

**ZONING BOARD OF APPEALS**

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

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WELLESLEY, MA 02181JOHN A. DONOVAN  
KENDALL P. BATES  
WILLIAM E. POLLETTAELLEN D. GORDON  
EXECUTIVE SECRETARY  
TELEPHONE  
(781) 431-1019 EXT. 2081998 JUN 17 A 8:41  
SUMNER H. BABCOCK  
ROBERT A. BASTILLE  
CYNTHIA S. HIBBARD

ZBA 98-26

Petition of Wellesley Gateway, LLC  
93 Worcester Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, April 2, 1998 in the Great Hall at the Town Hall, 525 Washington Street, Wellesley, on the petition of WELLESLEY GATEWAY, LLC requesting Site Plan Approval pursuant to the provisions of Section XVIA, Section IX and Section XXV of the Zoning Bylaw to allow construction of a four-story office building with a footprint of 74,083 square feet and a floor area of 270,000 square feet (FAR .4) and a one-story parking garage with a roof deck, which has a 58,368 square foot footprint, on a 633,653 square foot lot at 93 WORCESTER STREET, in an Administrative and Professional District. Parking for 1,120 cars will be provided in the garage and on site, as well as associated landscaping.

On February 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.

PUBLIC HEARING - APRIL 2, 1998

Presenting the case at the hearing was Bill Whitney, project manager from the Drucker Company, who was accompanied by David Manfredi, project architect from Elkus/Manfredi Architects; Cynthia Brush, project engineer from Rizzo Associates, and Edward Corcoran, Deputy Commissioner and legal counsel for the Mass Highway Department, owner of the site.

Using architectural renderings and facade drawings, Mr. Manfredi walked the Board through the site, and described the special features of each facade of the proposed four-story building.

Ms. Brush discussed the drainage plan. The existing drainage patterns and sewer system will be maintained. Three of the catch basins will be fitted with grit traps. The water main will loop the site to increase the pressure.

Mr. Corcoran began with the disclosure that he and Chairman John A. Donovan, Jr. were adversaries in a case involving a trucker hitting a bridge abutment on the Tobin Bridge in 1996.

Mr. Corcoran explained that the existing building had been operated by the Mass Highway Department. A degreasing machine, which used solvents containing TCE, had been located

in the vehicle maintenance bay. Through a seam in the concrete floor, the TCE drained into the subfloor and then into the groundwater. There is a concentration beneath the building where the contamination is 96,000 parts/billion (ppb). The reportable level is 300 ppb. The groundwater flows toward Route 128. Outside the building perimeter, the concentration drops to 10,000 ppb.

Presently, nearly 100 wells have been installed as per the Remedial Action Plan (RAM) filed with DEP, for use in an air sparging soil vapor extraction system. The system works by blowing air into the wells beneath the groundwater surface and then vacuuming the air out. TCE is a light substance which sits on the surface of the groundwater and can be volatilized by adding air. This system will operate until the building is demolished early in the summer. By then, a significant amount of the TCE will have been captured.

Once the building is demolished, groundwater sampling will be done and the system will be shut down. A significant portion of the new building will be located within the footprint of the old building. A vapor barrier will be installed below the building slab and a passive ventilation system will be installed in the building. As the flow of the groundwater moves away from the building, evaluation of the TCE outside the footprint will be done upon completion of the building. If necessary, a series of follow-up measures will be put in place.

The Remedial Action Plan was approved by DEP with the clear understanding that a new building will be constructed on the footprint of the old, and will be constructed while the RAM is in progress. There is likely to be TCE remaining in the groundwater below the building when the system is turned off, but both DEP and the developer are comfortable with this plan. A Health and Safety Plan, approved by a Certified Industrial Hygienist, will be in place during construction so that all workers employed on the site will be safe.

The Board asked if, when construction begins, the site will be clean to the extent that it meets the number of units/billion. Mr. Corcoran stated that they believe that by the time the existing building is demolished, it will be sufficiently safe for construction to begin.

The Board stated it was concerned about environmental safety, and asked if the water table, at the time of construction would meet safe levels.

Mr. Corcoran explained that a vapor barrier will be installed below the building slab to protect against vapors that might tend to migrate up through soils and enter the building. Because the groundwater flows out from under the building, they will be able to install a second phase of an aggressive treatment system which will operate outside the building footprint, and will continue to pull out the TCE while the building site is being developed.

Rosemary Donahue, 9 Maple Road, the neighborhood representative, presented a list of neighborhood concerns, each of which received a response from Mr. Whitney.

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Kate Kane-Leach, 17 Ledyard Street, expressed concern about traffic and potential accidents.

Royall Switzler, 10 Oakridge Road, stated that, in his opinion, nothing should be constructed until the site was completely clean.

The Board asked who would be responsible for determining that sufficient TCE has been removed from the building site to begin construction. Mr. Corcoran responded that the judgement will be made by the Licensed Site Professional responsible to DEP. He will also determine whether additional remediation is necessary.

The Board asked if the acceptable level for work would be the same for an enclosed building as for an open air site. When the shell of the building is erected, and prior to the installation of the passive venting system, will the level be acceptable. Mr. Corcoran said that it would be.

The Board asked what the acceptable level of contamination would be to allow the project to be built. Mr. Corcoran said that it could be constructed today, as long as there is a treatment system in place that would remediate the level of TCE in the groundwater outside the building. The existing building could be occupied now. They will have treated a significant amount of TCE under the building before demolition. After the building is completed with the vapor barrier and passive ventilation system in place, follow-up measures will be implemented depending on the state of existing contamination.

The Board asked if the petitioner had applied for an NPDES permit. Richard Marks, legal counsel for the Drucker Company, stated this had not yet occurred. Two days before site work begins, a Notice of Intent must be filed with the EPA. An individual permit is not necessary for the site. They will have a general permit in place which simply requires notification of EPA 48 hours before site work begins.

The Board asked if a condition requiring that the NPDES permit be awarded or documented that it is unnecessary, prior to the issuance of any building permit, be acceptable. Mr. Marks said it would be acceptable. As soon as the Notice of Intent is filed with EPA, they are entitled to a general permit which exists for such sites under the NPDES program. They will supply the Board with a copy of the document submitted to EPA.

After discussion, the Board determined that as a third set of plans had been submitted only three days prior to the hearing, and as the complexity of the TCE issue required more study, it needed further time before voting on Site Plan Approval. The Board voted unanimously to continue the Public Hearing to April 30, 1998.

On April 16, 1998, due notice was given by mailing and publication of the Public Hearing scheduled for April 30, 1998 in the Selectmen's Meeting Room (Conference Room B).

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PUBLIC HEARING - APRIL 30, 1998

Prior to the presentation of the case, John A. Donovan, Jr., Chairman, disclosed that his law firm, Burns & Levinson, represents both Rizzo Associates, the petitioner's engineering firm, and GZA, the environmental firm of the petitioner's Licensed Site Professional (LSP). Although he, personally does not represent either company, a department in his firm provides counsel for both companies.

Presenting the case at the hearing was Bill Whitney, project manager for the Drucker Company, who was accompanied by Richard Marks, legal counsel from Goulston & Storrs; Dennis Tuttle, Licensed Site Professional from ABB; and Edward Corcoran, Deputy Commissioner and legal counsel for the Mass Highway Department, which owns the site.

Mr. Whitney stated that all engineering issues have been resolved, and that a letter to that effect was sent to the Board by Doug Stewart, Assistant Town Engineer. The issue of TCE on site would be addressed by Mr. Corcoran and Dennis Tuttle, LSP.

Mr. Corcoran stated that, in response to the Board's concern regarding post-construction remediation, Mass Highway is obligated under the state and federal law to aggressively continue remediation, if it is determined to be necessary by the LSP. He has sent a letter to the Board in the nature of a contractual obligation, to do this.

Mr. Donovan stated that the Board has received Mr. Corcoran's letter committing the Mass Highway Department to responsibility for remediation pursuant to the law once the building is completed. The Board has agreed that the following additional conditions must be fulfilled prior to the issuance of a building permit: 1. Mr. Tuttle, or his successor, shall give a written opinion to the Board that construction is safe to begin; 2. a Health and Safety Plan, prepared by a Certified Industrial Hygienist, and a Soil Management Plan, approved by Mr. Tuttle, shall be submitted to the Board and will be reviewed by the Director of Public Health.

Mr. Donovan added that the Board is still concerned that once the building has been constructed, everything possible will be done to ensure the safety of the occupants, which may not be the contractual responsibility of the Mass Highway Department.

Mr. Corcoran said that before the building is constructed, a vapor barrier will be installed below the slab. A passive ventilation system will be installed in the building whereby any vapors will be safely dissipated into the air. There will be an ongoing monitoring and evaluation process. If necessary, a separate groundwater remediation system to continue to attack the groundwater condition outside the building footprint will be installed under a separate remedial action plan to be prepared and overseen by Mr. Tuttle and approved by DEP. Certification can be made at this time that the building will be safe for occupation when it is completed.

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The Board asked how the air quality will be monitored once the building is occupied.

Mr. Tuttle said that a layer of crushed stone will be installed between the vapor barrier and the slabs. Probes will be installed in this layer to monitor the vapor. Probes will also be installed, which could be monitored, in the venting system of the building.

Mr. Tuttle explained that ordinarily a vapor barrier is installed close to the slab of the building. In this case, the vapor barrier will be several feet below the slab. The Board expressed concern that the installation of utilities will penetrate the vapor barrier. Once the contamination has passed through the vapor barrier, it has open access to the building.

The Board asked if the probes inserted in the crushed stone layer could be monitored on a quarterly basis to cover any seasonal change. Mr. Tuttle agreed.

Cynthia Hibbard, Associate Member of the Zoning Board, but not sitting or voting on this petition, said that Mass Highway has been following a RAM, which is an expedited process, and asked if a detailed risk assessment and an exposure assessment of the site have been done, and if cleanup targets had been identified.

Mr. Tuttle said that Phase Two is part of the Mass Contingency Plan in the investigation of the site. This phase includes determining the extent of the contamination, which should be completed in the next month or so. They will then complete the risk assessment and evaluate the exposure risk focusing on receptors beyond the building, as the building occupants will be protected under the installation of the vapor barrier and passive venting system. No evidence of contamination has been found in any other direction but in an easterly direction between the proposed building and Route 128. As one moves away from the construction site, the concentrations decrease.

Mrs. Hibbard stated that Mass Highway is required to reduce the pollutant concentrations to a level of "**no significant risk**", which will be determined upon completion of the evaluation and approved by DEP. She suggested that Mr. Corcoran's commitment letter include this language.

Mr. Tuttle explained that the cleanup target is 300 ppb. Upon cessation of the current remediation system, they will reassess the remaining contamination. With the vapor barrier and passive venting system in place, the building will be safe for occupancy, without reaching this goal. The obligation under state law is to continue cleanup until a state of "no significant risk" is reached. He will sign off when this has occurred.

Mrs. Hibbard asked if, once the building was in place, remediation beneath the building could continue. Mr. Tuttle said they would evaluate depending on the levels achieved. If concentrations have not been sufficiently lowered, and the concentrations contribute to continued contamination as it leaves the construction site, they could add chemicals to the groundwater and let natural processes occur. Horizontal air sparging beneath the building

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could also be installed, but would probably be unnecessary, as concentrations appear to be decreasing.

Mrs. Hibbard asked if the LSP would provide an analysis of the safety of the building that addresses the proposed ventilation, including the proposed TCE vaporization rates for the existing contamination and estimated leakage through the vapor barrier.

Mr. Tuttle said that an analysis could be done, but the crushed stone layer will be monitored quarterly for the presence of vapors, providing an early warning system. If necessary, the space beneath the building can be ventilated, creating a negative pressure with carbon treatment of the vapor. This system will be in place in perpetuity.

Mrs. Hibbard said that the real concern is the levels of TCE in the building itself. Some type of quarterly sampling should also be conducted in all occupied spaces during the first year of occupation. Any TCE found should be compared with DEP allowable ambient levels (AALs) for a 24 hour period.

Rosemary Donahue, 9 Maple Road, expressed concern that the process is rushing forward without a risk assessment. She would prefer the process cease until the risk assessment has been completed.

Jim Whetton, 23 Maple Road, expressed concern about possible neighborhood basement contamination while the site utilities are being installed.

In summary, Mr. Corcoran stated that DEP is the enforcement body for the regulatory process required by law, which states that the building, as designed, can be safely inhabited. Mass Highway has been aggressively treating the TCE beneath the existing building and is aware that the TCE is moving out from under the building toward Route 128. This plume is their focus for follow-up remediation. When the evaluation is complete, the LSP will determine what course of action should be taken, and Mass Highway will then install and operate the required remediation systems until the LSP states they can be discontinued.

Mr. Marks added that, while the Board is struggling with the issues of safety of the building occupants and the possible interference of the building with remediation of the rest of the site, the LSP will certify that the building, as designed, is safe with the contamination level present at the time of construction, and that the presence of the building will not interfere with future remediation.

#### Statement of Facts

The subject property is located at 93 Worcester Street, in an Administrative and Professional District, on a 633,653 square foot lot which is bounded southerly by Worcester Street easterly and northerly by Route 128 and westerly by a Single Residence District. The

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property, which was the site of the Wellesley Maintenance Depot, is owned by the Massachusetts Highway Department, and leased to Wellesley Gateway, LLC on a long term basis.

The petitioner is requesting Site Plan Approval, pursuant to Section XVIA of the Zoning Bylaw, to construct a four-story office building with a footprint of 74,083 square feet and a floor area of 270,000 square feet (FAR .4), and a one-story parking garage with a roof deck which has a footprint of 58,368 square feet. Parking for 1,120 cars will be provided in the garage and on site, as well as associated landscaping. This project is designed for occupancy as the corporate headquarters of Harvard Pilgrim Health Care.

On May 5, 1997, Town Meeting adopted an amendment to Section IX, Administrative and Professional District, of the Zoning Bylaw allowing the Planning Board to grant a Special Permit for an increase in the Floor Area Ratio above .3 percent, but not higher than .4 percent and an increase in the maximum number of stories to four subject to specific conditions.

On September 22, 1998, the Planning Board granted a Special Permit with Conditions to Wellesley Gateway, LLC to increase the Floor Area Ratio to .4 and to allow the building to contain 4 stories, as all requirements of Section IX-B had been met including, but not limited to, a written site security plan approved on July 22, 1997 by the Chief of Police and a Traffic Demand Management Plan approved on August 20, 1997 by the Board of Selectmen.

On June 26, 1997, the Wetlands Protection Committee issued a Positive Determination of Applicability for the project. On December 15, 1997, the Committee voted to issue an Order of Conditions (DEP 324-253) for the proposed activities.

On February 4, 1998, the Planning Board, pursuant to the provisions of Section XVIA. part C issued a Special Permit for a Project of Significant Impact with Conditions and Negotiated Improvements to the petitioner.

The following engineering plans were submitted: Existing Conditions/Demolition Plan (C-1), dated 2/24/98, revised 3/19/98, revised 3/30/98; Site Layout & Materials Plan (C-2) dated 2/24/98, revised 3/20/98, revised 3/30/98; Grading & Drainage Plan (C-3) dated 2/24/98, revised 3/20/98, revised 3/30/98; Site Utility Plan (C-4) dated 2/24/98, revised 3/20/98, revised 3/30/98; Erosion Control Plan (C-5) dated 2/24/98, revised 3/20/98; Utility Profiles (C-6) dated 2/24/98, revised 3/20/98, revised 3/30/98; Utility Profiles (C-7) dated 2/24/98, revised 3/20/98, revised 3/30/98; Construction Details (C-8) dated 2/24/98, revised 3/20/98, revised 3/30/98; Construction Details (C-9) dated 2/24/98, revised 3/20/98; Construction Details (C-10) dated 2/24/98, revised 3/20/98; all signed by Richard A. Moore, Registered Professional Engineer.

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The following Landscape Plans were submitted: Landscape Plan (L-1), Irrigation Plan (L-2); Site Plan Enlargement (L-3); Site Details (L-4); Site Details (L-5); and Irrigation Details (L-6) all dated 3/20/98 and signed by Harry S. Fuller, Registered Landscape Architect.

The following architectural plans were submitted: First Floor Plan (A2.01); Second Floor Plan (A2.02); Third Floor Plan (A2.03); Fourth Floor Plan (A2.04); North Elevations (A3.01); West Elevations (A3.02); South Elevations (A3.03); East Elevations (A3.04); all dated 2/23/98; Garage Ground Level Plan (G1.01); Garage Second Level Plan (G1.02); Garage Elevations (G2.01); all dated 2/25/98; Site Lighting Plan (SL-1) dated 3/19/98; Garage Ground Level Lighting Plan (SL-2) dated 3/24/98; and Garage Second Level Lighting Plan (SL-3) dated 3/24/98. All architectural plans with the exception of Site Lighting Plan drawn by Rizzo Associates, were drawn by David P. Manfredi, Registered Architect.

The following materials were also submitted: Official Development Plan, Site Traffic Summary; Refuse Disposal System Plan; Fire Flow Test Results prepared by Brian Sullivan, P.E.; Comparison of Existing and Proposed Condition Peak Discharges/2-year, 10-year and 100-year Event Storms prepared by Rizzo Associates; GZA Boring Logs done in June, 1997; a Stormwater Management Report prepared by Rizzo Associates with a list of Stored Chemicals. A copy of the Release Abatement Measure (RAM) Plan dated January, 1998, prepared by ABB Environmental Services, Inc. was also submitted.

A letter dated April 29, 1998 was received from Edward J. Corcoran, Deputy Commissioner and Chief Counsel for Mass Highway Department, stating that Mass Highway confirms its commitment to continue to aggressively remediate all contamination and to see such processes through to completion in accordance with its obligations under the law.

A follow-up letter dated May 13, 1998, was received from Mr. Corcoran stating the following:

"Please understand that, by this letter, MassHighway commits to continue to aggressively remediate all contamination and to see such processes through to completion in accordance with its obligations under the law. MassHighway will continue with remediation efforts until contamination at the site is reduced to a level of no significant risk."

The Design Review Board held a preliminary review of the project on December 4, 1997 and a final review on December 18, 1998.

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

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On March 24, 1998, the Planning Board reviewed the petition and stated that the project was examined intensively in the PSI review. The site plans were consistent with the recommendations of the PSI review. The Planning Board offered no further comment.

Decision

This Authority has made a careful study of all the plans and materials submitted and the information presented at the two Public Hearings. Wellesley Gateway, LLC has proposed construction of a four-story office building with a footprint of 74,083 square feet and a floor area of 270,000 square feet, and a one-story parking garage with roof deck, which has a 53,368 square foot footprint at 93 Worcester Street, in an Administrative and Professional District.

This project 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.

It is the opinion of this Authority that the submitted plans, 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 public and private ways and insure adequate protection for water, sewerage and drainage. Furthermore, compliance is insured with Section XVI, Section XXI and Section XXII of the Zoning Bylaw.

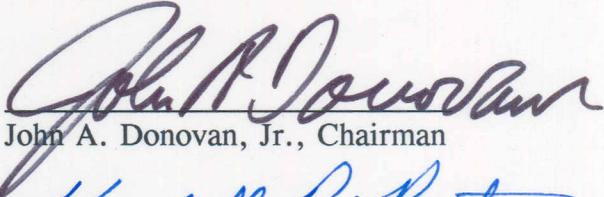
Therefore, Site Plan Approval is hereby granted, as voted unanimously by this Authority at the Public Hearing held on April 30, 1998, pursuant to Section XVIA and Section XI of the Zoning Bylaw, subject to the conditions attached hereto as Addendum A.

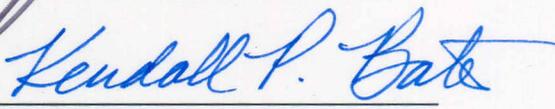
APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN  
THE OFFICE OF THE TOWN CLERK.

cc: Planning Board  
Wetlands Protection Committee  
Board of Selectmen  
Inspector of Buildings  
Dr. Robert Katz, Department of Public Health  
Richard Marks  
Edward Corcoran

edg

NB: ABB Environmental Services, Inc. is now known as Harding Lawson Associates.

  
John A. Donovan, Jr., Chairman

  
Kendall P. Bates

  
William E. Polletta

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ADDENDUM A

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1. The following documents including all Conditions and Negotiated Improvements contained therein are hereby incorporated into this decision:
  - a. Security Plan approved by Chief of Police
  - b. Traffic Demand Management Plan approved by Board of Selectmen
  - c. Order of Conditions (DEP 324-253) issued by Wetlands Protection Committee
  - d. Special Permit issued by Planning Board on September 22, 1997
  - e. Special Permit issued by Planning Board on February 4, 1998
  
2. The following conditions shall be met prior to the issuance of any building permit:
  - a. The Licensed Site Professional, Dennis Tuttle, or his successor, shall provide to the Board of Appeals his written opinion that the construction site at 93 Worcester Street is safe for construction to begin.
  
  - b. A Health and Safety Plan prepared by the Certified Industrial Hygienist employed by the petitioner's contractor and a Soil Management Plan approved by Dennis Tuttle or his successor, shall be submitted to the Board of Appeals. These plans shall also be submitted to and reviewed by Robert Katz, Director of Public Health.
  
  - c. A copy of the Notice of Intent filed with EPA for a general NPDES permit shall be submitted to the Board of Appeals.
  
3. Subsequent to the completion of remediation of the entire site, the Licensed Site Professional, Dennis Tuttle, or his successor, shall submit documentation to the Board of Appeals that the entire site has achieved a level of "no significant risk".
  
4. The petitioner shall be responsible for submission of documentation to the Board of Appeals and the Director of Public Health that monitoring of the crushed stone layer between the vapor barrier and the building slab for TCE has been done, together with a comparative analysis of the findings with the risk standards established through the Mass Contingency Plan (MCP) process. Said report shall be submitted on or before the 15th of January, April, July, and October for one year beginning with the first quarter following occupancy of the building.
  
5. The petitioner shall be responsible for submission of documentation to the Board of Appeals and the Director of Public Health that TCE sampling of the air in a minimum of two perimeter occupied spaces and two interior occupied spaces on each of the four floors of the building for a 24 hour period has been done, together with a comparative analysis of the findings with the standards established through the MCP process, applicable to indoor environments. Said report shall be submitted on or before the 15th of January, April, July and October for two years beginning with the first quarter following occupancy of the building.

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6. If the contaminant levels monitored in either Condition 5 or 6 are found to be above MCP allowable levels, immediate action shall be taken to eliminate the contamination problem; and monitoring shall continue until the levels obtained are below MCP allowable levels for a minimum of two consecutive quarters.
7. Prior to the issuance of a Certificate of Occupancy, the Licensed Site Professional, Dennis Tuttle, or his successor, shall submit certification to the Board of Appeals and to the Director of Public Health that the building is safe for occupancy, and furthermore, that the presence of the building will not interfere with further remediation, if necessary, by the Mass Highway Department. Increased costs of remediation shall not be deemed to be "interference".
8. All work shall be performed in accordance with plans submitted and on file with this Authority.
9. All design and construction must comply with all applicable state and local codes.
10. All requirements of the Town of Wellesley Fire Department shall be complied with.
11. 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.
12. Upon the completion of the project, a complete set of site utility plans shall be submitted to the Department of Public Works.
13. A copy of the Occupancy Permit issued by the Inspector of Buildings shall be submitted to the Board of Appeals at the time of issuance.

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