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ZONING BOARD OF APPEALS

Brenda Belsanti, Board Clerk

CITY CLERK
NEWTON, MA 02459

#08-22

DETAILED RECORD OF PROCEEDING AND DECISION

#08-22 Josh Ehrenfried of 78 Winston Road, Newton, Massachusetts, pursuant to M.G.L. c. 40A, § 8, and 15, appealing the August 18, 2022 issuance of a building permit by the Commissioner of Inspectional Services for the installation of foundations for sports field lighting. The subject property is at 140 Brandeis Street, Newton, Massachusetts within a Public (PUB) zoning district.

The Zoning Board of Appeals for the City of Newton (the "Board") held a hybrid public hearing in person and via Zoom on Wednesday, October 19, 2022 at 7:00 p.m.

Due notice of the public hearing was given by mail, postage prepaid, to all "parties in interest" in accordance with M.G.L. c. 40A, § 11 and by publication in *The Boston Herald*, a newspaper of general circulation in Newton, Massachusetts, on October 5, 2022 and October 12, 2022.

The following members of the Board were present:

- Brooke K. Lipsitt (Chair)
- Michael Rossi
- William McLaughlin
- Elizabeth Sweet
- Jennifer Pucci
- Lei Reilley

The following documents were submitted to the Board and/or entered into the record at the public hearing: 140 Brandeis Road Appeal Application, received August 19, 2022.

THE PUBLIC HEARING

1. At the start of the hearing, Chairperson Lipsitt explained her view that the appeal did not present any zoning issues within the jurisdiction of the Board. She noted that any improvements and modifications to City property are exempt from zoning review and are instead governed solely by the City's general ordinances, Section 5-58, which sets forth the relevant requirements for the review of projects located on City land. Chairperson Lipsitt cited the various provisions of the zoning ordinance, including Sections 2.2.1 and 6.3.10, which state that City projects are subject to a site plan review process under Section 5-58 of the general ordinances that is separate and apart from zoning site plan review. She also noted that the zoning ordinance has at all times been consistently interpreted not to apply to City projects. She further explained her view that the use at issue here is not a non-profit educational use that would be subject to administrative site plan review under the zoning ordinance.

2. Chairperson Lipsitt asked the Board's attorney, Deputy City Solicitor Jonah Temple, to explain to the Board why the site plan review required by general ordinance 5-58 did not take place here for the installation of the lights. Attorney Temple responded by explaining that while all construction and improvements on City property are governed by Section 5-58, the language of the ordinance exempts minor projects from the site plan review process. He pointed to other examples of minor projects, such as playground improvements, sidewalk improvements, and installation of solar panels that do not actually trigger 5-58 site plan review and are therefore not subject to any review.
3. Chairperson Lipsitt reiterated her stance that 5-58 site plan approval for City projects is not part of the zoning ordinance and any question as to whether or not 5-58 site plan review should have taken place here is outside the purview of the Board. Chairperson Lipsitt then asked the Petitioner to address the issue of whether or not the Board had jurisdiction over this matter and specifically requested that he identify any applicable provisions of the zoning ordinance.
4. The Petitioner, Josh Ehrenfried of 78 Winston Road, shared portions of a presentation with the Board and identified the provisions of the zoning ordinance that require administrative site plan review for non-profit educational uses. The Petitioner also contended that site plan review under general ordinance 5-58 is part of zoning and that its application falls within the Board's jurisdiction.
5. In response, Chairperson Lipsitt again restated her view that the zoning ordinance does not apply to City projects according to the provisions of the zoning ordinance and section 5-58 of the general ordinances. She further noted that 6.3.14, which governs non-profit educational uses, does not apply to City school uses that are instead governed by 6.3.10 as a public use. The Chairperson acknowledged that the zoning ordinance could be clearer but that this interpretation has been consistent for decades.
6. The Board then heard comment from members of the public.
7. After public comment, the Board discussed and deliberated whether the City lighting project at issue was subject to the zoning ordinance. All board members spoke briefly and agreed that the property was not subject to any zoning review, that the Board therefore didn't have authority to grant any relief in the matter, and that as a result the appeal is not properly before the Board.
8. A motion was made by Michael Rossi that the Petitioner lacks standing to seek relief from the Board, seconded by William McLaughlin with an amendment to refund the \$1,000 filing fee. Mr. Rossi agreed to the amendment. Chairperson Lipsitt then bifurcated the amendment into a separate motion which was deliberated by the Board.
9. On the motion that the appeal was not properly before the Board based on lack of jurisdiction and standing, the motion passed 5-0 as follows:

AYES:
Brooke K. Lipsitt

Michael Rossi
Jennifer Pucci
William McLaughlin
Elizabeth Sweet

10. On the motion to refund the filing fee, the motion passed 4-1 as follows:

AYES:

Brooke K. Lipsitt
Michael Rossi
William McLaughlin
Elizabeth Sweet

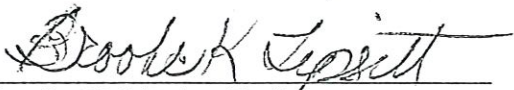
NAYS:

Jennifer Pucci

FINDINGS & DETERMINATION

After careful study of the materials submitted and the information presented at the public hearing, the Board makes the following findings and determination:

1. The appeal does not set forth any violation of the zoning ordinance and, based on the provisions of the zoning ordinance (Sections 2.2.1 and 6.3.10) and Newton general ordinance Section 5-58, the subject property and project is not subject to any zoning review.
2. As a result, the Board has no basis to hear the merits of the appeal based on lack of standing and lack of jurisdiction and the appeal is dismissed.



Brooke K. Lipsitt, Chairperson

The City Clerk certified that all statutory requirements have been complied with and that 20 days have lapsed since the date of filing of this decision and no appeal, pursuant to Section 17, Chapter 40A has been filed.

Carol Moore, City Clerk