

TOWN OF WELLESLEY



MASSACHUSETTS

## ZONING BOARD OF APPEALS

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482

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ZBA 2023-13  
Appeal of Wellesley College  
106 Central Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, March 2, 2023, at 7:30 p.m. in the Kingsbury Room, 485 Washington Street, Wellesley, on the petition of Wellesley College appealing a letter determination, dated January 9, 2023, from the Inspector of Buildings/Zoning Enforcement Officer, pursuant to the provisions of M.G.L. c.40A, §8, Section 6.2 of the Zoning Bylaw, and Article III, §2(c) of the Zoning Board of Appeals Rules and Regulations. The campus is located at 106 Central Street.

On February 8, 2023, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

The Chairman expressed his appreciation that Wellesley College was going through the process rather than invoking the Dover Amendment, MGL, Chapter 40A, Section 3.

Present at the public hearing was Johanna Schneider, Esq., on behalf of Wellesley College, the Petitioner.

Ms. Schneider said that the College is appreciative of the long standing cooperative relationship with the town. She said that the goal of the appeal is not to circumvent the necessary permit process but to obtain clarity as to what the necessary process is and to the extent that the process is not required, to be able to proceed judiciously with pulling building permits for a series of upgrades and renovations, deferred maintenance and life safety improvements.

Ms. Schneider said that the appeal arises in the context of the College's multi-year capital project to improve ADA access on the campus. She said that the College sought the Building Inspector's interpretation and filed this appeal in connection with Tower Court and the Clapp Library, located on the College campus. She said that they expect that the same issue will arise on other campus buildings as the project progresses. She said that they are anxious to resolve what they think is some ambiguity in the bylaw with respect to the applicability of Design Review Board (DRB) review for these uniquely situated buildings.

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Ms. Schneider said that the DRB has jurisdiction over projects that propose to change the outside appearance of a building that is visible from a public or private street or way. She said that the bylaw itself does not define what a public way is. She said that they looked at other town resources in an effort to understand how the campus drives might be characterized. She said that they started with the Department of Public Works (DPW) website and the Accepted and Unaccepted Street List that is compiled by the Engineering Division. She said that none of the drives on the campus appear on the list. She said that the campus drives were also not identified in the town's Guide to Private Ways. The Chairman asked if the ways are named. Mr. Grant said that one of the main roads through the campus is named Wellesley College Drive.

Ms. Schneider said that Tower Court is located to the left of the Clapp Library. She said that the campus is characterized by a network of small paths and driveways that are internal to the campus and wholly owned and controlled by the College. She said that the purpose of them is to allow vehicles, bicycles and pedestrians to access campus buildings. She compared them to a private driveway serving a private home. She said that the DRB would not have jurisdiction over a homeowner who is served by a long driveway installing a handicapped accessible entry. Mr. Grant said that with respect to comparing this to a driveway to a single family residence, Section 5.6 of the ZBL exempts one or two family dwellings from project approval.

A Board member asked if the College closes the entrances, labeled East Entrance and West Entrance, so that people cannot pass that way. Ms. Schneider said that the College does not close them regularly but has the right to close them. A Board member said that the public is allowed to access the campus.

A Board member said that Mr. Grant is correct that exterior, site work and handicapped accessibility work is regulated and is under the Building Inspector's jurisdiction.

A Board member said that major construction projects require DRB review and go through the Zoning Board of Appeals (ZBA) Site Plan Approval process. He said that minor construction projects require DRB review but do not go through the ZBA Site Plan Approval process. He said that two ramps could push the square footage over 5,000 square feet, which is the threshold for a major construction project. Ms. Schneider said that the subject projects are very small in nature and would be otherwise able to be accomplished with just a building permit. She said that DRB review can add several months to the process. A Board member said that the thresholds for what they review is set in the DRB regulations.

The Chairman said that from a real estate perspective, a public way is either taken by or granted to the town. He said that private ways do have meaning within the law for access, utilities and other purposes. He said that he did not think that these drives fall to the level of private ways. He said that they are more akin to a driveway. He said that just because the word driveway contains the word, "way," it does not make it a way under the bylaw. Ms. Schneider said that the driveways are not used as addresses.

Ms. Schneider said that the College requested a determination from Mr. Grant as to whether or not the work they were doing would require DRB review because it is visible from a private way. She said that it is the College's position that these are not private ways within the town. She said that there is no definition in the Zoning Bylaw (ZBL) and the limited town resources on private ways do not list the campus drives.

Mr. Grant said that this is a private way on private land. He said that these driveways act more like public ways than a driveway. He said that the definition of driveway defines it as a way. He said that the bylaw is silent and does not dictate or reference any other standard. He said that any definition other than in the bylaw does not lend any credence to the argument. He said that you cannot pick a document that fits your narrative.

The Chairman discussed intent of the bylaw. He said that the town has an interest in regulating projects that members of the public would be able to view or access. He questioned what the town's interest would be or the benefit to the town in requiring regulation of internal travel lanes on the Wellesley College campus.

Amir Kripper, who was present at the public hearing, said that he has been a DRB member for seven years. He said that Wellesley College has superb architecture and he doubted that they would do anything to diminish the quality of their buildings. He said that allowing the College to forego the DRB process may say to other large tenants that they can do the same thing. He said that it also devalues the work of the DRB. He said that the DRB has never given the College a hard time. He said that the College will not gain a lot by skipping the DRB process. He said that they meet at least once a month.

Ms. Schneider said that the College is not trying evade DRB review but it can sometimes take a couple of months to prepare the required materials. She said that these are critical life safety and accessibility upgrades and there is pressure to complete them expeditiously. She said that having a two to three month delay to get through DRB review is burdensome on these projects. She said that the College does not believe that these are private ways in any real definition of the term. She said that the College is happy to go through the process when applicable. She said that given the location of Tower Court and the Clapp Library on the campus, the College does not see the jurisdiction there.

David Himmelberger, Esq., who was present at the public hearing, said that there is a provision in Section 5.6 of the ZBL that concerns a series of two or more construction projects with a central theme on a lot that are filed within a three year period. He said that the Building Inspector would have the ability to link them together, triggering a major construction project.

Board members discussed concerns about setting precedent for other large property owners and projects involving introduction of handicapped ramps tying in with interior work that may bring it to the level of site plan review. Ms. Schneider said that the scope of these projects would not trigger site plan review. She said that the legal issue that they are placing before the Board is whether or not these are projects are visible from a private way.

The Chairman said that in a real estate context, he would not consider these private ways. He said that the intent of the bylaw was to protect members of the public, not the students at Wellesley College.

A Board member said that the reference to DPW did not make much sense to him because DPW's concerns are about geometry and safety that are accepted by a public entity. He questioned linking that definition to this. He said that the bylaw is clear. Ms. Schneider said that the issue is that the bylaw uses the term private way and does not define it. She said that they went to the DPW list because there is a void in the ZBL and they were looking for a sense of what the definition might be.

The Chairman confirmed with Mr. Grant that the buildings are not subject to setback requirements from the ways.

A Board member said that the ways look like streets and Fire and Police rely on them.

The Chairman said that the petition before the Board is whether to overrule Mr. Grant's determination that the ways on Wellesley College campus to access these two buildings are private ways within the meaning of Section 5.6 of the Zoning Bylaw. He said that other than at Babson College, he did not see this coming before the Board in another context. A Board member said that Wellesley College and Babson have the capability to go through the laborious procedures that the bylaws create.

#### Statement of Facts

The subject property is located at 106 Central Street, in an Educational District.

The Appellant is appealing a letter determination, dated January 9, 2023, from the Inspector of Buildings/Zoning Enforcement Officer, pursuant to the provisions of M.G.L. c.40A, §8, Section 6.2 of the Zoning Bylaw, and Article III, §2(c) of the Zoning Board of Appeals Rules and Regulations.

#### Submittals from the Appellant

- Letter to Zoning Board of Appeals, dated 1/23/23, from Johanna W. Schneider, Hemenway & Barnes LLP
- Exhibit A – Letter to Facilities Management & Planning, dated 1/9/23, from Michael T. Grant, Inspector of Buildings/Zoning Enforcement Officer
- Exhibit B – Map of Wellesley College
- Exhibit C – Letter to Wellesley Building Department, time-stamped on 1/25/23, from Michelle Maheu, Director for Planning, Design & Construction, Facilities Management & Planning
- Exhibit D – Town of Wellesley, Department of Public Works Engineering Division, Accepted/Unaccepted Street, dated May 2018,
- Exhibit E – Town of Wellesley Guide to Private Ways

#### Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

The Appeal of a letter determination, dated January 9, 2023, from the Inspector of Buildings/Zoning Enforcement Officer, pursuant to the provisions of M.G.L. c.40A, §8, Section 6.2 of the Zoning Bylaw, and Article III, §2(c) of the Zoning Board of Appeals Rules and Regulations

After a motion was moved and seconded, by a vote of 2 to 1 the Zoning Board of Appeals voted to not overrule the Building Inspector's determination letter.

As the vote of the Board to overrule the Building Inspector would require an unanimous vote, the Appeal is denied.

ZBA 2023-13  
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106 Central Street

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.

  
Robert W. Levy , Acting Chairman

  
Walter B. Adams

  
Derek B. Redgate

ZBA            2023-13  
Appellant    Wellesley College  
Address      106 Central Street

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NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

In accordance with Section 11 of Chapter 40A of the Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Wellesley, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Date:

Attest:

\_\_\_\_\_  
Cathryn Jane Kato  
Town Clerk

cc: Planning Board  
Inspector of Buildings  
lrm

TOWN OF WELLESLEY



MASSACHUSETTS

**Building Department**

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02482-5992  
781-431-1019 ext. 2228 Fax 781-283-5724

Michael T. Grant

Inspector of Buildings / Zoning Enforcement Officer /  
Public Safety Officer

Direct: 781-489-7452

January 9, 2023

Facilities Management & Planning  
Attention: Michelle Maheu, Director for Planning, Design & Construction  
106 Central Street  
Wellesley, Massachusetts 02481

Re: Wellesley College; Review of Proposed Renovation Projects

Dear Michelle:

I am writing you today in response to your January 5, 2023 letter. In the letter you requested a determination from me if two projects would be required to go through the Design Review Board (DRB) as "Minor Construction Projects".

In reviewing the letter it stated it is the College belief that review by the DRB is not required based off of the reading of Town and State regulations. In the letter it did not reference any state regulations that were applicable. Based on the descriptions of the two projects you provided most of the work appears to be interior of the building for the exception of the ADA entrances to Tower Court and the Clapp Library. I could be wrong as no plans were provided showing the full scope of the projects. I do agree that both buildings are not visible from a public way (Rt. 16 or Rt. 135). However I must disagree with the college opinion that the proposed work is not visible from any private way laid out in anticipation of acceptance by the Town.

In reading section 1.3 of the Zoning Bylaws it defines a Minor Construction Project as:

Minor Construction Project shall mean any Construction Project, not included within the definition of a Major Construction Project, which involves either or both of the following:

1. a change in the outside appearance of a building or premises visible from a public or private street or way, requiring a building permit;
2. construction, enlargement or alteration of a parking or storage area requiring a parking plan permit. Alteration, as used in the preceding phrase, includes installation, removal or relocation of any curbing, landscaping or traffic channelization island, driveway, storm drainage, lighting or similar facilities but does not include resurfacing, striping or restriping pavement markings on existing parking or storage areas.

In the definition of Minor Construction Project I do not see where it is a requirement that a private way must be "in anticipation of acceptance by the town." The definition just references a private street or way. In your letter you state, "Each of these projects is accessed from what is tantamount to a private driveway of the campus,..." In my opinion the private driveway is a private way and if the proposed work is visible from that private driveway and it also requires a building permit it is subject to DRB review as a minor construction project as defined and required by section 5.6 (C.) (1.) of the zoning bylaws.

In your letter you referenced the DRB Design Guidelines Handbook which states, "most college buildings are not visible from Wellesley Streets". As I stated earlier I do agree the buildings are not visible from Rt. 16 or Rt. 135. However the language you referenced was in Part I – Introduction as part of the community character description of the college property in the DRB Design Guidelines Handbook and has no bearing on the application of the zoning bylaws.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael Grant", written over a faint horizontal line.

Michael Grant  
Inspector of Buildings/ Zoning Enforcement Officer