

**TOWN OF BELMONT
ZONING BOARD OF APPEALS
MEETING MINUTES
January 9, 2023**

DATE: February 8, 2023
TIME: 8:56 AM

Present: Nick Iannuzzi, Chair; James Zarkadas, Vice Chair; Andrew Kelley; Casey Williams; David Stiff; Teresa MacNutt; Elliot Daniels

Staff: Gabriel Distler, Staff Planner, Offices of Community Development

The Belmont Zoning Board of Appeals held this hybrid public hearing at the Art Gallery on the third floor of the Homer Building, 19 Moore Street, and by remote access through Zoom as permitted by the Massachusetts Act Relative to Extending Certain State of Emergency Accommodations, that became effective July 16, 2022.

Mr. Iannuzzi introduced the Zoning Board Members and noted that they would take the cases out of order. First they would do a review of meeting minutes, next was Case No 23-02 Woodlands at Belmont Hills II Condominium Trust: Appeal of Denial of Zoning Enforcement Request, after that was CASE NO 23-01, 213 Beech Street and lastly was CASE NO 22-15, 3-5 Williston Road.

1. CALL TO ORDER 7:00 PM

2. CONTINUED CASES

a) CASE NO 22-15 ONE SPECIAL PERMIT 3-5 Williston Road – Lalig Musserian

The applicant seeks clarification of a previously approved Special Permit to convert existing office spaces into residential units at 3-5 Williston Road, located in Local Business I (LBI) zoning district. Special Permit: (1) Residential units in LBI zoning district are allowed by a Special Permit granted by the Board of Appeals.

Lalig Musserian, came before the Board to present her proposal. She would like to be sure that they have two special permits for two commercial units. Initially, she thought that the original permit was for two units, but it was for only one unit.

MOTION to approve a special permit for two units at 3-5 Williston Road was made by Mr. Iannuzzi and was seconded by Ms. Williams. Motion passed.

**YES votes-
Mr. Kelley
Mr. Daniels
Mr. Stiff
Ms. Williams**

Mr. Zarkadas

3. PUBLIC HEARINGS

a) CASE NO 23-01 ONE SPECIAL PERMIT 213 Beech Street – Paul and Paula Aloisio

The applicant requested Two Special Permit under section 1.5 of the By-Law to remove existing second story open front open front porch and roof and construct a new enclosed space at 213 Beech Street located in a General Residence (GR) Zoning District. Special Permit: 1.-§1.5.4 of the By-Law allows extensions and alterations of non-confirming structures in the GR zoning district by a Special Permit from the Zoning Board of Appeals. 2.-§4.2.2 of the Zoning By-Law requires a minimum front setback of 13.4', the existing and proposed front setback is 11.9'.

Ms. Williams recused herself from this case, she returned to the meeting at 8:34 PM.

Mr. Iannuzzi read the public notice.

Frank Dill, Architect, came before the Board to present the plans for the addition. He described the plans to remove an existing second story, an open front porch and roof and to construct a new enclosed space. They have had a lot of support from neighbors and they invited residents to see their plans.

Mr. Eldridge, 206 Beech Street, across the street abutter and was in support of the project.

No one spoke in opposition of the proposal.

MOTION to approve was made by Mr. Zarkadas and seconded by Mr. Iannuzzi. Motion passed.

YES votes-
Mr. Kelley
Mr. Stiff
Ms. MacNutt
Mr. Zarkadas
Mr. Iannuzzi

4. Case No 23-02 Woodlands at Belmont Hills II Condominium Trust: Appeal of Denial of Zoning Enforcement Request

The Board of Appeals will hold a hearing on the request of the Woodlands at Belmont Hills II Condominium Trust to appeal, in pursuant to M.G.L. c. 40A Section 8 and 15, the

decision of the Inspector of Buildings not to take enforcement action under the Zoning Bylaw of the Town of Belmont regarding the construction of Olmsted Drive in 2005.

Mr. Iannuzzi gave a brief history and explained that Mr. Clancy, Inspector of Buildings declined to require McLean to take actions to analyze stormwater runoff on a 2001 site plan approval for a project in Zone 3 of the McLean District. The request for the ZBA was whether McLean has committed a zoning violation or not. To find a zoning violation they would need to identify a specific provision in the Zoning By-Law or the applicable approvals that McLean has violated. A four out of five vote of the Board was required to reverse Mr. Clancy's decision and find the violation. This matter spans over twenty years. Under section 6.a of the By-Laws, projects in the McLean District and are subject to Design and Site Plan Review by the Planning Board and the Planning Board must consider stormwater mitigation. In 2001, the American Retirement Corporation was granted site plan approval to construct 482 units of senior housing in Zone 3. The 2001 approval required stormwater mitigation measures to address the impacts of full build conditions on the site. In 2006 McLean built Olmsted Drive and installed certain interim stormwater mitigation measures to address the impacts of Olmsted Drive. The American Retirement Corporation eventually abandoned this project and no part other than Olmstead Drive was constructed. In 2022, Northland Residential Corporation was granted a Design Site Plan Review approval for Zone 3. During the hearing on the NRC project, the petitioners had the opportunity to persuade the Planning Board to impose their desired stormwater mitigation requirements. The Planning Board decided that there was no evidence to support a finding that the existing facilities outside of Zone 3 were inadequate. The petitioners were now asking the Zoning Board of Appeals to require that McLean take the steps that the Planning Board did not require in the 2022 DSPR approval despite the significant discussions of stormwater runoff.

Edwin Alcott, Council for the Woodlands at Belmont Hill 2 Condominium Trust, spoke and noted that they are looking for the Building Inspector to require McLean to construct the appropriate stormwater detention basins in the Upham Bowl area that were supposed to be constructed as per the original plan and as that plan was modified by agreement. He reviewed Exhibit B - the original design drainage system for the campus. He noted that there could be a significant overflow flooding event as tank 11 was not designed to handle the entire campus by itself. He said that the stormwater systems were to be addressed on a full-build not a phase-by-phase basis. The permit violation was that there was a plan for drainage that was currently an existing tank and it was removed and upon condition that there would be something to address Upham Bowl stormwater runoff. That has not been constructed yet and the down gradient property will be impacted by future stormwater especially if tank 11 is going to fail and there is going to be a possible flooding event for the downgrading properties. He stated that the request was to build the stormwater tanks in compliance with the original permit and modifications and to the DEP standards.

Johnana Schneider, Attorney, Hemenway & Barnes, representing McLean, emphasized that the current stormwater issues were evaluated by the Planning Board in 2022 and there were no inadequacies in the existing infrastructure and no additional mitigation was required. This does not give rise to a zoning violation.

Mr. Clancy, Director of Community Development, Inspector of Buildings, explained his previous discussions with the McLean Developers over a span of 20 years. His recollection was that there was an acknowledgement that there was a site plan approval from 2001 that had specific conditions to construction of a road and they would honor those requirements as best as they could and the plans contemplated a full development of Zone 3 including the development of Olmsted Drive. There was recognition at that time that Stormwater Management meant for Olmsted Drive would be tied altogether for a larger project. The Planning Board has been reviewing stormwater management for a new development for Zone 3 and it is in the spirit of the requirement for the underlying zoning for Zone 3. He was not comfortable that there was a violation of the Zoning By-Law, he believes that the discussion with the Planning Board had already taken place with the new development for Zone 3.

Attorney Hall, representing the Town of Belmont, noted that in order to take enforcement action they have to be able to allege that a property owner is in violation of a by-law or permit and the 2001 site plan approval was for an abandoned plan and is effectively annulled at this point. A small portion of the work was performed with some interim measures were taken to mitigate the expected impacts of Olmsted Dr. Once the project was abandoned was this enough and the question ultimately was for the Planning Board. A new project was proposed and the 2021 DSPR supersedes the 2001 permit. The 2021 DSPR was subjected to updated stormwater management requirements, and he cannot see what the property owner has violated. This is a matter that the PB has addressed and he urged the Zoning Board to not get pulled into the merits of the stormwater design. The question was is there a violation and he did not see what that violation was.

Mr. Iannuzzi noted that they should not be deciding on enforcement of something that the Planning Board has already decided upon. He did not think that this was within the ZBA's purview. The Planning Board had a robust Stormwater management review and this issue had been vetted. The ZBA is not in the position to discuss stormwater management.

Mr. Clancy explained that because the actual construction of the buildings from the 2001 permit never came forward the stormwater management did not come together. The temporary measures that were taken by Olmsted Drive were all that was left in place until the new application came to the PB in 2021. There is an underlying requirement to manage stormwater based on specific projects as permitted through the Planning Board and they establish the conditions that require the developer to manage stormwater.

Mr. Alcott saw the problem as a permit with conditions and things to be done and McLean has proceeded with some of those things but then they are saying the permit is gone and we do not have to do anything else under the permit because the Planning Board focused on the permit for only Zone 3 and not the entire project. The Planning Board did not want to address Upham Bowl - Zone 5 and that they were only dealing with Zone 3. The PB suggested that they seek enforcement if they wanted to do something, and this was what his clients did. The 2001 permit is valid and omnibus, and they cannot design stormwater in piecemeal. Mr. Alcott explained that it does not matter what the PB decided on Zone 3 because there was a permit in place under which certain things proceeded and this permit requires a stormwater detention system that addresses the entire site. There was going to be something constructed once they removed tank

22 and the concern was that everything was going to flow down towards 22 and then to 11 and then to the condominiums below. There was a request for enforcement.

Mr. Hall noted that if a project does not get built then the conditions from the previous permit go away. The Building Inspector cannot act as a Board, and he can enforce what is in the permit in black and white but there is no such requirement that on the construction of Olmsted Drive alone the Upham Bowl improvements must be completed.

Mr. Hall noted that the PB had an opportunity to look at the 2001 approval, but they chose not to as the project was never built and many of the conditions did not apply.

Robert Eckert, Woodlands HOA President, noted that the 6A By-Law for McLean requires a special permit for road and stormwater. The 2001 site plan review approval required the Upham Bowl stormwater detention system prior to Olmsted Drive being constructed and this condition is applicable.

Mr. Iannuzzi noted that the Woodlands HOA was here to ask Glenn to approve something that he can't approve and for the Zoning Board to force him to do something that under his opinion under the by-law he doesn't want to enforce. He felt that they did not have the right to do what they were asking them to do. He felt that they were not the right Board to come to with this issue.

Mr. Eckert noted that the statutory path was Zoning Board and the next stop was the DEP.

Mr. Kelley noted that this was a legal question and not a factual question.

MOTION to approve the Building Inspector's decision under section 7.1.1 of the Zoning By-Law to decline enforcement action was made by Mr. Iannuzzi and seconded by Ms. Williams. Motion passed.

YES votes-

Mr. Zarkadas

Ms. Williams

Ms. MacNutt

Mr. Kelly

Mr. Iannuzzi

5. MINUTES: Review and approve Meeting Minutes

MOTION to approve the July 11, 2022 Meeting Minutes was made by Mr. Iannuzzi and seconded by Ms. Williams. Motion passed.

YES Votes-

Mr. Zarkadas

Ms. Williams

Ms. MacNutt

Mr. Kelly

Mr. Iannuzzi
Mr. Stiff
Mr. Daniels

MOTION to approve the September 12, 2022 Meeting Minutes was made by Mr. Iannuzzi and seconded by Ms. Williams. Motion passed.

YES votes-
Ms. Williams
Mr. Kelly
Mr. Iannuzzi
Mr. Stiff
Mr. Daniels

MOTION to approve the October 3, 2022 Meeting Minutes was made by Mr. Iannuzzi and seconded by Ms. Williams. Motion passed.

YES votes-
Mr. Zarkadas
Ms. Williams
Ms. MacNutt
Mr. Kelly
Mr. Iannuzzi
Mr. Daniels

MOTION to approve the November 7, 2022 Meeting Minutes was made by Mr. Iannuzzi and seconded by Ms. Williams. Motion passed.

YES votes-
Mr. Zarkadas
Ms. Williams
Mr. Kelly
Mr. Iannuzzi
Mr. Stiff

Meetings minutes for December 5, 2022 to be reviewed at a future meeting.

6. Adjourn 8:48 PM

The Zoning Board of Appeal's next regularly scheduled meeting will be held on Monday, February 6, 2023.