



January 11, 2021

**BY ELECTRONIC MAIL: niannuzzi@belmont-ma.gov
AND BY FIRST CLASS MAIL**

Belmont Zoning Board of Appeals
Belmont Town Hall
455 Concord Avenue
Belmont, MA 02478

Re: Application for Comprehensive Permit – 91 Beatrice Circle, Belmont

Dear Members of the Board:

This firm represents neighbors and abutters¹ to the proposed 12-unit apartment project on 23,496 square feet of land located at 91 Beatrice Circle, Belmont (the “Project” and the “Project Site”), which is the subject of a pending application for a comprehensive permit under General Laws Chapter 40B, Sections 20-23 proposed by Comprehensive Land Holdings, LLC (the “Developer”). The purpose of this letter is to put on record the Neighbors’ concerns with the Project, and to propose specific steps for the Belmont Board of Appeals to take during its public hearing.

I. Summary

The Project represents an excessive, over-utilization of this approximately half-acre lot, resulting in a number of material adverse impacts on the neighborhood and the Town generally. Specifically, as discussed below, access to the Project is problematic on a number of levels. First, the Project’s sole access is from Frontage Road, a service road that runs parallel to a state highway (Route 2), and which effectively operates as a high-speed on-ramp to Route 2. The approach to the Project driveway’s intersection is complicated by a steep downgrade limiting sight lines, in conjunction with a pedestrian footbridge and crosswalk in front of the driveway. The Project driveway itself will also have a steep downgrade, impairing driver visibility as they approach Frontage Road, the sidewalk and crosswalk, endangering public safety, especially during wet or icy conditions.²

^{1/} Our clients are Sam and Chris Alexander, 43 Beatrice Circle; Tracy and David Ramsey, 53 Beatrice Circle; Karleen and Tim Fallon, 63 Beatrice Circle; Kristen Boardman and Mark Stapp, 75 Beatrice Circle; Dan and Valerie Devine, 37 Beatrice Circle; Daniel and Beatrice Kleppner, 19 Beatrice Circle; Portia and Ryan Thompson, 11 Beatrice Circle; and Camil Sayegh, 26 Beatrice Circle.

^{2/} Frontage Road is shown on some maps as “Hinckley Way.”

Further, there is inadequate emergency vehicle access, no accommodation for visitor parking or loading, and insufficient buffers with residential abutters notwithstanding the design changes made during the project eligibility review process with MassHousing. The impacts from the Project's congestion (light pollution, noise pollution, loss of privacy, etc.) will inevitably spill over onto neighboring properties, with Building Nos. 9 through 12 set back a mere 10 – 20 feet from the rear property line. Furthermore, the excavation required to construct the Project will likely exacerbate these impacts by destroying several mature trees on this rear property line, wiping out the natural screening that Beatrice Circle residents currently enjoy from not only the structures on this neighboring property, but also the 8-lane state highway just a few hundred feet to the north of the Project Site.

The design, massing, bulk, height, scale, absence of any open space, and lack of reasonable setbacks are all in stark contrast to the neighborhood context in which the Project is located, violating the Chapter 40B Guidelines' mandate to provide "an appropriate transition to adjoining sites." The size and scale of the Project could be modulated to better conform to the prevailing density of development and architectural styles in the neighborhood, but instead are driven by a desire to maximize the number of condos, and consequently, profits from this half-acre parcel.

II. Jurisdictional Issues

You have received a letter this week from Attorney Timothy Fallon, one of the neighbors to the Project, explaining that the Board has the right to invoke the "general land area minimum" ("GLAM") safe harbor under Chapter 40B. The GLAM is one of three statutory safe harbors under Chapter 40B which can and should be exercised whenever a comprehensive permit application is filed. For towns that have affordable housing on sites that comprise at least 1.5% of the land area zoned for residential, commercial or industrial use, any decision made on a comprehensive permit application is considered, per se, "consistent with local needs." In other words, when a town reaches the 1.5% GLAM threshold, the local zoning board may approve or deny a Chapter 40B project with impunity.

According to our calculations, Belmont surpasses the 1.5% Safe Harbor threshold and, as such, the Board may and should invoke the GLAM safe harbor. However, to do so, the Board must put the Developer on notice of this defense "[w]ithin 15 days of the opening of the local hearing for the Comprehensive permit." 760 CMR 56.03(8)(a). The Board's decision to raise this defense must be made during the public hearing. Importantly, invoking the GLAM safe harbor within this 15-day time period is not a *denial* of the Project; rather, it simply means that after the Board conducts its public hearing on the application, whatever decision it renders, whether it is an approval with conditions or a denial, will be upheld as a matter of law. The Chapter 40B regulations allow for the Developer to make an immediate appeal from a safe harbor determination, which appeal is made to the state Department of Housing and Community Development ("DHCD"). If an appeal is made, the Board's public hearing is stayed pending the outcome of the appeal.

As Attorney Fallon explained, calculation of a town's status under the GLAM requires the collection and analysis of data from several sources. Over the last couple of weeks, Belmont residents have been gathering information, and the latest calculation indicates that the Town is at 1.79%. This analysis can be further refined, but the timing is critical – if the safe harbor is not invoked by January 26, 2021, the Board waives the right to use this defense for the Project. If after further review the Board or the Board of Selectmen decide not to pursue this argument, the defense can be withdrawn and the Board's public hearing will proceed. Therefore, we strongly urge the Board to invoke the safe harbor this evening based on the credible, good faith calculations that Attorney Fallon provided to you.

III. Legal Standard of Review

Probably the most significant function of Chapter 40B is to empower the local zoning board to waive any local bylaw, regulation, policy or procedure that would render the construction of the project "uneconomic." G.L. c. 40B, §20. Thus, the most important task of the Board's public hearing is to evaluate the Developer's waiver requests, and determine whether the public health, safety, environmental or planning concerns presented by those waivers outweigh the regional need for housing (in which case they should be denied).

There is a prevailing myth that local bylaws and regulations do not apply to Chapter 40B projects. This is wrong. Local rules apply to Chapter 40B projects unless the developer can prove that waivers are needed to make the project economically viable, and that the need for affordable housing outweighs the "local concerns" protected by the local bylaws and regulations for which waivers are sought. This balancing test was illustrated in the recent case of Reynolds v. Stow Zoning Bd. of Appeals, Appeals Court No. 14-P-663 (Sept. 15, 2015), where the Court ruled that it was "unreasonable" for the zoning board to grant waivers from restrictive local bylaws given unmitigated environmental and health impacts. To put this standard in plain English, the Board need only grant waivers to the extent they are necessary to make the project economically viable.

IV. Substantive Issues

A. Site Access

The intersection of the Project driveway and Frontage Road suffers from poor sight lines, attributable to the crest of Frontage Road to the west. Frontage Road is a service road to Route 2, providing direct access to an on-ramp to Route 2 eastbound. Compounding the deficient sight line is the steep downgrade of Frontage Road eastbound (approx. 8%), and traffic speeds at this location.

There are no state regulations governing minimum sight distances at intersections, but there are widely-accepted industry standards published in the manual "Geometric Design of Highways and Streets" by the American Association of State Highway and Transportation Officials ("AASHTO"). The Massachusetts Department of Transportation ("MassDOT") Project Development and Design Guide, Chapter 3, contains a section on sight distances, and states that

project designers should refer to the AASHTO Manual “for the use and calculation of sight distances.” § 3.7 (p. 3-37). The AASHTO standards have been accepted by state Housing Appeals Committee in Chapter 40B appeals as minimum criteria for public safety. See, *Washington Green Development, LLC v. Groton ZBA*, HAC No. 04-09 (Sept. 20, 2005) (a project’s failure to meet minimum AASHTO sight distances represent a “public safety hazard” that, if unmitigated, would outweigh the need for affordable housing).

The crest of Frontage Road is approximately 400 – 500 feet west of, and uphill from, the intersection, close enough to warrant a comprehensive evaluation given the steep downgrade. According to AASHTO standards, and as a matter of physics, drivers travelling along a steep downgrade require more time to decelerate or stop in order to avoid colliding with an object or another vehicle in its path, and consequently the minimum sight distance required under AASHTO for downgrade intersecting streets is longer than for flat streets or upgrade streets. See, AASHTO, *Geometric Design of Highways and Streets* (2018), Table 9-5.

The Developer provided a traffic impact report with its Chapter 40B application, which contains a discussion on available stopping and intersection sight distances at the Project intersection. The report suggests that there is adequate sight distance at this intersection under AASHTO standards, but the report fails to include the geometric diagrams with scaled distances that proves this. Moreover, the speed data that the Developer uses in the report was collected on June 30 and July 1, 2020, a period of time when most of Boston and the suburbs were in quarantine and not commuting to work or school.³ As such, the data collected are entirely unreliable as a statistical sample.

The Developer is proposing to re-align the pedestrian crosswalk that is currently directly opposite the project driveway. This crosswalk delineates the path for pedestrians walking between the sidewalk on the south side of Frontage Road and the pedestrian bridge over Route 2. The proposed new location of the crosswalk is still dangerous. Drivers exiting the driveway will be entering Frontage Road directly adjacent to the crosswalk, and therefore will need to be looking for pedestrians who will be crossing Frontage Road from either side, as well as crossing in front of the driveway entrance to get to the bus stop east of the driveway. The driveway’s approach to the Frontage Road sidewalk is a 12% downgrade (elevation 224’ to 218’, over 50 feet), further complicating intersection operations.

MassDOT’s *Project Development and Design Guide* states that “[s]eparation of conflict areas is recognized as an effective way to improve pedestrian, bicycle, and vehicle safety.” See, §15.2.3.1. Accidents are more likely to occur when drivers have to worry about multiple conflict points, and the complexity of this intersection is exacerbated by deficient sight distances and steep grades. The Developer’s traffic study fails to provide a meaningful analysis of the operation of the proposed intersection. We strongly recommend that the Board retain a competent traffic engineer to peer review these issues.

³ The Developer should also confirm that on June 30 and July 1 there was no road construction occurring at this location of Frontage Road. During the summer of 2020, road crews were seen performing work near the Project Site on Frontage Road. Road construction slows down traffic, and therefore speed data collected during such a period would not be a good representative sample.

B. Emergency Access Arrangements

Relatedly, the Project's emergency vehicle access is inadequate under state regulations. The Project does not comply with the state Fire Prevention Code mandate that dead-end fire access roads in excess of 150 feet must have an adequate turnaround area. See, 527 CMR Section 1 (NFPA § 18.2.3.4.4). The length of the driveway from Frontage Road to its western end is approximately 270 feet, and there is no turnaround area at the end of the driveway. Further, under § 18.2.3.4.6.1 of the Fire Code, the grade of a fire access road cannot exceed 10% unless otherwise approved by the fire chief. As noted above, the grade of the driveway is 12%.

The Developer's traffic report includes a "swept path" analysis, showing how Belmont's ladder truck will navigate the narrow Project driveway in the event of a fire emergency. This analysis does not comply with the provisions of the Fire Code that prohibit "the use of the opposite travel lane [] in the design of all new fire apparatus access roads." See, NFPA § 18.2.3.4.8. The ladder truck will need to use the entire width of the driveway to enter and exit the Project, and when taking a right turn out of the Project driveway, will have to use the opposite travel lane in Frontage Road.

Compounding the narrow driveway and the nonconforming dead-end segments, each proposed home has a garage that can accommodate only one vehicle. Since the units will have no attics, and there is relatively little storage area, one can expect that the garages will be used for storage. The proposed driveway cannot safely accommodate on-street parking. While the Developer may stipulate that on-street parking will be prohibited, the proposed site design is setting the Project up for inevitable tension, where there will be demand for more parking than what is available, and enforcement of the parking rules is impractical.

The proposed unit to parking ratio (1.66 spaces per unit) is low compared to the Zoning Bylaw requirement of 2 spaces per unit. The demand for on-site parking may be mitigated in part by the MBTA bus stop on Frontage Road, but bus stop locations are not permanent, and are more fleeting than train stations given the physical infrastructure involved. Further, the Frontage Road bus stop is convenient for getting to the Alewife train station, but does not provide access to most parts of Belmont, including its schools, parks, town offices, and retail amenities. The closest shopping and offices are a mile away, making an alternative pedestrian mode of transportation impractical.

We would expect that the proposed 4-bedroom apartments will attract families, not single adults, and therefore an increased level of daily trips. If on-site parking is limited to 1.66 spaces per unit, one can reasonably expect an above-average level of temporary vehicle trips from services like Uber and Lyft, grocery delivery services, take-out delivery, Amazon, and the like. The Project as designed does not accommodate any off-street parking or loading for these vehicles. Nor does it accommodate any loading areas for garbage trucks or moving trucks. Since this is a rental project, tenants will be constantly moving in and moving out. Given the lack of any visitor parking spaces and loading zones, temporary vehicle trips will inevitably

interfere with the circulation of regular traffic in the driveway, and potentially block emergency vehicle access.

C. Site Design – Privacy and Protection of Existing Trees

As the site section plans illustrate, the Project will loom over the abutting single-family homes on Beatrice Circle, particularly those downhill to the east and south. Buildings 9 through 12 are particularly intrusive to the existing neighbors at 29, 37 and 43 Beatrice Circle. Their backyards are a mere 10-20 feet from proposed buildings. While we understand that zoning dimensional requirements are commonly waived in Chapter 40B applications, such waivers should be tempered to protect the privacy of abutters. To put this in context, in the underlying SR-A zoning district, buildings must have a 30-foot front yard setback and a 40-foot rear yard setback.

There are many mature trees situated on the property line, or adjacent to it on the neighbors' properties, that are at risk of destruction from excavation. Based on the preliminary plans, one can expect excavation at least ten feet below current grade. The garage floor of the rear buildings appears to be at elevation 226' – 227'. This building will presumably require a slab foundation with footings that will be installed at least five feet below grade (i.e., 221 feet). With only 10-20 feet between the buildings and the rear property line, there will undoubtedly be significant excavation close to the property lines shared with the neighbors at 29, 37 and 43 Beatrice Circle, which will likely occur within the protective root zones of the property line trees.

Mature trees in this neighborhood serve a critical function of screening air pollution, particularly noise and exhaust, from Route 2 – an eight-lane highway that is only 75 feet north of the Project Site. While we appreciate that the Site's proximity to this commuter corridor is an advantage, it should not come at the expense of the Project's neighbors.

D. Site Design – Scale, Massing and Open Space

All the proposed units will have 3 or 4 bedrooms, which will likely attract families with children, but the Developer has proposed no useable open space or back yard areas for children to play outdoors, or even for adults to enjoy passive recreation.⁴ Having covered all of the useable areas on the Site with buildings and parking, there is simply no room left for a lawn or other amenity - the Developer has chosen a Project design that maximizes its profit potential. The over-utilization of this Site is excessive, is not in the spirit of affordable housing, and should be reconsidered. Further, the scale and massing of the proposed 3- and 4-story buildings is totally inconsistent with the surrounding residential neighborhood, comprised solely of single-family homes. As such, the Project doesn't comport with the Chapter 40B Guidelines adopted by the Department of Housing and Community Development, which proscribe that:

⁴ The area between the northerly property line and Frontage Road is wooded, but is not part of the Project Site.

[when developing multi-family housing in the context of an existing single-family neighborhood], it is important to mitigate the height and scale of the buildings to adjoining sites.

[T]he massing of the project should be modulated and/or stepped in perceived height, bulk and scale to create an appropriate transition to adjoining sites.

DHCD's "Handbook – Approach to Chapter 40B Design Reviews" suggests that projects can be deliberately designed to minimize disruption with neighborhood patterns.

Affordable housing projects under c.40B often have design elements that are different from the surrounding context as described by the terms used in the regulations; e.g., use, scale. However, with careful design and consideration of the project elements in relationship to the adjacent streets and properties, the projects can better integrate with the surrounding context.

The Project's buildings are not "modulated" or "mitigated" in any way to provide an "appropriate transition" to the abutting residential properties. A smaller project, perhaps consisting of detached single-family buildings with reasonable external and internal setbacks, would form a more appropriate transition to the low-density housing surrounding the Site.⁵

Thank you for the opportunity to provide comments on this application.

Very truly yours,


Daniel C. Hill

cc: Ted Regnante, Esq.
George Hall, Esq.
Belmont Select Board
Clients

⁵ The state Housing Appeals Committee ("HAC") has recognized that a project can be so abhorrent to generally-accepted residential design principles to warrant a denial. **Error! Main Document Only.** Dennis Housing Corp. v. Dennis Board of Appeals, HAC No. 01-02 (May 7, 2002) (zoning board's denial of a 50-unit apartment building on a 3.2-acre site was consistent with local needs because "the proposed design over-utilizes the site").