



# *Town of Brookline*

## *Massachusetts*

**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Johanna Schneider  
Lark Palermo

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**Benjamin Kaufman, Clerk**

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2023-0008  
774 BOYLSTON, BROOKLINE, MA

**ASSOCIATED DECISION:**  
51 RESERVOIR ROAD  
BOARD OF APPEALS CASE NO. 2023-0009

Petitioner, Roman Catholic Archdiocese of Boston, applied to the Building Commissioner for permission to construct a new Chapel for the Redemptoris Mater Seminary that would connect the existing dormitory and rectory. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed August 3, 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 its 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 July 20, 2023, and July 27, 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, August 3, 2023

**Location:** Virtual Hearing

**Virtual Registration Link:** <https://bit.ly/3D1gGuQ>

**Petitioner:** Roman Catholic Archbishop Of Boston

**Address:** 774 Boylston Street & 51 Reservoir Road

**Subject:** Construct a new Chapel that connects the existing dormitory and rectory together. The Chapel includes a full basement and double height first floor. Limited renovation work to existing Dormitory and Rectory.

**Nature of Action/Relief:**

§4.07 – TABLE OF USE REGULATIONS, USE #09

§5.08 - EXCEPTIONS TO DIMENSIONAL REQUIREMENTS FOR USES 9 & 10

*Plans and submissions may be viewed online at*

<https://www.brooklinema.gov/DocumentCenter/Index/4419>

*Interested persons may provide comments at the public hearing or by submitting written comments by email to [manthony@brooklinema.gov](mailto:manthony@brooklinema.gov).*

*Assistive Listening Devices are available upon request:*

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

**Publish: 7/20/2023 & 7/27/2023**

At the time and place specified in the notice, the Zoning Board of Appeals held a virtual public hearing and, at the Petitioner's request, heard both related cases together. Present at the hearing was the Chair Jesse Geller and Board Members Paul Bell 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 the project architect, Tim Burke, Timothy Burke Architecture, 142 Berkeley Street, Boston, Massachusetts.

Attorney Dopazo Gilbert presented both cases for the Petitioner. Attorney Dopazo Gilbert stated that Redemptoris Mater Seminary ("RMS") operates a seminary at 774 Boylston Street and 51 Reservoir Road (together referred to as the "Property") which is located in the T-6 zoning district and is owned by the Catholic Archdiocese of Boston. Attorney Dopazo Gilbert continued that the seminarians worship, live, and train for the priesthood at the Property, but do not use the St. Lawrence Church. She stated that the seminarians live in the Seminary Dormitory

building at 51 Reservoir Road and worship, eat meals, and receive instruction at the Rectory Building at 774 Boylston Street. She specified that the Petitioner proposes to construct a Chapel and reception hall between the Seminary Dormitory and Rectory Building.

Attorney Dopazo Gilbert noted that the project triggered review under the Town's Demolition Delay By-Law and that the Petitioner worked closely with the Town's Preservation Commission on design review in pursuit of a lift of stay of the 18-month demolition delay. She clarified that the Preservation Commission agreed to lift the stay based on a design for the project that did not include a bell tower and that the Preservation Ordinance stay of demolition expires in September. Ms. Dopazo Gilbert continued that the design review with the Preservation Commission resulted in many substantial changes that the Petitioner agreed to implement.

Attorney Dopazo Gilbert stated that the Planning Board was unanimously supportive of the proposal, including the bell tower feature, but requested that the Petitioner return to them for final design review to discuss materials for the base of the bell tower. She also noted that since the meeting with the Preservation Commission, the Petitioner had actually changed the location of the bell tower to address concerns initially raised by the Preservation Commission. She stated the Petitioner would agree to the recommended Planning Board conditions.

Tim Burke presented the architectural drawings and described the relationship of the existing buildings to the proposed structure. He reviewed renderings of the proposed building, the proposed floor plans and the circulation of the building, including the attached and accessible bell tower.

Attorney Dopazo Gilbert described the requested zoning relief stating that the FAR for the proposed project is conforming at .62 where the maximum allowed FAR is .75, that the front yard setback for a non-residential use is 25-feet and the proposed chapel is set back 24-feet from

Boylston Street and 31-feet from Reservoir Road, and that the height of the proposed Chapel and the Bell Tower exceed the maximum 35-feet, however she commented that this type of structure is exempt from the height requirements under Section 5.31 of the Zoning By-Law.

Attorney Dopazo Gilbert stated that there are two methods by which the Board of Appeals may grant the needed relief. She continued that Section 5.08.2 of the Zoning By-Law permits the Board to issue a special permit for religious uses (Use #9) in order to waive or modify dimensional requirements 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.” She also noted that this is also an educational use (Use #10) since seminarians attend the seminary for instruction on becoming ordained priests.

In the alternative, she stated, the Board could grant the relief by finding that the Dover Amendment applies to this project, because strict adherence to the existing dimensional requirements would be unreasonable as applied to this proposed Chapel and Seminary. She commented that the proposed use of the land and the building are for religious and educational purposes only and added that the primary goal of RMS is to train young men for missionary work and eventually to be ordained as Priests for the Catholic Church. She continued that it is clear that, in light of the Dover Amendment, a town may not prohibit a religious use or structure through its zoning by-law, and may not apply otherwise reasonable regulations that would nullify the protections of M.G.L. c. 40A, § 3.

The Board discussed whether and to what degree the Dover Amendment extended to setback requirements. Attorney Dopazo Gilbert noted that the relief was modest (1 foot), especially given the fact that the Zoning By-Law provided for special permit relief through Section 5.43 of the Zoning By-Law to waive setback requirements. She also noted the

preservation of both buildings which were found significant and the extensive landscape plan as counterbalancing amenities under that Section of the By-Law.

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

Chair Geller then called upon Madison Anthony, Planner and Zoning Coordinator, to deliver the findings of the Planning Board.

### **FINDINGS**

#### **§4.07 – TABLE OF USE REGULATIONS, USE #09**

Religious Use is allowed in all zoning districts.

#### **§5.08 - EXCEPTIONS TO DIMENSIONAL REQUIREMENTS FOR USES 9 & 10**

The ZBA by special permit may waive dimensional requirements to allow reasonable development in general harmony with other uses in the vicinity. The front yard setback for a non-residential use is 25'. The chapel is set back 24' from Boylston Street and 31' from Reservoir Road. The proposed FAR is conforming. The height of the Chapel and Bell Tower exceed 35'.

### **PLANNING STAFF COMMENTS**

Ms. Anthony stated that the Planning Staff has no objection to the construction of the chapel and reception hall. She stated that connecting the existing Rectory and dormitory will provide enclosed connections for all three buildings and much more space for the use of the Redemptoris Mater seminarians, who do not use the St. Lawrence Church. At the same time, she added, renovations to the exteriors of the two existing buildings, especially painting, and the provision of new landscaping will enhance the appearance of the site. Ms. Anthony stated that the signage on the 48-car parking lot indicates it is for use by both the seminarians and parishioners of St. Edwards Church, and it is of ample size to provide adequate parking space for both uses. Additionally, she noted, there should be no impact to the properties across Reservoir Road from the new chapel and the existing parking lot, because at one end, is some vacant land

belonging to an office building and at the other end, is 10-foot wood wall screening residential properties, which face Lyman Road in the Estate section of Brookline.

Ms. Anthony stated that the Planning Staff agrees with the Preservation Commission that the bell tower seriously detracts from the classic appearance of the steeple of the new chapel. She added that if it is a requirement for the religious use of the Redemptoris Mater seminarians perhaps it could be relocated to another part of this large property so that it does not conflict architecturally with the appearance of the steeple. She added that several court cases have made it clear that design review is not allowed for religious uses, especially in regard to steeples and towers.

#### **PLANNING BOARD COMMENTS**

Ms. Anthony stated that the Planning Board is supportive of this proposal and appreciates the thorough engagement the applicant has made with the Preservation Commission. She added that the Board feels like the design can be further improved and suggested incorporating a stone base to ground the tower to the plinth and improve its architectural integration with the chapel and other elements on the site. She stated that the Planning Board felt that the architecture could be further integrated through landscaping, which will also address the tower's proximity to Route 9 and the steep slope of the grade. She noted that the Board suggested adding a condition requiring that the applicant to return to the Planning Board for a final design review of the architectural and landscape plans.

Ms. Anthony therefore stated that the Planning Board recommends approval of the site plan prepared by A.S. ELLIOTT ASSOCIATES, PLS, dated July 6, 2022, and architectural plans prepared by TIMOTHY BURKE ARCHITECTURE, RA, dated July 6, 2022, subject to the following conditions:

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 Planning Board for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit final landscaping plans, stamped and signed by a registered architect or landscape architect, to the Planning Board for review and approval.
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 and agreed that the elements (bell tower and steeple) that exceeded the height were exempt under Section 5.31 of the Zoning By-Law.

In deliberation, the Board discussed granting the relief under M.G.L. Ch. 40A, Section 3. The Board of Appeals agreed that the use was protected under "Dover." Chair Geller stated that the proposal was both religious and educational in nature and felt that the proposal thus met the necessary characteristics to be a protected use. 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 Paul Bell concurred.

The Board then determined, by unanimous vote, that the proposed improvements for 774 Boylston Street (Case #2023-0008) and 51 Reservoir Road (Case# 2023-0009) are protected under the provisions of the M.G.L. Ch. 40A, Section 3, and, therefore, the Board granted a waiver from the Zoning By-Law. The Board determined that the building permit should be

issued, however, the Board voted to impose the following reasonable conditions recommended by the Planning Board and agreed 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 Planning Board for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit final landscaping plans, stamped and signed by a registered architect or landscape architect, to the Planning Board for review and approval.
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

SEP 12 2023

  
Jesse Geller, Chairman

Filing Date: \_\_\_\_\_

A True Copy  
ATTEST:



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Benjamin Kaufman  
Clerk, Board of Appeals