

**ZONING BOARD OF APPEALS**

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

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ZBA 98-37

Petition of Wall Street Development Corporation  
700 Worcester Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, May 21, 1998 at 8 p.m. in the Great Hall at the Town Hall, 525 Washington Street, Wellesley, on the petition of WALL STREET DEVELOPMENT CORPORATION requesting Site Plan Approval pursuant to the provisions of Section XIVB, Section XVIIA and Section XXV of the Zoning Bylaw to allow construction of a conforming two and one-half story dwelling with a footprint of 1,464 square feet and a 36 inch culvert for diversion of an existing ditch on the property at 700 WORCESTER STREET, in a Single Residence District and a Watershed Protection District.

Presenting the case at the hearing was Louis Petrozzi, principal of the Wall Street Development Corporation. Mr. Petrozzi explained that he is seeking Site Plan Approval to redirect the existing drainage ditch, which runs diagonally across the property, by means of a 36 inch culvert. He has received an Order of Conditions from the Wetlands Protection Committee.

Mr. Petrozzi submitted a revised plot plan to the Board, which addressed the comments of the Engineering and Health Departments regarding water and sewer connections. The location of the driveway will be on School Street.

The Board stated that it did not have sufficient time to review the submitted plan, and that neither the Engineering or Health Departments had signed off on the plan. Mr. Petrozzi responded that neither department had received the plan as yet.

Irwin Sanders, 400 School Street, expressed concern about potential flooding of his basement due to the diversion of the ditch. When the Newton-Wellesly Nursing Home was built, the culverts were not large enough, the water level was raised and his basement flooded. He has installed french drains to correct the problem, but is concerned about new flooding.

Mr. Petrozzi said that the 36 inch culvert will run across School Street from the property. The excavation for the basement will be two feet above the level of the ditch. They have calculated the size of the culvert according to the 100 year storm event. Both the Wetlands Committee and the Engineering Department are satisfied as to the culvert size.

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ZBA 98-37  
Petition of Wall Street Development Corporation  
700 Worcester Street

The Board was of the opinion that the issue of responsibility was important. The Town should be responsible to the new headwall, but the property owner should be responsible for the maintenance of the culvert from the new headwall to the old headwall on School Street. There should also be a requirement involving inspection by the town engineers during construction of the culvert. A requirement regarding replacement of trees removed during construction should be included, as the lot is densely treed at present.

Mr. Petrozzi said that the Order of Conditions mandates new trees along the property line and a buffer along the Route 9 frontage. The DPW has requested an easement for maintenance of the drain.

The Board decided that the maintenance of the culvert should not be the responsibility of the town, but the responsibility of the property owner, as the culvert is on private property. There should be a deed restriction in perpetuity to this effect, so that every future owner would be aware of and accept responsibility for the maintenance of the culvert with the purchase of the property. The Board decided that both an easement to the town and a deed restriction were necessary to allocate responsibility in perpetuity.

Joseph Grieco, 411 School Street, said he is concerned about a traffic problem. The Board said that traffic from the property will not create a problem.

Paul Cremonini, 96 School Street, expressed concern about trash collecting at the headwall which would plug the culvert, causing flooding on School Street. He requested that the piping from the lot not discharge water into the conservation area on School Street. He asked what steps would be taken by the petitioner and the town to prevent flooding to the properties on School Street.

The Board explained that currently the entire diagonal of the ditch is open and can be plugged. The culvert will relieve the situation to the upside property line. The sedimentation pit will be maintained by the property owner. Prior to the installation of the culvert, flooding could take place in the ditch on the lot, or any other property upstream. It will be the responsibility of the property owner to maintain the culvert from headwall to headwall.

After closing discussion of the petition, the Board voted to continue the Public Hearing until June 25, 1998 in order for the petitioner to submit the easement requested by the Engineering Department and the language to be included in the deed as to the responsibility of the property owner to maintain the culvert in perpetuity, and for the Engineering Department to review the revised plot plan.

Prior to the Public Hearing on June 25, 1998, which was duly noticed, Mr. Petrozzi submitted drafts of an Easement and a deed restriction to the Engineering Department and the Board of Appeals. In response to requests from both the Department of Public Works and

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ZBA 98-37

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700 Worcester Street

the Board of Appeals, Town Counsel, Albert S. Robinson reviewed the documents and redrafted the language of a portion of the Easement and the deed restriction which had been submitted. Copies of the revisions were given to the Board members and to Mr. Petrozzi prior to the hearing.

At the Public Hearing on June 25, 1998, held in the Selectmen's Meeting Room (Conference Room B) at the Town Hall, Mr. Petrozzi said that the latest revision of the plan, dated June 4, 1998, had been approved by the Engineering Department.

The Board decided that the language in the easement and the deed restriction should be changed from "headwall to headwall" to "property line to property line" to ensure that the property owner would have responsibility to maintain the entire drainage system including the sedimentation pit and the culvert in perpetuity.

No other person present had any comment on the petition.

Statement of Facts

The subject property is located at 700 Worcester Street at the corner of School Street, in a Single Residence District, and contains 9,500 square feet. A drainage ditch runs diagonally across the property which carries the Cold Stream Brook, an intermittent stream.

Pursuant to Section XIVB, part B of the Zoning Bylaw, a Watershed Protection District is defined as

"an area bordering a brook, stream or other water body, the limits of which are defined by a horizontal distance."

Although the ditch through which the Cold Stream Brook runs will not exist in the future, the Wetlands Protection Committee has made a determination that the culvert, through which the brook will flow, can be considered to be the brook.

Pursuant to Section XIVB, part E.2.(1), the Special Permit Granting Authority may give permission for any use, otherwise permitted by the underlying district within which the land is situated, subject to the provisions of Site Plan Approval.

The petitioner is requesting Site Plan Approval to construct a two and one-half story dwelling, with a footprint of 1,464 square feet. In order to construct the dwelling, the drainage ditch for the Cold Stream Brook will be diverted into a 36 inch culvert that will be extended from the School Street Bridge and will run along the southern edge of the property in an "L" shape.

The following materials were submitted: an Official Development Prospectus, Construction Sequence/School Street and Route 9, Wellesley, MA, dated January 26, 1998, prepared by

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1998 JUL 2 8 05

ZBA 98-37  
Petition of Wall Street Development Corporation  
700 Worcester Street

Jerome B. Carr of Carr Research Laboratory, Inc.; A Flood Plain Study dated February 6, 1998, prepared by Roy K. Schiff, M.S.Eng. for Carr Research Laboratory, Inc.; A letter dated April 17, 1998, from Angiolina Copellotti, property owner, authorizing Mr. Petrozzi to make application for site plan approval to the Board of Appeals; and Plot Plan for Proposed House & Drain Extension, dated 1/8/98, revised 1/27/98, revised 5/18/98, revised 6/4/98, drawn by Carmelo Frazetti, Registered Land Surveyor and H.L. Millard, Registered Professional Engineer.

On March 2, 1998, the Wetlands Protection Committee issued an Order of Conditions (DEP 324-257) for the proposed activities at 700 Worcester Street.

All submitted materials were 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 May 12, 1998, the Planning Board reviewed the petition and had no objection to the granting of the request.

#### Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearings. The proposed construction of a two and one-half story dwelling and diversion of a drainage ditch carrying the Cold Stream Brook by means of a 36 inch culvert constitute a Major Construction Project pursuant to Section XVIA of the Zoning Bylaw as the project is an activity regulated or restricted under Section XIVB Flood Plain or Watershed Protection Districts.

It is the opinion of this Authority that the Town should not be responsible for maintaining a culvert installed solely for the benefit of private development, but should have access to the property, through an Easement granted to the Department of Public Works, and approved as to form by Albert S. Robinson, Town Counsel, if only for the purpose of inspection.

Therefore, the responsibility of the maintenance of the culvert and the sedimentation pit, from property line to property line, shall be that of the particular owner of the property in perpetuity, as evidenced in the following language to be written into the deed:

"The premises are conveyed subject to the conditions set forth in the Site Plan Approval (ZBA 98-37), dated \_\_\_\_\_, and recorded with the Norfolk Registry of Deeds in Book \_\_\_ and Page \_\_\_, including the condition that the landowner, (the grantee hereof), their successors and assigns, in perpetuity, shall maintain and keep clear of all debris, the drainage culvert and sedimentation pit from property line to property line, as shown on

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the plan described in said decision, dated January 8, 1998, revised January 27, 1998, revised May 18, 1998, revised June 4, 1998, drawn by Cheney Engineering and stamped by Carmelo Frazetti, Registered Land Surveyor, and H.L. Millard, Registered Professional Engineer. Said condition to benefit the owners from time to time downstream of the culvert, and the Town of Wellesley, by its Department of Public Works, any one or more of whom are authorized to enforce said condition and to record renewals hereof according to law."

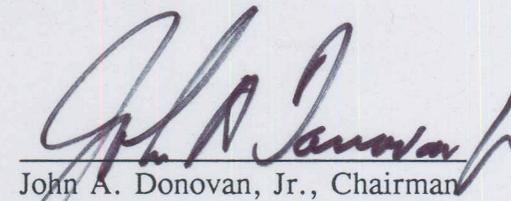
It is the opinion of this Authority that the proposed plan, referenced in the Statement of Facts, complies with the Zoning Bylaws of the Town, protects the safety, convenience and welfare of the public, minimizes additional congestion in public and private ways, and insures adequate protection for water, sewerage and drainage. Furthermore, it insures compliance with Section XVI of the Zoning Bylaw.

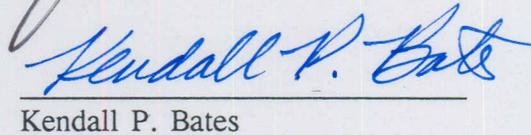
Therefore, Site Plan Approval is hereby granted by this Authority, as voted unanimously at the Public Hearing held on June 25, 1998, subject to Section XVIA, Section XIVB and Section II of the Zoning Bylaw, subject to the conditions attached hereto as Addendum A.

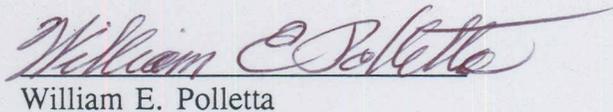
APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE FILED PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN  
THE OFFICE OF THE TOWN CLERK.

cc: Planning Board  
Wetlands Protection Committee  
Town Engineer  
Board of Health  
Town Counsel  
Inspector of Buildings

edg

  
John A. Donovan, Jr., Chairman

  
Kendall P. Bates

  
William E. Polletta

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ADDENDUM A

1. All work shall be performed in accordance with plans submitted and on file with this Authority.
2. All design and construction must comply with all applicable state and local codes.
3. All requirements of the Town of Wellesley Fire Department must be complied with.
4. The developer shall notify the Department of Engineering at least 48 hours prior to the installation of the culvert to arrange an inspection of the culvert with a staff engineer.
5. The Order of Conditions (DEP 324-257) issued by the Wetlands Protection Committee on March 2, 1998, is hereby incorporated into this decision.
6. The revised Drainage and Utility Easement running to the Town of Wellesley, Department of Public Works, authorizing, but not requiring, the Town to operate and maintain the storm drainage system shown on the Plot Plan revision dated June 4, 1998, shall be signed by the developer, approved by Town Counsel and submitted to the Department of Public Works prior to the issuance of any building permit. A copy of said Easement shall be filed with the Office of the Board of Appeals.
7. The current owner and all subsequent owners shall maintain and keep clear of all debris the drainage system, property line to property line. This condition, as written above, shall be recited in the deed out from the current owner to bind all successors and assigns in perpetuity.
8. The Easement document and the deed language referenced in the preceding two conditions shall be approved by Town Counsel as to form prior to recording.
9. 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.
10. 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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