head of School for Beaver Country Day, Alison Goyer, landscape architect, G2 Collaborative, 282 Moody St #308, Waltham, Massachusetts, and Dan Hisel, architect, Hisel Flynn, 17 Waltham Street, Lexington, Massachusetts.

Attorney Allen presented the case for the Petitioner, stating that 791 Beaver Country Day is a co-education private institution located on the corner of Woodland Road and Hammond Street in Brookline in a S-15 Zoning District. He stated that the Petitioner proposes to construct a 7-foot by 61-foot pool shed that is 8-feet-9-inches in height within a required front yard setback. Attorney Allen described how the new structure would be used as storage for mechanical equipment and ancillary chemicals needed to maintain the pools. He added that the shed structure would clean up the look of the overall pool deck and noted that it is anticipated that the shed will provide a sound buffer to the neighborhood, provide some privacy for the students, and create a safer environment.

Attorney Allen opined that this proposal can be accomplished “by right” under M.G.L. Ch. 40A, Section 3, which 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. Ch. 40A, Section 3 is applicable, however, this determination is often sent to the Board of Appeals in Brookline for transparency and thorough public review.

Attorney Allen stated that the proposal aims to enhance the educational use at Beaver Country Day School. Attorney Allen then reviewed Section 5.53 of the Zoning By-Law that provides that no accessory building shall be within required front yards. Attorney Allen stated that Table 5.01 of the Zoning By-Law requires a front yard setback of 35-feet and added that the pool shed must fit within the existing site constraints and so the shed is setback approximately 30.1-feet from the front property line. He noted that making the shed smaller to comply with the required 35-foot setback would make it unusable at only 2-feet wide, and there is no other appropriate location.

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

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

Maria Morelli, Senior Planner for the Town of Brookline, delivered the findings of the Planning Department:

FINDINGS:
Zoning Relief Needed

Section 5.53, Accessory Building in Front Yards: Accessory buildings shall not be permitted within required front yards.

ZONING: S-15	Requirements	Proposed Conditions	Relief Required
Front Yard Setback	35'	30.5'	<u>Special Permit*</u>

*Section 5.43, Exceptions to Yard and Setback Regulations: Relief from setback requirements can be granted through Section 5.43 which states that relief may be granted if the applicant can provide an adequate counterbalancing amenity that mitigates negative impacts arising from the requested deviation from the requirements of the Zoning Bylaw.

PLANNING DEPARTMENT COMMENTS

Ms. Morelli stated that the Planning Staff does not object to the proposal and added that the requested zoning relief is minor and the current use of the property qualifies as a use protected under M.G.L., Ch. 40A, §3 (the “Dover Act”). Such uses receive certain protections, as follows:

“No zoning ordinance or by-law [...] prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, 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.” – M.G.L., c.40A, §3

Nonetheless, Ms. Morelli added that the applicant is seeking relief through the Town’s local Zoning By-law. She stated that zoning relief for setbacks can be granted by the Board through **Section 5.43** if the applicant can provide an adequate counterbalancing amenity. She added that planning staff recommends that a landscape plan be required showing screening plantings along the proposed shed, between the shed and the property line.

Therefore, Ms. Morelli concluded, if the Zoning Board of Appeals recommends approval of the site plan by G2 Collaborative Landscape Architecture dated 1/24/22, the Planning Department recommends the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit elevations, stamped and signed by a registered architect, and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a final landscaping plan to the Assistant Director for Regulatory Planning for review and approval. Final landscaping shall be implemented in accordance with the approved plan.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

The Chair then called upon Paul Campbell, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Campbell stated that the Building Department has no objections to the relief sought under this application.

In deliberation, the Board discussed granting zoning relief from the provisions of **Section 5.53** pursuant to **Section 5.43** to waive the front yard setback requirement if the Petitioner provided landscaping to serve as a counterbalancing amenity. The Board of Appeals Members concluded that given the minimal impact anticipated and the existing vegetated buffer, it was not necessary to require a counterbalancing amenity and agreed that the use was protected under "Dover". Zoning Board of Appeals Member Wishinsky stated that he is supportive of the application of M.G.L. Ch. 40A, Section 3. Zoning Board of Appeals Member Zuroff and Chair Geller agreed that application of M.G.L. Chapter 40A, Section 3 is appropriate in this case.

The Board then determined, by unanimous vote, that the proposed improvements as presented in the submitted plans noted above are protected under the provisions of the M.G.L. Ch. 40A, Section 3 and therefore do not require zoning relief.

Unanimous Decision of
The Board of Appeals



Jesse Geller, Chair

Filing Date: **MAY 12 2022**

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals