



# IN CITY COUNCIL

Marlborough, Mass., OCTOBER 15, 2007

ORDERED:

## NOTICE OF DECISION GRANT OF SPECIAL PERMIT

In City Council  
Order No. 05/07-100931C

Application of:  
Fairbanks Development LLC  
8 College Ave.  
Arlington, MA 02474

Locus:  
406 Lincoln St.  
Map 69, Parcels 276, 106, 108, 109, 88, 89, 90

### DECISION

The City Council of the City of Marlborough hereby **GRANTS** the Application of Fairbank Development LLC, provided in the DECISION and subject to the following FINDINGS OF FACTS AND CONDITIONS.

Decision filed: October 23, 2007

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 23rd day of October, 2007.

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 13th day of November, 2007.

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

A TRUE COPY  
ATTEST:

City Clerk



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OCTOBER 15, 2007

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## AMENDED SPECIAL PERMIT FINDINGS OF FACT AND CONDITIONS

### Procedural Findings

- 1) Fairbanks Development LLC, a Massachusetts limited liability company having its principal place of business at 8 College Ave., Arlington, MA, is hereinafter referred to as the Applicant.
- 2) The Applicant is the owner of certain parcels of real property located on Lincoln St. The parcels shown on the Marlborough Assessors Maps as Map 69 Parcels 106, 276, 88, 89, 90, 108 and 109.
- 3) The Applicant, on or about Dec. 19, 2005, was granted a Special Permit by the City Council of the City of Marlborough by Order No. 05-100931A. Said permit is recorded in the MSRD in Book 48275, Page 122 and in Book 1321, Page 85, Certificate #236988.
- 4) The Applicant on or about July 19, 2007 filed with the City Clerk of the City of Marlborough an application for an amendment to the Special Permit. Applicant is requesting changes to the language of the Special Permit.
- 5) 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 News and sent notice of said hearing to abutters entitled to notice under law.
- 6) The Marlborough City Council, pursuant to MGL Ch 40A, held a public hearing on Sept. 10, 2007 concerning the said application. The hearing was opened and closed at that meeting.
- 7) The amended procedural findings specified in sections 2, 3, 4, 5, 6 and 7 of this Amended Special Permit supplement those made in the original Special Permit; the procedural findings made in the original Special Permit are incorporated by reference herein. Finding of fact E) of this Amended Special Permit supplements finding of fact E) made in the original special permit; the findings of fact made in the original Special Permit are incorporated in full herein. The amended conditions specified in sections 7, 11, 12, 13 and 23 and Attachment #1 of this Amended Special Permit replace those of the



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original Special Permit; all other conditions of the original Special Permit survive its amendment herein.

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.

B) The City Council finds that the current use of the site for manufacturing purposes is a currently nonconforming use that was in effect at the time of the creation of the current zoning provisions regarding the site.

C) The City Council finds that the proposed use would be substantially different from the existing nonconforming use of the site.

D) The City Council finds that the proposed new use would not be substantially more detrimental to the neighborhood than the existing nonconforming use.

E) The City Council, pursuant to its authority under MGL C40A, GRANTS the Applicant an Amended Special Permit to alter the existing structures on the site, and to use them and the related parking areas as not more than twenty-nine (29) artist live/work spaces, with additional work and storage areas and a commercial gallery space as shown on said plans, 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 and Zoning Regulations 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 prepared by Deborah Fairbanks dated Aug. 20, 2005 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.



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- 2) Compliance With Site Plan Review. The issuance of the Special Permit is further subject to technical site plan review in accordance with the City of Marlborough ordinance prior to the issuance of the actual Building Permit. Any additional changes, alternations, 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 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 significant changes to the plans will require subsequent approval by the City Council.
- 3) Compliance With Noise Ordinance. The Applicant shall comply with all of the requirements of the Noise Ordinance of the City of Marlborough. The Police Department shall strictly enforce the regulations contained in the Noise Ordinance and promptly respond to complaints lodged by abutters.
- 4) Completion of Site Improvements Prior to Occupancy. Prior to the issuance of any Occupancy Permit for this Project, Applicant must complete all landscaping and planting installations together with all other site improvements, except that if the Project is completed after October 1 of any year and before May 1 of the following year, all landscaping and planting installation will be completed by May 1 of said following year.
- 5) Compliance with Local, State and Federal Laws. The Applicant agrees to comply with all rules, regulations and ordinances of the City of Marlborough (except pursuant to the terms of this special permit), Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance and operation of Applicant's facility.
- 6) Incorporation of Plans and Drawings. All terms, conditions, requirements, approvals, plans, and drawings required hereunder are made a part of and incorporated herein as a condition to the issuance of this Special Permit.
- 7) Preferential Ownership by Artists. Attached hereto as Attachment #1 is language which defines the terms "artist" and "a person engaged in an art-related business," and which provides that preference will be given to a person in purchasing a unit in Renaissance Lofts Condominium when said person is an artist and/or is engaged in an art-related business. Said language, or language that the City Solicitor determines in writing will have a comparable effect, will be made part of the by-laws of the condominium association for the Project. The Applicant shall place a provision within the



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Master Deed and in each first Unit Deed that said Unit is being conveyed subject to the terms and conditions contained within the Amended Special Permit issued by the Marlborough City Council as Order No. 05-100931B.

8) Certain Uses Prohibited. The condominium documents will provide that all artistic uses of the units will meet current building, health and safety codes, and condominium rules and regulations will allow unit owners to be fined for violations of any of these codes.

9) Units for Handicapped Owners. The Proposed Units shown on the plans filed with the City Council as Unit #26 and Unit # 27 will be marketed actively to artists with physical handicaps. In the event that a qualified handicapped buyer agrees to purchase either of the Units, Applicant will adapt the unit for use by the handicapped buyer in accordance with Universal Design criteria at no additional cost to said person.

10) Parking. The plans currently on file with the Urban Affairs Committee show a total of 65 parking spaces. While the precise configuration of parking spaces can be changed through the Site Plan Approval Process, the plan as finally approved will have no less than 58 parking spaces available to the residents of the 29 condominium units.

11) Limitation on Retail Sales. No unit, except the gallery space units, will be used regularly to conduct retail sales.

12) Conversion of Gallery or Work Space to Living Space Prohibited. All areas shown on the plans on file with the Urban Affairs Committee as "workshop", "assigned storage" and "gallery space" will remain as areas that cannot be used as residential living space, and cannot be converted to residential space without an amendment of this special permit. While the areas of the residential units shown on the plans on file with the Urban Affairs Committee can be changed, no two units as finally configured can be combined to form one larger unit without an amendment to this special permit. Gallery Unit may be divided into two Units, both to be used as commercial space. The gallery space may be divided into two units, to be used as commercial space.

13) Rental of Units. No unit of the condominium will be rented through a lease with a term of greater than two years. All leases will require the prior approval of the Board of Trustees, or comparable governing entity, of the condominium association.

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



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- 15) Signage. All signage at the subject location shall comply with the existing City of Marlborough sign ordinance, without variance.
- 16) Exterior Lighting. Parking lot light fixtures shall not exceed 250 watts. Deflectors shall be utilized and configured to mitigate light from entering abutting properties.
- 17) Snow Storage. Snow storage is to be provided on-site. The Applicant may elect to utilize off-site storage. Snowmelt is to be directed toward catch basins.
- 18) Maintenance of Parking Areas. Parking areas will be swept and maintained as necessary.
- 19) Parking Lot Enforcement. Pursuant to the provisions of General Laws Chapter 90 sec. 18, the Applicant shall submit a written request and grant of authority to the Marlborough Traffic Commission (hereinafter, "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 regulations of the Marlborough Sign Ordinance.
- 20) Water and Sewer Service. Water and sewer services provided to the Project shall be subject to the current citywide water and sewer charges subject to annual adjustment by the Commissioner of Public Works. Water and sewer connections shall be subject to a separate approval process and conditions.
- 21) Compliance with Permit Conditions. The Project proposed shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's special permit application, as amended during the application/ hearing process before the City Council and/or the Urban Affairs Committee, and Site Plan Review, and in compliance with the conditions of the grant of the Special Permit.
- 22) Supplementary Inspectional Fees. The Applicant, at the time of application for a Building Permit shall pay the sum of \$2,500 to the City of Marlborough Inspectional Services Fund to offset the increase in costs associated with the Project construction, including but not limited to staff, materials, equipment and supplies, relative to the permitting, monitoring and inspection of the Project.



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23) Recording. The Amended Special Permit shall be recorded at the Middlesex South Registry of Deeds in accordance with the provisions of MGL Chapter 40A sec. 11 prior to the issuance of any Occupancy Permit regarding the project. The Applicant shall be responsible for recording this Amended Special Permit, and shall present evidence to the City Solicitor’s office regarding compliance.

24) Affordable Housing. Applicant shall pay to the Affordable Housing Trust, or to such other fund for the benefit of affordable housing as may be directed by the City Council, the sum of Fifteen Thousand (\$15,000) Dollars, of which Seven Thousand Five Hundred (\$7,500) Dollars shall be paid upon the sale of the 15<sup>th</sup> residential condominium unit, and Seven Thousand Five Hundred (\$7,500) Dollars shall be paid upon the sale of the 29<sup>th</sup> residential condominium unit.

Attachment #1  
RENAISSANCE LOFTS CONDOMINIUM  
BY-LAW PROVISION

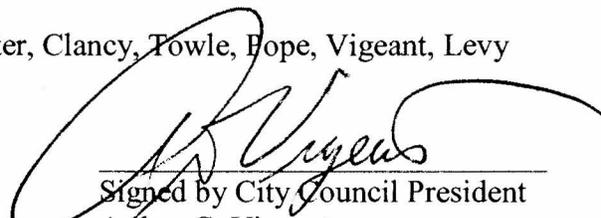
**PREFERENTIAL OWNERSHIP BY ARTISTS AND/OR TO PERSONS  
ENGAGED IN AN ART-RELATED BUSINESS**

Preference will be given to a person in purchasing a unit in Renaissance Lofts Condominium when said person is an artist and/or is engaged in an art-related business. For the purpose of this by-law provision, the term “artist” shall include choreographers, dancers, architects, landscape architects, urban designers and planners, interior designers, industrial designers, graphic designers, fashion designers, creative writers and literary translators, individual artists working in the film, radio, television, video, theater, conceptual performance, new genres, painting, print making, drawing, photography, sculpture, crafts, musical composers, musicians, mimes and playwrights; and the term “a person engaged in an art-related business” shall include a person engaged in a business related to any of the types of “artists” listed herein.

Yea: 10 – Nay: 0 – Abstained: 0 – Absent: 1

Yea: Katz, Ferro, Schafer, Juairé, Webster, Clancy, Towle, Hope, Vigeant, Levy  
Absent: Ossing

ADOPTED  
In City Council  
Order No. 05/07-100931C

  
Signed by City Council President  
Arthur G. Vigeant