



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0009

Petitioner, ND/CR 10 Brookline LLC, applied to the Building Commissioner for permission to erect a wall sign more than 25 feet above ground level at Ten Brookline Place (a/k/a 111 Washington Street). The application was denied and an appeal was taken to this Board.

On January 28, 2010, the Board of Appeals met and 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 April 1, 2010 at 7:15 p.m. in the Selectmen's Hearing Room on the sixth floor of the 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 March 18 and 25, 2010, in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., C.39, Sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

**Petitioner: ND/CR 10 Brookline LLC
Location of Premises: 10 Brookline Place West
Date of Hearing: Thursday, April 1 2010
Time of Hearing: 7:15 p.m.
Place of Hearing: Selectmen's Hearing Room, 6th floor**

A public hearing will be held for a variance and/or a special permit from:

7.00.1.b; Signs in All Districts, variance required, ...more than 25 feet above ground level.

Of the Zoning By-Law to install an internally illuminated wall sign of approximately 68 sf, mounted 80 feet above grade at **10 BROOKLINE PLACE WEST, BRKL.**

Said Premise located in a G-2.0 (general business) district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at:<http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

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 the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, a public hearing was held by this Board.

Present at the hearing was Chairman, Enid Starr and Board Members, Mark Zuroff and Jonathan Book. Kathryn L. Childs, Esq. appeared before the Board on behalf of the Petitioner, together

with Sherry Clancy of National Development, the project manager and asset manager for the Property.

I. Petitioner's Presentation – Proposed Dana Farber Cancer Institute Wall Sign

The Petitioner proposes to install a sign reading “Dana Farber Cancer Institute” as shown on the plans submitted with the application on the façade at the top (6th) floor of the existing 142,716 square foot building (the “Building”) located at 111 Washington Street (a/k/a) Ten Brookline Place (the “Lot”).

Dana Farber Cancer Institute (“Dana Farber”) occupies approximately 57% of the Building. Dana Farber utilizes its space in the Building for administrative functions and over 14 fundraising programs, including the Jimmy Fund, Dana Farber Marathon Challenge and the Mission Possible Campaign, to fund research to eradicate cancer. Dana Farber regularly invites donors and potential donors to the Building. The ability of donors and visitors to easily locate and access the Building is an important component of the success of Dana Farber’s fundraising activities. In its present condition, signage is inadequate to effectively identify the presence of Dana Farber in the Building.

Petitioner noted that the Building previously had a similar sign in approximately the same location when the Building was occupied by a single tenant, Harvard Community Health Plan (Board of Appeals decision, Case #3029, June 13, 1990 granting a special permit for a two identical signs containing the letters of the building name “Harvard Community Health Plan” and corporate logo, one on the east façade and one on the west façade).

II. Petitioner's Presentation - Reasons for Granting Variance

A. Unique conditions affecting the land or building for which the variance is requested exist which do not generally affect the Zoning District in which the land or building is located.

The Building is a six story office/educational complex at the gateway to the Brookline Village commercial area. The Lot’s unique shape, topography and location in relation to the busy and complicated intersection of Washington Street, Boylston Street and Brookline Avenue create challenging issues for providing effective signage. For visitors to the Building travelling eastbound on Boylston Street (Route 9), the transition from

Boylston Street to Washington Street is not readily apparent as Boylston Street appears to continue in a straight line in front of the Building though this is actually Washington Street which curves along the side of the Building and Lot from the northwest and becomes Route 9. The Building's name and official address create further confusion for someone trying to locate the Building – *i.e.* the Building's address is 111 Washington Street even though it fronts on what appears to be the continuation of Boylston Street and the Building is named "Ten Brookline Place" and there is no street named "Brookline Place". For visitors utilizing Mapquest or a GPS this is particularly troublesome.

The Lot also has unique topography in that it slopes from the back to the front and the adjacent streets are at significantly different elevations. The total elevation change around the building ranges from elevation 20 to elevation 28 with the main plaza at elevation 38, so that the Building has been built into the slope creating varied building elevations. Further, the front door to the Building is located at the plaza level approximately 10 feet above the street grade and is set back and not visible from the street level. Views of the front of the Building are blocked by natural obstructions (trees, bushes), as well as by the bus turn-out in the front of the Building and the pedestrian bridge over the street in front of the Building. The unique topography of the Lot and Building create further challenges to providing effective and visible access not present at other properties in the area. All of the above conditions are unique to the Lot and Building and do not generally affect the Zoning District (G) in which the Lot and Building are located.

Given the typical speed of travel on Route 9 approaching the Building, the ability to identify the Building with adequate time prior to entering the Washington/Boylston intersection is key to safely navigating the intersection and accessing the Building. Access to the Building is highly challenging as it is – eastbound drivers need to pass the Building, pass Pearl Street, take a left on Brookline Avenue and then a right on Pearl Street to enter the Building's garage from Pearl Street. Signage below approximately 40 feet is not visible when travelling eastbound on Route 9 until drivers are virtually in front of the Building and then only if they can see through the natural and manmade barriers, as well as the westbound traffic.

The proposed sign attempts to mitigate the challenging obstacles created by the Lot's topography and shape in relation to the Boylston/Washington Street intersection by giving visual cues to drivers and increasing the reaction time to change lanes.

B. Substantial hardship will result from the literal enforcement of the provisions of the Zoning Bylaw.

Location of the proposed sign in conformance with the Zoning Bylaw at or below the required 25 feet above grade would create a substantial hardship in that it would not provide effective visibility and thereby would defeat the purpose of signage – to effectively and safely communicate the location of the Building and/or its tenants. As discussed above, signage constructed at a lower point on the Building would be impractical and would not provide adequate reaction time for drivers travelling eastbound on Route 9 to access the Building and would create a substantial hardship in the Petitioner's efforts to provide coherent and effective signage for the Building.

C. The variance may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the Zoning Bylaw.

The erection of signage as proposed will enhance the public good by providing signage that will effectively identify the location of the Dana Farber Cancer Institute for vehicular traffic approaching the Building from the west thereby reducing erratic and dangerous vehicular movement in the Boylston/Washington Street intersection. The prominence of the Dana Farber sign at a higher elevation than permitted as-of-right will enhance vehicular and pedestrian safety by providing visual cues in adequate time for drivers to safely navigate the Boylston/Washington Street intersection and access the Building. The general public safety will be enhanced by the proposed signage thereby furthering, rather than nullifying or substantially derogating, one of the intents of the Zoning Bylaw.

III. Comments from Proponents/Opponents.

There were no members of the public present at the hearing; therefore, no comments from either Proponents or Opponents were made.

IV. Planning Board Report.

Courtney Synowiec, Planner, said that the Planning Board recommended approval (5-1) of the variance subject to certain conditions contained in the Planning Board's written recommendation. The Planning Board report was read into the record of the Hearing and the plans referenced in that report prior to the recommended conditions therein are incorporated herein.

V. Building Department Report.

Michael Shepard, Building Commissioner stated that he had no objection to the proposal as submitted by the Petitioner.

VI. Zoning Board of Appeals Findings, Deliberation and Decision.

The Board of Appeals, after reviewing the testimony, the written submission of Petitioner, the plans and the written report of the Planning Board to this Board, concluded that a variance under Section 7.00(b) of the Bylaw is appropriate, based upon the following findings of the Board:

- A. The Board finds that the unique shape and topography of the Lot and the Building which do not generally affect the Zoning District in which the Lot and Building are located results in difficult Building visibility and access. The proposed sign will mitigate the challenging obstacles created by the unique structure and by the Lot's shape and topography in relation to the Boylston/Washington Street intersection by giving visual cues to drivers and increasing the reaction time to change lanes.
- B. The Board finds that substantial hardship will result from the literal enforcement of the provisions of the Zoning Bylaw. Alternative locations for the sign were shown to be impractical and ineffective to safely promote way-finding.
- C. The Board finds that the variance may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the Zoning Bylaw. Rather, it is intended and likely that the proposed sign will enhance vehicular and pedestrian safety by providing visual cues which adequate time for drivers to safely navigate the Boylston/Washington Street intersection and access the Building. The general public safety will be enhanced by the proposed signage thereby furthering, rather than nullifying or substantially derogating, one of the intents of the Zoning Bylaw.

The Board of Appeals having made a determination that a variance is appropriate and that its grant will be consistent with the intents and purposes of the Bylaw unanimously grants a variance under Section 7.00(b) of the Bylaw to install a wall sign more than 25 feet above ground level subject to the following conditions.

1. Prior to a building permit, the applicant shall submit final plans, with dimensions of the top story band and proportional lettering (not larger than the 42" logo), and a section showing source of illumination, preferably with LED lighting, subject to the review and approval of the Assistant Director of Regulatory Planning.

2. Prior to a building permit, the applicant shall submit to the Building Commissioner, evidence that the decision was recorded at the Norfolk County Registry of Deeds.

Under the Decision of
The Board of Appeals

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Enid Starr, Chairman

Filing Date: May 05, 2010

A True Copy ATTEST



Patrick J. Ward
Clerk, Board of Appeal