

MARCH 12, 2007

**NOTICE OF DECISION
GRANT OF SPECIAL PERMIT**

In City Council
Order No. 06100-1377C

Application of:
Building Owner L.L.C.
900 Chapel St.
New Haven, CT. 06513

Locus:
175 Maple St.
Parcels 82, Lot 132

DECISION

The City council of the City of Marlborough hereby **GRANTS** the Application of Building Owner L.L.C. as provided in the DECISION and subject to the following FINDINGS OF FACTS AND CONDITIONS.

Decision filed: April 4, 2007

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 4th day of April, 2007.

APPEALS

Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, Ma.

ATTEST:

Acting City Clerk

**In City Council
Marlborough, Massachusetts
March 12, 2007**

Decision on a Special Permit Application

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to 1-A175 Maple St. Land Owner, LLC and 175 Maple Street Building Owner, LLC, having a principal place of business at 900 Chapel St. New Haven, CT. 06513 as provided in this Decision and subject to the following Findings of Facts and Conditions.

- 1) 1-A175 Maple St. Land Owner, LLC and 175 Maple Street Building Owner, LLC, both being Massachusetts limited liability companies having a business address c/o 900 Chapel St., New Haven, Connecticut, are hereinafter referred to as Applicants.
- 2) Applicants are the owners of certain real property located at 175 Maple St., Marlborough, MA shown, on the Marlborough Assessors Maps as Map 82 Parcel 132. The land is entirely located in a Business zone. The property, which was originally developed as the site of the Dennison Manufacturing Company, was used for manufacturing purposes of various kinds until the end of 2006. All the land in question was located in an Industrial zone until the land was rezoned to a Business zone through a zoning amendment that was adopted by the City Council on Oct. 30, 2006. As a result of that zoning amendment, the industrial uses became nonconforming.
- 3) The Applicants, on or about Nov. 14, 2006, filed with the City Clerk of the City of Marlborough an application for a Special Permit under the provisions of General Laws Chapter 40A sec. 6 and Marlborough Zoning Ordinance Article IV Sec. 200 Par 12(B), Sec. 200-59 of the Marlborough Zoning Ordinance. Applicants intend to alter the preexisting nonconforming use of the premises to a residential use, and to alter the preexisting nonconforming structure that exists thereon, through the adaptive reuse of the existing structure to accommodate ninety-five (95) residential housing units. Applicants intend to rent said housing units as apartments for at least five years.

- 4) In connection with the permit application, Applicants filed a Needs and Impact Statement, certified list of abutters, filing fee and thirteen (13) copies of the Site Plan.
- 5) 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.
- 6) 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 Middlesex News and sent notice of said hearing to abutters entitled to notice under law.
- 7) The Marlborough City Council, pursuant to MGL Ch 40A, held a public hearing on December 18, 2006, concerning the said application. The hearing was opened and closed at that meeting.
- 8) Applicants presented testimony at the public hearing detailing the application, and describing its impact upon municipal services and on the neighborhood, including visual, environmental and traffic impacts. No person in attendance spoke in opposition to the proposal. Several attendees spoke in favor of the proposal, including area businessmen who described the extremely positive anticipated impact of the proposal in inducing further improvements to the business climate in the area.
- 9) Applicants 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.

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

- A) The City Council finds that Applicants have complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application.
- B) The City Council finds that 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. Further, the City Council finds that the proposed new use of the site, and the structure as altered, will not be substantially more detrimental to the neighborhood than the continued use of the existing site and structure for manufacturing and other industrial purposes. The visual impacts from the proposed use have been mitigated, and the traffic impacts will be no more detrimental than the possible impacts from industrial uses. In addition, the City Council finds that the proposed residential use may act as a catalyst in encouraging further growth and improvements to the surrounding area.
- C) The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A section 6 and under Chapter 200 of the Marlborough City Code, GRANTS the Applicants a Special Permit to alter the preexisting nonconforming use of the premises to a residential use and to alter the preexisting nonconforming structure that exists thereon, through the adaptive reuse of the existing structure to accommodate ninety-five (95) residential housing units (the “Project”), SUBJECT TO THE FOLLOWING CONDITIONS:

1) Compliance With Building Regulations. Construction and modification 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 Applicants’ Special Permit Application and Site Plan. The Site Plan referred to in this condition is the plan entitled “175 Maple Street, Scale 1:20, dated 11/03/06, last revised February 6, 2007” by Level Design Group, L.L.C., Civil Engineering & Land Surveying, 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 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.

MARCH 12, 2007
PAGE 4

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. 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 Applicants. 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, or reduce the overall green space of the Project, except where said reduction is required to construct a dumpster pad or a sidewalk from the rear parking area, will require subsequent approval by the City Council.

3) Application and Documents. All plans, drawings, site evaluations and documentation provided by the Applicants 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. The Applicants agree 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 Applicants' 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 Applicants 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 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; provided, however, that if all other work is completed between Oct. 1 and June 1, all landscaping plants will be required to be installed by June 1. Applicants agree that the permanent maintenance of the landscaping and the other site improvements is an ongoing condition of this Special Permit.

MARCH 12, 2007
PAGE 5

7) Supplemental Permit Review Fee. Applicants shall, at the time of application for a Building Permit, pay the sum of Ten Thousand (\$10,000) Dollars 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. In addition, Applicants will comply with the terms specified in a separate communication from the Building Commissioner to the Urban Affairs Committee dated Feb. 13, 2007 and on file with the Committee, a copy of which is attached as Attachment #1, unless the Building Commissioner agrees to an alteration of those conditions. Issuance of a final Occupancy Certificate by the Building Commissioner shall be deemed to have demonstrated compliance with the terms of this Condition.

8) Limit and Type of Residential Units. The project will contain 95 units, consisting of eighty (80) one-bedroom units and no more than fifteen (15) two-bedroom units.

9) No Modifications to Entrances. If any modifications are made to the driveway entrances and exits as shown on the Site Plan that in any way alter the traffic flows as represented in the final revision of the Site Plan submitted to the City Council as part of the Special Permit Application, and as revised during the Special Permit approval process, the Applicants shall return to the City Council for approval of these modifications to the Special Permit. Applicants shall apply for and obtain all necessary permits from the necessary parties.

10) Snow Storage. Snow storage is to be provided on site for accumulations of up to 6 inches per 24-hour period. For accumulated amounts of more than 6 inches in a 24-hour period, Applicants will utilize off site snow storage. Snowmelt runoff will be directed toward catch basins.

11) 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. The catch basins are to be cleaned annually, or at more frequent intervals as determined necessary by the City Engineer.

12) Maintenance of Parking Areas. Parking areas will be swept and maintained as necessary. Pursuant to the provisions of Mass General Laws Ch. 90 s.18, the Applicants 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. Applicants shall be responsible for

MARCH 12, 2007

PAGE 6

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. Signs demarcating compact spaces shall not detract from the 'streetscape' established for the project as requested during Site Plan Review.

13) Maintenance of American Flag. The building as permitted will fly a 5-foot by 8-foot American flag or approved equal size on a flag pole comparable in size to that in use at the time of approval of this Special Permit. The flag will be flown and maintained consistent with federal laws and regulations regarding the use and care of American flags and shall be illuminated during the evening and night hours if it remains in place during these times. The flag to be located on the cell tower pole will be of a material made of exterior quality nylon or better. A new flag will be installed on or about November 1st and April 1st each year, or more often as directed by the Marlborough Code Enforcement Officer to maintain the integrity and appearance of the flag.

14) Compliance of Signs with Sign Ordinance. All building signage at the subject location shall comply with the then existing City of Marlborough Sign Ordinance without a variance.

15) Exterior Light Fixtures. All illumination of individual parking lot light fixtures shall not exceed 250 watt fixtures and shall be screened from abutting residential property. Reflectors shall be utilized and configured to mitigate light from entering abutting properties. The total height of the pole and attached fixture shall not exceed 14 feet at its highest point.

16) Landscaping Maintenance. Applicants agree 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.

17) Dumpster Screening. Applicants agree to screen the Project's trash area by constructing a suitable 7-foot screen fence approved by the Massachusetts Historic Commission. Applicants further agree that the dumpster located on the site will be covered.

18) Unit Washers and Dryers. Each residential unit shall contain a washer and dryer.

19) On Site Gym for Residents Only. The on site gym facilities will be restricted to use by Project residents. No memberships will be sold or provided to Project non-residents.

MARCH 12, 2007

PAGE 7

20) Parking Spaces. Applicants will not reduce the number of parking spaces at from the Project below 163 spaces.

21) Affordable Housing Mitigation Applicant will, on or before the second anniversary of the issuance of a Building Permit by the Building Commissioner to allow the construction of the Project, cause there to be added to the Marlborough Affordable Housing Inventory, maintained by the Massachusetts Department of Communities and Development pursuant to Mass. General Laws Chapter 40B, a total of ten affordable housing units, each said unit having an affordable housing restriction that will survive in perpetuity. Applicants will have identified, constructed and/or renovated all said units by the first anniversary of the issuance of said Building Permit. In the event that Applicants have failed to identify, construct or renovate said units by said first anniversary, Applicants will immediately pay to the Marlborough Affordable Housing Trust or to such other account as may be directed by the City Council a sum equal to \$19,000 times the number of units that have not been so identified and constructed or renovated. As to said units that have been so identified and constructed or renovated, in the event that any of said units has not been added to the Marlborough Affordable Housing Inventory by the second anniversary of the issuance of a Building Permit for the Project, Applicants will immediately pay to the Marlborough Affordable Housing Trust or to such other account as may be directed by the City

Council a sum equal to \$19,000 times the number of such constructed or renovated units that have not been added to said Inventory.

22) Trash Pickup. No trash pickup will occur at the site, and no commercial deliveries will be made to the site, before 7:00 A.M. or after 7:00 P.M. Applicants agree to maintain a separate dumpster for the recycling of paper products.

23) Compliance with Wetlands Protection Act. Applicants will comply with the Wetlands Protection Act and will pursue and comply with an Order of Conditions from the Conservation Commission.

24) Fire Protection. Fire protection systems shall be acceptable in all respects to the City of Marlborough Fire Chief or his designee.

25) Water and Sewer Connections. Water and sewer services provided to the Project shall be subject to the current citywide water and sewer charges and subject to annual adjustment by the Commissioner of Public Works. Water and sewer connections, if such connections are required, to service the building, shall be subject to a separate approval process and conditions.

MARCH 12, 2007

PAGE 8

26) Chain Link Fence. Applicant shall erect and maintain a 4-foot high chain link fence along the property line next to the abandoned railroad right-of-way, at all points at which the face of the retaining wall to be constructed by the Applicants exceeds 4 feet in total height.

27) Water Tower Maintenance. The existing water tower will remain as part of the project and be appropriately maintained so as to preserve its historic integrity.

28) Preservation of Exterior Façade. All alterations to the exterior façade of the existing structures of the Project, including the existing water tower, will be done in compliance with the Standards established by the Secretary of the Interior of the United States regarding the alteration of properties that are listed in the National Register of Historic Properties.

29) Sidewalk Construction. Applicants will install new vertical granite curbing and a cement concrete sidewalk along Maple Street for the entire length of the Project site's frontage, and around the corner at Valley Street for a distance of 25± feet into the layout of Valley Street. The sidewalk shall be constructed in accordance with requirements determined by the Marlborough Department of Public Works during the Site Plan Review process, shall be consistent with the plans now under design for the reconstruction of Maple Street, and shall be in full compliance with all requirements of the Americans with Disabilities Act (ADA) and relevant state and local regulations.

30) Land to be Taken by City. The Commissioner of Public Works has indicated that the City should take a portion of the land that is the subject of this special permit in order to allow the City to improve public safety at the corner of Maple Street and Valley Street. A preliminary sketch of the land to be taken is attached to a letter from Applicants' attorney, Arthur P. Bergeron, dated Feb. 13, 2007, and in the files of the Urban Affairs Committee. If the City determines that it is appropriate to take said land by eminent domain, Applicants will not make any claim for damages resulting from said taking.

31) Connection to City Drainage System. Applicants shall connect the proposed drainage of the site into the City's drainage system in accordance with the Maple Street reconstruction plans referred to in Condition #29 above. Applicants shall design and construct the necessary drainage connections, and shall construct the necessary drainage and appurtenances, directly adjacent to and as impacted by the proposed project, as directed by the City Engineer. The City Engineer shall provide said plans to the design engineer prior to construction for incorporation into design documents.

MARCH 12, 2007
PAGE 9

32) Compact Car Space Signage. During the Site Plan Approval process, Applicants will redesign the compact car signage at the site as directed by the City Engineer so as to minimize the aesthetic impact of said signage.

33) Neighborhood Mitigation. Prior to the issuance of the first Occupancy Permit regarding the Project, Applicants will pay to the City the sum of Twenty Thousand (\$20,000) Dollars to provide a Fund from which funds can be expended, as directed by the Police Chief, to provide increased and targeted traffic enforcement in the Maple Street area.

34) In accordance with the provisions of Mass. Gen. Laws c. 40A, § 11, the Applicants at their 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.

Yea: 11 – Nay: 0

Yea: Katz, Ferro, Schafer, Juairé, Webster, Clancy, Towle, Ossing, Pope, Vigeant, Levy.

Nay: 0

Signed by City Council President
Arthur G. Vigeant

ADOPTED
In City Council
Order No. 06-1001377C

A TRUE COPY
ATTEST:

Acting City Clerk