



# IN CITY COUNCIL

Marlborough, Mass., AUGUST 28, 2006

ORDERED:

## NOTICE OF DECISION GRANT OF SPECIAL PERMIT

In City Council  
Order No. 06100-1052B

Application of:  
Town Fair Tire Center  
480 Coe Avenue  
East Haven, CT

Locus:  
495 Boston Post Rd East  
Marlborough, MA 01752

### DECISION

The City Council of the City of Marlborough voted to GRANT a Special Permit to Town Fair Tire Center, to allow the sale and installation of tires for automobiles; a portion of the use involves minor repairs, changing tires and lubrication at 495 Boston Post Rd East.

Decision filed: September 5, 2006

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the fifth day of September, 2006.

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 26th day of September, 2006.

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

A TRUE COPY  
ATTEST:

City Clerk



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Marlborough, Mass.,

## ORDERED:

### Town Fair Tire Special Permit

1. Town Fair Tire Centers, Inc., a Connecticut corporation having its principal place of business at 480 Coe Avenue, East Haven, Connecticut, is hereinafter referred to as the Applicant.
2. Applicant is the proposed lessee of a portion of a certain parcel of real property located on 495 Boston Post Road East, formerly known as 481 Boston Post Rd East. The entire parcel is shown on Marlborough Assessors Map 73 as Parcel 20. The land is owned by Valtero Enterprises LLC, a Massachusetts limited liability company having its principal place of business at 22 Penny Lane, Milford, MA. The land is located entirely in a Business zone.
3. The Applicant, on or about January 19, 2006, filed with the City Clerk of the City of Marlborough an application for a Special Permit under provisions of Sec. 200-59 of the Marlborough Zoning Ordinance. Applicant intends to remodel an existing structure on the premises and use it for the sale of tires and tire accessories, which is a use permitted as of right in a Business zone. Applicant also intends to use a portion of the premises to install the tires and tire accessories sold there, and perform the related wheel alignment and tire repair. Such uses, when done in a Business zone, require a Special Permit from the City Council pursuant to Sec. 200-17 of the Marlborough Zoning Ordinance.
4. In connection with the Permit application, Applicant 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 Metrowest News and sent notice of said hearing to abutters entitled to notice under law.



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## ORDERED:

7. The Marlborough City Council, pursuant to MGL Ch 40A, held a public hearing on February 13, 2006, concerning the said application. The hearing was opened and closed at that meeting.
8. The Applicant presented testimony at the public hearing detailing the application, and describing its impact upon municipal services and on the neighborhood, including visual impacts. No person in attendance spoke in favor of or in opposition to the proposal. However, a City Councilor indicated that one or more area residents had contacted him expressing concerns about the proposal.
9. Applicant provided further written and oral documentation to the City Council's Urban Affairs Committee regarding the impacts of the proposed project, the adequacy of the proposed parking at the site, noise impacts to neighbors, and proposed building and 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 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 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 and will be 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 Ch. 40A and Chapter 200 of the Marlborough City Code, **GRANTS** the Applicant a Special Permit to use a portion of the building in question for removal and installation of tires and wheels, tire and wheel accessories, tire repair, and relating wheel balancing and alignment, **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 and shall be built according to the Special Permit Site Plan described below in Paragraph 5.



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## ORDERED:

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 Building Permit and no Occupancy Permit shall be issued until all conditions are complied with by Applicant. Any other provision of this paragraph notwithstanding:
  - (a) All plans, photo renderings, site evaluations, briefs and other documentation provided by Applicant as part of the 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 a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
  - (b) Notwithstanding condition (a) hereof, engineering changes may be made to said plans by the Site Plan Review Committee as long as said changes do not change the use of the Project as approved herein, increase the impervious area of the Project, reduce the green area, alter traffic flow or increase the size of the building shown on the plan.
- 3) Application and Documents. All plans, drawing, site evaluations and documentation provided by the Applicant as part of this Application are herein part of the record which was relied on in the issuance of this Special Permit, and will be relied on in matters of interpretation thereof.
- 4) Compliance with Local, State and Federal Laws. The 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 required hereunder are made a part of and incorporated herein as a condition to the issuance of this Special Permit. Specifically, the approved permit will be constructed substantially as shown on certain plans filed with the Urban Affairs Committee by Applicant, entitled "Town Fair Tire Center 481 Boston Post Road (Route 20) Marlborough, Massachusetts, Scale: 1'=30', dated August 26, 2005, last revised June 2, 2006, and "Town Fair Tire Center Floor Plan & Detail" dated May 23, 2006, last revised June 2, 2006, hereinafter both referred to as "the Special Permit Site



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**ORDERED.** Plans". The exterior façade will be designed and constructed substantially in conformance with a colored rendering presented by Applicant to the Urban Affairs Committee, entitled "Town Fair Tire Center Preliminary Elevations, 481 Boston Post Road, Marlborough, MA, Architect Andrew C. Milliken", dated June 23, 2006, and a line rendering entitled "Town Fair Tire Center Preliminary Elevations, Scale 1/8" = 1'", 481 Boston Post Road, Marlborough, MA Architect Andrew C. Milliken", dated June 23, 2006, and a line rendering entitled "Town Fair Tire Center Preliminary Elevations, Scale 1/8" = 1') dated May 15, 2006, last revised June 2, 2006, both hereinafter referred to as "the Special Permit building renderings". The proposed freestanding sign will be designed and constructed substantially in conformance with a rendering presented to the Urban Affairs Committee, entitled "Marlborough, MA" by Poyant Signs, dated June 1, 2006, revised June 7, 2006, revised June 21, 2006 hereinafter referred to as "the Special Permit freestanding sign rendering".

- 7) Limits of Automotive Work to be Performed. Applicant will limit the scope of work at the site to sale and installation of passenger and light truck tires and custom wheels. Applicant will provide the related services of installation, wheel balancing and wheel alignment, tire repair and other tire-related work that does not involve the replacement or installation of automotive parts. Applicant will not perform any other automotive repairs, oil changes, auto body repairs, tune-ups, brakes, shocks, mufflers or front-end repairs of any kind.
- 8) Perimeter Fencing. Applicant shall erect an 8 ft. stockade fence along portions of the perimeter of the Site, all as shown on the Special Permit site plans.
- 9) Hours of Operation. Hours of Operation will be limited to Monday 8 am to 7 pm; Tuesday through Friday 8 am to 6 pm Saturday 8:30 am to 4 pm. The store will be closed on Sunday.
- 10) Location of Service Bays. All service bays will be located on the westerly side of the building, as shown on the Special Permit site plans. Three of the four bays shown on said plan will be used for tire changing and related activities. The fourth bay will be used exclusively for wheel alignment.
- 11) Façade Appearance. The materials and appearance of the facades of the building at the site will be substantially as shown on the Special Permit building renderings. No substantial façade changes will be allowed without an amendment of this Special Permit.



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**ORDERED.** 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 May 1, all landscaping plants will be required to be installed by May 1. Applicant agrees that the permanent maintenance of the landscaping and other site improvements is an ongoing condition of this Special Permit, as shown on the Special Permit Site Plans.

- 13) Supplemental Permit Review Fee Applicant shall, at the time of application for a Building Permit, pay the sum of One Thousand Five Hundred (\$1,500) Dollars to the City of Marlborough Inspectional Services Fund to offset the increase in costs associated with the project's construction, such as, but not limited to, materials, staff, equipment and supplies related to permitting, monitoring and inspection of the project.
- 14) Freestanding Sign Characteristics. The entrance freestanding sign will be as shown on the Special Permit freestanding sign rendering, will be externally illuminated and will be installed along the Boston Post Rd. travel way upon Applicant's property. No signage will be illuminated except between one-half hour before opening and one hour after closing. Applicant will obtain all necessary sign permits with requesting any variances.
- 15) Indoor Storage of Vehicles. All vehicles of Town Fair Tire, its agents or employees will be stored in the building bays when the business is not in operation.
- 16) Site Lighting. No parking lot light fixture will exceed 250 watts. All fixtures will be screened from abutting residential properties. Deflectors will be utilized and configured to mitigate light from entering abutting properties.
- 17) Cooperation in Rte. 20 Beautification. Applicant will provide, at the recommendation of the City Planner, funds not exceeding \$2,500 per year as long as a Town Fair Tire store is in operation at the premises to pay for the planning and implementation of offsite landscaping in the area of Rte. 20 between Farm Rd. and Concord Rd; provided, however, that all funds contributed after July 1, 2008 will be used for plan implementation.
- 18) Trash and Tire Pickup. No trash or tire pickup will occur before 10:00 a.m. or after 6:00 p.m.



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- 19) Mitigation Fee. In recognition of the site impact of this project and in mitigation thereof, Applicant will pay a site mitigation fee to the City of Marlborough in the amount of Fifty Thousand (\$50,000) Dollars, said payment to be due before the issuance of any Certificate of Occupancy regarding this project, the said funds to be used as follows:
  - a) Twenty-Five Thousand (\$25,000) Dollars to improve public safety through the acquisition of an addition police cruiser;
  - b) Twenty-Five Thousand (\$25,000) Dollars to the Rte. 20 Pedestrian Corridor Stabilization Fund, improve pedestrian safety and encourage pedestrian access to Rte. 20 through the design and construction of a continuous pedestrian corridor along the northerly side of Rte. 20 from Concord Road to Farm Road.
  
- 20) Noise Mitigation Measures. As shown on the Special Permit Site Plans, the air compressor will be located in a separate soundproof room to be constructed by Applicant in a portion of the area that was to be occupied by a service bay on the eastern side of the building. All tire removal machines will be located behind a wall to be constructed to the rear of the proposed westerly side service bays, said wall to be made of sound-retardant materials acceptable to the City Engineer. Entrances to said area will be screened with heavy plastic slats to reduce noise. All bay doors will be operated electrically, and each door will be connected to the impact wrenches used in said bay in order to cause said wrenches to become inoperable when said bay door is more than six (6") inches from the ground. All bay doors will be equipped with timers so that if any bay door remains open for more than 90 seconds the door will automatically close. Sound-retardant walls ten (10) feet tall and twenty-four (24) feet long will be constructed between the service bays. Landscaped sound and visual improvement barriers will be constructed as shown on the Special Permit Site Plans. All tire machines will be electric and air rather than air and hydraulic. The impact air guns will be a new quieter model air gun. All said equipment will be maintained so as to minimize noise caused by their operation.
  
- 21) Advertising Signage in Windows Prohibited. No advertising signage of any kind will be allowed in the building windows at any time.
  
- 22) 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 rear property line, which line abuts existing residences. Prior to the issuance of a Certificate of Occupancy regarding this project, Applicant will notify the owners and tenants of the abutting residential property, in a manner satisfactory to the Building Commissioner, that any noise complaints regarding



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- 23) 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 53dbA at the 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 53 dbA at the 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 report 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 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 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.
- 24) Maintenance of Landscaping. Applicant will maintain all landscaping that Applicant installs at the site.
- 25) Permitting for Water and Sewer Connections. Water and sewer services provided to the project shall be subject to current citywide water and sewer services 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.
- 26) Storage of Tires. All new and scrap tires and rims will be stored inside the building. No outside displays will be allowed.



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- 27) Maintenance of Parking. Parking areas will be swept and maintained as necessary.
- 28) Minimizing of Delivery Noise. All delivery trucks will turn off their engines while making deliveries and pickups.
- 29) Screening of Dumpster. Applicant shall screen any trash receptacles for trash derived from its operation behind an eight (8) foot stained cedar stockade fence with landscaping around the perimeter of the trash dumpster. The dumpster located at the site will be covered at all times.
- 30) Ban on Overnight Vehicle Dropoffs. No overnight motor vehicle dropoffs will be permitted.
- 31) Snow Storage. Adequate snow storage is to be provided onsite. However, Applicant may elect to utilize off-site storage and disposal.
- 32) Local Employment Opportunity. In order to promote local jobs for local residents, Applicant agrees to hold a local jobs fair and to promote the job fair by advertising in the local news media.
- 33) This Special Permit shall be recorded in the Middlesex South Registry in accordance with the provisions of MGL ch.40A, Sec. 11 within twenty (20) days after the expiration of the appeal period for the granting of the Special Permit.

APPROVE

ADOPTED

In City Council

Order No. 06100-1052A

Adopted September 11, 2006

A TRUE COPY

ATTEST:

City Clerk