



BOARD OF APPEALS
Jesse Geller, Chairman
Johanna Schneider
Lark Palermo

Town of Brookline

Massachusetts

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2023-0025
20 NEWTON STREET

Petitioner, the Dexter Southfield School, applied to the Building Commissioner for permission to construct a new athletic field house. 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 May 25, 2023, 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 May 11, 2023, and May 18, 2023, in the Herald, a newspaper circulated in Brookline. A copy of said notice is as follows:

TOWN OF BROOKLINE – Zoning Board of Appeals

NOTICE OF HEARING

The Brookline Zoning Board of Appeals will hold a public hearing on

Date/Time: Thursday, May 25, 2023

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/3nJi7PM>

Petitioner: Dexter Southfield School

Address: 20 Newton Street

Subject: Appeal from the denial of the issuance of the building permit and in the alternative request for a finding of no substantial detriment under MGL ch. 40A Section 6

Nature of Action/Relief:

§5.08 - EXCEPTIONS TO DIMENSIONAL REQUIREMENTS FOR USES 9 & 10; §5.30 - MAXIMUM HEIGHT OF BUILDINGS;

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS;

§5.50 - FRONT YARD REQUIREMENTS; §9.11 - ADMINISTRATIVE SITE PLAN REVIEW REQUIREMENTS FOR EDUCATIONAL USES IN RESIDENCE DISTRICT

Plans and submissions may be viewed online at

<https://www.brooklinema.gov/DocumentCenter/Index/4159>

Interested persons may provide comments at the public hearing or by submitting written comments by email to manthony@brooklinema.gov.

Assistive Listening Devices are available upon request:

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

Publish: 5/11/2023 & 5/18/2023

At the time and place specified in the notice, the Zoning Board of Appeals held a virtual public hearing. Present at the continued hearing was the Chair Geller and Board Members Randolph Meiklejohn and Saul Feldman. 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 was Todd Vincent, Head of School, and Leslie DelleFave and Philip Laird, architects, Architectural Resources Cambridge, 501 Boylston Street, #4101, Boston, Massachusetts.

Attorney Dopazo Gilbert presented the case for the Petitioner. Attorney Dopazo Gilbert stated that Dexter Southfield School (the "School") appealed from the decision of the Building Commissioner which denied the application for a building permit to construct a new athletic field house and requests that the Board of Appeals either grant a waiver from the zoning relief required as permitted by M.G.L. c.40A, s. 3, the so-called Dover Amendment, or in the alternative, that the Board of Appeals grant a special permit for this educational use under

Section 5.08.2 of the Zoning By-Law if it finds that general harmony with other uses in the vicinity.

Attorney Dopazo Gilbert referred to her memorandum submitted to the Board and entered into the hearing record and then reviewed the prior Board of Appeals cases pertaining to various School projects. She noted that in each case, the Board of Appeals found that the Dover Amendment applied and a waiver from application of the zoning by-law was granted under the Dover Amendment, subject to reasonable conditions. Attorney Dopazo Gilbert stated that in one such prior decision, the Board granted a special permit in addition to the waiver under Dover, because the Board found that the project at the new lower school building was in general harmony with other uses in the vicinity due to its proximity to other institutional uses such as the Brandegee Estate, the Sisters of Saint Paul, and Allandale Farm.

Attorney Dopazo Gilbert continued that the project proposes a total of 15,100 gross square feet of new construction sited along the east side of the Dexter Southfield School campus for Lower School physical education programs (the "Project"). She stated that the selected site is between the Athletic Center and the Lower School, which provides optimal proximity to the primary Lower School students that will use the facility. She added that the principal use and need for the field house is to provide a dedicated space for the Lower School physical education programs. Currently, she noted, the students use various spaces on campus and a singular space will ensure an efficient and successful physical education curriculum for the students and the field house will also be used to support extracurricular activities after school and during inclement weather. She stated that the Project will not result in the addition of staff or students.

Attorney Dopazo Gilbert stated that the Petitioner is a co-educational institution located on one of the highest hills in Brookline, Mount Walley and described the property as including

over 35 acres served by 325 parking spaces. She noted that regional school buses are provided, which drastically reduces vehicular traffic during peak hours. Attorney Dopazo Gilbert stated that the School site is bounded by Boston to the east and surrounded by several institutional and religious uses; the Brandegee Charitable Foundation, Allendale Farm and the Sisters of St. Paul Convent. She continued that the Project will not be visible from any public way and the closest residential abutters are located at a lower elevation 675 feet to the rear, and have no visible site line to the Project.

Attorney Dopazo Gilbert stated that the Project plans were presented to the Planning and Building Departments early in the process and that the Building Commissioner determined that the School falls under use #10 (educational) in Table 4.07 of the Zoning By-Law. Attorney Dopazo Gilbert noted that the Building Commissioner recommended the School go through the comprehensive and detailed site plan review under **Section 9.11** of the Zoning By-Law, which outlines a review process for educational uses in a residential district. She stated that the School is located within the S-40, Single-Family District.

Attorney Dopazo Gilbert noted that the School worked with the various Town Departments to complete the site plan review and made reference to the memo from Polly Selkoe, Assistant Director of Regulatory Planning which submitted to the Building Commissioner confirming that the **Section 9.11** site plan review was completed.

Upon inquiry from Chair Geller, Attorney Dopazo Gilbert confirmed that the field house would be for the use of Dexter School only. Board Member Meiklejohn requested clarification on the view of the public way. Attorney Dopazo Gilbert stated that St. Paul Avenue is a private way.

The project architect, Philip Laird, presented the architectural drawings, the site plan and the location of the new building adjacent to the existing hockey rink. He then reviewed the proposed elevations, described the height of the field house that required zoning relief and also described the circulation of the building and materials to be used in the construction that he noted would complement the Dexter campus.

Attorney Dopazo Gilbert stated that the maximum height allowed is 35-feet and the front yard setback required is 40-feet in the S-40 zoning district and continued that the proposed peak of the building is approximately 38.4-feet (a maximum elevation of approximately 320-feet) and proposed front yard setback is 31-feet. She stated that landscaping would be provided, including trees along the front yard setback.

Attorney Dopazo Gilbert stated that use by the Petitioner for its purposes qualifies as a use protected by the Dover Amendment, as indicated in the prior decisions. She noted that the requested modifications to the Zoning By-Law were modest and requested that the Board of Appeals waive the zoning requirements, stating that the School would be amenable to the reasonable conditions as recommended by the Planning Department.

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.

Chair Geller noted that a memorandum was provided by Assistant Director of Regulatory Planning, Polly Selkoe, dated May 25, 2023, that outlines how the Project satisfies the requirements under **Section 9.11** of the Zoning By-Law. He continued that Ms. Selkoe recommended three conditions for the Board of Appeals to consider in its decision.

Chair Geller then called upon Madison Anthony, Planner and Zoning Coordinator, to deliver the findings of the Planning Department. Ms. Anthony stated that the Planning and Community Development Department recommends the following conditions be attached to any approval:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and 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 or designee for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan subject to approval by the Assistant Director for Regulatory Planning or designee.
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, floor plans, 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 requested relief.

In deliberation, the Board discussed granting the requested relief. The Board Members determined that the use was protected under the "Dover Amendment." Zoning Board of Appeals Member Feldman stated that he is supportive of the application of M.G.L. Ch. 40A, Section 3 and believed it met the criteria for Dover relief. Zoning Board of Appeals Member Meiklejohn and Chair Geller agreed.

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

does not require zoning relief and the building permit should be issued, subject to the following reasonable conditions (each of which is consented to by the Petitioner):

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and 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 or designee for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan subject to approval by the Assistant Director for Regulatory Planning or designee.
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, floor plans, 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



Jesse Geller, Chair

Filing Date: 6/22/2023

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals