

M E M O R A N D U M

To Belmont Planning Board

From Robert H. Fitzgerald

Re Belmont Hill School: Application for Design and Site Plan Review dated August 5, 2022

Date December 5, 2022

On behalf of the Belmont Hill School (“BHS” or the “School”), this memorandum respectfully is submitted to the Belmont Planning Board to addresses the application of M.G.L. c. 40A, §3 – the so-called Dover Amendment – to the project described in the above-referenced Application submitted under Section 7.3 of the Town of Belmont’s Zoning By-Law. BHS proposes to make certain modifications and additions to its campus in three phases, each as described in detail in the Application (the “Project”) and summarized as follows:

- Phase I of the Project involves: (a) the razing and/or repurposing of existing residential structures to house staff and faculty and provide storage of tables, chairs, tents and other equipment used for School functions; (b) the construction of a new East Campus Parking Lot consisting of 143 parking spaces, with approximately 100 spaces dedicated to faculty and staff parking, with additional spaces for parents, alumni or other visitors to the School, and associated improvements to allow pedestrian connections between the new lot and other parts of the BHS campus; and (c) fencing, vegetative screening, new lighting, and other landscape and stormwater management improvements.
- Phase II of the Project involves: (a) the creation of on-site parking for all students by converting 12 existing gravel parking spaces in the Zamboni Lot to a 26-space paved lot; (b) the conversion of 17 of the existing 35 parking spaces in the Upper Lot to a new drop-off area and pedestrian pathway; (c) the resurfacing and restriping of the remaining area of the Upper Lot to contain 18 parking spaces and 8 bike racks; (d) associated improvements to existing or construction of new curb cuts, including for access and egress of buses serving School activities; and (e) associated fencing and landscape improvements.
- Phase III of the Project involves the construction of a new Facilities Building and Yard for: (a) the storage of small buses, trailers, boats, maintenance vehicles, salt and sand to address on-campus winter conditions, and equipment serving the School’s needs including landscaping equipment and other tools; and (b) the installation of two concrete-mounted, double-walled fuel storage tanks (gasoline and diesel) for fueling the School’s vehicles and equipment stored or maintained in the Facilities Building and Yard.

A. The Dover Amendment

As it relates to educational uses, M.G.L. c. 40A, §3 provides in relevant part:

No zoning ordinance or by-law shall ... prohibit, regulate, or restrict the use of land or structures for ... educational purposes on land owned or leased ... 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 or building coverage requirements.

The Dover Amendment “seeks to strike a balance between preventing local discrimination against an educational use ... and honoring legitimate municipal concerns that typically find expression in local zoning laws.” Trustees of Tufts College v. City of Medford, 415 Mass. 753 (1993).

B. Educational uses protected by the Dover Amendment include uses accessory to the main educational use.

BHS is a nonprofit educational institution providing a formal middle school and high school education in the 7th through 12th grades and, therefore, its land and structures may be used for educational purposes consistent with the Dover Amendment and the case law interpreting it. In addition to the main educational use of land and structures, educational uses protected by the Dover Amendment include those “secondary functions incidental to the main educational purpose” of the institution, Radcliffe College v. Cambridge, 350 Mass. 613, 618 (1966), and those that are “directly related to the function of the ... educational institution on its ... campus.” The Bible Speaks vs. Board of Appeals of Lenox, 8 Mass.App.Ct. 19, 31 (1979).

Thus, in Radcliffe College, the Supreme Judicial Court held that “[p]roviding for the parking or housing of the automobiles of students, instructors, and employees of an educational institution is within the broad scope of the educational powers of the institution just as is providing for the feeding and housing of such personnel.” Radcliffe College, 350 Mass. at 618. See also Trustees of Tufts College, 415 Mass. 757 (campus parking an educational use subject to Dover Amendment); Newbury Junior College v. Town of Brookline, 19 Mass.App.Ct. 197 (1985) (dormitory use an educational use subject to Dover Amendment). And in The Bible Speaks vs. Board of Appeals of Lenox, 8 Mass.App.Ct. 19, 31 (1979), the court concluded that the installation of athletic-field lighting and the construction of a snack bar for those attending athletic events constituted uses directly related to the functioning of the campus and, therefore, were protected by the Dover Amendment.

Accordingly, the uses proposed by the Project fall well within the scope of accessory uses at educational institutions that are protected by the Dover Amendment. The Project proposes off-street parking for students, faculty, staff and visitors attending School functions, as well as residential uses for faculty and staff, all of which are specifically identified as educational uses in Radcliffe College. The proposed Facilities Building and Yard directly relate to the operation of the campus, providing storage for School vehicles used for academic or athletic trips as well as maintenance and other equipment to be used in support of School activities – uses that arguably have a much more direct relationship to campus operations than the athletic-field lights and snack bar in The Bible Speaks. Moreover, all of these uses – off-street parking for

students, faculty and staff, residential uses, and facilities/maintenance uses – already exist on the campus today. The purpose of the Project, to be described in greater detail throughout the hearings, is to rationalize these various uses to improve overall campus operations and address existing parking constraints.

C. Scope of Reasonable Regulation of Educational Uses under the Dover Amendment

Under the Dover Amendment, land and structures used for educational purposes “may be subject to reasonable regulations concerning the bulk and height of structures, and determining yard sizes, lot area, setbacks, open space, parking or building coverage requirements.” M.G.L. c. 40A, s. 3. However, a municipality “may not, through the guise of regulating bulk and dimensional requirements under the enabling statute, proceed to ‘nullify’ the use exemption permitted to an educational institution.” The Bible Speaks, 8 Mass.App.Ct. 19, 31 (1979), *citing Sisters of the Holy Cross v. Brookline*, 347 Mass. 486, 494 (1964)) *see also Newbury Junior College*, 19 Mass.App.Ct. 197, 206-207 (1985) (“a municipality may not, through the exercise of [other authority], undo the Dover Amendment by forbidding the use of land for educational purposes on general grounds of adverse impact on the neighborhood or similar land use consideration”). I note that the Project plans indicate that the Project complies with all regulations in the Zoning By-law concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, and building coverage requirements. See Project Plans, Sheet CS-100, Key Plan (providing zoning table and indicating compliance with maximum building height, minimum lot area, minimum setbacks, minimum open space, and maximum lot coverage requirements). Thus, BHS has advanced the Project in a way that conforms to these requirements of the Zoning Bylaw.

Cases upholding the application of zoning regulations to educational uses have done so where the regulation did not “unreasonably impede the protected use” while also “appreciably advancing critical municipal goals.” Martin v. The Corporation of the Presiding Bishop of the Church of Jesus Christ of Later-Day Saints, 434 Mass. 141, 148 (2001). For example, cases applying off-street parking requirements to educational uses have been found reasonable where the municipality sought to address pressing parking and traffic concerns by requiring **more** off-street parking than proposed by the educational institution. In Trustees of Tufts College, the court concluded that application of the parking requirements in the zoning ordinance was reasonable, due to parking problems on the campus and the public streets adjacent to the campus. Similarly, in Radcliffe College, the court found it reasonable to require compliance with applicable parking requirements (again, to require **more** parking than proposed by the educational institution) because of a lack of on-street parking and the adverse impacts related to public safety associated with overcrowded streets. And in Trustees of Tufts College, a setback requirement reasonably could be imposed where it reduced congestion and enhanced safety along a major public way that was heavily travelled.

Unlike Tufts and Radcliffe College, there is no specific minimum (or maximum) number of parking spaces required under the Zoning By-law from which the School is seeking some relief. See Zoning By-law Section 5.12(i) (number of parking spaces to be determined by the Building Inspector or by the Planning Board in cases referred to it for Design and Site Plan Review, based upon evidence from similar uses under similar circumstances). In the context of an educational use protected by the Dover Amendment, such as this one, this provision must be applied reasonably and any conditions related to parking must appreciably advance a critical



municipal concern. The proposed parking layout and associated Transportation Impact Assessment prepared by Vanasse & Associates Inc. and submitted with the Application (the “TIA”) will be discussed in greater detail during future hearings. However, the TIA does conclude that, among other things, the Project will not result in a material increase in traffic and the proposed parking supply is appropriately sized to accommodate the existing parking demands of the campus and to eliminate reliance on off-campus parking to meet current needs.

Based upon the foregoing, I respectfully submit that the Project proposes uses that fall within the broad scope of educational uses protected by the Dover Amendment.