

SUMMARY OF PROCEEDINGS

This matter came before the Planning Board (the "Board") on the application of the Town of Hingham (the "Applicant") for Site Plan Review under §§ I-I and III-B, 8.b. of the Zoning By-Law (the "By-Law") and such other relief as necessary to replace the Foster Elementary School with a new three-story 126,385 SF building along with related improvements at 55 Downer Avenue in the Official and Open Space District.

The Board opened a duly noticed public hearing on the application at a meeting held remotely on August 22, 2022 via Zoom as an alternate means of public access pursuant to Chapter 107 of the Acts of 2022 temporarily suspending certain provisions of the Open Meeting Law. Subsequent substantive hearings were held on September 12, 2022, September 28, 2022, October 12, 2022, and October 24, 2022. The Board panel consisted of regular members Judith Sneath, Chair, Gordon Carr, Rita DaSilva, Kevin Ellis, and Gary Tondorf-Dick. Gene Raymond, AIA, LEED AP, of Raymond Design Associates, Inc., presented the application to the Board, along with project representatives including Andy Street, P.E., of The Vertex Companies, LLC, and Lynne Giesecke, of Studio 2112 Landscape Architecture. The Board was assisted in its review by Patrick Brennan, P.E., of Amory Engineers and Jeffrey Dirk, P.E., PTOE, FITE, of Vanasse & Associates, Inc. At the conclusion of the review, the Board voted to grant Site Plan Approval under Sections I-I and III-B, 8.b. of the By-Law, with conditions set forth below.

Throughout its deliberations, the Board was mindful of the statements of the Applicant, its representative, and the comments of the general public, all as made or received at the public hearing.

STANDARD OF REVIEW

As the School Committee submitted the Project as part of the educational use of the Hingham public schools and the Foster Elementary School in particular, the Planning Board took into account the standards of review set forth under the Dover Amendment and related case law. The Dover Amendment provides in part: "No zoning ordinance or by-law shall...prohibit, regulate or restrict the use of land or structures for...educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic...; 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."

In *Regis College v. Town of Weston*, 462 Mass 280 (2012), the Supreme Judicial Court (SJC) stated that Massachusetts courts recognize "two common sense and interrelated limits on the statute's application:" First, the Dover Amendment protects those uses of land and those structures that have as their bona fide goal something that can reasonably be described as "educationally significant;" and second, the educationally significant goal must be the "primary or dominant" purpose for which the land or structures will be used.

The purpose of Dover Amendment, as stated in *Trustees of Tufts College v. City of Medford*, 415 Mass 753, 757 (1993), is as follows: “The whole of the Dover Amendment, as it presently stands, seeks to strike a balance between preventing local discrimination against an educational use [cite omitted] and honoring legitimate municipal concerns that typically find expression in local zoning laws.” The *Tufts* court also stated the burden of proof as follows: “Because zoning laws are intended to be uniformly applied, an educational institution...will bear the burden of providing that the local requirements are unreasonable as applied to its proposed project” (*Trustees of Tufts College* at 759).

BACKGROUND AND DISCUSSION

The project site consists of 39.75 ± acres of land, with approximately 8 acres improved by the Foster Elementary School along with associated driveways, parking areas, sports courts, and playing fields. The remainder of the property is woodland and wetlands. Wetland resource areas on site include bordering vegetated wetlands, a tidal creek with associated banks and Riverfront Area, salt marsh, and land subject to coastal storm flowage. The FEMA regulated flood zone AE (el. 6) encompasses the southern/ southeastern portion of the site.

The plan calls for demolition of the existing school and associated infrastructure and construction of a new three-story school building with a footprint of approximately 55,700 ± SF, with new driveways, parking areas, sports courts, playing fields, and playgrounds, collectively resulting in approximately 12 acres of disturbance. The project is proposed to be completed in phases so that the existing school may remain in use until the new school is available.

Traffic and Circulation: Access to the elementary school campus will be provided by way of three (3) driveways that will intersect the east side of Downer Avenue as follows: a north driveway that will be located approximately 20 feet north of the existing north driveway that serves the school campus; a central driveway that will be located opposite the entering drive to Planters Field Lane; and a southern drive that will align with the exiting drive from Planters Field Lane. The north driveway will be used for deliveries and by maintenance vehicles, with controlled (by means of gates) access by time of day for use as an entrance for Special Education vans and parents/caregivers during student drop-off/pickup periods only. The central driveway will serve as an exit only driveway for school buses. The southern driveway will serve as an entrance for school buses and as an exit for Special Education vans and for parents/caregivers during student drop-off/pick-up periods, reverting to a full access drive accommodating both entering and exiting traffic at all other times. Gates are planned to be installed at three (3) control points along the perimeter roadway: on the northern drive at Downer Avenue; east of the service driveway along the north side of the elementary school building; and to the east of the circular drive along the south side of the elementary school building. These control points have been established to restrict travel along the perimeter roadway to designated vehicles and to control access during specific times of day.

Parking: The exempt educational use under § III-B, 8.b is not explicitly listed in the Parking Table in § V-A of the By-Law. Therefore, a parking determination of reasonable regulation is required with this application.

The proposed plan depicts 160 on-site parking spaces. With the exception of a handful of parallel and angled parking spaces, the majority of the parking is located in two (2) parking lots situated in the southwest corner of the development site that are linked to the school building by sidewalks with marked crosswalks and wheelchair ramps provided to link the parking lots to the school building.

Based on a review of the Institute of Transportation Engineers data, the Board's traffic peer review engineer, Jeffrey Dirk, confirmed that the number of parking spaces that are proposed is sufficient to accommodate the anticipated parking demands of the project with consideration of parking demand fluctuations that will occur during special events and playing field use at the school.

Stormwater: The stormwater management system will include catch basins, area drains, manholes, bioretention areas, and underground infiltration systems consisting of plastic chambers surrounded by crushed stone. Roof drains will be connected to the stormwater piping system and routed through the underground infiltration systems. Proposed perimeter erosion controls consist of a line of bales/silt fence along the north, east and south limit of work, and inlet protection in the form of silt sacks are proposed. The Board's civil peer review engineer, Patrick Brennan, confirmed that the system overall meets applicable design standards and exceeds the capacity required for the site.

Utilities: New water and sewer lines will be connected to the existing lines in Downer Avenue and there will be some replacement of water lines in Downer Avenue in front of the complex. Underground electric and communication utilities will be connected to an existing utility pole along Downer Avenue. Geothermal piping and buried infrastructure under the fields and sports courts south of the new building are also proposed with this project.

Building and Site Design: While this project does not require waivers of submittal requirements or design and performance standards under § III-B, 8.b, the proposed building height of 47' exceeds the 35' maximum height allowed in the Official and Open Space District under § IV-A of the By-Law for nonexempt uses. The initial plans included tennis courts in the front of the property along Downer Avenue, including a 10' high tennis court fence and 10'± high retaining, within the 40' front yard setback required under § IV-A and 50' setback for a residential district under § IV-B,1. Plans were revised throughout the hearing process to eliminate the proposed tennis courts, allowing for a compliant site design in terms of setbacks serving the school program.

Landscaping and Tree Preservation: Tree removal proposed for this project consists of 38 trees in the existing developed area of the site. The project will result in a significant cut into the hillside and related tree clearing to the north of the proposed loop road and school building; however, more than an acre (47,400 SF) of the hillside will be restored with an erosion control seed mix and a variety of 5'-tall bareroot whips placed 8' on center. While none of the existing trees are considered Protected Trees as defined in the By-Law, the Applicant proposes a significant number of trees and plantings to mitigate the removals.

Related Improvements: In addition to the school, a number of outdoor recreational facilities are proposed consisting of a softball field, an outdoor volleyball court, two outdoor basketball courts, a Pre-K playground, a K-5 playground, and two outdoor classrooms.

During the course of the hearings, the Board raised numerous questions and provided extensive comments pertaining to bulk and height of structures, setback requirements, open space, parking, traffic, vehicle and pedestrian access and circulation, landscaping, light trespass, signage, and building design. Abutters provided public comment during the hearing process related to vehicle circulation, the environment, and an informal walking path.

FINDINGS

Based on the information submitted and presented during the review, and the deliberations and discussions of the Board during the hearings, the Board made the following findings in accordance with the Approval Criteria under § I-I, 7. as modified by § III-B, 8. of the By-Law:

- a. The proposed development, inclusive of the use of land and structures for educational purposes on land owned by the Town of Hingham qualifies for limited review pursuant to M.G.L. Chapter 40A, Section 3 and Section III-B.8.b of the Zoning By-Law.
- b. The proposed development, as conditioned by the Approval, will not adversely affect the health, safety and welfare of the prospective occupants, the occupants of neighboring properties, and users of the adjoining streets or highways, and the welfare of the Town generally.
- c. The project proposes 160 on-site parking spaces. Based upon information provided by the applicant and verified by the Board's traffic peer review engineer, the number of parking spaces proposed is sufficient to accommodate the anticipated parking demands of the project with consideration of parking demand fluctuations that will occur during special events and recreational uses at the school.
- d. The project proposes a stormwater management system to include catch basins, area drains, manholes, bioretention areas, and underground infiltration systems consisting of plastic chambers surrounded by crushed stone. Roof drains will be connected to the stormwater piping system and routed through the underground infiltration systems. Proposed perimeter erosion controls consist of a line of straw bales/silt fence along the north, east and south limit of work, and inlet protection in the form of silt sacks are proposed. The system overall meets the design standards and exceeds the capacity required for the site.
- e. The proposed development complies with all requirements of the Hingham Zoning By-law with the exception of the following:

Bulk and Height of Structures: The proposed school is 47' in height, exceeding the 35' height limitation in the Official and Open Space District under Section IV-A of the By-Law. A compliant structure would result in an expanded footprint and a greater impact to both the site and abutters. Additionally, the location of building, which is setback significantly from the street and abutting properties, will minimize the visual impact of the project.

Setbacks: The proposed development includes two parking spaces within the required 50' setback under Section IV-B.1 of the By-Law. Allowing this minimal encroachment into the 50' setback, where a landscaped buffer would otherwise be required, will not detract from the streetscape or natural features of the site and will not negatively impact abutters.

DECISION

Upon a motion made by Kevin Ellis and seconded by Gordon Carr, the Board voted unanimously to GRANT the application of the Town of Hingham for Site Plan Review under §§ I-I and III-B, 8.b. of the Zoning By-Law to replace the Foster Elementary School with a new three-story 126,385 SF building along with related improvements at 55 Downer Avenue in the Official and Open Space District, subject to the following conditions:

1. Recording of Decision. The Applicant shall file a certified copy of this decision in the Registry of Deeds and provide evidence of such recording with the application for a building permit.
2. Plan Revisions. Prior to application for a building permit, the Applicant shall submit a revised site plan to include the following:
 - a. Construction management plan with description of how stormwater will be handled during each phase of construction;
 - b. Hingham highway bounds on each side of Downer Avenue at its intersection with Planters Field Lane; and
 - c. snow storage areas for all internal roadways and parking areas, including all temporary roadways and parking areas during the construction phases that will occur during winter months, reviewed and approved by the DPW Supervisor.
3. Pre-Construction Meeting. A preconstruction review meeting with inspection of the erosion control installation and marked limits of clearing shall be required before issuance of a building permit.
4. Stormwater Pollution Prevention Plan. Since the project will disturb more than one acre, the Applicant shall submit a Stormwater Pollution Prevention Plan to the Community Planning Department a minimum of two weeks prior to the start of any work.
5. Traffic. The Applicant shall coordinate with the Community Planning Department, Police Department, and Traffic Peer Review Engineer to design signage intended to prohibit

drop-off/pick-up activities or parking along the west side of Downer Avenue during specific time periods on weekdays, except holidays. Said signage is subject to the review and approval of the Select Board pursuant to the Traffic Rules and Orders. The applicant shall also coordinate with such departments in advance of each phase of the construction to determine appropriate signage and traffic management for each construction phase.

6. Limits of Work. During clearing and/or construction activities, the marked limit of work shall be maintained until all construction work is completed and the site is cleaned up. All vegetation beyond the limit of work shall be retained in an undisturbed state and no stockpiling of topsoil or storage of fill, materials, or equipment may occur within the protected area.
7. Construction Hours. Construction shall not take place before 7:00 AM or after 7:00 PM Monday through Friday or before 8:00 AM or after 7:00 PM on Saturday and Sundays unless authorized on an emergency basis by the Building Commissioner.
8. Construction Vehicles. During the period of construction, no construction worker vehicles, and no construction equipment (unless in connection with off-site mitigation while such work is underway), shall be parked offsite or on any public or private way.
9. Construction Operations. In order to mitigate temporary impacts during the construction phase related to views, dust emissions, and sediment runoff, the Applicant shall undertake the following measures:
 - a. install and maintain solid screening upon the construction fence; and
 - b. follow all construction related provisions described on Notes included on the approved plans referenced herein.
10. Inspections. Inspections shall be required during construction, and prior to issuance of a certificate of occupancy, of all elements of the project related to or affecting erosion control, limits of work, and the approved drainage and stormwater system installed for the project. The Planning Board shall require, at the applicant's expense, the establishment of a consultant fee account pursuant to Massachusetts General Laws Chapter 44 Section 53G, to fund the cost of such inspections.
11. As-Built Plan Requirement. Upon project completion an as-built plan must be submitted to the Building Commissioner prior to the issuance of a certificate of occupancy, and in no event later than two years after the completion of construction. In addition to such other requirements as are imposed by the Building Commissioner, the as-built plan must demonstrate substantial conformance with the stormwater system depicted on approved plans referenced herein.
12. On-going Conditions.

- a. Prior to the start of each school year and periodically throughout the school year, the school administration shall inform parents/caregivers that parking and live drop-off of students are prohibited along Downer Avenue, Planters Field Lane and Crow Point Lane.
- b. Plan Changes. The installation of a ground mounted solar array on the property shall be considered a major modification of the Site Plan to be reviewed by the Board through a noticed public hearing so that potential impacts may be considered.

For the Planning Board,



Judith Sneath
October 28, 2022

In Favor: Judith Sneath, Gordon Carr, Rita DaSilva, and Kevin Ellis

Abstentions: Gary Tondorf-Dick

Opposed: None

This decision shall not take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed since the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded with the Plymouth County Registry of Deeds and/or the Plymouth County Land Court Registry, and indexed in the grantor index under the name of the record owner or is recorded and noted on the owner's certificate of title.