

**CITY OF WALTHAM  
ZONING BOARD OF APPEALS**

**May 2, 2017**

**The Zoning Board of Appeals held a public hearing at 7 P.M., Tuesday, May 2, 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 Michael Cotton, Glenna Gelineau, Sarah Hankins, Mark Hickernell, John Sergi and Michael Squillante.**

**Mrs. Rando: Tonight we have two continued cases before us, Case 2016-43 Cellco Partnership d/b/a Verizon Wireless 415 South Street and that's for variances; Case 2017-07 Brandeis University, 415 South Street and that is a case under the Dover Amendment for the building inspector's opinion.**

**The first action this evening would be a motion to accept the minutes of April 25, 2017.**

**On motion of Mr. Sergi, seconded by Mr. Squillante, the board voted to approve the minutes of April 25, 2017.**

**The members sitting on the Cellco Partnership case are: Mr. Sergi, Mr. Hickernell, Mrs. Rando, Mr. Squillante and Mr. Cotton.**

**Would the clerk please read the petition in Case 2016-43?**

**The clerk then read the petition of Cellco Partnership d/b/a Verizon Wireless. Owner: Brandeis University in an application for Telecommunications Act Use and**

**Dimensional Variances. Subject Matter: Install wireless communications equipment, consisting of stealth antennas and equipment on the rooftop and facade of the Brandeis University Volen Building mounted inside of four stealth canisters and four antennas mounted to the facade (paint to match) and a 20'-0" x 15'-2" stealth enclosure on a metal frame for the installation of its rooftop equipment cabinets. Location and Zoning District: 415 South Street, Map R067, Block 008, Lot 002. Residence A-3 Zoning District:**

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

**Daniel D. Klasnick, Duval & Klasnick LLC, 210 Broadway, Suite 204, Lynnfield, MA, the attorney representing Verizon Wireless came forward.**

**Mr. Klasnick: As this board may recall and I think it's already been discussed, we initially met on this particular petition back in December of last year. At that meeting Verizon Wireless made an initial presentation of a proposal outlining what it was proposing to do and provided this board with what I think was a fairly comprehensive petition along with supporting memorandum and proposed decision regarding the installation of the rooftop facade mounting Verizon facility at the Brandeis University campus on the Volen building.**

**At that particular meeting, the board, as I recall, continued the meeting to get an opinion from the City of Waltham Law Department. I know that that did occur within the time frame that was I think was requested by the Chair.**

**Mrs. Rando: Did you receive the opinion?**

**Mr. Klasnick: I did. I received a copy of the opinion as well. Thank you very much for that.**

We did provide a supplemental memorandum which I think I have identified for the board this evening where we try to address some of the comments or, I guess, the substance of the opinion that was offered by the Law Department.

Mrs. Rando: Regarding the use variance?

Mr. Klasnick: Yes, exactly.

So I think what we tried to do in our supplemental memorandum was to address each of those issues. I think what we have been struggling with, as you know, is that the Brandeis University Campus is located in the Residential A-3 Zoning District and unfortunately your ordinance provides that wireless facilities, rooftop facade mounted type facilities that Verizon is proposing is not an allowed use. And while looking at the ordinance you can see that they make certain provisions for an educational institution use concerning the dimensions of the building, setbacks, parking - things that realistically need to be considered to allow this type of use of the educational institution of the size and scope of Brandeis University. The ordinance itself still placed it within a residential A-3 District. So, that's I think the crux of the difficulty that we are dealing with. So as always been read into the record what Verizon has asked this board to consider is the necessary relief in the form of a use variance and has already been discussed, that's not something that's allowed in the ordinance. But as we tried to explain in our brief and otherwise, if we look at the options that are available to Verizon Wireless, I think what the Law Department says in its opinion is that you should go to City Council. And we certainly acknowledge that if this were an allowed use by special permit that would be the appropriate body for us to be before. In this particular instance, that isn't an avenue available to us. As this board knows, you can only get a special permit for something that is specifically allowed by the ordinance or by law. So the only empowerment that the City Council has is to grant those

necessary special permits. If the facility, as this facility is, is not an allowed use, the City Council is not an avenue that is available.

And I think it's clear under Massachusetts General Laws that in the absence of such provision in the ordinance allowing a particular use or that the only other avenue that is available to an applicant or a petitioner is a variance. And the only bodies that are authorized by Massachusetts law to grant variances, as you know, is the Board of Appeals or if a municipality is determined is only administrator.

So given those circumstances, what I think has been suggested to us is that go to the City Council to get the special permit because that's what the ordinance says but the ordinance also says that you can't do this here. So that's exactly what the Telecommunications Act was intended to address. What we outlined in our brief and our supplemental brief is the case law that's interpreted this. Basically what it says, and I think it's very clear, is that a municipality if a wireless service provider establishes that it has a significant gap in coverage, a municipality cannot prevent a wireless service provided from addressing that significant gap in coverage simply by saying we are not going to allow this particular use in a particular zoning district. I think that the case law that I have provided is very clear on that particular point. Otherwise the very purpose of a Telecommunications Act which is to expedite the deployment of wireless services would be frustrated by the fact that a municipality could simply say we are closing off various parts of our town/city to wireless communication facilities. You can't go there and then the wireless service provider would have no recourse. Also they have chosen under their ordinance not to give the Board of Appeals the authority as they have done here in the City of Waltham not to have the authority to grant use variances. So it becomes very much a catch 22 sort of circular reasoning. If we were to go to the City Council, the City Council has no authority so that Verizon Wireless would not be able to get any relief from them.

So what we have done is, the only recourse that is available to us, it's been recognized by both the first Circuit District Courts here in Massachusetts and actually all the Circuits throughout the country is that in the event that, as I had said, if a wireless service provider illustrates that it has a significant gap in coverage and has attempted to locate its facilities within allowed zones which Verizon Wireless has described through its supplemental filing to this board and we included as an exhibit a supplemental RF brief or letter where Verizon Wireless's RF consultant and Verizon Wireless's RF engineer has specifically gone back out to this search area to try to locate a facility in an allowed district or to otherwise provide for a facility that might satisfy the standards for an interior mounted type of wireless communications equipment and what we have certified in the exhibits from our most recent brief is that there are no buildings that can be modified to allow for interior mounted wireless equipment to the extent that's even defined in the ordinance. It's loud and clear as to what that means. In addition what we have shown through this coverage map is that Verizon Wireless has a significant gap in service. So all around, what we are depicting here, (referring to the map) in the green, that's really the ultimate level of service that Verizon Wireless has attempted to provide and then there are other areas that are shaded differently where there is some level of service and I'm not suggesting that you wouldn't have any service on Brandeis University, but you can see that there's a substantial gap located right along in the Brandeis University area, South Street, Overlook Road. This entire area has a significant gap in service. So what we did is we overlaid in this exhibit your zoning map and we've illustrated that we already have facilities basically all around this particular area in allowed zones. So we can't locate any other facilities that would provide the service we need within the allowed zones. So that only really leaves open Brandeis University to us.

So what we've propose to do, I think, is to located a facility in a manner that on the Volen Building, where really would not even be seen or anyone would be aware that it was there. We also provided a number of photo simulations where we've illustrated Verizon Wireless's attempt to both stout this facility, camouflage this facility, as well as the fact that

it wouldn't be visible really from anywhere other than on the campus and even anyone looking at the facility wouldn't necessarily know what they are looking at because we've tried to match the building features by putting them inside canisters. So I think what we have tried to illustrate and then once again in the other exhibit we provided to that supplemental RF letter, this is basically what the service would look like (referring to a rendering) after Verizon Wireless constructed it and added to this facility. So you can see how this location uniquely satisfies Verizon Wireless's requirements for a very targeted area.

So, I don't know if you need me to go over any particulars of the facility. The RF engineer is here as well. He can speak in greater detail and perhaps that is something that is important to get into the record as to, I mean, I've tried to describe it, so if the board has any specific questions or concerns about what I have said I certainly encourage that he is available.

Mrs. Rando: I understand your problem and I know it is needed.

But, unfortunately even on Page one, "The City of Waltham Zoning Ordinance does not contain the language to provide for this use," which we are not allowed since 1978 to give out a use variance and our legal counsel says, it is a use variance.

We also received a letter from Councilor Robert Logan who also said that you need to go to the City Council. So, I guess you can get some relief from the City Council or he wouldn't have suggested that that is where you should go. But we certainly can't issue a use variance and it is a use variance.

Mr. Klasnick: No, I don't disagree Madam Chair. But I think what we are talking about is exactly what they were talking about in the Plainville Case that I provided. You're prohibiting use variances but in that case if you read that case basically what the First Circuit said is whatever relief Verizon Service Provider needs in order to address a

significant gap in coverage a board must grant. So basically all that would happen from a denial in this particular instance would be Verizon Wireless seeking an injunction - -

Mrs. Rando: It would come back to us.

Mr. Klasnick: Well it wouldn't even come back to you they would give us the injunction and tell us to go build the facility. So we would like to avoid that. I have through our discussions offered to meet with someone at the Law Department which I'm certainly available to do to discuss this matter. What Verizon Wireless wants us to do is work with the community to the extent that it is possible. So I also tried reaching out to various councillors on the Ordinance and Rules Committee as well as the new Assistant City Clerk in regard to this facility. I haven't really received a response one way or the other from anyone on staff or otherwise as to a path forward basically. So I had hoped to have an opportunity to speak to someone at the Law Department. Perhaps the Attorney who issued the opinion will try and work through this and avoid some unnecessary procedure that everybody would prefer to avoid.

Mrs. Rando: I understand but we received two letters saying it's a use variance and we do not have permission to grant so we have to follow our own decision whether we agree with them or not and I agree with them. Of course we have other members that we will ask if they have any questions.

Mr. Klasnick: With all due respect you are the quasi judicial body for the City of Waltham and thus you have the authority to interpret the case law and the information.

Mrs. Rando: I thought I just said that.

Mr. Klasnick: Yes, thank you.

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

**Mr. Sergi: No. I tend to agree with your comments, Madam Chair. It's unfortunate. It's a catch 22, you're correct. I appreciate all the research you have done and I think you have to go to the next step.**

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

**Mr. Hickernell: Attorney Klasnick, could you give us a couple of sentences explaining the Federal Act preemption?**

**Mr. Klasnick: Yes. I think in this particular context, what it's saying and what the Act attempted to do is balance as the cases described really trying to maintain local control limiting those five instances that are enumerated in the statute. One of those being what we are discussing here which is the prohibition of wireless service. So to the extent that an ordinance or a by law or local law or regulation prohibits wireless services in circumstances where it establishes a significant gap, that provision is pre-empted. So what the pre-emption is here, as I interpret is, it's preempting the discretion given to a city or town as to whether or not to grant a use variance. It preempts specifically the ability of a town or a city to say we can't grant use variances. I mean the case law is right for that. I mean this is just factually on point exactly where the Plainville and some other cases have tracked as far as these circumstances.**

**Mr. Hickernell: This one is a significant gap in coverage as shown by Brandeis.**

**Mr. Klasnick: Yes and I think we have done that through our RF Affidavit, the information I just presented this evening. In this instance there is a significant gap. There's the entire campus at Brandeis which is basically a small city onto itself and the roads that**



pass through. All those commuters going up and down the street are now experiencing service obstruction.

Mr. Hickernell: So my understanding is that there's at least two ways that Congress can preempt stating those Statutes; One is by completely occupying the field which they are writing the statute about. I think that's usually one example that is nuclear power. Another one is by explicitly stating and I think that the congress does this that state or local laws that would act to the purposes of the federal law are null and void and I think it's the second one that applies in this case. Although it doesn't really matter preemption is preemption so the prohibition of use variances has to be determined by congress to be something we cannot actually exercise, at least not anymore.

Mr. Klasnick: I think that's exactly right.

Mrs. Rando: Mr. Squillante, do you have any questions?

Mr. Squillante: Well I think just a couple of comments. I think the ad and information simply restates that we don't have the power. We have finally addressed the question of use variances. Case law, up until tonight, the case law, some of it is close to our situation, some of it is not. Plainville probably is the closest and that's new information because your last time you presented information to us, I thought there might been alternative locations that might require one or more site for the gap and you presented evidence tonight that that it's not the case.

So I think that the, and I am convinced based on the cases that unless the city were to hire an expert and spend a lot of money and attorney's time it invariably ends in court and I don't see that the city and certainly the board is not in a position tonight for a defense on this because we don't have money to hire personal attorneys and I don't think it would be a sensible expense for either us or the petitioner to do that. So we are in an unfortunate

position that we probably can't defend our ordinances. But what bothers me the most about this, is not that site, not the location, not the use variance question, but it seems to provide a precedent for an alternative group to get cell towers set up without having to go to the city council and I'm really uncomfortable with that.

What I don't know and maybe you can help me out on this is if we do grant the variance could we add as a condition that you still go ahead and get the special permit because you're then not circumventing the city council which we all believe has the authority to rule on these petitions. That's what I would presumably like to hear if it is possible and that's probably what I would propose as an amendment.

**Mr. Klasnick:** To the extent that the city council felt they could under those circumstances grant the special permit, the applicant has no objection of going through your normal process with development prospectus and meeting with the city councilor and sitting down with the Ordinance and Rules Committee.

**Mr. Squillante:** That would address primary concerns on this because I can see people saying, let's see, should we go to the board or the city council and picking the board every time. To me it would set an unfortunate precedent. I would hate to have you spend a lot more time and money on this.

**Mrs. Rando:** Mr. Cotton, how do you feel about this.

**Mr. Cotton:** I don't think we have the right to act on this. It really has to go to the City Council. Unfortunately I don't want to have to say that but it seems like a waste of time on our part. I just can't see it. Sorry.

**Mr. Klasnick:** Could I have a moment to talk to my client?

**Mrs. Rando: You may.**

**At 7:30 P.M., on motion of Mrs. Rando, seconded by Mr. Sergi, the board voted for a two minute recess.**

**At 7:35 P.M., the board reconvened.**

**Mr. Klasnick: At this juncture, I was wondering if the board would entertain a request to continue this.**

**Mrs. Rando: I personally think it's fruitless to do that.**

**Mr. Hickernell: Could we hear the reason for the request?**

**Mr. Klasnick: We would just like to be able to consult with management at Verizon Wireless in regard to this particular petition to make certain that we are providing the guidance and the direction that they want us to go on.**

**I guess it would just be a courtesy to give us some additional time to take that into consideration.**

**Mrs. Rando: You did receive the opinion.**

**Mr. Klasnick: Yes.**

**Mrs. Rando: When did you receive it?**

**Mr. Klasnick: Right after it was written.**

**Mrs. Rando: When.**

**Mr. Klasnick: That would be back in January.**

**Mrs. Rando: Stating that it was a use variance and that we weren't allowed. So you have had time to look into it.**

**Mr. Klasnick: I understand, but we also supplemented our filing with some additional information that we hoped would be persuasive to the board in responding to the memorandum. Because I don't really see how the board is necessarily prejudiced but given this additional time to fully consult and make sure we - - -**

**Mr. Sergi: I don't have a problem with that, Madam Chair. It's a courtesy.**

**On motion of Mr. Hickernell, seconded by Mr. Sergi, the board voted to grant a continuance.**

**Roll call: Mr. Sergi, yes; Mr. Hickernell, yes; Mr. Squillante, yes; Mr. Cotton, yes and Mrs. Rando, yes.**

**The board agreed on June 13th for the date to continue Case 2016-43.**

**The members sitting on the following case are: Mr. Sergi, Mr. Hickernell, Ms. Gelineau, Ms. Hankins and Mrs. Rando.**

**Mrs. Rando: Would the clerk please read Case No. 2017-07 Brandeis University.**

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, and at this time I would like to reintroduce Mr. Jim Gray, Vice President of Campus Operations at Brandeis, to make some opening remarks on behalf of the University.

Mr. Jim Gray, Vice President of Campus Operations: Thank you very much for this opportunity to appear before you again tonight. I am the Vice President for Campus Operations at Brandeis. As Mike said, together with Mike, we represent Brandeis before you tonight.

We want at the outset to say we regret the fact that this petition has caused so much concern and has taken much of your valuable time as it has. We also wish to acknowledge the time invested by the Waltham Historic Commission, the Building Department, the Law

**Department and thank them for their role on this and other matters involving Brandeis over the years.**

**Our request for action tonight that would allow the construction of a much needed modern residence hall in our campus in the exact location of the current residence hall that has become unsafe and no longer able to house students is pressing and core to the mission of a great university that has long been proud to call Waltham its home.**

**From our perspective, we have attempted to the best of our ability now for over eighteen months to comply with all the necessary laws and proper procedures at the Waltham Historic Commission, the Building Department and the Zoning Board of Appeals to receive the approvals needed to replace the lost beds and, in fact, expand our housing stock by some additional forty plus beds. Expansion of our on campus housing has long been a priority we share with Waltham and particularly with our most immediate neighbors and one I know the City and Brandeis remain committed to.**

**We have hired a local Waltham firm of excellent reputation in Connors and Connors to help us through the long process and one with deep experience in the community particularly in matters related to municipal zoning.**

**We have sought and received the enthusiastic support of our Ward Councilor, Joe Giordano, whose commitment to the ward and to our University and the city we are also most grateful for.**

**In good faith we request the relief we needed based on direction from the building department and we requested that relief under the Dover Amendment, a long standing statutory basis for universities to seek zoning relief in Massachusetts.**

I would also like to note that after much publicity about this project and appropriate notice to our abutters, not a single voice of opposition has presented itself at these hearings either in person or by correspondence. I believe its fair to take that fact along with the ward councilor's strong endorsement of the project as an endorsement of the project by our neighbors.

The sense of urgency for us tonight is significant and very real. The ramifications and failure to be approved tonight are many and severe. Immediately the cost of our project will increase dramatically due to the delay in schedule and inability to compete the bidding and buying of the job and the escalation of costs occurring right now in the construction market. Further delays in the project will cause us to lose the benefit of a hundred and sixty-four beds of student housing for an additional year at a cost of hundreds of thousands of dollars per semester and add great inconvenience to an erosion of the college experience for a hundred and sixty-four students who would rather live on campus than in houses and apartments in the immediate neighborhood. It's an unfortunate fact that we already have more students living in the neighborhood that we would like or that the city would like and certainly more than the permanent residents in the area would like.

The existing residence hall on the site was closed this year and has been prepared for demolition. It is unsafe and unable to reopen to fill the gap that will be created by our failure to proceed with the new project on schedule.

So we stand before you tonight in a very difficult situation. Members of this body have had and may still have honest concerns about our petition which have been voiced in prior meetings. We have done all we can to answer those concerns including a reply to the Law Department's memo which has been filed with the city and which you should all have received yesterday. We, of course, respect the right of members of this board to disagree and will continue to respect that right no matter the outcome tonight. However, I do believe strongly that there exists in our petition combined with the records of these

proceedings and supported by specific precedent of this board and legal opinions in the state more than enough legal authority to support a vote in favor of our petition tonight.

We most respectfully ask that you do, therefore, approve the relief that we seek. I think you again for your time, for your long term support of Brandeis University, for the symbiotic relationship we have long enjoyed with the City of Waltham and lastly for the generous and kind spirit which each of you has brought to these proceedings regardless of positions or concerns today. Thank you very much.

Mike will help answer any questions you may have had about his response to the Law Department memo if you'd like to do that now.

Mrs. Rando: Thank you.

Mr. Connors: As Jim stated I filed a response to the Law Department dated April 25, 2017, that we received at last week's meeting. We had a currier to individual board member's homes, so hopefully you all received it. Accordingly it's my understanding that said response is part of the record.

As discussed at the previous two meetings Brandeis hopes to raise a portion of Usen Castle Complex formerly used as a dormitory with a hundred and twenty-two beds and place and construct, use and maintain a new one hundred and sixty-four bed residence hall. That residence hall will be located within the loop road on campus. In order to build it, they seek zoning relief for the setback and parking requirements under the Dover Amendment, Chapter 40, Section 3.

In short the petitioner will result in a net gain of forty-two beds on campus housing for students.



**Madam Chair, I believe we have answered all the issues in your response. If the board has any questions, I will be happy to try to answer them at this time.**

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

**Mr. Sergi. No. I think the attorney did a good job in responding to the questions that the Law Department had and I also appreciate the statement made by Brandeis and I recognize the urgency. Personally I am kind of sad that we have to replace the castle and trying to find the funds to restore it. But I am happy that you are going to be keeping at least a portion of it. I hope you keep it there for a while and maybe consider restoring that in the future. So with that, Madam Chair, I'm all set.**

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

**Mr. Hickernell: I think that the petitioner's reply exhaustedly covers why the petition should be granted.**

**Mrs. Rando: Ms Gelineau?**

**Ms. Gelineau: I agree with Mark.**

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

**Ms. Hankins: No questions at this time.**

**Mrs. Rando: I have a couple of questions. I know that under the Dover Amendment the word "reasonable" comes and I don't not consider the parking unreasonable or reasonable, I should say.**

**You state that you have 10,572 legal spaces.**

**Mr. Connors: Not needed, required by the zoning ordinance.**

**Mrs. Rando: Right. And you now have 1,663. And you're building a dorm that has a hundred and sixty-four parking spaces?**

**Mr. Connors: A hundred and sixty-four beds. One is required per rented bed in the zoning ordinance. So the only change on all of the campus is a net change in forty-two beds.**

**Mrs. Rando: That's my question. Where are those forty-two bed parking spaces going to be?**

**Mr. Connors: There are no additional parking spaces.**

**Mrs. Rando: I think you stated that you do have parking for forty-two more in one of your briefs. That wasn't included?**

**Mr. Gray: It's a two part answer. We have access parking capacity currently on the other side of South Street in existing lots that we do own that don't fill up. And that is an area where students park. But perhaps, more importantly, this dorm today or before we closed it, and tomorrow when we have a new residence hall on site will have sophomores who are not allowed to have cars on the campus. So there's no cars associated with these beds. And that is a condition that existed before we build the new building and that same condition will exist after the new building is built.**

**Mrs. Rando: So there will not be sophomores in those dorms?**

**Mr. Gray: There will be sophomores.**

**Mrs. Rando: So up until this time, freshmen and sophomores were not allowed to have a car on campus.**

**Mr. Gray: That is correct.**

**Mrs. Rando: Now you are going to have sophomores in that dorm.**

**Mr. Gray: Who will not be allowed to have a car on campus. There's no change in the status based on the building of a new building.**

**Mrs. Rando: I thought that I read somewhere that they will have cars, that you will be allowed.**

**Mr. Gray: If you did, that was stated in error. The zoning requirement strictly interpreted to us would require one car per bed parking but we haven't suggested in anything that we filed that that would in fact create a real time need for more parking because it won't affect the need for parking on our campus at all.**

**Mrs. Rando: Well you still need so many spaces.**

**Mr. Gray: Correct.**

**Mrs. Rando: Well you certainly need more parking on your campus. Would you consider putting a parking garage up? I know it stated in the brief the beautiful green grass and flowers are nice to walk through but would you consider putting in a garage up in one of the parking spaces?**

**Mr. Connors:** The test in the Tufts Case is the reasonableness whether the local ordinance is unreasonable when applied to religious or educational use. The use here is a dormitory.

**Mrs. Rando:** We're not hurting the educational use.

**Mr. Gray:** I don't mind answering the question. I don't know the answer to the question.

**Mrs. Rando:** We're not hurting the educational use by talking about the parking.

**Mr. Gray:** We currently have enough parking to serve the needs of our campus. We are not under parked in practical terms of meeting the needs of the coming and going traffic and students and faculty and staff.

**Mrs. Rando:** I disagree greatly in all due respect because cars are parked all over the neighborhood on side streets, on Cedarwood Avenue, Wheelock Road - - -

**Mr. Gray:** Some of those cars are Brandeis cars. There's no question about it. They are often associated with upper class juniors and seniors living off campus.

**Mrs. Rando:** So definitely you need more parking if your intention is to get students to park on campus and stay on campus.

**Mr. Gray:** It's very likely that it will have little affect on that. We'll pull a few students out of the neighborhood and we'll have access parking south of South Street in a somewhat remote lot over by closer to the river where we have access parking and always have had access parking. That's where students who have no room to park in the core campus have to park their cars.

**Mrs. Rando: Do you have any bus service for students?**

**Mr. Gray: We do. We run a shuttle service through Waltham and then around campus.**

**Mrs. Rando: During the day?**

**Mr. Gray: During the day and at night.**

**Mrs. Rando: Do you have permits on the cars that are allowed to park on campus?**

**Mr. Gray: We do. It's on the rear windshield.**

**Mrs. Rando: Does someone check to see?**

**Mr. Gray: Someone checks regularly and tickets cars that are not registered.**

**Mrs. Rando: Again, I look at the statutes that we are allowed to vote on and I don't see where Chapter 40, Section 3 is something that we are allowed to vote on as far as parking is concerned. I think one of the attorneys mentioned something about parking being a use variance. How do you feel about that?**

**Mr. Connors: We respectfully disagree. I filed the response material. Parking is listed in the Table of Uses in Residence A-3 as "Y" which means that it is allowed by right. So there's no issue of a use variance. And parking is listed not only in the Dover Amendment for reasonable regulations. It lists setbacks, open space, parking and building coverage requirements but it's also listed in Section 3.87 of the zoning ordinance that**

whole. So it can be treated that this board has granted variances numerous times for parking. So it's no different here.

Mrs. Rando: Well if we had made a mistake in the past, it doesn't mean we have to continue making mistakes.

Mr. Connors: There was no mistake made. It's clearly outlined.

Mrs. Rando: Maybe we didn't seek an opinion at that time. And some of your Brandeis cases were special permits. They weren't all under the Dover Amendment.

Mr. Connors: The last five I had were going back over a decade from 04 on and then across the street at the Lemberg's Children Center in 2013. I also filed as the last exhibit in the package, a 2014 case off campus with the Salvation Army where that specifically was parking as well. Parking is clearly stated, specifically stated in the Dover Amendment.

The second part of the Tufts Case was whether to waive provisions of the zoning ordinance would violate a community's legitimate concerns. Here, like I said, all we are talking about is a net change of forty-two beds in which Jim Gray spoke and said that the sophomores living in this dorm won't be allowed to have cars on campus.

Mrs. Rando: I think I read over the different cases that you gave us. I think the Belmont Case that the ZBA did decide and it went to court. The other ones, one was the Board of Aldermen in Newton.

Mr. Connors: What they are is a permit granting authority. So you've had items here, for instance, veterinary clinics. It used to go on a special permit here and now the council took that back over. So in BC that was the board of aldermen but what came out of it and what's in here is that the court said they can't require them to get a special permit.

So similarly here, 3.87 can't require Brandeis or any educational use to seek a variance, a higher standard of review. The review based on the courts, the Tufts Case which stood as good law, it's the Tufts Test and that's the reasonableness test and the Belmont Case was a ZBA case, anyone who's driver Route 2 can see the Mormon Tabernacle but that went forward similar to how we are here under the Dover Amendment.

Mrs. Rando: But most of them went to court.

Mr. Connors: They're from permit granting authorities so different municipalities have different forms of government and they can decide like veterinary clinics which board would hear them. But this test is to be applied by all permit granting authorities.

Mrs. Rando: All right I guess that's all my questions.

Is there anyone in the audience in favor of this petition?

(Six people raised their hands in favor.)

Mrs. Rando: Is there anyone in opposition? Seeing none. Is there anyone seeking information? Seeing none.

You may continue with your proposed Findings of Fact.

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

**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 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.**

**Mrs. Rando: I am ready for 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.**

**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 Proposed Decision?**

**Mr. Hickernell: What if we amended the decision on Page 7 with a line before any conditions:**

**“The Board also incorporates by reference the reasoning set forth in the Petitioner's May 1, 2017 Memorandum.”**

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

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adopt the Proposed Decision, as amended, to be the Board's decision.**

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



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

**On motion of Mr. Sergi, seconded by Ms. Gelineau, the board voted to adjourn at 8:10 P.M.**

*Barbara Rando*  
5/9/17