

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)		

PETITIONER'S MEMORANDUM OF LAW

NOW COMES the Petitioner, City of Waltham (the "Petitioner" or "City") in Case #2020-028 before the City of Waltham Zoning Board of Appeals (the "Board") and hereby submits the within Memorandum of Law in support of its application for variance relief and zoning waivers under the Dover Amendment (G.L. c.40A, §3) to allow the construction of a new high school on property located at 554 Lexington Street, Waltham.

I. NATURE OF PETITION

The City of Waltham ("Petitioner") is the owner of a 52.5 acre project site (the "Locus") on which it proposes to construct the new Waltham High School (the "Project"). The Locus is comprised of three parcels of land located at 554 Lexington Street (46.5), and one adjacent parcel known as Jericho Hill II, located at 131R Lincoln Street (6 acres) as shown on the plans entitled "Existing Conditions Plan 1 - C-101" and "Existing Conditions Plan 2 - C-102" dated September 11, 2020, prepared by Symmes, Maini & McKee, Associates ("SMMA"); See also, Orders of Taking recorded with the Middlesex Registry of Deeds, Book 00807, Page 74 and Book 34450, Page 142, submitted herewith. The majority of the locus is located within the Residence A2 Zoning District, with a small portion, including the frontage along Lexington Street located within the Residence A3 Zoning District.

The site is generally bounded by undeveloped conservation land to the west (known as Sanderson Heights), residential areas to the north and south, and Lexington Street and residences to the east. (See, Plans C-101, C-102). A portion of the site 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. (See, Plans C-111, C-112). The existing developed area of the Locus is located on the southern portion of the site. Id. The remainder of the Locus is undeveloped and contains

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areas of steep slopes with topographical elevations rising from 104 ft at Lexington Street to 318 ft at the highest portion of the site near the northern property line. (See, Application Appendix, Average Site Elevation Calculation).

The new school building will be approximately 414,850 square feet and will accommodate academic and vocational course offerings. The school building is designed to house approximately 1,830 students in grades 9-12. Significant earthwork will be required to achieve final design grades of the Project including significant bedrock removal.

Due to steeply sloped terrain and the existence of wetlands, the siting of this project presents a number of site limitations. The grades steepen substantially and exceed a 50% slope in many areas throughout the northern portion. Soil (or lack of soil) conditions present development challenges in the northern portions of the site as the depth to bedrock become more shallow. Areas of soil are deepest in the southern portions of the site, and the project is focused in these areas where possible.

In order to construct this Project on the Locus, zoning relief is required from the following provisions of the Zoning Ordinance:

1. Reduction in Building Setback per §4.12 (11)(d)

Required: Minimum Building Setback is 350 feet

Proposed: Building setback is 68 feet from southern property line (See Plan C-121)

2. Reduction in Exterior Bleachers setback per §4.12 (11)(f)

Required: Minimum setback is 350 feet to residential property lines

Proposed: Setback is 150 feet to southern property line (See Plan C-121)

3. Reduction in Setback for Parking/Turf Field Structure per §4.12(11)(b)

Required: Minimum setback is 75 feet to residential property and public open space

Proposed: Setback is 40 feet to western property line (public open space) and 62 feet to southern property line (residential) (See Plan C-121).

4. Reduction in Off-Street Parking Quantity per §5.22(c)

Required: 886 spaces given the individual uses of the school (see calculations in Application Narrative, Table 3.2)

Proposed: 650 spaces (See Plans C-121, C-122)

5. Installation of Exterior Signage LED Message Board per §6.41 & §6.6

Prohibited: Swinging, flashing on and off, animated signs, revolving beacons, searchlights

Proposed: 1 onsite monument style, fixed, electronic LED message board sign along interior of the entrance driveway ± 300 ft from Lexington St to convey quickly and/or periodically change messages to community members coming to the school (students, parents, teachers, other visitors alike) (See Plans C-122, C-510)

6. Installation of Secondary Wall Sign per §6.61

Allowed: 1 building mounted sign

Proposed: Second building sign at western entrance (adjacent to the parking structure) (See Plan A-201)

The Petitioner respectfully requests that the Board grant the necessary zoning relief, in accordance with the legal standards set forth in this Memorandum of Law, in order to authorize the construction and maintenance of a public school building, with related parking and athletic fields.

II. AUTHORITY OF THE ZONING BOARD OF APPEALS TO ENTERTAIN REQUEST FOR ZONING RELIEF

Pursuant to MGL c.40A, §10 and the City of Waltham Zoning Ordinance, Article III, Section 3.87, which governs “Public and Semipublic Buildings,” the Board has the authority to grant variance relief from the requirements of the Zoning Ordinance for educational uses 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 structure, 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. (Emphasis added).

In addition, G.L. c.40A, §3 (the “Dover Amendment”) provides a separate and independent basis for the Board to grant the required zoning relief for this Project. Under the Dover Amendment, zoning requirements concerning bulk and height of structures, setbacks and parking cannot be applied to an educational use where application of the requirements would improperly nullify the protection granted to the educational use, or where compliance with the requirements would significantly impede an educational use without appreciably advancing municipal goals embodied in the local zoning ordinance. See *Campbell v. City Council of Lynn*, 415 Mass. 772, 778 (1993); *Trustees of Bos. Coll. v. Bd. of Aldermen of Newton*, 58 Mass. App. Ct. 794, 802 (2003)

III. LEGAL ANALYSIS

A. Variance Standard of Review

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.

See also, *Tsagronis v. Bd. of Appeals of Wareham*, 415 Mass. 329, 331 (1993).

1. The Locus Has Existing Soil and Topography Limitations that Impose Significant Constraints on Site Development.

The initial inquiry of the Board under the G.L. c.40A, §10 variance standard of review is whether the site presents development-limiting conditions related to soil, shape or topography.

The proposed high school development proposal qualifies for variance relief due to the significant issues relating to existing soil conditions and topography on the Locus.

The Locus is heavily constrained due to existing steep topography which extends from an elevation of 104 feet at the eastern boundary to 316 feet at the western boundary. (See, Haley & Aldrich Report, p.7; see also Site Elevation Calculations in Application Appendix). Based on the initial subsurface investigation performed by the City's geotechnical engineering consultant, 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.2). The presence of a wetlands Resource Area in the form of an intermittent stream and the related Bordering Vegetative Wetlands impose additional development constraints on the Locus. (See ORAD in Application Appendix).

The proposed school building is sited to maximize use of the previously developed portion of the site. (See, Plans C-111, C-112). Due to the location of the intermittent stream and related Bordering Vegetative Wetlands, the Project cannot be setback any further from the southern property line without impacting the intermittent stream or its Buffer Zone. (See, C-121, C-122). Due to the presence of bedrock ledge and steep topography, which has an elevation increase over 100 feet from the eastern to western property lines, the City is constrained in the placement of the building and playing fields on the Locus. As proposed, the Project will still require a significant amount of grading and controlled blasting in order to accommodate the proposed Project. The siting of the building and parking structure closer to the southern property line allows the

Petitioner to maximize development in the previously developed quadrant of the Locus, limits the need for additional site blasting and allows for the preservation of greater wooded areas on the remainder of the site.

2. The Soil and Topography Conditions on the Locus are an Impediment to the Literal Enforcement of the Provisions of the Zoning Ordinance and Would Involve Substantial Hardship if Enforced.

The City's project development team has carefully planned the location and orientation of buildings on the Locus, developed parking plans, and proposed on-site signage in order to comply to the greatest extent possible with the local Zoning Ordinance, while still balancing numerous competing site challenges and ensuring that the proposed high school meets the required educational goals. Failure to grant the requested variances for dimensional, signage and parking would be a substantial hardship to the City in the development of this project.

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. The City's project development team and School Building Committee, with input from numerous stakeholders, developed an extensive educational plan, which served as the basis for the comprehensive high school design. The educational plan provides for fourteen career, technical and vocational programs, and includes four separate wings for each area of primary academic focus. The educational plan was approved by the Massachusetts School Building Authority (MSBA) on February 13, 2020, which qualified the City for substantial state funding to offset the cost of this project. The Locus has been carefully evaluated to balance numerous competing site development limitations and interests, all of which would be jeopardized without the requested zoning relief.

(a) Dimensional Relief for Building and Playing Fields

Failure to grant dimensional relief for the school building setback on the southern boundary, as well as for the parking structure and playing field and bleachers would be a substantial hardship due to specific site and building design limitations on the Locus. The proposed location of the building and parking structure/turf field is necessary for the full realization of the City's approved educational plan. The location of the building adjacent to the southern property line is essential to achieve the building symmetry and to ensure that each of the four educational wings are fully developed to provide maximum learning space. Neither the school building nor the proposed parking structure can be reduced in size or shifted further away from the southern property boundary without creating conflict with the intermittent stream and the Buffer Zone on the northern portion of the Locus.

The selected location for the parking garage and turf playing field on the Jericho Hill II parcel behind the school ensures accessibility and minimizes environmental impacts on other portions of the Locus. The parking garage houses a majority of the parking on-site and needs to be adjacent to the school. The playing field, which is located on the roof of the parking garage, has been positioned to the rear of the school to maximize proximity to the gymnasium, locker rooms, and other athletic facilities on the Locus and allow 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.

The bleachers have been 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.

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 maximizes the use of previously developed area, which is necessary to manage overall project cost and minimize the need for additional site blasting, which is a significant expense for this Project.

Failure to grant the requested relief would be a substantial hardship to the Petitioner as it would prevent the City from achieving full realization of its approved educational plan. Denying relief would necessitate major site redesign and would add substantial expense and delay to this Project. Such a delay could jeopardize the significant amount of funding already committed by the MSBA, which requires that the City meet the established development timeline for this project.

(b) Relief from Off-Street Parking Regulations

Requiring more than 650 on-site parking spaces would present a substantial hardship. 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. The Project has been designed to meet the necessary parking needs to accommodate students, teachers, staff and visitors to the site.

The required 886 number of parking spaces required under the calculations in Section 5.22(c) of the Zoning Ordinance does not necessarily reflect actual need as it is based not on educational use calculations, but on the attribution of various use classifications, such as theater, restaurant and sporting facility uses, which are all separate parts of the overall educational uses operating on the site. Requiring additional parking on the Locus would be a substantial hardship in that it would require the creation of additional impervious surfaces and destruction of more greenspace without realizing any substantial benefit in the day-to-day operation of the school building and the more precisely calculated actual parking needs, as determined by the project development team.

(c) Relief from Sign Regulations

It would be a substantial hardship were the Petitioner required to comply with the limitations imposed in Sections 6.41, 6.51 and 6.6 of the Zoning Ordinance for signage for this project. The installation of an on-site LED sign along the interior access road of the new high school is an essential educational tool that would allow the administration to effectively communicate with the student population, as well as staff, teachers and visitors, as they enter onto the site.

It would additionally present a substantial hardship to deny the school the ability to designate the western entrance into the school with an additional building sign. The western entrance signage is necessary to direct students, staff, and particularly visitors to the school entrance after exiting the parking garage. A majority of

the site's parking is located within the garage adjacent to this entrance. The request for zoning relief from signs is minimal in scope and essential to the safe and efficient operation of the site.

3. Relief May Be Granted Without Detriment to the Public or Nullifying or Substantially Derogating from the Intent and Purpose of the Zoning Ordinance.

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." Educational uses are recognized both under State Law (G.L. c.40A, §3 – the Dover Amendment) and the City's Zoning Ordinance as having a special status as it relates to the applicability of zoning regulations. See, Zoning Ordinance Sections 3.87 and 4.12(11). It is essential that the City have adequate educational institutions to support the health, safety and welfare of its students.

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. The City evaluated 13 separate locations before determining to acquire the Locus and construct the new high school at this location. The City's search for an appropriate site included extensive site evaluation of various locations to determine whether a site could be secured that could fully deliver the educational plan for a new high school, provide adequate space for school buildings, accommodate sufficient parking spaces and allow for construction of on-site athletic fields. 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 during construction, as well as to limit impacts on residential abutters, protect environmental resources and ensure accessibility for safe and efficient vehicular access to and from the site.

After the Locus was acquired for purposes of the new high school, the project development team engaged in further extensive site configuration analysis and exhaustively analyzed the various site limitations before reaching the current proposal for building locations. The proposed development plan balances the need for an appropriate high school campus with a desire to minimize potential environmental harms, preserve wetlands and open space, and limit, to the greatest extent possible, the impact on surrounding residential properties.

The Project is largely in compliance with the requirements of Section 4.12(11) of the Zoning Bylaw. The minor variance relief requested in this application can be granted without detriment to the public good or substantial derogation from the intent or purpose of the Zoning Ordinance.

(a) Dimensional Relief for School Buildings and Playing Fields

Dimensional relief for the school building setback along the southern boundary can be granted without detriment to the public or substantial derogation from the intent and purpose of the Zoning Ordinance. The Locus was previously developed and used for an Espousal Retreat and Conference Center and the proposed

high school buildings will occupy much of the same general development envelope as the existing buildings. The 68' proposed setback on the southern boundary for the building structure is greater than the existing 52' building setback for the current development. (See, Plan C-111). 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 property boundary. (See, Plans C-111, C-112, C-121 and 122). The project has been designed to comply with all other building setbacks to the west, north and east.

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). Moreover, due to the topography of the site and the blasting required to achieve developable grades, this portion of the field will be further off-set from public open space by a change in elevation between the two parcels. With respect to the reduced setback for the parking structure/turf field along the southern property line, there are only two residential structures that abut this portion of the property. These properties are significantly lower in elevation than the field and garage. The structure will be separated from these properties by a rock slope and a proposed fence to further limit the impact of the setback. (See, Plan C-121).

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 bleachers, 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 minimized by a corresponding reduction in the density of the seating and the perpendicular orientation of the bleachers (See, Plan C-121).

Site development on the Locus requires the balancing of numerous interests, including preservation of open space and protection of wetland resources. The variances required for the development along the southern property line are in the public interest as it allows for the full realization of the educational plan while still protecting the wetland resources on the northern portion of the property and allowing for zoning compliance with respect to other setbacks and zoning requirements on the site.

(b) Relief from On-Site Parking Regulations

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.

Section 5.22 (c) of the Zoning Ordinance contains no parking use classification specifically for schools or educational uses. 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). 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 listed in Applicant's Table 3.2 were simultaneously in use is 886. 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. 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.

The School Department additionally has the ability to provide off-site overflow parking for special events at the school-owned property located at 617 Lexington Street, as needed, in the event that certain events held at the school occasionally exceeded the onsite capacity. 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.

(c) Relief from Sign Regulations

The requests for zoning relief under Sections 6.41, 6.51 and 6.6 of the Zoning Ordinance for an on-site LED sign and an additional building sign are minimal in scope and essential to the safe operation of the site and is thus in the public interest.

All of the signs for which relief are requested are interior to the large development site and are not visible from the public way. The LED monument 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. The LED sign will not have changing messages or flashing lights so as to minimize risk of distraction to drivers entering the site. There is a substantial public benefit to ensuring that the students, staff, parents, and visitors of the school are able to receive information and announcements when entering the site.

The secondary building sign requested for the western entrance is at the rear of the building and is for the benefit of the general public visiting the site, as it will facilitate the locating of the western building entrance for individuals accessing the school building from the parking garage. Relief for both signs can be granted without substantial derogation from the intent and purpose of the Zoning Ordinance.

For the reasons stated herein, the City is entitled to the requested relief under Section 3.87 of the Zoning Ordinance to authorize the construction of the high school and related playing field and parking structure.

B. The Dover Amendment Requires the Waiver of Provisions of the Zoning Ordinance that would Nullify or Diminish or Detract from the Educational Use

The Board is also required to evaluate the zoning relief requested pursuant to the provisions of G.L. c.40A, §3, the "Dover Amendment," in determining whether to grant the requested zoning relief for the Project.

The Dover Amendment of G.L. c.40A, §3 provides a separate avenue of zoning relief for a non-profit educational use. The Dover Amendment states, in relevant part, as follows:

No zoning ordinance [shall] . . . prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on 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 may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.

The Dover Amendment is intended to encourage “a degree of accommodation between the protected use ... and matters of critical municipal concern” Trustees of Tufts Coll. v. City of Medford, 415 Mass. 753, 759–60 (1993) (citations omitted). Under the Dover Amendment, the Board may not deny a request for zoning relief for an educational use where denial of the request would substantially diminish or detract from the usefulness of the entire Project. The Board is required to waive strict application of any provision of the Zoning Ordinance that would “would significantly impede an educational use, ... without appreciably advancing municipal goals embodied in the local zoning law.” Campbell v. City Council of Lynn, 415 Mass. 772, 778 (1993); Trustees of Bos. Coll. v. Bd. of Aldermen of Newton, 58 Mass. App. Ct. 794, 802 (2003). Thus, under the Dover Amendment, the Board has the authority to waive the dimensional and parking requirements of the Zoning Ordinance to allow land and structures thereon to be used for educational purposes without strict compliance with the requirements of the Zoning Ordinance.

Notwithstanding the provision in Section 3.87 of the Zoning Ordinance, which authorizes the Board, in accordance with MGL c.40A, § 10, to grant a variance for adjustments to regulations pertaining to public and semi-public buildings, Courts have determined that in applying the Dover Amendment, the waiving of strict compliance with local zoning regulations **does not require that a variance be granted**, but operates as a separate avenue of relief for educational institutions. Radcliffe College v. City of Cambridge 350 Mass. 613, 619 (1966), citing Russell v. Zoning Bd. of Appeals of Brookline, 349 Mass. 532, 535 (1965) (finding that the highly restrictive conditions required for granting of variances should not be applied to applications under the Dover Amendment); see also, Trustees of Tufts Coll. v. City of Medford, 33 Mass. App. Ct. at 585–86 (1992), aff'd, 415 Mass. 753, 616 N.E.2d 433 (1993).

In conducting review pursuant to the Dover Amendment, the Board is required to consider the overall educational use of the “land” or “structure,” and not the use of an element or part of a structure. See, Martin v. Corp. of Presiding Bishop of the Church of Jesus Christ of Latter Day Saints, 434 Mass. 141, 149-50 (2001). Thus, the Dover Amendment can be applied to various aspects of educational and religious uses, such as a multi-level parking garage on a college campus (as part of a library expansion) (Tufts College) or the addition of a steeple to a religious building (Martin). In each case, the Court determined the garage and steeple were clearly part of the broader educational and religious uses and to deny a dimensional waiver would have been unreasonable. Id. See also, Trustees of Tufts Coll. at 759-760.

The City of Waltham clearly qualifies for a Dover Amendment waiver from applicable dimensional and parking regulations for this Project. The City 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. The City of Waltham 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 Waltham Zoning Ordinance. The Applicant is, therefore, entitled to relief under the Dover Amendment as further explained below.

1. Dimensional Relief for Building, Parking Structure and Bleachers

The setback relief requested for the school building, parking structure and bleachers all qualify as dimensional relief to which the Dover Amendment clearly applies. To enforce the dimensional setback requirements of the Ordinance to the southern and western property lines of the site for these buildings/structures would have the effect of significantly impeding the proposed educational use.

As explained in Section A of this Memorandum, the Locus has substantial development limitations as a result of the topography and soil conditions. The building and parking structure have been proposed in the locations shown in order to take advantage of the previously developed areas on the site and to limit the amount of blasting required. Furthermore, the presence of a wetlands Resource Area and Bordering Vegetative Wetlands to the north imposes a limitation on siting the building further to the north. The school building, as proposed, is based on comprehensive educational plan that allows for four separate wings to corresponded to the various academic disciplines. To comply with the southern setbacks, the building would have to either be moved to a different location on the site, at substantial cost both economically and environmentally, or be substantially reduced in size. To require such compliance under the circumstances presented herein would effectively nullify the educational use on this Locus and render such development infeasible or impossible.

Further, the parking structure and playing field with its proposed bleachers for spectators, is an integral part of the site feasibility (parking) and educational use (athletics) of the approved educational plan. A reduction in the parking structure would create substantial issues with respect to the ability to provide adequate alternative parking on the site, which would undermine the utility of this site as a viable location for the high school. Requiring parking to be located elsewhere on the site would come at substantial cost, both economically and environmentally. Finally, reduction in size or the elimination of spectator bleachers from this site would nullify in large part the integrated athletic elements of the educational plan.

Thus, relief from the specified setback requirements is essential to this educational use. There is no overriding municipal goal that would be advanced by the denial of this relief. See Campbell v. City Council of Lynn, 415 Mass. 772, 778 (1993).

2. Relief for Off-Site Parking Requirements

As explained in detail in Section A of this Memorandum, the parking calculations for the educational use on the site as prepared pursuant to Section 5.22(c) of the Zoning Bylaw do not accurately reflect the actual parking needs of the proposed educational use of the Locus. The Dover Amendment allows for the reasonable regulation of parking of educational uses. However, in this case, the amount of parking required is not reasonable and proportionate to the actual use of the site and should be reduced to allow for the proposed 650 spaces. See Radcliffe College, supra, 350 Mass. at 619 (concluding that a parking requirement could be applied, but suggesting that the application might be unreasonable if the result would require the educational institution to provide more parking spaces “than could in reason be deemed necessary to take care of the cars brought to the [area] by the use made of it by the college”).

Thus, relief under the Dover Amendment should be applied to waive the 886 parking space requirement for this use.

3. Relief from Sign Ordinance Requirements

The proposed LED monument sign and western entrance building sign, which require zoning relief, are integral “elements” of the high school structure. As an element of the project, these signs should not be the subject of separate consideration by the Board as to whether it serves a separate educational function within the overall educational mission of the high school. The Board must consider the sum total of the Project as an educational use and determine whether imposing the sign limitations would “diminish or detract from the usefulness” or “impair the character” of the entire high school project, not one component part. See Martin, supra 434 Mass. at, 149-50.

For the reasons stated in Section A of this Memorandum, ensuring that the student body, staff, parents, and visitors are able to be informed by way of electronic messages, and ensuring safe and well-marked entrance to the building from the parking structure are essential to the operation of this educational use and should be granted zoning relief under the Dover Amendment.

IV. CONCLUSION

WHEREFORE, for the reasons stated herein, the Petitioner, City of Waltham, respectfully requests that relief be granted in accordance with the applicable standards set forth herein.