



November 15, 2018

**BY HAND**

Wellesley Zoning Board of Appeals  
Wellesley Town Hall  
525 Washington Street, Lower Level  
Wellesley, MA 02482

Re: Application for Comprehensive Permit – 8 Delanson Circle, Wellesley

Dear Members of the Board:

As you may recall, this firm represents neighbors and abutters to the proposed 90-unit apartment building on 1.42 acres of land located at 1-8 Delanson Circle, Wellesley (the “Project” and the “Project Site”), which is the subject of a pending application for a comprehensive permit under General Laws Chapter 40B, Sections 20-23 proposed by Delanson Realty Partners, LLC (the “Developer”). The purpose of this letter is to put on record the Neighbors’ continuing concerns with the proposed Project and suggestions for the Board moving forward.

**I. Revised Architectural and Landscape Plans**

As a preliminary matter, the Neighbors are dismayed by the revised architectural and landscape plans submitted to the Board on November 9, 2018. Contrary to representations made by the Developer and its team at the last hearing, these “revisions” appear to amount to little more than shifting the building footprint.<sup>1</sup> Cliff Boehmer made many substantive and thoughtful comments on the Developer’s prior iteration of plans, which were largely swept aside at the last hearing given the Developer’s repeated reassurance that the architectural team was taking into consideration many of Mr. Boehmer’s suggestions. After reviewing what is now proposed, it is hard to believe that the Developer genuinely considered any of Mr. Boehmer’s recommendations.

We urge the Board to continue to push for the following revisions recommended by Mr. Boehmer:

- Make the building “L” shaped instead of “U” shaped. This will help to mitigate the overwhelming massing of this building on abutters and create more usable open space. As Mr. Boehmer noted, useable open space on the Site is severely deficient. This is undoubtably a function of the Developer’s resistance to reduce the size of this building.
- We acknowledge and appreciate that the Developer did “step back” the fourth/fifth floor of the building; however, we note that there has been no change in the number of units

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<sup>1/</sup> Notably, no new civil engineering site plans have been submitted reflecting this change.

being proposed, just the average size of the units. It is important the Board remember another of Mr. Boehmer's concerns – the variation of units even within the same type of unit in this building. This concern is extremely important given the nature of 40B projects. The Board should strongly consider including conditions that prevent the Developer from classifying all the units that had square footage slashed, in an attempt to retain the overall unit number, classified as the affordable or accessible units. Developers are not permitted to reserve the more desirable units for their market-rate units.

- Parking also remains deficient. Walker Consultants stressed, as concurred by Vanasse and Mr. Boehmer, that a project of this size requires 140 spaces for residents and 14 spaces for visitors. The current plan indicates there are 122 spaces in the garage for residents and 11 visitor parking spaces. While an improvement, this is still lacking and a problem that could easily be solved by a reduction in the unit count.

We were also underwhelmed by the Developer's proposed construction management plan. There seems to be a consensus that this will be a difficult project site to manage, yet the Developer continues to fail to give this Project the attention to detail in planning it requires.

## **II. The Requested Waivers**

A significant function of Chapter 40B is to empower the zoning board to waive any local bylaw, regulation, policy or procedure that would render the construction of the project "uneconomic." Thus, probably the most important task of the Zoning Board's public hearing is to evaluate the developer's waiver requests, and determine whether the concerns those waivers may present outweigh the regional need for housing. There is a prevailing myth that local bylaws and regulations do not apply to Chapter 40B projects. This is wrong. Local rules apply to Chapter 40B projects unless the developer can prove that waivers are needed to make the project economically viable, and that the need for affordable housing outweighs the "local concerns" protected by the local bylaws and regulations for which waivers are sought. This balancing test was illustrated in the recent case of Reynolds v. Stow Zoning Bd. of Appeals, Appeals Court No. 14-P-663 (Sept. 15, 2015), where the Court ruled that it was "unreasonable" for the zoning board to grant waivers from restrictive local bylaws given unmitigated environmental and health impacts.

The statutory framework of Chapter 40B does not contemplate that developers have a "blank check." Developers are expected to have thoughtfully reviewed their projects' conformity with the town's bylaws, and determined which specific sections and provisions it cannot comply with for economic reasons. Unfortunately, the Developer's Waiver List is inundated with "blanket" waiver requests without any corresponding justifications as to why such generous waivers are warranted.

*A. Section XVIA: Project Approval for Projects of Significant Impact*

The Project would be categorized as a “Project of Significant Impact” (PSI) under Section XVIA of the Zoning Bylaws due to its construction of 10,000 or more square feet of newly constructed floor area. Section XVIA(B). This section of the Bylaw outlines seven performance standards:

1. Ensure compliance with the Zoning Bylaws of the Town of Wellesley;
2. Protect the safety, convenience and welfare of the public;
3. Minimize additional congestion in public and private ways;
4. Ensure adequate provision for water, sewerage and drainage;
5. Ensure compliance with the provisions of SECTION XVI. RESTRICTIONS AFFECTING ALL DISTRICTS;
6. Ensure compliance with the provisions of SECTION XXI. OFF-STREET PARKING; and
7. Ensure compliance with the provisions of SECTION XXII. DESIGN REVIEW.

The Developer is inappropriately requesting to be exempt from all of these standards. The review of Projects of Significant Impact required under Section XVIA is responsive to the dangers and risks to the public health, safety, and environment associated with projects of this scope. The Developer should be required to comply with this Bylaw to the greatest extent possible, and request waivers only where needed. The Board can then focus on just the particular subsections the waiver is being requested for to properly evaluate whether the public and environment can bear the risk associated with the waiver.

*B. Section XVIE: Tree Protection & Preservation*

The requested waiver from the Town’s Tree Protection and Preservation Bylaw is even more concerning. The Town of Wellesley’s Tree Bylaw and regulations are unique among its peer communities. These rules reflect the value judgment the Town of Wellesley has placed on preserving its natural environment, particularly as it copes with the pressures of development and sprawl. The Tree Bylaw appropriately recognizes the importance of tree retention and protection, including trees’ “abilities to improve air quality, protect from glare and heat, reduce noise, aid in the stabilization of soil, provide natural flood and drainage control, create habitats for wildlife, enhance aesthetics and property values, contribute to the distinct character of certain neighborhoods, and provide natural privacy to neighbors.” Section XVIE(B).

The Developer, however, has proposed that the Town's Tree Bylaw be disregarded entirely and only be reviewed "in accordance with state law and regulations." There are no state law or regulations pertaining to tree protection or retention. Thus, unless the ZBA steps into the shoes of the Building Commissioner and the Planning Board to administer the Tree Bylaw and regulations through this "comprehensive permitting" process, as envisioned by the statute, Wellesley's legitimate tree protection objectives will be squandered.

The Project triggers the protection and review process of the Town's Tree Bylaw through both its demolition of an existing structure with a footprint of 250 square feet or more and its construction of retaining walls (either one of which alone would have been sufficient to trigger the Bylaw). Section XVIIE(D)(1). Here is what the Town Bylaw requires:

1. The Developer must retain a Certified Arborist to identify any "Protected Trees." Protected Trees are any tree with a diameter breast height (DBH) of 10" or greater<sup>2</sup> located within the "Tree Yards" (the area of a lot that is within 20 feet of the front property line(s) and 10 feet from side and rear property lines in the SR10 and General Residence zoning districts).<sup>3</sup>

2. All Protected Trees must be identified on a plan prepared and stamped by a Registered Land Surveyor and include the property lines, current buildings, driveways and retaining walls, proposed building, driveways, and retaining walls, the tree yards, and location, height, DBH, and species of the Protected Trees.

3. The Developer must then designate which trees will remain and which will be removed. If any trees are to be retained, the plan must also reflect the Critical Root Zones for those trees (the area of a tree's root network that cannot be impacted without causing death or destruction to the tree) and the Certified Arborist must prepare a Tree Retention Plan ensuring the survival of those trees during construction, for the Board's review and approval. For all Protected Trees to be removed, the Developer must further indicate whether it intends to replace those trees (one-half inch of caliper for new trees required for every 1 DBH inch of the removed trees) or make a donation to the Town's Tree Bank in accordance with the Bylaw.

While Wellesley's Tree Protection Bylaw is comprehensive, it is not unduly burdensome or costly. Other than the Developer's lack of interest in doing so, there does not appear to be any reason why this Bylaw cannot, or should not, be complied with. In fact, compliance is particularly warranted here given the extreme density of the proposed Project (90 units on 1.42 acres) as compared to the maximum allowable density in this zoning district (7,000 sf per unit in the General Residence A zoning district, which would allow for a maximum of 8 units on a lot containing 1.42 acres), and the corresponding need for effective screening.

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<sup>2/</sup> A tree's DBH is determined by measuring the tree's circumference at breast height (4.5 feet) and then dividing by  $\pi$  (3.14159). Section XVIIE Reg. § 3(c).

<sup>3/</sup> Because the Project Site has frontage on two street (Linden and Hollis), there may be two front tree yards. It is not clear how Wellesley treats corner lots.

The Neighbors have identified over two dozen trees all of which would trigger the protections afforded under this Bylaw. Admittedly, none of the Neighbors are arborists, and it was difficult to identify whether many of these trees were on the Project Site or abutting properties (the boundary lines have not been staked out). The Town's Tree Bylaw should also be interpreted to require a developer to address the protection of trees on *abutting* properties within close proximity to property line, which the Developer does not have the option of removing. Concern for these trees is particularly justified given the current steep grade changes and presence of ledge throughout the Project Site. Abutter trees along the Project Site's property lines are at risk of destabilization from the demolition of the five buildings that currently occupy the Project Site. A sketch showing the approximate location and size of the abutters' trees is attached as Exhibit A.

The Developer's vague note on a corner of the Landscape Plan that "Existing Trees To Be Protected" is meaningless. The Developer has not clearly identified or located the existing Site trees on its plans. This preliminary work must be done to ensure that all of these trees (including abutters' trees) are properly protected through a Tree Retention Plan, and that any Site trees to be removed are replaced in kind, or otherwise the appropriate donation to made to the Tree Bank.

Significantly, while the Developer has submitted new architectural and landscape plans, it has not provided a corresponding drainage and grading plan. The most recent grading plan (March) shows a large detention basin in the back of the Site; however, the new landscaping plans have a note indicating that this part of the Site will not have any grading changes. If the detention basin has been eliminated, the Developer should provide an updated grading plan for review by the Town's engineer. If the detention pond is staying in that location, the Board should be aware that even minor grading changes (e.g., less than a foot) can negatively impact a tree's root system, and should be evaluated in the Tree Retention Plan.

### **III. Request for Further Actions**

We respectfully request that the Board require the Developer first submit a complete, and cohesive set of site civil, architectural, and landscape plans to the Board.

The Developer should further submit a tree survey identifying all trees within 10 feet of the side and rear property lines and 20 feet of the front property line(s) as well as tree species, DBH, maturity, and critical root zone. For all trees to be retained, as well as trees on abutting properties, Developer should submit a Tree Retention Plan prepared by a Certified Arborist. The Developer should be required to submit a plan for replacing removed trees, and if 100% replacement cannot be achieved, Developer should contribute to the Tree Bank in accordance with this Bylaw.

Wellesley Zoning Board of Appeals

November 15, 2018

Page 6 of 6

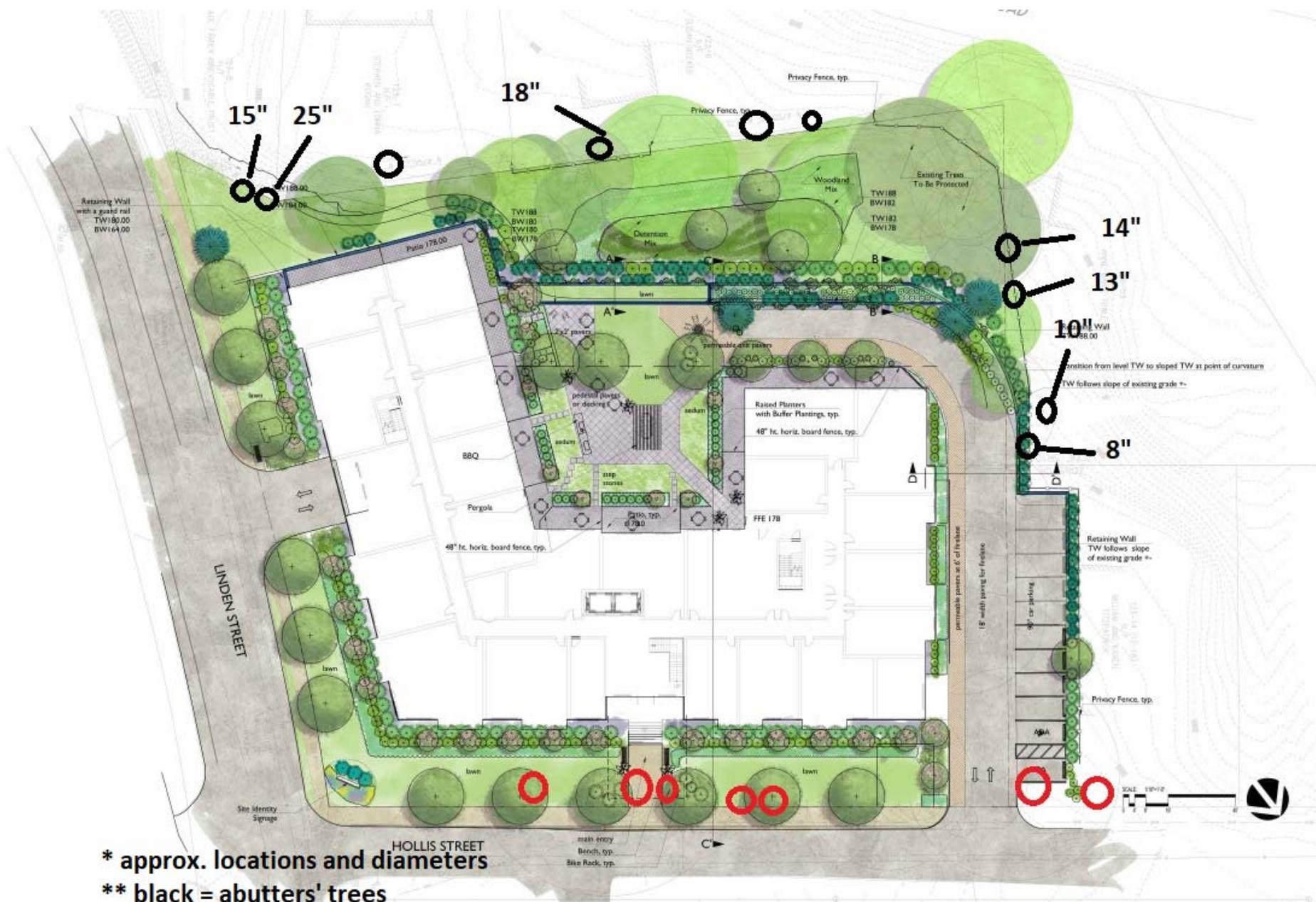
We appreciate the Board's continued diligence in reviewing this application and the significant impacts the proposed Project will have on the neighborhood and the Town generally.

Very truly yours,

  
Daniel C. Hill

Enc.

cc: Applicant  
Clients  
Wellesley Board of Selectmen  
Wellesley Planning Board



- \* approx. locations and diameters
- \*\* black = abutters' trees
- \*\*\* red = existing trees on project site

LANDSCAPE PLAN