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**TOWN OF BELMONT
ZONING BOARD OF APPEALS
MEETING MINUTES
August 21, 2023**

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

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. Update 3/30/23: The State has extended authorization for virtual public meetings through March 31, 2025.

This meeting recording has been posted to the Belmont Media Center webpage.

At 6:00 PM, Ms. Williams stated that the 6 PM scheduled executive session was canceled due to a lack of a quorum and that the meeting would be called to order at 7:00 PM.

1. CALL TO ORDER 7:00 PM

2. NEW PUBLIC HEARINGS

a) Case No 23-21 Appeal of April 19, 2023 Planning Board Belmont Hill School Design and Site Plan Review and Decision The Board of Appeals will hold a hearing on the request of local residents to consider the appeal, in pursuant of as pursuant to Zoning Bylaw §7.3.3(f); M.G.L. c. 40A §§ 8, 15, of the April 19, 2023 Belmont Hill School Design and Site Plan Review Opinion and Decision in Planning Board Application 23-04.

Alessandra Wingerter, Fitch Law Partners, Dylan Sanders, Beveridge and Diamond PC, Attorneys representing Appellants, residents who appealed the Planning Boards design and site plan review decision and asked for the decision to be remanded for further proceedings. Ms. Wingerter explained the major reason for appeal was that the site plan review decision was premised on the false assumption of the Dover Amendment and the Planning Board operated under the assumption that they could not place reasonable conditions on the school's project. She noted that the majority of the Planning Board felt that its hands were tied by the Dover Amendment as to what it could or could not condition. There was an error of law and they ask the Zoning Board of Appeals to correct this by remanding the decision to the Planning Board for further proceedings and review under the correct application of the Dover Amendment.

Bob Fitzgerald, Goodwin Proctor, Attorney representing the Belmont Hill School, made the following points:

- In a memo dated June 30th, Mr. Clancy noted that there was no lawful basis for the revocation of the two permits issued on June 8, 2023 for the project and he

had no lawful basis to deny any future permits required for the Belmont Hill School project.

- The memo informed the Appellants of their rights to appeal that decision with the Zoning Board of Appeals. There was no timely appeal filed within the 30-day response period.
- According to Section 8 of the Zoning Act, the permits issued on June 8 were not building permits and the ZBA does not have jurisdiction to hear the appeal. He noted that an appeal may be filed based on harm to a private interest not on general public interest. There was a limited set of reasonable regulations that could be applied to a Dover protected project such as bulk and height of structures, setbacks, yard sizes, parking, open space and building coverage requirements.
- He gave case examples of how the Dover Amendment had been applied in past cases: Tufts, Sisters of the Holy Cross and Radcliffe

Public comments:

Bryan Palmer, 210 Clifton Street, Abutter, noted that community involvement in the process was limited. The parking placement was not considered as to how it could work best for the environmental area, the trees and the proximity to neighbor's homes. There was no critical analysis for the 100 plus new spaces. They do not need this many new spaces, perhaps they could limit it to 60 spaces and there should be more community contributions.

Diane Lombardi, 25 Knox Street, noted that the Town has not considered all of the avenues of the Dover Amendment. It is not education, in no way does parking and maintenance have a direct implication for education.

Marina Popova, 255 Ridge Street, Arlington MA, the destruction of the habitat will affect all the communities. She noted that she was concerned about the climate and the impact of the removal of the trees.

Joyce Barsam, 170 Rutledge Road, direct abutter, this area without the trees could become a fire hazard. All the grass and the animals will suffer.

Linda Bilmes, 21 Elm Street, said that the community input was stifled. She only heard about the proposal through a road sign of a neighbor and there should have been more notice provided to the people of Belmont and more opportunities for public input.

Angus Abacrombie, Town Meeting Member Precinct 8, 79 Winn Street, said that there has not been an opportunity for Town members to be heard and to have their thoughts fully considered through an accurate and transparent process.

Alex Danahey, 192 Rutledge Road, noted that the Planning Board's role is to protect and preserve the quality and character the defines life in Belmont. This project fundamentally affects the character and the quality of life for the whole Town and the Planning Board did not serve its mission in the case and she would like to see the ZBA review this case again.

Siobhan Gallagher, 7 Broad Street, noted that she would like to see someone from Belmont Hill School talk about why they need this parking lot and why there are no better options. If they are going to have events that are not directly related to education, they should ask the Belmont Hill School to talk about what they would like to do for the Town of Belmont.

Chris Tomagin, 233 Rutledge Road, said he very much doubts that a legal trustee or the Administration of Belmont Hill School would support such a project in their own neighborhood. He doesn't understand how the Planning Board could have supported this effort and he hopes they will take a close look at this proposal.

Judith Feinleib, Town Meeting Member, Precinct 6, 87 Oakley Road, said that this issue has affected the entire Town and the PB process worked appallingly poorly, and the only recourse is the ZBA and she is hoping that they can deal with this project so that Belmont Hill School does place a large parking lot on Belmont Hill. She requested that the ZBA comes up with a way that the people of Belmont of should proceed to negate this project.

Susan Robotham, 19 Scott Road, said that this project is not in keeping with the neighborhood or even with some of the principals that are taught at the school. Just because you can doesn't mean you should, this project is wasteful of natural resources and inconsiderate of the Town residents.

Jane Lapin, 39 Amherst Road, noted that the engineers have done a very partial job of assessing the traffic impacts, the air quality impacts and an inadequate job of assessing the safety impacts. The road will become more dangerous to pedestrians.

Michael Moscovitz, 257 Prospect Street, said he was concerned about the impact of the wetlands and this issue needs to be revisited. The plan is environmentally unsound and hazardous. The Planning Board process was overbearing and in the builder's interest. The two adjoining driveways are a problem, and the project will add hazards to the community.

Marsha Mattison, 107 Chilton Street, said she is haunted by a headline in the Globe "they paved paradise to put up a parking lot" and who ever thought this would happen.

Louis Pines, 175 Rutledge Road, across the street and adjacent, said this was an abrogation of the rights of citizens regarding the manner which the Planning Board allowed for public input. She asked the ZBA to find a way to secure another look at this project.

Rosemary Burke, 216 Prospect Street, asked the ZBA to please listen to their conscience. This project was railroaded through the Planning Board and citizens were made to feel impotent when voicing their opinions. There is an ecological catastrophe approaching and to be blind to these issues is unconscionable. There is no harm in returning this to the Planning Board for a genuine review of this project and hearing citizens' concerns and evaluating the impact of this project on the Town.

Edward Mattison, 107 Chilton Street, noted that this project demonstrates that Belmont Hill School does not care about the Town or the environment and he hopes that the Board can mitigate this travesty.

Daron Munchin, 108 Village Hill Road, Town Meeting Member Precinct 2, said he was disappointed to see what Belmont Hill School is doing. He felt that the previous Planning Board chair would not listen to him, he was arrogant and rude. Belmont Hill School does not care about the well-being of this Town. He hopes that the ZBA will have a chance to revisit this.

Sam Rubin, 168 Claflin Street, in addressing Mr. Fitzgerald's comment about being an immediate abutter, he believes he has standing as he very much appreciates the area for walking. He is very concerned about the mature trees and the replacement of the trees is just not the same.

Doug Fici, 26 Greenbrook Way, this is the beginning of Belmont Hill's long-term plan. They will not stop as they have purchased abutting properties. The intersection is already overused, and he hopes that the traffic and safety studies were done well. The Belmont Hill School will not stop if the Town does not stop them.

Gloria Falco, 322 Marsh Street, noted that she is absolutely appalled by the arrogance of the Belmont Hill School and the advocacy of the Planning Board. She hopes that they can get together as a community and do something about this.

Joyce Barsam, 170 Rutledge Road, asked if any thought had been given to what would happen if there was a fire. Has anyone investigated this? She asked that there be a consultation with the Fire Department.

Marina Popova, 255 Ridge Street, Arlington MA, said that this is a violation of the process that was supposed to happen. The Chair's goal was just to prove the process. The Select Board decided to do nothing. She said that there was a statement made that the Planning Board Chair was "above the law".

Diane Lombardi, 25 Knox Street, asked that the traffic study be done again based on non-covid days. There should be restrictions on making left turns into the new parking lot.

Judith Feinleib, Town Meeting Member, Precinct 6, 87 Oakley Road, said thank you for letting us be heard.

Jeff Birenbaum, 80 Hillcrest Road, current Planning Board Chair, noted that if this were to come back to the Planning Board that the community would be heard, and issues would seriously be considered. He answered an audience question about why he did not write a dissent letter regarding the original Planning Board decision – he said he wasn't sure how to do it as it was a legal issue.

Public comments were closed at 8:38 PM

Mr. George Hall, Attorney representing Town of Belmont, noted that the enforcement of the Dover Amendment requirements refers to the dimensional

regulations as written in the Zoning By-Law. The only dimensional requirement that the project does not comply with is the separation of driveways. The Planning Board made a judgment that it was not reasonable to enforce that. The Appellant is arguing that the PB was not limited and that they could have applied reasonable conditions under Design Site Plan Review. All of the things that were reviewed by the Planning Board were typical for review and the Dover Amendment would not prohibit the Planning Board outside of a typical scope when considering a Site Plan Review for a use that is allowed by right. The Planning Board had no ability to make the conditions stricter.

Mr. Hall noted that there were three components of the Jurisdictional Question.

1. Does the issuance of the sewer and stormwater permit actually provide a right of appeal of the design and site plan review decision to the Board?
2. Did they waive their right to receive future permits by not appealing the Offices of Community Development response to their enforcement letter?
3. Has anyone made out a case that they are aggrieved, that they have suffered an injury to their legal interests and tied that to a particular claim of error by the Planning Board?

Zoning Board of Appeals members discussed the jurisdictional questions and agreed that there was no appeal filed in response to the letter from Mr. Clancy dated June 30. Board members were also in agreement that they did not hear a claim of aggrievement with a claim of legal harm. Ms. Williams noted the [Planning Board relied on and followed the advice of Town Council to interpret the application of the Dover Amendment in this case](#)~~main argument made by the Appellant was a false assumption for the Dover Amendment.~~ The Zoning Board of Appeal's opinion was that the Planning Board appropriately applied their authority as it relates to the Dover Amendment.

MOTION to dismiss Appeal of April 19, 2023 Planning Board Belmont Hill School Design and Site Plan Review and Decision, as requested by local residents as pursuant to Zoning Bylaw §7.3.3(f); M.G.L. c. 40A §§ 8, 15, of the April 19, 2023 Belmont Hill School Design and Site Plan Review Opinion and Decision in Planning Board Application 23-04. Motion was made by Ms. Williams and seconded by Ms. MacNutt. Vote was unanimous.

YES Votes-
Casey Williams
Andrew Kelley
Teresa MacNutt
Elliot Daniels
David Stiff

4. Adjourn 10:06 PM

The Zoning Board of Appeal's next meeting will be held on Monday, September 11, 2023.