



# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2210 Fax (617) 730-2248  
Patrick J. Ward, Secretary

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2017 DEC 11 11:11  
BOARD OF APPEALS  
Jesse Gehel, Chair  
Christopher Hussey  
Mark Zaroff

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. BOA 2017-0014

Petitioner, Boston University, applied to the Board of Appeals for zoning relief to install building identification, wayfinding, and freestanding signage at its new performing arts theater (the "Building") being constructed at 820 Commonwealth Avenue (formerly 808 Commonwealth Avenue), Brookline, Massachusetts (the "Property").

The Board of Appeals administratively 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 November 2, 2017 at 7:30 p.m. in the Selectmen's Hearing Room, 6<sup>th</sup> Floor, Town Hall, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, 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 October 19, 2017 and October 26, 2017 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

BOARD OF APPEALS  
NOTICE OF HEARING

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

**808 COMMONWEALTH AVENUE, BROOKLINE, MA 02215 - Addition of freestanding signs, building identification signs, and wayfinding signs as part of Boston University Booth Theater project in a(n) G-2.0 GENERAL BUSINESS on 11/02/2017 at 7:30PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Boston University) *Precinct 1***

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

1. Section 7.01.b: Signs in All Districts
2. Section 7.01.h: Signs in All Districts
3. Section 7.01.k: Signs in All Districts
4. Section 7.01.p: Signs in All Districts
5. Section 7.04.1.a: Signs in I, G, L and O Districts
6. Section 7.06.1.c: Illumination
7. Section 7.07.1.a: Exceptions to the Above
8. Any additional relief the Board may find necessary

**Any additional relief the Board may find necessary.**

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: [www.brooklinema.gov](http://www.brooklinema.gov).*

*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 Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at [llgellineau@brooklinema.gov](mailto:llgellineau@brooklinema.gov)*

*Jesse Geller, Chair  
Christopher Hussey  
Mark Zuroff*

The Building Department issued a letter denying the Petitioner's request for a building permit for signs on July 11, 2017 (the "Denial Letter"), and the sections of the Zoning By-law that were referenced in the Denial Letter are as follows:

1. **Section 7.01.a (Signs in All Districts)**
2. **Section 7.01.b (Signs in All Districts)**
3. **Section 7.01.h (Signs in All Districts)**
4. **Section 7.01.k (Signs in All Districts)**
5. **Section 7.01.p (Signs in All Districts)**
6. **Section 7.02.1.a (Signs in S, SC, T and F Districts)**
7. **Section 7.04.1.a (Signs in I, G, L and O Districts)**
8. **Section 7.06.1.c (Illumination)**
9. **Section 7.07.1.a (Exceptions to the Above)**
10. **Section 7.08 (Design Review)**
11. **Any additional relief the Board may find necessary**

Present at the hearing were Chair Jesse Geller and Board Members Christopher Hussey and Mark Zuroff. In response to the Chair's inquiry, the Petitioner waived reading of the legal notice. The Chair then outlined the order to be followed in the proceeding.

Petitioner's proposal was introduced by Timothy W. Sullivan of Goulston & Storrs, 400 Atlantic Avenue, Boston, MA, who introduced Ross Cameron of Elkus Manfredi Architects, 25 Dry Dock Avenue, Boston, MA. Mr. Sullivan presented an overview of the project and the construction of the Building, which was entering its final stages. Construction of the Building had been authorized by the Board through a Special Permit issued in 2016, and Petitioner was returning to the Board having now developed its designs for signage on and next to the Building.

Mr. Cameron presented an overview of the Building's design and an update on construction progress.

Using visual aids, Mr. Cameron showed Building elevation views from abutting streets. The front of the Property abuts Commonwealth Avenue, and Mr. Cameron showed views of the front plaza where most of the signage is proposed to be located. The rear of the Property is located across Dummer Street from a residential neighborhood, and Mr. Cameron highlighted how the landscaped buffer at the rear of the Building was designed to separate the Property from the residential neighborhood, as well as how the upper floor set-back was

designed to diminish the perception of bulk from the residential neighborhood. Mr. Cameron also showed renderings of the interior of the Building, which highlighted the front lobby space and the theater performance room. Mr. Cameron concluded his portion of the presentation by showing recent photographs of the Property, and pointed out that the as-built conditions were faithful to the renderings shown to the Board.

Before reviewing the proposed zoning relief, Mr. Sullivan requested an interpretation by the Board that the freestanding three dimensional improvement, spelling the name "Booth" and proposed to be located on the plaza in front of the Building (the "3-D Representation"), did not qualify as a "sign" as defined in the Zoning By-Law. In support of this, Mr. Sullivan argued it did not attract attention to or announce the purpose of, or identify the purpose of a person or entity, or communicate information of any kind to the public. Instead Mr. Sullivan argued that the 3-D Representation is a sculpture merely depicting the family name of the primary donor for the Building and was intended to complement other architectural and landscaping features in activating the plaza in front of the Building.

Michael Yanovitch of the Building Department, at the request of the Board Members, offered that the 3-D Representation also fit within the exception in Section 7.00.1.a(iii) of the Zoning By-Law because it was a building marker made of permanent material.

Mr. Geller asked Mr. Yanovitch what qualified as "permanent material". Mr. Yanovitch replied that any material qualified so long as it was intended to be permanent, and that the Zoning By-law used this phrase to contrast with temporary materials such as banners or paint.

Mr Geller asked whether the 3-D Representation was illuminated. Mr. Sullivan answered that the metal letters were reflective during the day and were internally illuminated at night, which created a halo effect around the perimeter. Mr. Geller noted that illumination

was not dispositive of the question of whether the 3-D Representation was a sign under the Zoning By-Law.

Mr. Yanovitch stated for clarification that Building Commissioner, Dan Bennett, shared Mr. Yanovitch's opinion that the 3-D Representation was not a sign as defined by the Zoning By-Law.

The Board Members then determined unanimously that the 3-D Representation was not a sign within the meaning of the Zoning By-Law.

Using visual aids that included close-up renderings of each sign, Mr. Sullivan provided a review of the proposed signage and identified each sign's location on the Property. He noted that most of the signs were oriented toward the front of the Property and the boundary line between Brookline and Boston. Mr. Sullivan then explained the relief required based on the Board's determination that the 3-D Representation was not a "sign" within the meaning of the Zoning By-Law.

According to Mr. Sullivan, the Project required the following zoning relief: (i) variance from Section 7.01.b (Signs in All Districts) to allow an animated sign; (ii) variance from Section 7.01.k (Signs in All Districts) to allow a free standing sign larger than thirty (30) square feet; (iii) variance from Sections 7.02.1.a (Signs in S, SC, T and F Districts) and 7.04.1.a (Signs in I, G, L and O Districts) to allow more than one building identification sign, and to allow building identification signs larger than one (1) square foot; (iv) variance from Section 7.04 for signs not permitted in General Business District; (v) variance from Section 7.06.1.c (Illumination) to allow a sign with internal illumination and high-intensity LED lights; and (vi) variance from Section 7.07.1.a (Exceptions to the Above) to allow for an attached sign more than 25% larger than otherwise permitted by Article VII of the Zoning By-Law. Given the clarification that the 3-D Representation was not a sign, Mr. Sullivan commented that variances from Sections 7.01.h and 7.01.p were no longer required. Mr.

Sullivan also explained that the Project had already completed Design Review by the Planning Board pursuant to Sections 7.01.a and 7.08 of the Zoning By-Law.

With respect to the use variance finding required by Section 9.09 and the general findings required for a variance under M.G.L. Chapter 40A, Section 10, Mr. Sullivan observed, as follows:

The Property is a through-lot that fronts on the major thoroughfare of Commonwealth Avenue. The front property line is also the Boston-Brookline municipal boundary line and is unlike other lots in the G-2 Zoning District. These factors present challenges for the design and placement of signage but also minimize their impact on the Town making the variances appropriate. The signs will create no detrimental impact on the surrounding neighborhood in part because the Petitioner or its affiliates own all of the affected properties bordering the Property, including properties located in Boston directly across Commonwealth Avenue and facing the majority of the proposed signs. In addition, the wayfinding function of several of the proposed signs is important to ensure that the Building is integrated into the Petitioner's larger campus.

Because many of the proposed signs highlight the philanthropic efforts of the Building's primary donor, any failure to obtain the requested zoning relief would create a financial hardship for the Petitioner by frustrating its ability to highlight the crucial efforts of its donors. Mr. Geller asked if this problem had been solved by the Board's determination that the 3-D Representation was not a "sign" within the meaning of the Zoning By-Law. Mr. Sullivan responded that it had not because there remained many other locations where the name of the Building, which is the "Boston University Joan and Edgar Booth Theater," would be depicted other than the 3-D Representation.

Mr. Sullivan added that if the Board was unwilling to grant the requested variances, it could find that the proposed signage was protected by the Dover Amendment (M.G.L. c. 40A,

Sec. 3) as part of an educational use. Mr. Sullivan was prepared to discuss that option in more detail if the Board wished to consider it.

Mr. Geller asked if any illumination from the proposed signs would be visible from the residential neighborhood across Dummer Street to the rear of the Building. Mr. Sullivan answered no.

Mr. Geller asked if there was any entrance to the Building on Dummer Street. Mr. Sullivan answered no.

The Chair of the Board called for any comments from the public. No members of the public offered comments.

The Planning Board, through Planner and Zoning Coordinator Ashley Clark, presented the comments of the Planning Board as contained in its report dated October 5, 2017, which comments are as follows:

The Planning Board supports the proposed sign proposal for the new Boston University Booth Theater Center. The theater will be a part of the University's performing arts department and will be an asset to the Town, as well as the University, because as a public benefit, Boston University has signed an agreement allowing conditional use of the theatre and its production facilities by Brookline Community Art Groups.

The success and viability of this new theatre will be greatly enhanced by the unique signage being proposed at this architecturally striking building. The freestanding carved letters on the plaza in front of the theatre serve more as a piece of art work than a sign. The informational video display, or marquee, on the opposite side of the plaza will promote the performances offered at the theatre or other Boston University events.

Although the proposed signage in aggregate is larger than what is allowed by zoning, it fits within the context of this large site and building and location, which is on a busy thoroughfare. Thus, it is appropriate both to the building's architecture and its use as a theatre.

Therefore, if the Board of Appeals finds that the statutory requirements for a variance are met or that relief can be granted under the Dover Amendment, the Planning Board recommends approval of the attached Building Identification and Campus Wayfinding Signage plans by Anna Farrington, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final dated sign plans and locations subject to the review and approval of the Assistant Director of Regulatory Planning.

2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) final sign plans and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Building Commissioner, through Michael Yanovitch on the Commissioner's behalf, acknowledged that the Zoning By-Law was not responsive to the needs of institutional uses in this zoning district. He added that any concerns over the proposed signage and been resolved during the Planning Board process and that the Petitioner's application met the requirements for a variance. If granted, the Building Department would work to ensure compliance by the Petitioner.

The Board then deliberated. Mr Zuroff noted that he sat when the Board voted to issue the Special Permit allowing the Petitioner to construct the Building, and he congratulated the Petitioner on producing a well-designed project with little to no adverse impact on the Town. He stated that he was in favor of granting the requested variances, and added that he also thought the Dover Amendment was a viable alternative if the Board wanted to consider it.

Mr. Hussey stated the he was also in favor of granting the requested variances, and concurred that the Dover Amendment was a viable alternative if the Board wished to consider it.

Mr. Geller stated that the Petitioner's request was not a borderline case because it clearly met the criteria for a variance, and therefore it was not worthwhile to consider a Dover Amendment alternative. He stated that the Building itself was unique and that this was further support for the finding that the Petitioner's application met the criteria for the granting of variances.

The Board, having considered the foregoing information and the written materials submitted by the Petitioner, having reviewed the Building Identification and Campus Wayfinding Signage plans by Anna Farrington, dated October 5, 2017 and the relief

requested, makes the following statutory findings under Massachusetts General Laws Chapter 40A, Section 10 and findings pursuant to Section 9.09 of the Zoning By-Law:

1. The property has unique characteristics relating to soil conditions, shape or topography that especially affect the property, but do not generally affect the G-2 District, in that the Property is a through-lot where the front property line is the Boston-Brookline municipal boundary line, is surrounded by Petitioner-owned property and contains a unique Building.
2. A literal enforcement of the provisions of the Zoning By-Law would involve substantial hardship to the applicant.
3. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning By-Law.

Therefore, the Board voted unanimously to grant the requested variances under Section 7.01.b, Section 7.01.k, Section 7.02.1.a, Section 7.04.1.a, Section 7.04, Section 7.06.1.c, and Section 7.07.1.a of the Zoning By-Law, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final dated sign plans and locations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) final sign plans and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

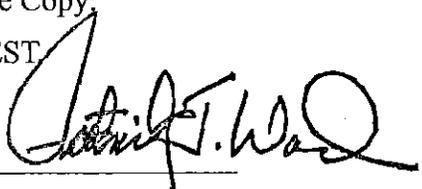
Unanimous Decision of  
The Board of Appeals

  
Jesse Geller

Filing Date: 12/15/17

A True Copy:

ATTEST

  
Patrick J. Ward

Clerk

Board of Appeals