



# *Town of Brookline*

## *Massachusetts*

BOARD OF APPEALS  
Jesse Zuroff, Chairman  
Mark G. Ziffbr  
333 Washington Street  
Brookline, MA 02445-6899  
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730-2043

Patrick J. Ward, Clerk

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2019 MAR 27 A 10:11

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2019-0009  
TRUSTEES OF BOSTON UNIVERSITY  
808 COMMONWEALTH AVENUE,  
BROOKLINE, MA

Petitioners, Trustees of Boston University, applied to the Building Commissioner for permission to install new window and projecting signage for the so-called Peter Fuller Building at 808 Commonwealth Avenue. The application was denied and an appeal was taken to this Board.

The Board determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed March 14, 2019 at 7:00 PM., in the Selectmen's Hearing Room as the date, time and place for the public hearing. Notice of the hearing was mailed to the Petitioners, to their attorney, Jennifer Dopazo Gilbert, 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 February 28, 2019 and March 7, 2019 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:

**808 COMMONWEALTH AVENUE, BROOKLINE, MA 02446 - Install facade-mounted signs, window signs, and building markers for 808 Commonwealth Avenue in a(n) G-2.0 GENERAL BUSINESS on March 14, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Paul Rinaldi, Assistant VP for Planning & Design) 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:

§7.01.c - SIGNS IN ALL DISTRICTS

§7.01.d - SIGNS IN ALL DISTRICTS

§7.01.e - SIGNS IN ALL DISTRICTS

**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 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](mailto:chaynes@brooklinema.gov).*

*Jesse Zuroff, Chair  
Mark G. Zuroff*

**Publish: 2/28 & 3/7**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Mark G. Zuroff and Board Members Kate Poverman and Lark Palermo. Also present at the hearing was Town Planner, Karen Martin.

The case was presented by Jennifer Dopazo Gilbert, Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, First Floor, and Brookline, Massachusetts 02445. Also in attendance

were Paul Rinaldi, Elizabeth Leary and Cecilia Nardi of Boston University, and Anna Farrington of Anna Farrington Graphic Arts & Design.

Chairman Zuroff called the hearing to order at 7:01 p.m. Attorney Dopazo Gilbert waived the reading of the public notice. Attorney Dopazo Gilbert then described the location of the site and some procedural background. She noted the site is was a former Cadillac dealership known as the Peter Fuller Building at the corner of Commonwealth Avenue and Essex Street. It is located in the G-2.0 zoning district immediately next to the recently-built B.U. Booth Theater. The building is on the National Register and there were several meeting with Preservation to ensure the Commission had no objection to the signage. Changes were made to reduce the number and size of the signs at the request of the Preservation Commission. She noted that to the rear of the building is the Cottage Farm residential neighborhood. The first two floors of the building are currently being converted into the Howard Thurman Center. The exterior façade improvements needed for the conversion were approved by the Planning Board at a design review meeting in the fall of 2018. These facade changes along with the signage were also reviewed and approved by the Preservation Commission in August 2018.

The proposal is to install new signage for Boston University and the new Howard Thurman Center. The signage principally includes three new internally-lit vertically-mounted projecting banner signs that will say "Boston University." Also part of the general signage program will be some window signage on the door of the new main entrance and a freestanding monument sign also near the new main entrance. Attorney Dopazo Gilbert noted that there are 5 signs proposed, but only the three large proposed projecting banner signs need zoning relief. She then introduced Paul Rinaldi, V.P. of Real Estate for Boston University to discuss the intended educational programs at the building.

Mr. Rinaldi described the site and the historic significance of the building. He described the building as being a part of the College of Fine Arts. He described the new program that would occupy a portion of the ground floor as the new Howard Thurman Center for Common Ground. He noted that Mr. Thurman was a professor at B.U. during the 1960's and was a mentor to Dr. Martin Luther King. He noted the rich diversity of students and staff at the University and described this location and program as a place where that diversity will thrive and people can come together. He noted briefly the façade work to the building that was currently underway and was previously approved by the Preservation Commission and the Planning Board. He noted that last week the Planning Board had unanimously supported the signage proposal.

Mr. Rinaldi then introduced Anna Farrington to walk through the details of the proposed signage. Ms. Farrington went over the design process and the changes that were made to the number and size of the signage at the suggestion of the Preservation staff. She also noted that the banner sign on Essex will not be internally illuminated on the side that faces the residential neighborhood per the suggestion of the town. Ms. Farrington presented a Power Point presentation which showed the location, dimensions and elevations of the signage proposed. She also noted the signs were 8" deep fabricated aluminum tubes with automotive grade paint finish with the Boston University red and the lettering in white will be internally illuminated and have a translucent white vinyl surface to match the University's other wayfinding signs. She described how the blade signs would be mounted to the building fascia with aluminum brackets and gussets.

Attorney Dopazo Gilbert then stated that the Petitioner seeks a variance for relief from **Sections 7.01.c** for the height of the signs which are 63.6 feet above the sidewalk and the by-law allows no more than 25'; **7.01.d** for the size of the signs each sign is 100 s.f. and only 12 s.f. in

area is allowed; and 7.01.e because the signs would project more than 12” from the wall. She noted that the other 2 signs; one in the window and the one free standing sign on Essex Street are allowed as of right and were previously approved by the Planning Board as part of the façade review process. Attorney Dopazo Gilbert addressed the specific relief sought for each of the proposed three banner signs. She noted that the exterior blade signs totaled 300 s.f. in area. She noted the irony that, because they were vertical blade signs they needed the relief from the size, but if they were horizontal they would have been permitted to have 812 s.f. total under the calculation in the by-law which takes in to account the length of the building on Commonwealth Avenue and Essex Street. She noted that in the G.0 district illumination for new signage is permitted under Section 7.06(c).

Attorney Dopazo Gilbert argued that the proposal meets all of the requirements for granting a variance under M.G.L. c. 40A, Section 10 stating: the building is a unique structure along the Commonwealth Avenue thoroughfare, it is a historic building with a large amount of window glazing making up both street facades; it is in a very prominent location with a significant amount of street frontage. She noted the location of the building and the importance for wayfinding as the building is a gateway building for people entering the University campus from Commonwealth Ave as well as from the B.U. Bridge, Storrow Drive and coming from Cambridge over the Charles River. She noted that the signage relief recently granted for 820 Commonwealth Avenue, Boston University’s Booth Theatre Case No. 2017-0014 was by way of a variance because of the uniqueness of the lot. She noted that the literal enforcement of the provisions of the by-law would involve substantial hardship, because the University is trying to integrate this important program and building into its larger campus and this is dependent on increasing the visibility of the building and attracting attendees and passersby to participate in its

various events and programs. The proposed signage is also in conformance with the intent and purpose of Article 7, including avoiding the proliferation of signs, preserving the aesthetic environment, and encouraging the effective use of signs. She noted the proposal which was approved by the Preservation Commission strikes a nice balance between respecting the historical integrity of the building while accomplishing the University's goals.

Attorney Dopazo Gilbert noted that the proposal is also entitled to zoning relief pursuant to M.G.L. c. 40A, Section 3, known as the Dover Amendment, which provides in relevant part:

"No zoning ordinance or by-law shall regulate or restrict ... the use of land or structures for ... educational purposes on land owned or leased by ... a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." (emphasis added).

Attorney Dopazo Gilbert stated that the Howard Thurman Center for Common Ground will be on the first floor of the building but that the art gallery will remain and the other floors will continue to be used by art students. This building is part of the College of the College of Fine Arts and is an integral part of the school's academic and programmatic mission.

Chairman Zuroff then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal. Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairman Zuroff then called upon Karen Martin, Planner, to deliver the findings of the Planning Board. Ms. Martin noted the following:

## **FINDINGS**

### **SITE AND NEIGHBORHOOD**

808 Commonwealth Avenue is an academic building at Boston University historically known as the Peter Fuller Building located at the intersection of Essex Street. The building was constructed in 1927 originally as a car showroom that has since been transformed into an academic facility. It has five floors and the street level includes the 808 Gallery and other teaching and event spaces that are used by the College of Fine Arts and the Howard Thurman Center.

**APPLICANT'S PROPOSAL**

The applicant, Boston University, proposes to install new façade-mounted projecting signs, window signs, and building markers for 808 Commonwealth Avenue. The proposal includes five pieces of signage – three, 40 feet high vertical red Boston University blade signs, one freestanding identifying sign measuring 5.4 feet tall by 1.5 feet wide and one set of entry graphics applied to the main door.

**DIMENSIONAL CRITERIA**

Street	Frontage	Aggregate Sign Area
Commonwealth Ave	245 feet	490 SF
Essex Street	181 feet	362 SF

Type of Sign	Dimensions	Maximum SF Allowed	Proposed
Blade Signs (3)	2.5 feet x 40 feet x 8 inches	36 SF	300 SF
Freestanding Identifying Sign	5 feet x 1.4 feet x 6 inches	30 SF	3.5 SF
Door Entry Graphics	1 foot by 1 foot	12 SF	1 SF

Relief needed:

**Section 7.01.c: Signs in All Districts**

Signs attached to a building shall not exceed a height of 25 feet above ground level

> *The top of the blade signs are 63.6 feet above the sidewalk*

**Section 7.01.d: Signs in All Districts**

Projecting or banner signs shall not exceed 12 square feet in area per face or be internally illuminated

> *Each blade sign is 100 square feet.*

**Section 7.01.e: Signs in All Districts**

Signs attached to a building shall not project more than 12 inches out from the wall to which it is attached

> *Each blade sign projects more than 2.5 feet from the building wall*

**MGL 40A, Sec. 3 – Dover Amendment of Massachusetts Zoning Act**

The Dover Amendment, Sec. 3 of MGL Chap. 40A, applies to non-profit educational uses which would include Boston University. The Board of Appeals could grant relief under the Dover Amendment.

**PLANNING BOARD COMMENT**

The Planning Board is supportive of this sign proposal for the former Peter Fuller building, now owned and used by Boston University. Although the signage exceeds the allowed size limits, the Planning Board found that the proposed signage is proportional to the size of the building and is therefore appropriate.

**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 signage and wayfinding plans by Anna Farrington dated November 2018, 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: a) final sign plans and b) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff then called upon Ms. Martin to deliver the comments of the Building Department. Ms. Martin stated that the Building Department has no objection to the proposal.

During deliberation, Chairman Zuroff and Board Members opined that the variance requirements were met, but the applicant also met the standard for relief under M.G.L. c. 40A, s. 3, the Dover Amendment. Chairman Zuroff was concerned with granting the relief by way of a variance, because the building might be sold and the relief would transfer to a new owner. Attorney Gilbert noted that while that was a possibility it is likely that new signage would be needed for a new use and there would be further review and approvals required at that time. Member Palermo also noted that the building was historic and any change would also require Preservation approval. Board Members Poverman and Palermo agreed with Chairman Zuroff



that the relief did meet the standard to grant a variance, because of the uniqueness of the lot and the location and the historic building, but agreed that the Dover Amendment should be applied to this proposal. Board members discussed the balancing of interests that was necessary when analyzing a proposal that met the criteria for relief under the Dover Amendment.

In reliance on the above referenced plans, the Board then determined, by unanimous vote, that the proposed signage for the building at 808 Commonwealth Avenue qualified for relief under the Dover Amendment. The Board made the following findings: that the applicant and the use of the space was educational, for Boston University's College of Fine Arts and its new Howard Thurman Center for Common Ground; that a literal enforcement of the By-Law would unreasonably restrict Boston University's educational mission and programming without substantially furthering any important municipal goals; and that relief from a literal enforcement of the by-law was appropriate under the Dover Amendment. Notwithstanding that the relief was granted under the Dover Amendment, the applicant and the Board agreed to implement the conditions that were recommended by the Planning Board.

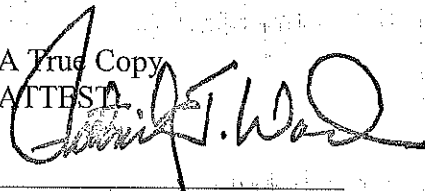
Accordingly, the Board voted unanimously to grant the zoning relief by applying the Dover Amendment subject to the following conditions:

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: a) final sign plans and b) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

  
Mark G. Zuroff, Chairman

Filing Date: 03/27/19

A True Copy  
ATTEST  


Patrick J. Ward  
Clerk, Board of Appeals