

October 27, 2022

VIA EMAIL (ayogurtian@belmont.ma.gov)

Mr. Ara Yogurtian
Assistant Director
Community Development
19 Moore Street
Belmont, MA 02478

Re: 13 Grant Avenue; 28 Hall Ave LLC

Dear Mr. Yogurtian:

Good day, sir. We write on behalf of Scott Miller, Darrell Sanders and 28 Hall Ave LLC with respect to their application for site plan review, the public hearing on which is scheduled to resume on November 1, 2022. We request that you include this correspondence in the Planning Board's materials for further consideration of the above application.

Based upon our clients' understanding of your meeting with Mr. Lowrie and them yesterday, there seems to be some disagreement or confusion concerning the procedural posture of the application. If we understand correctly, Mr. Lowrie expressed the sentiment that a revision to the parking space layout by the site plan review authority perforce requires that the *issued* special permit be amended, with the concomitant re-publication, rehearing, etc. We do not agree that requiring amendment to the special permit is necessary or fair, and under the circumstances of this application, the only result would be to substantially deprive the applicant of the economic value of its modest project.

The Planning Board took "final action" on the special permit application on August 12, 2022. G.L. c. 40A §9. See, Morra v. Covel, 21 LCR 643 (2013). The Board's inherent power to reconsider its decisions should only be "sparingly used if administrative decisions are to have resolving force *on which persons can rely*." Stowe v. Bologna, 32 Mass. App. Ct. 612, 616 (1992)(emphasis added). More importantly, however, there is some doubt that the board is authorized to reconsider their decision at all, *once it is filed with the clerk*. Lingerman v. 6 Mill Road LLC, 22 LCR 150 (2014) ("Here, the Planning Board never filed the August 16 vote with the town clerk, and thus it had not taken "final action" on the Gosselins' application. The Board could, therefore, reconsider that vote and take "final action", as it did here, within 90 days of the public hearing").

The principles at hand here are most aptly reflected in Barbaro v. Wroblewski, 44 Mass. App. Ct. 269 (1998), a case with notable similarities to the matter before the Board. In that case, the zoning board approved both a special permit and site plan review, and upon appeal, a Superior

Court judge found that the zoning board's special permit grant was proper, but the board had erred in determining the project's lot coverage, which exceeded the bylaw requirement by one percent. The court remanded to the board to ***reconsider its site plan review alone***, not the special permit. A dispute arose as to whether the board could allow the owner to make "minor modifications" within a reconsideration of site plan review or was compelled to seek an amendment to the special permit. The Court found that site plan review to allow minor modifications to comply with a bylaw requirement previously misapplied was perfectly appropriate: "She remanded the matter to the board simply to give the landowner an opportunity to correct a de minimis violation of the bylaw by submitting a revised site plan to the board for its review." Id. at 272.

The Court observed: "Here, where the violation of the by-law was ***easily remediable without material or substantial changes in the proposal*** and where the judge properly left the decision of site plan approval to the board as a prerequisite for the grant of a special permit ..., we conclude the limited remand to the board [for site plan review] was appropriate ..." Id.

The site plan review application was properly noticed, the public hearing on site plan review was properly noticed, and the public hearing was opened. No further public notice is required. The Planning Board has the authority to impose conditions on its site plan approval, including minor revisions to the parking layout, without reopening the special permit application. It should do so "to avoid prolonging the controversy in the form of further applications, hearings, decisions, and appeal." Id.

We respectfully request that the board proceed on November 1, 2022 to consider the applicant's revised parking plan and act upon its site plan review application promptly.

Thank you for your consideration.

Very truly yours,

FORD LAW P.C.

A handwritten signature in black ink, appearing to read "Michael W. Ford", with a long horizontal flourish extending to the left.

By: Michael W. Ford