

**CITY OF WALTHAM  
ZONING BOARD OF APPEALS**

**April 4, 2017**

**The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, April 4, 2017, in the Public Meeting Room of the Arthur Clark Government Center, 119 School Street, Waltham, MA.**

**In attendance were Chair Barbara Rando, and members Glenna Gelineau, Sarah Hankins, Mark Hickernell and John Sergi.**

**Mrs. Rando: Tonight we have three new cases before us, Case 2017-07, Brandeis University, 415 South Street and that's for an appeal of the building inspector; Case 2017-08 Roland Butler, 46 Weatherbee Road, and that's also for a variance; Case 2017-06, Design Communications, 225 Second Avenue, and that is also for a variance.**

**I will ask the clerk to please read the petition in Case 2017-08, 46 Wetherbee Road.**

**The clerk then read the Petition of Roland Butler who proposes to construct a two story addition. Location and Zoning District 46 Wetherbee Road, Waltham, Residence A-3 Zoning District.**

**May we hear from the petitioner or the petitioner's representative please?**

**Attorney Bret Francis, iiiiii Juliano, LLP, 10 Hammer Street, Waltham came forward.**

**Mr. Francis: I am here tonight on behalf of Petitioner/Owner of 46 Wetherbee Road locus, Roland Butler.**

**(Mr. Francis then read his brief into the record which is attached to the minutes and went over the plan with the board.)**

**Mr. Rando: Could you tell me if the garage is going to remain a garage?**

**Mr. Francis: Correct.**

**Mrs. Rando: And have you spoken to the Palazzolo Family and the Pelletier family?**

**Mr. Roland Butler: The Pelletier family no longer live next door to us but the family that does live there now, one of them is here right now in support. I'm sorry, I mixed the names up. The Pelletier family is right behind me. I spoke with him. He had no objections whatsoever. He just couldn't be here tonight.**

**Mrs. Rando: The Palazzolo's?**

**Mr. Butler: The Palazzolo's are here.**

**Mrs. Rando: Are there any questions?**

**Mr. Sergi: Do you have any idea what the proposed addition is going to look like? Is it an extension of the current house or it's going to kind of blend right in?**

**Mr. Butler: It's an extension of the current house. Today it's a brick Tudor and there is a Tudor style to the top notch of the house to the awning area of the house. That's going to carry across towards the top of the house and the bottom of the house is going to blend in. We looked at several houses in the different neighborhoods that have that style. It's probably going to be more of an old style shingle that we are going to put in there.**

**Mr. Sergi: Is it going to be the same roof line?**

**Mr. Butler: Yes, the same roof line. I brought a drawing.**

**(Mr. Butler went over the drawing with the board.)**

**Mrs. Rando: Attorney Francis, was that the Cardillo house? Do you know?**

**Mr. Francis: I don't.**

**Mr. Hickernell: What was the need for the extension?**

**Mr. Butler: The house is getting tight. We have three boys. They are growing big. Two of them are in a small room with bunks. They are just getting too big.**

**Mr. Hickernell: Is this a rendering that you are willing to make part of the of any decision?**

**Mr. Francis: This is just more of a design that I had a family friend do for me and it's kind of a rendering of what it might look like.**

**Mr. Hickernell: So, how close to the final do you think that is?**

**Mr. Butler: Pretty close. I would say its, I'm not too sure about, I think it was the facade that we weren't sure about. (Mr. Butler went over the plan again with the board.)**

**Mr. Hickernell: I think the questions is can you commit to that as part of a decision or not?**

**Mr. Butler:** Oh, yes.

**Mr. Francis:** It's in substantial conformance. The exterior may change a little bit. A little bit of wiggle room but that's conceptually the design of it.

**Mrs. Rando:** It doesn't match the plans that you submitted exactly.

**Mr. Francis:** That would be the footprint, actually (pointing to the plan). The footprint will not change. It will be absolutely in this footprint.

**Mrs. Rando:** Would you mind dating this one and passing it in?

**Mr. Butler:** Of course.

**Mrs. Rando:** Are there any other questions from board members?

(There were none.)

**Mrs. Rando:** Is there anyone here in favor of this petition?

**Ernie Pallazzola, 40 Wetherbee Road:** I'm a neighbor on the eastern side. I have no problems with this. They are great neighbors. I am sure they will do everything fine. We have a good relationship with them. Right now in between our properties there's the garage but the garage is wide enough that there's room for two vehicles to go side by side. So the distance between the addition and our house, we'll still have the garage and the driveway between that's there now. So it won't be an inconvenience to us at all.

**In addition, Ann and Dick Faulstich who lived at 36 Wetherbee Road so their one more house to the East. They couldn't be here this evening but they gave me a letter to submit. They are in support of the variance**

**(The clerk then read a letter from Dick and Ann Faulstich into the record stating they were in favor of the variance. This is attached to the minutes.)**

**Mrs. Rando: Is there anyone else in favor? Seeing no one, is there anyone seeking information? Seeing no one, is there anyone in opposition?**

**Nancy Lawrence and her husband, Jim Smith, 63 Harland Road: I received a card in the mail because we live on Harland Road and I just wanted to understand where you were relative to our house and I have a lot more information now. I would like to go up and look at the map.**

**Mrs. Rando: Is you have any questions for Attorney Francis you may ask him.**

**Mrs. Rando: You may continue with your Proposed Findings of Fact.**

**Mr. Sergi: May I propose that we waive the reading of the Proposed Findings of Fact since they have been on file at the Law Department.**

**Ms. Gelineau seconded the motion and the board voted to waive the reading of the Proposed Findings of Fact.**

**Mrs. Rando: You may continue with your Proposed Decision.**

**Mr. Sergi: Madam Chair, I also proposed that we waive the reading of the Proposed Decision since it's been on file in the Law Department.**

**Ms. Gelineau seconded the motion and the board voted to waive the reading of the Proposed Findings of Fact.**

**Do I have a motion on the Proposed Findings of Fact?**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adopt the Proposed Findings of Fact to be the board's findings.**

**Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mrs. Rando: Do I have a motion on the Decision?**

**Mr. Hickernell: I'd like to propose an amendment to Paragraph 3, subparagraph ii, to add at the end of the conditions, "and the plan submitted at hearing dated March 15, 2017,".**

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted that the Proposed Decision as amended becomes the Decision of the Board.**

**Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mrs. Rando: Will the clerk please read the petition in Case No. 2017-06?**

**The clerk then read the Petition of Design Communications Ltd. Owner: Alexandria Real Estate in the application for sign variance. The Petitioner, Design**

**Communications Ltd., is applying for a variance for a second set of building Logo/Letters and Second Face on approved sign at 225 Second Avenue; Commercial Zoning District.**

**Mrs. Rando: May we hear from the petitioner or the petitioner's representative please.**

**Mike Vickers, Design Communications, 25 Drydock Avenue, Boston came forward.**

**Mr. Vickers moved the photos showing where the signs will be located in front of the board and went over them with the board. He presented each member with a copy of his brief and drawings.**

**Mr. Vickers: Within the documents is all the information that's required that spells out our case in terms of the proposed decision and all the other supporting documents that are required but if it's okay, I've never done this. I prefer to walk through it visually because that tells the story a little easier and quicker if that's okay.**

**Mrs. Rando: Yes.**

**(Mr. Vickers went over the photos with the board.)**

**Mrs. Rando: Are there any questions from board members?**

**Mrs. Rando: Will that be lit just at night?**

**Mr. Vickers: Yes, The City has time limits so it's on a timeline.**

**Mrs. Rando: Is there anyone in the audience that is in favor?  
(Three people raised their hands in favor.)**

**Theron Hartold, 315 Winchester Street, Newton, MA:** We have done a lot of great companies both visitors and neighbors about the sign itself. It's a very beautiful sign. It came out very well. It actually has a short glimpse from the highway. But they are building a hotel across the street so we think that our only view of the sign will be taken up by that hotel in a short period of time, so I think this is really important, for you know, we have regular regulatory agent inspections FDA and some other international regulatory agencies regularly to our facility and inspect our documentations and out submittals for filing, so we do some pretty amazing signs so I think it will be a great addition to the facility to be able to help people. We have people showing up every day to the wrong address so we want to avoid that in the future and be a happy tenant.

**Mrs. Rando:** Is there anyone in opposition? Seeing none. Is there anyone seeking information? Seeing none. I am ready for the Proposed Findings of Fact.

**Mr. Sergi:** I will make a motion that we waive the reading of the Proposed Findings of Fact since it has been on file in the Law Department.

**Mr. Hickernell** seconded the motion and the board voted to waive the reading.

**Mr. Sergi:** In a similar fashion, Madam Chair, I will make a motion that we waive the reading of the Proposed Decision.

**Mr. Hickernell** seconded the motion and the board voted to waive the reading.

**Mrs. Rando:** I am ready for a motion on the Proposed Findings of Fact.

**Mr. Sergi:** I will make a motion that we adopt the Proposed Findings of Fact.



**Mr. Hickernell seconded the motion and the roll was called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mr. Sergi: I will make a motion that the Proposed Decision becomes the Board's Decision.**

**Mr. Hickernell seconded the motion and the roll was called: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mrs. Rando: Will the clerk please read the petition in Case No. 2017-07?**

**The clerk then read the Petition of Brandeis University, a Massachusetts Educational Corporation in an appeal from the decision of the building inspector under G.L. c.40A. s2. Brandeis University is a nonprofit educational corporation organized under Chapter 180 of the Massachusetts General Laws. The Locus is a large parcel of land known and numbered as 415 South Street, also known as Brandeis University (Upper Campus). The Petitioner proposes to raze a portion of the existing Usen Castle complex and in its place construction, use, and maintain a new residence hall thereon a portion of the Locus. Location and Zoning District: 415 South Street. The Locus is situated in a Residence A3 Zoning District. Provision of Zoning Ordinance Involved: ss4.12 (11) (a), ss4.12 (11)(e), ss5.21, and ss5.2, and ss5.2 et seq.**

**Mrs. Rando: May we hear from the Petitioner or the Petitioner's representative, please?**

**Michael Connors, Esquire, Connors and Connors, 6 Lexington Street, MA, forward.**

**Mr. Connors: I am here tonight on behalf of our client, Brandeis University which has been before this board numerous times over the University's history.**

**(Mr. Connors then read his lengthy brief into the record which is attached to the minutes.)**

**Madam Chair and members of the board, that's my presentation in chief. I can answer any questions at this time if there are any.**

**Mrs. Rando: I have a couple. First of all, in the petition you wrote 4.12 (11) (a), 4.12 (11) (e) and then you said General Laws 40A, Section 3. Shouldn't it be Section 7?**

**Mr. Connors: No. That's one of the things I mentioned at the beginning, 40A, Section 3 of the Dover Amendment.**

**Mrs. Rando: Section 7 has to do with education in the Dover Amendment and 7.3 has to do with um- - -**

**Mr. Connors: No, the 40A Section 3 is the Dover Amendment. That's what we cited in the legal notice. That's the proper petition. As I mentioned, we have been in front of this board many times under the Dover Amendment and this is the provision.**

**Mrs. Rando: Well I notice now that you say that you have been in front of the board many times but it has been mostly for variances or special permits. You haven't used the Dover Amendment too often and I am wondering why tonight you are using the Dover Amendment.**

**Mr. Connors: The last time we were here, we were here for the Lemberg Center across the street and we have used the Dover Amendment for the Science Center. As you saw, some of this case law has strengthened the Dover Amendment. The Tufts case was an**

earlier case but the BC case really was just prior to the Science Center. A number of the cases were under the Dover Amendment. That's the standard of review. It's actually less onerous than a variance. A variance standard of review, you have to jump through a lot more hoops and you have to prove hardship. Where here, the question is reasonableness.

**Mrs. Rando:** Right, but the Dover Amendment doesn't mean that you can do what you want either.

**Mr. Connors:** No and I didn't mean to overstate it, but I had to jump through the hoops that the Dover Amendment lays out for each of these and it's the same standard and the community can have legitimate concerns. Here I don't think that the proposed use, a dorm in a location where they are currently, or there was a dorm that's in a state of disrepair and being torn down, violates any of those legitimate concerns.

All we are talking about is the addition of forty-two beds which the parking change is de minimis. The building department hadn't required that we even show parking because it was understood that these uses happen on universities under previous building inspectors. Here he asked that it was put on but unlike the case where if I was coming with a blank slate of land and proposing something, here it is great because you can say, as the Ward Councillor did, that there's not a parking concern at Brandeis. And here by adding forty-two additional beds as much as that requires forty-two more spaces as far as dorms, you may be reducing traffic because those people don't have to live off campus and drive on. They may not even have a car during the semester when they are on campus.

**Mrs. Rando:** But I feel that we have the right to grant variances. I don't know if we have the right to grant the Dover Amendment. You're asking us to say that our city council wrote the ordinances and you want us to say that they are unreasonable. What are we going to say that the height is unreasonable, or is the parking unreasonable or is the setbacks unreasonable? Who are we when the city council is the one that sets these

ordinances, to say well, you know, that wasn't right. This seems to me that this is something that the court should set.

**Mr. Connors:** And the court has. And that's why I am going for Mass General Laws. The Supreme Judicial Court has in the Tufts Case and the BC Case. Those are the standards that are laid out. They're balancing tests.

**Mrs. Rando:** Right. It's funny that you should mention the Tufts Case because I was doing research today and I looked up the Tufts Case and it says exactly what you said but if you continue, it says, "On compliance by educational institutions the zoning ordinance will involve no significant cause or other hardship to the institution and does not interfere in any applicable extent with institution's plans. The institution has failed to meet the case requirements." In other words, if you don't have anything that you can tell us that you can prove like case law or legal briefs saying that, yes, the Zoning Board of Appeals has the right to say that the City of Waltham's Zoning Ordinance that they wrote knowing fairly well that Bentley and Brandeis were in our city, therefore, they made the four hundred and fifty or five hundred and fifty feet from residential. They took that into consideration. So they have taken into consideration both Universities, Brandeis and Bentley. And for you to come here, unless you can prove to us and give us a lot more information on how it's unreasonable, to say that the setback is unreasonable and how it's going to financially hurt you or, how did they phrase it, excessive cost of compliance with requirements without significant gain in terms of municipal concerns. I don't know. You haven't proved to me that compliance will substantially diminish or detract from the usefulness of the proposed structure or impair character of the institution's campus.

**Mr. Connors:** I respectfully disagree and I tried to hit on those points during it. Well, once again, there was an existing dorm here and we are now putting in a similar dorm here. That dorm had been long in existence. It was built during the depression. So when the zoning ordinance, this provision came in, in 1991, they were looking at existing

structures and they didn't want people to go out in surrounding neighborhoods for both family and Brandeis. Now here, we are within the loop road. We are not looking to reach out any farther and the height is very similar to the structure that is presently there.

**Mrs. Rando:** The Tufts Case and the BC Case are both determined by the court.

**Mr. Connors:** Well things go up to the court and then there's a standard of review. And that's what I tried to say at the beginning, is your prior two cases tonight were variances and that's a much more onerous standard of review and you have to jump through certain hoops there. This is actually the lesser standard and the Dover Amendment has been upheld time and time again under those cases. Those cases, even though they seem like they are older, it's because they are good law.

**Mrs. Rando:** Well I don't think that we have the right to - - -  
The Dover Amendment in my mind was given to the city so that when they write these ordinances that they don't take educational and religious institutions into consideration and our ordinances do.

**Mr. Connors:** The Dover Amendment, as I touched on the history of it, was written by the State to protect educational uses from cities back in the 1930s - - -

**Mrs. Rando:** Well they changed it to 1975, I believe.

**Mr. Connors:** But that doesn't change the Tufts Case and the BC Case and the balancing tests that have held up. And that's why I tried to walk through the brief. I touched on the jurisdictional aspects of it which gives this board the authority to - - -

**Mrs. Rando:** Well I don't remember anywhere that's saying that we have the right to change what the city council has stated unless you can prove better than you have to me that by us changing the regulations, it's going to affect the campus.

**Mr. Connors:** I am not asking you to change what the city council wrote and there's no need to. There's this balancing test and similar to a variance asked, you wouldn't be changing what the city council wrote when you granted the sign variances before.

**Mrs. Rando:** I am talking about this case.

**Mr. Connors:** The same analysis would apply. There's a rule and that's the whole reason the Board of Appeals. And you have the ability to vote on - - -

**Mrs. Rando:** No. That was a variance. This is not a variance.

**Mr. Connors:** But you're saying this would rewrite what the city council's done.

**Mrs. Rando:** We have the right to grant variances.

**Mr. Connors:** You have the right to grant the relief sought tonight.

**Mrs. Rando:** I don't think we do. I would like you to do more research and show me - - -

**Mr. Connors:** I laid out the jurisdiction in Section 387 of the zoning ordinance.

**Mrs. Rando:** Because if you look at the Tufts case again, it says - - -

**Mr. Connors:** This is page six of the brief. I lay it out each section jurisdiction.

**Mrs. Rando:** Page seventy-four of the General Laws of Massachusetts Dover Amendment, here it is (Mrs. Rando read this portion) I want more information on that before I vote on it and I would also like to know if we have the right to vote on it.

**Mr. Connors:** You most definitely have the right. This board has granted zoning relief under this provision.

**Mrs. Rando:** I would like to read that opinion.

**Mr. Connors:** We filed a legal brief here that's consistent with previous cases where there was no issue on this matter.

**Mrs. Rando:** Why didn't you come as Bentley did just recently? They wanted variances and they received it.

**Mr. Connors:** I wasn't part of the Bentley case there. As far as why they were coming as variances, they have a right to come under this provision and the courts say that you can't unreasonably prevent this educational use. This is a residential dormitory on a college campus. This is the very thing that is to be protected by the Dover Amendment.

**Mrs. Rando:** You can come back to this board and seek relief under the powers we can grant, variances.

**Mr. Connors:** This board can grant more than variances. This board also has the authority to grant special permits. This board also has the power to grant zoning relief under the Dover Amendment. That's not simply my opinion. That's broken down in the

brief on page six. I explained in the Tufts case lays out that says excessive cost is a different standard. I don't have to prove hardship.

**Mrs. Rando:** No you don't.

**Mr. Connors:** I don't. It's a lesser standard. It's to protect the campus.

**Mrs. Rando:** Well I've done some research on this and all of the cases that I have read, I see it differently than you do.

**Mr. Connors:** I will also mention that Brandeis University is on a typical calendar year and timing is of the essence here.

**Mrs. Rando:** We can't take that into consideration. We have to make the correct decision here.

**Mr. Connors:** The material that is presented lays out of how you have the power, why this board has the jurisdiction. This board has granted relief under this provision many times very recently and it's never been an issue. The standard of review is lesser than a variance, significantly.

**Mrs. Rando:** Mr. Sergi, do you have any questions at this time?

**Mr. Sergi:** Not at this time. It's a shame we have to knock down such a historical building. Are you going to preserve any of it?

**Mr. Connors:** As shown on the site plan, the back part of the structure is being taken down. This is in substantially the same location and that's currently where they are. Brandeis is a student population that's going through there and they need to have housing



for the incoming students at the end of this building process. The year has gone by under the demo delay and may be taken into consideration.

**Mrs. Rando:** Mr. Hickernell?

**Mr. Hickernell:** No questions on the petition. Assuming we don't render a decision tonight, I think a site visit might be helpful.

**Mrs. Rando:** Ms. Gelineau?

**Ms. Gelineau:** No questions.

**Mrs. Rando:** Ms. Hankins?

**Ms. Hankins:** I guess I have some confusion, as far as Chairperson Rando's concern. I do believe that you presented a pretty strong tight argument as far as the Dover Amendment applying and that the regulations and the ordinances set forth by the City Council in this particular instance would be overbearing for the University. So I think you did present a strong argument. I guess that I am a little bit confused from some of the onset that you know this board we have the ability to grant a special permit, to grant variances and to hear disputes with the building inspector. So I guess that's the third one you are coming under is that you are disputing the ruling of the building inspector? So where is the ruling from the building inspector? Where is his opinion?

**Mr. Connors.** It's the petition that was filed here. He signs the back page of the petition saying that he denies because of the provisions.

**Mrs. Rando:** May I interject one thing. He said that the setback and parking and those would be covered by a variance.

**Ms. Hankins:** Okay. So it seems to me that they wanted you to come in under a variance but I guess if - - -

**Mr. Connors:** No, that's not the case at all. We have every right to come under the Dover Amendment.

**Ms. Hankins:** No. I am not disagreeing with you on that. I guess I'm a little confused as far as whether it's a going in for a variance or going in to appeal the ruling of the building inspector.

**Mr. Connors:** The Zoning Board of Appeals hears the appeals of the building inspector.

**Ms. Hankins:** No. I know. But I'm just curious if the burden, I don't know, is it appealing the decision of the building inspector or going for a variance?

**Mr. Connors:** We are not seeking a variance. Variances have specific hoops that we would have to go through and prior attorneys tonight have had to jump through those hoops as far as the hardship.

**Ms. Hankins:** Okay. So, and then just as far as, you know, you guys about a year ago as you mentioned were in front of the Historical Commission and not to beat a dead horse but they put a demolition delay. They wanted, this community felt that there was historic significance there so I think we are in a position to be able to help out the University and let you guys grow but I think it would be nice to know that you made all your efforts to appease that board.

**Mr. Connors:** I think that the fact, and they take the Historical Commission very seriously as they do all boards and the city council in front of them as well, all government bodies within the city. I think the fact that it has been in existence and it's still used since it was built during the time of the depression, goes to the fact that Brandeis has done everything to preserve it. It ran out of its use for life. They presented information to that to the Historical Commission which has the authority to review that and at that time it was determined that the buildings had outlived their use for life. They have a safety feature. Like I said, this isn't a remote part of the campus. There's people walking around all the time. The pictures in the brief depict there's wrapping around the stone to keep from falling on people. So I mean within the materials, there's a letter that was submitted by the interim president at that time addressing the significant costs that it would take and a decision was made and there was testimony taken at that time. A year has since past and they are moving forward with this petition. As can be seen by the pictures, the buildings aren't useful any more. They are deteriorating beyond repair. This isn't something, potentially I worked on the Watch Factory for a number of years and by allowing certain uses in there and with tax breaks they were able to bring back a mixed use for over four hundred thousand square feet but there's not the money coming inside to that extent on an educational use. They have other buildings that they have to maintain and other buildings on the campus and they have other goals and objectives in their mission as far educating and providing financial aid, etc.

**Mrs. Rando:** Who said it had to come down? The Historical Society just said one year and that's all they are allowed to give you.

**Mr. Connors:** That is a fairly new provision and they went from six months to one year.

**Mrs. Rando:** And they have no control after one year. They can't stop it, correct?

**Mr. Connors: Correct.**

**Mrs. Rando: So even if they say it's historical and they would rather not see that it be taken down, they have no authority to go any further.**

**Mr. Connors: Correct. Brandeis owns the lands and owns the buildings.**

**Mrs. Rando: So they only have one year. I'm not sure whether we have the right and you may be correct. But I don't think that you have given us enough proof that they're unreasonable, that the ordinances are unreasonable.**

**Mr. Connors: I think as board member Hankins pointed out this a fact specific case. This doesn't roll these provisions aside for every case. They are specific to this case.**

**Mrs. Rando: Well maybe it's something the court should decide.**

**Mr. Connors: The court has decided it and there hasn't been a Waltham case that has been denied under the Dover Amendment and these cases are good law.**

**Mrs. Rando: I would like to know. I would ask the Law Department if the ZBA has the authority to decide that the City of Waltham's ordinances are unreasonable and I think that the burden of proof is on you to convince us that the parking and the setbacks are unreasonable and give us case law, give us cases.**

**Mr. Connors: I have cited cases and those cases are exactly on point.**

**Mrs. Rando:** Right and I told you on the Tufts Case that it doesn't detract from the usefulness of proposed structure or the character of the institution's campus. You have to prove to me better than you did how it does. So that's up to the rest of the board.

**Mrs. Rando:** Mr. Sergi, how do you feel?

**Mr. Sergi:** I think the case was presented adequately but I would yield to the chair if she feels that we need further explanation from the Legal Department. I also think that Mr. Hickernell's suggestion of a site visit might help with the reasonableness here and take a look at what's going on first hand.

So, that's my comment.

**Mrs. Rando:** Mr. Hickernell?

**Mr. Hickernell:** I have nothing to add at this time.

**Mrs. Rando:** Ms. Gelineau?

**Ms. Gelineau:** I am prepared to vote.

**Mrs. Rando:** Ms. Hankins?

**Ms. Hankins:** I think that this case is a clear example of something that is allowed under the Dover Amendment. So respectfully to the other board members, I don't see a need to go to the law department and I feel that Attorney Connors eloquently said that there's plenty of case law to this and the Dover Amendment is long established and I think the question before us is whether in this particular situation the city's zoning is onerous on them and I think the parking absolutely. I mean there's no way they should need ten

thousand parking spots for, I mean that would be the whole campus. You would have to pave over the whole campus with ten thousand parking spots for kids that don't even have cars. So that's a no brainer and the setback, if they were within some sort of residential area you know, you'd have a hard time there. The fact that the pumping station is sort of locked out I think that the setback is unreasonable. There shouldn't be a problem if they are seventy feet from the pumping station. I know that area. There's no houses there. There's no parking.

**Mrs. Rando:** How far are you from Wheelock?

**Mr. Connors:** Over two hundred and thirty-two feet from Wheelock Terrace so the pumping station is located within, as I mentioned, if you have been out to campus on the loop road which literally just takes you around, you may not even be aware that it's there.

(Mr. Connors went over the plan with the board showing where the pump station is located.)

The 232 setback is actually the Nipper Maher Park so the houses on Wheelock Terrace actually are further. As you can see here (referring to the plan) there's existing Brandeis dorms all here and some of them within forty feet of Wheelock Terrace. Those were there when the provisions of the zoning ordinance was drafted. So we are doing what was expected. We are building a dorm where a dorm was. I think this is a very reasonable request and the provisions were put in, I think, for sprawling out of campuses but we are staying here within the loop road and have many uses that are closer to residential property lines.

I have Jim Gray here tonight from Brandeis University if the board would like to hear from him. He would like to speak.

**Mrs. Rando: What does he do? What is his title?**

**Mr. Connors: His title is the Vice President of Operations at Brandeis.**

**Mr. Gray: Madam Chairperson and the rest of the Commission thank you for entertaining some comments. Two things I'd like to speak briefly to. The first is the existing structure that is being demolished which two members have raised or multiple members have raised tonight. No one feels more attachment to that structure than Brandeis University. We have a great many alumni, faculty and current students who love the castle and would like nothing more than to have found a way, a reasonable way, to renovate and maintain the castle for another generation or multiple generations at Brandeis. It simply was not possible. The structure was built during the depression with recycled materials without the benefit of an architect or licensed engineer. It was literally a hobby built structure and it lasted remarkably long given those circumstances. It is crumbling in many ways and to put it back together again we would have had to literally tear it down and rebuild it.**

**The cost of doing that and complying with the ADA and the reconstruction of that would have been multiples of the cost of the new residences, probably more than twice and the number of beds we would have gotten out of it would have been about eighty compared to the hundred and sixty-four in the new project. So, it just was not a reasonable way for us to imagine spending precious resources. That conclusion was difficult for us to reach and painful for us to reach and we recognize that that pain is shared by others in the Waltham Community and we frankly wish it was a different conclusion that could be reached but we could not reach one.**

**Secondly, we face you today in a rather time sensitive crunch. We being an educational institution run on the academic calendar. In order for this project to open in the fall semester of 2018, we need to be able to get a building permit soon and we are on the**

verge of applying for that building permit and we ask that you would consider that pressing need. The castle has been closed. It no longer houses students. In the absence of a replacement dorm we are in a desperate and difficult state in terms of housing students on campus and we would just ask that you consider that concern as we act or don't act tonight. Thank you very much.

**Mrs. Rando:** How come you waited so long to file if it was that important that you get the building?

**Mr. Gray:** We had to wait a year for the demolition and frankly we thought we would be in front of you a month or so sooner. We had some delays on our end in the preparation of package and there were some delays caused by weather in your town. And so we are here later than we would have liked to have been.

**Mrs. Rando:** Thank you.

**Mr. Connors:** Just one minor addition to that as to the timing. We did time it around the demo delay. I mentioned we have been in front of this board on what's referred to as the upper campus. We call it that simply for how Waltham calculates height under the zoning ordinance so they had to pick an area and it made sense to pick that side of South Street but if you see in the plans filed C8 is a new plan. This wasn't in our previous filings under the Dover Amendment for Brandeis. The new building inspector asked for the parking to be put on so when this board looked at the Science Center, a much bigger larger structure, you didn't review for parking. The parking was just accepted and similar was the case when you referenced Bentley in previous cases. The parking hadn't been on the plan. It hadn't been considered because it was just an understanding. This building inspector has made a decision that we have everything on the plan so the University had to spend a lot of time to put together these numbers. This breaks down each building and many like not unique to Brandeis. Many colleges and campuses have this. Buildings have



multiple purposes. So there aren't just multiple uses going on on the site. Each building had to be broken down. And there's a complex calculation and that end until itself, when the building inspector reviews and denies, he actually wants to see what he's requested is on plans so you can properly make your decision. So not only did they have to put this material together but then we met with the building inspector to see that it reflected the information that he requested properly, and thus, we could properly draft the petition.

**Mrs. Rando:** All right, any other questions?

Hearing none, I still don't understand how cutting down the space between the building and the closest residential in half is a hardship for you. It's just beyond me. Why you can't just cut it down so that it could be 450 - - -

**Mr. Connors:** In the standard it's not a hardship. It's the reasonableness of the municipality's concerns.

**Mrs. Rando:** I'm talking about the residents.

**Mr. Connors:** Their building is much closer. So in the BC case the Mass Supreme Judicial Court said that you should take into consideration whether they are a closer buildings. So really there wouldn't be an effect because those buildings are much closer to Wheelock Terrace. This is being located where there already is a dorm located.

**Mrs. Rando:** Is it the same distance from Wheelock?

**Mr. Connors:** It's within the loop road. It's the same spot. We are taking it down and building there a new building.

**Mrs. Rando: All right. Is there anyone in the audience that is in favor of this petition?**

**(Seven people raised their hands in favor.)**

**Mr. Connors: They are all from the petitioner and I think that shows as Mr. Jim Gray has stated this is very important as far and timing is concerned for the University.**

**Mrs. Rando: Then there is no one in opposition, correct, and no one seeking information.**

**We have one letter to be read into the record.**

**The clerk read a letter dated April 4, 2017, from Joseph M. Giordano, Jr. City Councilor, Ward Seven which is attached to the minutes noting that he supports Brandeis University's effort to increase student housing on campus.**

**Mrs. Rando: Do I have a motion?**

**On motion of Mr. Sergi, seconded by Ms. Gelineau the board voted to waive the reading of the Proposed Findings of Fact since it has been on file in the Law Department.**

**Mrs. Rando: All right, for the reading of the Proposed Decision.**

**On motion of Mr. Sergi, seconded by Ms. Gelineau the board voted to waive the reading of the Proposed Decision since it has been on file in the Law Department.**

**Mr. Connors: Madam Chair and members, my clients have requested a one minute recess if that would be okay with the board.**

On motion of Mr. Hickernell, seconded by Mr. Sergi the board called for a one minute recess at 9:03 P.M.

The board reconvened at 9:06 P.M.

Mr. Connors: Thank you Madam Chair. I am not sure if after I heard the prior request, after hearing from Vice President of Campus Operations, Jim Gray, about the timing aspects here. There may be some further discussion about where the location of the building is within the loop road where there are, theres whole quads of dorms closer to Wheelock Terrace. That pump station it shows in the brief that I filed if, I guess, we are requesting whether the board would be willing to vote on this matter without a site view due to the time constraints. I know that Board Member Hickernell thought it might be a good idea and where usually I am typically more than happy to have a site view here with I mentioned the whole page of parking information that was provided, the University lost over a month there and they are tied up to have to have housing for their students coming in. So, I just hope the board takes that into consideration and would be willing to move forward tonight.

Mr. Sergi: I think you presented an excellent case, excellent arguments. The Chair has some concerns. I personally would like to see it continued to address the concerns of the Chair.

Ms. Hankins: I just want to say to the Chair, that I feel that the Dover Amendment is really in place to make sure that the universities are able to do what they need without the interference of local municipalities. I disagree with us continuing it because I feel like we have all the information we have and that we are making it more difficult for them by continuing it. So I would like to see us rule tonight.

**Mr. Hickernell:** So my suggestion about a site visit is only in the event that we did, in fact, not vote tonight. But I am ready to vote tonight. If this is continued we might as well use the time to look at it. But I think the Dover Amendment is on point.

**Mrs. Rando:** Keep in mind that to overturn the decision of the building inspector, I need four out of five votes and to uphold the decision of the building inspector and deny the petition, I need three votes.

**Mrs. Rando:** How does the board feel on a site view. Do they want a site view?

**Ms. Hankins:** No. I don't.

**Ms. Gelineau:** I am ready to vote.

**Mrs. Rando:** Mr. Hickernell is ready to vote.

I think we are ready to do something.

**Ms. Hankins:** I would like to make a motion that we overturn the decision of the building inspector.

**Mrs. Rando:** Well, we are not there yet.

**Mr. Sergi:** Madam Chair, on my concern if we are going to ask for a legal opinion, you know, it historically will take quite a bit of time. Do you think that's still appropriate?

**Mr. Connors:** That's a major concern that we have as far as the timing element especially where this is something that the board has acted under the jurisdiction on

previous cases so I would think it would be a question that could be asked after the fact here where this is a typical case that is - - -

**Mrs. Rando:** After the fact? After it's been granted, is that what you think?

**Mr. Connors:** I think it's more of a general question as to, I don't think there's any question as to jurisdiction. It's laid out here as it has been in the past.

**Mrs. Rando:** I don't feel I have enough information.

**Do I have a motion on the Proposed Findings of Fact?**

**On motion of Ms. Gelineau, seconded by Ms. Hankins the board voted to make the Proposed Findings of Fact be the Findings of Fact of the board.**

**Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, yes; Ms. Hankins, yes and Mrs. Rando, yes.**

**Mrs. Rando: Do I have a motion on the Decision?**

**On motion of Ms. Gelineau, seconded by Ms. Hankins to adopt the Proposed Decision as the board's decision.**

**How do you vote on the decision, Mr. Sergi?**

**Mr. Sergi:** As I stated I'd like to see it continued and I yield to the Chair's questions. So I have to vote no.

**Mr. Connors:** Could we have a continuance on this matter? I thought that after the testimony by Board Member Hickernell that the Dover Amendment is on point, that we were moving forward, but I guess we will ask for a continuance in this matter if it's possible. The timing element that was brought up by Board Member Sergi is a major concern that we have.

**Mrs. Rando:** Do I have a motion to allow a continuance?

**On motion of Mr. Sergi, seconded by Mrs. Rando to address the concerns of the Chair and allow a continuance.**

**Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Ms. Gelineau, no; Ms. Hankins, no and Mrs. Rando, yes.**

**Mrs. Rando:** So we are going to continue it.

**Mr. Sergi:** Madam Chair may I ask that we request an expedited review?

**Mrs. Rando:** Absolutely.

**Mr. Connors:** Thank you very much.

**Mrs. Rando:** So we are going to continue it to April 25th and I'll make sure that I get a decision by the 25th.

**Mr. Connors:** Thank you Madam Chair. I very much appreciate it. I'll make arrangements for a site visit.

**Mr. Hickernell: You can email Ms. Doucette.**

**Mrs. Rando: One more motion is in order.**

**On motion of Mr. Sergi, seconded by Mr. Hickernell, the board voted to adjourn at  
9:15 P.M.**

*Barbara Rando 4/11/2017*