



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zurloff
Christopher Hussey

Town Hall, 1st Floor
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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0047
CLPF 10 BROOKLINE PLACE LLC
10 BROOKLINE PLACE, BROOKLINE, MA

Petitioner, CLPF 10 Brookline Place LLC, applied to the Building Commissioner for permission to change the use of the first floor to office space. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed September 6, 2018 at 7:15 PM., in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioners, to their attorney (if any) of record, 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 on August 23, 2018 and August 30, 2018 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

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:

10 BROOKLINE PLACE WEST, BROOKLINE, MA 02445 - Change use of first floor to office space in a(n) G-2.0 GENERAL BUSINESS on 09/06/2018 at 7:15PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: CLPF 10 BROOKLINE PLACE LLC.) Precinct 4

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:

Modification, as necessary, of BOA Case No. 1548 (1971), Case No 2836 (1986), and Case No. 090080 (2010)

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.

The Town of Brookline does not discriminate in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.

If you have any questions regarding this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

*Jesse Geller, Chair
Christopher Hussey
Mark Zuroff*

Publish: 08/23/2018 & 08/30/2018

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairperson Johnanna Schneider and Board Members Lark Palermo and Randolph Meiklejohn. Also present at the hearing were Zoning Planner & Coordinator, Ashley Clark and Deputy Building Commissioner, Michael Yanovitch.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445.

Chairperson Schneider called the hearing to order at 7:15 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described the background of the property, stating that the building is a six story office/ retail complex. He then described the proposal stating that the Petitioner proposes change the use of the first floor from institutional use to office use. He added that the new office space will be for the use of Dana Farber Cancer Institute, an existing tenant in the building. Attorney Allen stated that the building currently provides a significant amount of overnight parking and is in compliance with the prior decisions regarding parking. Furthermore, he noted that the Planning Board unanimously approved these plans and this proposal.

Attorney Allen then stated that the Petitioner seeks a Modification of ZBA Decisions Case No. 1548 (1969), Case #No. 1685 (1971), Case No. 2836 (1986), and Case No. 090080 (2010) for the change in use. Attorney Allen voiced a concern with some of the suggested conditions regarding reporting to the Town annually and methods required to be used by the tenant. He noted that Dana Farber is an existing tenant in the building and to add requirements to the existing lease would be infeasible.

Chairperson Schneider then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairperson Schneider then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairperson Schneider then called upon Ashley Clark, Zoning Planner & Coordinator, to deliver the findings of the Planning Board. Ms. Clark noted the following requested condition from a September 5th Memo written by Todd Kirrane, Transportation Administrator:

“Prior to the issuance of the Certificate of Occupancy, a Parking and Transportation Demand Management Plan (PTDM) shall be reviewed and approved by the Director of Engineering & Transportation and the Planning & Community Development Director (or his designee). This P&TDM Plan shall comply with the Transportation Access Plan Guidelines and include the appointment of an on-site Transportation Coordinator, a minimum 30% Transit and Bike Share membership subsidy, and other benefit programs and incentives to encourage car-pooling and alternative transportation modes for employees equal to those provided to Dana Farber Cancer Institute employees in the Longwood Medical Area to achieve a mode split goal for employees that is better than existing conditions for this census tract as well as proposed monitoring and annual reporting to the Town.”

Furthermore, Ms. Clark noted the following:

FINDINGS

MODIFICATION:

Modification of the following Board of Appeals decisions may be required:

Cases 1548, 1685, 1867, 1985, 2836, 090080 (*See background section of this report for description of cases.*)

STAFF ANALYSIS

The staff is supportive of this proposal to convert the first floor of 10 Brookline Place West to office use. The staff would like to see certain site concerns addressed that were a part of the 2009 ZBA decision and have drafted conditions that will require the applicant to follow up on these original elements before being granted a use permit for the new office space. Additionally, the staff would like to ensure that access and traffic to and at the site remains manageable and would like to recommend the below conditions to monitor trips to this large site. Other recommendations encouraged by staff include turning some existing loading area space into valet parking because loading requirements are now lower than in 2009 and the installation of a public information kiosk on the public plaza.

PLANNING BOARD COMMENTS

The Planning Board was supportive of this proposal to change the use of the first floor to office use. The Board did feel that the proposed conditions #7 through #9 were overly onerous for the amount of relief being requested and agreed with the applicant’s request to keep conditions #1 through #6 and modify #7 through #9 in consultation with staff. The revised conditions are noted below.

Therefore, the Planning Board recommends approval of plans entitled Dana Farber Cancer Institute 1st & 2nd Floor Renovations, prepared by Miller Dyer Spears Inc., dated 5/25/2018, subject to the following conditions:

- 1) Prior to the issuance of an occupancy permit, final floor plans indicating the space to be converted to office space shall be submitted, subject to the review and approval of the Assistant Director of Regulatory Planning.

2) Prior to the issuance of an occupancy permit, the applicant shall provide a landscaping plan indicating the removal of dead tree on MBTA side of public plaza and its replacement and other landscaping improvements as needed.

3) Prior to the issuance of an occupancy permit, the applicant shall ensure that all lighting, particularly along the corner of Washington Street under the building's overhang is in working order.

4) Dana Farber Cancer Institute shall utilize the new employee shuttle location on Pearl Street upon completion of the Gateway East project.

5) A minimum of twenty-five percent of constructed parking spaces shall be offered to residents for overnight parking at market-competitive rates. These spaces shall be available at a minimum from 8 pm. to 8:30 a.m. week days and all day Saturdays and Sundays. If the applicant chooses to provide more parking spaces for overnight use, these minimum hours of availability shall not apply. Additionally, if the applicant wishes to provide parking after 6 p.m. and before 1 a.m. for users of area businesses, such as restaurants, this shall be allowed subject to the review and approval of the Director of Transportation/Engineering.

6) No satellite parking shall be allowed. Satellite parking is defined as parking used by persons working a majority of their time at another location, who are not visiting the building.

7) Prior to the issuance of the Certificate of Occupancy, a Traffic Access Plan shall be reviewed and approved by the Director of Transportation/Engineering and the Planning & Community Development Director (or his designee). ~~In connection with this TAP plan, the applicant shall provide information describing its existing policies relating to employee transportation then in effect, and the mode use resulting from such existing policies. Any tenant in the development that has executed a lease for occupancy at 10 Brookline Place West shall be requested to provide such information as to its existing policies relating to employee transportation and the mode use resulting from such existing policies in such other locations. The TAP shall include the following reference material: — a. Include a parking garage lay-out plan showing parking spaces and companion table showing locations, numbers, and users of different types of parking spaces, including, but not limited to: compact, full car, handicap, drop-off, van, zip car and employee, visitor, resident overnight, loading and ambulance spaces. — b. Include a requirement for employee vehicle identification parking stickers or tags — c. Outline parking rates for employees, visitors, and residential overnight parkers~~

8) ~~No less than thirty (30) days prior to the anticipated date of issuance of a Certificate of Occupancy for the new office use at 10 Brookline Place West, the Applicant shall designate a traffic and parking coordinator to work with the Director of Engineering/Transportation and the Director of Planning and Community development (or designee) to ensure ongoing implementation of all TAP-related efforts. The coordinator shall allow access to the garage by the Town for review of the TAP plan implementation, coordinate and publicize all TAP-related efforts to building tenants. —~~

9) ~~To ensure compliance with the TDM plan, the following provisions shall apply, which provisions shall also constitute the Transportation Access Plan Agreement required under Section 5.09.3.c.6.e of the Zoning By-Law:~~

a). ~~An Annual Report shall be provided by the Applicant's traffic and parking coordinator, subject to the review and approval of the Director of Engineering/Transportation and the Director of Planning and Community Development (or his/her designee) relative to the implementation and effectiveness of the TDM plan. The Annual Report shall be submitted prior to issuance of an annual permit for the Transportation Access Plan Agreement from the Building Department under Section 5.09.3.e.6.d of the Zoning By-law. The Annual Report, which shall be submitted together with the applicant's request for 10 Brookline Place West (2018) 5 the annual permit for the Transportation Access Plan Agreement, shall include the following features: (i) The monitoring program will be based on traffic counts and employee surveys as to vehicle, transit, pedestrian, and bicycle usage to 2 Brookline Place and 1 Brookline Place, including the addition. The monitoring program will provide detailed information on the travel modes to work and overall transportation characteristics by type of traveler (employee, visitor, etc.). The survey instrument to be used for mode share monitoring will be provided to the Director of Engineering/Transportation and the Director of Planning and Community Development for approval prior to conducting the survey. The employee survey (which may be conducted through electronic means) will be sent out to all employees, with a goal of securing a sixty percent (60%) minimum response rate. A visitor survey shall be conducted during normal business hours, with a goal of securing at least 200 visitor surveys. The requirement for the Annual Report shall be in effect for five years, and thereafter at the discretion of the Director of Transportation/Engineering and the Director of Planning and Community Development (or his/her designee).~~

b). ~~The Director of Engineering/Transportation, in consultation with the Director of Planning and Community Development, shall determine whether the employee vehicular mode share is greater than 35 percent. In the event the employee vehicular mode share is greater than 35 percent, the TDM plan shall be modified to incorporate any reasonable requests of the Director of Engineering/Transportation within sixty (60) days after he/she issues his/her determination. Failure to issue such a determination within sixty (60) days of receiving the Annual Report shall be deemed acceptance of the Annual Report and the existing provisions of the TDM plan. If any owner objects to any new request as being unreasonable or not required, such matter may be presented to the Transportation Board for recommendation to the Board of Appeals for determination, and during such process the applicant will not be considered out of compliance with Section 5.09.3.e.6.d of the Zoning By-law. Following the issuance (or deemed issuance) of the foregoing determination, the Building Department shall use its best efforts to issue the annual permit for the Transportation Access Plan Agreement under Section 5.09.3.e.6.d of the Zoning By-law with appropriate due diligence.~~

Chairperson Schneider then called upon Michael Yanovitch to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no opposition to this request and, should relief be granted, the Building Department will work with the Petitioner to ensure compliance with the Building Code. He noted that some of the requested conditions may not be enforceable, but he

urged for an overarching condition requiring the Petitioner to work with the Building Commissioner and the Transportation Director.

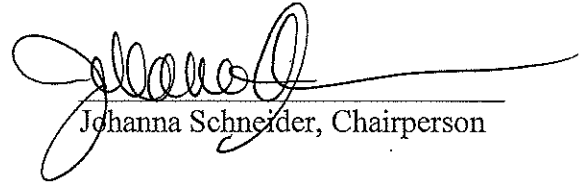
In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for a Modification of ZBA Decisions Case No. 1548 (1969), Case #No. 1685 (1971), Case No. 2836 (1986), and Case No. 090080 (2010) were met.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1) Prior to the issuance of an occupancy permit, final floor plans indicating the space to be converted to office space shall be submitted, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 2) Prior to the issuance of an occupancy permit, the applicant shall provide a landscaping plan indicating the removal of dead tree on MBTA side of public plaza and its replacement and other landscaping improvements as needed.
- 3) Prior to the issuance of an occupancy permit, the applicant shall ensure that all lighting, particularly along the corner of Washington Street under the building's overhang is in working order.
- 4) Dana Farber Cancer Institute shall utilize the new employee shuttle location on Pearl Street upon completion of the Gateway East project.
- 5) A minimum of twenty-five percent of constructed parking spaces shall be offered to residents for overnight parking at market-competitive rates. These spaces shall be available at a minimum from 8 pm. to 8:30 a.m. week days and all day Saturdays and Sundays. If the applicant chooses to provide more parking spaces for overnight use, these minimum hours of availability shall not apply. Additionally, if the applicant wishes to provide parking after 6 p.m. and before 1 a.m. for users of area businesses, such as restaurants, this shall be allowed subject to the review and approval of the Director of Transportation/Engineering.
- 6) No satellite parking shall be allowed. Satellite parking is defined as parking used by persons working a majority of their time at another location, who are not visiting the building.
- 7) Prior to the issuance of the Certificate of Occupancy, a Parking and Transportation Demand Management Plan (PTDM) shall be reviewed and approved by the Director of Engineering & Transportation and the Planning & Community Development Director (or his designee). This P&TDM Plan shall comply with the Transportation Access Plan Guidelines and include, for example, the appointment of an on-site Transportation Coordinator, a minimum 30% Transit and Bike Share membership subsidy, other benefit programs and incentives to encourage car-pooling and alternative

transportation modes for employees, or any other methods as agreed to by the applicant and the Director of Engineering and Transportation, to achieve a mode split goal for employees that is better than existing conditions for this census tract as well as proposed monitoring and annual reporting to the Town.

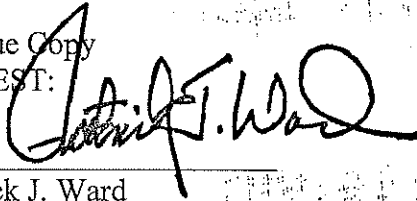
Unanimous Decision of
The Board of Appeals



Johanna Schneider, Chairperson

Filing Date: 9/10/18

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals