

# ANDERSON KREIGER

To: Christopher Ryan, Ph.D., AICP  
Director of Planning & Building  
Town of Belmont

From: George A. Hall, Jr.  
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Re: 3A Zoning

Date: July 28, 2024

As you know, Section 3A requires Belmont to update its Zoning By-Law to “provide[] for at least 1 district of reasonable size in which multi-family housing is permitted as of right.” You asked us to identify any areas of the existing Zoning By-law that could make projects covered by 3A zoning not “as of right.” This memorandum summarizes the results of our review.

After a review of the full By-Law, our only significant recommendations concern Section 7.3, Design and Site Plan Review: (1) clarifying approval criteria while expanding review criteria, and (2) enabling outside-consultant review while reserving Development Impact Reports (“DIR”) for discretionary processes such as special permit applications.

## **(1) Clarifying Approval Criteria and Expanding Review Criteria**

In general, Design and Site Plan Review cannot be used as a tool to impose discretionary review on otherwise as-of-right uses. *Prudential Ins. Co. of Am. v. Board of Appeals of Westwood*, 23 Mass. App. Ct. 278 (1986). Belmont’s current Design and Site Plan Review provisions, appropriately, make clear that an applicant is entitled to Design and Site Plan Approval so long as the project conforms with all relevant provisions of the By-Law. Zoning By-Law § 7.3.5(b). We recommend making that point unambiguous to avoid any confusion among applicants, the state, or Town officials. *See Proposed Amended Zoning By-Law § 7.3.5*. In parallel, we recommend expanding the list of criteria the Planning Board can raise during Design and Site Plan Review to make clear that the Planning Board may inquire into or make recommendations for any aspect of the site plan. *See Proposed Amended Zoning By-Law § 7.3.3(d)*. In addition to determining reviewing technical compliance with the By-Law, the Planning Board may also engage with the applicant on:

- Protection of adjoining premises against seriously detrimental uses by provision for , sound and sight buffers and screening, and preservation of light and air;

- Convenience and safety of vehicular and pedestrian movement within the site, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the vulnerable populations.
- Adequacy of the methods of disposal of refuse and other wastes resulting from the uses permitted on the site;
- Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises;
- Adequacy of the method of exterior lighting for convenience, safety and security within the site and for protection of neighboring properties, roadways and the night sky;
- Relationship of structures and open spaces to the natural landscape, existing buildings, and other community assets in the area;
- The project's incorporation of sustainability and resiliency principles; and
- Any other applicable criteria to be considered during Design and Site Plan Review as set out elsewhere in the By-Law.

## **(2) Enabling Outside-Consultant Review While Limiting DIR**

Currently, the Planning Board in its sole discretion can require an applicant for an as-of-right use to undergo the DIR process, and deny approval “[i]f the DIR demonstrates that one or more of the decision-making criteria, objectives, or standards cannot be met.” Zoning By-Law § 7.3,5(a), 7.5.5(b). Because of the breadth and flexibility of the DIR criteria, objectives, and standards, this essentially converts as-of-right uses into discretionary approvals. This will not pass state review. The proposed amendments limit the use of DIR in the DSPR process, but continue to permit DIR for otherwise discretionary decisions (i.e., special permit or variance applications). In practice, this will be a modest change. The Planning Board rarely imposes DIR and usually relies on outside consultants, who serve the same purpose: enabling the Planning Board to assess what mitigation measures (if any) are appropriate to impose in the Design and Site Plan Review process.

The amended By-Law would make clear the Planning Board can continue hiring outside consultants. Pursuant to G.L. c. 44, § 53G, the By-Law may permit the Planning Board to adopt rules and regulations providing for reasonable fees for the employment of outside consultants to review projects. The By-Law previously has not expressly authorized the Planning Board to establish such rules and regulations. We recommend expressly authorizing the Planning Board to do so. *See Proposed Amended Zoning By-Law § 7.3.3(j).*

Consistent with state law, the By-Law provides that the Planning Board may impose reasonable conditions on a Design and Site Plan Approval. The amendments described above do not change the Board's ability to analyze or impose such conditions.

## **Conclusion**

We found no other systematic issues with the By-Law that would prevent 3A projects from being developed as-of-right. Unlike many other towns, Belmont does not impose backdoor discretionary approval requirements through overlay districts or town-wide restrictions. For example, many towns require special permits for significant earth removal or filling even when incidental to an allowed use. In Belmont, incidental earth removal or filling is allowed as-of-right. Zoning By-Law § 6.2.

The Zoning By-Law does subject certain superfluous building elements that a developer *conceivably* could want to include in a 3A development to discretionary approval requirements. But these requirements would not prevent the core use—multi-family housing—from being as-of-right. For example, a developer might prefer for some reason to establish a “standing sign” next to a 3A project. A “standing sign” requires a special permit, Zoning By-Law § 5.2.5(b)(3), but nothing about multi-family housing requires a standing sign.

We look forward to continuing to work with you as Belmont’s 3A zoning advances.