

**TOWN OF BELMONT
ZONING BOARD OF APPEALS
MEETING MINUTES
August 18, 2021**

**RECEIVED
TOWN CLERK
BELMONT, MA**

DATE: October 7, 2021
TIME: 3:08 PM

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

Staff: Ara Yogurtian, Assistant Director, Community Development
David Lyons, Town Counsel

Absent: Ezra Glenn, Chapter 40B representative

In keeping with the extension of the remote participation portion of Governor Baker's Executive Order of March 12, 2020: "Order Suspending Certain Provisions of the Open Meeting Law" – All Participation for Town Residents will be by Remote Access.

1. CALL TO ORDER AT 7:00 PM

Mr. Iannuzzi called the meeting to order and introduced the Zoning Board of Appeals members. He noted the order of the meeting and explained that this meeting has been closed to the public and they would review the decision today. This and subsequent meetings related to this case are for Board to review and approve conditions of the decision.

2. CONTINUED CASES:

- a. CASE NO. 21-01 – COMPREHENSIVE PERMIT
91 Beatrice Circle (SRA) – 91 Beatrice Circle, LLC, Stephen A. Tamposi, Manager

Mr. Iannuzzi noted that the draft of the decision as written by Attorney Lyons was received earlier in the day and the Board members did not have enough time to review it in time for this meeting. The Board members agreed to meet on August 23, 2021 for a more thorough discussion.

Mr. Yogurtian noted that September 10, 2021 is the final date to have the decision completed, signed and time stamped by the Town Clerk.

Ms. Williams asked Attorney Lyons to explain how he laid out his thoughts and the pros and cons to taking either path.

Attorney Lyons, noted that he had included the standard conditions that are not likely to be controversial and the key issues were outlined in the summary table. He walked through the Key Zoning Parameters and how they would shape what this project would look like. The columns in the matrix were described as two alternatives along the parameters as what has been discussed by the Board so far. The columns were titled as 1.

Requirements as per Zoning Standards, 2. Applicant's Proposal and 3. Attorney Hill's Proposal. He reviewed and compared the issues as open space and lot coverage (massing of the buildings), number of units (identify the most problematic), setbacks, number of parking spaces, number of bedrooms per unit and lot coverage ratio (this would lead to a reduction of massing and some changes in other metrics, like open space and parking). He noted that the first alternative was to reduce the intensity of the project by removing some of the units. This has the advantage of being clear. The second alternative was to adjust the bedroom count and lot coverage ratio (the applicant would have to come back with alternative plans within thirty days of issuing the permit). This would lead to a reduction of massing and some changes in other metrics, like open space and parking. These alternatives were examples and could be modified.

Attorney Lyons discussed the legal ramifications and the likelihood of an appeal. The neighbors are very likely to appeal the applicant's proposal as offered and the developer will likely appeal the proposal from Attorney Hill. Based on the applicant's commitment to 12 units, "alternative one" would likely be appealed by the applicant. They could significantly reduce the massing of the southern unit by taking out a couple of units but still likely to have a short setback to the southern neighbors and they are likely to appeal. If there are two appeals, first the HAC is resolved and then the superior court appeal from the neighbors would follow. In "alternative two", an appeal from one side or the other is pretty likely in this scenario as well. If the 12 units are reduced the financial math looks a lot better and they are still getting 12 units worth of rents. They may be able to squeeze the building a little bit more room for parking then they would need to focus on lot coverage rather than open space.

Mr. Daniels asked if they could do something about the building height and the rear setback, could they get rid of the garage and make the garage a bedroom?

Ms. MacNutt noted that Attorney Hill was asking for the project to comply with the zoning regulations as they were not to have any relief or waivers.

Attorney Lyons noted that they are entitled to relief from certain zoning requirements.

Mr. Iannuzzi noted that the rear setback was a big issue for him. The Planning Board discussed different options for front setbacks.

Ms. Williams asked if they reduced by four units – "alternative one", how many of those units would be affordable units. Mr. Lyons said that they would need to provide 25% affordable units. She asked if "alternative two" leaves them in a position where they do not know what they are getting. If the applicant can make the changes if they so choose and they would submit drawings as part of the permit?

Attorney Lyons noted that the condition would be that they would have to come back with a redesign before applying for a building permit. They could be asked to go to the Building Department for further consultation and there would need to be an extension from the developer so they can do this before the final decision. These could be included

in the draft decision. They could be asked to make these revisions and come back with a redesign within the next couple of weeks if they think it is workable.

Mr. Iannuzzi and Mr. Zarkadas noted that they felt that the applicant was not going to make any changes. The decision needs to be reasonable enough when it goes to the HAC. They want to draft a fair and acceptable decision that works for the neighbors and the developer that would pass a proper 40B decision. Does the HAC in any case ever say to the developer that this was a fair and reasonable decision?

Attorney Lyons noted that this approval with conditions and the developer would have to show that the conditions make the project uneconomic. The HAC would take into consideration the protection of local interests such as health and safety, site design, etc. Mass Housing said that the original proposal of 16 units was too much. They had given preliminary approval to twelve units but that is not the final say. The HAC process would include a site visit, briefing and argument, testimony from peer reviewers, etc. The final standard for the decision is pretty favorable to the developer unless the Board is identifying really concrete health-safety-design issues.

Attorney Lyons noted that he could put “alternative two” into the decision and see how the applicant responds.

Mr. Iannuzzi noted that there would be an issue between Board members regarding the bedroom counts versus unit counts. The rear setback could ruin the back of the neighborhood. He said that this was not about bedroom count, it was about unit count.

Mr. Zarkadas noted that the Board’s responsibility was to make sure that a project is in harmony with a neighborhood. He said that this was not about affordable housing, and it makes no sense to hide behind the affordable housing piece of this. There has to be some compromise but the State will go ahead and make the decision on this. Traffic, safety massing, etc. are still very big issues. He would like to move along with the review.

Ms. Williams asked for a recommendation on the rear setback. Mr. Iannuzzi said forty-feet and to front load everything and make zero setback on the front and the front to be protected by a buffer. He said that the traffic and the parking was more of a problem than anything. He added that Ms. Chisholm has done her own study and there was going to be a safety issue at the crosswalk.

Attorney Lyons noted that it would be fine to post the Summary Table to the Town’s website and the Board members agreed. He also noted that a draft decision could be posted to the Town’s website as well.

Attorney Lyons said that he needed more direction from the Board as to what to include in the decision. He noted that he could write a draft decision for “alternative one” and “alternative two”.

Mr. Birenbaum noted that if you address the lot coverage and open space it will address the unit and bedroom count. The Board should make its decision based upon the waivers for what is existing as a zoning parameter and to focus on the maximum lot coverage, minimum open space, the setbacks and height. Once the approval with these conditions was set forth, the developer will look at the economics and look at designing a project that would be economically feasible based on the conditions set forth. The development should be within context of this neighborhood.

Mr. Iannuzzi noted that the Board would submit comments to Attorney Lyons.

Mr. Kelley noted that he was frustrated because he does not just want to nibble around the edges but anything you do to the size of the building won't happen. If the deal is that it is not going to happen no matter what you do than there is no reason to try to reduce the massing. He noted that he was not going to try to push something that people do not want. And the conditions would have no chance of standing up in an appeal and wasting town resources defending the conditions. If there was a good chance of finding something that would pass than he would be willing to work towards that.

MOTION to continue to August 23, 2021 was made by Mr. Iannuzzi and seconded by Ms. MacNutt. Motion passed. The vote was unanimous.

3. ADJOURN 8:40 PM