

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

LAND COURT DEPARTMENT
NO. 25 MISC 000233 (STF)

MICHAEL A. GIGANTE, III,

Plaintiff,

v.

THOMAS TAYLOR, PATRICA MALLETT,
MARC CHARNEY, JAMES ROBERTI,
KATHLEEN WOODWARD, and
SHEILA OLSON, as they are members of the
TOWN OF WELLESLEY PLANNING BOARD,
and ENCORE PROPERTIES, LLC a/k/a
ENCORE PROPERTIES WELLESLEY, LLC,

Defendants.

TOWN OF WELLESLEY PLANNING BOARD'S ANSWER

The defendants, the Members of the Town of Wellesley Planning Board (the “Board”), hereby answer the numbered allegations of the plaintiff, Michael A. Gigante, III’s Complaint dated April 2, 2025, as follows:

INTRODUCTION

The plaintiff’s introduction provides a general description of his cause of action to which no response is required. To the extent a response is required, the Board denies the same.

PARTIES

1. Admitted.
2. Admitted.
3. Admitted.

FACTS

A. The Properties

4. Admitted that the plaintiff owns 148 Cedar Street, Wellesley, Norfolk County, MA 02481. The deed referenced in para. 4 speaks for itself and the Board denies plaintiff's characterization of the same.

5. Admitted that the Encore owns 150 Cedar Street, Wellesley, Norfolk County, MA 02481. The deed referenced in para. 5 speaks for itself and the Board denies plaintiff's characterization of the same.

6. Admitted that the Encore owns 192 Worcester Street, Wellesley, Norfolk County, MA 02481. The deed referenced in para. 6 speaks for itself and the Board denies plaintiff's characterization of the same.

7. Admitted that the Encore owns 194 Worcester Street, Wellesley, Norfolk County, MA 02481. The deed referenced in para.7 speaks for itself and the Board denies plaintiff's characterization of the same.

8. Admitted that plaintiff's property is located to the northwest of the Encore Properties and that a gravel way runs along the southern boundary of the plaintiff's property. The Board is without knowledge or information sufficient to form a belief as to the truth of the portion of para. 8 describing plaintiff's use of the gravel way.

B. The Hearing and Votes Taken by the Board

9. Admitted.

10. Admitted, and stating further that the public hearing was additionally continued to March 3, 2025.

11. Denied that the vote described in para. 11 occurred on February 24, 2025, and stating further that the 3-2 vote occurred at the January 27, 2025 session of the public hearing.
12. Denied that the Board reopened the hearing on March 3, 2025, and stating further that the Board voted 4-1 to approve the application on February 24, 2025, and continued the hearing to March 3, 2025 to finalize the written decision.
13. Denied, and stating further that the Board approved the form of the written decision on March 3, 2025.
14. The Board admits that no meeting was convened between February 24 and March 3, 2025. The remainder of para. 14 constitutes a legal argument and conclusion of law to which no response is required. To the extent a response is required, the Board denies the same.
15. The Board's Decision speaks for itself, and the Board denies the plaintiff's characterization thereof.
16. Admitted that the Chair recited the Board's public comment policy of allowing three minutes per speaker. Denied to the extent that that the Board did in fact gave the Plaintiff's counsel additional time to speak and express concerns related to the application.
17. Admitted.
18. Admitted.
19. Admitted.
20. The Board is without knowledge or information sufficient to form a belief as to the truth of para. 20 describing the Properties' historic access from Worcester Street.
21. The Board's Decision speaks for itself, and the Board denies the plaintiff's characterization thereof.
22. Admitted.

23. The Board is without knowledge or information sufficient to form a belief as to the truth of para. 22 describing the plaintiff's historic access to his property.

24. Denied.

25. Denied.

COUNT I
(G. L. c. 40[A], § 17)

26. The Board restates its responses to paras. 1-25, above, as if expressly restated and set forth herein.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

AFFIRMATIVE DEFENSES

1. The Board's Decision was made within its legal authority, was not arbitrary or capricious, and was supported by substantial evidence in the Board's record.
2. The Board hereby gives notice that it intends to rely upon such other and further defenses as may become available or apparent during discovery proceedings in this action and hereby reserves the right to amend this Answer and to assert any such defense by appropriate motion.

WHEREFORE, the Town of Wellesley Planning Board respectfully requests that this Honorable Court grant the following relief:

1. Enter final judgment in the defendants' favor, and against the plaintiff;
2. Dismiss the plaintiff's Complaint, with prejudice;
3. Affirm the Board's Decision to approve Encore Properties, LLC d/b/a Encore Properties Wellesley, LLC's Special Permit application; and
4. Grant any other such relief that this Court deems just and equitable.

Dated: April __, 2024

Respectfully submitted,

By the Defendant,
WELLESLEY PLANNING BOARD,
By its attorneys,



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CERTIFICATE OF SERVICE

I, Anthony J. Riley, hereby certify that I served a copy of the foregoing document on all parties this 22nd day of April 2025:

By email:

Michael J. Kennefick, Esq.
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By first-class mail:

Encore Properties, LLC a/k/a Encore Properties Wellesley, LLC
40 Warren Street
Newton, MA 02459

Dated: April 22, 2025



Anthony J. Riley