



ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02181-5992

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ZBA 97-51

Petition of Truman Wellesley Realty Trust
27 Washington Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, June 19, 1997 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, 525 Washington Street, Wellesley, on the petition of TRUMAN WELLESLEY REALTY TRUST requesting a Special Permit pursuant to the provisions of Section XI-A-13-j and Section XXV of the Zoning Bylaw to allow the premises at 27 WASHINGTON STREET in a Business A District, an Industrial A District and a Flood Plain District, to be used as a retail store, including a 24 hour/day Supermarket (SUPER STOP & SHOP), having more than 50,000 square feet, which is a use not allowed by right in a Business A District.

On May 27, 1997, the petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Robert Davis, of Goulston and Storrs, attorney representing the petitioner, who was accompanied by Darin Vest, also of Goulston and Storrs; James Sylvia of Stop & Shop; and Steve Chouinard and Melissa Mintz of Vanesse Hangen Brustlin.

Mr. Davis began by stating that it was not the intention of Stop & Shop to operate a 24 hour store at this location, as they plan to comply with the Town Bylaw prohibiting all 24 hour retail operations.

Mr. Davis presented his argument that the Board of Appeals does not have the discretion to deny the Special Permit, based on the Supreme Judicial Court ruling in Cape Ann Development Corp. v. City of Gloucester, 371 Mass. 19, 24 (1976). In light of this decision, Mr. Davis argued that the Board must grant the special permit, and can only impose "reasonable conditions which do not amount, individually or collectively to the practical prohibition of the use". Mr. Davis submitted a memorandum to the Board on that point.

Using an enlarged aerial photograph, and blow-ups of the existing conditions plan and the proposed development plan, Mr. Davis located the building, described the surrounding areas, and walked the Board through the proposed development of the site. He noted that there are several by-right uses of the property such as a theater, restaurant, industrial uses, office space and a retail store containing less than 50,000 square feet.

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A letter from Engineering Advantage, Inc. and a brochure describing the proposed lighting was submitted. A noise assessment prepared by Tech Environmental, Inc. was also submitted, together with a municipal impact analysis prepared by VHB.

Melissa Mintz, Project Manager with VHB, addressed the Special Permit Use Standards.

Vehicular Circulation - The existing two curb cuts will be consolidated into one 48 foot entrance/egress. Washington Street will be striped to provide a left turn lane and a through eastbound lane; and a right turn lane and a shared through/left turn lane in the westbound direction. The exiting lane from the site will have a lane for right turn traffic and a shared left turn/through lane. This plan will result in turning traffic being taken out of the through traffic stream.

On-site Circulation - There will be two lanes exiting and one lane entering. Vehicles entering the site can turn into the parking lanes or continue along the right side of the site, returning to the parking aisles in front of the store. Trucks will enter through the main driveway, circulate to the loading docks, and return on the route to exit.

Vehicle Queuing Lanes - There are 12 foot lanes provided for exiting traffic. Vehicle queues for exiting traffic can be contained on the site, and will not interfere with traffic maneuvers. The single entry lane is 20 feet wide at the throat, narrowing to 19 feet to allow for circulation as well as vehicles pulling in and out of the front parking spaces.

Pedestrian Safety - A sidewalk will be constructed from the corner of the site drive on Washington Street that will run along the landscaped area to the front of the store. Currently there are two curb cuts with two unsignalized driveways. Under the proposed design, the intersection will have a traffic signal or police control. The traffic signal will have a pedestrian phase. These improvements will increase pedestrian safety.

Intensity of Use - The site is located on a heavily travelled, state numbered, arterial roadway. Relative to the types of alternative use of the site, the traffic generated by the Stop & Shop will have very little impact on the traffic volumes in the area. The increases expected from this project are one car or less per minute during peak hours on side streets off Washington Street, and between one and two cars per minute on Washington Street. The additional traffic will not adversely affect the character of the area.

The traffic signal will help meter the flow along Washington Street, and will provide gaps in the traffic stream that can be used by motorists turning in and out of side streets.

Mr. Davis added that it is not appropriate to compare the traffic increase to a "no-build" situation. Traffic to be generated by the Stop & Shop use of the property should be compared to that which would be generated by allowed uses, and not to a "no-build" situation.

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The Board asked what the difference was between the traffic generated by Grossman's and the traffic to be generated by the Stop & Shop. Mr. Davis responded that the use of the property by Grossman's was not nearly the intensive use of the site that could be made by right.

The Board asked where the traffic entering the site would come from. Ms. Mintz stated that during peak hours, about 50% of the traffic is already on the roadway passing the site. During non-peak hours, the traffic is generally from a two-mile area, which is considered as a new trip.

Stanley Brooks, Chairman of the Planning Board, gave a brief history of Planning Board interaction with the petitioner over the past three years. The Planning Board reviewed the current petition and voted to oppose granting the Special Permit.

William McDonough of McDonough & Scully, the Town's Traffic Engineering Consultants, said that the 7,500 vehicle trips per day expected from this development are significant. The proposed mitigation has been limited to the "front door" of the site. A comprehensive traffic investment is needed throughout the Lower Falls area to support any major development at the site. The limited mitigation proposed does not adequately address vehicle circulation.

Mr. McDonough offered the following observations:

Vehicle Queuing - The parking is very close to the proposed entrance. It is so close that at this location, inbound vehicles would be in conflict with vehicles parking and unparking in spaces along the frontage. With 500 or so vehicle trips entering during peak hours, due to potential conflict, vehicle queuing could be expected to back into the intersection affecting flow on Washington Street. When vehicles are entering from Washington Street, queuing to the traffic signal could be expected on the outbound side of the driveway. When this occurs, vehicles would not be able to cross the traffic queues to enter into the parking aisles, again potentially backing into Washington Street.

All parking aisles have to use the main driveway for circulation. As such, if vehicles are prevented from coming down the aisles and turning left to recirculate, they will all have to turn right, or split the queues, with the potential of vehicles coming around the corner not being able to see them in time to stop. There are still significant queuing issues that remain.

Pedestrian Safety - Although the pedestrian walkway is a positive feature of the plan, onsite pedestrian circulation is difficult for a supermarket. As for pedestrian safety and circulation through the Lower Falls area, pedestrian crossings on the remainder of Washington Street will be more difficult due to the additional 7,500 vehicles per day.

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Intensity of Use - The Stop & Shop use of the property would be far more intense than either the present condition or the previous use by Grossman's. The proposed comparison to a by-right use does not give a true comparison between the existing and proposed use, which is the real situation.

The applicant has indicated a 45%-50% pass-by traffic rate during peak hours. This figure is far too high for Washington Street. A combination of pass-by and diverted lane traffic might equal that figure, but diverted lane traffic represents new trips to the area and should be treated as such. Given the level of traffic perceived for the proposed use, there is not sufficient mitigation, and therefore, the increased intensity of use would have a negative impact on the Lower Falls area.

Pamela Stewart, 53 Whittier Road, and Sheila Tucker, 31 Ledyard Road, spoke for the neighborhood. Mrs. Tucker addressed the following Special Permit Use Standards:

Vehicular Circulation - New congestion will be created east and west of the site as 7,700 vehicle trips funnel from a four-lane roadway into the two-way roadway design. Nearby feeder streets will not be able to accommodate this funneling as indicated by Stop & Shop's traffic report indicating that the Glen Road intersection will operate at a LOS F without signalization both at the site and at Glen Road intersections. The additional signal proposed at River Street would mean 4 traffic lights between Concord Street and Glen Road, which is not a village roadway design.

Further congestion and circulation problems will occur during the Saturday peak hour. There are 810 vehicle trips projected, which means 405 vehicles entering the property which holds 295 parking spaces.

Accident potential is also evident. From the Newton line to Glen Road from 1995 through 1996, there were 56 accidents on that stretch of Washington Street, with no traffic from the site. During the period of 1993 and 1994, when Grossman's was open, and there were 2,200 vehicle trips per day, 114 accidents occurred on this same stretch of roadway. The actuarial computation on an additional 7,700 trips per day increases the number of accidents to 260.

Site distance, increased truck traffic and potential delays to rescue vehicles on route to Newton Wellesley Hospital were cited as concerns relative to increased accident potential.

Pedestrian Safety - The proposed 48 foot driveway is a pedestrian hazard as it leaves the pedestrian exposed to traffic a longer time than crossing a regular driveway. On Saturday, at peak hour, there are 194 pedestrian crossings, the largest number of which occur at the site or between the site and Mica Lane. Vehicular traffic for this peak hour is 810 trips, which equates to one car every 4.4 seconds with which 194 pedestrians must contend.

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Removal of the 8 onstreet parking spaces, which serve as a buffer between traffic and pedestrians, leaves 350 feet of sidewalk on which pedestrians are exposed to a dangerous traffic situation.

Noxious Uses - The intensive use of the premises by a large retailer dealing in high turnover, perishable inventory is incompatible with residential, educational and wild life abutters and neighbors. Daily, over 30 diesel-type trucks, including tractor-trailers will cause fumes, vibration and noise far beyond that created by Grossman's operation.

Pamela Stewart spoke on Compatability with the Surrounding Area and Intensity of Use.

Compatability - The proposed 48 foot driveway accommodating four lanes of traffic is not only unsafe, but is not compatible with the existing characteristics of the site and surrounding area. The addition of from one to three additional traffic signals within a one-third mile area is more characteristic of Route 9 than of the residential and small business district of Lower Falls. The removal of 8 parking spaces is detrimental to existing small businesses, and contrary to the Washington Street Master Design Plan. The expansion of Washington Street to four lanes would alter the existing streetscape to look more like a regional highway than a local business district.

Intensity of Use - According to the Institute of Transportation Engineers Trip Generation Index, there are few more intensive uses of a site than a store like Super Stop & Shop. A grocery superstore will create increases in vehicular and truck traffic, more solid waste and require more refuse trucking. All of this represents a significant increase in intensity of use over the previous and current use of the site.

Mrs. Stewart submitted petitions signed by more than 5,000 Wellesley Residents, requesting denial of the Special Permit.

Amy Sanjolo, a resident of Auburndale, cautioned the Board to consider that the new Jordan Marsh Redevelopment Project located in Newton approximately a mile and a half from the site, would bring in more than 1,500 additional cars.

Hugh Beckett, owner of the property at 29 Washington Street, said that the existing traffic from the ATM on the property is between 20 to 30 cars per hour for 18 hours of the day, with high concentrations coinciding with Stop & Shop peak hours. The VHB traffic report has not considered conflicts with this existing traffic flow, nor has it considered traffic conflicts with those parents picking up children at the St. John's School on Glen Road.

Bill Pike, 45 Croton Street, said that to compare projected traffic to that generated by Grossman's would be inaccurate because traffic is substantially worse today than it was when Grossman's occupied the site. The traffic survey has not examined the narrowing problem of reducing four lanes of traffic in Newton to two lanes in Wellesley. Exiting left-turn truck traffic will substantially slow traffic in all directions.

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Edmund Sheehan, 1 Orchard Street; Jim Todd, 16 Columbia Street; Dan Gordon, 3 Greenlawn Avenue; Francis Campion, 76 Prospect Street; Tom Pincince, 85 Prospect Street all opposed the petition, with particular regard to increased traffic on neighboring streets.

Kate Kane-Leach, 17 Ledyard Street, noted that 25,000 cartons of trash go through the compactor each day. The compactor, located close to the residential area, would create increased noise.

Maura O'Brien, Chairman of the Board of Selectmen, read a statement into the record.

Mr. Davis concluded with a request that the Board consider the legal principals involved, to consider their arguments, review the facts and to grant the Special Permit.

The Board asked if Stop & Shop would be willing to accept a condition that the traffic be no more than, or equal to, that generated by the previous tenant. Mr. Davis declined.

The Board began discussion of the petition. In regard to the traffic, it is not sufficient to focus on the situation today because it will be worse in the future, with or without Stop & Shop. The impact of the traffic due to Stop & Shop is just too great for this street and this neighborhood. The Board was of the opinion that the use of the property by Stop & Shop would result in overutilization of both the site, Washington Street, and the surrounding area.

In conclusion, the Board stated that it has tried, in all areas of town, to balance the commercial and residential interests of those areas in order to ensure co-existence between them. In this situation, the fragile balance existing in this area would be destroyed by allowing this development. The Board does not believe that nothing could be built here, or that a Stop & Shop could not be allowed here, but Stop & Shop is presently asking for more than the area can reasonably tolerate.

Statement of Facts

The subject property is located at 27 Washington Street, in a Business A District, an Industrial A District and a Flood Plain District, on a 4.98 acre lot. The property was used for retail sales of building materials and hardware by L. Grossman & Sons, and later Grossman's for approximately 40 years until 1994, when the property was sold to Joshua Katzen, principal of Truman Wellesley Realty Trust.

The property contains a 50,570 square foot building, a three-sided shed at the right rear portion of the property, and 268 parking spaces. The property is bounded by the Charles River at the rear, Town owned property on the easterly side, and Conservation, Residential and Business A Districts on the westerly side.

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27 Washington Street

The petitioner is requesting a Special Permit to allow the premises at 27 Washington Street to be used as a retail store having more than 50,000 square feet.

The following plans were submitted all dated 1/10/97: Legend & General Notes (C-2); Layout & Material Plan (C-3); Grading, Drainage & Erosion Control Plan (C-4); Utilities Plan (C-5); Landscape Plan (C-6); Existing Conditions Plan (C-7); Site Section (C-8); and Details (C-9). Plans C2 through C-5 and C-8 through C-9 were drawn by Michael E. McNeice, Registered Professional Engineer; C-6 was drawn by Frank S. Stewart, Registered Landscape Architect; and C-7 was drawn by Mark D. McGoniagle, Registered Professional Land Surveyor. Exterior Elevations (A-5) and Floor Plan (A-1), both dated 3/13/97, drawn by SSAE were also submitted.

Other materials submitted include: a Memorandum with accompanying documents produced by Goulston & Storrs; a municipal systems impact analysis prepared by Vanesse Hangen Brustlin, Inc.; Information Survey; and a Traffic Impact Analysis dated May, 1997, prepared by Vanesse Hangen Brustlin, Inc.

On June 10, 1997, the Planning Board reviewed the petition and voted unanimously to oppose the granting of the Special Permit.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The use of the premises at 27 Washington Street as a retail store containing more than 50,000 square feet is not a by-right use in a Business A District, and requires a Special Permit.

It is the opinion of this Authority that Cape Ann Land Development Corp. v. City of Gloucester, 371 Mass 19, 24 (1976) is not applicable to this petition. In Cape Ann, the use of the premises as a shopping mall was prohibited, and, as the petitioner was protected from the zoning change by filing an ANR Plan pursuant to MGL c.41, s.81P, the court ruled that a special permit must issue, and the only permissible limitation was the imposition of conditions which did not practically prohibit the use.

By contrast, in the present situation, the change in the Zoning Bylaw did not prohibit retail use of the premises as a retail store having more than 50,000 square feet, but rather only limited the intensity of the retail use that might be permitted as of right. This Authority therefore concludes that the amendment is applicable as written, and a special permit is required.

As presently in effect, the Zoning Bylaw authorizes the issuance of a special permit for the use of the premises as a retail store having more than 50,000 square feet. It requires that in order for a special permit to be issued, the petitioner must meet the conditions contained in

the seven standards listed in Section XXV-D of the Zoning Bylaw. The seventh standard, Intensity of Use, requires that increases in the intensity of use of the premises will "not adversely affect the character of the site and its surrounding area".

It is the finding of this Authority that the extreme increase in the level of intensity of the use of the premises is the primary issue, and not the use of the premises as a retail store having more than 50,000 square feet, for were the petitioner to propose a less intense use, a special permit might have been granted. In the opinion of this Authority, the petitioner is not entitled to a special permit, and the petition must be judged in accordance with the aforementioned special permit standards.

This Authority makes the following findings in regard to the petitioner's compliance with the required Special Permit Use Standards:

1. Vehicular Circulation (The project must not add to traffic congestion or accident potential on the site or in the surrounding area.)

a. Off-Site - The addition of 7,700 vehicle trips on an average weekday and 7550 vehicles on an average Saturday represents a significant increase in traffic volume. Without the addition of traffic signals at both the site driveway and Glen Road, the LOS at the Glen Road intersection will decrease from "E" to "F". The channeling of four lanes of westbound traffic into two lanes at the Newton line, coupled with the potential existence of three to four traffic lights from Concord Street to Glen Road, will create an unacceptable level of traffic congestion.

The plan presented by the petitioner envisions restriping and reorientation of lanes on Washington Street, and the installation of new traffic signals. The petitioner has not stated that these changes, which require the approval and action of other town officials, has been approved by the officials with jurisdiction over such changes.

In regard to accident potential, from the Newton line to Glen Road, in 1993/94 when Grossman's was open, there were 114 accidents on this stretch with 2,200 vehicle trips. In 1995/96, with Grossman's closed, there were 56 accidents on this corridor. With 7,700 vehicle trips projected, the projected number of accidents increases to 260.

b. On-Site - The access driveway curves behind the proposed parking spaces at the front of the lot, creating a potential for conflict between vehicles backing into the access road in order to exit the site and entering cars or trucks. In order to access the parking aisles in the front portion of the lot, an entering vehicle must cross the exit lane, creating a potential for an accident.

On Saturday, the peak hour traffic entering the site is projected to be 405 vehicles. There are 295 parking spaces on site, of which some will be occupied by employees. There is a real potential for traffic congestion and accidents due to insufficient parking.

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This Authority finds that the circulation patterns for motor vehicles create conditions that add to the traffic congestion and to the accident potential both on and off the site.

2. Driveways (Proposed driveways must be at least 50 feet from the nearest intersection.)

The nearest intersection to the proposed driveway is at Columbia Street, which has a centerline to centerline distance of approximately 200 feet.

This Authority finds that the proposed driveway meets the condition of being at least 50 feet from the nearest intersection.

3. Vehicle Queuing Lanes (Vehicle Queuing must be provided for without interfering with on or off street maneuvering of vehicles or pedestrians)

Parking in the front of the lot is very close to the entrance driveway. Inbound vehicles would be in conflict with vehicles parking and unparking in spaces along the frontage. With a projected stream of between 400 and 500 vehicles entering the drive during peak hours, vehicle queuing could back into the intersection, affecting flow on Washington Street. In addition, when vehicles are entering from Washington Street, vehicles would be queuing to the traffic signal on the outbound side of the drive. Entering vehicles will be unable to cross the traffic stream of the queues to access the parking aisles.

This Authority finds that vehicle queuing will contribute to interference with the on and off-street maneuvering of vehicles.

4. Compatibility with Surroundings (Compatible with natural and man-made site features, and with the characteristics of the surrounding area)

The area is characterized by a collection of small stores, curbside parking, a public way with only two travel lanes, numerous intersections, an elementary/middle school, a church, and intense pedestrian activity. A dense single residence area is adjacent in a westerly direction. The Charles River abuts the site to the rear.

This project involves the addition of up to four signalized intersections within a third of a mile, expansion of a two-lane roadway to four lanes, removal of 8 parking spaces, a tripling of vehicle traffic, and the creation of a four-lane 48 foot wide driveway.

This Authority finds that the proposed use of the premises is not in keeping with the characteristics of the surrounding area.

5. Pedestrian Safety (Adequate pedestrian and bicycle circulation must be provided and have barriers or physical separation from the motor vehicles)

The proposed plan provides a walkway from the street to the building on the westerly side of the site. Onsite pedestrian circulation is difficult. The proposed discontinuity in the sidewalk is an adverse aspect to pedestrian safety, as the scale of the intersection required to accommodate the high volume of traffic is directly contrary to the Town's "pedestrian friendly" goals for the area. Saturday peak hour pedestrian traffic is counted at 194 crossings at the site or between the site and Mica Lane. Vehicular traffic for this time is estimated at 810 trips, which is one car every 4.4 seconds. Even with a traffic signal containing a pedestrian phase, pedestrian crossings of the 48 foot driveway will be difficult and dangerous.

Elimination of the eight curb-side parking spaces will eliminate an important pedestrian safety buffer.

This Authority finds that pedestrian safety will be at risk due to the proposed plan.

6. Noxious Uses

A submitted report from Tech Environmental, Inc. deals with the noise impacts from rooftop mechanicals and delivery trucks, but does not include information on the trash compactors, except to state that use will be restricted to the hours of 7 a.m. to 10 p.m.

This Authority is unable to make a finding regarding "Noxious Uses" without further information.

7. Intensity of Use (Any increase in intensity of vehicle trips, employees or visitors, parking spaces, energy used, or volume of waste produced shall not adversely affect the character of the site or its surrounding area)

There are few more intensive uses of a retail site than for a store such as a Super Stop & Shop. The number of vehicle trips will increase from approximately 2,200 to 7,700 per day, which is a significant increase in the level of traffic not only to the site, but also traveling through the Lower Falls area. Additional traffic will make entering and exiting driveways more difficult. Traffic movements into and out of nearby streets including Mica Lane and River Street will be more difficult further aggravating existing capacity constrained locations. The increased traffic will exacerbate the difficulty pedestrians have crossing Washington Street, thus decreasing pedestrian safety.

The intensity of use requires an increase of 27 parking spaces on site, with the correlative reduction of 8 on-street parking spaces. The loss of these spaces would be injurious to the small retail businesses along Washington Street which rely on immediate access and on-street parking.

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Petition of Truman Wellesley Realty Trust
27 Washington Street

The proposed use of the premises is so intense as to disturb the fragile balance between the residential and commercial interests in this area. Both the residential and the small retail stores would be negatively impacted by the intensity of the proposed use of the premises.

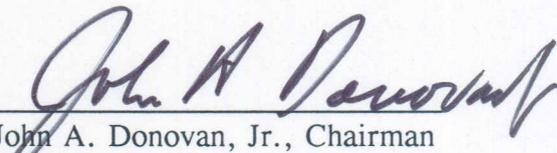
This Authority finds that the increase in the intensity of use shall adversely affect the character of the site and its surrounding area.

Furthermore, this Authority finds that the proposed use of the premises as a retail store having more than 50,000 square feet does not meet the conditions contained in the Special Permit Use Standards, and therefore, is not in harmony with the general intent and purpose of the Zoning Bylaw.

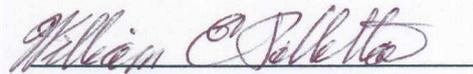
This Authority, by a unanimous vote taken at the Public Hearing, denies this request for a Special Permit. This Authority concludes that, the petition not having met the minimum requirements for the special permit requested, this Authority lacks the discretion to issue it. In addition, this Authority concludes that, if it did have the discretion to issue the requested special permit, it would decline to do so for the reasons set forth above.

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN
THE OFFICE OF THE TOWN CLERK.

cc: Planning Board
Wetlands Protection Committee
Board of Selectmen
Inspector of Buildings
Joshua Katzen


John A. Donovan, Jr., Chairman


Kendall P. Bates


William E. Polletta

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(SEAL)

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

NORFOLK, ss.

MISCELLANEOUS
CASE NO. 241226 (KFS)

JOSHUA KATZEN, TRUSTEE OF THE
TRUMAN WELLESLEY REALTY
TRUST,

Plaintiff

v.

TOWN OF WELLESLEY ZONING
BOARD OF APPEALS, and JOHN A.
DONOVAN, JR., KENDALL P. BATES,
WILLIAM E. POLETTA, SUMNER H.
BABCOCK, and ROBERT A. BASTILLE
as they are the members of the Town of
Wellesley Zoning Board of Appeals,
Defendants

JUDGMENT OF DISMISSAL

This case was brought by Plaintiff, on August 18, 1997, pursuant to G. L. c. 40A, § 17, appealing a decision of the Town of Wellesley Zoning Board of Appeals denying Plaintiff's petition for a special permit for the proposed operation of a Stop & Shop supermarket on property owned by Plaintiff. Since the filing of the instant action, this case has remained pending but inactive. At a status conference held on December 13, 2006, counsel for the parties advised the court that the case should be dismissed. Accordingly, it is hereby

ADJUDGED and ORDERED that the Complaint hereby is dismissed.

KFS By the Court. (Scheier, C.J.)

Attest:

Deborah J. Patterson
Recorder

Dated: December 14, 2006

A TRUE COPY
ATTEST:

Deborah J. Patterson
RECORDER

(SEAL)

COMMONWEALTH OF MASSACHUSETTS

LAND COURT

DEPARTMENT OF THE TRIAL COURT

NORFOLK, ss.

MISCELLANEOUS
CASE NO. 234333 (KFS)

JOSHUA KATZEN, TRUSTEE OF THE
TRUMAN WELLESLEY REALTY
TRUST,

Plaintiff

v.

PLANNING BOARD OF THE TOWN OF
WELLESLEY, and MARJORIE MARKS,
ROBERT L. DiSCHINO, STANLEY A.
BROOKS, ROBERT H. MURPHY, and
BARBARA S. GARD, as they are the
members of the Planning Board of the
Town of Wellesley,

Defendants

JUDGMENT OF DISMISSAL

This case was brought by Plaintiff, on December 17, 1996, pursuant to G. L. c. 41, § 81BB and c. 185, § 1 (k), seeking the annulment of a decision of the Town of Wellesley Planning Board denying Plaintiff's definitive subdivision plan related to land owned by Plaintiff and located in Wellesley at 27 Washington Street. Since filing of Defendants' Answer on January 13, 1997, this case has remained pending but inactive. At a status conference held on December 13, 2006, counsel for the parties advised the court that the case should be dismissed. Accordingly, it is hereby

ADJUDGED and ORDERED that the Complaint hereby is dismissed.

KFS By the Court. (Scheier, C.J.)

Attest:

Deborah J. Patterson
Recorder

Dated: December 14, 2006

A TRUE COPY
ATTEST:

Deborah J. Patterson
RECORDER