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CITY OF MARLBOROUGH

City Council Agenda

Monday, February 26, 2024

8:00 PM

This meeting of the City Council will be held in City Council Chambers, City Hall, 140 Main Street. **PUBLIC ATTENDANCE IS PERMITTED.** This meeting will be televised on WMCT-TV (Comcast Channel 8 or Verizon/Fios Channel 34), or you can view the meeting using the link under the Meeting Videos tab on the city website (www.marlborough-ma.gov).

1. Minutes, City Council Meeting, February 12, 2024.
2. PUBLIC HEARING Petition from Massachusetts Electric and Verizon New England, to install one Joint Owned Pole at 219 Forest Street beginning at a point approximately 972' East of the centerline of the intersection of Teller Street. Install 45'C1.2 midspan between Poles 25 & 26. Install feeder monitor on new midspan Pole 25-50, Order No. 24-1009089.
3. Communication from the Mayor, re: Gift Acceptance in the amount of \$350,000.00 from the Marlborough Public Library Foundation awarded to the Marlborough Public Library to be used to for the library renovation project.
4. Communication from the Mayor, re: Grant Acceptance in the amount of \$24,723.06 from the Executive Office of Public Safety & Security, Department of Fire Services awarded to the Fire Department to be used for the purchase of equipment.
5. Communication from the Mayor, re: Proposed change to the hours of the Senior Assessor from 35 hours to 40 hours per week and a Transfer Request in the amount of \$3,653.00 from Reserve for Salaries to Senior Assessor to cover the increased cost for the remainder of FY 24.
6. Communication from the Mayor, re: Notification of Extension of Temporary Appointment pursuant to MGL Chapter 41 §61A of Theodore L. Scott as Interim Commissioner of the Department of Public Works for an additional 60-day term to expire April 20, 2024.
7. Application for Special Permit from Alta Behavioral Health, LLC, to operate a nonresidential/outpatient facility licensed under 105 CMR 164 as a substance abuse treatment program in an existing building at 400 Donald J. Lynch Boulevard.
8. Minutes of Boards, Commissions and Committees:
 - a) School Committee, January 23, 2024.
 - b) Council on Aging, January 9, 2024.
 - c) Historical Commission, November 16, 2023.
 - d) OPEB Trust, February 15, 2024.
 - e) Zoning Board of Appeals, December 19, 2023 & January 16, 2024.

Electronic devices, including laptops, cell phones, pagers, and PDAs must be turned off or put in silent mode upon entering the City Council Chamber, and any person violating this rule shall be asked to leave the chamber. Express authorization to utilize such devices may be granted by the President for recordkeeping purposes.

9. CLAIMS:

- a) Richard Bourdeau, 16 Flagg Road, residential mailbox claim (2b).
- b) Carlos Fernandez, 69 Hildreth Street, pothole or other road defect.
- c) James Hogan, 86 Maplewood Avenue, other property damage and/or personal injury.
- d) Jennifer Munoz, 85 Hall Street. #2. Waltham, pothole or other road defect.
- e) Mary Ellen OLoughlin, 11 Mountain View Avenue, Shrewsbury, pothole or other road defect.
- f) Sheryl Primmer, 15 Magnolia Lane, other property damage and/or personal injury.
- g) Felicia Teabo, 86 Hosmer Street, Hudson, pothole or other road defect.

REPORTS OF COMMITTEES:

UNFINISHED BUSINESS:

From Personnel Committee

10. **Order No. 24-1009071: Communication from Mayor Dumais with Appointment to the Conservation Commission of Elizabeth Austin for a 2-year term to expire on May 5, 2026.**

Recommendation of the Personnel Committee is to APPROVE.

On a motion by Councilor Brown, seconded by the Chair, the Personnel Committee recommends approval of the appointment of Elizabeth Austin to the Conservation Commission for a 2-year term to expire on May 5, 2026. Vote 3-0.

From Finance Committee

11. **Order No. 24-1009068: Communication from Mayor Dumais with Transfer in the amount of \$100,000.00 from the Public Educational and Government Access Channels (PEG) Fund to fund WMCT-TV Operations.**

Recommendation of the Finance Committee is to APPROVE.

On a motion by Councilor Brown, seconded by the Chair, the Finance Committee recommended approval of the transfer. Vote 5-0.

12. **Order No. 24-1009070: Communication from Mayor Dumais with request to increase the spending limit for the Public Safety Revolving Fund from \$120,000.00 to \$143,520.00 for the remainder of FY2024.**

Recommendation of the Finance Committee is to APPROVE.

On a motion by Councilor Oram, seconded by the Chair, the Finance Committee recommended approval of the increase in the spending limit for the Public Safety Revolving Fund from \$120,000.00 to \$143,000.00. Vote 5-0.

13. **Order No. 24-1009072: Communication from Mayor Dumais with Proposed Amendments to the City Code, Chapter 125 "Personnel" §6 'Salary Schedule' relative to positions at the Library and Public Facilities and the Proposed Job Descriptions pursuant to Chapter 125 "Personnel" §5 'Preparation of Classification Descriptions' for new positions in the Public Library and Public Facilities Departments.**

Recommendation of the Finance Committee is to APPROVE.

On a motion by Councilor Brown, seconded by the Chair, the Finance Committee recommended approval of the ordinances and Job Descriptions as submitted. Vote 5-0.

Councilors-at-Large

Sean A. Navin
Mark A. Oram
Michael H. Ossing
Kathleen D. Robey



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Ward Councilors

Ward 1 – Mark A. Vital
Ward 2 – David Doucette
Ward 3 – Robert Preciado
Ward 4 – Teona C. Brown
Ward 5 – John J. Irish
Ward 6 – A. Trey Fuccillo
Ward 7 – Donald R. Landers, Sr.

Council President

Michael H. Ossing

Council Vice-President

Kathleen D. Robey

**CITY OF MARLBOROUGH
CITY COUNCIL
MEETING MINUTES
MONDAY, FEBRUARY 12, 2024**

The regular meeting of the City Council was held on Monday, February 12, 2024, at 8:00 PM in City Council Chambers, City Hall. Councilors Present: Ossing, Vital, Doucette, Preciado, Brown, Irish, Fuccillo, Landers, Navin, Oram, & Robey. Meeting adjourned at 8:28 PM.

Motion by Councilor Brown, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of the City Council meeting, JANUARY 22, 2024, **FILE**; adopted.

That the PUBLIC HEARING on the Application from ViewPoint Sign and Awning on behalf of Best Western Royal Plaza Hotel for replacement of a Free-Standing EMC Sign at 181 Boston Post Road West, Order No. 23-1009035, all were heard who wish to be heard, hearing closed at 8:08 PM; adopted.

Councilors Present: Vital, Doucette, Preciado, Brown, Irish, Fuccillo, Landers, Navin, Oram, Ossing & Robey.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Michael Kennedy on behalf of Kennedys Restaurant and Market, re: Request to Withdraw without Prejudice the Application for installation of a Free-Standing EMC Sign at 247 Maple Street, **APPROVED**; adopted.

That the PUBLIC HEARING on the Application from Barlo Signs on behalf of Kennedys Restaurant and Market for installation of a Free-Standing EMC Sign at 247 Maple Street, Order No. 23-1009036, be **CANCELLED**; adopted.

Councilors Present: Vital, Doucette, Preciado, Brown, Irish, Fuccillo, Landers, Navin, Oram, Ossing & Robey.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Mid-Year Transfer Requests in the amount of \$1,202,100.00 (One million two hundred two thousand one hundred dollars) from various departments for FY24, which moves funds from and to accounts as outlined in the transfer sheets, referred to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:		City Clerk/Election				FISCAL YEAR:		2024	
Available Balance		FROM ACCOUNT:				TO ACCOUNT:			
Amount	Org Code	Object	Account Description:		Amount	Org Code	Object	Account Description:	Available Balance
\$35,354.60	\$13,000.00	11620002	50520	Principal Clerk	\$4,450.00	11610002	50290	Assistant City Clerk	\$27,524.17
	Reason:	Position not filled for entire year			Reason:	Salary Ordinance change			
					\$1,550.00	11610004	53180	Prof & Tech Svcs	\$838.81
	Reason:				Reason:	Updates to General Code & Traffic Regulations			
					\$1,000.00	11620005	54220	Office Supply/Expense	\$1,550.88
	Reason:				Reason:	Election related materials and supplies			
					\$6,000.00	11620006	53871	Poll Workers	\$18,795.00
	Reason:				Reason:	Additional assistance for Early Voting/VBM			
\$13,000.00	Total				\$13,000.00	Total			

CITY OF MARLBOROUGH BUDGET TRANSFERS --									
DEPT:		Various				FISCAL YEAR:		2024	
Available Balance		FROM ACCOUNT:				TO ACCOUNT:			
Amount	Org Code	Object	Account Description:		Amount	Org Code	Object	Account Description:	Available Balance
\$141,700.00	\$50,100.00	11990006	57820	Reserve for Salaries	\$17,200.00	11210001	50321	Chief of Staff	\$11,164.52
	Reason:	Funds available				To cover vacation payout, slbb and overlap			
					\$4,900.00	11210002	50590	Executive Admin	\$18,483.26
						To cover vacation payout and slbb			
					\$11,000.00	11410004	53180	Assessors Professionl & Tech	\$10,686.80
	Reason:					To cover unexpected appraisals & consulting services			
					\$1,600.00	11550004	52544	Maint Contract/Copier	\$20,911.25
	Reason:					Library printing shortfall			
					\$10,400.00	11550006	53420	Telephone-City	\$46,004.80
	Reason:					Additional phones/phone lines			
					\$5,000.00	11210005	54230	Mayors Expense	\$3,735.13
	Reason:					To cover expenses through June 30th			
\$50,100.00	Total				\$50,100.00	Total			

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
DEPT: DPW - School Maintenance and Property Maintenance						FISCAL YEAR: 2024			
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$67,535.00	\$26,000.00	11920001	50375	Plumber	\$26,000.00	13032003	51240	Temporary Part-Time	\$1,500.00
	Reason:	Excess due to vacancy				Part time Plumber			
\$67,535.00	\$19,000.00	11920001	50375	Plumber	\$19,000.00	13032003	51300	Additional Gross	\$0.00
	Reason:	Excess due to vacancy				increased overtime need			
\$213,159.42	\$10,000.00	11920003	50560	Houseworker	\$10,000.00	11920004	53140	Contract Services	\$0.00
	Reason:	Excess due to vacancy				Library Custodians			
	\$55,000.00	Total			\$55,000.00	Total			

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
DEPT: DPW - School Maintenance - Electricity Utilities						FISCAL YEAR: 2024			
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$213,159.42	\$41,000.00	11920003	50560	Houseworker	\$41,000.00	13032006	52120	Electricity	\$637,612.63
	Reason:	Excess due to vacancy				Rate increase			
\$67,400.00	\$7,000.00	14003001	50750	Equipment Operator - RDF	\$7,000.00	13032006	52120	Electricity	\$637,612.63
	Reason:	Excess due to vacancy				Rate increase			
\$98,310.44	\$71,000.00	14003003	51240	Drop-Off Attendant	\$71,000.00	13032006	52120	Electricity	\$637,612.63
	Reason:	Excess due to vacancy				Rate increase			
\$489,104.79	\$22,000.00	14001503	50740	Equipment Operator - FPC	\$22,000.00	13032006	52120	Electricity	\$637,612.63
	Reason:	Excess due to vacancy				Rate increase			
\$96,926.87	\$16,000.00	14001001	50600	DPW Commissioner	\$16,000.00	13032006	52120	Electricity	\$637,612.63
	Reason:	Excess due to vacancy				Rate increase			
	\$157,000.00	Total			\$157,000.00	Total			

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
DEPT: DPW - School Maintenance - Electricity Utilities					FISCAL YEAR: 2024				
FROM ACCOUNT:					TO ACCOUNT:				
Available	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available
Balance									Balance
\$150,708.28	\$10,000.00	60085001	50850	Treatment Plant Operator	\$10,000.00	13032006	52120	Electricity	\$637,612.63
	Reason:	Excess due to vacancy				Rate increase			
\$254,173.30	\$237,000.00	60086006	52935	Solid Waste Disposal	\$237,000.00	13032006	52120	Electricity	\$637,612.63
	Reason:	No additional surcharges				Rate increase			
	\$247,000.00	Total			\$247,000.00	Total			

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
DEPT: DPW - School Maintenance - Gas Utility					FISCAL YEAR: 2024				
FROM ACCOUNT:					TO ACCOUNT:				
Available	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available
Balance									Balance
\$96,926.87	\$46,000.00	14001001	50600	DPW Commissioner	\$46,000.00	13032006	52200	Gas	\$333,349.83
	Reason:	Excess funds due to vacancy				Rate increase			
\$65,600.00	\$65,600.00	14001101	50700	Grade 2 Engineer (Aide)	\$65,600.00	13032006	52200	Gas	\$333,349.83
	Reason:	Excess funds due to vacancy				Rate increase			
\$156,584.88	\$42,400.00	14001101	50710	Junior Civil Engineer	\$42,400.00	13032006	52200	Gas	\$333,349.83
	Reason:	Excess funds due to vacancy				Rate increase			
\$61,702.05	\$8,000.00	13032001	50386	HVAC	\$8,000.00	13032006	52200	Gas	\$333,349.83
	Reason:	Excess funds due to vacancy				Rate increase			
	\$162,000.00	Total			\$162,000.00	Total			

CITY OF MARLBOROUGH									
BUDGET TRANSFERS -									
DEPT: DPW - Property Maintenance - Electricity Utility					FISCAL YEAR: 2024				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$451,863.20	\$60,000.00	14001303	50740	Equipment Operator - Streets	\$60,000.00	11920006	52120	Electricity	\$989,955.14
		Reason: Excess due to vacancy				Rate increase			
\$156,584.88	\$21,000.00	14001101	50710	Junior Civil Engineer	\$21,000.00	11920006	52120	Electricity	\$989,955.14
		Reason: Excess due to vacancy				Rate increase			
\$9,312.25	\$5,000.00	14001103	51240	Temporary Part/Time	\$5,000.00	11920006	52120	Electricity	\$989,955.14
		Reason: Excess due to vacancy				Rate increase			
\$489,104.79	\$98,000.00	14001503	50740	Equipment Operator - FPC	\$98,000.00	11920006	52120	Electricity	\$989,955.14
		Reason: Excess due to vacancy				Rate increase			
\$67,400.00	\$27,000.00	14003001	50750	Equipment Operator - RDF	\$27,000.00	11920006	52120	Electricity	\$989,955.14
		Reason: Excess due to vacancy				Rate increase			
	\$211,000.00	Total			\$211,000.00	Total			

CITY OF MARLBOROUGH									
BUDGET TRANSFERS -									
DEPT: DPW - Property Maintenance - Gas Utility					FISCAL YEAR: 2024				
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$451,863	\$31,000.00	14001303	50740	Equipment Operator - Streets	\$31,000.00	11920006	52200	Natural Gas	\$186,090.39
		Reason: Excess due to vacancy				Rate increase			
\$6,000	\$6,000.00	14001303	51240	Temporary / Part Time	\$6,000.00	11920006	52200	Natural Gas	\$186,090.39
		Reason: Excess due to vacancy				Rate increase			
	\$37,000.00	Total			\$37,000.00	Total			

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
DEPT:		DPW - Fleet				FISCAL YEAR:		2024		
FROM ACCOUNT:					TO ACCOUNT:					
Available									Available	
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance	
\$67,400	\$3,000.00	14003001	50750	Equipment Operator - RDF	\$3,000.00	14001403	51470	Interim Foreman	\$9,421.90	
Reason:		Excess due to vacancy				Increased need				
\$3,000.00	Total					\$3,000.00	Total			

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
DEPT:		DPW - Sewer				FISCAL YEAR:		2024		
FROM ACCOUNT:					TO ACCOUNT:					
Available									Available	
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance	
\$419,800	\$145,000.00	61090001	50740	Equipment Operator - Water	\$145,000.00	60080006	55660	Pumping Station	\$52.95	
Reason:		Excess due to vacancy				Replenish funds from Legal Services				
\$213,159	\$25,000.00	11920003	50560	Houseworker	\$25,000.00	60080006	55660	Pumping Station	\$52.95	
Reason:		Excess due to vacancy				Replenish funds from Legal Services				
\$213,159	\$60,000.00	11920003	50560	Houseworker	\$60,000.00	60080004	53110	Legal Services	\$0.00	
Reason:		Excess due to vacancy				Northborough legal fees				
\$67,400	\$10,000.00	14003001	50750	Equipment Operator - RDF	\$10,000.00	60080003	51310	Overtime - Regular	\$1,043.64	
Reason:		Excess due to vacancy				Increased need				
\$240,000.00	Total					\$240,000.00	Total			

CITY OF MARLBOROUGH BUDGET TRANSFERS --										
DEPT:		DPW - East Plant				FISCAL YEAR:		2024		
FROM ACCOUNT:					TO ACCOUNT:					
Available									Available	
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance	
\$150,708	\$27,000.00	60085001	50850	Treatment Plant Operator	\$27,000.00	60081003	51310	Overtime - Regular	\$22,921.80	
Reason:		<u>Excess due to vacancy</u>				<u>On-call Program</u>				
\$27,000.00	Total				\$27,000.00	Total				

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Transfer Request in the amount of \$162,202.95 (One hundred sixty-two thousand two hundred two dollars and ninety-five cents) from Free Cash to the Opioid Settlement Special Revenue Fund, referred to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS --										
DEPT:		Mayor				FISCAL YEAR:		2024		
FROM ACCOUNT:					TO ACCOUNT:					
Available									Available	
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance	
\$7,602,846.40	\$162,202.95	10000	35900	Undesignated Fund	\$162,202.95	29012809	48999	Opioid Settlements	\$0.00	
Reason:		<u>To move payments received in FY23</u>								
\$162,202.95	Total				\$162,202.95	Total				

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$20,150.00 from the MA Emergency Management Agency (MEMA) awarded to Marlborough Emergency Management to be used to fund the acquisition of additional equipment and supplies, adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Proposed Amendments to the City Code, Chapter 125 “Personnel” §5 “Preparation of Classification Descriptions” and to Chapter 125 “Personnel” §6 “Salary Schedule” to create a new position of Communications & Special Projects Director in addition to a Transfer Request in the amount of \$25,900.00 to fund the position for the remainder of FY 24, referred to **FINANCE COMMITTEE**, adopted.

CITY OF MARLBOROUGH									
BUDGET TRANSFERS -									
DEPT:		Mayor				FISCAL YEAR:		2024	
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$61,500.00	\$25,900.00	15120001	50607	Substance Abuse Coordinator	\$25,900.00	11210002	50592	Comms Director	\$0.00
	Reason:	Vacant position				New position			
	\$25,900.00	Total			\$25,900.00	Total			

Motion by Councilor Navin, seconded by the Chair to adopt the following:

ORDERED: That the Communication from the Mayor, re: Notification of Extension of Temporary Appointment pursuant to MGL Chapter 41 §61A of David Williams as Interim Comptroller/Treasurer for an additional 60-day term to expire April 2, 2024, **FILE**; adopted.

Motion by Councilor Navin, seconded by the Chair to adopt the following:

ORDERED: That the Reappointments of Sean Fay, Barbara Fenby, and Christopher Russ to the Planning Board for 5-year terms respectively to expire on February 5, 2029, referred to the **PERSONNEL COMMITTEE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from City Solicitor Jason Grossfield, re: Request for Executive Session to discuss litigation strategy relative to JW Capital Partners, LLC and Marlborough TOTG LLC v. City of Marlborough (Land Court No. 23 MISC 000199), **MOVED TO THE END OF AGENDA & FILE**; adopted.

Councilor Preciado Recused.

Motion by Councilor Brown, seconded by the Chair to adopt the following:

ORDERED: That the Communication from City Clerk, Steven Kerrigan, re: Presidential Primary Election Call, **FILE**; adopted.

Motion by Councilor Brown, seconded by the Chair to adopt the following:

ORDERED: That the Communication from City Clerk, Steven Kerrigan, re: In-Person Early Voting for Presidential Primary, **FILE**; adopted.

Motion by Councilor Navin, seconded by the Chair to adopt the following:

ORDERED: That the Communications from Karin Paquin of the Conservation Commission and James Confrey of the Council on Aging, re: Notification of Resignation as member of their respective board, **FILE**; adopted.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That there being no objection thereto set **MONDAY FEBRUARY 26, 2024**, as the **DATE FOR PUBLIC HEARING**, on the Petition from Massachusetts Electric and Verizon New England, to install one Joint Owned Pole at 219 Forest Street beginning at a point approximately 972' East of the centerline of the intersection of Teller Street. Install 45'C1.2 midspan between Poles 25 & 26. Install feeder monitor on new midspan Pole 25-50, referred to the **PUBLIC SERVICES COMMITTEE**; adopted.

Councilor Vital Recused.

Motion by Councilor Landers, seconded by the Chair to adopt the following:

ORDERED: That the Application for Renewal of Taxi/Livery License from Katsunori Tanaka d/b/a Global Limousine & Tour Services, to operate a Livery Service (One Vehicle) at 17 Eager Court, **APPROVED**; adopted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of following Boards, Commissions and Committees, **FILE**; adopted.

- a) School Committee, December 12, 2023, January 1, 2024 & January 9, 2024.
- b) Conservation Commission, January 4, 2024, January 11, 2024 & January 18, 2024.
- c) Cultural Council, January 3, 2024.
- d) Library Trustees, November 7, 2023.
- e) OPEB Trust, January 18, 2024 & January 24, 2024.
- f) Planning Board, December 4, 2023 & December 18, 2023.
- g) Traffic Commission, November 29, 2023.

Motion by Councilor Brown, seconded by the Chair to adopt the following:

ORDERED: That the following CLAIMS, referred to the **LEGAL DEPARTMENT**; adopted.

- a) Jose Aguilar, 55 Norwood Street, other property damage and/or personal injury.
- b) Joniel Anderson, 111 Howe Street, other property damage and/or personal injury.
- c) James Lee, 849 Boston Post Road East, #1F, pothole or other road defect.
- d) Nagwa Mina, 12 McIntyre Court, other property damage and/or personal injury.
- e) Lucas Ragan, 39 Austen Way, #13F, pothole or other road defect.
- f) Jonathan Taft, 30 Broad Street, #201, other property damage and/or personal injury.
- g) Ted Tamburro, 168 Naugler Avenue, pothole or other road defect.

Councilor Navin reported the following out of the Personnel Committee:

**City Council Personnel Committee
January 29, 2024
Minutes and Report**

This meeting convened at 7:35 PM in the City Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8 or Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's website, home page (www.marlborough-ma.gov).

Voting members present: Chair Navin, Councilors Brown and Doucette.

Non-Voting members present: Councilors Vital, Oram, Robey, Irish and Fuccillo.

Also present: Mayor Dumais, Conservation Commission Chair Edward Clancy.

Order No. 24-1009071: Communication from Mayor Dumais with Appointment to the Conservation Commission of Elizabeth Austin for a 2-year term to expire on May 5, 2026.

Chair Navin read the letter from the Mayor into the record.

Ms. Austin answered questions from councilors and explained her interest in joining the commission.

Edward Clancy, Chair of the Conservation Commission, highly endorsed Elizabeth's appointment, indicating she will be a perfect fit as a new member of the commission.

On a motion by Councilor Brown, seconded by the Chair, the Personnel Committee recommends approval of the appointment of Elizabeth Austin to the Conservation Commission for a 2-year term to expire on May 5, 2026. Vote 3-0

Motion made and seconded to adjourn; the meeting adjourned at 7:50 PM.

Councilor Irish reported the following out of the Finance Committee:

**City Council Finance Committee
January 29, 2024
Minutes and Report**

This meeting convened at 7:00 PM in the Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8/Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's home page, www.marlborough-ma.gov.

Voting Members present: Chair Irish, Councilors Brown, Vital, Fuccillo and Oram.

Non-Voting Members present: Councilors Navin, Robey, and Doucette.

Also present: Mayor Dumais; City Auditor Smith; Acting DPW Commissioner Scott; IT Director Gibbs; Library Director Belisle; WMCT-TV Director Malyar.

Order No. 24-1009067: Communication from Mayor Dumais with Transfer in the amount of \$40,000.00 which moves funds from Free Cash to IT Equipment for Website Upgrade and Redesign Project.

Reports of Committee Continued:

Chair Irish read the letter from the Mayor addressing the transfer. Mayor Dumais explained the updates to the website and asked for a suspension of the rules to approve the transfer on February 12.

On a motion by Councilor Brown, seconded by the Chair, the Finance Committee recommended approval of the transfer under suspension of the rules on February 12, 2024. Vote 5-0

Order No. 24-1009068: Communication from Mayor Dumais with Transfer in the amount of \$100,000.00 from the Public Educational and Government Access Channels (PEG) Fund to fund WMCT-TV Operations.

Chair Irish read the letter from the Mayor into the record.

On a motion by Councilor Brown, seconded by the Chair, the Finance Committee recommended approval of the transfer. Vote 5-0

Order No. 24-1009070: Communication from Mayor Dumais with request to increase the spending limit for the Public Safety Revolving Fund from \$120,000.00 to \$143,000.00 for the remainder of FY2024.

Chair Irish read the letter from the Mayor into the record. Police Chief Giorgi and Fire Chief Breen support the increase in the spending limit for the revolving fund. The funds are from the annual dispatch fee from Patriot Ambulance.

On a motion by Councilor Oram, seconded by the Chair, the Finance Committee recommended approval of the increase in the spending limit for the Public Safety Revolving Fund from \$120,000.00 to \$143,000.00. Vote 5-0

Order No. 24-1009072: Communication from Mayor Dumais with proposed amendments to the City Code, Chapter 125 "Personnel" §6 'Salary Schedule' relative to positions at the Library and Public Facilities and the proposed job descriptions pursuant to Chapter 125 "Personnel" §5 'Preparation of Classification Descriptions' for new positions in the Public Library and Public Facilities Departments.

Chair Irish read the letter from Mayor Dumais.

On a motion by Councilor Brown, seconded by the Chair, the Finance Committee recommended approval of the ordinances and Job Descriptions as submitted. Vote 5-0

Motion made and seconded to adjourn; meeting adjourned at 7:30 PM

Suspension of the Rules requested – granted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED That the Transfer Request in the amount of \$40,000.00 (Forty thousand dollars) which moves funds from Free Cash to IT Equipment for Website Upgrade & Redesign Project, **APPROVED**; adopted.

CITY OF MARLBOROUGH									
BUDGET TRANSFERS –									
DEPT:		IT			FISCAL YEAR:		2024		
FROM ACCOUNT:					TO ACCOUNT:				
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$7,602,846.40	\$40,000.00	10000	35900	Undesignated Fund	\$40,000.00	19300006	58618	IT Equipment	\$0.00
Reason:		Website redesign							
\$40,000.00		Total			\$40,000.00		Total		

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Marlborough City Council meet in executive session under Purpose 3 of the Open Meeting Law, MGL c. 30A, s. 21(a)(3), to “discuss strategy with respect to...litigation if an open meeting may have a detrimental effect on the...litigating position of the public body” regarding the pending matter, *JW Capital Partners, LLC and Marlborough TOTG LLC v. Marlborough City Council* (Land Court No. 23 MISC 000199), as the chair hereby declares that discussion in an open session may have a detrimental effect on the City and the City Council’s litigating position.

The City Council will not re-convene in open session after the Executive Session.

APPROVED; adopted.

Yea: 10 – Abstain: 1

Yea: Vital, Doucette, Brown, Irish, Fuccillo, Landers, Navin, Oram, Ossing & Robey.

Abstain: Preciado.

Motion by Councilor Navin, seconded by the Chair to adopt the following:

ORDERED There being no further business, the regular meeting of the City Council is herewith adjourned at 8:28 PM; adopted.



IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 12, 2024

ORDERED:

That there being no objection thereto set **MONDAY FEBRUARY 26, 2024**, as the **DATE FOR PUBLIC HEARING**, on the Petition from Massachusetts Electric and Verizon New England, to install one Joint Owned Pole at 219 Forest Street beginning at a point approximately 972' East of the centerline of the intersection of Teller Street. Install 45' C1.2 midspan between Poles 25 & 26. Install feeder monitor on new midspan Pole 25-50, be and is herewith referred to the **PUBLIC SERVICES COMMITTEE**.

ADOPTED

ORDER NO. 24-1009089



City of Marlborough

Office of the Mayor

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

J. Christian Dumais, Mayor

140 Main Street
Marlborough, MA 01752
(508) 460-3770

2024 FEB 22 AM 10:47

Mayor@marlborough-ma.gov

February 22, 2024

Council President Ossing
Marlborough City Council
140 Main Street
Marlborough, MA 01752

RE: Gift Acceptance – Marlborough Public Library

Dear Council President Ossing and Councilors,

Enclosed for your acceptance is a gift in the amount of \$350,000 from the Marlborough Public Library Foundation. This gift was given to support the Marlborough Public Library Renovation Project. These funds were raised by the foundation as part of their ongoing capital campaign.

I would like to thank the Marlborough Public Library Foundation for their efforts and their donation.

Please do not hesitate to contact me or my office with any questions.

Sincerely,

J. Christian Dumais
Mayor



City Of Marlborough
Marlborough Public Library
35 West Main Street
Marlborough, MA 01752
508-624-6900 FAX 508-485-1494

Sara Belisle
Director

February 20, 2024
Mayor J. Christian Dumais
140 Main Street
Marlborough, MA 01752

Re: Grant from the Marlborough Public Library Foundation

Dear Mayor Dumais,

I am pleased to submit to you the grant in the amount of \$350,000 to the Marlborough Public Library from the Marlborough Public Library Foundation. I would like to thank the Foundation for their tireless fundraising efforts for the library and this renovation project. Once approved by the City Council, the library will use the money to fund the completion of the renovation project.

Either Sara or I are available should you or the Councilors have any questions.

Sincerely,

Morgan C. Manzella

Morgan Manzella
Assistant Director

**CITY OF MARLBOROUGH
NOTICE OF GRANT AWARD**

DEPARTMENT: Library DATE: 2/20/2024

PERSON RESPONSIBLE FOR GRANT EXPENDITURE: Sara Belisle

NAME OF GRANT: _____

GRANTOR: Marlborough Public Library Foundation

GRANT AMOUNT: \$350,000

GRANT PERIOD: 2024

SCOPE OF GRANT/
ITEMS FUNDED Library renovation project

IS A POSITION BEING
CREATED: No

IF YES: CAN FRINGE BENEFITS BE PAID FROM GRANT? _____

ARE MATCHING CITY
FUNDS REQUIRED? No

IF MATCHING IS NON-MONETARY (MAN HOURS, ETC.) PLEASE SPECIFY:

IF MATCHING IS MONETARY PLEASE GIVE ACCOUNT NUMBER AND DESCRIPTION OF CITY FUNDS
TO BE USED:

ANY OTHER EXPOSURE TO CITY?
No

IS THERE A DEADLINE FOR CITY COUNCIL APPROVAL: _____
No

DEPARTMENT HEAD MUST SUBMIT THIS FORM, A COPY OF THE GRANT APPROVAL, AND A COVER LETTER TO THE MAYOR'S OFFICE REQUESTING THAT THIS BE SUBMITTED TO CITY COUNCIL FOR APPROVAL OF DEPARTMENT TO EXPEND THE FUNDS RECEIVED FOR THE PURPOSE OF THE GRANT



City of Marlborough

Office of the Mayor

RECEIVED
CLERK'S OFFICE
CITY OF MARLBOROUGH

J. Christian Dumais, Mayor

2024 FEB 22 AM 10:47

140 Main Street
Marlborough, MA 01752
(508) 460-3770

Mayor@marlborough-ma.gov

February 22, 2024

Council President Ossing
Marlborough City Council
140 Main Street
Marlborough, MA 01752

RE: Grant Acceptance – Marlborough Fire Department

Dear Council President Ossing and Councilors,

Enclosed for your acceptance is a Firefighter Safety Equipment Grant from the Executive Office of Public Safety and Security and Department of Fire Services in the amount of \$24,723.06 to the Marlborough Fire Department. The grant will allow the city to secure Self-Contained Breathing Apparatus (SCBA), exercise equipment, training software, and laptop computers.

I would like to thank Chief Breen and Assistant Chiefs Gogan and Emanuelson for securing this grant for the city.

Please do not hesitate to contact me or my office with any questions.

Sincerely,

J. Christian Dumais
Mayor



City of Marlborough
FIRE DEPARTMENT
215 MAPLE STREET
MARLBOROUGH, MASSACHUSETTS 01752

KEVIN J. BREEN
FIRE CHIEF

PHONE: (508) 624-6986
FAX: (508) 460-3795

February 8, 2024

Hon. J. Christian Dumais, Mayor
City Hall
140 Main Street
Marlborough, Ma. 01752

REF: Firefighter Safety Equipment Grant

Dear Mayor Dumais:

I am pleased to inform you that Marlborough Fire Department received notice of a grant award in the amount of \$24,723.06 from the Executive Office of Public Safety and Security and the Department of Fire Services (DFS). Our successful grant submission for the FY2024 Firefighter Safety Equipment Grant Program will permit us to secure the following equipment at no cost to the city:

- Self-Contained Breathing Apparatus (SCBA) Fit Testing Machine
- Exercise Equipment
- Training Software Program
- Lap-top Computer

We respectfully ask your support as we seek City Council approval to receive and expend funds received through this important state grant program. Thank you for your anticipated support and we remain available should there be any questions related to this award.

Sincerely,

A handwritten signature in blue ink that reads "Kevin J. Breen".

Kevin J. Breen
Fire Chief

W/Attachments



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE BOSTON, MA 02133
(617) 725-4000

MAURA T. HEALEY
GOVERNOR

KIMBERLEY DRISCOLL
LIEUTENANT GOVERNOR

February 6, 2024

Chief Kevin Breen
City of Marlborough
215 Maple Street
Marlborough, MA 01752

Dear Chief Breen,

Congratulations! I am pleased to inform you that the Executive Office of Public Safety and Security and the Department of Fire Services (DFS) has awarded the City of Marlborough Fire Department \$24,723.06 in State Fiscal Year 2024 funding for the Firefighter Safety Equipment Grant Program.

With each new challenge, the fire service in Massachusetts demonstrates its ability to adapt, overcome, and continue providing the excellent level of services that the citizens of the Commonwealth have come to expect. Please know how thankful I am for this, and how grateful I am to be able to provide your department with this important equipment.

The contract, terms and conditions, and other award documents for this program will be provided to you by DFS. Please contact Tim Moore at DFS with any questions about this award at 978-567-3721 or Timothy.Moore@mass.gov.

Sincerely,

GOVERNOR MAURA T. HEALEY

LT. GOVERNOR KIMBERLEY DRISCOLL

**CITY OF MARLBOROUGH
NOTICE OF GRANT AWARD**

DEPARTMENT: FIRE DATE: 2/21/2024

PERSON RESPONSIBLE FOR GRANT EXPENDITURE: Assistant Chief Jeffrey Gogan

NAME OF GRANT: FY24 Firefighter Safety Equipment Grant

GRANTOR: State of Massachusetts-Department of Fire Services

GRANT AMOUNT: \$24,723.06

GRANT PERIOD: 4 Months

SCOPE OF GRANT/
ITEMS FUNDED
Fitness Equipment
FIT Testing Machine
Laptop Computer
Training Software Package

IS A POSITION BEING
CREATED: NO

IF YES: CAN FRINGE BENEFITS BE PAID FROM GRANT? _____

ARE MATCHING CITY
FUNDS REQUIRED? NO

IF MATCHING IS NON-MONETARY (MAN HOURS, ETC.) PLEASE SPECIFY:
N/A

IF MATCHING IS MONETARY PLEASE GIVE ACCOUNT NUMBER AND DESCRIPTION OF CITY FUNDS
TO BE USED:
N/A

ANY OTHER EXPOSURE TO CITY?
NO

IS THERE A DEADLINE FOR CITY COUNCIL APPROVAL: NO

DEPARTMENT HEAD MUST SUBMIT THIS FORM, A COPY OF THE GRANT APPROVAL, AND A COVER LETTER TO THE MAYOR'S OFFICE REQUESTING THAT THIS BE SUBMITTED TO CITY COUNCIL FOR APPROVAL OF DEPARTMENT TO EXPEND THE FUNDS RECEIVED FOR THE PURPOSE OF THE GRANT



City of Marlborough

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

J. Christian Dumais, Mayor

Office of the Mayor

2024 FEB 22 AM 10:47

140 Main Street
Marlborough, MA 01752
(508) 460-3770

Mayor@marlborough-ma.gov

February 22, 2024

Council President Ossing
Marlborough City Council
140 Main Street
Marlborough, MA 01752

RE: Senior Assessor Position Hours Change

Dear Council President Ossing and Councilors,

Enclosed for your review and approval is a change in the hours for the Senior Assessor position within the Assessing Department from 35 hours per week to 40 hours per week. This change is pursuant to a Side Letter of Agreement made between Mayor Vigeant and the MMEA in August of 2023 and is in reference to Article 7 and Article 8 of the MMEA Collective Bargaining Agreement.

This change was requested under the previous administration with the goal of decreasing reliance on outside vendors, providing additional department coverage, and providing the Senior Assessor with more flexibility with scheduling. The Senior Assessor, along with the Principal Assessor, do work in the field which can take significant time out of the day.

Unfortunately, no funding source was identified by the prior administration when agreeing to this change, and it was not built within the existing FY24 budget. Therefore, as we are under an obligation to comply with the agreement, I am requesting a transfer of \$3,653.00 from Reserve for Salaries to cover the cost increase for the remainder of FY24.

With the transfer, I have included the letter from Principal Assessor John Valade and the updated salary ordinance for the Senior Assessor position.

Principal Assessor John Valade and I will be at a future meeting to answer any questions you may have.

Sincerely,

J. Christian Dumais
Mayor



City of Marlborough

Office of the Assessors

140 Main Street

Marlborough, Massachusetts 01752

TDD (508) 460-3610

Phone: (508) 460-3779

January 29, 2024

Re: Senior Assessor Position Hours Change

Dear Mayor Dumais,

I'm writing to request a change to the Senior Assessor (union) position from 35 to 40 hours per week at the same hourly rate that is currently received. It is my understanding that the MMEA has agreed to this change, and it falls within the parameters of Article 8 of the Collective Bargaining Agreement.

The Senior Assessor's position is an asset to the office in many ways and provides an essential role in the assessing office.

The points to consider are the following:

- To increase department coverage and office support, efficiency, and productivity regarding various required inspections, sales reviews, and other tasks.
- To better align this position with other mid to larger surrounding communities. Such as, the town or city of; Northborough, Southborough, Westborough, Leominster, and Worcester, to list a few. Refer to attachment.
- To increase internal data integrity.
- Thus, to have less reliance on outside vendors to conduct various inspections and for other professional services.

The increase of ten (10) hours per pay period, equates to an additional \$457.24 in salary.

I would be happy to answer any questions that you may have.

Thank you for your consideration.

Sincerely,
John Valade
Principal Assessor

ORDERED:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 125, ENTITLED "PERSONNEL," AS FOLLOWS:

I. By adding to the salary schedule referenced in Section 125-6, the following:

Position		Step 0	Step 1	Step 2	Step 3 Maximum
Senior Assessor (40 hours per week)	Effective Upon Passage	\$42.2741	\$43.9651	\$45.7237	\$47.5523 Per Hour.

II. This ordinance shall supersede and replace any existing rate for said position(s) (if applicable) in the current salary schedule.

ADOPTED
In City Council
Order No. 24-XXX
Adopted

Approved by Mayor
J. Christian Dumais
Date:

A TRUE COPY
ATTEST:

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Assessor

FISCAL YEAR: 2024

FROM ACCOUNT:

TO ACCOUNT:

Available
Balance

Amount

Org Code

Object

Account Description:

Amount

Org Code

Object

Account Description:

Available
Balance

\$141,700.00

\$3,653.00

11990006

57820

Reserve for Salaries

\$3,653.00

11410001

50171

Senior Assessor

\$28,806.50

Reason:

Funds available

Change from 35 to 40 hours per week thru year end

Reason:

Reason:

Reason:

Reason:

\$3,653.00

Total

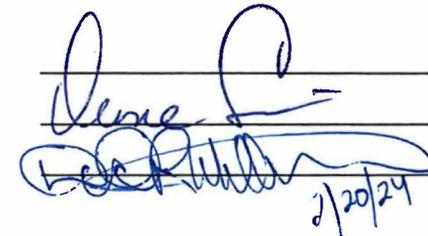
\$3,653.00

Total

Department Head signature:

Auditor signature:

Finance Director signature:


2/20/24



City of Marlborough

Office of the Mayor

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2024 FEB 22 AM 10:47

J. Christian Dumais, Mayor

140 Main Street
Marlborough, MA 01752
(508) 460-3770
Mayor@marlborough-ma.gov

February 20, 2024

Theodore Scott
City of Marlborough
140 Main Street
Marlborough, MA 01752

**RE: Extended Temporary Appointment as Commissioner of Public Works
Pursuant to M.G.L c. 41 § 61A**

Dear Mr. Scott,

In accordance with the authority vested in me under M.G.L. c. 41 § 61A, I hereby extend your appointment as Temporary Commissioner of the Department of Public Works as said office is vacant. This extension is effective February 20, 2024 and under this appointment, you shall hold and exercise the powers and perform the duties of Commissioner of Public Works for not more than 60 days, from time to time, for so long as the position remains vacant.

Thank you for your support during this interim period.

Please reach out to myself or my office with any questions or concerns.

Sincerely,

J. Christian Dumais
Mayor

cc: City Council

CITY OF MARLBOROUGH
OFFICE OF THE CITY CLERK

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2024 FEB 14 PM 1:20

APPLICATION TO CITY COUNCIL FOR ISSUANCE OF SPECIAL PERMIT

1. Name and address of Petitioner or Applicant:

Alta Behavioral Health, LLC, 55 Concord Street, Suite 111, Concord, MA 01742

2. Specific Location of property including Assessor's Plate and Parcel Number.

400 Donald J Lynch Blvd; Parcel ID 26/29; Vision ID 1824

3. Name and address of owner of land if other than Petitioner or Applicant:

SP Capital LLC, 7 Drydock Ave, Suite 2050, Boston, MA 02210

4. Legal interest of Petitioner or Applicant (owner, lessee, prospective owner, etc.) **Lessee**

5. Specific Zoning Ordinance under which the Special Permit is sought:

Article VI Section 650-21 Paragraph C Sub-paragraph (2) et seq.

6. Zoning District in which property in question is located:

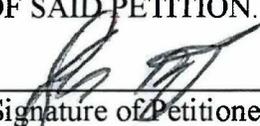
Limited Industrial

7. Specific reason(s) for seeking Special Permit **See below and Exhibit A hereto.**

400 Donald J Lynch Blvd is located in a limited industrial zone. A limited industrial zone allows for a "narcotic detoxification and/or maintenance facility" by special permit. The proposed use is a nonresidential/outpatient facility licensed under 105 CMR 164 as a substance abuse treatment program, thus fitting within the definition of a narcotic detoxification and/or maintenance facility, as set forth in Section 650-31. However, Section 650-31 sets forth limitations as to the locating of these facilities that is in violation of State and/or Federal Law. Relief is sought from those limitations.

8. List of names and addresses of abutter. SEPARATE SHEET ATTACHED

PETITION IS HEREBY MADE FOR THE ISSUANCE OF A SPECIAL PERMIT BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH AND IS BASED ON THE WITHIN PETITION OR APPLICATION AS FILED HERewith AND MADE PART OF SAID PETITION.



Signature of Petitioner or Applicant

Address: 55 Concord Street, Suite 111 _____

Concord, MA 01742

Telephone No. c/o counsel 401-396-9002 _____

Date: 2/9/2024

LIST OF NAMES AND ADDRESS OF ABUTTERS
AS REQUESTED ON THE APPLICATION FOR SPECIAL PERMIT OF:

Alta Behavioral Health, LLC

(Name of Petitioner)

FOR THE ISSUANCE OF SPECIAL PERMIT BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH UNDER CHAPTER 650, ZONING, OF THE CODE OF THE CITY OF MARLBOROUGH.

(Abutters as defined in §650-59, Section 4H, **Powers and Procedure of Special-Permit Granting Authorities**)

See attached.

ATLANTIC-FULCRUM REALTY L
205 NEWBURY ST
FRAMINGHAM, MA 01701

CROSSROADS SCHOOL INC
43 BROAD ST
SUITE C300
HUDSON, MA 01749

DENALI BELLE LLC
16 BRENT DR
HUDSON, MA 01749

LYNDE EMELINE M LI EST
780 NORTH BIGELOW ST
MARLBOROUGH, MA 01752

LYNDE GARY H
KATHLEEN E LYNDE
7 ASH ST
MARLBOROUGH, MA 01752

NEW ENGLAND POWER
COMPANY
PROPERTY TAX DEPT
40 SYLVAN RD
WALTHAM, MA 02451-2286

SP CAPITAL LLC
7 DRYDOCK AVE STE 2050
BOSTON, MA 02210

TARGET CORPORATION
ATTN PROP TAX DEPT TPN-09
P O BOX 9456
MINNEAPOLIS, MN 55440-9456

THREE LP PROPERTIES LLC
325 DONALD J LYNCH BLVD
MARLBOROUGH, MA 01752

SPECIAL PERMIT-SUMMARY IMPACT STATEMENT

Applicant's Name: Alta Behavioral Health, LLC Address: 55 Concord Street, Suite 111, Concord__

Project Name: Alta Behavioral Health, LLC Address: 400 Donald J Lynch Blvd_____

1. PROPOSED USE: (describe) Narcotic detoxification and/or maintenance facility_____

2. EXPANSION OR NEW: Existing space_____

3. SIZE: floor area sq. ft. 4,400_____ 1st floor_ all floors_____

buildings See plan_____ # stories_____ lot area (s.f.)_____

4. LOT COVERAGE: See plan_____ %Landscaped area: _____%

5. POPULATION ON SITE: Number of people expected on site at anytime:

Normal: 8 staff and 25 patients__Peak period: 10 staff and 30 patients_____

6. TRAFFIC:

(A) Number of vehicles parked on site:

During regular hours: 12_____ Peak period: 17_____

(B) How many service vehicles will service the development and on what schedule?

None

7. LIGHT: How will the development be lit at the exterior? How much light will leave the property and enter the abutting property? As existing, see plan_____

8. NOISE:

(A) Compare the noise levels of the proposed development to those that exist in the area now.

No change or any expected difference from allowed uses.

(B) Described any major sources of noise generation in the proposed development and include their usual times of operation. None from the proposed use._____

9. AIR: What sources of potential air pollution will exist at the development? None from _____ the proposed use.

10. WATER AND SEWER: Describe any unusual generation of waste. None_____

11. HAZARDOUS MATERIAL: List any types of Hazardous Waste that will be on-site. How will this waste be stored? Where? How much will be in storage on a daily basis? How will it be disposed? None_____

***Attach additional sheets if necessary**



**CITY OF MARLBOROUGH
MARLBOROUGH, MASSACHUSETTS 01752**

City Hall

140 Main St.

Marlborough, Massachusetts 01752

Voice (508) 460-3775 Facsimile (508) 460-3723 TTD (508) 460-3610

President and Members City Council

Date: 2/9/24

**SPECIAL PERMIT APPLICATION
CERTIFICATION BY PLANNING DEPARTMENT**

Project Name: Alta Behavioral Health, LLC _____

Project Use Summary: Narcotic detoxification and/or maintenance facility _____

Project Street Address: 400 Donald J Lynch Blvd _____

Plate: 26 _____ Parcel: 29 _____

Applicant/Developer Name: Alta Behavioral Health, LLC _____

Plan Date: Existing building _____ Revision Date: See plan submitted 10/22/14

Dear President and Members:

In accordance with the City Council's Rules for Special Permit Applications, I hereby certify that the Site Plan filed with the City Clerk has been reviewed by the Building Department within the limits of work shown on the plan, and that said plan meets all prior referenced informational requirements of Section 7; that the plan conforms in all aspects to City Code and to these Rules and Regulations, and that any necessary zoning variances have been already granted by the Marlborough Zoning Board of Appeals, and any applicable appeal period concerning said variances have run.

Very truly yours,

Tin Htway
Acting Director of Planning

**Application Fee to submit to
City Clerk's office**

\$250.00

City of Marlborough, Massachusetts
CITY CLERK DEPARTMENT



Steven W. Kerrigan
City Clerk

Dear Applicant,

To ensure that each department listed below receives a copy of your completed Special Permit application, please hand-deliver to each department as instructions indicate below.

PLACE A CHECK-MARK AFTER HAND-DELIVERING THE APPLICATION TO THE FOLLOWING DEPARTMENTS AND SIGN YOUR NAME & DATE IT ACCORDINGLY. MAKE SURE THIS PAGE IS SIGNED AND RETURNED TO THE CITY CLERK'S OFFICE WITH THE COMPLETED APPLICATION. THE CITY CLERK'S OFFICE WILL NOT ACCEPT THE APPLICATION WITHOUT THE SIGNATURE OF THE APPLICANT OR PETITIONER AS INDICATED BELOW.

- 1 SET POLICE CHIEF ✓ 8300
- 1 SET FIRE CHIEF ✓ [Signature]
- 1 SET CITY ENGINEER ✓ KL
- 1 SET DIRECTOR OF PLANNING ✓ KL
- ~~1 SET~~ CONSERVATION OFFICER (IF WETLANDS AFFECTED) _____
- 1 SET BUILDING COMMISSIONER H
- 12 SETS OFFICE OF THE CITY COUNCIL [Signature]
- 3 SETS OFFICE OF THE CITY CLERK [Signature] **(MUST be Original & 2 Complete Sets)**

[Signature]
Signature

Date

Thank you for your cooperation in this matter.

Sincerely,

Steven W. Kerrigan
City Clerk

City of Marlborough, Massachusetts ⁷⁻⁷
CITY CLERK DEPARTMENT

Steven W. Kerrigan
City Clerk



I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all Municipal tax returns and paid all Municipal taxes required under law.

Company Name

Alta Behavioral Health, LLC

Owner Name/Officer Name of LLC or Corporation

John Matthews, Manager

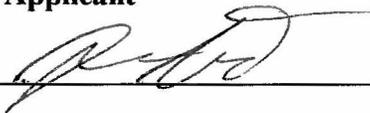
Owner/Officer Complete Address and Telephone Number

John Matthews, Manager, Alta Behavioral Health, LLC

55 Concord Street, Suite 111

Concord, MA 01742

Signature of Applicant



Attorney on behalf of Applicant, if applicable

Andrew J. Tine, Esq.

The Special Permit Package will not be accepted unless this certification clause is signed by the applicant and the Tax Collector.

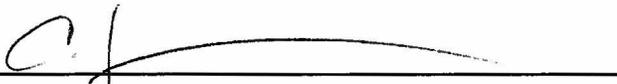

Tax Collector

EXHIBIT A to SPECIAL PERMIT APPLICATION OF ALTA BEHAVIORAL HEALTH, LLC

To: Marlborough City Council
From: Andrew J. Tine, Esq.
Counsel to Alta Behavioral Health, LLC
Re: 400 Donald Lynch Blvd (the "Property")
Application for Special Permit and Request for Reasonable Accommodation

Alta Behavioral Health, LLC ("Alta Health") hereby submits the below information in support of its application for a special permit.

A. Satisfaction of Criteria Under Article VI, Section 650-31 B(1)-(7)**1) Social, Economic, or Community Needs Which are Served by the Proposal**

Drug and alcohol abuse is wreaking havoc on public health and safety in communities across the United States, with more than 64,000 lives lost to drug overdoses in 2016 alone.¹ In an effort to recognize and combat this growing epidemic, on March 10, 2016, the United States Senate passed the Comprehensive Addiction and Recovery Act of 2016, which documented the abuse of heroin and prescription opioid painkillers as having "a devastating effect on public health and safety in communities across the United States," with the number of drug overdose deaths now surpassing the number of traffic accident deaths: According to the Centers for Disease Control and Prevention, drug overdose deaths now surpass traffic accidents in the number of deaths caused by injury in the United States. In 2014, an average of more than 120 people in the United States died from drug overdoses every day. See Comprehensive Addiction and Recovery Act of 2016, S.524, 114th Cong., § 2. The overdose death rate in Massachusetts is more than two times the national average.² In the year 2021, opioid-related overdose deaths in Massachusetts were 2,281 people up from 547 in 2010.

The City of Marlborough ("City") does not presently have any narcotic detoxification and/or maintenance facilities. As a result, City residents are forced to seek treatment outside of their hometown. From July 1, 2022 to June 30, 2023, 161 residents of the City were admitted to Bureau of Substance Addiction Services ("BSAS"). Only 8 of those individuals received treatment from providers located within the City.³ The 153 other residents of the City received treatment an average of 18 miles away, the majority being treated in Framingham (35 patients), Westborough (29 patients), and Worcester (24 patients). This exhibits a need for providers within the City for these services, for the convenience and accessibility of the City's residents.

¹ Drug Overdose Deaths in the United States, 1999-2016. No. 294, National Center for Health Statistics, U.S. Centers for Disease Control and Prevention, December, 2017.

² According to the National Institute on Drug Abuse, the national rate of deaths due to drug overdose in 2016 was 13.3 persons per 100,000, while in Massachusetts it was 29.7 persons per 100,000.

³ BSAS level and types of services vary and patient needs vary given their personal circumstances.

Many individuals in recovery do not have readily available transportation or the ability to travel great distances.

Alta Health has made an initial application, the first step in the process of obtaining a license from the Department of Public Health/Bureau of Substance Addiction Services to operate its day program at the Property. In response, on October 6, 2023, BSAS issued a "suitability determination" confirming that there is a need for this service, as proposed by Alta Health, at the subject Property location.⁴

2) Traffic Flow and Safety, Including Parking and Loading

The subject Property has 542 parking spaces of which 12 are handicap. Alta Health's lease with the landlord of the Property provides for 20 allocated parking spaces. This does not prevent access to additional parking spaces in the event of atypical short-term demands. Alta Health will have an average parking need for staff of 8 spaces, with a maximum of 10. The parking need for patients, from prior experience is in the range of 6-7 spaces per day. Twenty (20) parking spaces is more than adequate for the proposed use and predicted demands. Further, Individuals in recovery who attend a day program are typically dropped off or take public transportation to appointments. Alta Health's members operate similar facilities in North Reading and Haverhill and based upon those operations, they have first-hand information as to the expected parking demands.

Given these are personal services, there is no significant demand for commercial deliveries. There will be tractor trailer deliveries or the use of a loading dock by Alta Health.

Attached is a traffic study performed in 1998 in relation to the development of the Property. The developer, working in conjunction with the City, has already considered the traffic flow, safety and demands, in the construction of this project, of which the less than 5,000 square feet of space to be occupied by Alta Health is a part of. The City previously approved the traffic flow and safety for this Property.

3) Adequacy of Utilities and Other Public Services

This is not a new development/building. The adequacy of utilities and other public services has already been considered and addressed by the developer and the City. The demands upon the City/Property would be the same or substantially similar if this office space were occupied by any other business use allowed by right. There are no unusual or atypical demands upon the utilities or other public services that would result from the use of the Property as proposed by Alta Health.

⁴ BSAS shall not approve an application for an initial or renewal license or approval unless there is need for the service and it determines the applicant's suitability to establish or maintain the service in accordance with 105 CMR 164.010. See 105 CMR 164.012(A).

4) Neighborhood Character and Social Structures

The Property, 400 Donald J Lynch Blvd, is located in a limited industrial zone. The useable square footage of the Property is about 116,800 square feet of office space and it is located on a 10+ acre parcel. It is over 1000' feet from any residential zone. The backside of the Property abuts Interstate 290. The front of the Property is bordered by Donald J Lynch Blvd, a significant commercial thoroughfare within the City. The area is commercial in nature and not considered residential, in fact, the limited industrial zone does not allow single family, two family or multi-family homes as a matter of right.

5) Impacts on Natural Environment

This is not a new development/building. The impact on the natural environment has already been considered and addressed by the developer and the City. The demands upon the natural environment would be the same or substantially similar if this office space were occupied by any other business use allowed by right. There are no unusual or atypical demands upon the natural environment that would result from the use of the Property as proposed herein.

6) Potential Fiscal Impact, Including Impact on City Services, Tax Base and Employment

This is not a new development/building. The impact on the City financially or from a City services, tax base, or employment standpoint has already been determined by the approved and existing development – that is 400 Donald J Lynch Blvd. The fiscal impact, demand on City services, tax base and employment opportunities will be the same or substantially similar if this office space were occupied by any other business use allowed by right. The individuals that would use Alta Health's services have already received a higher level of care. Alta Health does not offer emergency services. Its patients/clientele are in a monitoring and educational phase of recovery from substance use.

From an employment standpoint, Alta Health will be hiring staff, which will present employment opportunities for residents of the City.

7) The Ability for the Facility to: a) Meet a Demonstrated Need; b) Provide a Secure Indoor Waiting Area for Clients; c) Provide an Adequate Pickup/Drop-Off Area; d) Provide Adequate Security Measures; and e) Adequately Address Issues of Traffic Demand, Parking and Queuing

a) See response to issue 1) *supra*, the City lacks adequate facilities for the treatment of individuals in recovery from substance use. BSAS has reviewed the proposed location and made an initial suitability determination, which includes an assessment of need.

b) There is a secure, dedicated waiting area within the leased space of the Property.

c) The leased space is located next to the side entrance of the building. Patients will use the waiting area before and after their sessions, and to the extent they are waiting for a pick-up, they will be instructed to use the waiting area and wait for a text or call from their pick-up to avoid congestion/loitering outside the building.

d) The clients/patients are in recovery from substance use. They have typically come from a higher or more intense level of care. Their circumstances do not present any threat or danger to others and to assume such, would be discriminatory. In terms of "security" for the safety of Alta Health's patients, they will use the waiting area before and after their sessions, and to the extent they are waiting for a pick-up, they will be instructed to use the waiting area and wait for a text or call from their pick-up. Alta Health requires patients to sign-in/sign-out and present identification at their initial visit.

e) This has been addressed in response to issue 2) *supra*. As previously expressed, the available parking is sufficient for the proposed use. There is a dedicated waiting area, that allows patients to wait for their pickup inside, exit through a side entrance and avoid congestion and congregating of persons or vehicles at the main entrance. The proposed use will see 20-30 patients per day. The volume is not significant or unusual, nor will it create an unmanageable impact given the size of this commercial property and the availability of parking.

B. Relief from Article VI, Section 650-31 C(1) and C(2)(a)-(e)

Section C(1) The City does not have a narcotic detoxification and/or maintenance facility.

Sections C(2)(a)-(e) These provisions are unenforceable, discriminatory, and should not be considered by the City in the review of this application for a special permit. By letter dated June 12, 2017, the Office of the Attorney General reviewed a proposed bylaw from the Town of Milbury to add a "distancing requirement" substantially similar to that existing in the subject Article VI of the City's code. The Town of Milbury's bylaw similarly required that methadone clinics and similar treatment centers could not be located within 1000' of schools, parks, playgrounds, etc. The Attorney General noted that other medical facilities had no such distancing requirement. The Attorney General opined as follows:

"On its face the by-law imposes a buffer zone requirement on facilities that treat disabled individuals - a buffer zone requirement that the Town does not impose on any similar use. By singling out substance abuse treatment providers for additional land use restrictions not imposed on similar uses in Town the by-law facially discriminates against disabled persons in violation of G.L. c. 40A, § 3. See

Brockton Fire Department v. St. Mary Broad Street, LLC, 181 F. Supp. 155, 157 (D. Mass. 2016).”

The Attorney General’s office also reviewed the distancing requirement under Federal Law and noted:

“If Article 4 were subject to a challenge under the ADA and FHA, an affected Methadone Treatment Center would have to show that a "protected characteristic played a role in" the Town's decision to treat such Centers differently from other land uses. Id. at 225-226. Because such a proof would require analysis of a full factual record beyond the documents submitted to the Attorney General for review under G.L. c. 40, § 32, we cannot conclude that Article 4 necessarily violates the ADA and FHA, but we caution the Town that the Article would be vulnerable to such a challenge.”

The Attorney General’s analysis concerns whether the distancing bylaw intentionally discriminates against the disabled under Federal Law. However, even if the bylaw does not intentionally discriminate against this disabled population, which we think it does, a reasonable accommodation to allow the use at the Property should be allowed as a reasonable accommodation. As such, a reasonable accommodation is requested under the ADA and Rehabilitation Act to allow Alta Health to locate its facility at the Property even if it does not comply with the distancing requirements of Sections C(2)(a)-(e). In other words, Alta Health in requesting that the City waive the 1,000 foot distancing requirement contained within Sections C(2)(a)-(e) in relation to this application for a special permit.

A locality is required to reasonably accommodate disabled persons by modifying its zoning policies, practices and procedures and may not intentionally discriminate against disabled persons. *Dadian v. Village of Wilmette*, 269 F.3d 831 (7th Cir. 2001). 28 C.F.R. § 35.130(b)(7) states: A public entity shall make *reasonable modifications* in policies, practices, or procedures when the modifications are *necessary* to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. The failure to provide a reasonable accommodation is discrimination.

Lastly, the City’s distancing requirement is more expansive than the Town of Milbury’s and effectively makes it impossible (a complete ban) to comply with to locate a narcotic maintenance facility anywhere within the City. The five (5) listed categories of uses/places from which a narcotic maintenance facility may not be within 1000’ simply covers too much ground. For example, a recreational facility has the following definition:

“Includes, but is not limited to, a playground, a forest preserve, conservation area, jogging trail or running track, hiking trail, beach, water park, wading pool, soccer field, baseball field, football field, basketball court or hockey rink, mini-

golf business, video arcade, laser tag establishment, Boys and Girls Club(s), skate park, dance or gymnastic studio, movie theater, martial arts school or family-oriented pool hall, whether publicly or privately owned, to which the public has a right of access as an invitee and which is located within the City of Marlborough.”⁵

One of the uses/places set forth in the above definition of “recreational facility” is located in simply every area of the City. As such, a complete ban is effectuated by the overly broad five (5) categories of uses from which a narcotic maintenance facility may not be within 1000’. The City’s distancing requirement has a discriminatory effect and/or purpose. Again, Alta Health asks that compliance with Sections C(2)(a)-(e) not be required under these circumstances in considering its application for a special permit.

Also submitted in support hereof is the Request for Reasonable Accommodation submitted to the City via its Building Commissioner/Zoning Officer on January 23, 2024.

⁵ The City uses the definition of Recreational Facility as it appears in Section 517-2 of the Code, entitled Sex Offenders.

ANDREW J. TINE

ATTORNEY AT LAW

Via US Mail and Email – thtway@marlborough-ma.gov

January 23, 2024

Tin Htway
Building Commissioner
Inspectional Services
140 Main Street, 2nd Floor
Marlborough, MA 01752

Re: 400 Donald J Lynch Blvd, Marlborough, MA (the “Property”)
Alta Behavioral Health LLC (“Alta Health”)
Request for Reasonable Accommodation under the ADA and Rehabilitation Act

Dear Commissioner Htway:

This office represents Alta Health with respect to its intended use and occupancy of office space on the first floor of the subject Property. The usable leased office space is under 5,000 square feet. Alta Health is an outpatient mental health and substance use maintenance facility to be licensed by the Bureau of Substance Addiction Service (“BSAS”) under 105 CMR 164 et seq. I have provided herewith a copy of BSAS’s suitability determination, which is the first step in license approval under 105 CMR 164 et seq. BSAS has determined that there is a need for this service, as proposed by Alta Health, at the subject location.¹

This Property is located in a light industrial zone. The City of Marlborough’s (“City”) table of uses indicates that Narcotic detoxification and/or maintenance facilities (“Special Permit Use”) are allowed by special permit in the light industrial zone. A special permit is relief that may be sought pursuant to City’s zoning ordinance. The City has established certain requirements to obtain a special permit to locate the Special Permit Use at the Property. My client reserves its rights to pursue this avenue of relief.

In addition to local laws (i.e. the City’s zoning ordinance), relief may be provided to Alta Health to locate its intended use at the Property under Federal Law. In this instance, the ADA and Rehabilitation Act both apply, and require that the City fairly consider Alta Health’s request for a reasonable accommodation with respect to the City’s zoning ordinance to allow the locating of its proposed use at the Property.

The standard to provide a reasonable accommodation is not the same as a Special Permit.

Title II of the Americans with Disabilities Act (“ADA”) provides: [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be

¹ The Department shall not approve an application for an initial or renewal license or approval unless there is need for the service and it determines the applicant’s suitability to establish or maintain the service in accordance with 105 CMR 164.010. See 105 CMR 164.012(A).

denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132. Public entities include counties, cities and towns. 42 U.S.C. § 12131(A). Zoning qualifies as a public program or service and the enforcement of a zoning ordinance constitutes an activity of a locality within the meaning of Title II. A Helping Hand v. Baltimore County, 515 F.3d 356 (4th Cir. 2008); see also START, Inc. v. Baltimore County, 295 F. Supp. 2d 569 (D. Md. 2003) (the administration of zoning laws is a “service, program, or activity” within the meaning of the ADA).

The ADA and the Rehabilitation Act are “separate but interrelated federal laws that protect persons with disabilities from discrimination.” *Wisconsin Community Services, Inc. v. City of Milwaukee, 465 F.3d 737, 746 (7th Cir. 2006).*

A locality is required to reasonably accommodate disabled persons by modifying its zoning policies, practices and procedures and may not intentionally discriminate against disabled persons. *Dadian v. Village of Wilmette, 269 F.3d 831 (7th Cir. 2001).* 28 C.F.R. § 35.130(b)(7) states: A public entity shall make *reasonable modifications* in policies, practices, or procedures when the modifications are *necessary* to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. The failure to provide a reasonable accommodation is discrimination.

The following are examples of case law applying the ADA in relation to local zoning laws:

- *Drug and alcohol rehabilitation programs:* The anti-discrimination provision of the ADA prohibits zoning decisions by a locality that discriminate against drug and alcohol rehabilitation programs, the clients of which are “qualified individuals with a disability.” *MX Group, Inc. v. City of Covington, 293 F.3d 326, 345 (6th Cir. 2002)* (agreeing with the trial court’s finding that “the blanket prohibition of all methadone clinics from the entire city is discriminatory on its face.”); *Bay Area Addiction Research and Treatment, Inc. v. City of Antioch, 179 F.3d 725 (9th Cir. 1999)* (holding that the ADA applied to zoning ordinance barring methadone clinics within 500 feet of residential areas); *Innovative Health Systems, Inc. v. City of White Plains, 117 F.3d 37 (2d Cir. 1997)* (holding that the ADA applies to zoning decisions involving a drug and alcohol rehabilitation center); *Habit Management, Inc. v. City of Lynn, 235 F. Supp. 2d 28 (D.Mass. 2002)* (no showing that the placement of methadone clinics in industrial or business zones poses any significant risk); *A Helping Hand v. Baltimore County, 515 F.3d 356 (4th Cir. 2008).*
- *Mental health facilities:* The anti-discrimination provision of the ADA applies to mental health facilities. *Pathways Psychological v. Town of Leonardtown, 133 F. Supp. 2d 772 (D.Md. 2001).*
- *Variance from regulations to allow reasonable use of home:* The anti-discrimination provision of the ADA prohibits zoning decisions by a locality that fail to reasonably accommodate persons with a disability to allow them the same housing opportunities

ANDREW J. TINE

ATTORNEY AT LAW

without a disability. *Trovato v. City of Manchester*, 992 F. Supp. 493 (D.N.H. 1997).

The proposed facility would not be a fundamental alteration in the nature of the City's zoning scheme as the Special Permit Use is allowed in the light industrial zone where the Property is located. A narcotic maintenance facility is *not allowed anywhere* within the City without a Special Permit. Therefore, it cannot be incompatible or a "fundamental alteration in the nature of the City's zoning scheme" to locate such a facility in one of the few zones where it is allowable. Further, there would be no undue financial and administrative burdens upon the City by allowing the proposed use at the Property in lieu of another type of occupancy.

In this instance, the City should provide a reasonable accommodation with respect to any zoning ordinance requirements that would prohibit the proposed facility at the Property given the proposed use would not impose any undue hardship or fiscal or administrative burdens upon the Town, and it would not undermine the basic purpose that the zoning ordinance seeks to achieve. Alta Health requests a reasonable accommodation to allow the use of its office suite at the Property to provide health services under its prospective license from BSAS.

Please let me know if a reasonable accommodation will be provided. If a reasonable accommodation under Federal Law must be sought from the City Council, please advise.

Sincerely,

/s/Andrew J. Tine

Andrew J. Tine

Enc.

cc: Alta Behavioral Health LLC

Debra McManus, Chair
Commission on Disabilities
140 Main Street, 4th Floor
Marlborough, MA 01752



The Commonwealth of Massachusetts
 Executive Office of Health and Human Services
 Department of Public Health
 250 Washington Street, Boston, MA 02108-4619

KATHLEEN E. WALSH
 Secretary

ROBERT GOLDSTEIN, MD, PhD
 Commissioner

Tel: 617-624-6000
 www.mass.gov/dph

MAURA T. HEALEY
 Governor

KIMBERLEY L. DRISCOLL
 Lieutenant Governor

October 6, 2023

Edward LePage
 Alta Behavioral Health, LLC
 400 Donald J Lynch Blvd, Suite 104
 Marlborough, MA 01752

Dear Mr. LePage,

The Department of Public Health, Bureau of Substance Addiction Service (BSAS) has received and reviewed the Notice of Intent to Apply for a Substance Use Disorder Treatment Program License (NOI) for Alta Behavioral Health, LLC.

The Department has reviewed the Notice of Intent and supporting documents. Based on this information, the Department has determined that the suitability requirements of 105 CMR 164.009 have been satisfied. Consideration for licensure is predicated compliance with 105 CMR 164.000, and all applicable state and federal regulations. This determination is valid for a period of 1 year from the date of issuance of this letter, should the approved entity fail to submit a complete application for licensure, the Department, at its discretion may require the approved entity to demonstrate suitability 105 CMR 164.009. Prior to starting the application for licensure through BSAS eLicensing please contact your regional licensing inspector (see the [webpage](#) for regional licensing inspector contact information).

To access BSAS eLicensing your Agency and its designated Virtual Gateway Access Administration must be set up by EHS VG Operations; the required forms and instructions accompany this letter.

If you have other questions or concerns, please reach out to your regional licensing inspector (see the [webpage](#) for regional licensing inspector contact information). We look forward to working with you throughout the licensure process.

Sincerely,

Erica Weil

Erica Weil, LICSW
 Director, Quality Assurance and Licensing
 Bureau of Substance Addiction Services
 Massachusetts Department of Public Health

Vanasse Hangen Brustlin, Inc.

Transportation
Land Development
Environmental Services



101 Walnut Street
Post Office Box 9151
Watertown
Massachusetts 02272
617 924 1770
FAX 617 924 2286

Memorandum To: Mr. G. Kent Gonzales
Nordblom Company
31 Third Avenue
Burlington, MA 01803-4470

Date: April 7, 1998

Project No.: 05845.26

From: Land Development

Re: Traffic and Access Assessment - Lots 6 & 7
Solomon Pond Park,
Marlborough, Massachusetts

INTRODUCTION

Vanasse Hangen Brustlin, Inc. (VHB) has conducted a traffic evaluation for the proposed construction of Lots 6 and 7 of the Solomon Pond Park property (formally known as the Marlborough Business Centre, EOE #4774) located on Donald J. Lynch Boulevard in Marlborough, Massachusetts. The total development for the Solomon Pond Park site which was approved under MEPA is approximately 1,000,000 square feet of office and industrial uses (refer to Attachment for "Summary of MEPA Review History"). The existing site is currently occupied by approximately 425,000 square feet of office, R&D, industrial, and recreational uses. Therefore, a balance of 575,000 square feet of office, R&D, and light industrial space has been reviewed and approved under MEPA. This development program will be distributed over the entire site, both on built and unbuilt lots.

This traffic assessment focuses on proposed development of Lots 6 and 7 within the Solomon Pond Park site. The current development program on these two lots will have less traffic impact than the already approved R&D building sizes for Lots 6 and 7 previously identified in the project's master plan. Furthermore, the access system and physical off-site roadway improvements for the overall development of the Solomon Pond Park site, which were approved by MHD based on the level of traffic projected in the FEIR, will more than adequately accommodate the traffic volumes generated by the current project proposal.

Accordingly, the purpose of this assessment is to describe the trip generation of the current development program on Lots 6 and 7 and compare the trip generation with the previous approved development program on these two lots. A qualitative discussion is also provided on the current traffic operations of three intersections identified by the City Engineer: Bigelow Street at Donald J. Lynch Boulevard; Bigelow Street at Robin Hill Street; and Bigelow Street at Elm Street. Based on field observations at these locations, existing roadway deficiencies were identified and non-structural ("soft") mitigation measures were suggested. Emphasis was placed on safety improvements and traffic calming measures.

PROJECT DESCRIPTION

The proposed project involves the construction of research and development (R&D) facilities consisting of 120,000 square feet contained in one building on Lots 6 and 7. Lots 6 and 7 are currently vacant parcels contiguous to each other on the south side of Donald J. Lynch Boulevard. Lot 6 is an approximately 6.5-acre irregularly shaped parcel located immediately west of Lot 5 which is currently occupied by Media 100, Inc. Lot 7 is a 6.55-acre irregularly shaped parcel located immediately east of Lot 8 which is currently occupied by Olicom, Inc.

Principal vehicular access to Lots 6 and 7 will be provided by the access road currently serving the Olicom, Inc. office building immediately west of Lot 7 and also from the access road currently serving the Media 100, Inc. office building immediately east of Lot 6.

PROJECT TRAFFIC

Project-related trip generation projections were calculated based on data compiled by the Institute of Transportation Engineers (ITE) and published in Trip Generation.¹ Rates published in Trip Generation represent observed trip generation rates of typical land uses throughout the United States. The vehicle trip generation for Lots 6 and 7 consisting of 120,000 square feet of R&D development is presented in Table 1.

Table 1
Project Trip Generation Summary

Weekday/Direction	Total Vehicle Trips*
Daily	1190
Morning Peak Hour	
Enter	135
<u>Exit</u>	<u>25</u>
Total	160
Evening Peak Hour	
Enter	25
<u>Exit</u>	<u>130</u>
Total	155

Source: ITE, Trip Generation, Sixth Edition, Washington, D.C., 1997; Land Use Code 760 (Research and Development Center). Trip generation based on 120,000 sf of buildable space.

The proposed development will generate an estimated 1190 daily vehicle trips. During the two critical peak hours for site trip generation, the weekday morning and weekday evening peak periods, 160 and 155 peak hour vehicle trips are expected during the morning and evening peak hours, respectively. The vehicle trip estimates refer to one-way trips, that is entering or exiting such that an estimate of 1190 daily vehicle trips relates to 595 vehicles visiting the project site.

¹ Institute of Transportation Engineers, Trip Generation, Sixth Edition, Washington, D.C., 1997.

A comparison of the project trip generation for Lots 6 and 7 based on the building sizes previously assumed in the project's master plan with the current proposed building size for Lots 6 and 7 is presented in Table 2.

Table 2
Project Trip Generation Comparison

Weekday Time Period	Previous Project Proposal* (Lots 6 and 7)	Current Project Proposal** (Lots 6 and 7)	Difference Between Previous and Current Project Proposal
Daily	1,565	1,190	-375
Morning Peak Hour	210	160	-50
Evening Peak Hour	205	155	-50

Source: ITE Trip Generation, Sixth Edition, 1997. Land Use Code 760, Research and Development Center.

* Based on the project's master plan identified in the September 1987 Supplemental EIR, Lots 6 and 7 were identified to have a build-out of 85,000 square feet (sf) and 60,000 sf of R&D space, respectively.

** The most current proposal for Lots 6 and 7 is 120,000 sf of R&D space.

As footnoted in Table 2, the building sizes for Lots 6 and 7 assumed in the project's master plan for the Solomon Pond Park project were 85,000 sf and 60,000 sf of R&D, respectively. The current proposal calls for one building consisting of 120,000 sf of R&D space on Lots 6 and 7. As shown in the table, the current project proposal will generate less traffic on a daily basis than that which was evaluated and approved in the previous master plan for the project. On a daily basis, Lots 6 and 7 in the current proposal will generate 375 fewer trips than the building sizes for these two lots in the previously approved project. During the weekday morning and evening peak hours, Lots 6 and 7 will generate 50 fewer vehicle trips than the approved project. Accordingly, the projects traffic impacts will be less than those already studied and mitigated in the previous EIR's for these two lots.

Site access for the site will be improved as a result of the construction of the development. The westerly driveway will be upgraded to provide one inbound and two outbound lanes (currently this driveway provides for one inbound and one outbound lane). The existing median separating entering and exiting traffic will be removed and an exclusive right-turn lane and an exclusive left-turn lane will be provided for the outbound movements. STOP sign control will also be provided for the outbound movements.

PRELIMINARY EVALUATION OF OFF-SITE LOCATIONS

Potential transportation improvements were investigated at three intersections in the vicinity of the Solomon Pond Park project at the request of the City of Marlborough that did not include capacity increasing measures. Emphasis was placed on safety improvements and traffic calming measures. The three locations where non-capacity related transportation improvement strategies are proposed include:

- Bigelow Street at Elm Street
- Bigelow Street at Donald J. Lynch Boulevard
- Bigelow Street at Robin Hill Street

The specific improvement measures proposed for each of these locations are summarized below.

Bigelow Street and Elm Street

Bigelow Street and Elm Street currently intersect as a "T"-type intersection. Leonard Drive is a dead end street serving about eight homes which is offset from Bigelow Street immediately to the west. STOP sign control exists along the southbound approach of Bigelow Street. Sight distance constraints exist due to the vertical crest (hill) on the Elm Street eastbound approach. High speeds along Elm Street (higher speeds than the posted speed limit of 30 mph) also make it difficult to exit from Bigelow Street as well as Leonard Drive. In addition, the southbound approach of Bigelow Street has a fairly wide right turn radius which encourages southbound traffic along Bigelow Street to stop north of the stop bar to overcome sight distance constraints. The improvement actions suggested for this location include:

- Install speed advisory signage on the Elm Street eastbound approach to the intersection;
- Add pedestrian crosswalk across the Bigelow Street approach;
- Move STOP line and STOP sign forward on the Bigelow Street approach to improve sight distance;
- Stripe a triangular island on the southbound approach to channelize the left-turn and right-turn movements; and
- Remove vegetation on the north side of Elm Street for the eastbound approach to improve visibility and safety. (Note that field observations indicate that seasonal foliage may develop on the overhanging branches of two large trees in the northwest corner of the intersection which may further impact sight distance on the southbound approach).

A conceptual sketch of the above mentioned improvements at this location are included in the Attachment.

Bigelow Street and Donald J. Lynch Boulevard

Bigelow Street and Donald J. Lynch Boulevard form a "T"-type intersection with the Bigelow Street northbound approach under STOP sign control. There is no posted speed limit along Donald J. Lynch Boulevard which gives motorists the opportunity to traverse this roadway at high rates of speed. Eastbound and westbound vehicles were observed to travel through the intersection at high speeds. Furthermore, the northbound approach of Bigelow Street is currently striped for a right-turn movement only which causes unnecessary delay for some motorists. Also, a sign pole currently exists immediately south of the STOP sign on the northbound approach which affects the motorist's line of sight on the STOP sign. Improvements suggested for this location include:

- Install speed advisory signage on the Donald J. Lynch Boulevard approaches to the intersection;
- Remove striping for right-turn only movement on the northbound approach; and
- Remove sign pole immediately south of the STOP sign pole.

Bigelow Street and Robin Hill Street

The Bigelow Street and Robin Hill Street intersection is a four-way intersection providing STOP sign control on all approaches. Advanced warning signs indicating "stop ahead" are located on the northbound and southbound approaches of Bigelow Street. Also, an advanced warning sign with a STOP sign symbol is provided on the westbound approach of Robin Hill Street. Sight distance constraints exist due to the vertical crest (hill) on the Robin Hill Street westbound approach. Motorists traveling in the southbound direction on Bigelow Street were observed to traverse the link between

Donald J. Lynch and Robin Hill Road at high rates of speed, and often times, come to a "rolling" stop and/or not stop at all. Improvements suggested for this location include:

- Install speed advisory signage on the Bigelow Street southbound approach;
- Install a flashing beacon to warn motorists of the intersection ahead; and
- Install advanced warning sign indicating "stop ahead" on the eastbound approach of Robin Hill Street.

CONCLUSIONS

VHB conducted a traffic evaluation for Lots 6 and 7 located within the Solomon Pond Park property (EOEA #4774) along Donald J. Lynch Boulevard in Marlborough, Massachusetts. The overall project was previously approved by MEPA based on a submittal of a series of EIRs prepared in the 1980's. The current proposed change to the approved project consists of downsizing Lots 6 and 7 from 85,000 sf and 60,000 sf of R&D space, as previously approved, to construct a 120,000 sf building on both lots consisting of R&D space. The assessment compared the trip generating characteristics of the current project proposal as it relates to Lots 6 and 7 of the project to the previously approved proposal for these two lots as identified in the project's master plan. The results of the assessment indicated that the current project proposal will generate less traffic than what was identified for these two lots in the EIR's. The projections for Lots 6 and 7 in the previous proposal are 375 more vehicle trips per day than that generated with the current project proposal. During the weekday morning and evening peak hours, Lots 6 and 7 in the previous proposal are 50 additional vehicle trips than the estimates for the current project proposal. Accordingly, the current project proposal will have less traffic impact than the already approved R&D building sizes for Lots 6 and 7 in the EIR's. Furthermore, the project's access system and physical off-site roadway improvements, which were approved by MHD based on the level of traffic projected in the EIR's, will more than adequately accommodate the traffic volumes generated by the current project proposal.

ATTACHMENT

- **Summary of MEPA Review History**
- **Conceptual Improvement Plan - Bigelow Street/Elm Street**

SUMMARY OF MEPA REVIEW HISTORY

Original Project

The original project proponent prepared and submitted a Draft Environmental Impact Report (FIR) (EOEA #4774) dated September 1983 for a full-build of 1,140,000 square feet of office, research and development (R&D), and light industrial space, followed by a Final EIR in November 1983 (at that time, the project was then called "Robin Hill Development"). On January 13, 1984, the Secretary of Environmental Affairs issued a certificate that the FEIR submitted on the project adequately and properly complied with MEPA and its implementing regulations.

Notice of Project Change #1

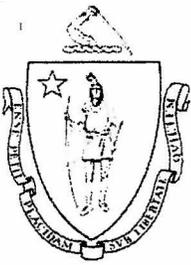
Consistent with the requirements in the Certificate on the FEIR dated November 1983, a succeeding owner of the overall site (Cabot Cabot & Forbes), filed a Notice of Project Change (NPC) describing a 300,000 square foot increase in the full-build development program (the project was then renamed "Marlborough Business Centre"). A Supplemental Draft EIR was filed in September 1987, followed by a Supplemental Final EIR in June 1988. On August 19, 1988, the Secretary of Environmental Affairs issued a certificate on the Supplemental Final EIR stating that it adequately complies with MEPA.

Notice of Project Change #2

In early 1994, New England Sports Management Corporation (NESM) proposed a 148,000 square foot skating rink facility on Lot 14 of the Solomon Pond Park site (at that time, the project was known as the "Marlborough Business Centre"). On April 26, 1994, prior to seeking a required "indirect" access permit from the Massachusetts Highway Department (MassHighway) for this newly-proposed land use on this site, the proponent filed a NPC for this skating rink facility under EOEA #4774, describing the project as a "replacement" of 155,000 square feet of office, R&D, and light industrial space. On July 8, 1994, the Secretary of Environmental Affairs issued a certificate on NPC #2 stating that no further MEPA review would be required.

Environmental Notification Form - Solomon Pond Mall

In addition, the Solomon Pond Mall development, located north of Donald Lynch Boulevard and adjacent to the Solomon Pond Park development, is significant to the Solomon Pond Park development since the mall site incorporates land that was part of the overall Solomon Pond Park project. As required, the New England Development (NED) filed an Environmental Notification Form (ENF) for the proposed 1,100,000 square foot "Regional Shopping Center" project (EOEA #9909 -now known as "Solomon Pond Mall"). As required, NED filed a Draft EIR in June 1994, followed by a Final EIR in September 1994. Because the traffic impact analysis and mitigation measures for this mall project were not well developed in these prior documents, a NPC was required to be filed to provide such further details. Therefore, a NPC was filed on November 22, 1994. On December 14, 1994, the Secretary of Environmental Affairs issued two certificates - one for the NPC and one for the Final EIR - stating that no further MEPA review would be required of the project, with the exception that a Draft MassHighway Section 61 Finding be developed and circulated for public comment. On January 31, 1995, this Draft Section 61 Finding was circulated by MassHighway. On February 24, 1995, MassHighway issued the Section 61 Finding in its final form, requiring that significant traffic mitigation measures (both physical and "soft") be implemented in conjunction with the occupancy of the mall - with particular emphasis on the I-290/Solomon Pond Road interchange.



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

MAURA HEALEY
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

June 12, 2017

Jayne Marie Davolio, Town Clerk
Town of Millbury
127 Elm Street
Millbury, MA 01527-2632

**Re: Millbury Special Town Meeting of January 3, 2017 - Case # 8248
Warrant Articles # 3 and 4 (Zoning)**

Dear Ms. Davolio:

Article 4 – We must disapprove Article 4 because it is inconsistent with the Massachusetts Zoning Act (G.L. c. 40A, § 3, ¶ 4), (and as discussed below, potentially the Americans with Disabilities Act (42 U.S.C. §§, 12132 et seq.), the Rehabilitation Act (29 U.S.C. § 794(a)), and the Fair Housing Act (42 U.S.C. § 3604(f)(1) et seq.)), in its differing treatment of facilities that serve disabled persons. The reasons for our disapproval are explained below.¹

This letter briefly describes Article 4; discusses the Attorney General's standard of review of town by-laws under G.L. c. 40, § 32; and then explains why, governed as we are by that standard, we must disapprove the Article because it is in conflict with state and federal law. We emphasize that our disapproval in no way implies any agreement or disagreement with the policy views that led to the passage of the by-law. The Attorney General's limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state and federal law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986).

I. Description of Article 4.

Article 4 proposes to amend the Town's zoning by-law by adding a new (un-named) Section 54 as follows:

Any Methadone Treatment Center, Facility, Clinic, Service Center and/or, any similar type program (hereinafter Methadone Clinic) that dispenses, prescribes,

¹ In a decision issued April 11, 2017 we approved Article 3.

administers, allocates, delivers, hands out, or uses in any way, Methadone, or any synthetic version of the same or similar type drug form, may not operate and/or locate within one thousand (1,000) feet of a public school, private school, parochial school, Town or Commonwealth of Massachusetts approved charter school, a public or privately accredited preschool, accredited headstart facility, vocational school, college or university, or a Town and/or state public park or playground which is located within the Town of Millbury's boundaries. The distance between any school, park or playground, as herein described, and a proposed Methadone Clinic, will be determined by a straight line drawn between the closest boundary lot line of the Methadone Clinic to the closest boundary lot line of the school and/or park/playground as herein described.

Similar uses in the Town are not subject to such a buffer zone requirement. For example, the Town allows "nursing, convalescent or rest home, hospital" by right in the Town's Residential Districts, Suburban Districts, Bramanville Village District, Industrial I District, and the Town's Business Districts. The Town also allows a "residential social service facility" by special permit in the Residential Districts, the Suburban Districts, and the Business Districts, with no buffer zone requirement. *See Zoning By-law, Article 2, District Regulations.*

II. Attorney General's Standard of Review and General Zoning Principles.

Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796.² "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom, 363 Mass. at 154 (emphasis added). "The legislative intent to preclude local action must be clear." Id. at 155. Massachusetts has the "strongest type of home rule and municipal action is presumed to be valid." Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted).

Article 4, as an amendment to the Town's zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). When

² The Attorney General also reviews by-laws for consistency with the federal constitution and statutes. This is because towns draw their legislative power from the state's Home Rule Amendment, Mass. Const. amend. art. 2, § 6 (as amended by amend. art. 89), which allows a town to exercise, subject to certain limits, "any power or function which the general court has power to confer upon it." and the Legislature has no power to confer on a town the power to enact by-laws contrary to federal law.

reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. "[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). Because the adoption of a zoning by-law by the voters at Town Meeting is both the exercise of the Town's police power and a legislative act, the vote carries a "strong presumption of validity." *Id.* at 51. "Zoning has always been treated as a local matter and much weight must be accorded to the judgment of the local legislative body, since it is familiar with local conditions." Concord v. Attorney General, 336 Mass. 17, 25 (1957) (*quoting Burnham v. Board of Appeals of Gloucester*, 333 Mass. 114, 117 (1955)). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Durand, 440 Mass. at 51 (*quoting Crall v. City of Leominster*, 362 Mass. 95, 101 (1972)). Nevertheless, where a zoning by-law conflicts with state or federal law or the Constitution, it is invalid. *See Zuckerman v. Hadley*, 442 Mass. 511, 520 (2004) (rate of development by-law of unlimited duration did not serve a permissible public purpose and was thus unconstitutional). In general, a municipality "is given broad authority to establish zoning districts regulating the use and improvement of the land within its borders." Andrews v. Amherst, 68 Mass. App. Ct. 365, 367-368 (2007). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]..." Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Article 4 Discriminates Against Disabled Persons in Violation of the Massachusetts Zoning Act, G.L. c. 40A, § 3, ¶ 4.

The Massachusetts Zoning Act, G.L. c. 40A, § 3, ¶ 4 prohibits town by-laws that have a discriminatory effect on disabled persons, as follows:

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination.

Persons suffering from drug addiction are considered disabled under G.L. c. 40A, § 3, and facilities that serve this population are entitled to the protections of the statute. *See S. Middlesex Opportunity Council, Inc. v. Town of Framingham*, 752 F. Supp. 2d 85, 95 (D. Mass. 2010) ("Federal regulations define 'handicap' to include drug addiction or alcoholism that 'substantially limits one or more major life activities.'" (citation omitted); Granada House, Inc. v. City of Boston, 1997 WL 106688 at *9 (Mass. Super. Feb. 28, 1997) ("Massachusetts would look to federal law, including the [Fair Housing Act], in interpreting the phrase 'disabled person' and 'persons with disabilities', and that by so doing, the [Massachusetts Zoning Act] must be read to bar the City's discriminatory treatment of a group home for recovering drug and alcohol users under the Code."); Spectrum Health Systems, Inc. v. City of Lawrence, No. 2015-288-C (Essex Superior Ct.) ("Based upon the record now before this Court, the plaintiff Spectrum is entitled to those protections set out under G.L. Ch. 40A, § 3, as amended.").

The Town's by-law seeks to impose a buffer-zone requirement on a use described as: "Methadone Treatment Center, Facility, Clinic, Service Center and/or, any similar type program (hereinafter Methadone Clinic)." Although this use is not defined in Article 4 or elsewhere in the existing Zoning By-law, the by-law appears to target facilities that dispense Methadone. Methadone treatment is an established treatment for opioid addiction. *See* Massachusetts Office of Consumer Affairs and Business Regulation, Bulletin 2015-05 "Access to Services to Treat Substance Use Disorders; Issued July 31, 2015, "Medically Assisted Therapies." ³ On its face the by-law imposes a buffer zone requirement on facilities that treat disabled individuals – a buffer zone requirement that the Town does not impose on any similar use. By singling out substance abuse treatment providers for additional land use restrictions not imposed on similar uses in Town the by-law facially discriminates against disabled persons in violation of G.L. c. 40A, § 3. *See Brockton Fire Department v. St. Mary Broad Street, LLC*, 181 F. Supp. 155, 157 (D. Mass. 2016) (ruling that the City could not enforce the Massachusetts Sprinkler Law, G.L. c. 148, § 26H, against sober homes because such enforcement would constitute "facially disparate imposition of the Sprinkler Law on a group residence sheltering disabled individuals."); *see also Jeffrey's House, Inc. v. City of Fitchburg*, 2016 WL 4926415 at *7 (D. Mass. 2016) (Because the Massachusetts Sprinkler Law "imposes a health and safety requirement on sober homes... which is not imposed on homes housing families and certain unrelated groups of a similar size" it "runs afoul of the [Massachusetts Zoning Act] where it is a 'facially disparate' statute which 'shall constitute discrimination.' ") (internal citations omitted). ⁴ Because of this conflict with G.L. c. 40A, § 3, we must disapprove the by-law.

IV. Article 4 May Also Violate the ADA, the Rehabilitation Act, and the Fair Housing Act.

The Americans with Disabilities Act (42 U.S.C. §§, 12132 et seq.) ("ADA"), the Rehabilitation Act (29 U.S.C. § 794(a)) ("RA"), and the Fair Housing Act (42 U.S.C. § 3604(f)(1) et seq.) ("FHA") all prohibit municipal by-laws from discriminating against disabled persons.⁵ "Under the ADA and FHA, a public entity such as the [Town] is prohibited from implementing a zoning scheme that treats disabled individuals differently than non-disabled individuals." *U.S. v. City of Baltimore*, 845 F.Supp. 2d 640, 647-648 (D. Md. 2012) (Baltimore's zoning code requirement that residential substance abuse treatment programs obtain a conditional ordinance before locating in any district for which they were otherwise eligible was facially discriminatory in violation of the ADA and FHA).⁶ "[C]ourts have found ADA and FHA violations not only in cases of specific zoning actions such as outright permit denials, but also in cases of burdensome procedural zoning requirements uniquely placed on disabled individuals."

³ See *Bulletin 2015-02: Issued July 31, 2015*.

⁴ Article 4 may also be found to violate the protections for educational uses in G.L. c. 40A, § 3. Several courts have ruled that substance abuse treatment centers qualify as educational uses under that statute. *See e.g. Spectrum Health Systems, Inc. v. City of Lawrence*, No. 2015-288-C (Essex Superior Ct.). Whether a court would find the 1000-foot buffer requirement in Article 4 to qualify as a "reasonable regulation concerning ...setbacks..." allowed by G.L. c. 40A, § 3, ¶ 2 is a fact-specific analysis beyond the by-law review process in G.L. c. 40, § 32.

⁵ Because the analysis under the ADA and the RA is substantially the same, we hereafter refer only to the ADA.

⁶ The Article's definition of "Methadone Clinic" is broad enough to include residential facilities that administer Methadone, thus triggering Fair Housing Act protections.

Id. at 648 (collecting cases). Even if a local ordinance or by-law does not use the word “disability” it can be found to discriminate against disabled persons if the effect is to impose unique land use burdens on disabled persons. Community Housing Trust v. Dep’t of Consumer & Regulatory Affairs, 257 F.Supp.2d 208, 224-25 (D.D.C. 2003) (District of Columbia requirement that community based residential facilities obtain a certificate of occupancy expressly targeted individuals with disabilities, even if it did not use the word “disability,” and was thus facially discriminatory).

Here Article 4 does not use the word “disabled.” However, by specifically targeting “Methadone Treatment Centers[s]” for an additional land use requirement (a 1,000-foot buffer zone) not imposed on similar uses, it facially discriminates against disabled persons. See Community Housing Trust, 257 F.Supp.2d at 222-224 (by singling out community based residential facilities for certificate of occupancy requirement, ordinance facially violated FHA). If Article 4 were subject to a challenge under the ADA and FHA, an affected Methadone Treatment Center would have to show that a “protected characteristic played a role in” the Town’s decision to treat such Centers differently from other land uses. Id. at 225-226. Because such a proof would require analysis of a full factual record beyond the documents submitted to the Attorney General for review under G.L. c. 40, § 32, we cannot conclude that Article 4 necessarily violates the ADA and FHA, but we caution the Town that the Article would be vulnerable to such a challenge.

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

MAURA HEALEY
ATTORNEY GENERAL

Margaret J. Hurley

By: Margaret J. Hurley
Chief, Central Massachusetts Division
Director, Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 ext. 4402

cc: Town Counsel Brian Falk

Community Profile

Select a city/town or county

Marlborough

Population 41,793



Overview

Deaths

ER Visits

Substance Addiction Services

Deaths Jan 2022 - Dec 2022

Notice on deaths data

27 Any Substance-Related Deaths



10 Opioid-Related Deaths

14 Alcohol-Related Deaths

7 Stimulant-Related Deaths

Emergency Events July 2022 - June 2023

Notice on emergency events data

552 Any Substance-Related ER Visits



34 Opioid-Related ER Visits

72 Opioid-Related EMS Incidents

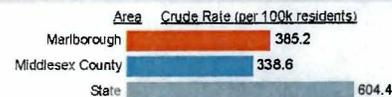
407 Alcohol-Related ER Visits

* Stimulant-Related ER Visits

Substance Addiction Services July 2022 - June 2023

Notice on services data

161 Individuals Admitted to BSAS Services



18 mi. Avg. Distance to BSAS Provider

2,798 Bup. Rx's Filled

264 Individuals Who Received Bup. Rx's

165.0 Naloxone Kits Received

16 Naloxone Kits : Opioid Deaths Ratio

800 Fentanyl Test Strips Received

Community Profile

Select a city/town or county

Marlborough

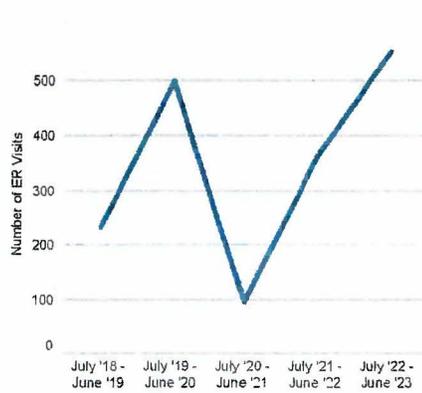
Population 41,793

Overview Deaths ER Visits Substance Addiction Services

Show data on the following substances: Any Substance

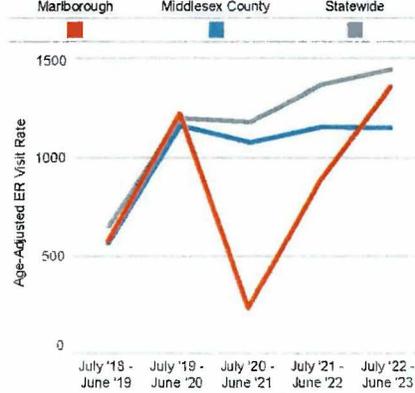
Any Substance-Related ER Visits Trend

Last 5 complete 12-month intervals of data



Age-Adjusted Any Substance-Related ER Visit Rate Trend

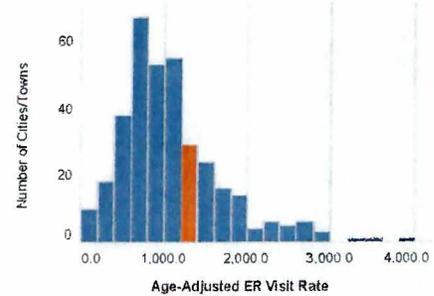
Last 5 complete 12-month intervals of data



Age-Adjusted Any Substance-Related ER Visit Rate Distribution

Last complete 12-month interval of data (July 2022 - June 2023)

The histogram shows how many cities/towns fall into each rate range, allowing for the comparison of Marlborough's rate within the distribution of all other city/town rates (Marlborough is one of the cities/towns in the orange bin).



Substance addiction services dashboard

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Community Profile

Select a city/town or county

Marlborough

Population 41,793

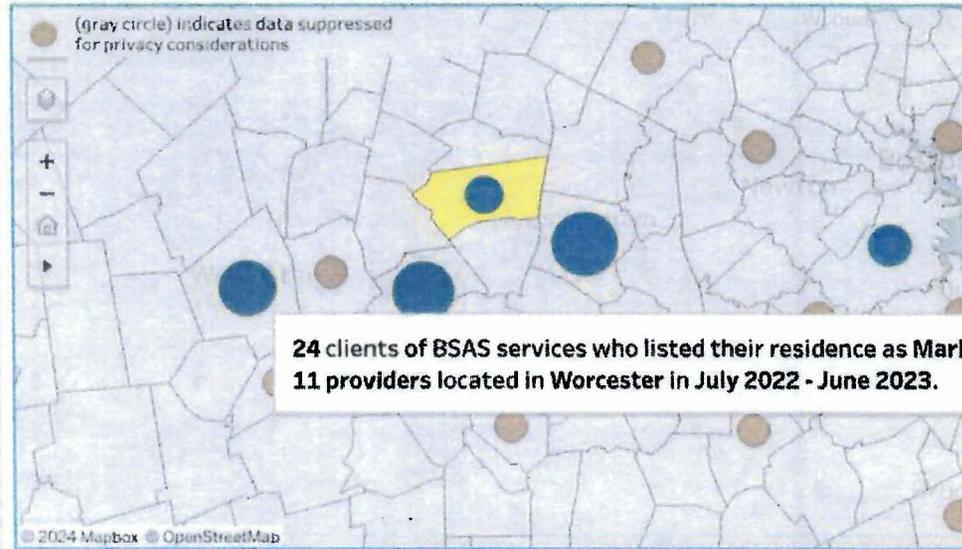


Service Accessibility Map

[Help on interpreting the map](#)

Select a Service

Locations of BSAS Providers That Rendered Services



Number of BSAS providers in Marlborough as of July 2022 - June 2023 by service category



Number of clients of BSAS services in July 2022 - June 2023 that listed their residence as Marlborough by service category



Substance addiction services dashboard

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Community Profile

Select a city/town or county

Marlborough

Population 41,793

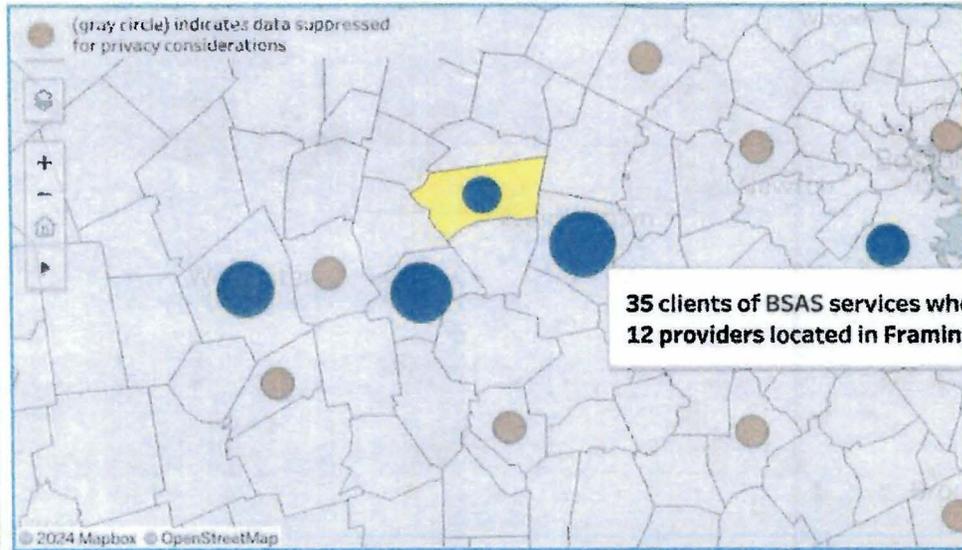


Service Accessibility Map

Help on interpreting the map

Select a Service

Locations of BSAS Providers That Rendered Services



Number of BSAS providers in Marlborough as of July 2022 - June 2023 by service category



Substance addiction services dashboard

TOP Table of Contents

Community Profile

Select a city/town or county

Marlborough

Population 41,793

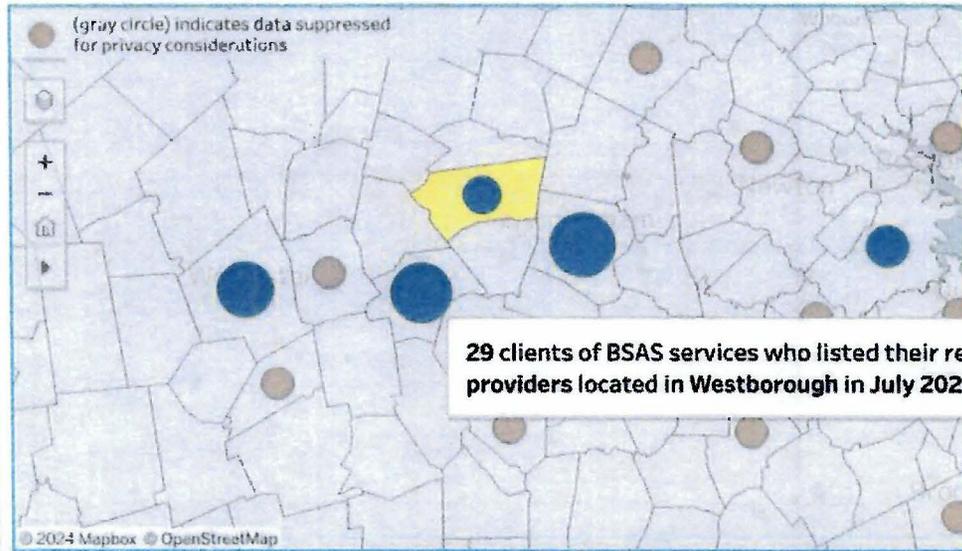


Service Accessibility Map

Help on interpreting the map

Select a Service

Locations of BSAS Providers That Rendered Services



Number of BSAS providers in Marlborough as of July 2022 - June 2023 by service category



Number of clients of BSAS services in July 2022 - June 2023 that listed their residence as Marlborough by service category



Substance addiction services dashboard

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Select a city/town or county

Marlborough

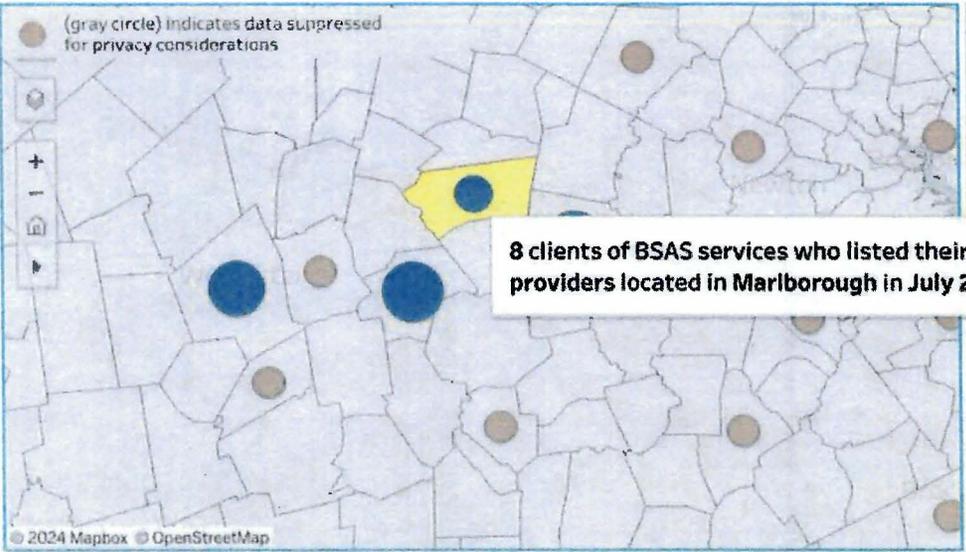
Population **41,793**

Overview **Deaths** **ER Visits** **Substance Addiction Services**

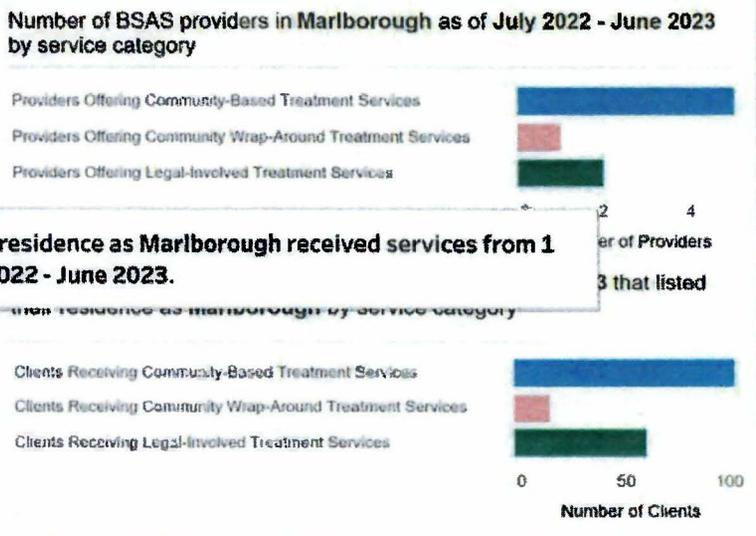
Service Accessibility Map [Help on interpreting the map](#)

Select a Service

Locations of BSAS Providers That Rendered Services



8 clients of BSAS services who listed their residence as Marlborough received services from 1 providers located in Marlborough in July 2022 - June 2023.



400 Donald Lynch Blvd.

EXCEPTIONS**LEGAL DESCRIPTION**

6. Title to and rights of the public and others entitled thereto in and to those portions of the insured premises lying within the bounds of Donald J. Lynch Boulevard and Bigelow Road.
7. Covenant from Paramount Development Associates, Inc. ("Paramount"), for the benefit of the City of Marlborough dated October 1, 1984, recorded in Book 15843, Page 177.
8. Easement from Paramount to New England Telephone and Telegraph Company dated May 2, 1985, recorded in Book 16235, Page 13. **(NOT LOCUS)**
9. Reservation of easements as set forth in a Deed from Christopher F. Clancy, Stephen H. Anthony, Joseph W. O'Connor and Michael J. Rushman as Trustees of Marlborough Associates Realty Trust under Declaration of Trust dated June 27, 1985, filed as Document No. 684224 ("Marlborough Associates"), to the City of Marlborough dated April 20, 1990, recorded in Book 20512, Page 269. **(NOT LOCUS)**
10. Acceptance of Donald J. Lynch Boulevard by the City of Marlborough recorded in Book 20687, Page 261.
11. Declaration of Covenants and Easements for Marlborough Business Centre made by Marlborough Associates and the Trustees of Marlborough Associates Realty Trust II dated April 29, 1991, recorded in Book 21127, Page 3.
12. Order for Relocation of Donald J. Lynch Boulevard recorded in Book 25186, Page 94.
13. Order of Taking by the Commonwealth of Massachusetts Department of Public Works for Route 495, a limited access highway, recorded in Book 10188, Page 356, as affected by further alteration recorded in Book 13601, Page 102.
14. Order of Taking by the Commonwealth of Massachusetts Department of Public Works for Route 290, a limited access highway, recorded in Book 11336, Page 555, affected by further alteration recorded in Book 13601, Page 102.
15. Taking for transmission line easement by the Commonwealth of Massachusetts Department of Public Utilities for the benefit of New England Power Company dated April 7, 1976, recorded in Book 12990, Page 599, and Confirmatory Grant of Easement from G. Bonazzoli & Sons, Inc. to New England Power Company, recorded in Book 13064, Page 647. **(NOT LOCUS)**
16. Utility Easement to New England Telephone and Telegraph Company recorded in Book 16235, Page 11.
23. Easement to Massachusetts Electric Company, dated December 10, 1998, recorded in Book 29776, Page 532.
24. Easement to Massachusetts Electric Company, dated January 8, 2000, recorded in Book 32319, Page 188. **(NOT LOCUS)**
31. Matters shown on Plan Nos. 419 and 421 of 1988, including 10' wide Electric Easement, Electric and Drain Easement and Access and Utility Easement.

Beginning at a point
corner of the descrThence running by
along a curve
concrete bou
N79°-54'-23"
thence turning and
courses:S10°-05'-37"
along a curve
point;

S20°-01'-21"

N68°-58'-39'

S11°-53'-48"

S32°-48'-57"

S11°-53'-48"

along a curve

point;

S11°-53'-48"

thence turning and
N33°-18'-33"

N33°-18'-33"

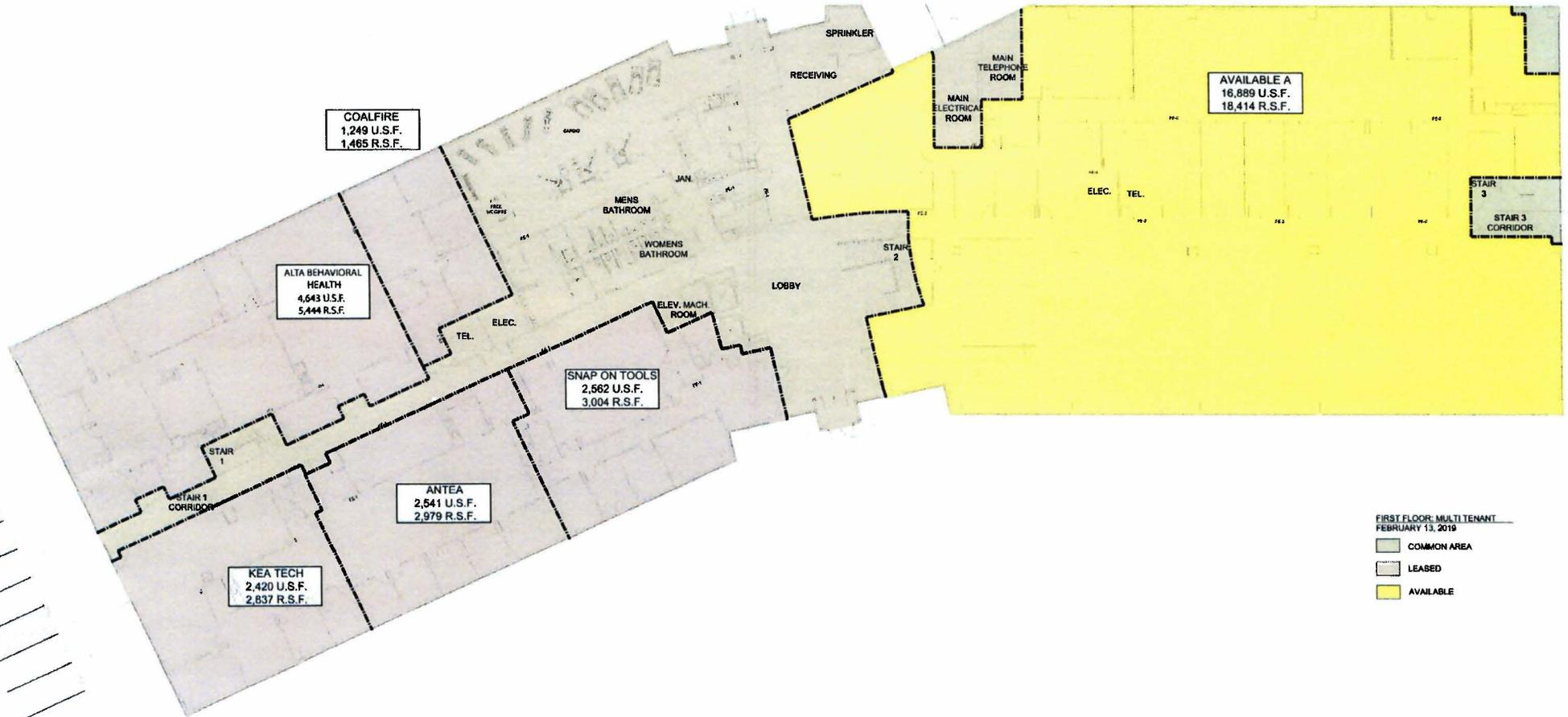
N53°-08'-25'

Said Lot 6 contains

NOTE: The above de

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ASCM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2, 3, 4, 8, 11a, 13, 14 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON OCTOBER 20, 2014.

THE PROPERTY IS LOCATED IN A ZONE X AS SHOWN ON FEMA MAP COMMUNITY PANEL NUMBER 25017C0476F, REVISED JULY 7,

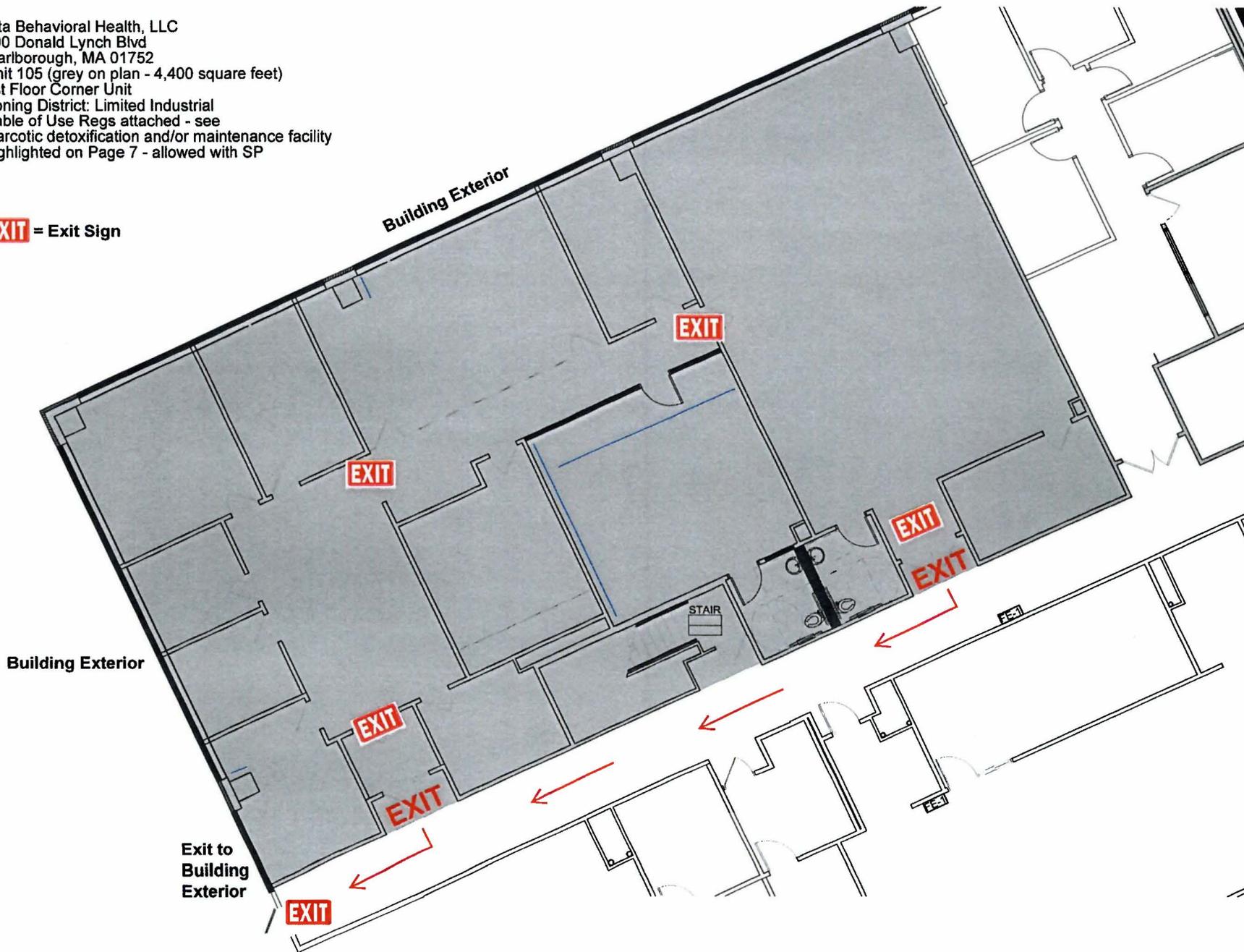


FIRST FLOOR: MULTITENANT
FEBRUARY 13, 2019

- COMMON AREA
- LEASED
- AVAILABLE

Alta Behavioral Health, LLC
400 Donald Lynch Blvd
Marlborough, MA 01752
Unit 105 (grey on plan - 4,400 square feet)
1st Floor Corner Unit
Zoning District: Limited Industrial
Table of Use Regs attached - see
Narcotic detoxification and/or maintenance facility
highlighted on Page 7 - allowed with SP

EXIT = Exit Sign



ZONING

650 Attachment 1

City of Marlborough

Table of Use Regulations
(§ 650-17)

[Amended 5-9-2005 by Ord. No. 05-100713C; 11-23-2009 by Ord. No. 09-1002277F; 3-11-2013 by Ord. No. 12/13-1005235B; 10-7-2013 by Ord. No. 13-1005481D; 2-10-2014 by Ord. No. 13/14-1005578C; 4-28-2014 by Ord. No. 14-1005693C; 8-14-2014 by Ord. No. 12/13/14-1005247I; 12-1-2014 by Ord. No. 14-1005947C; 11-28-2016 by Ord. No. 16-1006631D; 10-16-2017 by Ord. No. 17-1006980B; 11-27-2017 by Ord. No. 17-1007002C; 4-2-2018 by Ord. No. 18-1007163-1C; 5-21-2018 by Ord. No. 18-1007163-2D; 9-10-2018 by Ord. No. 18-1007311C; 11-19-2018 by Ord. No. 18-1007337E; 12-16-2019 by Ord. No. 19-1007716E; 5-18-2020 by Ord. No. 20-1007915D; 6-22-2020 by Ord. No. 20-1007947H]

KEY:

All uses noted with "Y" are allowed as of right, subject to any referenced conditions.

All uses noted with "SP" are allowed by special permit, subject to any referenced conditions.

All uses noted with "N" are not permitted.

	Zoning District Abbreviations													Wayside
	RR	A-1	A-2	A-3	RB	RC	RCR	NB	B	CA	LI	I	MV	
Residential Use														
Single-family	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N	N
Single-family, attached (1)*	SP	SP	SP	SP	N	N	N	N	N	N	N	N	N	N
Conversion of detached one-family to a two-family (2)	SP	SP	SP	SP	Y	Y	N	Y	N	N	N	N	N	N
Two-family homes	N	N	N	N	Y	Y	N	Y	N	N	N	N	N	N
Conversion of a two-family dwelling to a three (3)	N	N	N	N	SP	SP	N	SP	SP	N	N	N	N	N
Multifamily dwelling (4)(42)	N	N	N	N	SP	SP	N	SP	SP	N	N	N	SP	SP
Comprehensive developments (§ 650-27)	Y	Y	Y	Y	Y	Y	Y	SP	Y	Y	Y	Y	N	Y

* (Numbers in parentheses correspond to subsection numbers in § 650-18, Conditions for use as noted in the Table of Uses.)

MARLBOROUGH CODE

	Zoning District Abbreviations													Wayside
	RR	A-1	A-2	A-3	RB	RC	RCR	NB	B	CA	LI	I	MV	
Residential Use														
Boarding and lodging homes	N	N	N	N	N	SP	N	N	SP	N	N	N	N	N
Tourist home\bed-and-breakfast	Y	N	N	N	N	Y	N	Y	N	N	N	N	SP	N
Open space development (§ 650-28)	SP	SP	SP	SP	N	N	N	N	N	N	N	N	N	N
Trailer mobile homes (5)	SP	SP	SP	SP	SP	SP	SP	N	SP	SP	SP	SP	N	N
Retirement Community Overlay (§ 650-22)	N	N	N	N	N	N	N	N	N	N	SP	SP	N	N
Residential accessory uses (6)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Customary home occupations (7)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Yard sales, charitable sales bazaars (8)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Two residential structures on a lot less than 80,000 square feet (9)	N	N	N	N	SP	SP	N	N	N	N	N	N	N	N
Artist studio/live/work gallery space	N	N	N	N	N	N	N	Y	N	N	N	N	Y	Y
Recording studio/live/work space	N	N	N	N	N	N	N	Y	N	N	N	N	Y	Y
Assisted living facilities (44)	N	N	SP	N	N	N	N	N	N	N	N	N	N	N

ZONING

	Zoning District Abbreviations													
	RR	A-1	A-2	A-3	RB	RC	RCR	NB	B	CA	LI	I	MV	Wayside
Business Use														
Convert buildings to office, bank, insurance use (18)	N	N	N	N	N	SP	N	Y	N	N	N	N	Y	Y
Commercial kennels and animal hospitals	SP	N	N	N	N	N	N	N	N	N	N	N	N	N
Veterinary hospital	N	N	N	N	N	N	N	SP	N	Y	N	N	SP	N
Commercial kennels	SP	N	N	N	N	N	N	N	Y	Y	N	N	N	N
Riding academy	SP	N	N	N	N	N	N	N	SP	SP	N	N	N	N
Retail sales and services <75,000 square feet gross floor area (19) (43)	N	N	N	N	N	N	N	Y	Y	Y	SP	SP	Y	Y
Retail sales and services >75,000 square feet gross floor area (19) (43)	N	N	N	N	N	N	N	N	SP	SP	SP	SP	SP	SP
Offices, banks, insurance and financial institutions	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y
Schools, for business, trade, music, dance, and television\or radio broadcasting studios (but not including towers)	N	N	N	N	N	N	N	Y	Y	Y	N	N	Y	Y
Commercial radio and television towers and wireless communications facilities (20)	SP	SP	SP	SP	SP	SP	N	SP						
Hotels (41)	N	N	N	N	N	N	N	SP	SP	SP	SP	SP	Y	N
Hotels < 100 rooms														SP
Hotels with conference facilities and commercial uses (21)	N	N	N	N	N	N	N	N	SP	SP	SP	SP	Y	N

MARLBOROUGH CODE

	Zoning District Abbreviations													
	RR	A-1	A-2	A-3	RB	RC	RCR	NB	B	CA	LI	I	MV	Wayside
Business Use														
Residential conference and training center with food and recreation services (22)	N	N	N	N	N	N	N	N	N	N	Y	Y	N	N
Recreation center (23)	N	N	N	N	N	N	N	Y	N	N	SP	SP	N	SP
Private clubs, nonprofit	N	N	N	N	N	Y	N	N	SP	SP	N	N	Y	N
Clubs (24)	N	N	N	N	N	N	N	Y	Y	Y	N	N	Y	N
Self-service laundry	N	N	N	N	N	N	N	Y	Y	Y	N	N	SP	SP
Medical office/clinic	SP	SP	SP	SP	SP	Y	Y	Y	Y	N	N	N	Y	Y
Dental clinics	SP	SP	SP	SP	SP	Y	Y	Y	Y	N	N	N	Y	Y
Consumer service establishments	N	N	N	N	N	N	N	Y	Y	Y	N	N	Y	Y
Salesroom	N	N	N	N	N	N	N	SP	N	Y	N	N	N	Y
Wholesale office or showroom	N	N	N	N	N	N	N	N	N	Y	N	N	N	N
Wholesale sale and warehousing	N	N	N	N	N	N	N	N	N	Y	N	N	N	N
Commercial greenhouse	N	N	N	N	N	N	N	SP	Y	Y	Y	Y	N	N
Motels	N	N	N	N	N	N	N	N	SP	SP	SP	SP	N	N
Mixed-use development (42)	N	N	N	N	N	N	N	SP	SP	N	N	N	Y	SP
Brew pubs	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y
Copy shops, newspaper offices	N	N	N	N	N	N	N	Y	Y	N	N	N	Y	Y
Place of repair for cars, boats, trucks and farm equipment (25)	N	N	N	N	N	N	N	N	N	Y	N	N	N	N
Places of assembly	N	N	N	N	N	N	N	SP	SP	SP	N	N	SP	N
Outdoor recreation uses	N	N	N	N	N	N	N	SP	SP	SP	SP	SP	SP	N
Outdoor storage (26)	N	N	N	N	N	N	N	N	Y	Y	SP	SP	N	N
Car parking lots, garages (27)	N	N	N	N	N	N	N	N	SP	SP	N	N	N	N

ZONING

	Zoning District Abbreviations													
	RR	A-1	A-2	A-3	RB	RC	RCR	NB	B	CA	LI	I	MV	Wayside
Business Use														
Gasoline filling stations (28)	N	N	N	N	N	N	N	N	SP	SP	N	N	N	N
Auto service facilities for minor repairs, changing tires and lubrication (28)	N	N	N	N	N	N	N	N	SP	SP	N	N	N	N
Auto sales and service (25)	N	N	N	N	N	N	N	N	N	Y	N	N	N	N
Car wash (28)	N	N	N	N	N	N	N	N	SP	SP	N	N	N	N
Open air markets (29)	N	N	N	N	N	N	N	N	SP	SP	N	N	Y	N
Shopping malls	N	N	N	N	N	N	N	N	N	N	SP	SP	N	SP
Soil removal (30)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Accessory uses	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Funeral homes, parlors and mortuaries	N	N	N	N	N	Y	N	Y	N	Y	N	N	N	N
Public, private or commercial recreation establishments, recreation grounds or places of amusement	N	N	N	N	N	N	N	SP	SP	SP	SP	SP	SP	N
Restaurant, cafe	N	N	N	N	N	N	N	Y	Y	Y	SP	SP	Y	Y
Restaurant with drive-in or drive-thru facilities (31)	N	N	N	N	N	N	N	SP	SP	SP	N	N	N	SP
Restaurants serving food outdoors (31)	N	N	N	N	N	N	N	Y	Y	Y	SP	SP	Y	Y
Restaurants for employee use	N	N	N	N	N	N	N	N	N	N	Y	Y	N	Y
Drive-thru facilities	N	N	N	N	N	N	N	N	SP	SP	N	N	N	SP
Adult bookstore (32)	N	N	N	N	N	N	N	N	N	N	N	SP	N	N
Adult video store (32)	N	N	N	N	N	N	N	N	N	N	N	SP	N	N
Adult paraphernalia store (32)	N	N	N	N	N	N	N	N	N	N	N	SP	N	N

MARLBOROUGH CODE

	Zoning District Abbreviations													
	RR	A-1	A-2	A-3	RB	RC	RCR	NB	B	CA	LI	I	MV	Wayside
Business Use														
Adult movie theatre (32)	N	N	N	N	N	N	N	N	N	N	N	SP	N	N
Adult live entertainment establishment (32)	N	N	N	N	N	N	N	N	N	N	N	SP	N	N
Tattoo and body piercing parlors and shops (32)	N	N	N	N	N	N	N	N	N	N	N	SP	N	N
Narcotic detoxification and/or maintenance facility	N	N	N	N	N	N		N	N	SP	SP	SP	N	N
Medical marijuana treatment center (45)	N	N	N	N	N	N		N	SP	N	SP	N	N	SP
Adult use marijuana retail; marijuana accessories retail (46)	N	N	N	N	N	N			SP	N	SP	N	N	SP
Medical and/or adult use marijuana cultivator, independent testing laboratory, product manufacturer or transporter (47)	N	N	N	N	N	N			N	N	SP	SP	N	N
Winery, brewery, or distillery with tasting room	N	N	N	N	N	N	N		Y	Y	Y	Y	Y	Y
Contractor's yard (48)	N	N	N	N	N	N	N	N	N	SP	SP	N	N	N
Landscape contractor's yard (48)	N	N	N	N	N	N	N	N	N	SP	SP	N	N	N

ZONING

	Zoning District Abbreviations														Wayside
	RR	A-1	A-2	A-3	RB	RC	RCR	NB	B	CA	LI	I	MV		
Agriculture, Public and Institutional Use															
Agriculture, horticulture or floriculture >5 acres (10)	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	N
Forest, woodlots, portable, woodworking mills (11)	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Livestock farms > 10 acres (12)	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Farms and poultry farms (13)	Y	SP	SP	SP	N	N	Y	N	N	N	N	N	N	N	N
Cemeteries	SP	SP	SP	SP	N	N	N	N	N	N	N	N	N	N	N
Hospitals and sanitarium	SP	SP	SP	SP	SP	SP	N	N	N	N	N	N	N	N	N
Correctional institutions	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Golf courses, country clubs and beaches (14)	Y	SP	SP	SP	N	N	N	N	N	N	N	N	N	N	N
Charitable and philanthropic buildings	SP	SP	SP	SP	SP	SP	N	SP	N	N	N	N	N	SP	N
Churches and religious buildings (15)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Public recreation and conservation	Y	SP	SP	SP	N	N	N	Y	N	N	N	N	N	N	N
Day camps	SP	SP	SP	SP	N	N	N	N	SP	SP	N	N	N	N	N
Public, private and religious schools, museums, libraries, parks, recreation facilities, buildings and playgrounds	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Child-care centers (16)	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y
Public utilities, not including storage yards or repair shops	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Public buildings (17)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

MARLBOROUGH CODE

	Zoning District Abbreviations													
	RR	A-1	A-2	A-3	RB	RC	RCR	NB	B	CA	LI	I	MV	Wayside
Agriculture, Public and Institutional Use														
Water towers, reservoirs	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Floodplain and Wetland Protection District (§ 650-23)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Water Supply Protection District (§ 650-24)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Convalescent and nursing homes	SP	SP	SP	SP	SP	Y	N	N	N	N	N	N	N	N
Chicken hens, personal use (6 or fewer) (49)	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N	N	N
Chicken hens, personal use (between 7 and 12) (49)	Y	Y	Y	Y	N	N	N	N	N	N	N	N	N	N

ZONING

	Zoning District Abbreviations													Wayside
	RR	A-1	A-2	A-3	RB	RC	RCR	NB	B	CA	LI	I	MV	
Industrial Uses														
Airports and heliports	N	N	N	N	N	N	N	N	N	N	Y	Y	N	N
Newspaper printing and publishing, job printing	N	N	N	N	N	N	N	N	N	Y	Y	Y	SP	N
Manufacturing where the majority of items are sold on premises to the consumer	N	N	N	N	N	N	N	N	N	Y	N	N	N	N
Transportation terminal and freight depots	N	N	N	N	N	N	N	N	N	SP	SP	SP	N	N
Food processing plants	N	N	N	N	N	N	N	N	N	N	N	Y	N	N
Research, experimental labs (33)	N	N	N	N	N	N	N	N	N	N	Y	Y	N	N
Bakery (nonretail)	N	N	N	N	N	N	N	N	N	N	N	Y	N	N
Light non-nuisance manufacturing	N	N	N	N	N	N	N	N	N	N	Y	Y	N	N
Light manufacturing, using portable electric machinery (34)	N	N	N	N	N	N	N	N	N	Y	N	N	N	N
Light manufacturing incidental to research	N	N	N	N	N	N	N	N	N	N	Y	Y	N	N
Associated/accessory research uses (35)	N	N	N	N	N	N	N	N	N	N	SP	SP	N	N
Manufacturing and/or warehousing (36)	N	N	N	N	N	N	N	N	N	N	Y	Y	N	N
Manufacturing or warehouse (37)	N	N	N	N	N	N	N	N	N	N	N	Y	N	N
Retail sales accessory to manufacturing (38)	N	N	N	N	N	N	N	N	N	N	N	Y	N	N
Recreation center, indoor and outdoor	N	N	N	N	N	N	N	SP						

MARLBOROUGH CODE

	Zoning District Abbreviations													
	RR	A-1	A-2	A-3	RB	RC	RCR	NB	B	CA	LI	I	MV	Wayside
Industrial Uses														
Power laundries	N	N	N	N	N	N	N	N	N	N	N	Y	N	N
Dry cleaning	N	N	N	N	N	N	N	N	Y	N	N	Y	N	SP
Dye works	N	N	N	N	N	N	N	N	N	N	N	Y	N	N
Packaging or bottling plants	N	N	N	N	N	N	N	N	N	N	N	Y	N	N
Electric power substation for changing bulk power to distribution voltage	N	N	N	N	N	N	N	N	N	N	SP	SP	N	N
Accessory uses and service buildings (39)	N	N	N	N	N	N	N	N	N	N	Y	Y	N	N
Large tract development (40)	N	N	N	N	N	N	N	N	N	N	N	Y	N	N
Data storage/ telecommunications facilities	N	N	N	N	N	N	N	N	N	N	Y	Y		N
Self-service storage facility	N	N	N	N	N	N	N		SP	SP	N	N	N	N
Coffee roastery	N	N	N	N	N	N	N		SP	N	SP	SP	SP	SP



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2024 FEB 14 AM 9:39

Marlborough Public Schools

School Committee
District Education Center
25 Union Street, Marlborough, MA 01752
(508) 460-3509

Call to Order

January 23, 2024

1. Chairman Dumais called the regular meeting of the Marlborough School Committee to order at 7:36 p.m. at 17 Washington Street, Marlborough, MA. Members present included Michelle Bodin-Hettinger, Daniel Caruso, Earl Geary, Katherine Hennessy, Heidi Matthews, and Denise Ryan. Also present were Superintendent Mary Murphy, Assistant Superintendent of Teaching and Learning, Robert Skaza, Assistant Superintendent of Student Services and Equity, Jody O'Brien, and Director of Finance and Operations, Tom Lafleur. MEA Representative Elton Thomas was also present.

This meeting is being recorded by local cable, WMCT-TV, and is available for review.

2. **Pledge of Allegiance:** Chairman Dumais led the Pledge of Allegiance.
3. **Presentation**
 - A. **Marlborough Education Foundation Grant Awards**
The president, vice president, and new board member of the MEF awarded multiple MPS teachers grants.
4. **Committee Discussion/Directives:** None.
5. **Communications:** None.
6. **Superintendent's Report:**
Jillian Roberts, the Communication Coordinator, presented an overview of the variety of school events that her office has covered throughout the year thus far. She also reviewed how the district uses social media to market and showcase these events. Superintendent Murphy reported that she, the School Committee, and Mr. Lafleur met for a workshop on November 2, 2023 to discuss the busing issue and discuss possible responses. Additionally, Superintendent Murphy provided an overview of the state-wide and district student attendance issues, along with the steps taken to address chronic absenteeism that was also discussed at the workshop.

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Superintendent Murphy shared that there will be a student art exhibition held at Kennedy's Restaurant from 4-6pm on January 24th to showcase 40 prints of student artwork for the Permanent Art Collection.

Superintendent Murphy provided an update on district and state attendance data. She noted that if a student has been out for five or more days, the district will reach out to families.

A. Director of Finance & Operations Report

Mr. Lafleur, the Director of Finance and Operations, updated the committee on the district's breakfast and lunch participation rates.

Mr. Lafleur discussed the district's collaboration with NRT regarding bus driver staffing. There are currently two routes without an assigned driver, but these should be covered shortly once drivers complete their training.

Mr. Lafleur mentioned that he will be proposing a budget transfer from Behavior Tech Salaries to Contracted Services.

B. Assistant Superintendent of Teaching & Learning

Dr. Skaza, the Assistant Superintendent of Teaching and Learning, shared that Keyla Ann De Oliveira, an eighth grade Whitcomb student, has accepted the Project 351 Ambassador role. Dr. Skaza provided some background on this organization.

Dr. Skaza informed the committee that the two research-based programs the district uses are IntoReading and IntoLiterature. He did mention that the Foundations program for phonics-based instruction in grades K-3 is also used for students.

7. Acceptance of Minutes

A. Minutes of the December 12, 2023 School Committee Meeting

Motion made by Mrs. Matthews, seconded by Chairman Dumais to approve the minutes of the School Committee.

Motion passed 7-0-0.

B. Minutes of the January 9, 2024 School Committee Meeting

Motion made by Mrs. Matthews, seconded by Chairman Dumais to approve the minutes of the School Committee.

Motion passed 7-0-0.

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8. Public Comment: None.

It should be noted that members of the public may provide comment via email before the meeting to superintendent@mps-edu.org. Public comment is a time for your comments to be heard by the committee; it is not a question-and-answer session.

9. Action Items/Reports

A. MHS Business Professionals of America State Leadership Conference

Mrs. Haley requested permission for the MHS BPA club to attend the State Leadership Conference in Norwood, MA.

Motion made by Mrs. Matthews, seconded by Chairman Dumais to approve the MHS BPA State Leadership Conference.

Motion passed 7-0-0.

B. MHS Program of Studies

Principal Riley presented the MHS Program of Studies to the School Committee to notify them of changes.

Motion made by Mrs. Matthews, seconded by Chairman Dumais to table the vote on the MHS Program of Studies until the next School Committee meeting.

Motion passed 7-0-0.

C. FY23 Operating Budget Transfers

Mr. Lafleur presented the budget transfers, which are detailed in his report.

Motion made by Mrs. Matthews, seconded by Chairman Dumais to accept these transfers.

Motion passed 7-0-0.

D. Additional Entitlement Funded Positions

Superintendent Murphy stated that she is requesting the addition of a Wrap Around Service Coordinator, EL para educator, and a translator.

Motion made by Mrs. Matthews, seconded by Chairman Dumais to approve this request.

Motion passed 7-0-0.

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E. Policy for Approval

1. Policy 3.410 Budget Authority

Motion made by Mrs. Hennessy, seconded by Chairman Dumais to approve policy 3.410 Budget Authority.
 Motion passed 7-0-0.

F. Change April Meeting Date

Motion made by Mrs. Bodin-Hettinger, seconded by Chairman Dumais to change the April 23, 2024 School Committee meeting to April 30, 2024.
 Motion passed 7-0-0.

G. Appointment of Director of Finance & Operations

Superintendent Murphy would like to move forward with Matthew Wells for appointment as the Director of Finance and Operations effective July 1, 2024.
 Motion made by Mrs. Matthews, seconded by Chairman Dumais to enter into negotiations with Mr. Wells for the Director of Finance and Operations position.
 Motion passed 7-0-0.

H. Acceptance of Donations and Gifts

Cocotree Kids. MPS received \$880.00 from Cocotree Kids.

Motion made by Mrs. Matthews, seconded by Chairman Dumais to approve this donation.
 Motion passed 7-0-0.

Global Alliance. Whitcomb School received \$500.00 from Global Alliance.

Motion made by Mrs. Matthews, seconded by Chairman Dumais to approve this donation.
 Motion passed 7-0-0.

St. Gobain Foundation. Mr. Rodriquenz's engineering/technology classes received \$920.00 from the St. Gobain Foundation.

Motion made by Mrs. Matthews, seconded by Chairman Dumais to approve this donation.
 Motion passed 7-0-0.

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FY24 FC222 TAG. MPS received \$50,000.00 from FY24 FC222 TAG.

Motion made by Mrs. Matthews, seconded by Chairman Dumais to approve this donation.

Motion passed 7-0-0.

Motion made by Mrs. Bodin-Hettinger, seconded by Chairman Dumais to suspend the rules.

Motion passed 7-0-0.

MEF Grants. MEF awarded \$5,727.68 to MPS on behalf of the teachers awarded the grant.

Motion made by Mrs. Bodin-Hettinger, seconded by Chairman Dumais to accept this grant.

Motion passed 7-0-0.

10. Reports of School Committee Sub-Committees: None.

11. Members' Forum:

Mrs. Matthews has reviewed and will sign the warrant.

12. Adjournment:

Motion made by Mrs. Matthews, seconded by Chairman Dumais to adjourn at 8:57 p.m.

Motion passed 7-0-0.

Respectfully submitted,

Heidi Matthews
 Secretary, Marlborough School Committee

HM/jm

Approved February 13, 2024

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RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

MEETING: Council on Aging Board of Directors Meeting 2024 FEB 21 PM 3: 23

DATE: January 9, 2024

TIME: 8:30

ATTENDANCE: Jim Confrey, Joe Bisol, Leslie Biggar, Judy Kane, Donna Scalcione, Linda Warren, Judith Benedetto, Trish Pope, Kathy Faddoul

I. Called to order at 8:30 AM

II. No December Minutes

III. Director's Update:

1. The cost of the lunches from Kennedys is increasing from \$5.00 to \$7.00. The cost of events will increase from \$10.00 to \$15.00. The price charged only covers a portion of the cost of the lunch or the event and the rest is paid for by the senior center. The plan remains to hire a chef and an assistant to expand the meals to three times a week.
2. Changes needed to be made to the city program that allows seniors to work off a portion of their taxes. There are some legal issues that need to be finalized before the program can be implemented.
3. If there is no school in Marlboro due to the weather, there are no programs at the senior center. The center is open but any scheduled programs or classes will be canceled. Marlboro public schools will not have a delay due to their bussing contract. They will either be open or closed.

IV. Springwell update: Joe reminded us that the Springwell director will be coming to our next meeting.

V. Board discussion

1. Jim announced he is stepping down as the chair of the council on aging. He will remain on the board. Jim suggested Joe, the current vice chair, as the next chairperson. Trish stated that the chairperson is appointed by the mayor.
2. Kathy asked about services for homebound adults that are available through the center. Trish discussed the senior mobile mart which delivers supplemental groceries from the food pantry monthly to homebound seniors.

Meeting adjourned at 8:50

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2024 FEB 14 PM 1:10

MARLBOROUGH HISTORICAL COMMISSION

MEETING MINUTES

November 16, 2023

CITY HALL, 140 MAIN STREET

COUNSEL COMMITTEE MEETING ROOM, 7:00PM

Board Members: Meeting comes to order 7:01PM

*Brendan Downey, Chair – Present
Sarah Hough, Vice Chair – Present
Stephanie Ferrecchia – Present
Kathleen Newton – Present
Adrian Gilbert, Secretary – Present*

1. *Motion put forth and seconded to approve October 19, 2023 minutes. Motion passes 5 - 0*

*Brendan Downey, Chair - Aye
Sarah Hough - Aye
Stephanie Ferrecchia - Aye
Kathleen Newton - Aye
Adrian Gilbert – Aye*

2. *Correspondence & Communications*

- A. *Marlborough resident Gillies Plichon, President of Residents Association of Renaissance Lofts, 460 Lincoln Street attended the meeting to provide details of their request, October 20, 2023, and gather more information concerning an Historical marker and Historical designation. Brendan Downey, Chair, explained in detail what the Marlborough Historical Commission could accomplish concerning a 'marker' and the procedures required to have the site listed as a National Historical Site. Discussion of the pro's and con'; residents of Renaissance Lofts must be in agreement, an attorney should be involved, Government Rule's and Regulations will be involved in future renovations, and that the timeline of the state is not something the MHC cannot influence. Mr. Plichon was directed to review background information gathered by MHC and add or correct and information. Also, gather old photographs, if possible, to assist with the completion of the form requesting the listing as a National Historical Site.*

3. *Current Business*

- A. *Veteran's Board located in Barrett Park, corner of Prospect and Main Street. Resident who contacted Brendan Downey with concerns about preservation of Veteran's Board has not returned calls since the initial communication.*
- B. *Web Site. Discussion on hold due to unavailability of Tn Hatway to review MHC documents.*
- C. *Preservation Guidebook. Brendan Downey presented material to previous Chair, Bob Fagone. He suggested that Brendan Downey and Adrian Gilbert meet with Ms. Chandra Lothian to review and obtain possible photos of actual sites with more detailed information to enhance the Guidebook.*

- D. *House Tours. Are Historical House Tours a possibility? Marlborough has had tours in the past organized by the Marlborough Historical Society; pro's and con's discussed with final question as to future plans of the Historical Society.*
- E. *487 Lincoln St., Cozy Café. Kathy Newton discussed with daughter of owner for approval of language to be placed on plaque. Daughter approved language*
4. *New Business*
- A. *Recently located State Marker located on Bolton Street construction site. We would request that the language and background information be reviewed for corrections and or updates.*
- B. *Armor Project on Lincoln Street is proceeding, Brendan Downey stated the mitigation of Hazardous Materials on the site is very time consuming but proceeding.*
5. *Motion to Adjourn meeting, 8:021PM. Motion passes 5 - 0*

*Brendan Downey, Chair - Aye
 Sarah Hough - Aye
 Stephanie Ferrecchia - Aye
 Kathleen Newton - Aye
 Adrian Gilbert - Aye*

*Respectfully Submitted,
 Adrian Gilbert, Secretary
 Marlborough Historical Commission*



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MARLBOROUGH COMMUNITY DEVELOPMENT AUTHORITY (CDA)
OTHER POST-EMPLOYMENT BENEFITS ("OPEB") TRUST BOARD MEETING

February 15, 2024

Regular Meeting Minutes

Call to order: 3:03 pm

Members Present: Mayor Dumais, Paul Sliney, David Williams, Diane Smith and Michael Ossing

Members Absent: None

Others in Attendance: Chad Carter

Discussion:

- The CDA OPEB Trustees last met in July 2017. The following was provided to update the Trustees:
 - The Trustees were established on July 28, 2016, with 5 members: Mayor, Comptroller, Auditor, Mayor appointee from the MCDA (Paul Sliney) and a Mayor appointee (Michael Ossing).
 - The Trustees voted Michael Ossing Chair of the Trust and Paul Sliney Secretary.
 - On June 29, 2017, the Trustees approved the Trust Agreement with an investment policy of 25/75 (equity/fixed) and to mirror the City OPEB investment policy.
- The Trustees agreed to have Michael Ossing continue to serve as Chair of the CDA OPEB Board of Trustees and Paul Sliney to serve as the Secretary of the CDA OPEB Board of Trustees.
- The balance in the CDA OPEB fund is \$13,852.13 as of January 31, 2024. There were two initial deposits into the CDA OPEB trust account. In FY18, a deposit of \$2603.63 was made and in FY19 a deposit of \$9,000.00 was made. There have been no deposits into the account since FY19.
- The CDA OPEB liability in June 2016 was \$520,725. The June 2023 Odyssey actuarial study lists the CDA OPEB liability as \$986,293.
- Chad Carter discussed that the CDA OPEB liabilities are being funded as part of a pay as you go system that receives funding from the State and paid quarterly by the CDA. Future contributions to the CDA OPEB Trust will be determined by the CDA Director.
- The Trustees voted 5-0 to change the investment policy to a 60/40 (equity/fixed) risk profile. The CDA OPEB Trustees agreed that the CDA OPEB investment policy will mirror the City's investment policy going forward. The revised investment policy was signed by Comptroller David Williams.
- Chad Carter agreed to send Paul Sliney and the Mayor the monthly CDA OPEB balance reports going forward. The Auditor, Comptroller and Michael Ossing currently receive of the City OPEB the monthly statements which includes the CDA OPEB balances.
- No date for the next meeting as future meetings will be conducted on an as needed basis.

Meeting Adjourned: 3:20 pm



City of Marlborough
 Zoning Board of Appeals
 140 Main Street
 Marlborough, Massachusetts 01752
 Tel. (508) 460-3768

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 2024 FEB 20 AM 11:50

Meeting Minutes

For Meeting Held: December 19, 2023, Memorial Hall, City Hall, 140 Main Street, Marlborough.

Members Present: Ralph Loftin-Chairman, Robert Levine, Thomas Pope, and Thomas Golden.

Members Absent: None.

Items Discussed:

Zoning Board of Appeals Case # 23-1500

Applicant: David and Katherine Mason, represented by Attorney Christopher Flood

Date of Appeal: November 14, 2023

Location of Subject Property – 553 Elm St. Marlborough Map 67 Parcel 17

Petition: This is a request for relief taken under M.G.L Ch. 40A § 10, 13 and 14 to the Zoning determination of the City's Building Commissioner dated November 9, 2023, as said determination affects premises at 553 Elm St. The applicant requested a zoning determination of the Building Commissioner as to whether the proposed 19'x32' addition can be built by right in the Zoning District A2. The Building Commissioner determined that the applicant requires relief from Chapter 650 Article 41, "Table of Lot Area, Yards and Height of Structures", of the City Code of Marlborough. The applicant is seeking relief in the form of a Variance to construct an addition, replacing the existing patio, which exceeds the minimum rear yard setback requirement of 40 feet. The proposed rear yard setback is 32.6 feet.

Also present were:

Priscilla Ryder – Acting Senior Clerk,
 David and Katherine Mason- Owner,
 Attorney Christopher Flood – owner representative
 Tin Htway – Building Commissioner
 William Payton – Assistant Building Commissioner
 Diana Lopez – abutter 557 Elm St.
 Jean Bradly – abutter 537 Elm St.

James Hogan- Neighbor Elm St.

Chairman Loftin called the meeting to order and asked Board Member Levine to read the petition.

Attorney Christopher Flood made his presentation as follows:

- Petitioner Mason is requesting to build an addition on an existing concrete patio.
- The current house has 3 bedrooms, but one room is only 10'x11' with no closet.
- In 1987 the previous owner split the lot into two and created a new lot line with a variance from the ZBA for 50' frontage. The lot lines created were not square making it difficult to add on without a variance.
- They want to change the patio to a livable space. They can't build out front, so the shape of the lot is causing the hardship.
- Because the cost of housing is so high, they are not able to sell and move, so they have requested a variance to allow them to build this addition.

David Mason spoke.

- He explained that he loves this house and neighborhood. They have a growing family and need a new bathroom and bedroom to accommodate their family.

Chairman Loftin asked if anyone in the audience was in favor of the project and invited them to speak.

- Diana Lopes- 557 Elm St. – said she was all for the project and had no objection.
- Jean Bradly – 537 Elm St. – said she has no problem with the addition, no objection.
- James Hogan – 527 Elm St.- said this is a great family, the addition is a great value, and he's hopeful they can get a variance since the lot shape is what is preventing this.

Chairman Loftin asked if anyone was in opposition – no one spoke in opposition.

Chairman Loftin opened it up for discussion.

Mr. Htway explained that the lot was created a while back based on a variance granted to the abutter to the rear. The variance would allow a remedy through a Section 6 finding to the odd lot shape which was created in 1987.

Mr. Levine asked why this lot wouldn't be created now.

Mr. Htway noted that according to the records, in 1987; the hardship noted was that the previous owner didn't want to mow the yard. A variance was granted for this odd, shaped lot. This logic wouldn't hold today, and such a lot would not have been created.

Chairman Loftin noted that:

- A variance is difficult to receive.
- In order to be granted a variance the petitioner must present a case for a hardship, which is something more than an inconvenience. The hardship must arise from the soil conditions, shape or topography of the property.
- He wanted to know what was unique about this lot in relation to others in the neighborhood.

Attorney Flood noted that:

- The other lots are more rectangular, this one has a number of angles which are not quite square. The house was built in 1955, the lot was created in 1987 and is an odd shape and therefore unique to this neighborhood.

Board Member Levine made a motion to close the public portion of the hearing, seconded by Board Member Golden. By vote of 4-0 the public portion of the hearing closed.

Chairman Loftin explained that with only 4 members any decision requires a unanimous vote to carry. He also noted to the applicant that before any vote is taken the applicant has the option to withdraw the petition without prejudice. Board Member Pope explained that if the appeal is denied, the applicant cannot return until 2 years have elapsed.

Discussion:

Board Member Levine:

- Explained that hardship and variance requests don't come easy.
- He doesn't see a big hardship here, as the house is being used as zoned. He asked if there was any option to locate the addition near the pool to avoid a variance request.
- He is having issues figuring out hardship.
- Because of the crazy way this lot shape was created, he may be inclined to support this request.
- The expansion is on the existing concrete patio so not an expansion of the footprint of the house.
- Mr. Htway's comments that the variance couldn't be granted in this world and the lot could not have been configured as shown. Therefore, in his opinion this is a borderline case.

Attorney Flood indicated that several designs were considered but nothing fit.

Board Member Golden

- Since the lot was created after the house was built, he sees that as a hardship and based on that weird lot shape would be inclined to grant the variance, since this lot shape happened after the fact.
- Board Member Pope
 - But for the previous variance would not be inclined to approve. But given this unique situation he may be inclined to approve.

Chairman Loftin

- He is having a hard time with this, since the current owners bought the lot as it is,
- The lot was as it is, and they purchased it with this odd shape. They may not have anticipated the need to expand, but that doesn't justify a hardship.
- This is not different from the deck case previously reviewed which was denied.
- He is not persuaded that this meets the financial hardship criteria since they bought the property as it is and have been using it as zoned.

Board member Levine made a motion to grant the variance, which was seconded by Board member Pope.

Mr. Mason asked to allow him to consider a withdrawal without prejudice but wanted to ask some questions. He stated:

- He is the only house without a square back yard, everyone else has room to expand.
- They need more space in this single-family house, previous owners moved because it was too small.
- Without a variance they can't stay.

Chairman Loftin explained:

- Needing to expand a house is not a hardship; zoning laws don't support a homeowners need to have a bigger house; the hardship needs to be related to the land. The ZBA is bound by the regulations; a hardship not related to the land doesn't reach the level for a variance.
- The ZBA has denied similar cases.

Board Member Levine explained:

- Hardship is related to three things,
 - Soil, topography, lot shape
 - Hardship can be - financial or otherwise

- Whether there is a detriment to the public good
- This case seems different from the past case because of the unique past problem with the property line create in 1987.

Chairman Loftin asked Mr. Htway his thoughts, since he'd like to be persuaded.

Mr. Htway explained that a Section 6 finding can be used to right a wrong. The use hasn't changed. The setback request is a small change. This lot would not have been allowed to be created today. Based on his review, this addition would have no impact to the neighborhood. There is an existing tree barrier, it's a single-story addition, which couldn't meet zoning without changing the lines. He usually doesn't persuade; his job is to state the facts and be neutral.

Mr. Payton noted that 557 Elm St. is an odd lot, doesn't meet setbacks and not sure why it was placed where it was, and not sure why in 1987 the house behind was allowed.

Attorney Flood noted that it is the shape of the lot that is the root cause of this hardship.

Mr. Mason explained he is asking for a minimum impact to setback. There are no objections from the neighbors, and he thanked the neighbors for their support.

Chairman Loftin explained that he is not unsympathetic. But the owner bought the lot as is, the 1987 change happened before they bought the lot and it has not changed. The variance should not be easy to get and stays with the property in perpetuity. He cannot see the hardship as having to do with the property. The courts say that personal hardship doesn't factor into the decision. The owner has the option to build a second floor, rather than impact the setback.

Board Member Golden indicated that the shape is the constraint on this lot and in his opinion is the hardship and the addition can be built without incurring large expense. He is not opposed to this variance request.

Board Member Pope also concurred and said shape was a strong consideration since if the lines were straight, they would meet the setback requirements.

Attorney Flood and Owner Mr. Mason both noted that the request is for a minimum deviation and if the lot line was straight, they wouldn't need a variance. They asked for clarification from Chairman Loftin what he is looking for.

Chairman Loftin explained that the case law is strict about hardship. It is not subjective, improvements to a home to make it bigger does not create a hardship; it needs to be tied to the land. The ZBA's job is to hear the arguments; they have little discretion if the case doesn't meet the hardship criteria. Financial hardship needs to be tied to the land, like ledge for example if, it would cost too much to blast the ledge.

Mr. Mason asked what is the reasonable limit to financial hardship, what is that number, and what is the pathway to success here?

Chairman Loftin indicated that he would like to explore the notion of financial hardship and will seek to get clarity from the city solicitor.

Board Member Levine withdrew his motion to grant the variance.

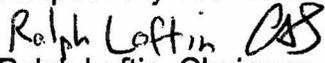
Board Member Levine made a motion to continue the hearing to January 16, 2024, Chairman Loftin seconded, on a roll call vote the ZBA voted unanimously 4-0 to continue the hearing to January 16, 2024.

On a motion by Board Member Levine second by Board Member Pope to adjourn, the ZBA voted unanimously 4-0 to adjourn. Meeting was adjourned at 8:23 PM.

Documents Used by ZBA:

- December 19, 2023, Meeting Agenda Posting
- Zoning Determination letter from the Building Commissioner Tin Htway dated Nov. 9, 2023
- Certified Plot Plan titled: Plan of Land n Marlborough MA owned b John E & Marie E. Palaima. Dated January 31, 1987. By George D. White Marlborough Ma. Surveyor.
- Plan Titled: Proposed Addition, Plan of Land in Marlborough MA, dated March 30, 2023; Scale 1"=30'. Owner: David and Katherine Mason, 533 Elm St. Marlborough MA 01752. Prepared by Anthony M. Dellorco of Colonial Engineering Inc. 11 AWL Street, Medway MA

Minutes prepared by
Priscilla Ryder acting Secretary.
Zoning Board of Appeals

Respectfully submitted:

Ralph Loftin, Chairman
Zoning Board of Appeals



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City of Marlborough
Zoning Board of Appeals
140 Main Street
Marlborough, Massachusetts 01752

2024 FEB 20 AM 11:50

Tel. (508) 460-3768

Meeting Minutes

For Meeting Held: Jan 16, 2024 7:00 PM, at 3rd Floor, Memorial Hall, City Hall, 140 Main Street, Marlborough.

Members Present: Ralph Loftin-Chairman, Robert Levine, Thomas Pope, and Thomas Golden.

Members Absent: None.

Also Present: Tin Htway – Building Commissioner, William Paynton – Assistant Building Commissioner, Priscilla Ryder – Conservation Officer/acting ZBA secretary, David & Katherine Mason – Owner, Representative: Atty. Christopher Flood 14 Winthrop St. Marlborough, Ma 01752.

Items Discussed:

1. Zoning Board of Appeals Case # 23-1500

Applicant: David and Katherine Mason – Represented by Atty. Christopher Flood
Location of Subject Property – 553 Elm St. Map 67 Parcel 16

Petition: This is a request for relief taken under M.G.L Ch. 40A § 10, 13 and 14 to the Zoning determination of the City's Building Commissioner dated November 9, 2023, as said determination affects premises at 553 Elm St. The applicant requested a zoning determination of the Building Commissioner as to whether the proposed 19'x32' addition can be built by right in the Zoning District A2. The Building Commissioner determined that the applicant requires relief from Chapter 650 Article 41, "Table of Lot Area, Yards and Height of Structures", of the City Code of Marlborough. The applicant is seeking relief in the form of a Variance to construct an addition, replacing the existing patio, which exceeds the minimum rear yard setback requirement of 40 feet. The proposed rear yard setback is 32.6 feet.

Atty. Christopher Flood made his presentation as follows:

Stated the adjoining lots have similar shapes but are deeper. The subdividing of the adjoining rear lot (67-17A) created the odd shape lot on 553 Elm St.

Mr. Loftin – Chairman feels that Lot Shape is not unique to the neighborhood. Prior variance issued is not relevant to this case. Also, the “financial or otherwise” hardship as stated by the applicant does not meet the criteria under “Financial Hardship.” Because the applicant desires to build a larger home the “hardship” is created by the applicant.

Mr. Levine – Board Member – Hardship must relate to the unique condition of the property itself. Lot Shape is not unique to the area.

Atty Flood stated hardships:

1. Hardship is financial or otherwise – Considering the makeup of the interior of this single-family, one-story home, to construct upward and remove the existing roof to create a 2nd floor would be very costly and the family would have to be displaced during construction, and a new staircase will need to be added.
2. The hardship is also the irregular lot shape. In 1987 as a result of the split rear adjoining lot created new lot lines, thus the irregular lot shape of 553 Elm St.
3. Enforcement of the zoning code will be a hardship to his client.

Mr. Mason – Applicant stated the following:

1. The current front and side setbacks will remain the same.
2. His options may be to build above the garage which is not feasible because the garage floor is over a slab, so utilities cannot be located under the garage floor. Or to create a 2nd floor, several existing windows will need to be replaced and that would be costly.

A motion was made by Robert Levine and seconded by Thomas Pope to close the public hearing. On a 4-0 vote the public hearing was closed. It should be noted with four members present the applicant must have four affirmative votes to be granted a variance. It appears Board Members Thomas Pope and Thomas Golden were in favor of granting a variance.

The Board reminded the applicants that they could "Withdraw Without Prejudice" prior to the vote of the board.

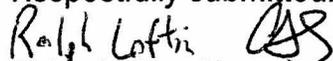
The applicant requested to "Withdraw Without Prejudice." On a motion by Board Member Levine, seconded by Board Member Pope to allow the applicant to withdraw without prejudice. The Board voted 4-0 to grant the applicant's request to "Withdraw Without Prejudice."

On a motion by Board Member Levine, seconded by Board Member Pope, to adjourn, the Board voted unanimously 4-0 to adjourn. Meeting was adjourned at 7:31.

Minutes prepared by:

Priscilla Ryder acting Secretary.
Zoning Board of Appeals

Respectfully submitted:


Ralph Loftin, Chairman
Zoning Board of Appeals