

TOWN OF WELLESLEY



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ZONING BOARD OF APPEALS

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Record, Decision and Comprehensive Permit

ZBA 2005-26
Wellesley Manor Estate
874-878 Worcester Street

Name of Record Owner of Title to Subject Property: 874 Worcester Street, LLC

Petition of 874 Worcester Street, LLC (the "Applicant"), with a principal place of business at 141 Chestnut Street, Needham, Massachusetts, 02492, requesting a Comprehensive Permit pursuant to the provision of MGL Chapter 40B, Sections 20-23 and the regulations promulgated thereunder ("Chapter 40B"), for the construction of twenty-eight (28) dwelling units (voluntarily reduced by the Applicant from an original request for 32 units), consisting of four (4) one bedroom units and twenty-four (24) two bedroom units, in one (1) building (the "Project"), on 65,439 square feet of land located at 874-878 WORCESTER STREET (the "Site"), the former Wellesley Manor Nursing Home. Twenty-five percent (25%) of the units (7 units) will be sold to households meeting Chapter 40B income restrictions. The remaining seventy-five percent (75%) of the units (21 units) will be sold at market rate. The existing building coverage (footprint) is 11,015 square feet. The existing building floor area is 33,400 square feet. The proposed building coverage (footprint) is 13,130 square feet. The proposed building floor area is 46,800 square feet. The proposed building will be four (4) stories. One garage building is proposed totaling 1,365 square feet. Forty-eight (48) parking spaces are proposed.

The property is located in a Single Residence District with a 10,000 square foot minimum lot size and is located within a Water Supply Protection District. The Applicant seeks deviation from the Zoning Bylaw regarding, among other requirements, the use of the Site for multi-family dwellings.

I. Chapter 40B Affordable Housing Thresholds

At the time of the issuance of this Comprehensive Permit the Town of Wellesley does not meet any of the minimum thresholds for affordable housing established in Chapter 40B. According to the Department of Housing and Community Development's (the "DHCD") Chapter 40B Subsidized Housing Inventory ("Inventory") (revised as of April 24, 2002), the Town of Wellesley has 416 units of affordable housing. According to the Inventory, 4.7 percent of its housing stock is affordable, which does not meet the 10 percent threshold established by Chapter 40B.

ZBA 2005-26
Wellesley Manor Estate
874-878 Worcester Street

The percentage of total land area zoned for residential, commercial or industrial use devoted to low and moderate income housing in the Town of Wellesley is 0.443 percent, which does not meet the 1.5 percent threshold established by Chapter 40B.

The percentage of land on which the commencement of construction for low and moderate income housing in 2005 (inclusive of Applicant's project and the approved but not yet constructed Hastings Village) will be 0.0548 percent, which does not meet the three percent (3%) of Town's total land area or 10 acres, whichever is greater, threshold established by Chapter 40B.

II. Project and Applicant Requirements

Pursuant to Chapter 40B, the Applicant must fulfill three jurisdictional requirements: (1) the Applicant must be a public agency, non-profit organization, or a limited dividend organization; (2) the Project be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and (3) the Applicant must control the Site (760 CMR 31.01).

The Board received evidence of the Applicant's status as a limited dividend organization. 874 Worcester Street, LLC is a limited liability company formed under Massachusetts law, although it is currently not in good standing with the Secretary of the Commonwealth. Pursuant to the conditions of this Comprehensive Permit, 874 Worcester Street, LLC must enter into the Regulatory Agreement in a form approved by the Board and Town Counsel, which provides limits on the dividend on owner's equity and return on investment equity not to exceed twenty percent (20%). As such, the Applicant is eligible to receive a subsidy under the New England Fund (the "NEF") of the Federal Home Loan Bank of Boston (the "FHLBB"). Accordingly, conditioned upon receipt of evidence of the Applicants good standing with the Secretary of the Commonwealth, the Board finds that it received sufficient evidence of the Applicant's organization as a limited dividend organization.

The Board has received written communication from the subsidizing agency indicating that the Project is acceptable. The Applicant intends to use the New England Fund through the Rockland Trust Community Development, LLC., a member of the FHLBB. The Applicant provided a Project Eligibility letter from the Massachusetts Housing Finance Agency dated July 26, 2004. The Board finds that pursuant to 760 CMR 31.01 (2), the Project is fundable by a subsidizing agency.

The Board has received a copy of a deed recorded with the Norfolk Registry of Deeds to an entity controlled by the Applicant for the Site. Accordingly, the Board finds that, pursuant to 760 CMR 31.01 (3), the Applicant controls the Site.

Submittals from Applicant:

1. Copy of 874 Worcester, LLC Certificate of Organization;
2. Site Approval Letter dated July 26, 2004;
3. Copy of Purchase and Sale Agreement evidencing site control, dated November 13, 2001;
4. Resume of Jeffrey E. Roche, Developer;
5. Letter dated 7/31/04 from Citizens Bank regarding financial standing of Applicant;
6. Official Development Prospectus;

ZBA 2005-26
 Wellesley Manor Estate
 874-878 Worcester Street

7. Traffic Impact and Access Study prepared by Vanasse & Associates, Inc., dated November 7, 2003, revised June 23, 2005;
8. Fire Flow Certification, prepared by Lewis DeSouza, Registered Professional Engineer, dated June 21, 2005;
9. Construction Impact Management Report, prepared by Jeffrey Roche, Developer, dated June 23, 2005;
10. Tier II Extension Request for Former Sunoco Service Station, prepared by EnviroTrac Ltd, dated September 14, 2004;
11. Environmental Site Assessment 874-878 Worcester Street and 12 Russell Road, prepared by TGG Environmental, Inc., dated February 2002;
12. Phase IV Remedy Implementation Plan for Former Texaco Service Station SAP #100029, prepared by ATC Associates Inc., dated March 2, 2005;
13. Deed from Nationwide Health Properties, Inc. to Jeffrey E. Roche, Sr., Trustee of 376-378-380 Centre Street Realty Trust, dated December 1, 2003, recorded with the Norfolk County Registry of Deeds at Book 20268, Page 111; and to be deeded to the Applicant prior to the recording of this Comprehensive Permit.
14. Filing fee.

The following plans, prepared by Ross Engineering, Inc., were submitted:

Sheet No.	Title	Date	Revision Dates
1 of 7	Title Sheet	August 14, 2003	
2 of 7	Existing Conditions Plan	August 14, 2003	October 8, 2004, May 10, 2005, July 25, 2005
3 of 7	Layout Plan	August 14, 2003	October 8, 2004, May 10, 2005, July 25, 2005, September 6, 2005, October 5, 2005, October 26, 2005, December 16, 2005
4 of 7	Grading Plan	August 14, 2003	
5 of 7	Utility Plan	August 14, 2003	October 8, 2004, May 10, 2005, July 25, 2005, September 6, 2005, October 5, 2005
6 of 7	Details	August 14, 2003	
7 of 7	Details	August 14, 2003	
	Drainage Calculations	October 7, 2005	
	Stormwater Management Form, prepared by James J. Donovan, Registered Professional Engineer	October 20, 2005	
	Stormwater Pollution Prevention Plan	August 17, 2005	October 20, 2005
	Operation and Maintenance Plan	October 19, 2005	
	List of Requested Exceptions	October 14, 2005	December 2, 2005

ZBA 2005-26
 Wellesley Manor Estate
 874-878 Worcester Street

The following plans, prepared by The Architectural Team, Inc., were submitted:

Sheet No.	Title	Date	Revision Dates
A2.01	Ground Floor Plan	July 25, 2005	October 17, 2005
A2.02	First Floor Plan	August 10, 2005	October 17, 2005
A2.03	Second Floor Plan	August 10, 2005	October 17, 2005
A2.04	Third Floor Plan	August 10, 2005	October 17, 2005
A2.05	Roof Plan	August 10, 2005	
A2.06	Garage Plans, Elevations & Details	August 10, 2005	
A4.01	Exterior Elevations	August 10, 2005	
A4.02	Exterior Elevations	August 10, 2005	
A4.03	Exterior Elevations	August 10, 2005	
A5.03	Building Sections	August 10, 2005	
A5.04	Building Sections	August 10, 2005	
C1.00	Architectural Site Plan	August 10, 2005	October 21, 2005
T1.00	Title Sheet	December 10, 2004	August 10, 2005
	Landscape Plans	September 19, 2005	

The following plan, prepared by Zax Associates, was submitted:

E100	Photometric Site Plan	August 10, 2005	
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The following plan, prepared by John Lind, independent market consultant to the Applicant, was submitted:

	Wellesley Manor Estate Market Overview	June 23, 2005	
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III. Hearings

The Board conducting public hearings on the petition on March 17, 2005, June 23, 2005, August 9, 2005, September 20, 2005, and October 26, 2005. The Board moved to close the public hearing and begin deliberations on October 26, 2005. The Board conducted deliberations on November 18, 2005. The Board met on January 12, 2006 and voted to approve the Comprehensive Permit.

IV. Public Comment

During the course of the hearings on the Application, the Board took testimony and received correspondence from various individuals, including the representatives of the Planning Board, the Design Review Board, the Fire Department, the Town Engineer, the Board of Health, and owners of properties in the neighborhood of the Project. The Applicant responded orally and in writing to the issues raised by the Board, the Board's consultants and other interested parties.

This Comprehensive Permit requires that the Project be constructed in compliance with the standards of the Massachusetts Building Code. Furthermore, the conditions of this Comprehensive Permit require the

ZBA 2005-26
Wellesley Manor Estate
874-878 Worcester Street

design of the Project to incorporate features to eliminate the concerns of the Board regarding the health and safety of the occupants of the Project and the occupants of the neighboring parcels.

V. Town's Enforcement Power

The Board recognizes that the Project's higher density, deviations from various local requirements and the sensitive nature of the Site relative to drinking water resources, and abutters, raise a heightened concern that the conditions of this Comprehensive Permit, as well as other local and state requirements, rules, regulations, and statutes are upheld. The organization of unit owners for the condominium to be established at the Site (the "Condominium Association") and the Monitoring Agent designated under the Regulatory Agreement shall have primary responsibility for enforcement of compliance with those conditions, rules, regulations, requirements, and statutes for which they are responsible. However, the Town, through its agents, employees, appointed officials, boards, and commissions shall have the right, but not the obligation, to conduct inspections and take necessary enforcement actions related to the health, safety, and welfare of the residents of the Project and the Town. With reasonable notice to the Condominium Association and, as appropriate, any individual unit owner (except in the event of an emergency), the Town shall have the right to inspect and take such actions as necessary to remedy violations concerning any issue of the health, safety or welfare, including but not limited to: limitations on the number of bedrooms in units; compliance with affordability requirements; emergency vehicles access (including, but not limited to, the placement or construction of structures or other barriers to access by emergency equipment to and around the buildings and clear maintenance of emergency access to Russell Road). The Town is authorized to assess fines for such violations in accordance with the amounts and procedures provided for at the time of such violation in Town bylaws, rules, and regulations and may seek injunctive relief to address such violations. The Building Inspector for the Town may bring enforcement actions on behalf of the Board. Nothing in this paragraph should in any way limit the Town's rights to take any other actions provided by law.

VI. Town's Right to Recover Costs Associated with Enforcement Actions

In order to ensure that the costs of enforcement of conditions of this Comprehensive Permit or any other local and state requirements, rules, regulations, and statutes are not borne by the Town, the Applicant shall establish a monetary reserve of \$14,000 payable to the Town, prior to the issuance of a building permit, in the event the Town incurs expenses, including attorney's fees, arising out of the conditions of this Comprehensive Permit or other local or state requirements, rules, regulations, statutes or other requirements. The Applicant, until it has sold the last unit at the Project shall make yearly certifications to the Board that it is in compliance with these requirements. In the event this reserve is utilized in accordance with this paragraph, the Applicant or the Condominium Association shall take all necessary actions, including a special assessment, to return the reserve to \$14,000 within 45 days against the Applicant, or the Condominium Association as appropriate. Nothing in this paragraph should in any way limit the amount of reimbursement to the Town.

VII. Definitions

For purposes of this Comprehensive Permit, the following terms shall have the following definitions:

ZBA 2005-26
Wellesley Manor Estate
874-878 Worcester Street

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WELLESLEY MA 02462

"Affordable Units" means the units in the Project, not fewer than seven in number, designated as affordable units, and offered for sale at affordable rates.

"Applicant" means 874 Worcester Street, LLC, the submitter of the application for this Comprehensive Permit.

"Chapter 40B" means Massachusetts General Laws, Chapter 40B, Sections 20-23 and the regulations promulgated thereunder.

"Conditions" means the conditions enumerated in the Comprehensive Permit under the heading "Conditions to the Comprehensive Permit".

"Condominium Association" means the organization of unit owners for the condominium to be established at the Site.

"DHCD" means the Department of Housing and Community Development.

"FHLBB" means the Federal Home Loan Bank of Boston.

"Inventory" means the DHCD's Chapter 40B Subsidized Housing Inventory revised as of April 24, 2002.

"LC" means an unconditional, irrevocable letter of credit in the Town's favor from a qualified issuer approved by the Board in such form and content acceptable to the Board and to Town Counsel.

"Lender" means the Applicant's construction lender.

"Market Units" means the units in the Project, not more than twenty-one in number, designated as market units and offered for sale at market rates.

"NEF" means the New England Fund.

"Project" means the twenty-eight dwelling units consisting of four one-bedroom and twenty-four two-bedroom units in one building on 65,439 square feet of land located at 874-878 Worcester Street.

"Project Agreements" means, collectively, the Monitoring Agreement, the Master Deed, the Organization of Unit Owners, the Regulatory Agreement, and a Deed Rider.

"Project Sign" means the exterior sign for the Project that states "Wellesley Manor Estate".

"Site" means the 65,439 square feet of land located at 874-878 Worcester Street.

"Wellesley Residents" means for the purposes of determining compliance with the local preference guidelines, persons meeting the mutually acceptable definition of Wellesley residents developed by the Applicant and the WHDC, which may include: (i) then-current residents of the Town; (ii) family of then-current residents of the Town; or (iii) current or retired employees of the Town.

2006 JAN 17 A 11:18

“WHDC” means the Wellesley Housing Development Corporation.

VIII. Findings

After reviewing the evidence and extensive testimony, the Board, mindful of the Town's need for affordable housing, voted to approve this Comprehensive Permit, subject to conditions. The Board considered conditions it felt would best ameliorate the issues raised by the construction and operation of the Project, including concerns regarding health and safety of the occupants of the Project and of occupants of neighboring properties. The Board finds that the conditions as approved strike the appropriate balance between protecting health, safety, and welfare of the residents of the Town, the Project, and the abutters and encouraging the development of affordable housing in the Town outside the parameters the Zoning Bylaw would ordinarily permit.

The Board therefore on motion duly made and seconded hereby grants a Comprehensive Permit to the Applicant under the provisions of Chapter 40B for the renovation, reconstruction and use of the existing structure at 874-878 Worcester Street by 874 Worcester Street, LLC, pursuant to Section XXV, Section XVI and Section II of the Zoning Bylaw, substantially in accordance with the plans listed above subject to and conditioned upon the following requirements captioned "Conditions to the Comprehensive Permit." The Board further approves exceptions to the Zoning Bylaw as described below in the section entitled "Exceptions Granted."

CONDITIONS TO THE COMPREHENSIVE PERMIT

The Board's approval of this Comprehensive Permit for the Project is premised on the Applicant's and Project's compliance with the following conditions (the "Conditions"). All requirements imposed by the Conditions or this Comprehensive Permit shall be applicable to the Condominium Association or other entity responsible for the administration of the Project regardless of whether the condition specifically identifies the Applicant, the Condominium Association, or no entity as having responsibility for a particular condition. By accepting this Comprehensive Permit, the Applicant agrees to the terms, covenants, conditions, and agreements contained herein. The Master Deed establishing the condominium shall specifically provide that it is subject to the terms and conditions of this Comprehensive Permit.

General

1. The Applicant submitted an application to the Board for the construction and renovation of a 32 unit housing development, which has been voluntarily reduced to twenty-eight (28) units, located in a renovated existing structure at 874-878 Worcester Street, as shown in the plans listed in Section II of this Comprehensive Permit. The Project shall be comprised of no fewer than seven

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TOWN CLERK'S OFFICE
WELLESLEY MA 02482
2006 JAN 11 AM 10

- (7) units designated as affordable units (the "Affordable Units"), with the remainder of the units designated as market units (the "Market Units").
2. The Project shall be built by the Applicant, which shall at all times be a limited dividend organization in good standing and otherwise in accordance with applicable requirements of Chapter 40B and the applicable standards of the NEF. Except as provided in this paragraph, this Comprehensive Permit is not assignable (including the transfer of any legal or beneficial interest in the Applicant or the properties) without prior written consent of the Board. Notwithstanding the foregoing, the transfer of this Comprehensive Permit to the Applicant's construction lender (the "Lender") or to any acquirer pursuant to the mortgage granted to the Lender shall not be prohibited assignments, provided that the Lender or such other acquirer delivers to the Board a written agreement to be bound by all of the provisions of this Comprehensive Permit. Any material change in the composition of 874 Worcester Street, LLC shall be subject to approval by the Board.
 3. Except for the relief granted by the Board as listed in the section below entitled Exceptions Granted, the Applicant shall comply with all provisions of the Zoning Bylaw, general bylaws, and all the rules and regulations of the Planning Board and the Board of Health generally applicable to a project approved on January 12, 2006. No fees are waived in connection with the Project. Fees shall be those then in effect at the time of application for the permit or approval subject to the fee.
 - (4) The Applicant shall execute or cause to be executed: (i) a Monitoring Agreement; (ii) a Master Deed; (iii) an Organization of Unit Owners; (iv) a Regulatory Agreement; and (v) a Deed Rider; (collectively, the "Project Agreements"). The Project Agreements shall be consistent with the requirements and conditions of this Comprehensive Permit. Prior to execution, each of the Project Agreements shall be approved by Town Counsel and the Board. The requirements of the Project Agreements are incorporated into this Comprehensive Permit by reference. All documents required to be filed under this Permit shall be submitted to Town Counsel and this Board prior to execution for review to ensure consistency with the conditions contained herein. Prior to the issuance of a certificate of occupancy, the Project shall be organized as a condominium in accordance with applicable law.
 - (5) The Project shall be age restricted in perpetuity. One permanently residing owner of each unit shall be 55 years or older. No person under the age of 21 shall reside in a unit other than issue or adopted children of the age-qualified permanently residing owner or that owner's spouse. No more than two persons not related by blood or formal, legal process shall reside in a unit. If there is no permanently residing owner age 55 or older, the unit shall be sold within six months to a qualifying person, unless the Board grants a further time period for good cause shown. However, the surviving spouse of a qualified permanently residing owner may continue to reside in the unit and need not sell the unit pursuant to the previous sentence, even if the surviving spouse does not meet the age requirements, provided that at the time the unit was originally obtained by the age-qualified spouse, the surviving spouse was a tenant in the entirety or joint tenant in that transaction and the surviving spouse has continuously resided in the unit for the previous six (6) months. It shall be in the Board's discretion to grant exceptions from the permanent residing ownership requirement in order to accommodate the goals of providing age-restricted housing in the Town, for example in the event a child wishes to purchase a unit for an age-qualified parent. The Project Agreements and the rules and

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TOWN CLERK'S OFFICE
WELLESLEY MA 02452

regulations of the Condominium Association shall include: (i) such restrictions in perpetuity; and (ii) a requirement that such restrictions shall not be modified or amended without written approval of the Board.

(6) This Comprehensive Permit shall not be effective until it and the plans are recorded with the Norfolk County Registry of Deed, a certified copy of which shall be provided to the Board. This Comprehensive Permit shall expire two years from the date hereof unless prior to that time a building permit has issued for the Project and construction has commenced. The Applicant may apply to the Board for reasonable extensions to this Comprehensive Permit for good cause.

(7) Prior to issuance of any building permit for the Project, final plans shall be submitted to the Board for review as to their general consistency with this Comprehensive Permit.

Design Conditions

(8) Design and construction of the Project shall fully comply with all applicable federal and state laws and regulations, including, but not limited to, the Massachusetts State Building Code (CMR 780), the Massachusetts Architectural Access Board (CMR 521), and with the regulations of the Department of Public Works with respect to a Water Supply Protection District. This Project shall be designed and constructed on the Site in accordance with the plans, except as provided in the Comprehensive Permit, including the Conditions. Any requirement of consistency with the plans means as those Plans are modified by the Conditions.

(9) No more than 24 two-bedroom and 4 one-bedroom dwelling units shall be constructed in the Property identified in the plans. The unit types, sizes and mix of units will be in accordance with the Plans. Construction of all dwelling units, utilities, pedestrian and vehicle areas, drainage structures and all related appurtenances shall be in accordance with the plans. The Affordable Units shall be dispersed among the several floors of the building and no two Affordable Units shall be contiguous, and the number of one bedroom Affordable Units shall not be more than two. The exterior and interior appearance, fixtures, appliances and finishes of the Affordable Units shall be indistinguishable from the Market Units. The location of the Affordable Units shall be designated by the Monitoring Agent, WHDC, subject to the approval of the Board. Each dwelling unit shall contain no more than two bedrooms and such restriction shall be included in all relevant documents, including the Project Agreements and any condominium rules and regulations.

(10) Contract documents, including working drawings and specifications for any building renovations, modifications, additions, or removals shall undergo the usual and customary review and approvals of the Building Inspector, the Board of Health, the Fire Chief, the Town Engineer, or any other applicable local inspector or board. In addition, to assure that contract documents are consistent with the preliminary plans submitted in support of this Comprehensive Permit, concurrent with the application for a building permit, the Applicant shall submit contract documents to the Board and to the Design Review Board for approval. Construction of the Project shall be subject to on-site compliance inspections by the Building Department in the customary manner.

(11) The Applicant shall design and construct sidewalks to allow residents to walk to the Fells area. The sidewalks shall include: (i) along the eastern side of Russell Road in the Town Layout/DPW

ZBA 2005-26
Wellesley Manor Estate
874-878 Worcester Street

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482

easement from Fells Road to the existing sidewalk adjacent to Worcester Street; (ii) from Stairway #2 westward to the sidewalk described in (i) above; and (iii) from the patio at the north side of the building adjacent to the common room eastward to the parking lot. The sidewalk described in (iii) shall accommodate handicapped access.

(12) All new utilities shall be constructed underground. Existing overhead utilities may remain overhead, provided that such utilities are required for the operation and maintenance of the Project after the construction period.

(13) After the construction period, there shall be no exterior dumpsters on the Site. The Applicant shall provide details of trash rooms, compactors and community room to the Board for approval.

Traffic and Parking

(14) During the post-construction period, all parking for residents and guests shall be within the parking lot on the Site. The Project shall include parking spaces in accordance with the Plans submitted, and the final Plans shall have no fewer than three (3) handicapped parking spaces.

(15) Between the hours of 7:30 a.m. and 9:00 a.m. and 2:00 p.m. and 3:30 p.m. on each weekday, all traffic exiting the Site shall turn right on Russell Road. The Applicant shall erect and the Applicant and the Condominium Association shall maintain a sign at the exit of the parking lot to notify residents and guest of this requirement.

(16) Site distance on Russell Road from the exit driveway, shall not be reduced to less than 200 feet by the storage of snow in the parking lot or in the proposed recreation area.

(17) The Applicant shall provide a final exterior lighting design plan that includes location and design of light posts and luminaries for all exterior lighting to the Board for approval. The final design shall prevent any light spillover to abutting residential properties.

Fire and carbon Monoxide Detection and Protection

(18) The Applicant shall design and install a fire detection and fire protection system meeting the requirements of the Massachusetts Building Code. The Applicant shall also install carbon monoxide detectors.

(19) The fire detection system shall have visual indicators of a fire alarm condition in each unit sufficient to warn occupants without the ability to hear of a fire alarm.

(20) The fire and carbon monoxide detection systems shall be connected to a third-party monitoring service, the costs of which shall be paid by the Condominium Association. They shall conform with all statutes and regulations and the requirements of the Wellesley Fire department. The Condominium Association shall retain a qualified entity to make a yearly inspection of the fire and carbon monoxide detection and protection systems and shall make a yearly certification to the fire department that the fire and carbon monoxide detection and protection system is fully functional and continues to be connected to a third-party monitoring service.

2006 JAN 17 A 11:19

Signage

- (21) A sign for the Project (the "Project Sign") shall state "Wellesley Manor Estate" and shall not contain any other language or information including, but not limited to, the name of any management company. The Project Sign may state the address of the Project to the extent municipal public safety officials request such a designation. The Applicant may display a temporary marketing sign stating appropriate marketing information. The temporary sign shall be displayed for no longer than one year, which term shall be renewable at the Board's discretion. The temporary sign shall be made of high-quality materials and be consistent with the project sign and the neighborhood.
- (22) The Project Sign shall be made of wood or, subject to the Board's prior approval, a high-quality wood composite and not exceed 15 square feet.
- (23) The final design of the Project Sign shall be approved by the Board.

Fencing

- (24) In order to reduce the impact on abutters, the Applicant shall install, and the Condominium Association shall maintain, repair, and replace as needed, fencing along any property line shared with an abutter. The Board notes that direct abutters have indicated in submissions to the Board both their desire for fencing, and in some cases, the type of fencing requested. Unless agreed otherwise with an affected abutter, the fencing shall be six feet high, black vinyl-clad chain link fence.

Water Supply Protection District

- (25) The stormwater run-off and drainage system shall be operated and maintained in accordance with the Operations and Maintenance Plan submitted by the Applicant. Operation and maintenance of the stormwater run-off and drainage system shall comply with the requirements of the Town's "Municipal Stormwater Drainage System Rules and Regulations".
- (26) No soluble chemicals that can pass through the grit chambers and sediment traps to be reinjected into the soil shall be used for snow and ice removal or control.

Construction

- (27) During the period of construction, all construction equipment, material deliveries and personnel traffic shall utilize Worcester Street and Russell Road to access the Site, with no such vehicles passing through the intersection of either Weston Road with Fells Road or Fells Road with Russell Road.
- (28) During the period of construction, no vehicles of construction workers and no construction equipment shall be parked on Worcester Street, Russell Road, Fells Road, or any other public way of the Town.
- (29) During the period of construction, all deliveries of construction materials and equipment shall be made only on Monday through Friday no earlier than 7:00 a.m. and no later than 6:00 p.m. Construction

ZBA 2005-26
Wellesley Manor Estate
874-878 Worcester Street

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02482

operations shall be limited to the hours of 7:00 a.m. through 6:00 p.m. Monday through Friday, and 8:00 a.m. to 4:00 p.m. on Saturday. Except for emergency conditions, no construction work shall be allowed on Sundays.

- (30) During construction the Project Site shall be secured in a manner approved by the Building Inspector so as to prevent personal injury or property damage.
- (31) Prior to the commencement of outdoor construction activities and prior to the time that the permanent stormwater management system is operational, the Applicant shall install hay bales, silt fences or other run-off control measures to meet the requirements of the Environmental Protection Agency's Phase II National Pollutant Discharge Elimination System regulations as well as the Town's "Municipal Stormwater Drainage System Rules and Regulations".
- (32) Landscaping shall be in conformance with the Landscaping Plan to be submitted to and approved by the Board and shall be maintained, repaired, or replaced as needed by the Condominium Association.
- (33) During the construction period, between May 1st and September 30th, no construction activity shall create any areas of standing water that could become potential mosquito breeding areas.
- (34) During construction, any mobile food vendors/trucks that service this Site must be permitted by the Wellesley Health Department.
- (35) The Applicant shall provide as-built plans of the Project to the Board and the Building Inspector as soon as practicable after completion of construction, but before the issuance of a certificate of occupancy.

Affordability

(36) The Applicant in conjunction with the Monitoring Agent shall establish the sale price for each Affordable Unit. The Affordable Units shall be made available at sale prices that are affordable to households earning not more than 80% of the household median income of the Boston Primary Metropolitan Statistical Area (as defined by HUD on an annual basis) adjusted for household size which is based on one person per bedroom for the Affordable Unit in question, all as more particularly described in the Regulatory Agreement described in Condition 4. The maximum sale and resale price for the Affordable Units shall be determined by the WHCD, and set forth in the Regulatory Agreement and Deed Rider, to be a price such that a household earning no greater than 70% of the median income for the Boston, MA Primary Metropolitan Statistical Area for a family of two (2) for a one bedroom and a family of three (3) for a two bedroom would pay no more than 30% of gross income for the sum of annual debt service on a mortgage of 95% of the sale price (including principal and interest at current interest rates) plus property taxes, property insurance (unless covered by the condominium fees), private mortgage insurance and any required condominium association fees. Qualified households shall have household assets of no more than \$350,000 or the maximum amount allowed by NEF guidelines adjusted for any increases in area median income from the date of this Comprehensive Permit to the date of the household's application. Once the Applicant establishes prices for the Affordable Units and advertises such sale prices, such prices shall not be increased for a period of six months after the first such advertisement. Prior to submitting the proposed Regulatory and Deed Rider to the Board, the Applicant

RECEIVED
TOWN CLERK'S OFFICE
WELLESLEY MA 02462

shall use best efforts to the appropriate governmental approval restricting the Affordable Units in perpetuity in accordance with MGL c. 184 §§ 31-33. In the event the necessary governmental approvals for such restrictions is denied the proposed Deed Rider shall set forth a period of affordability which shall be the longest period allowed by law, but in no case less than ninety-nine years. In the event the perpetuity restriction is denied the Applicant shall provide the Board written evidence of its efforts and the responses, including the denial and grounds therefore, to such request

(37) Prior to the advertisement of the Affordable Units for sale, the Applicant shall develop a marketing and resident selection plan for the Affordable Units, and submit such plan to the Wellesley Housing Development Corporation (the "WHDC") for review and approval. The marketing and resident selection plan shall conform to: (i) all affirmative action requirements or other requirements imposed by federal or state regulation; (ii) the "Guidelines for Housing Programs in Which Funding is Provided Through a Non-Governmental Entity" adopted by the Commonwealth of Massachusetts' Department of Housing and Community Development; and (iii) the local preference requirements set forth below. The marketing and resident selection plan shall require timely notice to the Board and to the WHDC of the availability for sale or re-sale of any Affordable Unit.

(38) For the initial sale of each of the Affordable Units Wellesley residents, who properly apply for a unit and who meet all qualification requirements for acceptance, shall receive a preference for five (5) of the Affordable Units at the Project, to the extent permitted under state and federal fair housing laws. After such initial sale period, qualified Wellesley residents shall have a preference as stated above for a re-sale of any available Affordable Unit that was originally a local preference unit.

(39) The resident selection process shall be based on a lottery scheme, which shall be implemented by the Applicant or a third-party consultant in accordance with the selection plan. The Applicant shall work cooperatively with the WHDC, as the Monitoring Agent and Lottery Agent, to develop a mutually acceptable definition of Wellesley residents, which shall include: (i) then-current residents of the Town; (ii) family of then-current residents; or (iii) current or retired employees of the Town (collectively, the "Wellesley Residents"), for purposes of determining compliance with the local preference guidelines.

(40) If an Affordable Unit is unable to be sold to an eligible purchaser within a 180-day period from the date the unit was put on the market, as determined by the date of the first advertisement for sale or the date an agreement was signed with a listing broker to market the Affordable Unit, the Town through the WHDC, shall have the right (but not the obligation) to purchase the unit at the affordable price. The seller of an Affordable Unit shall notify the Town, the Board, and the WHDC in writing at the expiration of the initial 180-day sale period. In order to exercise its right to purchase the Affordable Unit, the Town must declare its intent to purchase the Affordable Unit in writing to the seller of the Affordable Unit and any broker within 60 days of the notification and must complete the closing within 60 days of the notification. If the Town does not exercise this right, the Affordable Unit may be sold in accordance with the terms of this Comprehensive Permit. At the expiration of every further 180-day period in which the Affordable Unit is not sold (measured from the expiration of the time period for the Town's response to the Affordable Unit seller), the seller shall again notify the Town, the Board, and the WHDC in writing. After the initial offer to the Town, the Town must declare its intent to purchase the Affordable Unit in writing to the seller of the Affordable Unit within 15 days of each subsequent notification and must complete the closing within 45 days of the notification. The Town may assign or delegate this right to a

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subdivision of the Town or another entity which supports the creation and maintenance of affordable housing.

(41) For any Affordable Unit previously offered to, but rejected by, the Town under provisions of this condition, the Town may require the seller of the Affordable Unit to sell the Affordable Unit to a currently available purchaser qualified as eligible under this Comprehensive Permit at any time prior to the execution of a purchase and sale agreement between a seller and a buyer not qualified as eligible for an Affordable Unit. Any offer to purchase an Affordable Unit previously offered to, but rejected by, the Town under the provisions of this Condition shall contain a contingency incorporating the Town's right to require the seller to sell under these conditions prior to the execution of a purchase and sale agreement.

(42) If the seller of any Affordable Unit previously offered to, but rejected by, the Town under the provisions of Paragraph 40 accepts an offer to purchase an Affordable Unit in accordance with this Permit for an amount less than 95 percent of what it would have been sold as an Affordable Unit, the seller shall provide written notice to the Town, the Board, and the WHDC of that intent to sell at such a price, and the Town shall have 15 days to declare its intent to purchase the Affordable Unit at that price. The Town must complete the closing within 45 days of the notification. Any offer to purchase an Affordable Unit previously offered to, but rejected by, the Town shall contain a contingency incorporating the Town's right to require the seller to sell to the Town under these conditions and the seller shall not execute a purchase and sale agreement until the expiration of the Town's notification period under this paragraph.

(43) The percentage interest of the units in the condominium common elements shall be based on the sales prices of the units, including the sales prices of the Affordable Units consistent with this Comprehensive Permit.

Security

(44) The construction of all on-site and off-site structures and installations of municipal services shall be secured by the following method:

a. Bond or Securities: By a proper bond or a deposit of money or negotiable securities in the sum of \$450,000.00. The status of such security to be reviewed at least annually by the Board and may be increased to reflect increases in actual costs for completion of construction; or

b. Security may be in the form of an unconditional, irrevocable letter of credit (the "LC") in the Town's favor from a "Qualified Issuer" approved by the Board in such form and content acceptable to the Board and Town Counsel. The LC shall be for a duration of not less than two (2) years and thereafter automatically extended without amendment for periods of one year from the expiry date, or any future expiration date, unless at least sixty (60) days prior to any expiry date the issuer notifies the Board by certified mail that it does not intend to extend the LC. The LC shall provide that upon receipt of such notice the LC may be drawn on, in which event the proceeds thereof held by the Town as security, as provided herein. Partial draws shall be permitted.

c. The Board may refuse security based upon the advice from Town treasurer as to the financial status of the bank, company or institution involved.

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Rental Restrictions

(45) The petitioner shall develop and sell the market rate units as owner-occupied condominiums and not as rental units. The affordable units shall not be rented. The Master Deed and Condominium Association document of the Condominium shall provide, among other things, that any lease or rental of a unit by a market rate Unit Owner shall be subject to the following conditions:

- a. Such lease shall be in writing.
- b. The lease shall apply to the entire unit and not a portion thereof.
- c. The term of the lease shall be for a term of not less than six (6) months nor more than two (2) years, and may not be renewed or self-extending. After each rental, the unit must be owner occupied for at least one year.
- d. No more than four (4) of the Market Units shall be leased or rented at any one time without the approval of the Board.
- e. The occupancy of any rental unit shall be for not more than the number of unrelated persons as provided in the Zoning Bylaw or three (3) persons, whichever is less.
- f. The lease shall expressly provide that the lease is subject to the Master Deed, the Organization of Unit Owners and the Rules and Regulations of the Condominium Association.
- g. A copy of the lease shall be provided to the Organization of Unit Owners who shall report all rentals to the Board annually.
- h. Leasing or renting of the affordable units is prohibited, except as governed by the provisions of the Regulatory Agreement or Deed Rider.
- i. All units must be occupied by the buyer of the unit for a minimum of one year after initial purchase and occupancy, and for a minimum of one year after each transfer of ownership, prior to any rental or leasing of said unit unless given written permission by the Board of Appeals.
- j. Rental solely for investment purposes is prohibited.
- k. The foregoing provisions of the Master Deed and Organization of Unit Owners shall not be amended without the prior written consent of the Board of Appeals.

(46) **Miscellaneous**

ZBA 2005-26
Wellesley Manor Estate
874-878 Worcester Street

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a. Applicant shall submit a copy of its cost certification of the Project to the Board. In the event that the cost certification demonstrates a profit in excess of twenty (20%) percent as allowed by current rules, Applicant shall remit such excess to the Town of Wellesley.

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- b. Any underground irrigation system shall be designed and constructed in compliance with department of Public Works standards and approval.
- c. There shall be no floor drains in the garage spaces.
- d. No petroleum products, fuel or solvents shall be stored on site during construction.
- e. All construction activities shall be completed within eighteen (18) months from the date of issuance of the building permit, unless extended by the Board.
- f. The Applicant shall furnish a copy of the recorded Deed to the Applicant before this Comprehensive permit is recorded and before a building permit shall issue.

EXCEPTIONS GRANTED

The Board grants the following exceptions to the Zoning Bylaw in accordance with the Conditions of this Comprehensive Permit.

Zoning Bylaws

Section II. Single Residence District

- Buildings that contain multiple independent dwelling units are not allowed in a 10,000 square foot Single Residence District

Section XVIA. Site Plan Approval

- Requirements under this section of the Bylaw generally do not apply to a 40B project.

Section XVII. Pre-Existing Non-Conforming Uses, Structures and Lots

Section XVII.B. Changes to Non-Conforming Structures

- Requirements under this section of the Bylaw generally do not apply to a 40B project.

Section XVIII. Area Regulations

Section XVIII.C. Ratio of Building to Lot Area

- In Single Residence Districts, the maximum building coverage for lots containing at least 40,000 square feet is 15 percent. The proposed building coverage is equal to approximately 20.2 percent.

Proposed Multi-Family Building = 11,875 s.f.
Proposed 5 Bay Garage Building = 1,365 s.f.

ZBA 2005-26
 Wellesley Manor Estate
 874-878 Worcester Street

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Total Building Area = 13,240 s.f.
 Lot Area = 65,459 s.f.

Proposed Building Coverage= 20.2%

Section XIX. Yard Regulations

Section XIX.B. Requirements

Paragraph 3

Heating, ventilation, air conditioning, swimming pool, electric generating, or other noise emitting equipment shall not be located in required setback areas. Plans and installation of sound reduction and/or visual screening may be required if, in the opinion of the Inspector of Buildings abutters may be affected.

- Proposed Multi-Family may require heating, ventilation, or air conditioning equipment to be located in the required front yard setback at Russell Road.

Table 1 (Applicable to lots recorded or endorsed on or before January 24, 1985)

	<u>Required</u>	<u>Proposed</u>
Min. Lot Area required	10,000 s.f.	65,459 s.f.
Min. Frontage	60 feet	288.83 feet along Worcester Street
Min. Front Yard Width	60 feet	288.83 feet
Min. Front Yard Depth	30 feet	23.2 feet (proposed addition to main building at Russell Road)
Min. Side Yard Width	20 feet	5 feet (proposed garage)
Min Rear Yard Depth	10 feet	Not applicable to corner lots

- Proposed Multi-Family Building Front Yard setback at Russell Road is 23.2 feet
- Proposed 5 bay garage requires a variance to side yard setback

Section XIX.C. General

Paragraph 1

No building or lot shall be so altered as to reduce the size of the then existing yard unless the resulting yard complies with the requirements of this Section, except taking by eminent domain or by a conveyance for a public purpose.

- Proposed Multi-Family requires a variance to front yard setback at Russell Road

Section XXI. Off-Street Parking

2005 JAN 17 A 11:19

Section XXI. Part C. Applicability

- Requirements under this section of the Bylaw do not apply to a 40B project

Section XXI.D.1. General Provisions

- Requirements under this section of the Bylaw do not apply to a 40B project

Section XXI.D.2. Required Parking

- The Single Resident 10 Zoning District is not listed under the Off-Street Parking Requirements of Section XXI.D.2. The Inspector of Buildings has determined that a variance from this Section will be not be required.

Section XXI.D.3. Development Standards

Design

Section f. On any parking area in any District, all paved portions of all parking spaces and maneuvering aisles shall be set back five (5) feet from any wall of a building, and five (5) feet from any private or public way, or any lot line of any land in residential districts or used for residential, conservation or park use.

- Proposed parking/paved areas are located a minimum of 2.5 feet from property lines.

Landscaping

Section b. In any outdoor parking area a landscaped open space having an area of not less than 10% of the outdoor parking area on the lot shall be provided. A minimum of one half of the required landscaped open space shall be located in the interior of the parking area.

- Approximately 19,000 square feet of parking area is proposed, which requires a minimum of 1,900 square feet of open space. A minimum of one half of the required landscaped open space shall be located in the interior of the parking area. Therefore, the open space required to be located in the interior of the parking area is 950 square feet. Approximately 1 percent of the required open space is proposed to be located in the interior of the parking area.
- Landscaping to be provided as shown on the approved Landscape Plan.

Screening

Section a: Materials

- To be provided as shown on the approved Landscape Plan

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2006 JAN 17 A 11:19

Section b: Height

- To be provided as shown on the approved Landscape Plan

Section c: Width

- To be provided as shown on the approved Landscape Plan

Section d: Maintenance

- Screening includes a mixture of both landscaping and fencing. A portion of the fencing, which will provide screening, is currently located on abutting residential properties. The Applicant does not have control over the maintenance of fencing located on abutting properties; therefore, the Inspector of Buildings has recommended that a variance be requested under this section.

Section XXIIA: Signs and Identification Devices

Section XXIIA.C.5: Non-Conforming Signs

Any non-conforming sign may continue to be maintained but shall not be enlarged, reworded, redesigned or altered in any way unless it is brought into conformity.

- Existing signs may be utilized for the proposed purpose

Section XXIIA.C.7: Standing Signs

Standing signs shall have a minimum setback of 15 feet which shall be measured to the nearest property boundary line whether or not said line abuts a public or private street or way.

- A sign is proposed to be located adjacent to the site entrance and within 15 feet of the Russell Road right-of-way

Section XXIIA.C.12: Special Permits for Signs

- Requirements under this section of the Bylaw do not apply to a 40B project

Section XXIIA.D: Maximum Allowable Sign Dimensions

- Variance required for dimensions of Standing and Temporary signs in a residential district

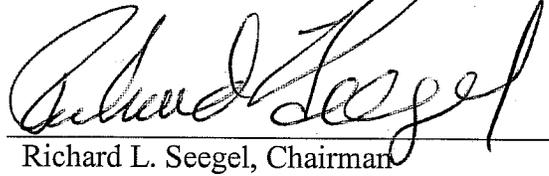
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ZBA 2005-26
Wellesley Manor Estate
874-878 Worcester Street

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- Variance required for dimensions of Standing and Temporary signs in a residential district

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40B,
SECTIONS 20-23, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE OF
FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.


Richard L. Seegel, Chairman


J. Randolph Becker


Robert W. Levy

cc: Planning Board
Inspector of Buildings
Town Engineer
Town Counsel

lrm