

## Memorandum

To: Commonwealth of Massachusetts  
City of Waltham  
Zoning Board of Appeals

From: SMMA - City of Waltham, Representative

---

Name of Petitioner:	City of Waltham	Date:	10/9/2020
Location of Property:	554 Lexington Street (Assessor's Parcel ID Map 33, Block 2, Parcels 19, 19A, 19B and Assessor's Parcel ID Map 32, Block 5, Lot 38)	Project No.:	16030
		Case #:	2020-028
Nature of Application:	Application for Variances and Zoning Relief Pursuant to the Dover Amendment, G.L. c.40A, §3.		
Distribution:	(MF)		

---

### PROPOSED FINDINGS AND DRAFT DECISION

On the basis of evidence presented in the above matter, the Zoning Board of Appeals (the "Board") for the City of Waltham may find the following facts:

#### I. Findings Regarding Existing Site Conditions

1. The City is currently undertaking design and construction of a new Waltham High School at 554 Lexington Street, Waltham.
2. The project site ("Locus") is 52.5 acres, comprised of three parcels located at 554 Lexington Street (46.5 acres) and one adjacent parcel known as Jericho Hill II, located at 131R Lincoln Street (6 acres).
3. The Locus is zoned RA3 for a small portion of the site along Lexington Street, with the majority of the site located within the RA2 zoning district.
4. The Locus is generally bounded by undeveloped land to the west (known as Sanderson Heights), residential areas to the north and south, and Lexington Street and residences to the east.
5. A portion of the Locus was previously owned by the Stigmatine Fathers Inc. Trust and is partially occupied by buildings of the former Espousal Retreat House and Conference Center, including dormitories, office space, chapels, and a gift shop. Existing developed portions of the site include roadways, parking lots, a grass field, and an outdoor equipment storage area. (See, Plans C-101, C-102, C-111 and C-112).

---

1000 Massachusetts Avenue  
Cambridge, MA 02138  
617.547.5400

[www.smma.com](http://www.smma.com)

---

6. The existing developed areas of the Locus are on the south eastern portion of the site. The remainder of the Locus is undeveloped forested land and contains areas of steep slopes. (See, Average Site Elevation Calculation in Application Appendix).
7. Site access is from a single driveway on Lexington Street. (See, Plan C-122).
8. As part of its preliminary site development, the City retained the geotechnical engineering firm Haley & Aldrich to perform subsurface explorations and provide geotechnical recommendations at the project site. Haley & Aldrich began conducting subsurface testing in April 2019 to investigate soils and bedrock through test pits, test borings, and a geophysical survey through the limit of the proposed development. See, Haley & Aldrich (H&A) Report, submitted in Application Appendix.
9. Bedrock outcrops were documented sporadically across the site, with the largest exposures along the western, north and northeastern property boundaries. (H&A Report, p. 7).
10. The H&A report identifies the depth to top of bedrock, makes observations of the structural nature of the bedrock, and estimates the approximate thickness and nature of soils overlaying the bedrock as they affect the proposed future construction and site development. (H&A Report, p. 7-9).
11. Based on subsurface testing, bedrock was encountered in most test pits and test boring locations on the site. (H&A Report, p. 9). The top of the bedrock ranged from 0.4 to 26.5 feet below ground surface and was also exposed in numerous outcrops at ground surface. (H&A Report, p. 9).
12. Ground surface elevations across the 554 Lexington Street and Jericho Hill II sites increase dramatically and range from approximately El. 104 near the southeast corner of the site adjacent to Lexington Street to greater than El. 316 in the northwest corner of the site. (H&A Report, p. 7).
13. An intermittent stream runs north to south through the center of the site and has associated areas of Bordering Vegetated Wetlands (BVW).
14. The City's project development team filed an Abbreviated Notice of Resource Area Delineation (ANRAD) in May of 2019 with the Waltham Conservation Commission to confirm the wetland delineation.
15. The Conservation Commission issued an Order of Resource Area Delineation (ORAD). (See Recorded ORAD, submitted in Application Appendix).
16. The stream extends from a high point in the north central portion of the site to a point in the middle of the site, where the stream enters underground piping that extends off the site and under Lexington Street to Chester Brook. (See recorded ORAD in Application Appendix).

## **II. Findings Regarding Project Design**

1. The new high school building will be approximately 414,850 gross square feet and will house approximately 1,830 students in grades 9-12.
2. The project will require the alteration of 10.2 acres of land and create approximately 8.54 acres of impervious area.
3. The educational plan proposes a comprehensive high school with fourteen career, technical and vocational programs. The school is designed around four academic clusters: STEAM (Science, Technology, Engineering, and Mathematics); Fine and Performing Arts; Health, Wellness and Athletics; and Humanities. The massing of the building embodies a four-cluster approach to match the Educational Program.
4. The proposed building will be a four-story academic bar fronting the main entrance drive, and a series of two-to-three story volumes fanning outwards to the north. A multi-story Dining Commons hall connects the new Media Center to the Auditorium and Gymnasium.
5. The building will be situated in the southwestern quadrant of the property, such that the footprint of the exiting development may be optimized and open space preserved near the Lexington Street corridor. (See, C-121, C-122).
6. The development will retain an existing natural turf field near the east side of the property and include an artificial turf field to be installed on top of a parking structure at the rear of the building adjacent to the western property line. (See, C-121).
7. The selection of the site for the new high school and project design were the result of a multi-year site acquisition and design process involving the evaluation of over 13 alternative locations and the creation of an educational plan with extensive input from numerous stakeholders.
8. As a result of the extensive environmental review process undertaken pursuant to the Massachusetts Environmental Protection Act ("MEPA"), the City sought to further reduce environmental impact on the Locus by transferring the Jericho Parcel II to the School Department to allow for the siting of a parking structure with turf field installed on top behind the school building in a manner that avoids impacts to the existing wetland resources and reduces the amount of altered land and overall impervious area on the Locus.
9. Due to the topographical and existing soil conditions on the property and the presence of significant bedrock and a steep elevation, the project will require substantial bedrock blasting to achieve developable grades.

III. Findings Regarding Zoning Compliance

A. Dimensional Relief Pursuant to Section 4.12(11) of the Zoning Ordinance

- 1. The project is a permitted educational use located primarily within the RA-2 Zoning district, with a frontage in the RA-3.
- 2. Section 4.12 (11) of the Zoning Ordinance provides that “public or private educational institutions which are fully accredited by recognized private, state or federal organizations shall be allowed to exceed the height limitations of the RA-2 and RA-3 Districts given the following building setback criteria from residential or public open space property lines as specifically noted [within this Section].”
- 3. The project complies with all required dimensional requirements for educational uses enumerated within Section 4.12 (11), with the exception of the following:

	Required	Proposed
Minimum Building Setback to Residential Properties: High School (§4.12(11)(d))	350 feet	68 feet (southern property line)
Minimum Building Setback: Field Structure (§4.12(11)(b))	75 feet	40 Feet (western property line – public open space)  62 feet (southern property line – residential property)
Minimum Recreational Structure Setback: Exterior Bleachers (§4.12(11)(f))	350 feet	150 feet (southern property line)

- 4. Section 4.12(11)(d) of the Zoning Ordinance requires educational-use buildings that are four stories in height to be set back a minimum of 350 feet from all residential property lines. The project has residential properties located to the north, south and east. At its closest point, the school building is set back 68-feet from the southern residential properties. The project complies with residential setbacks to the north and east.
- 5. Section 4.12(11)(b) of the Zoning Ordinance requires educational-use buildings and structure that are two stories in height to provide a 75-foot setback from all residential and public open space property lines. This project includes a synthetic turf structure over the western parking area. The field is 40

feet from public open space to the west and 62 feet from the residential properties to the south. The playing field complies with dimensional setbacks to the north and east.

6. Section 4.12(11)(f) of the Zoning Ordinance requires that outdoor recreational structures, including sports bleachers, be set back 350 feet from residential properties. As proposed, the bleachers will be setback 150 feet from the southern property line.

#### **B. Off-Street Parking Relief from Article 5, Section 5.22(c)**

1. Article 5, Section 5.22(c) of the Zoning Ordinance requires that parking be calculated based on “the minimum total number of parking spaces required to serve the combination of all uses” based on the calculation formula set forth in the Ordinance.
2. The parking calculations for the high school include spaces attributed to the following individual uses: auditorium, lecture hall, large group instruction, dining common, culinary arts restaurant, outdoor dining common, outdoor culinary seating area, exterior field and office space.
3. Using the required formula in Section 5.22(c) the required number off-street parking for the project would be 886. (See Variance Application Narrative, Table 3.2, p. 3-5).
4. The project proposes 650 spaces and requires zoning relief for the reduction in on-site parking.

#### **C. Signage Relief Pursuant to Sections 6.41, 6.51, and 6.6**

1. Section 6.6 of the Zoning Ordinance allows one ground sign for properties within the RA-2 Zoning District.
2. Section 6.41 of the Zoning Ordinance restricts certain types of signs that can be deemed distracting to motorists, including LED signs.
3. The project proposes two ground signs – one identification ground sign located at the Lexington Street and one LED message board ground sign interior to the site, approximately 300 feet from Lexington Street.
4. The LED sign will be visible only to individuals, such as teachers, students, parents, and visitors traveling the access road around the school.
5. The LED message board will display a fixed message, which can be changed to reflect the date, weather, current notifications, upcoming events, awards, or any other use deemed appropriate for the school.
6. Zoning relief is required pursuant to Section 6.6 of the Zoning Ordinance to add a secondary sign, and pursuant to 6.41 to allow an LED fixed message electronic sign.

7. The City also requires relief pursuant to Section 6.51 of the Zoning Ordinance to install a second building-mounted sign to identify the western entrance to the building adjacent to the parking structure.

#### **IV. Findings Regarding Variance Standards**

1. Section 3.87 of the Zoning Ordinance addresses public and semipublic buildings and provides as follows:

This chapter shall not regulate or restrict the use of land or structures for religious purposes or land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination or by a nonprofit educational corporation; provided, however, that such land or structures shall be subject to the regulations of this chapter regulating the bulk and height of buildings, yard sizes, lot area, setbacks, open space, parking and building coverage; and provided further, that the Board of Appeals may, in accordance with MGL c.40A, § 10, grant a variance for adjustments to such regulations.

2. Pursuant to G.L. c.40A, §10, a variance may be granted where:

owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

##### **A. The Locus is Constrained Due to Existing Soil and Topographical Features on the Site.**

1. The Locus is heavily constrained due to existing steep topography which extends from an elevation of El. 104 at the eastern boundary to El. 316 at the western boundary. (See, Haley & Aldrich Report, p. 7; see also Site Elevation Calculations in Application Appendix).
2. Based on the initial subsurface investigation performed by Haley & Aldrich, it has been confirmed that the site contains substantial bedrock, which will require blasting to achieve buildable grades for site development. (See Haley & Aldrich Report, p. 7-9).
3. The presence of a wetlands Resource Area in the form of an intermittent stream and the related Bordering Vegetative Wetlands impose substantial development constraints on the Locus. (See ORAD in Application Appendix)
4. The project team has made every effort to limit the development footprint and retain as much of the existing woods as possible. The school building is sited to maximize use of the previously developed portion of the site. (See, Plans C-111 and C-112).

5. Due to the location of the intermittent stream and location of the previously developed portions of the property, the project cannot be located any further from the southern property line without impacting the intermittent stream. (See, Plan C-121).

**B. Literal Enforcement of the Zoning Ordinance Would Involve Substantial Hardship to the Petitioner.**

1. In order to secure state funding, the Massachusetts School Building Authority (MSBA) requires that school building plans be developed to meet an approved educational plan.
2. The School Building Committee, with input from numerous stakeholders has developed an educational plan that allows for a comprehensive high school with fourteen career, technical and vocational programs, and includes four separate wings for each area of primary academic focus.
3. The educational plan was approved by the MSBA on February 13, 2020.
4. The site has been carefully evaluated to balance numerous competing interests, which would be jeopardized without the requested zoning relief.

**i. Dimensional Relief for Building and Playing Fields**

1. Failure to grant dimensional relief for the school building setback on the southern boundary, as well as for the parking garage and playing field bleachers would be a substantial hardship due to specific site and building design limitations on the Locus.
2. The proposed location of the building and playing field is necessary for the full realization of the City's approved educational plan.
3. The location of the building adjacent to the southern property line is essential to the building symmetry and to ensure that each of the four educational wings are fully developed to provide maximum learning space.
4. The building cannot be shifted away from the southern property boundary without creating conflict with the intermittent stream and the Bordering Vegetative Wetland on the northern portion of the Locus.
5. The selected location for the parking structure is adjacent to the school as the parking in this area is most of the parking on the site. The adjacency ensures accessibility between the school and parking and minimizes environmental impacts on other portions of the Locus.
6. The playing field, which is located on the roof of the parking garage has been positioned on the site to the rear of the school to maximize proximity to the gymnasium, locker rooms and other athletic facilities on the Locus and allows for more effective use of space so as to minimize site disturbance, reduce the amount of blasting and preserve greater open space on the Locus.

7. The bleachers are located on the eastern side of the field in order to provide accessibility from the garage and eliminate the need for spectators to cross over the field to reach viewing area. The bleachers have been specially designed to maintain a low-profile layout for safety and to avoid obstruction of views of the playing field from the school building. It would be a substantial hardship to require the reconfiguration or relocation of the bleachers to another location on the field.
8. The site design prioritizes cost-effective development, due to the substantial amount of blasting that will be required to achieve developable grades. The proposed building location, which maximizes the use of previously developed area, is necessary to manage overall project cost and minimize the need for additional site blasting, which is a significant expenses for this project.
9. Failure to grant the requested relief would be a substantial hardship as it would prevent the City from achieving full realization of its approved educational plan.
10. Requiring additional site redesign would add substantial expense and delay to this project and could jeopardize the substantial approved funding already committed by the MSBA.

#### **ii. Parking Regulations**

1. Requiring more than 650 on-site parking spaces would present a substantial hardship.
2. The parking needs for this site have been carefully evaluated by the project design team based on existing educational uses within the City and the anticipated use of the new high school.
3. The project has been designed to meet the necessary parking needs to accommodate students, teachers, staff and visitors to the site.
4. The required 886 number of parking spaces required under the calculations in Section 5.22(c) of the Zoning Ordinance does not accurately reflect actual need as it is based not on educational use, but on the attribution of various use classifications, such as theater, restaurant and sporting facility uses, to the particular aspects of the educational uses operating on the site.
5. Requiring additional parking on the Locus would be a substantial hardship in that it would require greater impervious surfaces and destruction of more wooded and resource areas without realizing any substantial benefit in the day-to-day operation of the school building and the more precisely calculated parking needs as determined by the project development team.

#### **iii. Sign Regulations**

1. It would be a substantial hardship to deny relief for the installation of an on-site LED sign on the interior access road of the new high school. Elimination of this notification feature on the site would limit the ability of administration to effectively communication with the student population.



2. It would be a substantial hardship to deny the school the ability to mark the western entrance with a building additional sign. The western entrance signage is necessary to direct students, staff, and particularly visitors to the school entrance after exiting the parking garage.
3. The request for zoning relief from signs is minimal in scope and essential to the safe operation of the site.

**C. Relief May be Granted Without Detriment to the Public Good or Substantial Derogation from the Intent or Purpose of the Zoning Ordinance.**

1. The purpose of the City's Zoning Ordinance, as set forth in Article I, Section 1.1 is to promote the health, safety, convenience, morals and welfare of its inhabitants, the City, pursuant to the provisions of G.L. c.40A, and Section 29 of Chapter 93 of the General Laws of the Commonwealth.
2. Educational uses are recognized both under State Law (G.L. c.40A, §3 – the Dover Amendment) and the City's Zoning Ordinance, Sections 4.12(11) and Section 3.87 as having a special status as it relates to the applicability of zoning regulations.
3. It is essential that the City have adequate educational institutions to support the health, safety and welfare of its students.
4. The existing 388,000 square foot Waltham High School was constructed in 1968 and does not meet current building, access and safety standards, nor does it accommodate educational programming needs and increases in student population. The current high school is at risk of losing state accreditation by 2027 without significant investment in building infrastructure or the construction of a new high school.
5. The City evaluated 13 locations across the City before determining the construct the new high school at the Locus.
6. The City's search for an appropriate site included extensive site evaluation as to of whether the site could fully deliver the educational plan for a new high school, provide adequate space for school buildings, parking spaces and on-site athletic fields.
7. The City has also sought, through its site selection process, to select a site that would minimize disruptions to the educational experience of its current high school population, as well as to limit impacts on residential abutters, and environmental impacts, and to ensure accessibility for safe and efficient vehicular access.
8. After the Locus was acquired for purposes of the new high school, the project development team engaged in further extensive site configuration analysis before reaching the current proposal for building locations.

9. The proposed development plan balances the need for an appropriate high school campus with concerns over minimizing potential environmental harms, preserving wetlands and open space, and limiting, to the greatest extent possible, the impact on surrounding residential properties.
10. The variance relief requested in this application is minor in scope and can be granted without detriment to the public good or substantial derogation from the intent or purpose of the Zoning Ordinance.

**i. Dimensional Relief for School Buildings and Playing Fields**

1. The Locus was previously developed and used for an Espousal Retreat and Conference Center and the proposed high school buildings will occupy the same general development envelope as the existing buildings.
2. The proposed setback on the southern boundary for the building structure (68'), is greater than the existing building setback for the current development (52').
3. Due to the design and orientation of the building, the 68' setback reduction for the school building structure applies only to a single wing of the school, which is adjacent to one single residential lot. The remaining portion of the building along the southern property line has substantially greater setbacks from the other abutting residential structures along the southern boundary. (See, Plans C-111, C-112, C-121, and C-122).
4. The zoning relief requested for the parking structure/turf field along the western boundary would have little impact on the public as the field abuts public open space. (See, Plan C-121).
5. With respect to the 150' setback for the bleachers from the southern property line, the project development team has endeavored to minimize impacts of this spectator area by installing narrower benches, spread over a longer span of the field to ensure visibility from the school building. Thus, although the bleachers will be located somewhat closer to the southern property line, the separation will be mitigated by a corresponding reduction in the density of the seating. (See, Plan C-121).
6. Site development on the Locus requires the balancing of numerous interests, including preservation of open space and protection of wetland resources. The variance for southern property line setback allows for the protection of wetlands resources on the northern portion of the property.

**ii. Parking Reductions**

1. Reduction of the amount of parking on site from the requirements of Article 5, Section 5.22(c) of the Zoning Ordinance would not result in detriment to the public good or substantial derogation from intent and purpose of the Zoning Ordinance.
2. Section 5.22 (c) contains no parking use classification specifically for schools.

3. The required on-site parking numbers for the High School were generated by assigning use classifications to the various aspects of the educational use, such as athletic fields, theater uses, and restaurant uses. (See Table 3.2 in Application Narrative).
4. Following the approach in Section 5.22 (c) the number of spaces that would be required for the high school if each of the sub-uses of listed in Table 3.2 were all simultaneously in use is 886.
5. Due to the fact the High School will be used primarily as a school, and not as a series of separate principal uses, the total number of parking as derived from Section 5.22(c) is not necessarily an accurate reflection of the number of spaces that would be required for educational use on the site.
6. The City's project development team has determined that an appropriate number of spaces to serve the actual educational use on the site and provide adequate additional spaces for visitors and events such as sporting competitions and theater productions would be 650.
7. The School Department has the ability to provide off-site overflow parking for special events at the school-owned property located at 617 Lexington Street, as needed
8. The number of spaces is adequate and a reduction from the number required under Section 5.22(c) can be provided without detriment to the public good or substantial derogation from the intent and purpose of the Zoning Ordinance.

### **iii. Sign Regulations**

1. The request for zoning relief from signs is minimal in scope and essential to the safe operation of the site.
2. The allowance of zoning relief for a single LED sign on site is essential to providing notifications to the school community.
3. All of the signs for which relief are requested are interior to the large development site and are not visible from the public way.
4. The LED sign will be located on an interior access roadway and the messages displayed thereon will not be visible to the general public traveling along Lexington Street.
5. The secondary building sign requested for the western entrance is to the benefit of the general public visiting the site and parking in the parking garage, as it will facilitate the locating of the entrance when the building is accessed from the garage.

## **V. Findings Regarding Dover Amendment**

1. The City of Waltham is a municipal corporation and operates the High School as part of its public school program, acting by and through its School Committee and appointed administrative staff.

2. The City of Waltham School Department is a non-profit educational corporation within the definition of G.L. c.40A, §3, and the high school is a public building under the provisions of Article III, Section 3.87 of the Zoning Ordinance.
3. The Dover Amendment, MGL c.40A, §3 provide the Board of Appeals with authority to grant zoning relief for a non-profit educational use.
4. The zoning relief sought by the City is necessary to fully realize the City's educational plan for the high school as approved by the Massachusetts School Building Authority (MSCA) on February 13, 2020.
5. The proposed development plan balances the educational needs of the new high school with protection of the environment and minimizes harm to residential properties.
6. Relief under the Dover Amendment is essential to allow the project to locate in a manner that would not impair the usefulness of the structure or overall educational purposes of the Project.
7. For the reasons stated under the variance findings above, requiring strict compliance with dimensional and parking regulations would nullify the educational use of the Locus without appreciably advancing municipal goals embodied in the local Zoning Ordinance.

**THEREFORE, THE ZONING BOARD OF APPEALS FOR THE CITY OF WALTHAM AFTER DUE DELIBERATION, ON A MOTION DULY MADE AND SECONDED, VOTED \_\_\_\_\_:**

1. To grant the variances requested in Case No. 2020-28 and incorporate by reference the Findings of Fact adopted by the Board;
2. To grant all zoning relief requested herein pursuant to the Dover Amendment and waive applicable provisions of the Zoning Ordinance;
3. To expressly exempt the Petitioner from seeking (1) Board approval of any alterations or modification to the submitted site development plans; or (2) modification of this decision, unless future changes to site development plans would result in any new zoning noncompliance necessitating additional zoning relief.