



BOARD OF APPEALS  
Jesse Geller, Chairman  
Christopher Hussey  
Mark G. Zuroff

# Town of Brookline Massachusetts

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-  
6899  
(617) 730-2010 Fax  
(617) 730-2043

Patrick J. Ward, Clerk

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2019-0016  
EEFORALL, LLC  
127-131 HARVARD STREET, BROOKLINE, MA

Petitioner, EEFORALL, LLC, applied to the Building Commissioner for modification of prior Board of Appeals decision #2017-0028 and/ or conditions as necessary. 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 April 11, 2019 at 7:00 PM., in the Select Board'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 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 March 28, 2019 and April 4, 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:

127 HARVARD STREET, BROOKLINE, MA 02446 - Modification of Prior Decision #2017-0028 and/ or conditions as necessary in a(n) L-1.0 LOCAL BUSINESS on April 11, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Robert L. Allen, Jr.) Precinct 7

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 OF PRIOR ZBA CASE 2017-0028**

**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 Geller, Chair  
Mark G. Zuroff*

**Publish: 3/28 & 4/4**

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 Johanna Schneider and Randolph Meiklejohn. Also present were the Assistant Director of Regulatory Planning, Polly Selkoe and Deputy Building Commissioner, Joseph Braga.

Chairman Zuroff called the hearing to order at 7:00 p.m. and explained the hearing process for the hearing. He asked Attorney Allen to waive the reading of the public notice.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr. LLP, 300 Washington Street, Brookline, Massachusetts 02445. Also in attendance were Laura Trust and Alan Litchman, representatives for the Petitioner, EEforAll, LLC and Eileen Casciari of CBT Architects.

Attorney Robert L. Allen, Jr. presented the case for the Applicants. He described the lot and the proposal to modify the existing special permit. The lot is at 127-131 Harvard Street. He described the surrounding commercial and residential uses which surround the site and along Harvard Street. He described the EEforAll, LLC as the owner of the property which he indicated was owned wholly by the Cause du Jour Foundation a 501(c)(3) non-profit trust established for broad charitable purposes (the "Foundation"). The applicant will establish another educational non-profit which will be the tenant that will run the early educational program at the site. Mr. Allen went over the Foundation's documents that were submitted and described the Foundation's mission included supporting the education of minority and underserved children. The Foundation was established in 1993. The applicant will also establish the Center for Partnership and Early Education ("CPEE") as a non-profit 501(c)(3) educational entity which will be the tenant at the site. The Foundation will also own this new LLC, and Attorney Allen noted that this is where some of the confusion and misinformation may have started. Attorney Allen noted the various documents that had been provided to the Board which showed that the Foundation was a tax-exempt entity. He also noted that the applicant's corporate documents had been amended to mandate that the only tenant at the property will be a non-profit entity qualified under the IRS Code 501(c)(3). Attorney Allen stated that the petitioners are not developers. Their intent is to continue to provide early education for underserved and underprivileged children in need. He reiterated that the only intent of the petitioners is to establish a non-profit educational entity in order to provided early

education services to minority and underserved children in need. He noted the prior decision which was granted under the Town's Zoning By-Law Section 5.08 had a condition that a 20-year lease be granted to the Town's BEEP program. He noted that for a variety of reasons the lease with BEEP did not come to fruition, and so the Petitioners now seek modifications as needed to the original special permit in order to permit the project to proceed. Attorney Allen stated that the modification is simply to allow for another qualified Dover tenant at the site.

Mr. Allen described the Petitioners' desire to provide quality pre-school programming to those in need. He noted that the Petitioners' young son had disabilities when he was a child and that the BEEP program made the difference for their son who is now headed to college. The applicants credit their son's success to the early intervention of the BEEP program. Mr. Allen stated that through their family foundation the applicants have donated over \$400,000 in programs to supplement the town's BEEP programs and scholarships. He described the applicants' existing Trust Center for Education ("TCE") which was established at the Temple in Brookline specifically for early education. He noted that Laura Trust has partnered with BEEP to provide additional subsidies, and provides afternoon care to those families that are in need. Through its Foundation they have awarded thousands of dollars in scholarships over the past years for Brookline's BEEP families. TCE also provides subsidies for afternoon extended day and summer programs. TCE accepts voucher students that BEEP can't take. TCE also provides spots to children of school staff. The TCE fills the void where the Town is unable to accommodate. The TCE desires to continue to partner with BEEP under the CPEE and continue on its mission to serve underprivileged and underserved children with special needs and provide quality early education to all. BEEP can only handle 55 voucher students. CPEE will accept the overflow that the town can't handle. CPEE will also agree to provide preference to town staff children and extended day programs for working parents.

Although the lease arrangement with the town did not work out it is still a goal of this applicant to continue to partner with BEEP and continue the educational mission of this non-profit entity. The year-round curriculum that the CPEE will provide is critical to the early intervention programs that the town supports. He noted that all of the space in this smaller building is needed in order to provide the educational program similar to the Trust Center for Education. Attorney Allen noted that it is important under the Dover analysis to show that the programmatic space proposed is required. BEEP originally needed the extra floor for administrative space on-site. The current program, however, will not need that additional administrative space and so a floor was removed. This service is critical to the town and its children. Attorney Allen noted the reduction in size and scale of the proposal. The building went from 69'6" to 62'6"; 6 to 5 floors; the GFA went from 25,000 to 19,000 s.f.; 2.7 to 2.0 FAR.; 18 required on-site spaces with 4 provided to 14 required spaces (due to the smaller building) and now 12 are required and 6 will now be provided on-site with another 6 off-site within a quarter mile; staff was reduced from 47 to 20 (plus 2 part-time) and the number of children was reduced from 115 to 85.

The site at issue is at 127 Harvard Street between Brookline Village and Coolidge Corner, in front of a car wash and between a gas station and the Williams Piano Shop and was previously improved by a 19<sup>th</sup> century Victorian structure used for commercial purposes. The prior structure was subject to a demolition delay for a period of one year and on expiration of that period was demolished.

Architect Eileen Casciari of CBT Architects presented the plans for the proposal, which are incorporated into this decision by reference. Using the plans, Ms. Casciari described the changes from the previously approved proposal. Ms. Casciari discussed the design of the building and the proposed materials. She noted that the major changes were that the building height was reduced by one floor and two additional parking spaces are provided on-site. She noted that the upper two levels were changed to a lighter color to reduce the massing and scale. She showed the various elevations to the Board as well

as various sight line perspectives. She described the change in materials and color tones and that they set back the upper floors to reduce the massing. She also went over the original plans as compared to the reduced mass and scale now proposed. She noted the parking on-site for scooters and bicycles. She noted that 2 additional spots for parking were added for a total of 6 on-site. She discussed the levels of classroom space and the conference rooms on the upper levels.

Chairman Zuroff asked about the large size of the rooftop penthouse. Ms. Casciari described the mechanical equipment and the set-back from the roof line. The penthouse itself is 12' high to accommodate the mechanical equipment.

Board Member Johanna Schneider asked the Architect to walk her through the details of the floor plans so she could better understand the use of the program spaces. Ms. Casciari said the first floor has a lobby and main student entrance off of Harvard Street. The first level also has a parent conference area and an office. One office is reception and one is for outreach programming. Attorney Allen noted that staff would be available to bring children in at drop-off. Level 2 and 3 are classrooms and also includes a special sensory room. There are conference rooms as well on levels 2 and 3, and level 3 has a food prep area. Level 4 is primarily the covered playground and outdoor space and also has conference room space for the teachers. Ms. Casciari noted that the mechanical space is quite set back from Harvard Street.

Board Member Randolph Meiklejohn asked if there was a basement. Ms. Casciari said there is no basement due to expense. They did consider the basement, but it was too expensive and not feasible.

Chairman Zuroff asked someone to describe how the drop-off works. Ms. Casciari described the circular vehicular path and that staff would be available to walk the children in. She described it as a rolling drop off with staggered arrival and departure times; 7, 7:30 and 8:00 a.m. drop off. Attorney Allen described how the rolling drop off works at other sites in town.

Chairman Zuroff asked what the professional qualifications of the staff are. Attorney Allen noted that state certification is required and there will be enough full-time staff to accommodate the reduced number of children. He noted that BEEP would have had 45 staff because of all the administrative staff. He noted that the current proposal only has 20 full-time staff and 2 part-time. There was further discussion of the educational curriculum and the early intervention program which identifies special needs of pre-school children. Attorney Allen noted the benefit is the ability to transition in to Kindergarten.

Johanna Schneider asked about whether children will pay tuition. Attorney Allen noted that it is a needs-based program so some will pay tuition and some may not. He also noted that CPEE will have specialists on-board to address disabilities. Attorney Allen noted the extensive need of those economically disadvantaged families in Brookline and the fact that this applicant can address those needs and supplement the Town's services. Chairman Zuroff asked if this program would compete with BEEP or supplement it. Attorney Allen noted that this would continue to be a partnership with the town and would supplement BEEP's programs. Attorney Allen noted that the applicants had recently purchased the building at 370 Washington Street in order to allow parking for the staff off-site and have offered space to the town for BEEP administrative staff, but the town has not responded to that offer.

Board Member Johanna Schneider asked for further clarification of the conference room space on the 6<sup>th</sup> floor and how it was related to the educational programming needs.

Attorney Allen described the space on the 6<sup>th</sup> floor and the need for private conference rooms for parent meetings. He noted that many children have developmental and other disabilities that need to be discussed in private with the professionals. Attorney Allen made the connection of the administrative space to the educational program.

Board Member Johanna Schneider opined that the use appeared to be a protected Dover use. She wants to understand the connection with the administrative space and the educational mission and program.

Laura Trust, the applicant then spoke. She described the space on the upper floors as areas for specialists and team interaction; such as speech, O.T., P.T. and curriculum. The 2 lower spots on the first floor will be parent resource areas or so-called in-take areas. She noted that there is a lack in the current spaces where parents can be comforted and professionals can discuss diagnosis and plans in private with parents. Ms. Trust described the conference rooms as professional space for specialists to interact with parents in private. She noted that she is open to partnering with BEEP in the future.

Board Member Randolph Meiklejohn asked about the 4<sup>th</sup> floor play space and why this story is necessary on the site. Ms. Cascieri described that some of the children are special needs so travelling away from the site is not optimal. She also noted the space is covered and so can be used in all seasons and weather. Attorney Allen also noted that there are 7 other daycares in the area that compete for the same public playground space. In fact, at one point the public parks were so overcrowded that the daycares had to sign up for playground use.

Chairman Zuroff asked for the specific language proposed for the modifications to the existing conditions. Attorney Allen noted that the replacement language is for the new educational non-profit CPEE to replace BEEP and that the 20-year duration was no longer necessary. Attorney Allen noted that the Foundation had provided documentation and background information to the Board and Town Counsel. He also noted the prior opinion of Town Counsel that the applicant qualified for Dover relief and that documentation was submitted to the Board of the non-profit status. Chairman Zuroff was concerned about the user being a Dover user under a long-term lease. The Chairman asked for language that would be a use restriction for this educational entity. Attorney Allen said that to address this



concern Condition #13 should be reinstated and modified to replace BEEP with the new entity CPEE. Chairman Zuroff agreed that Condition #13 should be included, but revised accordingly. Although the request was for a modification to the existing special permit, Mr. Allen went through the elements of Section 9.05 as was previously granted in the original permit for the record. Attorney Allen noted that the special permit conditions under 9.05 are also met and had been satisfied. For the record he outlined the criteria under 9.05 again noting that the site was an appropriate location for an early education center as it was located on Harvard Street a commercial district with access to transit near the Pierce School and several day care centers and the Stop & Shop; the drop off and pick up plans as well as a traffic report were reviewed and approved by the town and the project does not create a hazard or nuisance for vehicles or pedestrians; the building will not adversely impact the neighborhood as the building was reduced in size and the number of students and staff had also been reduced which in turn reduced the number of required parking spaces. He also noted that any shadow impacts were on the nearby car wash and not on any residential buildings. In addition, Attorney Allen noted that the traffic report showed that there would be no queuing on Harvard Street. He opined that adequate and appropriate facilities have been provided for the use and in particular he noted the outdoor playground space provided at this facility. He opined that the applicant still meets all of the criteria for application of the Dover Amendment, but asked that the town grant the modifications under its By-Law s.5.08 with the amended conditions.

Board Member Johanna Schneider indicated that this was a request for modification to an existing special permit and so it was not necessary to go through the special permit standard again. Attorney Allen agreed, but noted that there was some discussion as to this being a new application and so he wanted to clarify for this new Board to understand how the project previously met all the criteria for a grant of a special permit under s. 9.05 and s.5.08 as an educational use.

Chairman Zuroff called for anyone wishing to speak in favor of the application.

Vicki Milstein, Principal of the Brookline Early Education Program ("BEEP"), appeared to speak in favor of the application, but not in her official capacity. She wished to speak as a citizen and advocate for all children, especially those underserved and underprivileged pre-school children. She has been working with the Brookline Community Foundation for funding to increase opportunities for these underserved children. She discussed the town's inadequate voucher system for underprivileged children. Only BEEP accepts vouchers and there is a significant need for additional programs that will accept vouchers. Currently there are none other than the program the applicant currently runs at the Trust Center. There no longer are any other programs that accept voucher children in Brookline. When a child participates in an early education program they are on par academically with other children when they begin Kindergarten. She explained how the voucher system works, and the fact that when there are no spaces at BEEP then they may be assigned to a program outside the community in Roxbury or Dorchester. This creates the added burden of having to travel outside the family's community. The early education programs in the City do not require college degrees for their teachers and they are not the same as the BEEP program and the intended program that the applicant will provide. The only partner the Town has ever had to serve the many underprivileged children of Brookline that the town can't take is the applicant's Trust Center which she runs at the Temple. I am here to speak on behalf of the generosity of the Trust family to provide enrichment programs and provide a high-quality placement for those. I do not want Brookline children that BEEP can't serve to have to travel to another community for a lesser program. If we can't provide access to all Brookline children in Brookline then no other community can accomplish it. Ms. Milstein described the early intervention program and special needs programs that the applicant intends to provide at the site which will supplement and support the town's program. This is especially important for the underserved, those under the age of 3,

those with special needs and those economically disadvantaged Brookline children that don't have early education opportunities they can afford through the town. She fully supports the application on behalf of all Brookline children, she wants Brookline children to be able to stay in Brookline for their early education, but can't comment further, because she is a town employee.

There were no further speakers in support. The Chairman then called for those who wished to speak in opposition.

Speaking in opposition, John Hebert of 21 Auburn Street appeared. He believed that Ms. Milstein's comments would not have had to have been made had there been a deal with the Town as previously approved. He believes there was a deal with the Town for 20 years. He referred to a letter from David Pollack approving the lease. He is trying to be a good citizen. He is relying on the March 7<sup>th</sup> Planning Board report. He stated that the information he is hearing now about the applicant is new. He was unaware of much of the information until this evening. He believes there are a number of issues to be addressed which he has submitted in writing. He is disturbed by what he characterized as the "violation" of the condition with the town. His opinion is that the application is lacking and shouldn't be considered. He discussed his opinion relative to Dover and Section 5.08. He noted that Dover still has the ability to regulate this project as does s. 5.08.02 which requires that the use must be in general harmony with other uses in the neighborhood. He is concerned with future over building. He believes the height is too much and the FAR is 200% over what is allowed. He believes the application should be rejected. He thinks the Planning report is incomplete and the application should have been returned.

The Chair reminded Mr. Hebert that this is a modification of an existing special permit. He asked Mr. Herbert if after hearing the details if he was still opposed. Mr. Hebert believes a proper application should be filed and the Board is asking him to make a decision in "real time".

Jessica Stokes, 9 Auburn Street spoke in opposition. She wants to answer the Chair's question by reading Condition No. 13 of the prior approval. She read Condition No. 13. She believes the applicant is a different Dover applicant and must start anew. She thanked the applicant, but said the building is too big and it still needs to follow the law. She is of the opinion that the height and FAR are too much for the site. She is also concerned about the parking and has a lot of questions. She thinks it should go back to the Planning Board with more information. She is opposed to the requested relief.

Jonathan Margolis, Precinct 7 Town Meeting Member and Library Trustee spoke in opposition. He believes this is a well-intended project, but it is too big and may be in the wrong location. He opined that the project did not qualify for Dover relief. His opinion is that EEforAll is a for profit entity. He is of the opinion that because there is no educational non-profit entity formed yet, they should come back and re-file when they have such an entity established. He believes the project is simply far too big. He also expressed concern that there is only one elevator to service the building. He disputed that many families would walk with children; he believes they will come by car. He expressed concern with the traffic. Ultimately, he believes the application is premature. He agrees with Ms. Stokes that the applicant must start anew.

Valet Dibia came to Brookline 17 years ago. She questions the statement that this will not be a day care facility, because of the age of the children she said it will be a daycare. She also questioned how a rolling drop off would work. She also questioned the age of the children and whether enrollment will be limited to Brookline residents.

Rena Silevich, Harvard Avenue. was supportive when it was a gift to BEEP. She is concerned about the focus of this non-profit changing in the future.

Arthur Pinkham, 79 Harvard Avenue, a licensed architect in Massachusetts spoke in opposition. He believes the building is grossly oversized. He applauded the donors, but believes the design is not

sufficient. He asked the architects how much space can actually be used for the children when you remove all the other areas. He does think the design is insufficient.

Pam Redliner, Auburn Street, was originally supportive of BEEP at this site. However, Vicki Milstein's idea is that BEEP will go back in to the schools, so she asked what then happens to this building? She opined that her huge concern is the precedent for such a large 6-story building on Harvard Street.

Dan Williams, Williams Piano Shop, 123 Harvard Street, is not in favor of the entire process or the project. He also believes the building is too large. He believes a plan should be in place and he doesn't like the hole in the ground. He believes the site is surrounded by 2-3 story wooden structures, and this simply is out of scale for the neighborhood.

Susan Cohen, TMM Precinct 7, thinks the idea is great, but the building is too big. She questioned why they couldn't find another home to fix up that was more suitable.

Attorney Allen responded to some of the public comment and questions by providing more information about the intended non-profit early education program. He also noted that not only is the building smaller, there will be fewer students and less staff under the current proposal. The desire of the applicants is still to provide early education to those children in need. He noted that for a variety of reasons the applicant was unable to reach an agreement with BEEP. However, he noted that this did not change the desire of the applicants to fill the need and to serve children in need at this site. He reiterated that the desire of the applicants has not changed as far as identifying the needs of these children and providing this much needed service. Attorney Allen noted that a project was approved last year with conditions for a larger, taller building. The proposal now is smaller and has less students and staff. Attorney Allen noted that the Board cannot differentiate between types of Dover uses. Regardless,

Attorney Allen noted that there is a need for this educational service and that has been acknowledged. He requested the Board approve the necessary amendments.

Chairman Zuroff asked why the CPEE entity had not yet been established. Attorney Allen noted the time and costs associated with that process, and noted that the plan was to get this approval first before going through that process. Attorney Allen stated that setting up a non-profit with certain restrictions is a longer process, and one they will complete after this zoning process. Chairman Zuroff stated that it would be a condition of any modification that this entity be established. Attorney Allen agreed.

Chairman Zuroff then called upon Associate Town Counsel John Buchheit to provide guidance to the Board under the Dover Amendment and the town by-law. Attorney Buchheit referred the Board to his prior memorandum submitted to the Board. He noted that the zoning by-law had a similar Dover type provision. He went over the relevant case law applicable to the Dover Amendment. He described the Dover Amendment and explained that it is a balancing act. The question is whether the zoning requirements are reasonable in light of the educational use. He noted it is a very fact specific analysis and that the burden is on the applicant to establish which requirements of the by-law are unreasonable. He noted that according to the lead case, *Trustees of Tufts College v. City of Medford*, 415 Mass. 753, 759-760 (1993), regulations are deemed unreasonable if to apply them would substantially diminish or detract from the usefulness of the proposed educational structure or there is an excessive cost for compliance without significantly advancing the municipality's legitimate zoning concerns. Attorney Buchheit stated that the Board must have an understanding of the particular entity. Mr. Buchheit then went over the highlights of his prior opinion and the facts of each of the leading cases which interpreted the Dover amendment.

Chairman Zuroff then called upon Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the findings of the Planning Board. Ms. Selkoe noted that this is a modification of an existing special permit, however, the applicant did apply again and went through the entire review process. She presented the Planning Board's recommendation approving plans with amendments to the conditions of the original permit as follows:

## FINDINGS

**Modification of ZBA Case #2017-0028 and conditions, as necessary.**

### **PLANNING BOARD COMMENTS**

The Planning Board believes that although this building will no longer be leased to the Town it still qualifies for protection under the Dover Amendment since it is a non-profit educational use. The Planning Board is pleased that the building is now smaller and will have fewer students and teachers. The proposed condition for a Transportation Management Plan requires that there be at least a 50% discount for MBTA passes for employees and the provision of 20 staff on-street or off-street parking permits, 10 of which should be within a quarter of a mile, and the parking at the site has been increased by two spaces from the original proposal. With these and other traffic and parking mitigation measures, the Planning Board is able to support this proposal.

Therefore, the Planning Board recommends approval of the site plan by Hancock Associates, dated 12/23/16, and architectural plans by CBT Architects, dated 1/8/2019, subject to the following conditions as amended:

1. Prior to the issuance of a building permit, the applicant shall submit an electronic copy and two 11x17" copies of final site plans; floor plans and elevations, indicating façade details, colors, materials, windows and rooftop equipment, which if noisy shall be screened ; and a signage plan with dimensions and colors 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 a final landscaping plan, subject to the approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, a final construction management plan, including parking locations for construction vehicles, hours of construction and materials delivery, noise mitigation, staging areas, security fencing, location of portable toilets, rodent control, erosion and sediment control and emergency contact information, shall be submitted for review and approval by the Building Commissioner. A copy of the approved plan shall be submitted in an electronic form to the Planning and Community Development Department and the Director of Engineering and Transportation.

4. Prior to the issuance of a building permit, a Transportation Demand Management (TDM) Plan shall be submitted for review and approval to the Director of Engineering and Transportation and the Assistant Director of Regulatory Planning. There shall be a requirement to offer at least a 50% discount for MBTA passes and Hubway memberships for employees working at the site, and the provision of 20 staff on-street or off-street parking permits, 10 of which shall be within a quarter of a mile. Traffic monitoring and annual reporting to the Town shall be required for a three-year period, including providing the transportation mode used by employees and parents and type of traveler, and an analysis of the drop-off/pick-up procedures with suggested improvements, if needed. The monitoring and reporting program shall commence six months after receipt of the final Certificate of Occupancy for the Project. If monitoring shows queuing on Harvard Street or other problems, then the BEEP shall reevaluate and change its drop-off and pick-up procedures and/or procedures for accepting deliveries and off-street parking arrangements, subject to the review and approval to the Director of Engineering and Transportation and the Assistant Director of Regulatory Planning. Alternatively, if a Transportation policy for all school and town properties is in place then that policy shall be applicable.
5. Prior to the issuance of a building permit, a Traffic Impact Assessment shall be submitted in accordance with the Town of Brookline's Transportation Access Plan Guidelines effective January 1, 2018, or most recent adoption, to the Director of Engineering and Transportation.
6. Site driveway aprons should provide a sidewalk level concrete pedestrian route across site driveways. There shall be no crosswalk markings across site driveways.
7. Prior to the issuance of a building permit, a drainage plan shall be submitted for review and approval of the Director of Engineering and Transportation.
8. One temporary construction and/or development sign(s), no greater than 30 square feet, may be erected on site during construction, with the design and location subject to the review and approval of the Assistant Director of Regulatory Planning.
9. Should food service to be provided on-site, the applicant shall comply with the Public Health permit requirements as well as Town By-Laws on waste and recycling.
- ~~10. Prior to the issuance of a building permit, a valid and binding lease agreement for not less than a 20 year term by and between the Petitioner and BEEP shall be negotiated to the satisfaction of all parties, including Town counsel, and executed by the Petitioner and the School Committee or such other duly authorized party on behalf of the Town of Brookline.~~
11. Prior to the issuance of a building permit, the Petitioner shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, including fencing, grading, and location of utilities; 2) final building elevations including exterior signage, stamped and signed by a registered architect; 3) final floor plans, stamped and signed by a registered architect; 4) an executed lease agreement between the Petitioner and the School Committee or



~~such other duly authorized party on behalf of the Town of Brookline; 5) an approved Transportation Demand Management (TDM) Plan; and 6) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.~~

12. Prior to the issuance of the Certificate of Occupancy, complete as-built plans certified by a registered architect as in compliance with the approved plans shall be prepared and filed with the Building Commissioner.
13. ~~The relief granted is specific to the educational and programmatic needs of the Town's BEEP program. It has been granted because Petitioner has demonstrated that BEEP's programmatic needs outweigh the Town's legitimate zoning interests. It has also been granted because the Petitioner has demonstrated that BEEP's operations, including but not limited to its proposed parking plan and its drop off/pick up plan, will not create significant negative impacts for the neighborhood. If a Dover entity other than BEEP seeks to occupy or use the premises, it shall be subject to new review and approval by the Board and demonstrate to the Board that the Town's legitimate zoning interests, as applied to it, are unreasonable before it begins its use and occupancy of the premises. In such a case and as to a new Dover user, the Board may amend the special permit and impose any reasonable restrictions allowed by the Dover Amendment. Should an entity not protected by the Dover Amendment seek to use the premises, it shall obtain the necessary variances from the Board before it begins its use and occupancy of the premises.~~

Ms. Selkoe noted that the last sentence of the original Condition #5 was removed as it was applicable only as it pertained to BEEP and the Public Schools of Brookline. She also noted that based on the comments from the Board this evening that Condition 13 should remain in place with CPEE being substituted for BEEP so that the amended Condition 13 would read:

The relief granted is specific to the educational and programmatic needs of the CPEE program. It has been granted because Petitioner has demonstrated that CPEE's programmatic needs outweigh the Town's legitimate zoning interests. It has also been granted because the Petitioner has demonstrated that CPEE's operations, including but not limited to its proposed parking plan and its drop off/pick up plan, will not create significant negative impacts for the neighborhood. If a Dover entity other than CPEE seeks to occupy or use the premises, it shall be subject to new review and approval by the Board and demonstrate to the Board that the Town's legitimate zoning interests, as applied to it, are unreasonable before it begins its use and occupancy of the premises. In such a case and as to a new Dover user, the Board may amend the special permit and impose any reasonable restrictions allowed by the Dover Amendment. Should an entity not protected by the Dover Amendment seek to use the premises, it shall obtain the necessary variances from the Board before it begins its use and occupancy of the premises.

Chairman Zuroff asked Ms. Selkoe if the Planning Board had fully reviewed this application in

light of some of the public comments that the application was incomplete or premature. Ms. Selkoe noted that the Planning Board did review this as a new application even though it is a request to amend or modify the existing special permit. She also stated that both she and the full Planning Board reviewed the revised plans. She stated that there were questions about the FAR and the Planning Board was able to get that information prior to the Planning Board hearing for full review. Ms. Selkoe is satisfied that the application has been fully vetted and undergone the appropriate process anew. She noted that the applicant had to reapply and got a new denial letter from the Building Commissioner.

Joe Braga, Deputy Building Commissioner, next addressed the Board. He noted that his predecessor, Mike Yanovitch had opined on the previous application and had no objection. He noted that the Building Department has no objection to the requested modifications to the existing permit, so long as all the criteria are met. Chairman Zuroff asked Mr. Braga if he thought the one elevator proposed for the building was sufficient. Mr. Braga noted that due to the age of the children all of the life-safety elements have been met, and one floor was taken off. Chairman Zuroff asked if the rooftop equipment could be made smaller. Mr. Braga noted that the size of equipment indicated may be needed, because there is no basement and everything is located on the roof.

Mr. Allen discussed the language of condition No. 4 as proposed by the Planning Board and requested that it accurately reflect the reduction in staff and students so that Condition #4 will read that 6 spots will be provided on-site and 6 will be provided within a quarter of a mile. The Board agreed that this modified language was reasonable in light of the smaller building and less staff and students.

Board Member Johanna Schneider wanted to discuss the original Condition #13 regarding the Dover use requirements. She wants to clarify her opinion that this can be taken up as a modification to the original permit which was granted with BEEP as the intended tenant. She cited language from the applicable case law that the applicant must prove that the zoning would be unreasonable and not

appreciably advance the town's legitimate municipal concerns. This is the reason she asked about the need for the office space. After having heard from the Applicant regarding the use of this space for professionals to meet privately with families she believes that all of the space and programmatic areas satisfy the Dover requirements. She would be uncomfortable shrinking the space. She is satisfied now with how the applicant described the office and conference space and its connection to the educational programming and privacy for consulting needs. As for the balancing of the needs for the program and municipal concerns she noted that it is also a legitimate municipal concern that there is an underserved population of pre-school children that the town cannot serve with its current infrastructure.

Board member, Randolph Meiklejohn believes the requested modifications are appropriate. He noted that the original condition #13 contemplated that another Dover user might come back with a bigger building. This building as proposed is now smaller and he has trouble objecting to a smaller building for an educational use. He noted that originally this was intended for Brookline children and acknowledged that Attorney Allen had confirmed this project would also be for Brookline children. He questioned whether such a Brookline only condition would be appropriate.

Chairman Zuroff did note that this could be framed as a Brookline preference and could be imposed by the Board. Ms. Schneider said a preference is acceptable, but it is not appropriate to require only Brookline children and exclude others.

Attorney Allen suggested that a condition of Brookline preference may also include preference for staff of town employees, because this is also where the need lies.

Chairman Zuroff agreed with Attorney Allen. He noted that Harvard Street is changing and the population and use along major thoroughfares in Brookline is changing. Chairman Zuroff opined that in the context of whether this building fits, he does not believe the building is so oversized that it will be an abrupt change. While it will certainly be a change, he noted that the project is now smaller than the

original project. He noted that the main change is that the lessee will no longer be the town. BEEP is a fine program, but the applicant is providing a parallel program that will benefit the population and will not replace BEEP or interfere with BEEP's programs. He believes the fact that BEEP could not enter into a lease agreement is not the Board's concern. The Chairman agrees this is a Dover use and is in favor of granting the requested modifications. The Chairman wants a restriction confirming that this use will be for this CPEE non-profit entity and there will be a long-term lease as intended by the applicant and the Board. He wants the original Condition 10 and 13 to remain, but be reworded and refined to apply to this applicant so as to protect the town and the building for its intended educational use. The Chairman will review the modified language and the conditions. The other members agreed with the Chairman. The Chairman supports the grant of the modifications under the Dover amendment and the Zoning By-Law s. 5.08. He congratulated the applicant and applauded her dedication to early education.

The Board then determined that the requirements have been met for the requested modifications of special permit #2017-0028 and that the proposed CPEE program is for an educational use allowed under Sections 5.08.2, 6.02.4.c, 5.09.2 and 9.05 of the Zoning By-Law, because the relief is necessary to allow reasonable development of the proposed educational use in general harmony with other uses permitted and as regulated in the vicinity, and therefore, the Board granted the modifications as requested.

Accordingly, in connection with its findings the Board voted unanimously to approve the requested modifications to the existing special permit #2017-0028 for the proposed educational use (Use 10) and approved the site plan by Hancock Associates, dated 12/23/16, and architectural plans by CBT Architects, dated 1/8/2019 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit an electronic copy and two 11x17" copies of final site plans, floor plans and elevations, indicating façade details, colors, materials, windows and rooftop equipment (which if noisy shall be screened); and a signage plan with dimensions and colors 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 a final landscaping plan, subject to the approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, a final construction management plan, including parking locations for construction vehicles, hours of construction and materials delivery, noise mitigation, staging areas, security fencing, location of portable toilets, rodent control, erosion and sediment control and emergency contact information, shall be submitted for review and approval by the Building Commissioner. A copy of the approved plan shall be submitted in an electronic form to the Planning and Community Development Department and the Director of Engineering and Transportation.
4. Prior to the issuance of a building permit, a Transportation Demand Management (TDM) Plan shall be submitted for review and approval to the Director of Engineering and Transportation and the Assistant Director of Regulatory Planning. There shall be a requirement to offer at least a 50% discount for MBTA passes and Hubway memberships for employees working at the site, and the provision of 6 spaces on-site and 6 off-site within a quarter (1/4) of a mile. Traffic monitoring and annual reporting to the Town shall be required for a three-year period, including providing the transportation mode used by employees and parents and type of traveler, and an analysis of the drop-off/pick-up procedures with suggested improvements, if needed. The monitoring and reporting program shall commence six months after receipt of the final Certificate of Occupancy for the Project. If monitoring shows queuing on Harvard Street or other problems, then the CPEE shall reevaluate and change its drop-off and pick-up procedures and/or procedures for accepting deliveries, subject to the review and approval of the Director of Engineering and Transportation and the Assistant Director of Regulatory Planning.
5. Prior to the issuance of a building permit, a Traffic Impact Assessment shall be submitted in accordance with the Town of Brookline's Transportation Access Plan Guidelines effective January 1, 2018, or most recent adoption, to the Director of Engineering and Transportation.
6. Site driveway aprons should provide a sidewalk level concrete pedestrian route across site driveways. There shall be no crosswalk markings across site driveways.
7. Prior to the issuance of a building permit, a drainage plan shall be submitted for review and approval of the Director of Engineering and Transportation.
8. One temporary construction and/or development sign(s), no greater than 30 square feet, may be erected on site during construction, with the design and location subject to the review and approval of the Assistant Director of Regulatory Planning.

9. Should food service be to be provided on-site, the applicant shall comply with the Public Health permit requirements as well as Town By-Laws on waste and recycling.
10. Prior to the issuance of a building permit, the Petitioner shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision, evidence that the Applicant has entered in to a long-term lease with The Center for Partnership and Early Education a non-profit entity to be established as CPEE, LLC ("CPEE") or other similar non-profit educational entity that intends to provide early educational programming and to the extent legally allowed CPEE shall give preference to children of Brookline residents and then the children of town of Brookline and School Department employees.
11. Prior to the issuance of a building permit, the Petitioner shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, including fencing, grading, and location of utilities; 2) final building elevations including exterior signage, stamped and signed by a registered architect; 3) final floor plans, stamped and signed by a registered architect; 4) an approved Transportation Demand Management (TDM) Plan; and 5) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.
12. Prior to the issuance of the Certificate of Occupancy, complete as-built plans certified by a registered architect as in compliance with the approved plans shall be prepared and filed with the Building Commissioner.
13. The relief granted is specific to the educational and programmatic needs of the described CPEE early education program. It has been granted because Petitioner has demonstrated that CPEE's educational programmatic needs outweigh the Town's legitimate zoning interests. It has also been granted because the Petitioner has demonstrated that CPEE's operations, including but not limited to its proposed parking plan and its drop off/pick up plan, will not create significant negative impacts for the neighborhood. If a Dover entity other than CPEE seeks to occupy or use the premises, it shall be subject to new review and approval by the Board and demonstrate to the Board that the Town's legitimate zoning interests, as applied to it, are unreasonable before it begins its use and occupancy of the premises. In such a case and as to a new Dover user, the Board may amend or modify the special permit(s) and impose any reasonable restrictions allowed by the Dover Amendment. Should an entity not protected by the Dover Amendment seek to use the premises, it shall obtain the necessary variances from the Board before it begins its use and occupancy of the premises.

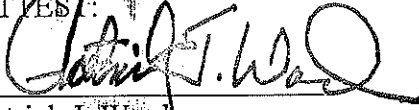
Unanimous Decision of  
The Board of Appeals

Filing Date: 05/16/19

  
Mark G. Zuroff, Chairman

A True Copy

ATTEST:

A handwritten signature in black ink, appearing to read "Patrick J. Ward". The signature is written in a cursive style with a large, prominent "P" and "W".

Patrick J. Ward

Clerk, Board of Appeals