TOWN OF WELLESLEY MASSACHUSETTS

# ZONING BOARD OF APPEALS

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ZBA 98-16
Petition of Steven A. Cohen/CEA Wellesley Trust
981 Worcester Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, February 26, 1998 at 8 p.m. in the Great Hall at the Town Hall, 525 Washington Street, Wellesley, on the petition of STEVEN A. COHEN/CEA WELLESLEY TRUST requesting Site Plan Approval pursuant to the provisions of Section XVIA, Section XI, Section XIVB, Section XIVE and Section XXV of the Zoning Bylaw to allow construction of a two-story building with a footprint of 13,600 square feet and a floor area of 27,200 square feet (FAR .29) on a 113,700 square foot lot, of which 93,179 square feet is in a Business District and 20,561 square feet is in a Single Residence District at 981 WORCESTER STREET, in a Business District, a Single Residence District, a Water Supply Protection District, and a Flood Plain District. Parking for 110 cars and associated landscaping are included.

On January 26, 1998, 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 Steven Cohen, who was accompanied by Rick Moore, project engineer from Rizzo Associates. Mr. Cohen gave a brief introduction to the project. The site, previously occupied by Chin's Village, has been vacant for the past nine years. For the past two and one-half years, he has been working with various Town Boards to resolve the zoning and environmental issues.

Last year, Town Meeting voted to rezone a portion of the Single Residence District on the lot to Business use. In January, 1998, the Planning Board issued a Special Permit for a Project of Significant Impact (PSI), which contains many conditions regarding traffic. An Order of Conditions has been obtained from the Wetlands Protection Committee, and a Conservation Easement covering about 55% of the lot has been granted to the Natural Resources Commission.

Mr. Cohen explained that the building will have two floors; the first floor will be devoted to retail use and the second floor to office space. Parking for the retail use will be in the front of the lot, while parking for the offices will be in the rear. The design of the building is a balance between traditional and modern, as recommended by the Design Review Board.

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Using the submitted site plan, Rick Moore walked the Board through the site. There is traffic entrance and egress from Route 9 and Overbrook Drive. Due to the configuration of the egress onto Overbrook Drive and the signage, the public will be discouraged from turning right onto Overbrook Drive.

Mr. Moore said that parking lot lighting will be on 7 poles, two of which will be in the rear parking area and two on the side. Each of the 25 foot poles will have a hooded structure directing light onto the parking area. The poles are below the height of the building. The closest residence is about 300 feet from the rear parking area, so will not be impacted by any parking lot lighting.

Mr. Moore added that water and sewer connections are in place from the prior restaurant. The transformer and dumpster will be located at the rear of the property. There will be 109 parking spaces, as one has been removed on recommendation of the DPW.

He stated that they have received an Order of Conditions from the Wetlands Committee. The building has been raised about half a foot above the parking lot, so it is slightly above the 100 year flood elevation. They cannot raise the whole site due to Wetlands issues. Regardless of how much water is involved, the excess water sheets over onto Route 9.

The Board said it has received a recommendation from the Engineering Department that a document be executed indemnifying the Town from any damage to the property caused by flooding. The Board feels this is necessary because without it, if the Board accepts the drainage design, the Town would have liability for flood damage. The building is .2 feet above the water that was present on the site a year ago. The idemnification will make the petitioner the responsible party for any damage, not the Town.

The Board questioned the traffic exiting onto Overbrook Drive from the site, particularly in light of the future use of the adjacent Sozio site by the Guardian bank. It appears that the proposed queue line of seven vehicles could extend past the egress from the site. The Board asked if that situation occurred, how the office traffic would exit the site.

Mr. Moore said that the traffic analysis included the office peak hour. Mr. Cohen stated that there are two means of exiting the site - one onto Route 9 and one onto Overbrook Drive. Traffic will tend to use the less crowded exit. The traffic plan has already been carefully examined by the Board of Selectmen, the Town's Traffic Engineer, and the Planning Board, and has been approved by all of them.

Mr. Moore stated that the Route 9 entrance was moved westward toward Overbrook Drive to eliminate the potential of traffic crossing two lanes of traffic to make a "U" turn at the lights. The Town's Traffic Engineer considered it safer to have most of the traffic exit onto Overbrook, where it could proceed eastbound on Route 9 by means of a traffic signal. The State Highway Department has also reviewed the curb cuts, and supported the traffic

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circulation pattern. After the building is occupied, if timing adjustments are necessary at the traffic light, the Highway Department will make them, and Mr. Cohen will assume the cost. If a queue forms, it will be on the premises, and not on Overbrook Drive.

The Board commented that the proposed traffic from the Guardian bank site will be crossing Overbrook Drive to enter the queue. If cars are stacked up to the egress, this might present a problem.

The Board noted that one wall of the proposed building will be 5.5 feet from the property line and questioned how the building facing will be installed without trespassing on the abutting Regan & Stapleton property. A chain link fence separates the lots. Mr. Cohen said that the contractors will have to solve the problem.

The Board asked if an NPDES permit had been issued. Mr. Moore said that it was not necessary. The Board agreed that the decision would contain a condition that either a NPDES permit be submitted, or documentation be provided that the permit is unnecessary before construction begins.

The Board questioned the use of catchbasins equipped with a Neenah hood, and requested that all catchbasins be of the dropped "T" type.

The Board noted that both granite and bituminous curbing are mentioned on the plans. Mr. Cohen stated that all curbing will be pre-cast concrete.

Dr. Roy Welker, 24 South Woodside Avenue, expressed opposition to the exit onto Overbrook Drive. He preferred all parking be located off of Route 9 and not split between the front and rear of the building. He was concerned that the parking lot lights would be intrusive, and asked for restricted hours for the lights and the use of the loading dock.

Mr. Cohen responded that Dr. Welker's home is between 400 to 500 feet from the parking lot. Both the Planning Board and the Design Review Board had recommended that the building be set at the front of the lot with all parking at the rear. The neighborhood wanted the building at the rear with all parking in the front. The building has been sited in the middle of the lot as a compromise.

The Board asked how access to the land under the Conservation Easement will be controlled. Mr. Cohen said that control would be determined by the Natural Resources Commission. The land abutting the parking lot is thicket and swamp. The property cannot be fenced as access would be eliminated. The easiest access to the aqueduct is from Overbrook Drive.

Mr. Cohen said that the use of the loading dock will be minimal and that he would be agreeable to reasonable restrictions on the hours of use.

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Lisa Brown, 94 Beechwood Road, also expressed concern with the access onto Overbrook Drive. In her opinion, there is not sufficient space for seven cars to queue from the light to the Overbrook Drive exit.

Lee Mades, 32 South Woodside Avenue, suggested a blinking red light rather than a stop sign at the exit.

James Brown, 94 Beechwood Road, requested that the height of the light poles at the rear parking lot be reduced to 15 feet. The Board stated that the Planning Board had recommended a height of 18 feet.

Mr. Cohen said that the 25 foot height of the two poles allows total coverage of the rear parking lot. If the poles are shorter, more poles will be required, and some of the additional poles would have to face away from the building. The lighting was designed to face in and to minimize the impact on the neighborhood. The Board suggested the use of low pressure sodium lamps, rather than mercury vapor lamps, to reduce the glare.

Lori Schneider, 32 South Woodside Avenue, expressed concern regarding neighborhood security with the parking lot behind the building. The Board responded that the lighting would provide security. The height of the poles with shielded low sodium lamps would eliminate the glare and the need of additional poles. The Board cannot impose a curfew on the lighting, nor does it have jurisdiction to relocate the building.

The Board then discussed the conditions to be required in the decision.

## Statement of Facts

The subject property is located on a 113,740 square foot lot at 981 Worcester Street, in a Business District, a Single Residence District, a Water Supply Protection District and a Flood Plain District. The property is bounded southerly by Worcester Street, westerly by Overbrook Drive, northerly by a Single Residence District and the Cochituate Aqueduct, and easterly by a car dealership owned by Regan & Stapleton.

The petitioner is requesting Site Plan Approval to construct a two-story building with a footprint of 13,600 square feet and a floor area of 27,200 square feet on the Business zoned portion of the lot, which comprises 93,179 square feet (FAR .29). The remaining 20,561 square feet is zoned Single Residence. Parking for 109 cars and associated landscaping is included.

On August 29, 1996, the Wetlands Protection Committee issued an Order of Conditions (DEP 324-230) to the petitioner.

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In April, 1997, Town Meeting voted to pass Article 38, which allowed rezoning of 61,579 square feet of the lot from Single Residence to Business use.

On January 6, 1998, the Planning Board voted to issue a Special Permit for a Project of Significant Impact. Said Special Permit is required pursuant to Section XVIA of the Zoning Bylaw for any project having an aggregate of newly constructed floor area of 10,000 or more square feet.

A Conservation Restriction to the Town of Wellesley Natural Resources Commission was accepted by the NRC on April 7, 1998 and by the Board of Selectmen on April 8, 1998. The document will be recorded following sign-off by the Secretary of Environmental Affairs.

Other documents relating to the site include a Declaration of Cross Easements affecting the Shell property at 987 Worcester Street; Exclusive Easement Agreement and Option Agreement affecting the property at 5 Overbrook Drive; and Order of the Land Court eliminating portions of Brookside Avenue and Fairlawn Terrace. Copies of all of the above documents are on file in the Office of the Board of Appeals.

The following information was submitted: An Official Development Prospectus; Summary of PSI Application Traffic Analysis dated November 27, 1997, prepared by Rizzo Associates; Hydrologic Analysis Summary prepared by Rizzo Associates; and Boring Logs dated 11/3/97 prepared by GZA GeoEnvironmental, Inc.

The following survey and engineering plans were submitted: Location Plan (C-1) dated 1/21/98, drawn by Ronald S. Gerber, Registered Professional Land Surveyor, revised 2/19/98 by Richard Moore, Registered Professional Engineer; Existing Conditions Plan (C-2) dated 1/21/98, drawn by Ronald S. Gerber, Registered Professional Land Surveyor, revised 2/19/98 by Richard Moore, Registered Professional Engineer; Layout & Materials Plan (C-3) dated 1/21/98, revised 2/19/98, drawn by Richard Moore, Registered Professional Engineer; Utility/Grading/Drainage Plan (C-4) dated 1/21/98, revised 2/19/98, drawn by Richard Moore, Registered Professional Engineer; Miscellaneous Construction Details (D-1) dated 8/7/97, revised 1/21/98, revised 2/19/98, drawn by Richard Moore, Registered Professional Engineer; and Construction Details (D-2) dated 6/7/97, revised 1/21/98, revised 2/19/98, drawn by Richard Moore, Registered Professional Engineer.

The following architectural plans were submitted: First Floor Plan (A-1), dated 1/20/98; Second Floor Plan (A-2), dated 1/20/98; Exterior Elevations (A-5), dated 1/20/98; Exterior Building Sections (A-7.1) dated 1/13/98; Exterior Building Sections (A-7.2) dated 1/13/98; Exterior Building Sections (A-7.3) dated 1/13/98. All architectural plans were drawn by Michael R. Davis, Registered Architect.

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A landscape plan (L-1) dated 9/3/97, drawn by Michael Weinmayr, Registered Landscape Architect; and Cross-Easement Plan: Between Shell Oil Products Company and CEA Group, Inc., dated 8/6/96, drawn by Ayoub Engineering, were also submitted.

On August 14, 1997, the Design Review Board held a preliminary review of the project. At that time, the Board voted to approve the proposal and waived final review.

All submitted information and plans were also sent to the Planning Board, Wetlands Protection Committee, Town Engineer, Board of Health and the Fire Chief as required by Section XVIA of the Zoning Bylaw. Written responses from each of the above were received and are on file at the office of the Board of Appeals.

On February 10, 1998, the Planning Board reviewed the petition and recommended that the parking lot light poles have an overall height of not more than 18 feet, and that the luminaires to be used shall be of a type having a total cutoff of less than 90 degrees so as to direct light only onto the parking lot pavement. The project was examined extensively by the Planning Board in the PSI review. Based on the conditions contained in that approval, the Planning Board recommends approval of the site plan.

## Decision

This Authority has made a careful study of the materials and plans submitted and the information presented at the hearing. The proposed two-story building with a floor area of 27,200 square feet constitutes a Major Construction Project pursuant to Section XVIA of the Zoning Bylaw because it includes the construction of 2,500 or more square feet of gross floor area, and is also pursuant to Section XIVB and Section XIVE of the Zoning Bylaw because portions of the property lie in a Water Supply Protection District and in a Flood Plain District.

It is the opinion of this Authority that the plans for the proposed two-story building at 981 Worcester Street, as enumerated in the foregoing Statement of Facts, comply with the Zoning Bylaws of the Town, protect the safety, convenience and welfare of the public, minimize additional congestion in the public and private ways, and insure adequate protection for water sewerage and drainage. Furthermore, the project is in compliance with Section XVIA, Section XXI and Section XXII of the Zoning Bylaw.

A Special Permit is hereby granted and Site Plan Approval is given by this Authority, as voted unanimously by this Authority at the Public Hearing, pursuant to Section XVIA, Section XIVB, Section XIVE, and Section XI of the Zoning Bylaw, subject to the conditions attached hereto as Addendum A.

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
Inspector of Buildings
Wetlands Protection Committee
Bill Millett, Engineering Department
Dr. Robert Katz, Health Department

Kendall P. Bates, Acting Chairman

William E. Polletta

Cynthia S. Hibbard

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## ADDENDUM A

1. The petitioner shall obtain an Amended Order of Conditions to be issued by the Wetlands Protection Committee as the plans on which the original Order of Conditions was issued have been revised. A copy of the Amended Order of Conditions shall be submitted to the office of the Board of Appeals. All conditions contained therein shall be incorporated into this Decision.

2. All catchbasins shall have dropped "T" heads as shown on the submitted detail.

3. Only granite and pre-cast concrete curbing shall be used.

4. Town Counsel shall prepare a document to be signed and recorded by the petitioner, which will indemnify the Town from any damage to the property and/or building as a result of flooding. This shall be done prior to the issuance of a building permit.

5. Prior to the issuance of any building permit, a NPDES (National Pollution Discharge Elimination System) permit shall be obtained, or documentation provided to the Board of Appeals that said permit is unnecessary.

6. The hours of the use of the loading dock shall be restricted to between 7 a.m. and 8 p.m.

7. The two 25 foot lighting poles at the rear of the building shall be illuminated with low pressure sodium lamps.

8. No lights for outside illumination of the parking lot shall be installed on the rear facade of the building.

9. All conditions contained in the Special Permit for a PSI issued by the Planning Board are herby incorporated into this decision. Condition 3 under traffic and pedestrian safety involves a review of the operation of the Route 9/Overbrook intersection at the time of at least 80% occupancy but not later than one year after initial occupancy; and a second review approximately 6 months after the acceptance by the Town of the first study. These two reviews shall also include an evaluation of the queue length from the intersection stop light to the site exit on Overbrook Drive, and providing recommendations for correcting, at the expense of the Applicant if so required by MHD, any operating deficiencies, including closure of this exit.

10. If the existing 10 inch water main at 965 Worcester Street is not already connected to the existing 8 inch water main at 987 Worcester Street, the applicant will be responsible for making the connection.

ADDENDUM A CONTINUED

11. The DPW Engineering Department will prepare a document and plan for the applicant to provide the Town of Wellesley with a permanent grant of an electric easement.

12. All trash must be handled by a waste hauler licensed by the Health Department. A water service connection shall be placed near the dumpster to allow the dumpster pad to be rinsed.

13. All work shall be performed in accordance with the plans submitted and on file with this Authority.

14. All design and construction must comply with all applicable state and local codes.

15. All requirements of the Town of Wellesley Fire Department shall be complied with.

16. All requirements of the Department of Public Works shall be met including, but not limited to, the requirement that water, sewer and electric connections, together with drainage connections, be made in accordance with DPW standards and installed and maintained at no cost to the Town of Wellesley.

17. Upon completion of the project, a complete set of Site Utility Plans shall be submitted to the Department of Public Works.

18. A copy of the Occupancy Permit issued by the Inspector of Buildings shall be submitted to this Authority at the time of issuance.

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