



Town of Brookline

Massachusetts

BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Christopher Hussey

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2012-0001

Petitioners Lowell and Luisa Bryan asked the Building Commissioner to rescind the building permit for the Runkle School project because, they allege, the on-going work does not comply with the Board's decision in Board of Appeals Case Nos. 09-0077 and 09-0078. The Commissioner denied the Bryans' request to rescind the building permit and enforce the zoning and the Bryans appealed to this Board.

On January 5, 2012 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed February 2, 2012 at 7:15 p.m. in the Selectmen's hearing room as the time and place for a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to their attorney 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 12 and 19, 2012 in the Brookline Tab, a newspaper of general circulation in Brookline. A copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **LOWEL AND LUISA BRYAN**
Owner: **BROOKLINE PUBLIC SCHOOLS**
Location of Premises: **50 Druce Street**
Date of Hearing: **February 2, 2012**
Time of Hearing: **7:15 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th Floor**

A public hearing will be held to consider Petitioners/Appellants Lowell and Luisa Bryan M.G.L. ch. 40A, §8 appeal of the Building Commissioner's denial of their request for enforcement. Petitioners/Appellants allege that the ongoing renovation and addition to the Runkle School does not comply with the Board of Appeals' decision in Consolidated Case nos. 09-0077 and 09-0078. The petitioner's further allege that additional zoning relief is required pursuant to Zoning By-Law §5.08.2 at **50 DRUCE ST.**

Said premise located in an **S-7(single-family)** residential district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at:

<http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

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 the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Enid Starr and Board Members Jesse Geller and Mark G. Zuroff. Attorney James Gray Wagner represented the Petitioners. Associate Town Counsel John

Buchheit and Architect Robert Bell represented the School Department. The hearing was opened on February 2, 2012 and, at the request of the Petitioners, continued to March 1, 2012. The Bryans, through Attorney Wagner, presented their case and were supported by their neighbors Michael Oates (96 Dean Road) and Harvey Finkel (92 Dean Road).

The Bryans are abutters to the School and live at 36 Druce Street. The Runkle School ("School") is a public school located at 50 Druce Street. The Bryans allege that the construction of the School violates the Board's prior decision in Case Nos. 09-0077 and 09-0078 (the "2010 Decision") because it is different from the plans presented to the Board during the hearing of those matters. More specifically, the Bryans state that heating, ventilation and air conditioning (HVAC) units have been moved to the Druce Street side of the school near their home, the square footage of the school has been increased, and the School Department has not complied with Condition 1 of the 2010 Decision. Moreover, the Bryans alleged that the School Department has increased a nonconformity by adding HVAC equipment and screening to the roof of the school near their home. For the reasons set forth below, the Board upholds the decision of the Building Commissioner denying the Bryans' request for zoning enforcement and rescission of the building permit.

In the 2010 Decision, the Board found that the School Department had met its burden under the portion of G.L. c. 40A, §3 known as the *Dover Amendment*, and granted it an exemption from the Zoning By-Law's requirements for floor area ratio ("FAR"), parking and loading docks. No relief by way of Special Permits was granted. The only portion of the relief granted in the 2010 Decision alleged by the Bryans to be at issue in this appeal is the FAR exemption. As reflected in the 2010 Decision, this Board found that in order for the School Department to adequately educate the children in the neighborhood, it required a school with an

FAR of .88. It also determined that this need to educate the local school children outweighed local municipal zoning concerns. In arriving at these conclusions, the Board reviewed plans, elevations and drawings presented by the School Department. The Board recognized that the School Department had considered a wide range of design alternatives to shift and redistribute the mass, and to minimize the overall bulk of the building as much as possible. It also understood that the plans presented to it were schematic and not final plans, and subject to some revisions. For example, it understood that a change had been made to reduce the FAR of the structure. Eighteen feet of the three-story gymnasium/cafeteria was removed from the Clinton Road side of the building and as a result the music room was moved from the lower to the upper level of the School. This change was reflected in floor plans presented to the Board at the 2010 hearing, but was not reflected in the elevations and drawings presented to the Board. This change resulted in two HVAC units (at issue in the Bryans' appeal) being moved to the Druce Street side of the School nearer to the Bryans' home.

The Bryans allege that the change in location of the music room increased the floor area of the School beyond that allowed by the 2010 Decision. To arrive at this conclusion, the Bryans added 1,200 plus square feet of habitable space to the upper level of the School. In their calculation, however, the Bryans failed to consider that this move was necessary in order to reduce the size of the gymnasium/cafeteria, a portion of the project that the Dean Road abutters found particularly objectionable. As explained by the project architect, the net effect of this change was a reduction in the FAR making the project more compliant with the Zoning By-Law's FAR requirements. Moreover, as stated above, the School Department presented these changed floor plans at the 2010 Hearing and based its FAR calculation on these floor plans.

Accordingly, we do not find, as alleged by the Bryans, that this change increased the FAR of the project.

The Bryans next argue that the 2010 Decision has been violated because HVAC units were moved. When the music room was moved to the upper floor, three HVAC units were displaced. Two of these units were moved to the Druce Street side of the School resulting in one or both of these units being nearer to the Bryan's home. At the hearing the Bryans proposed a plan to move three HVAC units away from their home. This plan included one unit that was represented in the schematic drawings and two units displaced by the music room. The Board's 2010 Decision, however, had no bearing on the placement of these HVAC units. The zoning relief granted was an exemption from the Zoning By-Law's FAR, parking and loading dock requirements. The three HVAC units of concern to the Bryans do not contribute to FAR, meet all of the requirements of the Zoning By-Law, and are allowed as of right. For rooftop mechanical units, the only requirement in the Zoning By-Law is that they not exceed the height limit by more than ten feet and that they "be concealed or screened from public view to the greatest extent feasible and shall comply with the provisions of the Noise Control By-Law." Zoning By-Law §5.31.1. These three HVAC units have been designed to meet these requirements. As stated above, the two displaced HVAC units that concern the Bryans and the music room were moved in order to reduce the size of the gymnasium/cafeteria addition, which reduced the FAR and made the project more compliant with the Zoning By-Law.

The Bryans argue that the School Department has not complied with Condition 1 of the 2010 Decision. Condition 1 provides:

In completing its final design for the school, the building architect shall review the comments of the Planning & Community Development Director in his Administrative Site Plan Review memorandum and accommodate as much as possible changes to

exterior cladding and landscape changes that would help improve the exterior of the building, particularly on the Dean Road side.

(Emphasis added.) Decision at page 22. The Board agrees with the Building Commissioner that the School Department has met the requirements of Condition 1. As outlined in the Building Commissioner's letter dated December 1, 2011, the School Department's design team has taken a number of steps to meet this condition. It has refined the gymnasium facade by changing the window arrangement and cladding materials; prepared different options for the upper floor and made its final selection with input from abutters; added green wall screening to the final design based on abutter input; added trellis work along the former gymnasium/multi-purpose room; prepared nighttime renderings and studied the effects of different interior colors in order to reduce light trespass; prepared photometric site plans to illustrate how the concealed areas are illuminated and how light trespass will be mitigated; and, developed a landscape plan that includes significant landscape buffers and adjustments made in response to requests from abutters. The design team has also selected a color for the metal veneer used to screen the mechanical units that disappears into the skyline as much as possible.

Finally, the Bryans at the hearing argued that the placement of the HVAC units near their home increased a prior non-conformity. The School on the Dean Road side does not meet the side-yard setback for the Zoning District (S-7). The Zoning By-Law requires a twenty foot setback and there is only nineteen feet. It was, however, uncontroverted that the HVAC units and screening have not been placed within the twenty foot setback and are being constructed well back from the non-conforming wall and the twenty-foot setback. As a result, this Board finds that the HVAC units and screening do not increase the nonconformity and no zoning relief is required.

Accordingly, the Board voted unanimously to uphold the decision of the Building Commissioner denying the Bryans' Request for Zoning Enforcement.

Unanimous Decision of
The Board of Appeals



Enid Starr, Chairman

Filing Date: May 18, 2012

A True Copy
ATTENTION:
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TOWN OF BROOKFIELD
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MAY 18 A 8:04
Patricia J. Ward
Patricia J. Ward
Clerk, Board of Appeals