

**TOWN OF BELMONT  
ZONING BOARD OF APPEALS**

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**CASE NO:** 23-02

**PETITIONER/OWNER:** Woodlands at Belmont Hills II Condominium Trust

**PROPERTY:** Olmsted Drive

**DATE OF PUBLIC HEARING:** January 9, 2023

**MEMBERS SITTING:** Nicholas A. Iannuzzi Jr., Chair  
Demetrios (Jim) Zarkadas, Vice Chair  
Teresa MacNutt  
Casey Williams  
Andrew Kelley  
Elliott Daniels, Associate Member  
David Stiff, Associate Member

**MEMBERS VOTING:** Nicholas A. Iannuzzi Jr., Chair  
Demetrios (Jim) Zarkadas, Vice Chair  
Teresa MacNutt  
Casey Williams  
Andrew Kelley

Pursuant to M.G.L. c. 40A, § 15, this matter came before the Zoning Board of Appeals (“Board”) of the Town of Belmont (“Town”) acting as the Appeals Board under the Zoning By-Law of the Town of Belmont, Massachusetts (“By-Law”) and Chapter 40A of the Massachusetts General Law (the “Zoning Act”) to consider the appeal by Woodlands at Belmont Hills II Condominium Trust (“Petitioner”), located at Olmsted Drive, of the denial of a zoning enforcement request.

**Proposal**

Petitioner is appealing the decision by the Town of Belmont Inspector of Buildings, acting as the Zoning Enforcement Officer per Section 7.1.1 of the Belmont Zoning By-law, to deny a zoning enforcement request, as presented in a letter (“denial letter”) dated September 1, 2022. The Petitioner filed an appeal to the Board dated September 29, 2022. The appeal requests that the Board “**order** the Building Inspector to enforce the 2001 DPSPA by **ordering** McLean to build the Upham Bowl Detention Improvements as required, permitted, and contemplated by the 2001 DPSPA.”

**Public Hearings**

The Board held a duly advertised public hearing conducted via ZOOM videoconference (in connection with current restrictions regarding social distancing in connection with COVID-19) on January 9, 2023 and closed the hearing on January 9, 2023. The Petitioner was represented by Edmund Allcock. The Town was represented by Town Counsel George Hall, and Paul Kominers. Johanna W. Schneider and Stephen W. Kidder were present for McLean Hospital.

Chair Nick Iannuzzi reviewed the history of the zoning of the site and the Petitioner's enforcement request. He then invited Attorney Allcock to speak.

Attorney Allcock argued that the 2001 Design and Site Plan Approval for McLean Zone 3 ("2001 DSPA") called for a detention pond to be constructed in the Uphams Bowl after Olmsted Drive was constructed, and because Olmsted Drive had been constructed in 2006, the Uphams Bowl detention pond needed to be constructed as well in order to address a possible future "significant [stormwater] event" as the McLean campus continues to be build out.

Attorney Schneider responded that McLean agreed with the denial letter. According to Schneider, the stormwater issues Petitioner raised were raised and evaluated in full in connection with a Planning Board Design and Site Plan Approval process in 2022, and the Planning Board found no issues and no need for additional mitigation.

Glenn Clancy, Inspector of Buildings, stated that Attorney Allcock's comments were better directed to the Planning Board, and he had denied zoning enforcement because the Petitioner had not identified any zoning violation. Clancy added that, as he recalled conversations with representatives of McLean in 2006 about the construction of Olmsted Drive, McLean intended to honor the 2001 DSPA's conditions "as well as they could" in light of the fact that those conditions were not designed to address the impacts of Olmsted Drive alone.

Attorney Hall then stated that there was no violation of either an express condition of a zoning bylaw or of a zoning approval. The question was whether the construction of Olmsted Drive alone was enough to trigger the requirement under the 2001 DSPA to construct the Uphams Bowl detention area. By late 2022, it certainly was not; a new project, with its own stormwater mitigation infrastructure, had since been approved for Zone 3.

The Chair opened the floor to Board members to ask questions.

Teresa MacNutt asked why there was any need to develop stormwater mitigation infrastructure comparable to what was permitted under the 2001 approval when the project approved for the same site in 2022 involved fewer units. Inspector Clancy responded that the permitting mechanism for projects in the McLean District requires stormwater management on a per-project basis. Attorney Allcock argued that the Planning Board erred in its 2022 Zone 3 Design and Site Plan Approval process by looking only to Zone 3 stormwater management, and that the 2001 permit remained valid. Attorney Hall noted that the number of units was not necessarily indicative of the stormwater impacts of the project.

The Chair asked whether Attorneys Schneider or Hall attended Planning Board meetings on the 2022 Design and Site Plan Approval process. Neither had. Attorney Hall added that Design and Site Plan Approvals in the McLean District are zone-by-zone, and there is no omnibus permit or master plan for the McLean District.

Andrew Kelley asked Attorney Hall whether site plan approvals generally expire. Attorney Hall explained that while site plan approvals generally expire, the Belmont Zoning Bylaw may treat Design

and Site Plan Approvals for the McLean District somewhat differently. However, at any time since Olmsted Drive was constructed, the Petitioner could have argued to the Planning Board that the 2001 DSPA should be modified to account for the fact that only Olmsted Drive was constructed. The Petitioner never did so.

The Chair opened the floor to members of the public to comment. Robert Eckert spoke in support of the Petitioner. He stated that the 6A bylaw required a permit for road construction, and that in this case, the 2001 DSPA said that the Upham Bowl detention area was to be constructed before Olmsted Drive.

**Deliberation and Decision**

The Board deliberated on January 9, 2023. The members were unanimous that the Petitioner had not identified a zoning violation subject to enforcement.

**Accordingly, upon motion duly made by Nicholas Iannuzzi Jr. and seconded by Casey Williams, Board members Nicholas Iannuzzi Jr., Jim Zarkadas, Teresa MacNutt, Casey Williams and Andrew Kelley voted to uphold the decision of the Building Inspector and deny the Petitioner’s appeal.**

On Behalf of the Board,

Dated: January 26, 2023



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Gabriel Distler  
Staff Planner,  
Office off Community Development