



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-0031
20 NEWTON STREET, BROOKLINE, MA

TOWN CLERK'S OFFICE
JUN 14 '22 PM 4:14

Petitioner Dexter School applied to the Building Commissioner for permission to expand the existing cafeteria. 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 28, 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 April 14, 2022, and April 21, 2022, in the Brookline TAB, a newspaper circulated in Brookline. A copy of said notice is as follows:

NOTICE OF HEARING

**The Brookline Zoning Board of Appeals will hold a virtual public hearing via ZOOM on
Thursday, April 28, 2022 at 7:00pm**

Registration Link: <https://bit.ly/3NCWAQQ>

The ZBA will consider the following pursuant to M.G.L. 40A & the Brookline Zoning-Bylaw:

Petitioner: Dexter School **Address:** 20 Newton Street

Zoning: S-40 **Precinct:** 15

Description: Construct addition to Dexter School dining area

The Board will consider variances and/or special permits from the following sections of the By-law (and any additional zoning relief the Board deems necessary):

MODIFICATION TO ZBA DECISIONS #2016-0088 and #2019-0032

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://brooklinema.gov/DocumentCenter/Index/2352>.

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.

Assistive Listening Devices are available upon request:

<https://www.brooklinema.gov/560/Americans-With-Disabilities-Act-ADA>

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Publish: 4/14/2022 & 4/21/2022

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing and continued the hearing to May 12, 2022, at 7:00 p.m. without testimony. Present at the continued hearing were Chair Lark Palermo and Board Members Mark Zuroff and Paul Bell. The case was presented by the attorney for the Petitioner, Attorney Jennifer Dopazo Gilbert, RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance were Todd Vincent, Head of School, and Philip Laird, architect, Architectural Resources Cambridge, 501 Boylston Street, #4101, Boston, Massachusetts.

Attorney Dopazo Gilbert presented the case for the Petitioner. Attorney Dopazo Gilbert stated that Dexter School is in the S-40, Single-Family District, and abuts the Boston/Brookline

municipal boundary. She noted that the property is surrounded on three sides by the Brandegee Estate, the Sisters of Saint Paul, and Allandale Farm.

Attorney Dopazo Gilbert described the Dexter Southfield School as a non-profit, pre-K through grade 12 school, and stated that the Petitioner is seeking a modification of two prior ZBA decisions, 2019-00032 and 2016-0088, as applicable, to allow for the expansion of the Clay Center Dining Area with a 16'10" high addition that is 4,178 square feet. She stated that the expansion could be done by right, however, the Petitioner had agreed to request a modification of the prior Board of Appeals decisions. She stated that the addition would be within an existing courtyard area that is interior to the school. She added that the addition would be more than 355 feet away from St. Paul's Avenue, about 386 feet away from the side abutter Brandegee Charitable Foundation, and more than 675 feet away from the residential abutters to the rear.

Attorney Dopazo Gilbert opined that this modification can be accomplished by right and stated that M.G.L. Ch. 40A, Section 3 (the "Dover Act") 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 Dopazo Gilbert added that in the prior decisions, the Board of Appeals found that Dexter School qualified as a protected use under M.G.L. Ch. 40A, Section 3, and further added that the request is simply to modify the prior decisions to reflect the proposed changes.

In reliance on a digital presentation, Mr. Laird reviewed the architectural drawings showing the location and dimensions of the cafeteria expansion. He noted that the location would be tucked into the courtyard of the original building. He described the crowded condition of the

existing cafeteria and noted that students eat outside in tents during the winter and this expansion would allow them to eat indoors year-round comfortably.

Zoning Board of Appeals Chair Palermo 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.

Chair Palermo then called upon Maria Morelli, Senior Planner for the Town of Brookline, to deliver the findings of the Planning Department. 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 the Dover Act. Such uses receive certain protections, as follows:

“No zoning ordinance or by-law [...] shall 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

Ms. Morelli therefore stated, if the Zoning Board of Appeals approves the site plan and architectural plans by Architectural Resources Cambridge, Inc. dated 4/5/22, 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 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 had no objections to the requested modification.

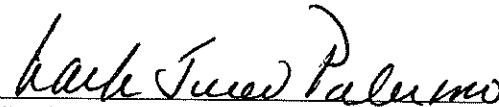
In deliberation, the Board discussed granting the modification request. The Board of Appeals concluded that the use was protected under the Dover Act. The Board then determined, by unanimous vote, that the proposed improvements to Dexter School are protected under the provisions of the M.G.L. Ch. 40A, Section 3 and therefore do not require zoning relief, however, the Board voted to modify prior ZBA decisions numbered 2016-0088 and 2019-0032, as applicable, and to impose the following reasonable 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 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.

Unanimous Decision of
The Board of Appeals

JUN 14 2022

Filing Date: _____


Lark Jurev Palermo, Chair

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals