

JUNE 25, 2007

**NOTICE OF DECISION  
GRANT OF SPECIAL PERMIT**

In City Council  
Order No. 07100-1500C

Application of:  
St. Mary's of French Hill Redevelopment, LLC  
69 Lowell Ave.  
Newton, MA 02460

Locus:  
26 Broad St.  
Map 80, Parcel 61, 61A, 67 & 68.

**DECISION**

The City Council of the City of Marlborough hereby **GRANTS** the Application of St. Mary's of French Hill Redevelopment, LLC as provided in the DECISION and subject to the following FINDINGS OF FACTS AND CONDITIONS.

Decision filed: July 12, 2007

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 12<sup>th</sup> day of July, 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:

City Clerk



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ORDERED:

## ST. MARY'S OF FRENCH HILL REDEVELOPMENT, LLC

### SPECIAL PERMIT FINDINGS OF FACT AND CONDITIONS

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to St. Mary's of French Hill Redevelopment LLC, having a principal place of business at 69 Lowell Ave., Newton, MA 02460 as provided in this Decision and subject to the following Findings of Facts and Conditions.

1) St. Mary's of French Hill Redevelopment, LLC, is a Massachusetts limited liability company having a business address of 69 Lowell Ave., Newton, MA 02460, and is hereinafter referred to as Applicant.

2) Applicant is the prospective owner of certain real property located at 26 Broad St., Marlborough, MA shown on the Marlborough Assessors Maps as Map 80 Parcels 61, 61A, 67 and 68. The land is entirely located in a Residence C zone. The property was originally developed and used as the site of the St. Mary's Church, Rectory and School, together with a related parking structure and parking lot.

3) Applicant received a variance from the Zoning Board of Appeals for the City of Marlborough, Case #1358-2006 to deviate from the required maximum lot coverage of 30% to 50.9% on February 9, 2007.

4) The Applicant, on or about March 8, 2007, filed with the City Clerk of the City of Marlborough an application for a Special Permit under the provisions of General Laws C.40§6 and Marlborough Zoning Ordinance Article IV Sec. 200-12 Paragraph B, and Article V Section 200 Paragraph 17 and Section 200 Paragraph 18(4), of the Marlborough Zoning Ordinance and Massachusetts General Laws Chapter 40A §6. Applicant intends to alter the preexisting nonconforming structures that exist thereon, through the adaptive reuse of the existing structures to accommodate twenty-five (25) residential housing units. In addition, Applicant intends to construct on the premises eleven (11) new townhouse units. The Project will be developed in two phases. In Phase I, Applicant will complete the adaptive reuse of the former school into ten (10) units, and adaptive reuse of the former rectory into five (5) units. In Phase II, Applicant will complete the adaptive reuse of the former church into ten (10) units, and will construct the eleven (11) new townhouse units.

5) In connection with the permit application, Applicant filed a Summary Impact Statement, certified list of abutters, filing fee and twenty (20) copies of the Site Plan.



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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.

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 April 9, 2007, concerning the said application. The hearing was opened and closed at that meeting.

9) Applicant 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 abutters who described the positive anticipated impact of the proposal.

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.

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. Further, the City Council finds that the proposed new use of the non-conforming structures at the site will not be substantially more detrimental to the neighborhood than the original uses of those structures. The visual impacts from the proposed use have been mitigated, and the traffic impacts will be no more detrimental than the possible impacts from alternative 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.



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C) The City Council, pursuant to its authority under MGL C.40A §6 and under Chapter 200 of the Marlborough City Code, GRANTS the Applicant a Special Permit to alter the non-conforming structures that exist on the premises in order to allow their use for twenty-five (25) residential units, and to allow the construction of eleven (11) new townhouse units on the premises, (the "Project"), SUBJECT TO THE FOLLOWING CONDITIONS:

1) Compliance With Building Regulations. Construction and modification of all structures on the site are 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 "St Mary's of French Hill Redevelopment, LLC Site Plan for a 36 Unit Condominium Development" dated March 21, 2006 last revised February 20, 2007 by Hancock Associates, 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.

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, or reduce the overall green space of the Project will require subsequent approval by the City Council.

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.



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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 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 on 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. All said improvements will be completed prior to the issuance of the first occupancy permit for the new townhouses being constructed pursuant to this special permit. 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 \$4,500 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) Limit and Type of Residential Units. The project will contain thirty-six (36) units, consisting of thirty-five (35) two-bedroom units and one (1) three-bedroom unit.



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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 Applicant shall return to the City Council for approval of these modifications to the Special Permit. Applicant shall apply for and obtain all necessary permits from the necessary parties.

10) 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 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.

13) 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.

14) Exterior Light Fixtures. All illumination of individual parking lot light fixtures shall not exceed 200-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 fourteen (14) feet at its highest point.

15) 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.





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23) Street Opening. In connection with the installation of improvements within public right-of-ways which requires a street opening permit, the City Engineers shall be provided with a schedule of work and the construction procedures to be utilized prior to the commencement of such work. To the extent a police detail is required for such improvements, the Applicant and not the City of Marlborough will bear the costs of any police detail for any work performed within the public way.

24) Access Allowed. Access on the Site will be allowed for trash and snow removal deliveries that will be servicing Fay Court.

25) Fay Court Road and Drainage Improvements. Applicant has filed with the Urban Affairs Committee a revised plan entitled "GRADING, DRAINAGE AND UTILITIES PLAN" which was revised on May 17, 2007 to reflect the repair of certain sidewalk panels next to the Project on Broad Street, the installation of granite curbing at certain locations, and the installation, repair and/or replacement of drainage structures. All said improvements as shown on said plan will be installed prior to the issuance of the first occupancy permit for the first unit of the Project.

26) Fay Court Water Pressure Improvements. Applicant will cause its internal water system to create a loop into the City water system by connecting said water system into the existing Broad St. and Fay Court water mains as shown on the Plan referred to in Condition #27 above. In addition, in response to perceived individual water pressure problems at 14 Fay Court, 17 Fay Court and 19 Fay Court, Applicant will pay to the owners of said properties the sum of Fifteen Hundred (\$1,500) Dollars per property in order to allow the owners of said properties, in their discretion, to purchase and operate individual water pumps at their properties. All said water system improvements and all said mitigation payments shall be made prior to the issuance of the first occupancy permit for the first unit in the Project.



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27) Owner-Occupancy. It shall be a condition of the condominium bylaws of the Project that all units in the project that are sold will be purchased by a person or persons who intend to reside in the units. The condominium documents shall provide for appropriate daily fines for the violation of this section of the condominium bylaws, and will provide that this section may not be amended. No occupancy permit regarding the Project shall be issued unless and until the City Solicitor has certified to the Building Commissioner that the condominium bylaws for the Project conform to this provision and that the said condominium bylaws, along with the condominium master deed, have been recorded. Applicant may, following the issuance of the occupancy permit for a particular unit but prior to the conveyance thereof to the purchaser of the unit, rent said unit to tenants; provided, however, that:

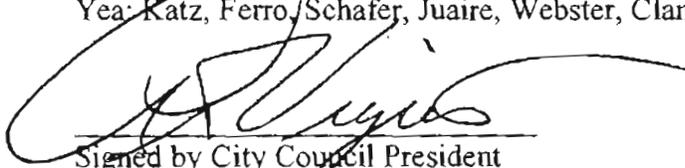
- a) no said unit shall be or continue to be rented after the third anniversary of the date of the occupancy permit of said unit;
- b) no unit shall be rented or continue to be rented after the fifth anniversary of the date of issuance of the first occupancy permit for the Project;
- c) the number of units being rented to and occupied by tenants shall not at any time exceed three (3) units in Phase I and four (4) units in Phase II; and
- d) no sign at the premises shall market any unit as being for rent.

28) Handicapped-Accessible Units. Two of the units in the former school will be marketed as handicapped-accessible, and will be appropriately modified to accommodate the needs of a handicapped buyer at no extra cost to the buyer.

29) No Further Subdivision of Condominiums. Applicant shall cause there to be included in the Master Deed creating the condominium for the Project a requirements that there shall be no further units created within the condominium other than the thirty-six (36) units allowed through this special permit. Prior to the issuance of the first occupancy permit for the first unit of the Project, the City Solicitor shall verify in writing to the Building Commissioner that the Master Deed creating the condominium for the Project has been recorded, that said requirement is contained in the Master Deed, and that the Master Deed contains a provision that said Master Deed requirement prohibiting the creation of further units may not be eliminated.

Yea: 11 - Nay: 0

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

  
Signed by City Council President  
Arthur G. Vigeant

ADOPTED  
In City Council  
Order No. 07100-1500C