



City of Waltham

COMMONWEALTH OF MASSACHUSETTS

ZONING BOARD OF APPEALS

LEGAL NOTICE

DATE FILED: April 4, 2019

THE ZONING BOARD OF APPEALS OF THE CITY OF WALTHAM WILL HOLD A PUBLIC HEARING IN THE GOVERNMENT CENTER, 119 SCHOOL STREET, WALTHAM, MA ON May 14, 2019 AT 7:00 P.M. ON THE FOLLOWING:

Case #: 2019-11. **Petitioner/Owner:** Brandeis University, a Massachusetts Educational Corporation. **Nature Of Appeal/Petition:** Appeal from Decision of Building Inspector pursuant to G.L. c. 40A §8 and §7.31 of the Zoning Ordinance of the City of Waltham and/or under G.L. c. 40A §3. **Subject Matter:** Brandeis University is a nonprofit education corporation organized under Chapter 180 of the Massachusetts General Laws. The Locus is a large parcel of land located on the southerly side of South Street known and numbered as 480 South Street. This parcel of land is the Brandeis University Athletic Center and fields. The Petitioner proposes to install, use, and maintain a battery based energy storage system adjacent to and connected to its existing electrical substation. The proposed work is setback further from South Street than the existing electrical substation that was permitted and installed in 2006. The purpose of this system is to charge the batteries from the Eversource electrical grid at night and during off-peak power usage periods so that the batteries can then deliver energy to various campus buildings during peak usage periods, reducing the University's reliance on the electrical grid during peak usage periods and in turn reducing Eversource's reliance upon inefficient and highly polluting oil or coal fired power generation during peak usage periods. This system is being installed in conjuncture with Eversource as part of a pilot program and is an important sustainability initiative for Brandeis, the Commonwealth of Massachusetts, and Eversource in its efforts to help reduce the peak demand for electricity across New England. **Location And Zoning District:** 480 South Street; Residence A3 Zoning District. **Provisions Of Zoning Ordinance Involved:** §4.221 and §7.31 of the Zoning Ordinance and G.L. c. 40A §8. **Specific Relief Sought:**

M.G.L. c. 40A, §8 and §7.31 of the Zoning Ordinance:

This appeal is taken pursuant to M.G.L. c. 40A, §8 and §7.31 of the Zoning Ordinance.

M.G.L. c. 40A, §8 provides in pertinent part that "An appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by any person aggrieved by reason of his inability to obtain a permit... from any administrative officer under the provisions of this chapter..."

§7.31 of the Zoning Ordinance of the City of Waltham provides that "Any person aggrieved by the refusal of the Inspector of Buildings to issue a permit on the grounds of

noncompliance with this chapter... may appeal to the Board of Appeals as provided herein and in General Laws.” Accordingly, the Board of Appeals is the appropriate body to hear this matter pursuant to both General Laws and the Zoning Ordinance of the City of Waltham.

Here, in a “Notice of Permit Rejection” dated March 8, 2019 and a “Notice of Permit Rejection #2” dated March 29, 2019 the Building Inspector rejected the Petitioner’s application for a building permit to install, use, and maintain a battery based energy storage system adjacent to and connected to its existing electrical substation (installed in 2006), noting in pertinent part that “In accordance with Section 4.221 Accessory Buildings may not be located in the front yard of any lot in a Residential Zoning District.”

The Petitioner contends that the proposed free standing battery based energy storage system does not meet the definition of a “Structure” (§2.343) or a “Building” (§2.308) under the Zoning Ordinance. Thus, it cannot be an Accessory Building (§2.302) and is not subject to §4.221. Accordingly, the Petitioner respectfully requests that the Board of Appeals make a determination to overrule the decision of the Building Inspector pursuant to G.L. c. 40A §8.

The Dover Amendment – M.G.L. c. 40A, §3, ¶2:

To the extent that the Board of Appeals agrees with the Building Inspector’s determination that the existing switchgear and proposed freestanding battery based energy storage system are a “Structure” and thus an “Accessory Building” under the Zoning Ordinance, the Petitioner alternatively contends that the switchgear, battery based energy storage system, and the University Land as a whole are entitled to the broad and deep protections under M.G.L. c. 40A, §3, para. 2 (hereinafter, "Section 3") afforded to land and structures used for religious or educational purposes. Section 3 is also commonly referred to as “the Dover Amendment”.

In this case, the Petitioner contends that the location restrictions for accessory buildings of §4.221 as applied to this proposed freestanding battery based energy storage system are not reasonable under the Dover Amendment as applied to Brandeis University.

Therefore, the Petitioner respectfully requests that the Board of Appeals make a determination and declare that the location restrictions for accessory buildings of §4.221 to be unreasonable as applied to said freestanding battery based energy storage system as proposed by the Petitioner, and to set such provisions of the Zoning Ordinance aside pursuant to G.L. c. 40A, §3.

Further information and plans concerning this case may be viewed at the Zoning Board of Appeals’ Office, 119 School Street, Waltham, Massachusetts 02451; Hours: Monday - Friday 8:30-4:30. **MEMBERS:** Chair Barbara Rando, Michael Cotton, Mark Hickernell, John Sergi, Glenna Gelineau. **ASSOCIATE MEMBERS:** Edward McCarthy, Oscar LeBlanc, Marc Rudnick, Michael Squillante, Sarah Hankins.