

**NOTICE OF DECISION
GRANT OF SPECIAL PERMIT**

In City Council
Order No. 06100-1076A

Application of:
New England Development

Locus:
Donald Lynch Blvd, Plates 50
Parcels 4A,4B,4D and Plate 63, Parcel 1A

DECISION

The City council of the City of Marlborough hereby **GRANTS** the Application of New England Development as provided in the DECISION and subject to the following FINDINGS OF FACTS AND CONDITIONS.

Decision filed: July 27, 2006

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 27th day of July, 2006.

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.

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 17th day of August, 2006.

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

A TRUE COPY
ATTEST:

City Clerk



IN CITY COUNCIL

Marlborough, Mass., _____ 20
JULY 24, 2006

ORDERED:

DECISION ON A SPECIAL PERMIT APPLICATION

The City Council of the City of Marlborough hereby GRANTS the Application of New England Development as provided in the DECISION and subject to the following FINDINGS OF FACTS AND CONDITIONS.

FINDINGS OF FACTS, RULINGS AND CONDITIONS

1. New England Development is hereinafter referred to as the "Applicant."
2. The Applicant's affiliate, Solomon Pond Mall LLC, owns or controls certain property located on Donald J. Lynch Boulevard comprising Assessor's Plate 50, Parcels 4A, 4B and 4D and Plate 63, Parcel 1A (together, the "Site").
3. The Applicant, on or about February 9, 2006, filed with the City Clerk of the City of Marlborough, an Application for Special Permit (the "Application") seeking authorization to construct and operate retail stores, shops and/or service establishments with accessory uses pursuant to Section 200-17 of the Marlborough Zoning Ordinance (the "Zoning Ordinance"), to reconfigure landscaping pursuant to Section 200-47(H)(4) of the Zoning Ordinance, and to increase the maximum lot coverage applicable to the Site to 65.2% pursuant to Section 200-43 of the Zoning Ordinance (the "Project").
4. The Director of Planning for the City of Marlborough certified by letter dated February 9, 2006, that the Application is complete and that the Site Plan submitted by the Applicant (the "Site Plan") meets the requirements of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
5. In accordance with and 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 on the Application and the City Clerk caused notice of said public hearing to be advertised in accordance with applicable law and sent notice of said public hearing to abutters entitled to notice under law. Such notice was published, mailed and posted in accordance with applicable law.
6. The City Council, pursuant to G.L. c. 40A, held a public hearing on March 27, 2006 and April 10, 2006 concerning the Application (the "Public Hearing").



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7. The Applicant presented testimony at the Public Hearing detailing the Application, including the existing use of the Site, the proposed use of the Site, and the impact of the Project upon municipal services, the neighborhood, traffic, and such other issues as the City Council and members of the public deemed appropriate.

8. The Applicant submitted written and oral testimony and documentation to the City Council's Urban Affairs Committee regarding landscaping, drainage, lighting, water, sanitary and utility improvements and environmental and wetlands impacts associated with the Project, as well as information regarding the impacts on police, fire, and transportation. The written information is set forth in Exhibit A attached hereto and incorporated herein. The Applicant's detailed traffic study indicated that the Project improvements will sufficiently mitigate impacts from traffic associated with the Project when the conditions set forth in Section D(3) hereof are implemented.

**BASED UPON THE ABOVE FINDINGS OF FACT
THE CITY COUNCIL MAKES THE FOLLOWING
FINDINGS AND CONDITIONS:**

A. The City Council finds that it may issue the Special Permit, subject to such conditions, safeguards and limitations on matters that may affect the public health, safety, welfare and convenience, including conditions on time and use as it deems appropriate.

B. The City Council finds that: (i) the Application does not derogate from the intent or purpose of the Zoning Ordinance, or G.L. c. 40A, et seq.; (ii) the proposed use of the Site for the Project is an appropriate use and is in harmony with the general purpose and intent of the Zoning Ordinance, and that its impacts and characteristics are not in conflict with public health, safety, convenience and welfare, and that said use is not detrimental or offensive; (iii) upon the discontinuance of the portion of Old River Road located on the Site and the consummation of the land swap as shown on the plan referenced in Exhibit A as LS-1, the Site will constitute a Retail Lot under Section 200-05 of the Zoning Ordinance (and the remaining land will constitute the "motel parcel" as shown on said plan); (iv) the construction of the Project will complement the existing business uses in this area of Marlborough and will enhance the development goals of the community in this area by providing additional services and increased employment opportunities; (v) the Site Plan shows perimeter landscaping which, in area, exceeds the parking lot interior islands landscaping which would be required by Section 200-47(H)(2) of the Zoning Ordinance by a minimum of 125% and, in accordance with Section 200-47(H)(4) of the Zoning Ordinance, the requirements of Section 200-47(H)(2)(a)(b) and (c) are suspended;



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(vi) the Project includes open space and infrastructure improvements that will benefit not only the Project but other property within the City; and (vii) the Site Plan as submitted by the Applicant provides improvements which will protect the environment and provide a substantial benefit to the City of Marlborough by improving traffic systems, utility service and pedestrian routes in this area. The City Council makes this determination subject to completion and adherence by the Applicant to the conditions provided for herein.

C. The Applicant has complied with all the Rules and Regulations promulgated by the City Council as they pertain to the Application.

D. The City Council, pursuant to its authority under G.L. c. 40A, GRANTS to the Applicant a Special Permit to construct and operate retail stores, shops and/or service establishments with accessory uses pursuant to Section 200-17 of the Zoning Ordinance, to reconfigure landscaping pursuant to Section 200-47(H)(4) of the Zoning Ordinance, and to increase the maximum lot coverage applicable to the Site to approximately 65.2% pursuant to Section 200-43 of the Zoning Ordinance, as per plans submitted by the Applicant to the City Council, and subject to the following conditions:

1. 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 the Commonwealth of Massachusetts. All referenced plans, exhibits or other documents (as they are amended) are hereby incorporated into and made a part of this Special Permit.
2. The issuance of the Special Permit is subject to detailed Site Plan Review, in accordance with Chapter 63 of the City of Marlborough Code, prior to the issuance of the building permit for the Project. Any additional changes, alterations, modifications or amendments shall become further conditions of this Special Permit and shall be attached to the building permit for the Project, and no final occupancy permit shall be issued until all conditions are complied with by Applicant. Site Plan Review will be consistent with the intent of this Special Permit and its conditions.
3. Subject to the receipt of all necessary permits and approvals, including, without limitation, Conservation Commission approval to the extent required, the Applicant shall implement the traffic mitigation measures recommended in the Traffic Report prepared by Vanasse & Associates, Inc. for New England Development dated September 8, 2005, as the same may be modified and/or approved by MEPA and/or the Massachusetts Highway Department and/or the City Engineer. Said report is incorporated in its entirety into this Special Permit and is made a part hereof.



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4. The Applicant shall, at the time of the issuance of the Building Permit for the Project, pay the sum of Ten Thousand Dollars (\$10,000.00) to the City of Marlborough Inspectional Services Fund to offset the increases in costs associated with the Project's construction.
5. The Applicant shall provide status reports to the Building Department regarding compliance with the Special Permit in the following intervals:
 - A. During construction, every sixty (60) days;
 - B. Thirty (30) days prior to the anticipated occupancy date for the Project;
and
 - C. Once annually on January 1 for two (2) years after issuance of the Certificate of Occupancy for the Project.
6. This Special Permit in approved form shall be bound and labeled "SPECIAL PERMIT DOCUMENTS" and shall be available in the Applicant's on-site construction office during construction.
7. Upon issuance of the Building Permit for the Project, the Applicant shall provide Two Hundred Thousand Dollars (\$200,000.00) to the City of Marlborough Department of Public Works to be used for the study and/or implementation of improvements to the public water system in the area of the Project, specifically the system in the Robin Hill Road area.
8. Building signage and Pylon signage at the subject location as shown on the submitted plans dated June 13, 2006, prepared by Arrowstreet Inc., shall comply with the existing City of Marlborough Sign Ordinance without variance, and shall be as shown on said Plan.
9. This Special Permit shall be subject to the discontinuance of the portion of Old River Road located on the Site prior to the issuance of the Building Permit for the Project.
10. The Applicant agrees, prior to the Grand Opening of the Project, to conduct a "Job Fair", so-called. The Applicant will coordinate such Job Fair, to the extent feasible, with local schools and local or regional governmental employment



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agencies so that local residents are provided with adequate notice of employment opportunities. In addition to the implementation of the specific arrangements that the Applicant has made, the Applicant will also coordinate a like Job Fair for contractors for improvements in the Project and the Applicant will encourage its contractors to hire local construction workers for the Project.

11. The owner of the Site shall grant a utility easement to any utility company with a line (including, without limitation, gas, electricity, cable and water lines) in the portion of Old River Road located on the Site as of July 24, 2006 in order to allow the continued use by the utility company of such line in its present location or in another location on the Site acceptable to the utility company.
12. If any term or provision of Paragraphs D.1 to D.11 of this Special Permit or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Special Permit, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Special Permit shall be valid and be enforced to the fullest extent permitted by law.
13. In accordance with the provisions of Mass. Gen. Laws 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.



IN CITY COUNCIL

EXHIBIT A Marlborough, Mass., Written Submissions

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ORDERED:

Drawing No.

Title

Last

Revised

C-1	Cover Sheet	01/13/06
LM-1	Locus Map	01/13/06
KP-1	Key Plan, General Notes, Zoning Data	01/13/06
	Table Footnotes & Legend	
EC-1	Existing Conditions Plan	01/13/06
L-1	Layout Plan	01/13/06
LA-1	Landscape Plan	01/13/06
ER-1	Erosion Control Plan	01/13/06
G-1	Grading Plan	01/13/06
DR-1	Drainage Plan	01/13/06
U-1	Utility Plan 1	01/13/06
U-2	Utility Plan 2	01/13/06
E-1	Electrical Plan 1	01/13/06
E-2	Electrical Plan 2	01/13/06
D-1	Site Details 1	01/13/06
D-2	Site Details 2	01/13/06
D-3	Site Details 3	01/13/06
D-4	Site Details 4	01/13/06
D-5	Site Details 5	01/13/06
LS-1	Proposed Land Swap	05/23/06

“Traffic Impact and Access Study, Proposed Retail Development”, prepared by Vanasse & Associates, Inc. for New England Development dated September 8, 2005

“Utilities Summary” prepared for New England Development, Leavitt Parcel, Donald J. Lynch Boulevard, Marlborough, MA

“Building and Pylon Signage Plans”, prepared by Arrowstreet Inc. for New England Development dated June 13, 2006.

Yea: 8 – Nay: 2 – Absent: 1

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

Nay: Ferro, Schafer

Absent: Juairé

ADOPTED

In City Council

Order No. 06100-1076B

Adopted July 24, 2006

A TRUE COPY

ATTEST:

City Clerk