



# IN CITY COUNCIL

Marlborough, Mass., SEPTEMBER 8, 2008

ORDERED:

## NOTICE OF DECISION GRANT OF SPECIAL PERMIT

In City Council  
Order No. 08-1001806-1C

Application of:  
Boston Post 355 LLC

Locus:  
355 Boston Post Rd. West  
Map 88, Parcel 15

### DECISION

The City Council of the City of Marlborough hereby **GRANTS** the Application of Boston Post 355 LLC as provided in the DECISION and subject to the following FINDINGS OF FACTS AND CONDITIONS.

Decision filed: September 23, 2008

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 23<sup>rd</sup> day of September, 2008

### APPEALS

This is to certify that twenty (20) days have passed since the filing of the within decision and no appeal has been filed with this office.  
Given at Marlborough this 14th day of October, 2008.

Given under Chapter 40A sec. 11 of the General Laws.

A TRUE COPY  
ATTEST:

City Clerk



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ORDERED:

## **BOSTON POST 355 LLC**

### **SPECIAL PERMIT (BUSINESS DISTRICT) FINDINGS OF FACT AND CONDITIONS**

#### **DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 08-1806-1C**

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Boston Post 355 LLC to construct a carwash in a Business District, as provided in this Decision and subject to the following Findings of Facts and Conditions.

- 1) Boston Post 355 LLC is a Delaware limited liability company having a business address of 154 Southfield Rd, Concord, Massachusetts, and is hereinafter referred to as "Applicant".
- 2) Applicant is the owner of certain real property located at 355 Boston Post Road West, Marlborough, Massachusetts, as shown on the Marlborough Assessors Maps as Map 88 Parcel 15. The land is entirely located in a Business District and is also entirely located in the Water Supply Protection District.
- 3) The property is currently used as a contractor's yard for a landscaping and snowplowing business.
- 4) The Applicant, on or about April 25, 2008, filed with the City Clerk of the City of Marlborough an application for a Special Permit under the provisions of Article V Sec. 200-17 and pursuant to the procedures specified in Article VIII Section 200-59 of the Marlborough Zoning Ordinance.
- 5) In connection with the permit application, Applicant filed a Summary Impact Statement, certified list of abutters, filing fee and had previously filed twenty (20) copies of the Site Plan.
- 6) The Site Plan was certified by the City Planner for the City of Marlborough as having complied with Rule 4, items (a) through (m) of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.



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## ORDERED:

7) Pursuant to the Rules and Regulations of the City Council and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing for the permit application and the City Clerk caused to be advertised said date in the Metrowest Daily News and sent notice of said hearing to abutters entitled to notice under law.

8) The Marlborough City Council, pursuant to MGL C.40A, held a public hearing on June 9, 2008, concerning the said application. The hearing was opened and closed at that meeting. Pursuant to MGL c. 40A, § 9, the ninety-day time limit for the City Council to make a decision on the Applicant's Special Permit was extended, by written agreement, until 5:00 p.m. on September 30, 2008, and a copy of that agreement was timely filed in the office of the City Clerk for the City of Marlborough.

9) Applicant's attorney presented testimony at the public hearing detailing the application, described the improvements to the environment resulting from improved stormwater control at the site, and showed renderings of the proposed carwash to emphasize the improved aesthetic appearance of the site that would result from approval.

10) Applicant provided further written and oral documentation to the City Council's Urban Affairs Committee regarding the impacts of the proposed project, and proposed building and related site modifications. In particular, Applicant presented a traffic study describing the likely impact of the proposed carwash on traffic, and a noise impact study dealing with the impact of the proposed carwash on surrounding properties.

11) Applicant provided the Urban Affairs Committee with revised site plans entitled "Proposed Site Plan Set for 355 Boston Post Road West" dated 10/17/07, revised 7/10/08, by Cabco Consult, and a final revised Planting Plan by Bartsch & Radner Design, Inc. dated 7/23/08) (hereinafter, "The Revised Plans".)

**BASED UPON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT AND TAKES THE FOLLOWING ACTIONS:**

A) The City Council finds that Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application.



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## ORDERED:

B) The City Council finds that the proposed use of the site, subject to the conditions imposed below, will be in harmony with the general purposes and intent of the zoning ordinance, in that it will improve the appearance of the site and will have no significant negative impacts upon abutters. The proposed use of the site, subject to the conditions imposed below, will not be in conflict with the public health, safety, convenience and welfare and will not be detrimental or offensive. The visual and noise impacts from the proposed use have been mitigated, and the limited hours of operation will minimize the noise and traffic impacts to neighbors.

C) The City Council, pursuant to its authority under MGL C.40A §9 and under Chapter 200 of the Marlborough City Code, GRANTS the Applicant a Special Permit to allow a carwash on the premises, (the "Project"), SUBJECT TO THE FOLLOWING CONDITIONS:

1) Compliance With Building Regulations. Construction of all structures on the site is to be in accordance with all applicable building codes in effect in the City of Marlborough and Commonwealth of Massachusetts. The Project shall be constructed, maintained and operated according to the specifications, terms, and conditions of the Applicant's Special Permit Application and Site Plan. The Site Plan referred to in this condition is the plan entitled "Proposed Site Plan Set for 355 Boston Post Road West" dated 10/17/07, by Cabco Consult, filed with the Special Permit Application, as amended during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, all said revisions being reflected in plans showing a revision date of 7/10/08, and a final revised Planting Plan by Bartsch & Radner Design, Inc. dated 7/23/08). All other terms, conditions, requirements, approvals, drawings and renderings required hereunder are made a part of and incorporated herein as a condition of the issuance of this Special Permit.

2) Compliance With Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review, in accordance with the City of Marlborough Ordinance, prior to the issuance of the actual Building Permit; provided, however, that the Building Commissioner may issue a building permit prior to the completion of site plan review regarding work which, in his opinion, will not be affected by said site plan review. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions attached to the Special Permit and no Occupancy Permit shall be issued until all conditions are complied with by the Applicant. Subsequent Site Plan Review shall be consistent with the Conditions of this Special Permit and Plans submitted, reviewed and approved by the City Council as the Special Permit granting authority. Any changes to the plans which alter the traffic patterns within the site, require the removal of landscaping, reduce the overall green space of the Project, or add any new element in Zone A other than the landscaping, will require subsequent approval by the City Council.



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## ORDERED:

3) Application and Documents. All plans, drawings, site evaluations and documentation provided by the Applicant as part of this Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same.

4) Compliance with Local, State and Federal Laws. Applicant agrees to comply with all rules, regulations and ordinances of the City of Marlborough, Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of Applicant's facility, except pursuant to the terms of this Special Permit.

5) Incorporation of Plans and Drawings. All terms, conditions, requirements, approvals, plans, and drawings provided by the Applicant as part of this Special Permit Application and as amended during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee are herein incorporated into and become part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council. The Site Plan referred to in this condition is the site plan referred to in Condition #1 above.

6) Improvements Installed Prior to Certificate of Occupancy. All site improvements, except those specified on the plans approved at Site Plan Review, that have been shown in renderings and/or are conditions of this Special Permit will be installed prior to the issuance of any temporary or permanent occupancy certificate. If all other work is completed between Oct. 1 and June 1, all landscaping plants will be required to be installed by June 1. Applicant agrees that the permanent maintenance of the landscaping and the other site improvements is an ongoing condition of this Special Permit.

7) Supplemental Permit Review Fee. Applicant shall, at the time of application for a Building Permit, pay the sum of \$2,000 to the City of Marlborough Inspectional Services Funds to offset the increase in cost associated with the project's construction such as materials, staff, equipment and supplies relative to permitting, monitoring and inspection of the project. Issuance of a final Occupancy Certificate by the Building Commissioner shall be deemed to have demonstrated compliance with the terms of this Condition.

8) Snow Storage. Snowmelt runoff will be directed toward catch basins. All snow will be stored in the designated paved area shown on the Revised Plans.



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## ORDERED:

9) Catch Basins. All catch basins shall be installed in accordance with the plans submitted to the City Council and/or the City Council's Urban Affairs Committee. The catch basins shall be monitored on a semi-annual basis with reports given to the City Engineer and the Conservation Commission Agent. The catch basins are to be cleaned annually, or at more frequent intervals as determined necessary by the City Engineer and the Conservation Commission Agent.

10) Maintenance of Parking Areas. Parking areas will be swept and maintained as necessary. Pursuant to the provisions of MGL C.90 §18, the Applicant shall submit a written request and grant of authority to the Marlborough Traffic Commission (the "Commission") to promulgate legally enforceable rules and regulations for the control of on-site traffic and parking. Applicant shall be responsible for providing, installing and maintaining all signage or markings required by the Commission. Such signage or markings shall meet the standards of the Manual of Uniform Traffic Control Devices.

11) Compliance of Signs with Sign Ordinance. All building signage at the subject location shall comply with the existing City of Marlborough Sign Ordinance without a variance. The proposed freestanding sign for the project will be made of wood or a material appearing to be wood, and will be lit by indirect lighting. The sign will not be lit from ½ hour after closing to ½ hour before the opening of the carwash each day.

12) Exterior Light Fixtures. Exterior parking lot lighting shall not spill on to abutting residential property. Parking lot light poles shall not exceed 20 feet in height. Reflectors shall be utilized and configured to mitigate light from entering abutting properties. Light fixtures shall consist of pressure sodium lights not exceeding 200 watts. During the Site Plan review process, the location of the light pole shown on Sheet 6 of the Revised Plans as being located at a location behind the parking lot in the rear of the building will be moved to a location to the north of the dumpster shown on said plan.

13) Landscaping Maintenance. Applicant agrees to plant and maintain the Project landscaping as shown on the Site Plan as submitted to the City Council and/or the City Council's Urban Affairs Committee.

14) Dumpster Screening. Applicant agrees to screen the Project's trash area by constructing a suitable 6-foot high wooden screen fence.

15) Trash Pickup. Trash pick up and commercial deliveries will only be made from 7:00 AM through 5:00 PM Monday through Friday.

16) Hours of Operation. Hours of Operation will be limited to 7 AM to 7 PM, Monday through Saturday, and 8:00 AM to 6 PM on Sunday.



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## ORDERED:

17) Facade Appearance. An artist-colored rendering of the proposed building façade for Applicant will be provided prior to Site Plan Approval. The building façade will consist of a red brick veneer, and will be configured as shown in renderings filed with the Urban Affairs Committee.

18) Noise Mitigation Enforcement. This special permit is being approved based upon the representation of Applicant that the noise caused by operation of equipment inside Applicant's building will not cause so-called noise "spikes" in excess of 53dbA at the easterly, westerly or rear property lines. Prior to the issuance of a Certificate of Occupancy regarding this project, Applicant will notify the owners and tenants of all abutting property, in a manner satisfactory to the Building Commissioner, that any noise complaints regarding business operations should be reported to the Code Enforcement Officer. Thereafter, the Code Enforcement Officer may, in said Code Enforcement Officer's discretion, order that sound testing be conducted forthwith by an independent certified sound engineer to be selected by the Code Enforcement Officer, with the advice of Applicant, at Applicant's cost. The sound engineer shall immediately conduct such sound testing as the sound engineer deems appropriate to determine whether, in fact, the operation of equipment inside Applicant's building is causing noise "spikes" exceeding 53bdA at the said easterly, westerly or rear property line; and the sound engineer shall present the results of his/her sound testing in a written report to be provided to both the Code Enforcement Officer and the Applicant. If the sound engineer determines that, in fact, the operation of equipment inside Applicant's building is causing noise "spikes" exceeding 53dbA at the said easterly, westerly or rear property line, the Code Enforcement Officer shall order Applicant to devise and implement such building or operations modifications as will eliminate said noise "spikes" within sixty (60) calendar days. Immediately upon either the expiration of that time period or the Applicant's implementation of such building and operational modifications, whichever is sooner, the Code Enforcement Officer shall order that sound retesting be conducted forthwith by the sound engineer, at Applicant's cost, to determine whether the operations or building modifications have eliminated the noise "spikes", and the sound engineer shall present the results of his/her sound retesting in another written reports to be provided to both the Code Enforcement Officer and the Applicant. If the sound engineer determines that the Applicant has not eliminated, within said sixty (60) calendar day period, the noise "spikes" exceeding 53dbA at the said easterly, westerly or rear property line, then all of Applicant's equipment operations determined by the sound engineer to cause said noise "spikes" will thereafter be prohibited until, if ever, the sound engineer, at Applicant's cost, certifies that no noise spikes exceeding 53dbA at the easterly, westerly or rear property line will occur thereafter; and the sound engineer shall provide his/her written certification to both the Code Enforcement Officer and the Applicant.



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### ORDERED:

19) [Omitted]

20) Compliance with Related Permit. Applicant has also applied for a special permit, pursuant to Chapter 200-24, to construct a carwash in the Water Supply Protection District. Any conditions attached to the approval of that special permit are also incorporated herein and made a part hereof.

21) No Queuing on Rte. 20. Applicant will assure that no motor vehicle that is queuing and waiting for carwash or other service on the premises will be located on the Rte. 20 right of way. If the Chief of Police determines that this condition is not being complied with, the Chief may, in the Police Chief's absolute discretion, require the closing of the carwash for a period to be determined by the Police Chief or, if the Police Chief is unavailable, by his designee.

22) Limited Vacuum Operation. All exterior motor vehicle cleaning vacuums will be turned off and disabled when the carwash is not in operation. All exterior vacuums shall be located as shown on the Revised Plans.

23) Limited Left-Hand Turns. Applicant will, as part of its curb cut application to MassHighway, request that appropriate signage be installed to prohibit left-turns from the site from 4:00 PM to 6:00 PM from Monday through Friday. Provided that said signage is approved, Applicant will erect said signage and prohibit left-hand turns from the site during said periods. If the Police Chief later determines, based upon accident reports and other data he finds to be relevant, that left-hand-turns should be prohibited at the site at all times, he shall so notify the owner of the property, who shall then promptly apply to MassHighway, to cause said prohibition to come into effect. If said prohibition comes into effect, the owner of the property shall cause appropriate signage to be installed and shall thereafter cause said prohibition to be enforced on the site.

24) Car Wash Safety Factor. The Chief of Police or his designee shall have authority to order the carwash temporarily closed when an "icing" or unsafe condition on the public way exists due to the carwash or weather conditions, as determined solely by the Chief of Police or his designee.

25) Storage of Flammables Prohibited. No flammable materials, except those, like diesel and oil, that will be used to heat the premises, will be stored at the site.

26) Recordation. In accordance with the provisions of MGL C.40A, § 11, the Applicant at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and before a Building Permit is issued.



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ORDERED:

**Yea: 10 – Nay: 1**

**Yea: Delano, Ferro, Schafer, Juairé, Seymour, Clancy, Landers, Ossing, Vigeant,  
Levy**

**Nay: Pope**

  
Signed by City Council President  
Arthur G. Vigeant

ADOPTED  
In City Council  
Order No. 08-1001806-1C