

BOARD OF APPEALS CASE NO. 18-05

PETITION OF FRAMINGHAM PUBLIC SCHOOLS

DATE OF DECISION: APRIL 10, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of FRAMINGHAM PUBLIC SCHOOLS (hereinafter the Applicant), for property located at 31 FLAGG DRIVE. This Decision is in response to a Petition for a Variance for height (hereinafter the Application).

2. Property Owner and Applicant

Framingham Public Schools
73 Mt. Wayte Avenue, Suite 5
Framingham, MA 01702

3. Location

Property is located at 31 Flagg Drive and identified by Assessors' Parcel IDs 102-82-8137-000, 102-82-4579-000, 102-82-2420-000, and 102-92-2532-000 (hereinafter the Site).

4. Board Action

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on April 10, 2018 the Board voted to GRANT the requested VARIANCE by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
SUSAN S. CRAIGHEAD	YES
STEPHEN MELTZER	YES

5. Proceedings

The Application was received by the Board on March 15, 2018 pursuant to MGL, Ch. 40A, §10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on April 10, 2018 at 7:15 P.M. in the Ablondi Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and alternate Edward Cosgrove, were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

Matthew Torti, Director of Building and Grounds for the Framingham Public Schools, introduced himself, Joel Seeley of Symmes Maini & McKee Associates, Inc. (SMMA), and Philip Gray of Jonathan Levi Architects. Mr. Seeley explained the Framingham Public Schools and

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Fuller Middle School Building Committee were undertaking a feasibility study in collaboration with the Massachusetts School Building Association (MSBA). As part of the feasibility study, the School Committee began investigating options for the renovation, renovation construction, and new construction of the Fuller Middle School, which will lead to selection of a single preferred option to be submitted to the MSBA. The applicant is seeking a height Variance to be able to build up to 55 feet.

Mr. Gray continued to explain the project proposes replacing an existing 196,000 gross square feet (gsf) single story school originally built in the 1950s to accommodate 1,200 high school students with a new school building either 2 or 3 stories to comprise between 145,000 and 160,000 gsf, to serve 630 students in grades 6-8. He proceeded to explain the site is unique in that it has three existing adjacent schools and is effectively ringed by wetlands, which separate it from any adjacent residential property. He explained the four alternatives reflect site restrictions and urban design improvements. Renovation of the existing building would be substantially more expensive than new construction and would require costly and disruptive use of swing space for existing students. He explained that the proposed urban design improvements will attempt to improve campus identity between the Fuller, Farley, and McCarthy Schools. New construction proposals, with large setbacks, will have smaller apparent height than the neighboring Farley School which sits adjacent to Flagg Drive.

Mr. Gray proceeded to explain the four schematics, including the preferred Scheme C, which was 55 feet and 3 stories, the tallest of the four. He stated that a scheme had not yet been decided on and that they were still required to receive approval by the School Committee, City Council, and the MSBA. Receiving relief from the height would remove height concerns from the state and potentially avoid delays.

Mr. Cosgrove questioned the proposed available open space and its use. Mr. McKenna voiced concern regarding the removal of the softball field. Mr. Gray clarified that open space use would be determined when one of the four schemes has been decided on, but more space would be available as opposed to what currently exists.

Mr. Gerald Bloomfield (1347 Edgell Road) voiced concern regarding the City's responsibilities in regards to due diligence because this is a Dover project. He questioned if abutters were notified. Mr. Ottaviani clarified that all abutters within 300 feet were notified as required by MGL Chapter 40A.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Application filed with the Building Official to construct a three-story structure, dated March 1, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on March 16, 2018.
- 6.3. Planning Board comments, dated April 6, 2018.

- 6.4. Board of Health comments, dated April 6, 2018.
- 6.5. Plan set entitled “Fuller Middle School – ZBA Variance Application Drawings” dated March 9, 2018 and including Existing Conditions Plan (C-1.0), Existing Conditions Plan (C-1.1), Existing Conditions Plan (C-1.2), Existing Conditions Plan (C-1.3), Site Plan Alternative – Scheme A, Site Plan Alternative – Scheme B, Site Plan Alternative – Scheme C, Site Plan Alternative – Scheme D, and Elevation Diagrams, prepared by Jonathan Levi Architects, 266 Beacon Street, Boston, MA 02116.

Exhibit 6.5 shall be hereinafter referred to as the “Plans”.

7. Findings and Conclusions

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1. The property is located within the Single Family Residence (R-1) zoning district.
- 7.2. On March 1, 2018, the Building Official denied the Application for the construction of a three-story structure exceeding height requirements under Section IV.E.2 of the Zoning By-Law.
- 7.3. On March 16, 2018 the Applicant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Variance from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in “THE METROWEST DAILY NEWS” on March 26 and April 2, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The maximum height in the R-1 zoning district is three stories and 35 feet. Variances are needed to allow additional height. The Petitioner proposes a 55-foot-tall school building comprised of three stories. Although the proposed project is subject to the Dover Amendment, MGL Chapter 40A, Section 3, states that educational uses cannot be unduly burdened by zoning, and the City can impose reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.
- 7.6. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.
- 7.7. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *The Board finds that this parcel is unique, in that the site is adjacent to three existing schools and ringed by wetlands.*

- 7.8. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *The alternative of building on the existing footprint would be more costly and impose a financial hardship. Students would have to be moved during demolition and construction; the preferred alternative would allow the current school to remain in operation during construction.*
- 7.9. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *Visually, the proposed building has the same impact as the Farley School which sits adjacent to Flagg Drive. The grant of a Variance for three stories/55 feet would not be detrimental to the public good, nor would the additional story derogate from the intent and purpose of the Bylaw.*
- 7.10. The Board grants these Variances with the following condition:
- 7.10.1. The proposed building shall be located and constructed as shown on the Plans. All of the proposed schemes are approved.
- 7.10.2. The maximum height shall be 55 feet.
- 7.11. This Decision applies only to the requested Variances. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 7.12. If the rights authorized by these Variances are not exercised within one year of the date of grant of such Variances, such rights shall lapse. The Applicant may request an extension to the one-year period by submitting a written Application for extension prior to expiration of the one-year period. However, it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by these Variances shall lapse at the expiration of the one-year period. If the Variance lapses, such rights pertaining to the Variances may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.
- 7.13. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official
- 7.14. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the City of Framingham.

8. Appeals

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the City Clerk.

ZONING BOARD OF APPEALS

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By: _____
Philip R. Ottaviani, Jr., Chairman