

BUCHANAN & ASSOCIATES
100 CAMBRIDGE STREET, 14TH FLOOR
BOSTON, MA 02114

Jamy Buchanan Madeja, Esq.
JMadeja@BuchananAssociates.com

Office: (617) 227-8410
Mobile: (617) 256-8491

VIA EMAIL (ayogurtian@belmont-ma-gov)

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Comments by Jamy B. Madeja, Esq. jmadeja@buchananassociates.com legal counsel on behalf of Belmont Concerned Citizenry re: Belmont Hill School Proposal, Case No. 16, 350 Prospect St. Belmont, Mass

Below are the comments which would have been delivered orally, had oral commentary been allowed at the most recent and first Planning Board hearing regarding the above-referenced application. Instead, as the entire public hearing was taken up with presentation by the proponent of the project, presentation by the Chair of the rules for the review process, and questions by the Planning Board, this document is being submitted in hopes of reaching the Planning Board for reconsideration of its intended review process.

To the Planning Board members, thank you for your volunteer service, in an often thankless yet very necessary job on behalf of your community. The community, as expressed in its legally enacted bylaws, has extremely reasonable expectations and goals, which apply to all developers. The Dover Amendment does not exempt a development project from review, nor has this project been determined by anyone as being entitled to Dover Amendment altered review standards or process.

Approval under Design and Site Plan Review of this Belmont Hill School project requires a majority vote of the five (5) members of the Planning Board. The Bylaw which governs the Planning Board decisions expects a “no” vote until all the requirements are met. Section 7.3.2(e)

1. It should first be decided by the Town of Belmont whether it intends to review this proposed development project as subject to the Dover Amendment or not.¹ The

¹ Regarding who makes the decision for the Town of Belmont on the application of the Dover Amendment, while legal counsel is surely to be consulted, Section 7.2 of the Zoning By-Law requires Building Inspector certification that “land may not be substantially altered or changed in principal use without certification of the Building Inspector that such action is in compliance with then applicable zoning (or review all necessary permits are in place). This section suggests the land area proposed for clear cutting may not be altered for parking and a building without the Building Inspector having established what is the applicable zoning and whether it applies.

Planning Board seems to be stepping back from its usual review criteria before even knowing if it is obliged to do so. Also, respectfully, even if the development is to be considered subject to the Dover Amendment, it is entirely within the rights and obligations of the Planning Board to regulate the bulk and height of structures, lot area, setbacks, open space, parking and building requirements. [The Planning Board chair seemed to say the Planning Board could not “second guess” the developer on how much parking or building was needed. Respectfully, this statement if it is what the Chair intended, is not legally correct.]

Regarding the alleged application of the Dover Amendment to this parking lot and maintenance building, the Dover Amendment exists to prevent exclusion of educational and religious institutions from Massachusetts cities and towns, not to free these institutions from any reasonable community development requirements. This parking lot and maintenance structure after clear cutting many acres of woodlands may or may not be a protected “educational use.” Even if it is:

The statute states that, “No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building nor shall any such ordinance or by-law prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or 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 and building coverage requirements.**”

2. The Planning Board should require alternatives be analyzed and detailed, not simply referenced as having been considered and rejected. It is up to the well-established, tremendously well-funded Belmont Hill School as the developer to provide alternatives analyses. It is not up to the Town or the concerned residents to do BHS’s design work for them. We eagerly await alternatives analyzing the goals we list below, all of which are in the local bylaws applicable to all developers. No reputable developer would propose a project of this size without presenting alternatives to the preferred option.

The Belmont Hill School proposal contains no alternatives to clear cutting many acres of long-established woodlands in favor of a desired new parking lot and maintenance/facilities building. The Joni Mitchell song of paving paradise and putting up a parking lot is not far afield.

BHS should provide alternatives developed with professionals’ worthy of BHS’s reputation and standing as a leadership institution. All respectable developers must do this. The

planning Board can and should require this, along with a Development Impact Report. Examples of alternatives to be considered include a smaller facilities building and a structured parking garage.

3. Require a Development Impact Report.

7.3.5 (a) the Planning Board may require completion of a Development Impact Report. PLEASE require this DIR. The developer seems to be avoiding the state MEPA (Mass Environmental Policy Act) review process by segmenting the project to avoid state approvals. This is why the Belmont community enacted this local bylaw to require Development Impact Reports to look at developments holistically and avoid, minimize, and mitigate impacts.

7.5.1 Purpose of a DIR is to identify the environmental/social/physical and/or infrastructure impacts of the requested activity and to determine if the impacts can be mitigated. The DIR shall identify the methods to be used to mitigate and to minimize adverse impacts on the neighborhood and the Town.

7.5.2(a) the Planning Board has the authority to require a DIR upon the submittal of any application for Design and Site Plan Review Approval. PLEASE REQUIRE. The DIR per your bylaw studies the physical environmental and impacts, surface water and stormwater, erosion controls, town services and infrastructure.

4. Section 7.3 re Design and Site Plan Review:

(purpose)

7.3.1 (a) to maintain the integrity and character of all zoning districts and adjoining zones.

(b) to ensure that development ...is planned and designed to minimize impacts on its abutters, the neighborhood, and the environment. This proposal so far has dramatic and negative impact on its abutters, the neighborhood, AND the environment. Specific negative impacts include exponential increase in traffic, loss of open space and clean air from tree canopy, loss of woodland habitat and loss of residential character of the area.

7.3.2(a): Design and Site Plan Review is required for any new building...or a proposal that results in the need for six (6) or more parking spaces...This proposal vastly exceeds that threshold, further evidencing the need for a DIR.

7.3.2(b) requires notice to abutters which was NOT SENT by BHS for this recent public hearing. Only after a call to the Town of Belmont Office of Community Development was made was the already-published agenda

amended to state that the prior withdrawn application materials still “counted”, meaning “read those for the new application.” Yet, no new notices of the Planning Board process were sent to abutters.

7.3.2(e) if the Design and Site Plan Review Application does not conform to the requirements of these By-Laws, the Planning Board shall identify these deficiencies in writing and may deny approval. There needs to be a new application after notification, and one which meets the above criteria for alternatives considered, before hearing and further consideration. Until then, the application should be denied.

Section 7.3.5 (b) requires parking and loading, and internal traffic circulation and traffic controls not adequately shown and analyzed, nor are the landscaping requirements or the environmental controls.

5. Our Goals, which we also see as the Planning Board’s goals according to the Belmont bylaw:

- Eliminate or reduce clear cutting of trees which provide substantial clean air canopy, stormwater aspiration and woodland habitat.

- Show a structured parking alternative as well as the single ground level proposal as among the alternatives seriously analyzed and presented.

- Re-evaluate maintenance building with sustainable energy use and footprint in mind for both the building and the vehicles projected to need the building, including changes in height and density.

- Show alternative fueled vehicles for the future use and alternative energy use in the building itself and reduced footprint of the building as alternatives to consider

- Produce transportation analyses for bringing large numbers of people on site for event occasions using busing from same destinations rather than all single use cars, to reduce need for individual parking and reduce traffic congestion and air quality impacts as well as need for parking. Off-site lots which are already environmentally degraded and not in residential neighborhoods should also be considered for these traffic-intense occasions.

- After these analyses of alternatives, with what remains as a transportation “need”, show a transportation management plan to minimize impact on the community and maximize safety.

-After these analyses of areas to be altered, propose protective landscaped borders to retain the residential neighborhood experience and protect the community from the intrusion of nuisance noise and lighting.

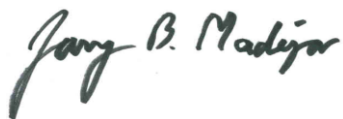
-Show the documentation of statements that the lighting plans will be compliant with night sky lighting elimination, and minimization of the lighting impacts on the environment and on human neighborhood needs.

-Demonstrate stormwater management will not alter off-site or on-site wetlands, including the established wetlands and pond across the street.

-Dramatically improve community communications with sincere discussion before forcing application to a vote by the Town of Belmont. 2,000 people have already expressed concern and desire for changed plans, over ½ of whom are Belmont residents. Respect their concerns and pause the proposals to at least attempt to reach consensus. Use of the Planning Board current format of segmenting the project into “issue sessions” only works if alternative proposals have already been presented and are on the table for comparative purposes, preferably after a DIR.

Thank you again for your service. We respectfully hope to hear before the next “public hearing” if and when public comment will be taken and if any of our comments above can be implemented by the Planning Board in requiring alternatives analyses and a DIR.

Cordially,

A handwritten signature in black ink, reading "Jamy B. Madeja". The signature is written in a cursive, flowing style.

Jamy B. Madeja, Esq.

cc: Justin Roe
Tanya Austin