



Town of Lexington
Department of Land Use, Health and Development
Building and Zoning Division

James Kelly
Building Commissioner
Phone: (781) 698-4530
Fax: (781) 861-2780

Jennifer Gingras
Zoning Administrator
Phone: (781) 698-4515
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MEMORANDUM

To: Sheila Page, Assistant Planning Director
CC: Planning Board Members
From: Jennifer Gingras, Zoning Administrator and James Kelly, Building Commissioner
Date: September 24, 2019
RE: Cotting School, 453 Concord Road – Limited Site Plan Review

Sheila,

On behalf of the Building and Zoning Department, we would like to respectfully request that the Planning Board considers requesting further information from the Cotting School in regards to their Parking. We have heard numerous complaints from abutters to the property, not only individually, but thru zoning enforcement as well.

As such, we would like to request that the Cotting School submits the following information:

- Certified Parking and Loading Plan that includes the following information:
 - Driveway traffic counts (entries and exits);
 - Number of Motor Vehicle Trips by type (bus trips and car trips);
 - Number of Employees (categorized by type of staff and number of hours/times worked)
 - Number of Students (categorized by type of transportation provided)
- Traffic Analysis prepared by a traffic engineer who has certified that he/she qualifies for the position of member of the Institute of Transportation Engineers. The analysis shall include:
 - Traffic counts on arterial streets that provide access to the site showing data on average daily traffic and a.m. and p.m. peak periods (conducted for two hours divided into fifteen-minute segments);
 - Intersection turning movement counts on intersections likely to be affected by the proposed development showing two-hour counts for the a.m. and p.m. peak periods divided into fifteen-minute time segments;
 - An inventory of roadway characteristics showing the width of the principal approach streets and the presence or absence of curbing and its condition;
 - Estimated trip generation showing the projected inbound and outbound vehicular trips for the a.m. and p.m. peak periods and a typical one-hour off-peak trip generation;
 - The estimated distribution of new trips by approach streets;
 - The effect of additional traffic generated by the development on traffic levels of service on each approach street (the term "level of service" means level of

- service as defined by the Highway Capacity Manual issued by the Highway Resource Board of the United States Department of Transportation); and
 - Estimated off-street parking and loading requirements and time of peak accumulation.
- Before the Site Plan Review is finalized, we would like to respectfully request the matter regarding the parking lot located at 497 Concord Avenue that was recently the subject of an Appeal at a Zoning Board of Appeals Hearing, be resolved. The Cotting School is required to re-submit the Site Plan which should include additional screening and landscaping that specifically addresses the criteria of density, height, and composition, in addition to a lighting schedule. The ZBA Decision was filed on July 25, 2019.

Thank you for your consideration of these items.

Respectfully,



Jennifer Gingras
Zoning Administrator



James Kelly
Building Commissioner

Attachments: ZBA Decision, dated June 27, 2019
ZBA Minutes, from June 27, 2019 Hearing



RECEIVED

2019 JUL 25 PM 2:27

TOWN CLERK
LEXINGTON, MA

Town of Lexington
Board of Appeals

Ralph D. Clifford, Chair
Jeanne K. Krieger, Vice Chair
Martha C. Wood
David G. Williams
Norman P. Cohen

Phone: (781)-698-4534
Fax: (781) 861-2780

July 25, 2019

Ms. Nathalie Rice
Town Clerk
Lexington MA 02420

Re: 489 Concord Avenue, Map 11, Lot 32
Benjamin B. Tymann
APPEAL OF THE DECISION OF THE ZONING
ADMINISTRATOR

Dear Ms. Rice:

Attached please find the decision of the Board of Appeals made after a public hearing on June 27, 2019.

The Board of Appeals, voted to approve an APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR DATED MARCH 27, 2019 ON BEHALF OF ALYSSA GOODMAN OF 485 CONCORD AVENUE AND MEI TUO OF 501 CONCORD AVENUE AND AN APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR DATED MAY 1, 2019 ON BEHALF OF SHARON CERNY OF 1 BARBERRY ROAD regarding the Cotting School Parking Lot Project located at 489 Concord Avenue.

Very truly yours,

Sharon Coffey
Administrative Clerk, Board of Appeals

Enc.
CC: Benjamin B. Tymann
100 Cambridge Street
Boston, MA



Town of Lexington
Board of Appeals

Tel: (781) 698-4534

Fax: (781) 861-2780

TO: Benjamin B. Tymann
100 Cambridge Street
Boston, MA

FROM: Sharon Coffey, Zoning Board of Appeals Administrative Clerk

RE: RECORDING OF DECISION(S) for 489 Concord Avenue

This is to notify you that an APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR DATED MARCH 27, 2019 ON BEHALF OF ALYSSA GOODMAN OF 485 CONCORD AVENUE AND MEI TUO OF 501 CONCORD AVENUE AND AN APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR DATED MAY 1, 2019 ON BEHALF OF SHARON CERNY OF 1 BARBERRY ROAD in accordance with Section(s) 135-9.2.2.3 of the Code of the Town of Lexington (Zoning By-Law) regarding the Cotting School parking lot project at 489 Concord Ave was APPROVED at a hearing held on June 27, 2019.

The decision was filed with the Town Clerk on July 25, 2019.

In accordance with M.G.L. c. 40A sec. 11, when twenty days have elapsed from the time of filing the decision in the Office of the Town Clerk, and no appeal has been filed with the Town Clerk, you are required to obtain a 21-day letter to record the CERTIFIED decision at the Registry of Deeds. The special permit and/or variance IS NOT EFFECTIVE until the decision has been recorded at:

Registry of Deeds
Southern Middlesex District
208 Cambridge Street
Cambridge, MA 02141
Tel.: (617) 679-6300

In order to facilitate this process please call the Town Clerk's office at (781) 698-4558 with your request for this document at least 48 hours in advance of the date you wish to obtain the letter.

Sharon Coffey, Administrative Clerk
Zoning Board of Appeals
Town of Lexington

TOWN OF LEXINGTON
DECISION OF THE BOARD OF APPEALS

Subject Property: 489 Concord Avenue (Map 11, Lot 33)
Applicants: Benjamin B. Tymann, Esq.
Property Owner: Cotting School, Inc.
Hearing Date: June 13, 2019 and June 27, 2019

Pursuant to notices published on May 9, 2019 and May 16, 2019; and May 30, 2019 and June 6, 2019 in the *Lexington Minuteman*, a newspaper of general circulation in the Town of Lexington, and notice sent by mail, postage prepaid, to all parties in interest pursuant to Massachusetts General Laws Chapter 40A, and notice posted as required by said Chapter 40A, a public hearing was held on June 13, 2019 and June 27, 2019, in the Town Office Building on the application of BENJAMIN B. TYMANN, ESQ. on behalf of ALYSSA GOODMAN OF 485 CONCORD AVE. AND MEI TUO OF 501 CONCORD AVE., for an APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR, DATED MARCH 27, 2019 and SHARON CERNY OF 1 BARBERRY ROAD, for an APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR, DATED MAY 1, 2019, regarding the Cotting School Parking Lot Project located at 489 Concord Ave. This appeal was made in accordance with the Zoning By-Law (Chapter 135 of the Code of Lexington) section 135-9.2.2.3.

The Petitioner submitted a document titled "Nature and Justification" with the application. The Board also received a Memorandum from Bruce Embry, counsel for the Cotting School, dated May 15, 2019, Memorandums from Benjamin Tymann, dated June 11, 2019, and June 19, 2019 and letters from abutters opposing the parking lot project.

Attorney Benjamin B. Tymann appeared on behalf of Alyssa Goodman, Mei Tuo, and Sharon Cerny.

Attorney Bruce Embry appeared on behalf of the Cotting School.

Acting on the petition were members Ralph D. Clifford (Chair), Jeanne K. Krieger, Martha C. Wood, and David G. Williams, and associate member William P. Kennedy.

The staff present were Jennifer Gingras, Zoning Administrator, Jim Kelly, Building Commissioner, and Sharon Coffey, Administrative Clerk.

Mina S. Makarious, of Anderson Kreiger LLP, Counsel for the Town of Lexington, was also present at the June 13, 2019 hearing.

Prior to the hearing, the Appeal was reviewed by the Building Commissioner, Conservation Administrator, Town Engineer, Board of Selectmen, the Planning Director, the Historic District Commission Clerk, Historical Commission, Economic Development (Commission?), and the Zoning Administrator. Comments were received from the Zoning Administrator and the Engineering Department.

On January 8, 2019, the Zoning Administrator received a request for zoning enforcement from Benjamin Tymann on behalf of Alyssa Goodman. On February 4, 2019 she determined that the Cotting School's Parking Lot Project qualifies as a protected use under the Dover Amendment, but should be subject to reasonable regulations. She found that the School had not addressed specific zoning requirements related to lighting, screening, and landscaping, and asked the Cotting School to submit an adequate site plan that would address these issues. The Cotting School submitted revised plans in March. The Zoning Administrator and the Building

Commissioner reviewed the plans and determined that they met the requirements of the Bylaw with respect to screening, landscaping, and lighting.

The Petitioners challenged the Zoning Administrator's determination that the revised site plan was adequate on eight grounds: screening, traffic safety, light spillover, noise, flooding and runoff concerns, placement and number of parking spots, snow storage, and loss of property value. The Petitioners asserted that no one in Town had done an engineering review of the proposed parking lot. They also argued that the Cotting School must demonstrate that the use is an educational one in order to be protected by the Dover Amendment, and that the Board's regulation of that use would be permissible under the Dover Amendment.

The Cotting School argued that it has complied with everything that the Town has asked of it. It stated that the parking would improve traffic conditions by moving cars further from the main entrance to the school. The School also noted that the lighting was required by the police, but that they had taken steps to minimize the impact of the lights on the neighbors, including through the use of timers and motion sensors.

Members of the public spoke at the hearing and raised concerns about the Cotting School's use of an easement to access the parking lot, as well as lighting, screening, flooding, and snow storage.

Findings

The Town of Lexington Zoning Board of Appeals (the "Board"), having received the Application for Hearing, viewed the Subject Property, conducted a public hearing, and reviewed the submitted evidence, finds:

1. Benjamin B. Tymann, Esq. filed appeals of the Zoning Administrator's decision to deny zoning enforcement against the Cotting School on behalf of Alyssa Goodman of 485 Concord Avenue, and Mei Tuo of 501 Concord Avenue on April 26, 2019, and on behalf of Sharon Cerny of 1 Barberry Road on May 9, 2019, in accordance with Chapter 135 of the Code of the Town of Lexington, Zoning Bylaw, § 135-9.2.2.3.
2. The two (2) appeals from the three (3) abutters have been consolidated and were heard together by the Board on June 13, 2019 and June 27, 2019.
3. The Subject Property is more particularly described in a deed recorded in the Middlesex South District Registry of Deeds Book 1476, Page 103. Included with the parcel is an easement for ingress and egress, shared with others, from the subject property to Concord Avenue.
4. The Subject Property is situated in a zoning district classified under the Bylaw as RO (One Family Dwelling).
5. The area in which the Subject Property is located consists primarily of residential uses located in the RO zoning district.
6. The previous use of the Subject Property was for a single family residence. The lot currently has a partially-constructed parking lot.

7. On January 8, 2019, a Request for Zoning Enforcement (RZE) was received by the Zoning Administrator (ZA) from Attorney Tymann regarding the Cotting School Parking Lot Project.
8. On February 4, 2019, the ZA determined that the project does qualify as a protected use under the Dover Amendment; however, the project is still subject to reasonable regulation by the Town, and the Cotting School had not addressed certain requirements related to lighting, screening, and landscaping of parking contained in §§ 135-5.1.4; 135-5.1.12.1 and 135-5.1.13.9(a) of the Lexington Zoning Bylaw. Cotting School was asked to submit an adequate site plan for review and approval by the Town.
9. On March 6, 2019, Cotting School responded to the February 4, 2019 letter from the ZA with a revised Site Plan and corresponding documents.
10. On March 27, 2019, the ZA determined that the Cotting School had met the reasonable regulations and had provided the information required.
11. The Petitioners appealed that decision, and raised the following 8 points in their appeal, which were reviewed individually by the Board, as listed below. At the hearing, counsel for the Petitioners conceded that the proposed parking lot is protected as an educational use by the Dover Amendment.
 - a. Screening of parking lot and driveway
The Board voted 5-0 to reverse the ZA's decision regarding screening, finding that more density, height, and composition needs to be considered for the screening, landscaping, and noise considerations between the parking lot area and the adjoining residential parcels. The Board also found, however, that screening along the easement was adequate. The ZA's decision was therefore reversed.
 - b. Traffic safety based on location of driveway
The Board voted 5-0 to affirm the ZA's decision regarding traffic safety. The Board found that traffic safety is not a zoning issue that can be considered because the location of the easement is a pre-existing condition rather than a new construction.
 - c. Light spillover
The Board voted 5-0 to reverse the ZA's determination regarding light spillover. The Board required that the Cotting School submit a lighting schedule for the proposed lighting system. As discussed in paragraph 11(a) above, spillover light into the adjoining residential parcels should be reasonably controlled and the lights should be time-controlled so that they do not activate when not in use.
 - d. Noise
The Board voted 5-0 to reverse the determination of the ZA for the reasons discussed in paragraph 11(a), above.
 - e. Flooding/runoff
The Board voted 4-1 to affirm the ZA's determination regarding flooding and runoff. During site visits conducted by the Board members following heavy rain events, flooding was not observed.

- f. Placement, and number of parking spaces
The Board voted 5-0 to affirm the ZA's determination with respect to placement and number of parking spaces. The Board found that the balance struck by the Cotting School between allowing sufficient parking and the placement and layout of the parking was reasonable under the Dover Amendment.

- g. Placement of snow storage point
The Board voted 5-0 to affirm the ZA's determination with respect to snow storage. The Board found that the placement of the removed snow was properly within the boundaries of the subject parcel and is not directly regulated by the Zoning Bylaw.

- h. Loss of property values & neighborhood character
The Board voted 5-0 to affirm the ZA's determination with respect to loss of property value and neighborhood character. The Board found that the Dover Amendment does not allow the ZA or Board to weigh these considerations against the educational use of the subject parcel.

12. The Board reviewed each item raised in the Applicant's appeal individually and found that the enforcement denial should be reversed with respect to screening, landscaping, and lighting as listed above in paragraph 11(a), (c), and (d).

Decision

On a Motion by Jeanne K. Krieger and seconded by William P. Kennedy, the Board voted 5-0 to overturn the Zoning Administrator's decisions dated March 27, 2019 and May 1, 2019 for the reasons specified in paragraph 13 in accordance with § 135-9.2.2.3 of the Zoning Bylaw, Ch. 135 of the Code of the Town of Lexington. Therefore, the Cotting School is required to submit a revised site plan to the Zoning Administrator for approval which would include additional screening and landscaping that specifically addresses the criteria of density, height, and composition, in addition to a lighting schedule.

Town of Lexington Board of Appeals' Decision


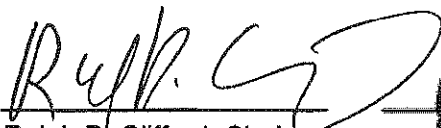
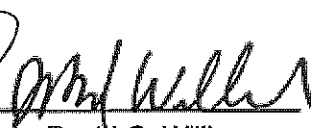
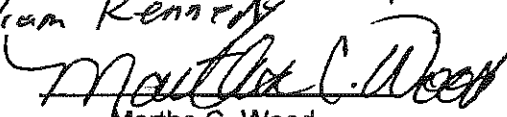
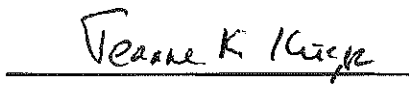
This constitutes the record of the decision of the Town of Lexington Zoning Board of Appeals acting under Massachusetts General Laws, Chapter 40A, relative to:

Address of Subject Property: 489 Concord Avenue

Hearing Date: June 13, 2019 and June 27, 2019

Petitioner/s: Benjamin B. Tymann

Board Members sitting for hearing:

 _____ William Kennedy	 _____ Ralph D. Clifford, Chair	 _____ David G. Williams
 _____ Martha C. Wood		 _____ Jeanne K. Krieger

I, Sharon Coffey, Department Clerk of the Board of Appeals, certify that copies of the decision have been filed with the Lexington Town Clerk:



Administrative Clerk

Registry of Deeds filing requirements variance/ special permit: This variance and or special permit shall not take effect until the petitioner records, at his or her own expense, a copy thereof with the Registry of Deeds, South District Middlesex District pursuant to Massachusetts General Laws, Chapter 40A, Section 11.

Lapse of variance: Per Massachusetts General Laws, Chapter 40A, Section 10— If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance, the rights of such variance shall lapse; provided, however, that the permit granting authority, in its discretion and upon written application by the grantee of such rights, may extend the time for exercise of such rights for a period not to exceed six (6) months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period.

Lapse of special permit: Per the Town of Lexington Zoning Bylaw (Chapter 135 of the Code of the Town of Lexington) Section 135-9.4.6 Special Permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within twenty-four (24) months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in Massachusetts General Law CH 40A, section 17, from the grant thereof). The permit granting authority, in its discretion and upon written application by the grantee of such rights, may extend the time for exercise of such rights.

Appeal of Board of Appeals Decision: Any person aggrieved by a decision of the Board of Appeals may appeal to the land court department or the superior court department in which the land concerned is situated by bringing an action within twenty days after the decision has been filed in the office of the town clerk, pursuant to Massachusetts General Laws, Chapter 40A, Section 17.

Minutes of the Lexington Zoning Board of Appeals
Selectmen's Meeting Room
June 27, 2019

Board Members: Chair – Ralph D. Clifford Jeanne K. Krieger, Martha C. Wood, David G. Williams, and Associate Member William P. Kennedy

Administrative Staff: Jennifer Gingras, Zoning Administrator and Sharon Coffey, Administrative Clerk, James Kelly, Building Commissioner

Address: 489 Concord Avenue

As two petitions had been filed concerning the same address seeking the same type of relief, the Board Chair announced that they would be heard together. The Board Chair opened both hearings on June 13, 2019.

The petitioner Benjamin Tymann on behalf of Sharon Cerny is requesting an APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR, DATED MAY 1, 2019, regarding the Cotting School Parking Lot Project located at 489 Concord Ave. This appeal is made in accordance with the Zoning By-Law (Chapter 135 of the Code of Lexington) section 135-9.2.2.3.

The petitioner submitted the following information with the application: Nature and justification, memorandum from Bruce Embry Date May 15, 2019 and memorandum from Benjamin Tymann and a letter from an abutter.

Prior to the meeting, the petitions and supporting data were reviewed by the Building Commissioner, Conservation Administrator, Town Engineer, Board of Selectmen, the Planning Director, the Historic District Commission Clerk, Historical Commission, Economic Development, and the Zoning Administrator. Comments were received from the Zoning Administrator and Engineering Department.

The petitioner Benjamin Tymann on behalf of Alyssa Goodman of 485 Concord Ave. and Mei Tuo of 501 Concord Ave. is requesting an APPEAL OF THE DECISION OF THE ZONING ADMINISTRATOR, DATED MARCH 27, 2019, regarding the Cotting School Parking Lot Project located at 489 Concord Ave. This appeal is made in accordance with the Zoning By-Law (Chapter 135 of the Code of Lexington) section 135-9.2.2.3.

The petitioner submitted the following information with the application: Nature and justification, memorandum from Bruce Embry Date May 15, 2019 and memorandum from Benjamin Tymann and a letter from an abutter.

Prior to the meeting, the petitions and supporting data were reviewed by the Building Commissioner, Conservation Administrator, Town Engineer, Board of Selectmen, the Planning Director, the Historic District Commission Clerk, Historical Commission, Economic Development, and the Zoning Administrator. Comments were received from the Zoning Administrator and Engineering Department.

Presenter: Ben Tymann counsel for three applicants and Bruce Embry representative for Cotting School

The hearing opened at 7:23 PM

Chair, Ralph D. Clifford, clarified what was before the Board.

Mr. Tymann stated there were two requests for zoning enforcement. On June 19 he submitted a letter to the board. The case law he sighted that the role of the Zoning Board of Appeals in reviewing an administrator's decision is not akin to abusive discretion. This is a different process, the board has discretion to engage in its own fact finding. Mr. Tymann stated and discussed the eight different grounds for the two appeals. The eight grounds are as follows: screening, traffic safety, light spill over, noise, flooding and run off concerns, placement and number of parking spots, snow storage and loss of property value.

A Board member, David G. Williams, asked how wide the easement is (Mr. Tymann responded the easement is wider than what was actually there. It is Mr. Oscan who owns the road and who would have standing in a legal proceeding. The easement limits the right to pass and repass to all lawful purposes in common with all persons having such right. It is the responsibility of the Board to decide whether that is permitted).

Mr. Williams asked what Mr. Oscan thought of this (Mr. Tymann responded that on February 27 the Planning Board Hearing was held on the subdivision. At that hearing Mr. Embry stated the use the Cotting School wishes to pursue is not overburdening the easement and they have the right to do it. Board Member Charles Hornig asked Don Borenstein if he agrees with Mr. Embry's position and he said he can't say that he agrees. From his perspective they don't agree).

Mr. Clifford stated an easement for passing and repassing is broad. He asked is there anything in that document that indicates the easement is limited to residential use and asked if the land was already developed (Mr. Tymann responded just the language about uses in common. There were houses located at 497 Concord Avenue and 489 Concord Avenue).

Mr. Embry discussed the original use of the easement and when it was created. Anybody has a right to use that driveway. The only person who can decide if Cotting School is using that easement poorly is Mr. Oscan. Mr. Embry clarified the terminology in the bylaw regarding driveways. This is a 100 year old driveway, not a driveway the Cotting School is building. The issue of the intersection is the real argument. Mr. Embry then discussed the situation when Mr. Oscan went before the Planning Board for a subdivision. He then stated this is a driveway not a street. He stated the Tufts case has no relevance here. The Cotting School has been working on this project for two years and has produced what has been asked of them from many departments. The main reason for this parking lot was to alleviate traffic in one entrance. It will be the same number of people and not cause more traffic.

The Zoning Administrator stated on January 8, 2019 they received a request for zoning enforcement from Benjamin Tymann on behalf of Alyssa Goodman. On February 4, 2019 she replied to the request with the determination that the project does qualify as a protected use under the Dover Amendment but should be subject to reasonable regulations. So she stopped the project. She found they had not addressed specific zoning requirements related to lighting, screening, and landscaping. Cotting School was asked to submit an adequate site plan that would address these issues. In March herself and the Building commission received and reviewed new plans submitted. Screening, landscape and lighting were reviewed and found they reasonably met the requirements of the bylaw. Those are the three issues she had

specifically looked at, the other issues brought forth in the appeal were not originally discussed. The Zoning Administrator then discussed the other issues that were brought forth in the appeal.

The Building Commissioner stated the Dover Amendment protects these certain uses. We want to protect these uses, but sometimes they seem to be coming into some neighborhood and it's not compatible. There has been a lot of effort and consideration. They have made changes that in the future some of these exempt uses may require a site plan review. It's a struggle but this is a great place to hear all issues that go into the decision and how they are made.

An audience member, Leon Goodman of 35 Maple Avenue in Sudbury, stated he is a licensed professional engineer and a certified professional traffic operations engineer. He stated this is a different situation and it's going to function as a street. He then discussed the design speed of a road way and the distance requirements in feet between streets and driveways. He discussed his concern for safety.

Mr. Clifford stated there are a lot of intersections that would not meet modern code and asked how that is addressed (Mr. Goodman responded you can't correct all existing intersections, but this is creating a new situation. Any use for that driveway has been very sporadic).

A Board Member, Nyles N. Barnert, stated the Cotting School states this will ease the traffic problems (Mr. Goodman stated traffic coming from west, this is not a good situation for making the turn into the driveway).

A Board Member, David G. Williams, asked if a policeman posted would help (Mr. Goodman responded yes that would always help but not much).

An audience member, Robert Harris of 500 Concord Avenue, stated his concern for the location of the driveway and traffic safety.

Applicant, Sharon Cerny of 1 Barberry Road, stated she has spoken with Mr. Oscan and he thinks the use of the right of way for the parking lot is a disaster. She discussed her concern for traffic safety and discussed the number of existing parking spots Cotting School has. She showed the Board the other parking plan the Cotting School had in 2016. Ms. Cerny went on to discuss lighting, screening and flooding. She stated the arborvitaes will not be adequate for light screening. The parking lot lights should be hooded and directed down at the ground. Neighbors that have been flooded are concerned about it occurring again. We would like to see a water run off mitigation plan. Snow storage was a concern. In summary she stated the Cotting School plans have been undisclosed to the public and they had no knowledge.

Landscaping along the easement was discussed.

An audience member, Marina Thompson of 500 Concord Road, stated her concern for traffic going over the hill from Spring Street.

An audience member, Ann Senghas, of 476 Concord Avenue, stated her concern for traffic safety and the blind hill.

An audience member, Ashish Mamania of 2 Barberry Road, stated his concern for safety.

An audience member, Deborah Lapidés of 16 Barberry Road, stated her concern for traffic safety, stating it is a terrible hazard especially in the winter.

An audience member, Jennifer Dillis of 481 Concord Avenue, stated her concern for traffic safety. She asked if it was correct that Cotting School was not using the house on the property because she has seen people going in and out (Mr. Embry stated there are no specific plans for how that house will be used. People go in and out to keep an eye on the house).

Ms. Dillis then stated she hasn't seen plans for screening and was wondering what that would look like.

Mr. Williams questioned why the Dillis' property had plantings that went half way across the yard (Ms. Dillis responded there was some planted all the way but trees have died most likely from water drainage).

Mr. Clifford asked Mr. Embry why more parking is needed (Mr. Embry stated if what they are going to do is alleviate traffic in the morning you've got to move cars away from the main entrance. Also Cotting School has lost about 20 parking spaces over a conservation area).

Mr. Clifford asked if the new lot is built will there be a problem with over flow parking (Mr. Embry responded that would be unlikely).

Mr. Clifford asked how many out of the 150 or so spots will be empty on a daily basis (Mr. Embry responded 15 to 20).

Ms. Krieger asked if the parking on campus is currently lit at night and for what hours (Mr. Embry responded yes, when Cotting School made its first proposal there was no lighting included. The police said they want lights. They can be moved up and down on the poles and are solar powered with timers and motion detectors. Every effort has been made to limit the impact on the neighbors. They can monitor it for animals too).

Mr. Williams asked if they would be willing to have a four foot caliper for the trees (Mr. Embry stated he didn't know enough about calipers, Cotting School has been open to landscape requirements. They have gave more when asked).

Mr. Williams discussed screening for the people on the left side of the easement.

Mr. Embry stated what they have been asked to do they have done. Part of this process is that there is a questionnaire that goes out to various town departments whether they want to comment and none of them did and that's because they have been involved for two years and don't have any objection.

Mr. Tymann stated the statement by Mr. Embry that no departments have commented is not accurate, David Pavlik commented on the appeal. They received an email from Ross Morrow who stated this work has not triggered an engineering review. There has been no review with regards to this driveway. No one in town has done an engineering review. He stated the concern for the conflicting left turns and traffic. He discussed screening and the fact that the Cotting School proposed no trees with regards to the driveway. He then discussed lighting and stated the concerns were ignored. A statement made at the Conservation Commission was clarified. The Board is free under Dover to say no to a particular plan, it's the *Radcliff College* decision. From the 2016 plan there are alternative ways for them to meet their needs for additional parking. Cotting School needs to demonstrate this is an educational use. The Board needs to decide if the Cotting School demonstrated the enforcement of the bylaw provision does not appreciably advance the municipality's legitimate concerns.

On a motion made and seconded, the Board voted to close the hearing at 9:44 PM.

Mr. Clifford stated they are the first and foremost authority of what the Lexington bylaw means. When it comes to the application of the bylaw the Board needs to be careful on how some of the bylaw provisions are phrased. There has been discussion about what the parking exception means in the Dover Amendment, the SJC is concerned about making sure there is sufficient parking and not with the set up or design. When it comes to a Dover case they have to be sensitive to not interfere with the statutorily allowed uses in the regulations that are imposed. The method for the decision will be to go through all eight issues raised individually.

The Board reviewed each item raised in the Applicant's appeal individually and found that the enforcement denial should be reversed only for screening, landscaping, and lighting reasons listed above.

Loss of property value and neighborhood character

After a discussion on the intention of the Dover Amendment, on a Motion by Martha C. Wood, and seconded by Jeanne K. Krieger, the Board voted 5-0 to find that the Zoning Administrator's decision was proper in this decision.

Snow storage

The Board discussed that there is not a requirement in the bylaw on where snow placement should be and if there is an issue later on, it can be enforced thru the Town. The Board also referenced that the safety considerations from the Fire Department and the Conservation buffer zones were considered appropriately. On a Motion by Nyles N. Barnert, and seconded by Jeanne K. Krieger, the Board voted 5-0 to find that the Zoning Administrator's decision was proper in this decision.

Placement and quantity of parking

The Board discussed the intention to provide minimum parking requirements, not maximum, and to prevent off-site parking. On a Motion by Marth C. Wood, and seconded by Jeanne K. Krieger, the Board voted 5-0 to find that the Zoning Administrator's decision was proper in this decision.

Drainage

The Board stated that drainage is not under the jurisdiction of the Zoning Board, and is considered under the Engineering and Conservation Departments. During inspections done by Board members, there was no flooding observed during heavy rainfall and the Engineering Department did not have any issues. Mr. Williams expressed a concern with the vegetation dying in the area and did see an impact with the water. On a Motion by Nyles N. Barnert, and seconded by Martha C. Wood, the Board voted 4-1 (David G. Williams in opposition) to find that the Zoning Administrator's decision was proper in this decision.

Light spill over

The Board discussed concerns with the lighting that did not have a schedule of when it would be turned off during evening hours. On a Motion by Martha C. Wood and seconded by Jeanne K. Krieger, the Board voted 0-5 to find that the Zoning Administrator's decision was proper in consideration of this aspect citing that a lighting schedule for the lighting system that is

proposed was needed. The Board found that the spill-over light into the adjoining residential parcels should be reasonably controlled and the light should be time-controlled so that it does not activate when not in use. The Zoning Administrator's decision was therefore reversed.

Driveway location

The Board stated that although this is may be a dangerous situation, there is little they can do about this because the driveway connects the parcel to the easement. The owner of the easement would only be able to enforce the screening issues and this driveway location was in place prior to this project. The Board recommended that the abutters bring their concerns to the Traffic Advisory Committee and contacting their Town Meeting Members. On a Motion by Nyles N. Barnert and seconded by Jeanne K. Krieger, the Board voted 5-0 to find that the Zoning Administrator's decision was proper in consideration of this aspect citing that traffic safety is not a zoning issue that can be considered because the location of the easement "ROW" is a pre-existing condition rather than a new construction. The Board found that the easement for ingress and egress was not limited as to purpose of the ingress and egress and, therefore, could be used to move cars between Concord Avenue and the subject parcel.

Screening/Landscaping/Noise

The Board discussed that more screening should be put in place to prevent headlight glare onto the abutting properties. Noise also falls into this category, as more landscaping and screening could potentially buffer the noise. The Board also discussed potential hardscape, such as a combination of fencing and plantings. Overall, the Board decided that there needs to be more density, height, and composition of the screening and landscaping. On a Motion by Jeanne K. Krieger, and seconded by William P. Kennedy, the Board voted 0-5 to find that the Zoning Administrator's decision was proper in consideration of this aspect citing that more density, height, and composition needs to be considered for the screening, landscaping, and noise considerations between the parking lot area and the adjoining residential parcels, but not for screening along the easement "ROW." The Zoning Administrator's decision was therefore reversed.

Conclusion

On a Motion by Jeanne K. Krieger and seconded by William P. Kennedy, the Board voted 5-0 to overturn the Zoning Administrator's decisions dated March 27, 2019 and May 1, 2019 only for the reasons specified above in accordance with § 135-9.2.2.3 of the Zoning Bylaw, Ch. 135 of the Code of the Town of Lexington.

Minutes of the Lexington Zoning Board of Appeals
Selectmen's Meeting Room
June 27, 2019

Board Members: Chair – Ralph D. Clifford Jeanne K. Krieger, Martha C. Wood, David G. Williams, and Associate Member Nyles Barnert

Alternate Sitting: William P. Kennedy

Administrative Staff: Jennifer Gingras, Zoning Administrator and Sharon Coffey, Administrative Clerk

On a motion made and seconded, the Board voted to adjourn.