

REGULAR MEETING
JUNE 17, 2019
TIME: 8:00 PM

IN CITY COUNCIL
ABSENT
LOCATION: CITY HALL, 140 MAIN STREET, 2ND FLOOR

CONVENED:
ADJOURNED:
RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2019 JUN 13 P 1:40

1. Minutes, City Council Meeting, June 3, 2019.
2. PUBLIC HEARING On the Application for LED Sign Special Permit from Attorney Elizabeth McDonough Noonan on behalf of Colbea Enterprises, LLC (Shell Gas Station), 342 Boston Post Road East, Order No. 19-1007670.
3. PUBLIC HEARING On the Proposed Zoning Amendment to Chapter 650 §12, Nonconforming Uses, from Attorney Brian Falk on behalf of David Skarin, Order No. 19-1007673.
 - a. Communication from Attorney Arthur Bergeron, re: Proposed Zoning Amendment to Chapter 650, §12 Nonconforming Uses, Order No. 19-1007673.
4. Communication from the Mayor, re: Promotions within the Marlborough Fire Department.
5. Communication from the Mayor, re: Reappointment of Police Chief David Giorgi as Keeper of the Lockup for a term of one year.
6. Communication from the Mayor, re: Draft Zoning Petition related to the Route 20 East corridor.
7. Communication from City Solicitor, Jason Grossfield, re: Proposed Small Cell Antenna Petition of New Cingular Wireless PCS, LLC (AT&T), 28 Concord Road, in proper legal form, Order No. 17/19-1007055C.
8. Communication from City Solicitor, Jason Grossfield, re: Application for Special Permit from Thomas Coder, to demolish the existing single-story home and construct a new two-story home at 21 Patten Drive, in proper legal form, Order No. 19-1007612B.
9. Communication from DPW Commissioner, John Ghiloni, re: Proposed Easement for Sudbury Street Sewer Project, Phase 4, 55 Hanlon Drive.
10. Communication from DPW Commissioner, John Ghiloni, re: Proposed Easement for Sudbury Street Sewer Project, Phase 4, 263 Sudbury Street.
11. Communication from DPW Commissioner, John Ghiloni, re: Proposed Easement for Sudbury Street Sewer Project, Phase 4, 299 Sudbury Street.
12. Communication from Code Enforcement Officer, Ethan Lippitt, re: Request for Sign, Synopsys, 11 Apex Drive, within the HRMUOD, Order No. 16/19-1006443.
13. Application for Special Permit from Attorney Brian Falk, on behalf of St. Mary's Credit Union, for two drive-thru facilities associated with a bank and coffee shop building to be located at 133 South Bolton Street.

Electronic devices, including laptops, cell phones, pagers, and PDAs must be turned off or put in silent mode upon entering the City Council Chamber, and any person violating this rule shall be asked to leave the chamber. Express authorization to utilize such devices may be granted by the President for recordkeeping purposes.

14. Communication from Touré Foster, re: Letter of Opposition to Proposed Zoning Amendment – Home Office and Contractor/Landscape Contractor Storage Yards, Order No. 18/19-1007500F.
15. Communication from the MA State Lottery Commission re: Application for Keno Monitor, Marlboro Smoke Shop, 170 Pleasant Street, Order No. 19-1007534.
16. Minutes, Board of Assessors, May 1, 2019.
17. Minutes, Conservation Commission, May 16, 2019.
18. Minutes, Historical Commission, May 16, 2019.
19. Minutes, High School Council, June 10, 2019.
20. CLAIMS:
 - a) Alexandre Cezar, 62 Linda Circle, other property damage and/or personal injury.
 - b) Jeff DiBuono, 25 Jacobs Road, residential mailbox claim (2a).
 - c) Lauren Jackson, 219 Phelps Street, pothole or other road defect.
 - d) Elyse Probst, 22 Broad Street, #225, other property damage and/or personal injury.

REPORTS OF COMMITTEES:

UNFINISHED BUSINESS:

From Finance Committee

21. **Order No. 19-1007682 – Snow and Ice Year End Transfers for \$1,325,300.00:** The Finance Committee reviewed the Mayor’s letter dated May 16, 2019 requesting a transfer of \$1,325,300.00 from the Undesignated Fund account to the following snow and ice accounts:

- \$280,300.00 to Overtime Snow and Ice
- \$395,000.00 to Snow Removal
- \$650,000.00 to Operating Expenses

The Finance Committee voted 3 - 0 to approve the transfers.

22. **Order No. 19-1007683 – Transfer \$388,000.00 from Meals Tax Revenue Account to FY19 Bond Payment for Parks and Recreation Improvements:** The Finance Committee reviewed the Mayor’s letter dated May 16, 2019 requesting a transfer of \$388,000.00 from the Meals Tax Revenue Account to the FY19 bond payment for parks and recreation improvements. The May 2019 balance in the Meals Revenue Account is \$3,925,755.96. The Finance Committee reviewed the Comptroller letter dated May 22, 2019 that outlined the future bond payments for the two approved bonds through 2032. **The Finance Committee voted 3 – 0 to approve the transfer.**

23. **Order No. 19-1007684A – Year End Transfer in the amount of \$58,000.00 for the Department of Public Works:** The Finance Committee reviewed the Mayor’s letter dated May 16, 2019 requesting year end transfers from within the existing budget in the amount of \$58,000.00 within various DPW accounts for park maintenance, consultant fees for the Assistant Commissioner duties and roof and masonry repairs at the DPW. **The Finance Committee voted 3 – 0 to approve the transfer.**
24. **Order No. 19-1007685 – Transfer \$16,900.00 from Reserve for Salaries to Fund Retirement of Human Resource Director:** The Finance Committee reviewed the Mayor’s letter dated May 16, 2019 requesting the transfer of \$16,900.00 from Reserve for Salaries to fund the retirement costs associated with the retirement of the Human Resource Director. **The Finance Committee voted 4- 0 to approve the transfer.**
25. **Order No. 19-1007686 – Transfer \$4,500.00 to Open Space Stabilization Account for FY18 Antenna Receipts:** The Finance Committee reviewed the Mayor’s letter dated May 16, 2019 requesting a transfer of \$4,500.00 from the Undesignated Fund account to the Open Space Stabilization. The source of the \$4,500.00 is from the FY18 wireless antennae receipts. The DPW Commissioner mentioned that \$22,500.00 was incorrectly moved to the Parks and Recreation Revolving Fund. This will be corrected for the FY19 transfer. **The Finance Committee voted 5 - 0 to approve the transfer.**
26. **Order No. 19-1007687 – Fiscal Year 2020 Revolving Fund Spending Limits:** The Finance Committee reviewed the Mayor’s letter dated May 16, 2019 requesting the City Council approve the spending limits for three Revolving Funds for FY2020:
- Order - That no more than \$350,000.00 shall be expended from the Parks and Recreation Revolving Fund during Fiscal Year 2020, unless otherwise authorized by the City Council and Mayor.
 - Order - That no more than \$75,000.00 shall be expended from the Public Safety Revolving Fund during Fiscal Year 2020, unless otherwise authorized by the City Council and Mayor.
 - Order - That no more than \$70,000.00 shall be expended from the Council on Aging Revolving Fund during Fiscal Year 2020, unless otherwise authorized by the City Council and Mayor.

The Finance Committee voted 5 - 0 to approve all three Revolving Fund Spending limits for FY20.

From Urban Affairs Committee

27. **Order No. 19-1007612B (X 18-1007244): Application for Special Permit from Thomas Coder, to demolish existing single-story home and construct a new two-story home at 21 Patten Drive.** Chairman Delano was recused as he was absent from the public hearing on April 29, 2019 and Councilor Juaire was the acting chairman for this item. The committee met with Tom Coder, 3 Atwood Road, Southborough, who was applying for a special permit to tear down the existing home at 21 Patten Drive and build a new home. Mr. Coder displayed a picture of the current home, viewed floor plans for the basement, first and second floors, and a front and side elevation. Mr. Coder stated the new plans lowered the height of the home between 4.5 – 5.0 feet from the previously submitted design. The committee discussed with the Building Commissioner and applicant the setbacks, lot coverage (733 SF versus 1,767 SF), and building location on the site. The applicant stated he planned to have a small patio and no deck, and the committee voted to have a condition in the special permit that there be no decks on the sides of the home. The Ward Councilor (President Clancy) liked the new design and had no objections to the new project. **Motion made by Councilor Doucette, seconded by the Chair, to include a condition, there be no decks on the sides of the home. The motion carried 4-0. Motion made by Councilor Doucette, seconded by the Chair, to approve the special permit as amended. The motion carried 4-0.**

From Legislative & Legal Affairs Committee

28. **Order No. 19-1007688A: Communication from City Solicitor Donald Rider regarding Proposed Conservation Restriction and Proposed Regulatory Agreement, Avalon Orchards, 91 Boston Post Road East.** Solicitor Rider provided the Council with a letter detailing these matters. The conservation restriction on approximately 9 acres of land is condition #10 in a ZBA comprehensive permit approved in 2000. Another condition calls for a trail easement within that land. A trail was created but has become overgrown, and the trail easement was not recorded to signify the condition was met. Conservation Commission approval is also required. An email from Priscilla Rider indicates a vote to approve carried at their meeting on May 16, 2019. **Councilor Delano moved to approve the Conservation Restriction for Avalon Orchard, 91 Boston Post Road. It was seconded, and the motion carried 3-0. The second matter related to this property is the Regulatory Agreement, which will extend to the year 2045 the ability to count all 156 rental units in the property as affordable units. Councilor Delano moved to approve the Regulatory Agreement for Avalon Orchard, 91 Boston Post Road. It was seconded, and the motion carried 3-0.**

Communication from City Solicitor, Jason Grossfield, re: 1) Proposed Grant of Public Trail Easement; 2) Proposed Conservation Restriction and 3) Proposed Regulatory Agreement, Avalon Orchards, 91 Boston Post Road East, in proper legal form, Order No. 19-1007688A.

From Public Services Committee

29. **Order No. 19-1007651: Application for Renewal of Junk Dealer/Second Hand Dealer License, Jean Rabelo, d/b/a Post Road Used Auto Parts, 785 Boston Post Road East.** Police Chief Giorgi approved the CORI report for Jean Rabelo and had no objection to their application for a Junk Dealer's/Second Hand License. Jean Rabelo and Julio Rabelo appeared before the committee to request renewal of their license. Ms. Rabelo stated the business is doing well and they take pride in it. She did discuss her attendance at a public meeting regarding the redevelopment of Route 20 where her business was mentioned as the former auto parts recycler. The councilors in attendance were unaware of this and indicated their support for her business as it provides a valuable service to the City and region. **Motion made by Councilor Doucette, seconded by the Chair, to approve the license renewal for Jean Rabelo, d/b/a Post Road Used Auto Parts, 785 Boston Post Road East. The motion carried 3-0.**
30. **Order No. 19-1007652: Application for Renewal of Junk Dealer/Second Hand Dealer License, Gerald Dumais, d/b/a Dumais & Sons Second Hand Store, 65 Mechanic Street.** Police Chief Giorgi approved the CORI report for Gerry Dumais and had no objection to his application for a Junk Dealer's/Second Hand License. Gerry Dumais appeared before the committee for renewal of his license. He has opened the store once in the past year (the previous Thursday) for two customers. He is in the process of cleaning it up as it has become cluttered. **Motion made by Councilor Doucette, seconded by the Chair, to approve the license renewal for Gerald Dumais, d/b/a Dumais & Sons Second Hand Store, 65 Mechanic Street. The motion carried 3-0.**

31. **Order No. 19-1007653: Application for Renewal of Junk Dealer/Second Hand Dealer License, Best Buy Stores LP #820, d/b/a Best Buy, 769 Donald J. Lynch Boulevard.** Police Chief Giorgi approved the CORI report for Kelly Costello and had no objection to their application for a Junk Dealer's/Second Hand License. Kelly Costello appeared on behalf of Best Buy seeking renewal of their license. Ms. Costello explained they receive many trade-ins for phones as people upgrade their devices and a large part of their business is recycling smaller electronic items in store such as laptops, monitors, smaller televisions, keyboards, cables, and ink/toner cartridges. Best Buy also offers recycling as part of their home services for refrigerators, large televisions, and other large items which are sent to their warehouse in Bellingham. The Best Buy in-store recycling program will take items without requiring a purchase. **Motion made by Councilor Irish, seconded by the Chair, to approve the license renewal for Best Buy Stores LP #820, d/b/a Best Buy, 769 Donald J. Lynch Boulevard. The motion carried 3-0.**
32. **Order No. 19-1007672A: Petition from TC Systems, Inc., on behalf of AT&T, to install new underground conduits with cable on Forest Street from Pole #24 to Verizon MH #516 for a distance of 65' within the Public Way.** Chris Murray of TC Systems, who provide local services for AT&T, explained they wish to install underground conduits from a utility pole into Verizon systems which services the 200 Forest Street Business Park. The project will take two to three days and they hope to complete it as soon as possible. Thomas DiPersio, City Engineer, indicated the project will require a road opening permit and they will coordinate with TC Systems regarding the finishing of Forest Street. **Motion made by Councilor Doucette, seconded by Councilor Irish, to approve the Petition from TC Systems, Inc., on behalf of AT&T. The motion carried 3-0.**
33. **Order No. 17/19-1007055C: Communication from Attorney Michael Dolan on behalf of New Cingular Wireless PCS, LLC (AT&T), regarding Small Cell Antenna Petition, 28 Concord Road.** Michael Dolan, attorney for Brown Rudnick, appeared on behalf of New Cingular Wireless (AT&T) and provided background information on their request. In October 2017, they requested permission to install a small antenna facility on the top of a utility pole near 28 Concord Road at the same time as several other sites. Based upon feedback and concerns from the Councilors, AT&T made changes and received approval for three sites. At this site, the utility pole is tilting and based upon aesthetics and safety, the City Council tabled the petition. National Grid has agreed to replace the existing utility pole with a new, straight pole and to allow AT&T to relocate their equipment 11 feet off the ground. AT&T will bear the cost for the installation of the new pole. **Motion made by Councilor Doucette, seconded by Chair, to approve the small cell antenna petition at 28 Concord Road, as amended, with condition that the building permit for the wireless site is subject to the installation of a new utility pole as proposed by AT&T. Motion carried 3-0.**

From City Council

34. Communication from City Solicitor, Jason Grossfield, re: Proposed Zoning Ordinance Amendment to Chapter 650, §5, §17, & §18 – Home Office and Contractor/Landscape Contractor Storage Yards, in proper legal form, Order No. 18/19-1007500F, **ITEM WAS TABLED UNTIL THE JUNE 17, 2019 CITY COUNCIL MEETING.**



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2019 JUN 10 A 8:55

**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK**
Steven W. Kerrigan
140 Main St.
Marlborough, MA 01752
(508) 460-3775 FAX (508) 460-3723

JUNE 3, 2019

Regular meeting of the City Council held on Monday, June 3, 2019 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Juare, Oram, Ossing, Robey, Delano, Doucette, Dumais, Tunnera, Irish and Landers. Meeting adjourned at 10:32 PM.

ORDERED: That the Minutes of the City Council meeting, MAY 20, 2019 **FILE**; adopted.

ORDERED: That the PUBLIC HEARING On the Petition from Massachusetts Electric and Verizon New England, to relocate Pole and anchor #6 to the opposite side of Boudreau Avenue to accommodate a city road widening project, Order No. 19-1007690, all were heard who wish to be heard, hearing closed at 8:02 PM; adopted.

Councilors Present: Delano, Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juare, Oram, Ossing & Robey.

ORDERED: That the JOINT PUBLIC HEARING WITH THE PLANNING BOARD On the Proposed Revised Zoning Amendment to Chapter 650, §5, §17, & §18 – Home Office and Contractor/Landscape Contractor Storage Yards, Order No. 18/19-1007500D, all were heard who wish to be heard, hearing closed at 9:36 PM; adopted.

Councilors Present: Delano, Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juare, Oram, Ossing & Robey.

Planning Board Members Present: Fenby, Elder, Hodge, LaVenture, Russ.
Planning Board Members Absent: Fay.

President Clancy called a recess at 9:36 PM and returned to open meeting at 9:41 PM.

ORDERED: That the Communication from the Mayor, re: Appointment of Jason Grossfield as City Solicitor of the City of Marlborough, effective May 20, 2019, **FILE**; adopted.

ORDERED: That the sum of \$4,000,000.00 (four million dollars) be and is hereby appropriated for street construction.

That to meet said appropriations, the Comptroller/Treasurer, with the approval of the Mayor, is hereby authorized to borrow the sum of \$4,000,000.00 under and pursuant to the provisions of Chapter 44, Section 7 (1) of the Massachusetts General Laws, as amended and supplemented, or any other enabling authority, and to issue bonds or notes of the City of Marlborough therefor. Any premium received by the City upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount, refer to **FINANCE COMMITTEE**; adopted.

ORDERED: That Transfer Request in the amount of \$1,752,958.50 for various department needs as outlined in the Mayor's letter, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
DEPT:		Various				FISCAL YEAR:		2019	
FROM ACCOUNT:						TO ACCOUNT:			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$6,919,461.00	\$1,752,958.50	10000	35900	Undesignated Fund	\$60,000.00	19300006	58512	Capital Outlay-Fire	\$68,937.45
	Reason:	To fund equipment requests							
					\$750,000.00	19300006	58461	Capital Outlay-Sewer	\$0.00
					\$201,000.00	19300006	58593	Capital Outlay-Police	\$1,716.25
	Reason:								
					\$283,958.50	19300006	58514	Capital Outlay-DPW Projects	\$0.00
	Reason:								
					\$28,000.00	19300006	57102	Capital Outlay-Building	\$0.00
	Reason:								
					\$430,000.00	19300006	58467	Capital Outlay-Public Facilities	\$0.00
	Reason:								
	\$1,752,958.50	Total			\$1,752,958.50	Total			

ORDERED: That the Transfer Request for the Department of Public Works in the amount of \$49,090.00 00 to fund the recently ratified 3-year contract with the DPW Engineers Local 176 through FY2021, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH BUDGET TRANSFERS -									
DEPT:		FROM ACCOUNT:				FISCAL YEAR:		2019	
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance
\$485,582.65	\$49,090.00	11990006	57820	Reserve for Salaries	\$1,560.00	14001101	50108	GIS Administrator	\$5,977.00
	Reason:	Contractual Obligation			Reason:	Contractual Obligation			
					\$3,700.00	14001101	50660	Asst. City Engineer	\$14,219.00
	Reason:				Reason:	Contractual Obligation			
					\$1,110.00	14001101	50700	Grade II Engineering Aide	\$5,573.00
	Reason:				Reason:	Contractual Obligation			
					\$5,630.00	14001101	50710	Junior Civil Engineer	\$29,504.00
	Reason:				Reason:	Contractual Obligation			
					\$230.00	14001103	51430	Longevity	\$109.00
	Reason:				Reason:	Contractual Obligation			
					\$275.00	14001103	51920	Sick Leave Buy Back	\$0.00
	Reason:				Reason:	Contractual Obligation			
					\$1,780.00	14001301	50660	General Foreman	\$6,920.00
	Reason:				Reason:	Contractual Obligation			
					\$630.00	14001303	51430	Longevity	\$206.00
	Reason:				Reason:	Contractual Obligation			

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT:		FROM ACCOUNT:				FISCAL YEAR:		2019		TO ACCOUNT:	
Available Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Available Balance		
					\$390.00	14001303	51920	Sick Leave Buy Back	\$0.00		
	Reason:							Contractual Obligation			
					\$1,850.00	14001401	50692	Automotive Maintenance	\$7,017.00		
	Reason:							Contractual Obligation			
					\$125.00	14001403	51430	Longevity	\$4.00		
	Reason:							Contractual Obligation			
					\$75.00	14001403	51920	Sick Leave Buy Back	\$0.00		
	Reason:							Contractual Obligation			
					\$1,850.00	14001501	50680	General Foreman	\$7,017.00		
	Reason:							Contractual Obligation			
					\$625.00	14001503	51430	Longevity	\$0.00		
	Reason:							Contractual Obligation			
					\$1,060.00	14001503	51920	Sick Leave Buy Back	\$69.00		
	Reason:							Contractual Obligation			
					\$1,515.00	60080001	50570	Chemist	\$15,422.00		
	Reason:							Contractual Obligation			

CITY OF MARLBOROUGH
BUDGET TRANSFERS -

DEPT:		FROM ACCOUNT:				FISCAL YEAR:		2019	
Available Balance		TO ACCOUNT:						Available Balance	
Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Amount	Available Balance
				\$1,150.00	60080001	50580	Asst Chemist		\$4,404.00
				Reason:			Contractual Obligation		
				\$35.00	60080003	51430	Longevity		\$0.00
				Reason:			Contractual Obligation		
				\$10.00	60080003	51920	Sick Leave Buy Back		\$194.00
				Reason:			Contractual Obligation		
				\$6,210.00	60081001	50850	Treatment Plant Operator		\$27,898.00
				Reason:			Contractual Obligation		
				\$1,850.00	60081001	50910	Chief Treatment Plant Oper.		\$7,107.00
				Reason:			Contractual Obligation		
				\$300.00	60081003	51430	Longevity		\$0.00
				Reason:			Contractual Obligation		
				\$185.00	60081003	51920	Sick Leave Buy Back		\$0.00
				Reason:			Contractual Obligation		
				\$5,500.00	60085001	50850	Treatment Plant Operator		\$21,509.00
				Reason:			Contractual Obligation		

CITY OF MARLBOROUGH
BUDGET TRANSFERS -

DEPT:		FROM ACCOUNT:			FISCAL YEAR:		2019			
Available Balance	Amount	Org Code	Object	Account Description:	Amount	TO ACCOUNT:	Org Code	Object	Account Description:	Available Balance
	Reason:				Reason:	Contractual Obligation				
					\$1,800.00	60085001	50910	Chief Treatment Plant Oper.		\$7,144.00
	Reason:				Reason:	Contractual Obligation				
					\$100.00	60085003	51430	Longevity		\$0.00
	Reason:				Reason:	Contractual Obligation				
					\$95.00	60085003	51920	Sick Leave Buy Back		\$1.00
	Reason:				Reason:	Contractual Obligation				
					\$1,725.00	61090001	50680	General Foreman		\$8,481.00
	Reason:				Reason:	Contractual Obligation				
					\$75.00	14001403	51440	Education Incentive		\$43.00
	Reason:				Reason:	Contractual Obligation				
					\$75.00	14001503	51440	Education Incentive		\$0.00
	Reason:				Reason:	Contractual Obligation				
					\$4,500.00	60081003	51440	Education Incentive		\$575.00
	Reason:				Reason:	Contractual Obligation				
					\$3,000.00	60085003	51440	Education Incentive		\$0.00
	Reason:				Reason:	Contractual Obligation				
					\$75.00	61090003	51440	Education Incentive		\$0.00
	Reason:				Reason:	Contractual Obligation				

ORDERED: That the Transfer Request for the Legal Department in the amount of \$6,000.00 from Reserved for Salaries to City Solicitor to fund the position for the remainder of FY19, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
DEPT:		Legal				FISCAL YEAR:		2019		
		FROM ACCOUNT:				TO ACCOUNT:				
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$485,582.65	\$6,000.00	11990006	57820	Reserve for Salaries	\$6,000.00	11510001	50030	City Solicitor		\$11,766.55
Reason:		To fund City Solicitor line through June 30th due to a retirement								
	\$6,000.00	Total			\$6,000.00	Total				

ORDERED: That the Communication from the Mayor, re: S+P Global Bond Rating for the City of Marlborough, **FILE**; adopted.

ORDERED: That the Communication from City Clerk, Steven Kerrigan, re: Appointment of Wilson Chu as Assistant City Clerk effective June 3, 2019, **FILE**; adopted.

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed License for Outdoor Seating requested by Melynda & JP Gallagher of Lost Shoe Brewing and Roasting Company, 19 Weed Street in proper legal form, **MOVED TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed Zoning Map Amendment, by St. Mary's Credit Union for land on John Street, identified as Map 82, Parcels 112 & 113, in proper legal form, **MOVED TO ITEM 26**; adopted.

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed Zoning Ordinance Amendment to add to Chapter 650 a new section, which will create the Executive Residential Overlay District in the Simarano Drive and Cedar Hill Road Area, in proper legal form, **MOVED TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed Grant of Public Trail Easement, Proposed Conservation Restriction and Proposed Regulatory Agreement, Avalon Orchards, 91 Boston Post Road East, in proper legal form, **MOVED TO REPORTS OF COMMITTEE**; adopted.

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed Zoning Ordinance Amendment to Chapter 650, §5, §17, & §18 – Home Office and Contractor/Landscape Contractor Storage Yards, in proper legal form, **MOVED TO AFTER ITEM 26**; adopted.

ORDERED: That the Communication from Code Enforcement Officer, Ethan Lippitt, re: Request for Signs, Spenga, 115 Apex Drive, within the HRMUOD, **APPROVED**; adopted.

ORDERED: That the Communication from the MA State Lottery Commission re: Application for Keno License, Firefly's, 350 East Main Street, **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, JULY 22, 2019** as **DATE FOR PUBLIC HEARING** On the Application for Special Permit from Attorney Brian Blaesser, on behalf of Cameron General Contractors, to construct a Senior Independent Living Multifamily Community, pursuant to the provisions of the Retirement Community Multifamily Overlay District, 90 Crowley Drive, refer to **URBAN AFFAIRS COMMITTEE & ADVERTISE**; adopted.

ORDERED: That the Minutes, School Committee, April 23, 2019 & May 14, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Commission on Disabilities, April 9, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Conservation Commission, April 4, 2019 & May 2, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Council on Aging, April 9, 2019, **FILE**; adopted.

ORDERED: That the Minutes, License Board, April 24, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Retirement Board, March 26, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, April 24, 2019, **FILE**; adopted.

ORDERED: That the following CLAIMS, refer to the **LEGAL DEPARTMENT**; adopted.

- a) Shakirah Najjemba, 8 Joanne Drive, #15, Ashland, pothole or other road defect.

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

**City Council Finance Committee
Tuesday May 28, 2019
In Council Chambers**

Finance Committee Members Present: Chairman Ossing; Councilors Robey, Oram (present for items 3B, 4, 5 and 6), Irish (present for items 5 and 6) and Dumais.

Finance Committee Members Absent: None

Other Councilors in Attendance: Councilor Clancy, Landers and Doucette.

The meeting convened at 7:03 PM.

1. **Order No.19-1007682 - Snow and Ice Year End Transfers for \$1,325,300.00:** The Finance Committee reviewed the Mayor's letter dated May 16, 2019 requesting a transfer of \$1,325,300.00 from the Undesignated Fund account to the following snow and ice accounts:
 - \$280,300.00 to Overtime Snow and Ice
 - \$395,000.00 to Snow Removal
 - \$650,000.00 to Operating Expenses

The Finance Committee voted **3 - 0** to approve the transfers.

2. **Order No. 19-1007683 – Transfer \$388,000.00 from Meals Tax Revenue Account to FY19 Bond Payment for Parks and Recreation Improvements:** The Finance Committee reviewed the Mayor's letter dated May 16, 2019 requesting a transfer of \$388,000.00 from the Meals Tax Revenue Account to the FY19 bond payment for parks and recreation improvements. The May 2019 balance in the Meals Revenue Account is \$3,925,755.96. The Finance Committee reviewed the Comptroller letter dated May 22, 2019 that outlined the future bond payments for the two approved bonds through 2032. **The Finance Committee voted 3 – 0 to approve the transfer.**
3. **Order No. 19-1007684 A&B – Year End Transfers in the amount of \$73,000.00:** The Finance Committee reviewed the Mayor's letter dated May 16, 2019 requesting year end transfers from within the existing budget in the amount of \$73,000.00 for the Department of Public Works and Fire Department. The Finance Committee took the following actions:
 - Order No. 19-1007684A - \$58,000.00 within various DPW accounts for park maintenance, consultant fees for the Assistant Commissioner duties and roof and masonry repairs at the DPW. **The Finance Committee voted 3 – 0 to approve the transfers.**
 - Order No. 19-1007684B - \$15,000.00 in the Fire Department to supplement the purchase of a new incident command vehicle– **The Finance Committee voted 4 – 0 to approve the transfers.**

The Finance Committee agreed to support suspending the rules at the June 3, 2019 City Council meeting to approve the transfer for Order 19-1007684B.

4. **Order No .19-1007685 – Transfer \$16,900.00 from Reserve for Salaries to Fund Retirement of Human Resource Director:** The Finance Committee reviewed the Mayor's letter dated May 16, 2019 requesting the transfer of \$16,900.00 from Reserve for Salaries to fund the retirement costs associated with the retirement of the Human Resource Director. **The Finance Committee voted 4- 0 to approve the transfers.**
5. **Order No. 19-1007686 – Transfer \$4,500.00 to Open Space Stabilization Account for FY18 Antenna Receipts:** The Finance Committee reviewed the Mayor's letter dated May 16, 2019 requesting a transfer of \$4,500.00 from the Undesignated Fund account to the Open Space Stabilization. The source of the \$4,500.00 is from the FY18 wireless antennae receipts. The DPW Commissioner mentioned that \$22,500.00 was incorrectly moved to the Parks and Recreation Revolving Fund. This will be corrected for the FY19 transfer. **The Finance Committee voted 5 - 0 to approve the transfer.**

Reports of Committee Continued:

6. Order No. 19-1007687 – Fiscal Year 2020 Revolving Funds Spending Limits: The Finance Committee reviewed the Mayor’s letter dated May 16, 2019 requesting the City Council approve the spending limits for three Revolving Funds for FY2020:

- Order - That no more than \$350,000.00 shall be expended from the Parks and Recreation Revolving Fund during Fiscal Year 2020, unless otherwise authorized by the City Council and Mayor.
- Order - That no more than \$75,000.00 shall be expended from the Public Safety Revolving Fund during Fiscal Year 2020, unless otherwise authorized by the City Council and Mayor.
- Order - That no more than \$70,000.00 shall be expended from the Council on Aging Revolving Fund during Fiscal Year 2020, unless otherwise authorized by the City Council and Mayor.

The Finance Committee voted 5 - 0 to approve all three Revolving Fund Spending limits for FY20.

The Finance Committee adjourned at 7:32 PM.

Councilor Robey reported the following out of the Legislative & Legal Affairs Committee:

City Council Legislative and Legal Affairs Committee
Tuesday, May 28, 2019 6:30 PM– In Council Chambers
Minutes and Report

Present: Chairman Katie Robey, Councilor Landers, and Councilor Delano. Other Councilors- Clancy, Doucette, Dumais, Landers and Ossing. Other attendees-City Solicitor Jason Grossfield, JP and Melynda Gallagher from Lost Shoe Brewing and Roasting Company for the 1st order and former City Solicitor Donald Rider, Scott Dale and Paul Monnie from AvalonBay Communities for the 2nd order.

Order No. 19-1007671: Communication from Melynda and JP Gallagher to add outdoor seating to their establishment, Lost Shoe Brewing and Roasting Company, 19 Weed St. Because this is not on Main Street, a license to encroach on public sidewalk and indemnification of city are necessary. Their plan is to set up tables in front of entrance, starting with coffee only and applying to local License Board and state Alcoholic Beverages Commission for a permit to serve beer in an outdoor patio. The license to encroach gives them permission to use the sidewalk area from May 1st to Sept. 30 each year and each year in the future. Licensee shall not allow any use of the tables and chairs in the licensed area after 10PM. Licensee shall remove all tables and chairs at the close of business on September 30th.

Councilor Delano moved to approve the License to Encroach on Public Sidewalk and Indemnification for Lost Shoe Brewing and Roasting Company, 19 Weed St. It was seconded, and the motion carried 3-0.

A Suspension of Rules will be requested at the June 3 City Council meeting to vote on this.

Reports of Committee Continued:

Order No. 19-1007688: Communication from City Solicitor Donald Rider regarding Proposed Conservation Restriction and Proposed Regulatory Agreement, Avalon Orchards, 91 Boston Post Road East. Solicitor Rider provided the Council with a letter detailing these matters. The conservation restriction on approximately 9 acres of land is condition #10 in a ZBA comprehensive permit approved in 2000. Another condition calls for a trail easement within that land. A trail was created but has become overgrown, and the trail easement was not recorded to signify the condition was met. Conservation Commission approval is also required. An email from Priscilla Rider indicates a vote to approve carried at their meeting on May 16, 2019.

Councilor Delano moved to approve the Conservation Restriction for Avalon Orchard, 91 Boston Post Road. It was seconded, and the motion carried 3-0.

The second matter related to this property is the Regulatory Agreement, which will extend to the year 2045 the ability to count all 156 rental units in the property as affordable units.

Councilor Delano moved to approve the Regulatory Agreement for Avalon Orchard, 91 Boston Post Road. It was seconded, and the motion carried 3-0.

It was moved and seconded to adjourn; motion carried 3-0. Meeting adjourned at 7PM.

Councilor Landers reported the following out of the Public Services Committee:

Meeting Name: City Council Public Services Committee
Date: May 28, 2019
Location: City Council Chambers, 2nd Floor, City Hall, 140 Main Street

Convened: 7:40 PM – Adjourned: 8:34 PM

Present: Chairman Landers; Public Services Committee Members Councilors Doucette and Irish; and Councilor Clancy, Oram, and Ossing; Thomas DiPersio (City Engineer, City of Marlborough)

Order No. 19-1007651: Application for Renewal of Junk Dealer/Second Hand Dealer License, Jean Rabelo, d/b/a Post Road Used Auto Parts, 785 Boston Post Road East. Police Chief Giorgi approved the CORI report for Jean Rabelo and had no objection to their application for a Junk Dealer's/Second Hand License. Jean Rabelo and Julio Rabelo appeared before the committee to request renewal of their license. Ms. Rabelo stated the business is doing well and they take pride in it. She did discuss her attendance at a public meeting regarding the redevelopment of Route 20 where her business was mentioned as the former auto parts recycler. The councilors in attendance were unaware of this and indicated their support for her business as it provides a valuable service to the City and region.

Motion made by Councilor Doucette, seconded by the Chair, to approve the license renewal for Jean Rabelo, d/b/a Post Road Used Auto Parts, 785 Boston Post Road East. The motion carried 3-0.

Reports of Committee Continued:

Order No. 19-1007652: Application for Renewal of Junk Dealer/Second Hand Dealer License, Gerald Dumais, d/b/a Dumais & Sons Second Hand Store, 65 Mechanic Street. Police Chief Giorgi approved the CORI report for Gerry Dumais and had no objection to his application for a Junk Dealer's/Second Hand License. Gerry Dumais appeared before the committee for renewal of his license. He has opened the store once in the past year (the previous Thursday) for two customers. He is in the process of cleaning it up as it has become cluttered.

Motion made by Councilor Doucette, seconded by the Chair, to approve the license renewal for Gerald Dumais, d/b/a Dumais & Sons Second Hand Store, 65 Mechanic Street. The motion carried 3-0.

Order No. 19-1007653: Application for Renewal of Junk Dealer/Second Hand Dealer License, Best Buy Stores LP #820, d/b/a Best Buy, 769 Donald J. Lynch Boulevard. Police Chief Giorgi approved the CORI report for Kelly Costello and had no objection to their application for a Junk Dealer's/Second Hand License. Kelly Costello appeared on behalf of Best Buy seeking renewal of their license. Ms. Costello explained they receive many trade-ins for phones as people upgrade their devices and a large part of their business is recycling smaller electronic items in store such as laptops, monitors, smaller televisions, keyboards, cables, and ink/toner cartridges. Best Buy also offers recycling as part of their home services for refrigerators, large televisions, and other large items which are sent to their warehouse in Bellingham. The Best Buy in-store recycling program will take items without requiring a purchase.

Motion made by Councilor Irish, seconded by the Chair, to approve the license renewal for Best Buy Stores LP #820, d/b/a Best Buy, 769 Donald J. Lynch Boulevard. The motion carried 3-0.

Order No. 19-1007672: Petition from TC Systems, Inc., on behalf of AT&T, to install new underground conduits with cable on Forest Street from Pole #24 to Verizon MH #516 for a distance of 65' within the Public Way. Chris Murray of TC Systems, who provide local services for AT&T, explained they wish to install underground conduits from a utility pole into Verizon systems which services the 200 Forest Street Business Park. The project will take two to three days and they hope to complete it as soon as possible. Thomas DiPersio, City Engineer, indicated the project will require a road opening permit and they will coordinate with TC Systems regarding the finishing of Forest Street.

Motion made by Councilor Doucette, seconded by Councilor Irish, to approve the Petition from TC Systems, Inc., on behalf of AT&T. The motion carried 3-0.

Order No. 17/19-1007055C: Communication from Attorney Michael Dolan on behalf of New Cingular Wireless PCS, LLC (AT&T), regarding Small Cell Antenna Petition, 28 Concord Road. Michael Dolan, attorney for Brown Rudnick, appeared on behalf of New Cingular Wireless (AT&T) and provided background information on their request. In October 2017, they requested permission to install a small antenna facility on the top of a utility pole near 28 Concord Road at the same time as several other sites. Based upon feedback and concerns from the Councilors, AT&T made changes and received approval for three sites. At this site, the utility pole is tilting and based upon aesthetics and safety, the City Council tabled the petition. National Grid has agreed to replace the existing utility pole with a new, straight pole and to allow AT&T to relocate their equipment 11 feet off the ground. AT&T will bear the cost for the installation of the new pole.

Motion made by Councilor Doucette, seconded by Chair, to approve the small cell antenna petition at 28 Concord Road, as amended, with condition that the building permit for the wireless site is subject to the installation of a new utility pole as proposed by AT&T. Motion carried 3-0.

Motion made and seconded to adjourn. The motion carried 3-0. Meeting adjourned at 8:34 PM.

Councilor Delano reported the following out of the Urban Affairs Committee:

Meeting Name: City Council Urban Affairs Committee

Date: May 22, 2019

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street

Convened: 5:20 PM – Adjourned: 6:44 PM

Present: Chairman Delano (left 6:28 PM); Urban Affairs Committee Members Councilors Juare, Landers, Doucette, and Tunnera; Councilors Clancy, Irish, Robey (arrived 5:47 PM), and Ossing (left 6:28 PM); Donald Rider (Former City Solicitor, City of Marlborough); Jeffrey Cooke (Building Commissioner, City of Marlborough)

Order No. 19-1007533: Proposed Zoning Amendment, to add to Chapter 650 a new section §36, which will create an Executive Residential Overlay District in the Simarano Drive and Cedar Hill Road Area. At the April 29, 2019 City Council Meeting, the Urban Affairs Committee recommended approval of the proposed Executive Residential Overlay District (EROD) zoning petition as amended by the committee and referred it to the City Solicitor to be placed in proper legal form for the May 20, 2019 City Council Meeting. In preparation for the May 20th City Council Meeting, former City Solicitor Rider noted two issues which required further City Council action and it was referred to the Urban Affairs Committee for their review.

The Urban Affairs Committee met with attorneys Arthur Bergeron and Brian Falk of Mirick O’Connell to review the proposed changes as recommended by former City Solicitor Rider at a meeting on May 22, 2019. The proponents agreed “Multifamily Dwellings, provided that the total number of units within the entire EROD shall not exceed 475,” which will require Post Road Residential in the future “1) to amend, if at all, the EROD in order to allow more than 475 multifamily dwelling units and 2) to apply for and be granted, if at all, a special permit for such units in conformance with any amended EROD.”

Reports of Committee Continued:

Chairman Delano suggested a change to section G.3. Landscaping. The language as written came from the Hospitality and Recreation Mixed Use Overlay District (HRMUOD) which does not apply to this site and he proposed it be changed to "landscaping in the EROD shall conform with the provisions of § 650-47 of the Marlborough Zoning Ordinance." The committee and applicants approved of this change.

Former City Solicitor Rider also noted there were two additional issues requiring City Council action. Section D.1.a. lists eligible uses permitted by right in the EROD which includes those uses allowed by right in the underlying zoning district, as set forth in the Table of Use Regulations. Two of those uses listed, "professional offices" and "co-working or shared working spaces" are not noted in the Marlborough Zoning Ordinance, Table of Uses (§ 650-17), therefore any use not specifically allowed shall be prohibited and they should be deleted from Section D.1.a.

The second issue he raised was regarding Site Plan Approval, conducted by the City Council, that will be conducted with reference to an ERO Phase, which is a phase of development within the EROD. If an ERO Phase has already received site plan approval, individual uses within that ERO Phase may be changed without further site plan approval unless required by Chapter 270 of the City Code which deals with Site Plan Approval or it requires modification as noted in H.3. of the proposed zoning ordinance for the EROD.

Section D.4. proposes "Once an ERO Phase receives Site Plan Approval, individual uses within the ERO Phase may be changed without further Site Plan Approval, unless such change otherwise requires Site Plan Approval under §270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection H.3." and Former City Solicitor Rider proposed replacement of Section D.4. with the following:

"Once an ERO Phase receives Site Plan Approval,

- i) an individual as-of-right use within the ERO Phase may be changed without further Site Plan Approval, unless such change otherwise requires Site Plan Approval under §270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection H.3; and
- ii) an individual use already granted a special permit within the ERO Phase may be changed upon the grant of a new or modified special permit, as appropriate, for that changed use, and will be subject to Site Plan Approval; provided, however, that if the change is to an as-of-right use in the EROD, no further Site Plan Approval is required unless such change otherwise requires Site Plan Approval under §270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection H.3."

The Urban Affairs Committee requested the proponent provide the Legal Department with an amended version containing the approved and agreed upon changes, so the Legal Department may place it on the June 3, 2019 City Council Agenda in proper form.

Reports of Committee Continued:

Motion made by Councilor Juaire, seconded by the Chair, to approve the recommended changes to Sections D.1.a and D.4. The motion carried 5-0.

Motion made by Councilor Juaire, seconded by the Chair, to approve the change of the total number of units within the EROD to not exceed 475 and modification to section G.3. Landscaping as proposed. The motion carried 5-0.

Motion made by Councilor Juaire, seconded by the Chair, to request a Suspension of the Rules at the June 3, 2019 City Council Meeting to vote on the proposed zoning amendment for the EROD as amended. The motion carried 5-0.

Motion made by Councilor Juaire, seconded by the Chair, to approve the Executive Residential Overlay District as amended. The motion carried 5-0.

Councilor Juaire reported the following out of the Urban Affairs Committee:

Order No. 19-1007612 (x. 18-1007244): Application for Special Permit from Thomas Coder, to demolish existing single-story home and construct a new two-story home at 21 Patten Drive. Chairman Delano was recused as he was absent from the public hearing on April 29, 2019 and Councilor Juaire was the acting chairman for this item. The committee met with Tom Coder, 3 Atwood Road, Southborough, who was applying for a special permit to tear down the existing home at 21 Patten Drive and build a new home. Mr. Coder displayed a picture of the current home, viewed floor plans for the basement, first and second floors, and a front and side elevation. Mr. Coder stated the new plans lowered the height of the home between 4.5 – 5.0 feet from the previously submitted design.

The committee discussed with the building commissioner and applicant the setbacks, lot coverage (733 SF versus 1,767 SF), and building location on the site. The applicant stated he planned to have a small patio and no deck, and the committee voted to have a condition in the special permit that there be no decks on the sides of the home. The ward councilor (President Clancy) liked the new design and had no objections to the new project.

Motion made by Councilor Doucette, seconded by the Chair, to include a condition, there be no decks on the sides of the home. The motion carried 4-0.

Motion made by Councilor Doucette, seconded by the Chair, to approve the special permit as amended. The motion carried 4-0.

Motion made and seconded to adjourn. The motion carried 4-0. The meeting adjourned at 6:44 PM.

Suspension of the Rules requested – granted.

ORDERED:

That the Transfer Request for the Fire Department in the amount of \$15,000.00 which moves funds from 2018 Multi-Purpose Bond to Fire Equipment to fund the purchase of a new command vehicle, **APPROVED**; adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
DEPT:		Fire				FISCAL YEAR:		2019		
Available Balance		FROM ACCOUNT:				TO ACCOUNT:				Available Balance
Amount	Org Code	Object	Account Description:		Amount	Org Code	Object	Account Description:		
\$1,054,000.00	\$15,000.00	17110006	59968	2018 Multi Purpose Bond	\$15,000.00	19300006	58512	Fire Dept Equipment		\$128,631.40
Reason:		Excess due to favorable interest rates				Replace vehicle totaled in accident				
\$15,000.00	Total					\$15,000.00	Total			

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed License for Outdoor Seating requested by Melynda & JP Gallagher of Lost Shoe Brewing and Roasting Company, 19 Weed Street in proper legal form, **FILE**; adopted.

Suspension of the Rules requested – granted.

ORDERED:

License to Encroach on Public Sidewalk and Indemnification

WHEREAS, Lost Shoe Brewing and Roasting Company, LLC d/b/a Lost Shoe Brewing and Roasting Company, duly incorporated in the Commonwealth of Massachusetts with a principle place of business at Ashcroft Law Firm, LLC, 200 State Street, Boston, MA 02109, operating a coffee roasting facility and brewery including retail sales for serving the roasted coffee and beer brewed on-site known as Lost Shoe Brewing and Roasting Company located at 19 Weed Street, Marlborough, MA (being a portion of Assessors Map 70 Parcel 147) desires to use a portion of the sidewalk fronting said 19 Weed Street, Marlborough, MA for table service of food and/or beverages (hereinafter, "License Area"); and

WHEREAS the City of Marlborough (hereinafter, the "City") wishes to allow the Lost Shoe Brewing and Roasting Company to use the License Area for table service of food and/or beverages;

WHEREAS the License Area is owned by the City;

NOW, THEREFORE, the City of Marlborough, by and through its City Council (hereinafter, "the City"), grants to Lost Shoe Brewing and Roasting Company, LLC d/b/a Lost Shoe Brewing and Roasting Company (hereinafter, "Licensee") permission to use the License Area for the limited purpose of outdoor dining on food and/or beverages associated with the Licensee and to place tables and chairs thereon for said purpose, and for no other purpose, under the terms and conditions stated below (hereinafter, "the license" or "this license"):

1. The License Area is identified in its approximate location on the plan attached as Exhibit "A," which exhibit is made a part hereof.
2. The license shall be effective from the date of approval by the City until September 30, 2019. Thereafter, subject to the terms and conditions of this license, this license shall run from year to year starting on May 1st and ending on September 30th. Licensee may not place tables and chairs on the License Area until the start of business on May 1st, and Licensee must remove all tables and chairs at the close of business on September 30th.
3. Licensee shall not allow any use of the tables and chairs in the License Area after 10 PM.
4. Licensee acknowledges that this license is not a grant of interest in the License Area or in any other portion of City property.
5. Licensee acknowledge that this license is exclusive to Licensee and that no other person(s) or entity(ies) has the permission of the City to utilize the License Area for any purpose other than for dining on products purchased at the Lost Shoe Brewing and Roasting Company.
6. Licensee agrees that it shall not allow loitering or other use of the License Area which is not related to dining on products purchased at the Lost Shoe Brewing and Roasting Company.
7. Licensee agrees to indemnify and hold harmless the City, their officers, employees and agents from and against all suits, actions or claims, civil or criminal, of any character brought because of any injury or damage received or sustained by any person, persons or property arising out of, or resulting from the existence of any obstruction or defect in the public way abutting the License Area or in the License Area, or arising out of, or resulting from any asserted negligent or intentional act, error or omission of Licensee or its agents, servants or employees, occurring in the performance of the Licensee to place tables and chairs upon License Area and to allow the utilization by third parties of said License Area. The indemnification required hereunder shall not be limited by reason of the specifications of any particular insurance coverage of the Licensee.
8. The City's Building Commissioner or his agents may revoke the license for violation of the terms and conditions of this license.
9. Service of alcoholic beverages out-of-doors in the License Area shall require a separate license from the Licensing Board and any appropriate State approvals.

10. Said tables and chairs shall not interfere with accessible path of travel for handicapped individuals, per the Americans with Disabilities Act and all other applicable laws and regulations.
11. Signs shall not be permitted except in accordance with City's Sign Ordinance.
12. All applicable federal, state, and City policies, regulations and ordinances, as amended, shall remain in full force and effect, and Licensee shall comply with same.
13. Licensee agrees to abide by its terms and conditions and acknowledges that said license may be revoked by the City of Marlborough for breach of any condition contained therein.

APPROVED; adopted.

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed Grant of Public Trail Easement, Proposed Conservation Restriction and Proposed Regulatory Agreement, Avalon Orchards, 91 Boston Post Road East, in proper legal form, **FILE**; adopted.

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed Zoning Ordinance Amendment to add to Chapter 650 a new section, which will create the Executive Residential Overlay District in the Simarano Drive and Cedar Hill Road Area, in proper legal form, **FILE**; adopted.

Suspension of the Rules requested – granted.

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY ADDING A NEW §650-36, ENTITLED "EXECUTIVE RESIDENTIAL OVERLAY DISTRICT," AS FOLLOWS:

§650-36 – EXECUTIVE RESIDENTIAL OVERLAY DISTRICT

A. Purpose and Objectives

The Executive Residential Overlay District ("EROD") allows the application of supplemental land use controls within the boundaries of a certain overlay district, subject to City Council approval, as an alternative to land use controls that exist in the underlying district(s). The establishment goals of the EROD are to enhance land use development and encourage desired growth patterns for the benefit of the public health, safety, and welfare by promoting integrated, pedestrian-friendly, residential and mixed-use development with convenient access to employment options in Marlborough's southwest quadrant and along Interstate 495.

B. Location of EROD; Development Phasing

1. For the purposes of this Section (§650-36 et. seq.), the EROD is located on the easterly side of Simarano Drive between the Interstate 495 Interchange and Cedar Hill Road containing approximately 43 acres as indicated on the City Zoning Map and more particularly described in Exhibit "A" annexed hereto and incorporated by reference herein.

2. Within the EROD, there may be one or more phases of development (“ERO Phase”). Each ERO Phase may consist of one or more parcels of land and may include any eligible use set forth in Subsection D below, which may be commingled within a single structure or located in separate structures on one or more parcels. Parcels within the EROD may be combined or subdivided and held under separate ownership or leaseholds. Each ERO Phase shall be subject to Site Plan Approval.
3. Upon the issuance of Site Plan Approval for an ERO Phase on a parcel or parcels in the EROD, this Section (§650-36 et. seq.) shall govern said parcel as developed in accordance with the Site Plan Approval.
4. Except as specifically provided herein, the provisions of the Zoning Ordinance relating to the underlying zoning districts not otherwise impacted by this Section (§650-36 et. seq.) shall continue to remain in full force and effect. In the event of any conflict between the provisions of this Section (§650-36 et. seq.) and any other provision of the Zoning Ordinance, the provisions of this Section (§650-36 et. seq.) shall govern and control.

C. Authority of Permit Granting Authority

1. The City Council shall be the Permit Granting Authority for Special Permits and Site Plan Approvals in the EROD. Special Permits shall require a two-thirds vote of the City Council; Site Plan Approvals shall require a simple majority vote.
2. At the request of an applicant as part of an initial application or as part of a modification pursuant to Subsection H, the City Council may elect to vary the dimensional, parking, design, and landscaping requirements applicable to an ERO Phase by Site Plan Approval upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of this Section (§650-36 et. seq.).
3. An application for Site Plan Approval for an ERO Phase shall comply with Chapter 270 of the Marlborough City Code. An application for a Special Permit for a use in the EROD shall comply with the requirements of §650-59 of the Zoning Ordinance.

D. Eligible Uses

1. The following uses are permitted BY-RIGHT in the EROD:
 - a. Uses allowed by right in the underlying zoning district, as set forth in the Table of Use Regulations, including but not limited to offices, banks, and insurance and financial institutions.
 - b. Accessory uses, as defined in Section 650-5B.

2. The following additional uses are permitted BY SPECIAL PERMIT in the EROD:
 - a. Multifamily Dwellings, provided that the total number of units within the entire EROD shall not exceed 475.
 - b. Restaurant, café with or without table service (including outside seating and service) without drive-thru.
 - c. Restaurant, café with or without table service (including outside seating and service) with drive-thru, provided that said facilities have no dedicated driveway with a curb cut on a public way.
 - d. Health, sports and fitness clubs (indoor and/or outdoor) and related facilities.
 - e. Retail sales and services.
 - f. Brew pubs.
 - g. Distilleries with attached restaurants.
 - h. Accessory solar energy installations, including but not limited to roof-top systems and solar parking canopies.
 - i. Uses allowed by special permit in the underlying zoning district.
3. All uses not specified in Subsection D.1 and Subsection D.2 above shall be deemed prohibited in the EROD.
4. Once an ERO Phase receives Site Plan Approval:
 - a. an individual as-of-right use within the ERO Phase may be changed without further Site Plan Approval, unless such change otherwise requires Site Plan Approval under §270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection H.3; and
 - b. an individual use already granted a special permit within the ERO Phase may be changed upon the grant of a new or modified special permit, as appropriate, for that changed use, and will be subject to Site Plan Approval; provided, however, that if the change is to an as-of-right use in the EROD, no further Site Plan Approval is required unless such change otherwise requires Site Plan Approval under §270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection H.3.
5. Multifamily dwellings in the EROD shall be subject to Section 650-26 of the Zoning Ordinance.

E. Dimensional Requirements

1. Notwithstanding any provisions of the Zoning Ordinance to the contrary, development in the EROD shall be subject to the following dimensional standards:
 - a. Minimum Lot Area: none.
 - b. Minimum Lot Frontage: none.
 - c. Minimum Front Yard or Setback from a Public Way: 20 feet.
 - d. Minimum Side and Rear Yard: 25 feet.
 - e. Maximum Building Height: 80 feet, no limitation on stories.
 - f. Maximum Lot Coverage: 60%, over the entire EROD.

2. Notwithstanding anything contained herein to the contrary, there shall be no yard or setback requirements, or planting strips required as to internal lot lines within the EROD.

F. Parking Requirements

1. Parking Locations – Parking may be provided at ground level, underground, or in parking garages. Parking garages may be free standing or part of buildings dedicated to other permitted uses. Parking garages may contain accessory solar energy installation.
2. Minimum Required Parking Spaces – An ERO Phase shall provide parking as follows: 1 parking space per bedroom; 1 parking space per 250 square feet of office space; 1 parking space for every 3 seats plus 1 parking space for every 3 employees for a restaurant or other food/beverage service use; and 1 parking space for each 100 square feet of public floor area of other commercial space; provided, however, that the City Council may, through Site Plan Approval, authorize a reduction in the required number of parking spaces upon finding that the parking provided for the ERO Phase is sufficient to meet demand.
3. Parking Space Dimensions – Each parking space shall be no less than 9' x 18' except that the use of compact spaces (no smaller than 8' x 16') may be utilized throughout provided that no more than 33% of the total parking spaces within an ERO Phase shall be compact spaces.
4. Except as otherwise provided in this Section (§650-36 et. seq.), parking and circulation requirements in the EROD shall conform with the provisions of §650-48 and §650-49 of the Zoning Ordinance.

G. Design Standards

1. Design Criteria – An application for Site Plan Approval under this Section (§650-36 et. seq.) shall adhere to the design criteria specified in §270-2 of the Marlborough City Code.
2. Roadways – To the extent feasible, internal roadways shall be constructed using the methods and materials prescribed in the Rules and Regulations for the Subdivision of Land in the City but shall not be required to conform to the subdivision standards or dimensional requirements thereof, provided that those roadways shall be adequate for the intended vehicular and pedestrian traffic. The design of ways and parking circulation should be as efficient as possible to reduce the overall development impact and area of impervious surfaces.
3. Landscaping – Landscaping in the EROD shall conform with the provisions of §650-47 of the Zoning Ordinance.
4. Storm Water Management System – An ERO Phase shall have a storm water management system designed in accordance with the Rules and Regulations for the Subdivision of Land in the City, the Department of Environmental Protection's Storm Water Management Guidelines, and the City's Stormwater Ordinance, §271 of the Marlborough City Code.

5. Signage – Except as otherwise provided in this Section (§650-36 et. seq.), signage shall conform to the provisions of §526 of the Marlborough City Code.

H. Modifications

1. After approval, applicants may seek modifications to any approved Special Permits or Site Plan Approvals.
2. Special Permits – Major modifications to a Special Permit may be granted by a two-thirds vote of the City Council, and minor modifications to Special Permit may be granted by the Building Commissioner. The Building Commissioner shall have jurisdiction to determine whether a requested modification to a Special Permit is major or a minor. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce a material increase in impact on City services, the environment, or the neighborhood. Where the effect of a modification to a Special Permit is quantifiable (by way of example only, modifications to building size or location, parking count or location, or other such quantifiable modification), it shall be presumed minor if the quantifiable effect does not result in a ten percent (10%) or greater variation from the applicable approval, provided however, that said modification would not result in a violation of any provision of this Section (§650-36 et. seq.). If it is determined that a modification to a Special Permit is not minor, per §650-59 of the Zoning Ordinance, an application for a revised Special Permit shall be filed, and a public hearing shall be held in the same manner as required for a new application.
3. Site Plan Approvals – Major modifications to a Site Plan Approval may be granted by a majority vote of the City Council, and minor modifications to a Site Plan Approval may be granted by the Building Commissioner. The Building Commissioner shall have jurisdiction to determine whether a requested modification to a Site Plan Approval is major or a minor. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce a material increase in impact on City services, the environment, or the neighborhood. Where the effect of a modification to a Site Plan Approval is quantifiable (by way of example only, modifications to building size or location, parking count or location, or other such quantifiable modification), it shall be presumed minor if the quantifiable effect does not result in a ten percent (10%) or greater variation from the applicable approval, provided however, that said modification would not result in a violation of any provision of this Section (§650-36 et. seq.). If it is determined that a modification to a Site Plan Approval is not minor, an application for a revised Site Plan Approval shall be filed in accordance with the City Council's Rules for Site Plan Approval.

EXHIBIT A

The Executive Residential Overlay District shall include the following parcels of land (herein identified by the Assessors' Map and Parcel Number):

- Assessors Map 116, Parcel 5
- Assessors Map 116, Parcel 11
- Assessors Map 116, Parcel 12

APPROVED; adopted.

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain, adopted. No objection to passage in one evening.

Suspension of the Rules requested – granted.

ORDERED: That the Application for Special Permit from Thomas Coder, to demolish the existing single-story home and construct a new two-story home at 21 Patten Drive refer to the **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE JUNE 17, 2019 CITY COUNCIL MEETING**; adopted.

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed Zoning Map Amendment, by St. Mary's Credit Union for land on John Street, identified as Map 82, Parcels 112 & 113, in proper legal form, **FILE**; adopted.

ORDERED: THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH HEREBY ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING THE ZONING MAP, SECTION 650-8, AS FOLLOWS:

Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as amended, be further amended by amending the Zoning Map established by Chapter 650 Zoning Article III Establishment of Districts Section 650-8 "Boundaries Established; Zoning Map". Said Zoning Map is amended by including Assessors Map 82, Parcels 112 and 113 in the Business District.

Councilor Delano recused.

APPROVED; adopted.

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain, adopted. No objection to passage in one evening.

President Clancy called a recess at 10:15 PM and returned to open meeting at 10:25 PM.

Suspension of the Rules requested – granted.

ORDERED: That the Communication from the Planning Board regarding their favorable recommendation with comments on the Proposed Zoning Ordinance Amendment to Chapter 650, §5, §17, & §18 – Home Office and Contractor/Landscape Contractor Storage Yards, **FILE**; adopted.

ORDERED: That the Communication from City Solicitor, Jason Grossfield, re: Proposed Zoning Ordinance Amendment to Chapter 650, §5, §17, & §18 – Home Office and Contractor/Landscape Contractor Storage Yards, **TABLED UNTIL JUNE 17, 2019 CITY COUNCIL MEETING**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 10:32 PM; adopted.



IN CITY COUNCIL

Marlborough, Mass., MAY 6, 2019

ORDERED:

That there being no objection thereto set **MONDAY, JUNE 17, 2019** as **DATE FOR PUBLIC HEARING** On the Application for Sign Special Permit, from Attorney Elizabeth McDonough Noonan on behalf of Colbea Enterprises, LLC, 342 Boston Post Road East, be and is herewith refer to **URBAN AFFAIRS COMMITTEE, ADVERTISE.**

ADOPTED

ORDER NO. 19-1007670



IN CITY COUNCIL

Marlborough, Mass., _____

MAY 6, 2019

PAGE 1

ORDERED:

That the Communication from Attorney Brian Falk on behalf of David Skarin, re: Proposed Zoning Amendment, to Chapter 650 §12 Nonconforming Uses, be and is herewith refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE PUBLIC HEARING FOR MONDAY, JUNE 17, 2019.**

Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as most recently amended, be further amended by amending certain provisions of (new text underlined, deleted text in strikethrough):

§650-12 Nonconforming uses.

- A. No building or other structure nor any land shall be used nor shall any building or other structure or part thereof be erected or altered except in conformity with the provisions of this chapter and any amendments thereof which apply to the district in which the building, structure or premises shall be located; provided, however, that this chapter shall not apply to the existing use of any building or structure or of land to the extent to which it was lawfully used at the time of the adoption of this chapter.
- B. This chapter shall apply to any change of use thereof and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration or for its use for the same purpose to a substantially greater extent, ~~provided that~~ unless the City Council determines, by the grant of a special permit, that expansion or alteration of a nonconforming use or structure is not substantially more detrimental to the neighborhood than the existing nonconforming use, except that an alteration, reconstruction, extension or structural change of or to a lawful pre-existing nonconforming single-family dwelling or two-family house shall be governed by Section 650-58B(3), and subject, however, to the following provisions:
 - (1) Such use has not been abandoned for a period of two years or more, except in the case of land used for agriculture, horticulture or floriculture for a period of less than five years.
 - (2) Such use is not enlarged to more than 25% of the floor and ground areas of use existing at the time of adoption of the original Zoning Ordinance, or any amendments thereto, except than any nonconforming farm may be enlarged up to the total area owned by the nonconforming farmer at the time of adoption of this chapter, and there shall be no limit as to the expansion of farm buildings.



IN CITY COUNCIL

Marlborough, Mass.,

MAY 6, 2019

PAGE 2

ORDERED:

- (3) In case the use is destroyed or damaged by fire, explosion or other catastrophe to not greater than 75% of the fair market value of the building or structure, exclusive of foundation, based upon replacement cost immediately prior to such damage, the structure or use may be restored or rebuilt at the same location and used as previously, provided that:
 - (a) The building, structure or use of land as restored or rebuilt shall be no greater in floor or land area than the maximum permitted under Subsection B(3)(b) of this section.
 - (b) The restoration or rebuilding shall conform to this chapter so far as practicable and shall be completed within two years of the catastrophe, unless approved by the City Council in writing in accordance with Article VIII.
- (4) The building or structure is completed if a permit for construction was granted prior to the adoption of this chapter and construction is accomplished within two years after the date of adoption of this chapter.
- (5) The provisions of the above Subsection B(1), (2) and (4) shall not apply to a single-family dwelling.

ADOPTED

ORDER NO. 19-1007673

2019 JUN 11 A 9 08

Arthur P. Bergeron
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
abergeron@mirickoconnell.com
t 508.929.1652
f 508.463.1385

June 10, 2019

Councilor Edward Clancy, President
Marlborough City Council
City Hall
Marlborough, MA 01752

Re: Order #19-1007673;
Proposed Zoning Amendment – Section 650-12 (Nonconforming Uses)

Dear Councilor Clancy:

This is in reference to the zoning amendment I proposed on behalf of my client, David Skarin, set for a public hearing on June 17, 2019. I wanted to take this opportunity to explain the rationale for the amendment.

Conversion of 19 Ash Street

Mr. Skarin is the owner of property at 19 Ash Street in Marlborough. The property is a preexisting nonconforming use in a residential district, operating as a contractor's yard next to an existing single-family home. Mr. Skarin's late father lived in the home and operated the business for decades.

Mr. Skarin would like to convert the property to a small townhouse condominium community with direct access to the adjacent rail trail, through a "Section 6 finding" special permit to convert from one nonconforming use to another nonconforming use in accordance with M.G.L. c. 40A, §6 and Section 650-12 of the Zoning Ordinance. Over the years, several projects in Marlborough have been permitted through this process, such as Design Pak and the Howe Shoe Factory Condominiums, breathing new life into uses and buildings that would have otherwise turned to blight.

Complicating matters, however, is the text of Section 650-12.B of the Zoning Ordinance, which contains a drafting error.

Section 650-12.B of the Zoning Ordinance

Section 650-12.B governs changes, alterations, and extensions to preexisting nonconforming uses and structures. Section 650-12.B largely tracks the language of M.G.L. c.

MIRICK O'CONNELL

Marlborough City Council
June 10, 2019
Page 2

40A § 6 except that Section 650-12.B uses the words “provided that” in a key sentence where M.G.L. c. 40A § 6 uses the word “unless.” As a result, a literal reading of Section 650-12.B would preclude changes, alterations, and extensions to preexisting nonconforming uses and structures in Marlborough.

Traditionally, Building Commissioners in Marlborough have interpreted Section 650-12.B as allowing changes, alterations, and extensions to preexisting nonconforming uses and structures, essentially reading the words “provided that” to mean “unless” in the context of the other provisions of Section 650-12. However, relying on an interpretation rather than clear language in the Zoning Ordinance poses risks to applicants.

Building Commissioner Jeffrey Cooke is aware of this issue and has been reluctant to proceed on Section 6 finding special permit applications without an amendment to Section 650-12.B.

Section 6 of M.G.L. c. 40A vs. the Zoning Ordinance

As a general rule, new land uses and structures must comply with the terms of the current Zoning Ordinance. Any new nonconformity requires a variance from the Board of Appeals.

An exception to this general rule is set forth in Section 650-11 of the Zoning Ordinance, which provides:

“Any lawful building or structure or lawful use of a building, structure or land or part thereof existing at the time of the adoption of this chapter is not affected by this chapter to the extent of the use existing at the time of adoption.”

This is the “grandfathering” provision for preexisting nonconforming uses and structures required by M.G.L. c. 40A, §6. While protecting preexisting nonconforming uses and structures, Section 6 of M.G.L. c. 40A provides that “any change or substantial extension” must comply with the current Zoning Ordinance.

Section 6 of M.G.L. c. 40A, however, also provides that the City’s special permit granting authority may authorize changes to preexisting nonconforming uses and structures:

“Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.” (Emphasis added).

The Zoning Ordinance implements this authority in Section 650-12.B, which provides:

MIRICK O'CONNELL

Marlborough City Council

June 10, 2019

Page 3

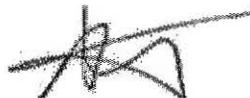
“This chapter shall apply to any change of use thereof and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration or for its use for the same purpose to a substantially greater extent, **provided that the City Council determines, by the grant of a special permit,** that expansion or alteration of a nonconforming use or structure is not substantially more detrimental to the neighborhood than the existing nonconforming use, except that an alteration, reconstruction, extension or structural change of or to a lawful pre-existing nonconforming single-family dwelling or two-family house shall be governed by Section 650-58B(3), and subject, however, to the following provisions...” (Emphasis added).

Thus, by using “provided that” instead of “unless”, Section 650-12.B literally states that the Zoning Ordinance “shall apply” to any change of a nonconforming use or structure “provided that” the City Council determines that the change to the structure or use “is not substantially more detrimental to the neighborhood than the existing non-conforming use.” It would appear pointless for Section 650-12.B to give the City Council authority to make the “not substantially more detrimental” finding and provide a list of criteria for modifications to preexisting nonconforming if the current provisions of the Zoning Ordinance “shall apply” anyway.

Reading the words “provided that” in Section 650-12.B to mean “unless” is the only way for this provision to make sense and be consistent with M.G.L. c. 40A, § 6. Section 650-12.B has been interpreted in this fashion for many years.

Mr. Skarin would like to convert his contractor’s yard to a more desirable and valuable use, complementary to the nearby rail trail. We ask the City Council to correct Section 650-12.B and give applicants and the Building Commissioner clear authority to accommodate changes, alterations, and extensions to preexisting nonconforming uses and structures.

Very truly yours,



Arthur P. Bergeron

APB/cm

cc: David Skarin
Brian R. Falk, Esq.



City of Marlborough
Office of the Mayor

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CITY OF MARLBOROUGH

2019 JUN 13 A 9:40

Arthur G. Vigeant
MAYOR

Kate Flanagan
EXECUTIVE AIDE

Patricia Bernard
EXECUTIVE SECRETARY

140 Main Street
Marlborough, Massachusetts 01752
508.460.3770 Fax 508.460.3698 TDD 508.460.3610
www.marlborough-ma.gov

June 13, 2019

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

RE: Promoted Members of the Marlborough Fire Department

Dear President Clancy and Councilors:

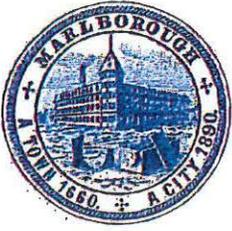
Please join me in congratulating three Marlborough Fire Department members who have been promoted, Lieutenant Frederick W. Johannes to Fire Captain, Firefighter Brian P. Leonard to Fire Lieutenant and Firefighter Christie L. Clement to Fire Lieutenant.

The City of Marlborough is proud of those who serve to ensure the safety of our residents, and we congratulate the members of the Marlborough Fire Department on their well-deserved promotions.

Thank you for your time and consideration given to this matter.

Sincerely,


Arthur G. Vigeant
Mayor



City of Marlborough
Office of the Mayor

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CITY OF MARLBOROUGH

2019 JUN 13 A 9:40

Arthur G. Vigeant
MAYOR
Kate Flanagan
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Marlborough, Massachusetts 01752
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www.marlborough-ma.gov

Patricia Bernard
EXECUTIVE SECRETARY

June 13, 2019

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

RE: **Appointment of Chief David Giorgi as the Keeper of the Lockup**

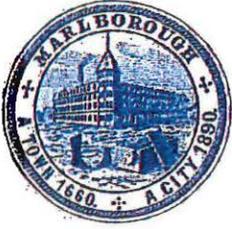
Dear President Clancy and Councilors:

I am pleased to appoint Chief David Giorgi as the Keeper of the Lockup for the City of Marlborough in accordance with Massachusetts General Laws, Chapter 40, Section 35 for a term of one year.

Please do not hesitate to contact my office with any concerns.

Sincerely,


Arthur G. Vigeant
Mayor



City of Marlborough
Office of the Mayor

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CITY OF MARLBOROUGH

2019 JUN 13 A 9:40

Arthur G. Vigeant
MAYOR

Kate Flanagan
EXECUTIVE AIDE

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EXECUTIVE SECRETARY

140 Main Street
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June 13, 2019

City Council President Edward J. Clancy
Marlborough City Council
140 Main Street
Marlborough, MA 01752

RE: **Draft Zoning Petition – Route 20 East**

Dear President Clancy and Councilors:

Please find enclosed for your review a draft zoning petition for the Route 20 East corridor. In addition, I have attached the Table of Use Regulations, Table of Dimensions and the Route 20 East Zoning Boundary map.

I have been working with the Massachusetts Area Planning Council and the Marlborough Economic Development Corporation to draft an ordinance for the rezoning of the Route 20 East corridor for quite some time.

Councilor Delano has agreed to take it up in the Urban Affairs Committee and if so desired, it will be submitted to the City Solicitor to be put in proper legal form and placed before City Council for scheduling of a public hearing and referred to the Planning Board.

Thank you in advance for your consideration. Should you have any questions, please do not hesitate to contact me.

Sincerely,


Arthur G. Vigeant
Mayor

Enclosures

06 - 12 - 2019

§ 650-XX. Route 20 East Zoning District. [Added DATE by Ord. No. X]

Within the Route 20 East Zoning District (R20E), the following provisions govern. Where these provisions conflict with other sections of the Zoning Ordinance, the provisions of this section shall apply. The Route 20 East Zoning District is located on Boston Post Road East (Route 20) as indicated on the City Zoning Map.

- A. Purpose and vision. The purpose of the Route 20 East Zoning District is to implement smart growth principles with development that will enhance compatible land uses and encourage desired growth patterns for a traditionally automobile centered commercial corridor for the benefit of public health, safety and welfare, by promoting integrated, pedestrian-friendly, commercial mixed-use development including retail, housing, and workplaces within close proximity to each other that are consistent with the stated economic development objectives of the City and contribute to enhanced streetscape and designed to further promote livability and quality of life within the district.
- (1) Commercial mixed-use development.
- (a) For the purposes of this Zoning District, a commercial mixed-use development shall include any eligible use set forth in Subsection E below, which shall be commingled into a single structure or multiple structures with other eligible uses on the same property. Accordingly, commercial mixed-use developments shall benefit the public health, safety and welfare, through the sharing of parking lots and driveway curb cuts, to minimize the amount of impervious paved parking area and driveway curb cuts, to reduce automobile trips and traffic congestion, and accordingly to improve air quality.
- (b) All developments shall be designed to be pedestrian-friendly and that shall include site design, building layout, and pedestrian circulation features and amenities in compliance with the design standards of this Zoning District. Pedestrian-friendly developments shall benefit the public health, safety and welfare, through the encouragement of walking and physical activity.
- B. Site plan review. Projects within the Route 20 East Zoning District shall be subject to site plan review as provided in § 270-2, entitled "Site plan review and approval," of the Marlborough City Code.
- (1) Applicability.
- (a) In all instances, a development which proceeds within the Route 20 East Zoning District is subject to site plan approval in accordance with § 270-2 of the Marlborough City Code.
- (b) Site plan review applies to both as of right and uses available by grant of a special permit within the Route 20 East Zoning District. Site plan review applicability includes, but is not limited to, new construction of any building or structure; addition to an existing building or structure; and increase in area of on-site parking or loading areas. [See § 270-2(3).]
- (c) Site plan review shall be conducted administratively, as provided in § 270-2, except for multifamily uses, hotel uses, and for those projects over 10,000 square feet, which projects shall undergo administrative site plan review with final review and approval by the City Council.

- (d) The City Council may elect to vary the dimensional and parking requirements of this section by site plan approval if, in its opinion, such change shall result in an improved project and will not nullify or substantially derogate from the intent or purpose of this section. This authority continues subsequent to occupancy.

C. Special permit granting authority. The City Council shall be the special permit granting authority within the Route 20 East Zoning District.

D. Exclusivity/control. This section (§ 650-XX) of the Zoning Ordinance exclusively controls the establishment, development, and design of any development undertaken in the Route 20 East Zoning District and supersedes any other provision of the Zoning Ordinance. In the event of any conflict between the provisions of this section (§ 650-XX) and any other provision of the Zoning Ordinance, the provisions of this section shall govern and control.

E. Eligible uses. Except as specifically provided herein, any uses which are not permitted, whether as of right or by a special permit, within the Route 20 East Zoning District (R20E) under § 650-17, Table of Use Regulations, of the Zoning Ordinance, shall be prohibited.

- (1) The following uses are permitted by right in the Route 20 East Zoning District, and are encouraged to be combined as a commercial mixed-use development:
- (a) Customary home occupations
 - (b) Yards sales, charitable sales bazaars
 - (c) Artist studio/live/work gallery space
 - (d) Recording studio/live/work space
 - (e) Convert buildings to office, bank, insurance use
 - (f) Retail sales and services <75,000 square feet gross floor area
 - (g) Office, banks, insurance and financial institutions
 - (h) Schools, for business, trade, music, dance, and television\or radio broadcasting studios (but not including towers)
 - (i) Medical office/clinic
 - (j) Dental clinics
 - (k) Consumer service establishments
 - (l) Brew pubs
 - (m) Copy shops, newspaper offices
 - (n) Restaurant, café
 - (o) Restaurants serving food outdoors
 - (p) Restaurants for employee use
 - (q) Churches and religious buildings
 - (r) Public, private and religious schools, museums, libraries, parks, recreation facilities, buildings and playgrounds
 - (s) Child-care centers
 - (t) Public buildings
 - (u) Floodplain and Wetland Protection District
 - (v) Water Supply Protection District
 - (w) Associated/accessory research uses
 - (x) Recreation center, indoor and outdoor

- (2) The following additional uses are also permitted by special permit in the Route 20 East Zoning District, and are encouraged to be combined as a commercial mixed-use development:
 - (a) Retail sales and services >75,000 square feet gross floor area
 - (b) Commercial radio and television towers and wireless communications facilities
 - (c) Hotels <100 rooms
 - (d) Recreation center
 - (e) Self-service laundry
 - (f) Mixed use development
 - (g) Car parking lots, garages (which are not accessory to an on-site allowed use)
 - (h) Shopping malls
 - (i) Dry cleaning
 - (j) Accessory uses and service buildings, in the Route 20 East Zoning District only, accessory shall be defined to include uses on a non-adjacent parcel, e.g. across the street from the parcel with the primary use. Accessory uses and service buildings must also comply with Route 20 East Zoning District Design Standards that follow.
- (3) All uses not noted in Subsection E (1) and Subsection E (2) above shall be deemed prohibited, except where to so deem would interfere with or annul any other City of Marlborough ordinance, rule, regulation, permit or license, or any state or federal law or regulation.

F. Dimensional requirements. The Route 20 East Zoning District shall be subject to the dimensional standards in accordance with Article VII of the Zoning Ordinance, with the following exceptions:

- (1) The Route 20 East Zoning District shall consist of lots with a minimum area of 5,000 square feet.
- (2) Minimum lot frontage measurement shall be no less than 50 feet for any lot.
- (3) Minimum front yard measurement shall be no less than 30 feet.
- (4) Minimum side yard measurement shall be no less than 25 feet.
- (5) Minimum rear yard measurement shall be no less than 25 feet.
- (6) Maximum building height shall not exceed 52 feet permitted by-right and 85 feet permitted by special permit. The special permit height of 85 feet shall step down to 52 feet when the building is within 50 feet setback from a property line that abuts a residential district.
- (7) Maximum lot coverage shall not exceed 80% of the lot area.

G. Parking, curb cut and landscaping requirements. Except as otherwise provided in this section, parking, circulation and landscape requirements shall conform with the provisions of § 650-47, § 650-48 and § 650-49 of the Zoning Ordinance.

- (1) General. In the Route 20 East Zoning District, adequate off-street parking shall be provided. The City Council and the applicant shall have as a goal, for the purposes of defining adequate off-street parking, making the most efficient use of the parking facilities to be provided and minimizing the area of land to be paved for this purpose. In implementing this goal, the City Council shall consider complementary or shared use parking areas by activities having different peak demand times, and the applicant shall locate adjacent uses in such a manner as will facilitate the complementary use of such

parking areas. Implementation of such complementary use of parking areas may result in permitted reductions in the parking requirements.

- (2) Parking locations.
 - (a) Parking shall be located to the side and/or rear of all new building structures that front on Route 20 East, an existing connecting street, or a new internal access street.
 - (b) Parking may be provided at ground level, underground, or in a parking garage. Parking garages can be freestanding or as part of buildings dedicated to other permitted uses, but must be integrated with the surrounding site plan and oriented so as to minimize visual impact of the parking garage on surrounding uses.
- (3) Parking access. Where a proposed parking lot is adjacent to an existing parking lot of a similar use, providing vehicular and pedestrian connections between the two parking lots shall be required. This access shall allow vehicular circulation between parking areas without the need to travel on Route 20. This access shall allow the unobstructed flow of pedestrians between adjacent properties, businesses, and parking areas. A sidewalk shall be provided on at least one side of the driveway.
- (4) Parking requirements. Parking in the R20E shall be provided at a minimum of 1 parking space per 250 square feet of net floor area for retail and restaurant uses. Parking for other commercial uses shall be provided at a minimum of 1 parking space per 350 square feet of net floor area. Parking for residential units shall be provided at a minimum of 1 parking space per unit.
- (5) Parking reductions. The applicant may seek a reduction in the number of required parking spaces, through a Special Permit. Consideration may be given to the hours of peak use, amount of parking that could be shared with other uses, the amount of parking located conveniently accessible to the property, as well as other relevant information to assist in the determination of parking relief. Relief may be granted provided that it is demonstrated that the additional demand for such spaces can be reasonably met without placing an undue burden on existing facilities already relying on such spaces under the following conditions:
 - (a) Allow parking areas to be shared with adjoining businesses based upon having peak user demands at different times provided that all businesses sharing parking are located on the same lot.
 - (b) Parking spaces on a separate lot or lots within a radius of six hundred feet, measured from the lot line of the principal use, may be counted, provided that a safe and convenient pedestrian connection through the use of sidewalks, crosswalks, or multi-use paths is created to the separate lot or lots.
- (6) Parking dimensions. Each parking space shall be no less than nine feet by eighteen feet. Aisle widths shall be a minimum of 11 feet for one-way travel lanes and 22 feet for two-way travel lanes.
- (7) Curb cuts. Curb cuts shall be minimized. All new curb cuts are subject to Site Plan Review. To the extent feasible, vehicular access shall be provided through one of the following methods:
 - (a) Through a common driveway serving multiple lots, or
 - (b) Through an existing side or rear street.
- (8) Landscape strips. Continuous landscaping strips shall be provided no less than 10 feet to the right-of-way line along Boston Post Road East (Route 20), not including the width of sidewalks.
- (9) Parking landscape islands. The location of landscaped islands in parking lots shall be placed so that a portion of every parking space is not more than 90 feet from a landscaped

area on the perimeter or interior of the parking lot. Portions of these landscape islands may be used to establish safe pedestrian walkways through parking lots.

- (10) Streetscape planting quantity. Plantings shall consist of at least one shade tree per every 50 linear feet of street frontage. Plantings may be grouped, not evenly spaced, but groups of trees shall be spaced no further apart than 75 linear feet.
- (11) Stormwater management. The site shall be designed to infiltrate all stormwater on site and avoid run-off onto adjacent properties.
- (12) Granting relief. The City Council may, during the site plan approval process, waive any of the foregoing requirements or the requirements of § 650-47, § 650-48 and § 650-49 if it makes a finding that to do so will enhance the overall design of the Route 20 East Zoning District.

H. Design standards.

In addition to the following design standards herein which apply to all developments within the Route 20 East Zoning District, Route 20 East Zoning District mixed-use including residential development should incorporate design guidance from the City of Marlborough Multifamily Development Review Criteria and Design Guidelines.

- (1) Site layout
 - (a) Site and building layout. Buildings shall be located in close proximity to streets and access ways with parking located to the rear or to the side of buildings. Buildings shall be oriented to frame street frontage and define outdoor spaces in coordination with adjacent buildings located on the same property or abutting property.
 - (b) Site and parking layout. Parking shall be located to the rear or to the side of buildings that front on a street. Where an existing parking lot is in front of a building that will be redeveloped, landscaping shall be placed to screen parking and enhance the visual appeal of the site and street frontage. Where a new parking lot is to the side or rear of a building, but adjacent to a street, landscaping shall be used to screen the parking and reduce the visual impact of the parking.
 - (c) Site buffer. The setback abutting an existing residential or industrial use shall include landscape plantings and features that screen and separate adjacent residential or business uses from new commercial mixed-use development. This requirement does not need to be provided where adjacent to an existing commercial mixed-use development, retail, or restaurants.
- (2) Pedestrian and bicycle circulation
 - (a) Pedestrian circulation. Safe, convenient, and attractive pedestrian access shall be incorporated into plans for new construction of buildings and parking areas, and should be designed in concert with landscape plans. Where appropriate, new pedestrian and bicycle paths shall connect the site with abutting trails, amenities, or parks to promote pedestrian and bicycle circulation and safety. Where appropriate, pedestrian access should be expanded into a shared-use path to provide safe, convenient, and attractive bicycle access. When parking is located to the rear of the building, pedestrian access via a pedestrian-oriented alley or walkway through to the primary street is encouraged.
 - (b) Pedestrian amenities. Sidewalks shall provide access from internal site uses, building entries, and parking areas to Route 20 and between adjacent sites.

- (c) **Bicycle amenities.** All developments shall include provisions for the parking of bicycles at locations that are safely separated from vehicular and pedestrian circulation and convenient to building entries. Bicycle racks shall be placed as to not obstruct pedestrian walkways or impede the parking area for automobiles.
- (3) **Outdoor Pedestrian Spaces**
- (a) **Useable Outdoor Pedestrian Space.** Buildings and site features shall be arranged to create functional public and private outdoor spaces, including sidewalks, patios, entryways, courtyards, and other types of spaces. Useable and accessible outdoor pedestrian space shall be provided and integrated with the site plan and building design. Such outdoor pedestrian spaces shall provide space to enhance visual connections between buildings, streets, open spaces, and pedestrian circulation, but that is set back from major vehicular ways and is appropriate to the anticipated level of foot traffic.
- (b) **Uses with outdoor seating.** Outdoor seating areas may be provided for restaurants, cafes, coffee shops, or other establishments with seating and may overlap with outdoor pedestrian spaces.
- (c) **Location of outdoor seating.** Outdoor pedestrian spaces and seating areas shall be oriented to street frontage, with side streets and secondary access streets the preferred locations, and integrated with the streetscape. Amenities and seating shall not reduce the required sidewalk widths or impact pedestrian or bicycle circulation.
- (4) **Building design**
- (a) **Mixed-uses.** Route 20 East Zoning District would benefit from mixed-use development that combines several uses that are allowed as of right or by special permit in the district. These uses could be provided in a cluster of separate buildings, or combined vertically in a single building. A mix of uses in close proximity would enhance the creation of smaller, walkable clusters that enhance the Route 20 East corridor and provide opportunities for residents and patrons to circulate between uses without the use of a vehicle.
- (b) **Façade step back.** A step back in the façade of a building shall occur at the upper floor(s) for all buildings above 3-stories in height. For example, the fourth story of a 4-story building shall be recessed from the lower 3-stories of the primary façade with a step back. Or, the fourth and fifth story of a 5-story building shall be recessed from the lower 3-stories of the primary façade with a step back. The step back shall be a minimum of 5 feet.
- (c) **Multiple buildings.** In mixed-use developments with multiple buildings, recurring forms and materials shall be used to unify the development, while establishing an overall hierarchy of buildings for visual interest and orientation.
- (d) **Define corners.** Prominent corners of sites and buildings should be defined and celebrated by the layout and design of the building(s). Prominent building corners may use design elements such as towers, arches, unique building massing, or roof forms to serve as identifiable and memorable landmarks.
- (e) **Roof forms.** Gable, hip, mansard, gambrel, stepped, and peaked roofs add variety and interest to buildings and shall be incorporated into mixed-use developments. Flat roofs may be incorporated into the roof design with other roof forms and features.

- (f) Blank walls. Large portions of building facades which are unarticulated or blank walls shall be avoided through the careful placement of doors, windows, façade features, and transitions in façade materials and finishes.
 - (g) Design quality. Building massing and façade design shall be of a high quality with well composed and articulated building forms using a variety of techniques to create visual interest and character with architectural details, vertical and horizontal projections and recesses, changes in height, roof forms, cornice treatments, pilasters, window reveals, materials, colors, and prominent building entrances or other design features.
 - (h) Building materials. Use of traditional, natural, and sustainable building materials such as wood, brick, and stone shall be preferred over other synthetic materials.
 - (i) Placement of utilities. HVAC equipment, transformers, fans, generators, and other utility structures shall be located on buildings and sites so that they are not visible on roofs visible from streets and access ways or visible in building frontage areas. Where such utility structures occur, they shall be suitably screened from view through architectural or landscape elements.
- (5) Exterior lighting
- (a) Lighting quality. The use of lighting should be integrally designed as part of the site layout and building design. Use of high-quality light, which provides uniform visibility while avoiding light pollution, is encouraged. Consider illuminating sidewalks, parking areas, and other multi-use pathways using low intensity fixtures that provide an even distribution of light while avoiding areas of intense shadows and glare.
 - (b) Lighting consistency. Lighting shall be consistent throughout the development and coordinated in appearance between site lighting and any building-mounted light fixtures. Consistent fixture selection for design and coordinated decorative poles shall be used throughout the development.
 - (c) Lighting shielding. Light fixtures shall be shielded as to prevent light pollution beyond the lot boundary or upward into the night sky.
- (6) Signage
- (a) Sign quality. Signs and sign locations shall be an integral part of high quality development, designed to be consistent with the scale, image and style of the associated buildings. Sign design and materials shall relate to the building and site elements.
 - (b) Informational signs. Parking, wayfinding, or other information signs shall be simple and understated and located to provide convenient direction and information.
 - (c) Integrated signs. Signs mounted on buildings shall be integrated with the architectural design of the building and should not be located to cover or obscure architectural elements. The building design should offer an integrated location on the building façade to receive signs. For buildings with multiple tenants, a consistent and integrated location on the building façade should be designed to receive signs for each separate tenanted space.
 - (d) Awnings. Awnings, trellises, or canopies are encouraged above windows, doors, and entrances to provide shade and architectural relief from flat facades while providing an alternative location for signage.

(7) Landscape

- (a) Landscape quality. The landscape design shall use natural and informal patterns of high canopy trees and clusters of low height shrubs. The area between the street and the front building façade shall receive additional landscape attention with more plantings and a design to complement the site and building design. A mix of deciduous and evergreen plantings shall be utilized. Landscape features shall be used to highlight site and building features and entries, and to screen and conceal utilities and parking areas.
- (b) Stormwater treatment and features. The site and landscape design should integrate bioswales, rain gardens, or other surface stormwater treatment features that are integral to the function of the site's stormwater management and highlighted as a landscape feature.
- (c) Landscape maintenance. Landscape areas shall be associated with a maintenance plan and maintained after installation including watering, removal of debris, pruning and replacement of plants when necessary. Site drainage improvements shall be designed as part of the landscape and feature drainage as part of the natural landscape.

I. Signage.

- (1) Except as otherwise provided in this section, signage shall conform to the provisions of Chapter 526 of the City Code, the Sign Ordinance.
- (2) Granting relief. The City Council may waive any of the requirements of the Sign Ordinance if it makes a finding that to do so will enhance the overall design of the Route 20 East Zoning District.
- (3) Prohibited signs include, but are not limited to signs which contain or consist of pennants, ribbons, streamers, spinners, or devices which flash, rotate, or make noise. Signs which have blinking, flashing, or fluttering lights. Signs which are inflatable. Signs which would interfere with safety or traffic operations.

J. Application.

- (1) Special permits. An application for a special permit for a use in a development in the Route 20 East Zoning District shall comply with the requirements of § 650-59 of the Zoning Ordinance.
- (2) Site plan approval. An application for site plan approval in the Route 20 East Zoning District shall comply with the requirements of Chapter 270 the City Code, Article II, Permits and Approvals, § 270-2.

K. Site plan approval review criteria.

- (1) Review criteria. The City Council in connection with a special permit and/or site plan application in the Route 20 East Zoning District shall review such applications with respect to the following review criteria:
 - (a) Compliance of the design with the § 650-XX section H Design Standards
 - (b) Compliance of sidewalks with Americans with Disabilities Act (ADA) design standards;
 - (c) Scale of buildings relative to surroundings and relative to City of Marlborough Multi-family Development Review Criteria and Design Review Guidelines;
 - (d) Quality of design and materials for building facades visible from public ways;
 - (e) Quality of design and materials for public space;
 - (f) Placement of utilities and wiring underground, to the extent practical; and

- (g) External lighting shall be sensitive to the night sky, utilizing Illuminating Engineering Society of North America (IESNA) guidance for any lighting design, and avoid light spillage onto adjacent properties.
- (2) Submission requirements:
 - (a) Site plan depicting proposed development, buildings, parking, vehicular, pedestrian, and bicycle circulation, open space
 - (b) Building elevations
 - (c) Landscape plan
 - (d) Lighting plan with photometrics
 - (e) Site and building signage plan
- (3) Public presentation. Concurrent with any public hearing/meeting associated with a special permit and/or site plan filing, the applicant shall make a presentation to the City Council to present the proposed architectural design and shall consider the comments and input from the City Council. A final building elevation shall be submitted prior to the close of the public hearing/meeting.

L. Standards for roadways and drainage.

- (1) Roadways. Internal Route 20 East Zoning District roadways shall be private ways and shall be maintained by owners/developers of the Route 20 East Zoning District and portions thereof. Private ways within the Route 20 East Zoning District, to the extent feasible, shall be constructed using the methods and materials prescribed in the City of Marlborough Subdivision Regulations, but shall not be required to conform to the dimensional requirements thereof, provided that those private roadways shall be adequate for the intended vehicular and pedestrian traffic and shall be maintained by the owner/developer or an association of owners.
- (2) Stormwater management system. Developments proposed in the Route 20 East Zoning District shall have a stormwater management system designed in accordance with the City of Marlborough Subdivision Regulations and the Department of Environmental Protection's Storm Water Handbook and Standards and the City's Stormwater Ordinance (Chapter 271), as amended.

M. Amendments. After approval, the owner/developer may seek amendments to the approved permits. Minor amendments to a special permit and major or minor amendments to a site plan approval may be made by a super majority (2/3) vote of the City Council. It shall be a finding of the City Council, not subject to dispute by the applicant, whether a requested amendment is deemed to be a major amendment or a minor one. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce more than a material increase in impact on City services, the environment or the surrounding neighborhood. If it is determined that revisions to a special permit are not minor, per § 650-59 of the Zoning Ordinance, an application for a revised special permit shall be filed, and a public hearing shall be held in the same manner as required for a new application, subject to the fee schedule under Subsection C(3) of § 650-59.

ZONING

650 Attachment 1

03 - 20 - 2019

City of Marlborough

FOR ILLUSTRATIVE PURPOSES ONLY – ALL ZONING DISTRICTS ARE NOT SHOWN

Table of Use Regulations

(§ 650-17)

[Amended 5-9-2005 by Ord. No. 05-100713C; 11-23-2009 by Ord. No. 09-1002277F; 3-11-2013 by Ord. No. 12/13-1005235B; 10-7-2013 by Ord. No. 13-1005481D; 2-10-2014 by Ord. No. 13/14-1005578C; 4-28-2014 by Ord. No. 14-1005693C; 8-14-2014 by Ord. No. 12/13/14-1005247I; 12-1-2014 by Ord. No. 14-1005947C; 11-28-2016 by Ord. No. 16-1006631D]

KEY:

All uses noted with "Y" are allowed as of right, subject to any referenced conditions.

All uses noted with "SP" are allowed by special permit, subject to any referenced conditions.

All uses noted with "N" are not permitted.

Changes from existing underlying zones are highlighted

	Zoning District Abbreviations				
	Existing Underlying Zones			Recommended Route 20 East Zoning District	
	RCR	B	LI	Proposed R20E	(Compare to) Wayside OD
Residential Use					
Single-family	Y	N	N	N	N
Single-family, attached (1)*	N	N	N	N	N
Conversion of detached one-family to a two-family (2)	N	N	N	N	N
Two-family homes	N	N	N	N	N
Conversion of a two-family dwelling to a three (3)	N	SP	N	N	N
Multifamily dwelling (4) (42)	N	SP	N	N	Y (up to 100 units) SP (more than 100)
Comprehensive developments (§ 650-27)	Y	Y	Y	N	N
Boarding and lodging homes	N	SP	N	N	N
Tourist home\bed-and-breakfast	N	N	N	N	N
Open space development (§ 650-28)	N	N	N	N	N
Trailer mobile homes (5)	SP	SP	SP	N	N
Retirement Community Overlay (§ 650-22)	N	N	SP	N	N
Residential accessory uses (6)	Y	Y	Y	N	N
Customary home occupations (7)	Y	Y	Y	Y	N
Yard sales, charitable sales bazaars (8)	Y	Y	Y	Y	N

* (Numbers in parentheses correspond to subsection numbers in § 650-18, Conditions for use as noted in the Table of Uses.)

MARLBOROUGH CODE

	Zoning District Abbreviations				
	Existing Underlying Zones			Recommended Route 20 East Zoning District	
	RCR	B	LI	Proposed R20E	(Compare to) Wayside OD
Two residential structures on a lot less than 80,000 square feet (9)	N	N	N	N	N
Artist studio/live/work gallery space	N	N	N	Y	N
Recording studio/live/work space	N	N	N	Y	N
Assisted living facilities (44)	N	N	N	N	N
Business Uses					
Convert buildings to office, bank, insurance use (18)	N	N	N	Y	N
Commercial kennels and animal hospitals	N	N	N	N	N
Veterinary hospital	N	N	N	N	N
Commercial kennels	N	Y	N	N	N
Riding academy	N	SP	N	N	N
Retail sales and services <75,000 square feet gross floor area (19) (43)	N	Y	SP	Y	Y
Retail sales and services >75,000 square feet gross floor area (19) (43)	N	SP	SP	SP	SP
Offices, banks, insurance and financial institutions	N	Y	Y	Y	Y
Schools, for business, trade, music, dance, and television or radio broadcasting studios (but not including towers)	N	Y	N	Y	N
Commercial radio and television towers and wireless communications facilities (20)	N	SP	SP	SP	N
Hotels (41)	N	SP	SP	N	N
Hotels <100 rooms				SP	
Hotels with conference facilities and commercial uses (21)	N	SP	SP	N	N
Residential conference and training center with food and recreation services (22)	N	N	Y	N	N
Recreation center (23)	N	N	SP	SP	Y
Private clubs, nonprofit	N	SP	N	N	N
Clubs (24)	N	Y	N	N	N
Self-service laundry	N	Y	N	SP	N
Medical office/clinic	Y	Y	N	Y	Y
Dental clinics	Y	Y	N	Y	Y

ZONING

	Zoning District Abbreviations				
	Existing Underlying Zones			Recommended Route 20 East Zoning District	
	RCR	B	LI	Proposed R20E	(Compare to) Wayside OD
Consumer service establishments	N	Y	N	Y	Y (complimentary to other principal uses)
Salesroom	N	N	N	N	N
Wholesale office or showroom	N	N	N	N	N
Wholesale sale and warehousing	N	N	N	N	N
Commercial greenhouse	N	Y	Y	N	N
Motels	N	SP	SP	N	N
Mixed use development (42)	N	SP	N	SP	Y
Brew pubs	N	SP	N	Y	N
Copy shops, newspaper offices	N	Y	N	Y	N
Place of repair for cars, boats, trucks and farm equipment (25)	N	N	N	N	N
Places of assembly	N	SP	N	N	N
Outdoor recreation uses	N	SP	SP	N	N
Outdoor storage (26)	N	Y	SP	N	N
Car parking lots, garages (27)	N	SP	N	SP	Y
Gasoline filling stations (28)	N	SP	N	N	N
Auto service facilities for minor repairs, changing tires and lubrication (28)	N	SP	N	N	N
Auto sales and service (25)	N	N	N	N	N
Car wash (28)	N	SP	N	N	N
Open air markets (29)	N	SP	N	N	N
Shopping malls	N	N	SP	SP	N
Soil removal (30)	Y	Y	Y	N	N
Accessory uses	Y	Y	Y	N	N
Funeral homes, parlors and mortuaries	N	N	N	N	N
Public, private or commercial recreation establishments, recreation grounds or places of amusement	N	SP	SP	N	N
Restaurant, cafe	N	Y	SP	Y	Y
Restaurant with drive-in or drive-thru facilities (31)	N	SP	N	N	N
Restaurants serving food outdoors (31)	N	Y	SP	Y	Y
Restaurants for employee use	N	N	Y	Y	N
Drive-thru facilities	N	SP	N	N	N
Adult bookstore (32)	N	N	N	N	N

MARLBOROUGH CODE

	Zoning District Abbreviations				
	Existing Underlying Zones			Recommended Route 20 East Zoning District	
	RCR	B	LI	Proposed R20E	(Compare to) Wayside OD
Adult video store (32)	N	N	N	N	N
Adult paraphernalia store (32)	N	N	N	N	N
Adult movie theatre (32)	N	N	N	N	N
Adult live entertainment establishment (32)	N	N	N	N	N
Tattoo and body piercing parlors and shops (32)	N	N	N	N	N
Narcotic detoxification and/or maintenance facility		N	SP	N	N
Medical marijuana treatment center	N	N	N	N	N
Agriculture, Public, and Institutional Use					
Agriculture, horticulture or floriculture >5 acres (10)	Y	Y	Y	N	N
Forest, woodlots, portable, woodworking mills (11)	N	N	N	N	N
Livestock farms > 10 acres (12)	N	N	N	N	N
Farms and poultry farms (13)	Y	N	N	N	N
Cemeteries	N	N	N	N	N
Hospitals and sanitarium	N	N	N	N	N
Correctional institutions	N	N	N	N	N
Golf courses, country clubs and beaches (14)	N	N	N	N	N
Charitable and philanthropic buildings	N	N	N	N	N
Churches and religious buildings (15)	Y	Y	Y	Y	N
Public recreation and conservation	N	N	N	N	N
Day camps	N	SP	N	N	N
Public, private and religious schools, museums, libraries, parks, recreation facilities, buildings and playgrounds	Y	Y	Y	Y	N
Child-care centers (16)	N	Y	Y	Y	N
Public utilities, not including storage yards or repair shops	Y	Y	Y	N	N
Public buildings (17)	Y	Y	Y	Y	N
Water towers, reservoirs	Y	Y	Y	N	N
Floodplain and Wetland Protection District (§ 650-23)	Y	Y	Y	Y	N

ZONING

	Zoning District Abbreviations				
	Existing Underlying Zones			Recommended Route 20 East Zoning District	
	RCR	B	LI	Proposed R20E	(Compare to) Wayside OD
Water Supply Protection District (§ 650-24)	Y	Y	Y	Y	N
Convalescent and nursing homes	N	N	N	N	N
Industrial Uses					
Airports and heliports	N	N	Y	N	N
Newspaper printing and publishing, job printing	N	N	Y	N	N
Manufacturing where the majority of items are sold on premises to the consumer	N	N	N	N	N
Transportation terminal and freight depots	N	N	SP	N	N
Food processing plants	N	N	N	N	N
Research, experimental labs (33)	N	N	Y	N	N
Bakery (nonretail)	N	N	N	N	N
Light non-nuisance manufacturing	N	N	Y	N	N
Light manufacturing, using portable electric machinery (34)	N	N	N	N	N
Light manufacturing incidental to research	N	N	Y	N	N
Associated/accessory research uses (35)	N	N	SP	Y	N
Manufacturing and/or warehousing (36)	N	N	Y	N	N
Manufacturing or warehouse (37)	N	N	N	N	N
Retail sales accessory to manufacturing (38)	N	N	N	N	N
Recreation center, indoor and outdoor	N	SP	SP	Y	Y (health, sports and fitness clubs)
Power laundries	N	N	N	N	N
Dry cleaning	N	Y	N	SP	Y (pick-up/drop-off)
Dye works	N	N	N	N	N
Packaging or bottling plants	N	N	N	N	N
Electric power substation for changing bulk power to distribution voltage	N	N	SP	N	N
Accessory uses and service buildings (39)	N	N	Y	SP	N
Large tract development (40)	N	N	N	N	N
Data storage/telecommunications facilities	N	N	Y	N	N

ZONING

650 Attachment 2

03 - 20 - 2019

City of Marlborough

FOR ILLUSTRATIVE PURPOSES ONLY - ALL ZONING DISTRICTS ARE NOT SHOWN

Table of Lot Area, Yards, and Height of Structures

(§ 650-41)

[Amended 12-1-2014 by Ord. No. 14-1005947C; 12-19-2016 by Ord. No. 16-1006667D]

Existing Underlying Zones	District	Minimum Lot Area	Minimum Lot Frontage (feet)	Minimum Side Yard (feet)	Minimum Front Yard (feet)	Minimum Rear Yard (feet)	Height		Maximum Lot Coverage
	Retirement Community	15 acres		250 ⁷	25 ⁸	50 ⁸	— ⁸	2 ½ stories	
Business B	5,000 square feet		50	25 ³	50	None	52 feet		30% for residential; 80% for all other uses
Limited Industrial LI	2 acres	200	50	50	50	50	Distance from Residential Zone (feet)	Height ^{6,10} (feet)	60%
							0 to 150:	30	
							151 to 250:	36	
							251 to 400:	40	
							401 to 500:	52	
Recommended Route 20 East Zoning District	Proposed R20E	5,000 square feet	50	25	30	25	52 feet (by-right) 85 feet (by special permit)		80%
	(Compare to) Wayside OD	5,000 square feet	50	25	30	None	52		85%

MARLBOROUGH CODE

NOTES:

- ¹ Note deleted.
- ² Applies to all buildings erected on or after January 27, 1969; all others, 10 feet.
- ³ Where abutting a residence district or within the Marlborough Village District where abutting an existing structure that has side-facing windows at the structure's lot line; otherwise 0 feet.
- ⁴ Except where abutting a residence district, shall be 50 feet.
- ⁵ Except for buildings extending through a block or to a railroad siding.
- ⁶ For the purpose of measuring setback distances for the corresponding height restrictions, an owner of LI or I zoned land may count abutting residentially zoned land toward the setback requirement if such land is owned by the same owner. Ownership of the residential land and the LI or I land must continue to be held by the same entity.
- ⁷ However, this frontage need not be contiguous.
- ⁸ No part of any principal building shall be within 25 feet of any exterior lot line nor shall any part of any building be closer to any exterior lot line than the minimum side yard requirement which would have been applicable in the zoning district in which the land in question was located before it was rezoned into a Retirement Community Residence District. A building may be as close as 25 feet to the front yard line of the exterior lot; provided, however, that no said building shall be less than 50 feet from the side line of a public way.
- ⁹ Excluding from lot size any land which prior to development of the site as a Retirement Community would be defined as a resource area as that term is defined in MGL c. 131, § 40.
- ¹⁰ Buildings on a Large Tract Development Lot, which are more than 1,200 feet from a Residential Zone, may be built to a maximum height of 85 feet.
- ¹¹ Maximum lot coverage for a Large Tract Development Lot shall be 50%.
- ¹² Within the Marlborough Village District, special permits may allow for an increase in height to 80 feet; also, provided that the height of any development adjacent to any residential district shall be stepped down and shall not exceed 52 feet. (See § 650-33F.)
- ¹³ Within the Marlborough Village District, special permits may allow for an increase in lot coverage.
- ¹⁴ Except along the following streets in the Marlborough Village District where zero-foot setback is allowed by right: Main Street, the eastern side of South Bolton Street between Main Street and Granger Boulevard, and the northern side of Granger Boulevard between South Bolton Street and Main Street.
- ¹⁵ Except that a special permit may be granted to reduce this to zero where public safety will not be impacted and the reduction will yield a better design.



City of Marlborough
Legal Department

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CITY OF MARLBOROUGH
JASON D. GROSSFIELD
CITY SOLICITOR
2019 JUN 13 A 11: 26

June 13, 2019

Edward J. Clancy, President
Marlborough City Council
City Hall
140 Main Street
Marlborough, MA 01752

Re: City Council Order No. 17/19-1007055C: Small Cell Antenna Petition of New Cingular Wireless PCS, LLC (AT&T), 28 Concord Road, Marlborough

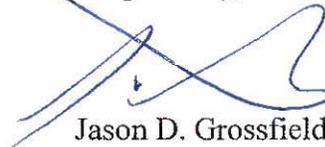
Dear Honorable President Clancy and Councilors:

I provide this letter as to the legal form of the City Council's proposed decision on the above-referenced petition submitted on behalf of New Cingular Wireless PCS, LLC ("AT&T"). The petition asks the Council to grant a location on an existing utility pole located at 28 Concord Road in Marlborough, which pole is designated as National Grid pole #2-84.

I reviewed the proposed draft decision and incorporated revisions based on the committee meetings held regarding this petition to state that the Small Cell Facility is only permitted to be placed upon a new replacement utility pole at this location, and not the existing utility pole.

The proposed decision is enclosed and in proper legal form for the Council's vote. Please contact me if you have any questions or concerns.

Respectfully,



Jason D. Grossfield
City Solicitor

Enclosure

cc: Arthur G. Vigeant, Mayor
Michael R. Dolan, Esq.

ORDERED:

That the City Council for the City of Marlborough, pursuant to M.G.L. c.166, §22, does hereby approve the petition of New Cingular Wireless PCS, LLC ("AT&T") dated October 5, 2017, filed with the City Clerk on October 5, 2017, to grant a location on an existing utility pole (which pole shall first be replaced by National Grid as set forth herein) located at 28 Concord Road in Marlborough, which pole is designated as National Grid pole #2-84, in order for AT&T to deploy a small cell facility thereon by constructing and maintaining telecommunications wires and appurtenances, including a pole top antenna, equipment cabinet, circuit breaker box, electric meter main, related wiring, fiber optic cable, and conduit (the "Small Cell Facility"), all as depicted on plans submitted with AT&T's petition to the City Council's Wireless Communications Committee and Public Services Committee, which plans are attached hereto and incorporated herein;

subject, however, to the following conditions, which conditions shall be binding upon AT&T, its successors and/or assigns:

1. The Small Cell Facility shall be of such material and construction, and all work shall be done in such manner, as to be satisfactory to the City Council and the Engineering Division of the City's Department of Public Works (the "City Engineering Division").
2. AT&T shall indemnify and hold harmless the City against all damages, injuries, costs, expenses, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and equity, allegedly caused by the acts or neglect of AT&T, its employees, agents and servants in any manner arising out of the rights and privileges granted herein to AT&T for its Small Cell Facility.
3. AT&T shall comply with the requirements of existing City ordinances, including but not limited to Chapter 473 thereof, entitled "Poles, Wires and Conduits," as may be applicable, and such requirements as may hereafter be adopted governing the construction and maintenance of the Small Cell Facility.
4. AT&T shall not install its Small Cell Facility on double poles. If National Grid pole #2-84 becomes a double pole in the future, AT&T shall remove its Small Cell Facility to a single pole as expeditiously as possible within the guidelines then prescribed by National Grid, but in any event no later than December 31 of the year in which National Grid pole #2-84 becomes a double pole; provided, however, that if AT&T is unable to comply with the December 31 deadline for reasons fairly attributable to National Grid, AT&T shall submit to the City Council a letter, to be received by the City Council prior to such deadline, requesting that the Council extend the deadline to a specified date in the subsequent year and providing good cause in support of such request.
5. All cutting of and/or digging into City streets and/or sidewalks by or on behalf of AT&T in conjunction with its Small Cell Facility is prohibited, as is all underground installation associated with the Small Cell Facility; provided, however, that the

grounding rod proposed to be installed as part of the Small Cell Facility is permitted as long as 1) AT&T installs the rod immediately adjacent to National Grid pole #2-84 so as to cause minimal disturbance to the surface of the street or sidewalk, and 2) AT&T restores the street or sidewalk surface to its pre-disturbance condition to the satisfaction of the City Engineering Division.

6. The Small Cell Facility shall be color-coordinated so as to best minimize the visual impact of the Facility.
7. The Small Cell Facility's equipment cabinet, circuit breaker box, and electric meter main shall be mounted on the side of National Grid pole #2-84 facing away from the roadway.
8. Any future modification of the Small Cell Facility by AT&T shall require further City Council Approval.
9. Any future road reconstruction or repair project by the City and/or the Commonwealth requiring the relocation of National Grid pole #2-84 shall result in AT&T's moving their Small Cell Facility to another pole in a timely fashion after having been notified by the City Engineering Division about the road project; provided, however, that any such relocation shall require further City Council approval.
10. Prior to the commencement of construction and/or installation of the Small Cell Facility, AT&T shall provide the City Engineering Division with a written construction and/or installation schedule satisfactory to the Division.
11. Prior to the commencement of construction and/or installation of the Small Cell Facility, AT&T shall provide the City's Chief Procurement Officer (the "City CPO") with a bond from a surety authorized to do business in Massachusetts and satisfactory to the City CPO in an amount equal to the cost of removal of the Small Cell Facility from National Grid pole #2-84 and for the repair and/or restoration of the public way, in the vicinity of National Grid pole #2-84, to the condition the public way was in as of the date of this order, said amount to be determined by the City Engineering Division. The amount of the bond shall be the total of the estimate by the Division plus an annual increase of 3% for the operating life of the Small Cell Facility. AT&T shall notify the City CPO and the Division of any cancellation of, or change in the terms or conditions in, the bond.
12. Prior to commencement of construction and/or installation of the Small Cell Facility, National Grid shall replace the existing pole #2-84 with a new pole as further described in the plans attached hereto. Notwithstanding anything to the contrary, the Small Cell Facility shall not be placed on said existing pole, and this Grant of

Location only authorizes the Small Cell Facility to be placed on the new replacement pole.

13. Failure by AT&T to comply with any of the above conditions to the satisfaction of the City Council or, as applicable, the City Engineering Division or the City CPO shall result in the City Council's review of AT&T's petition granted herein.

ADOPTED

In City Council

Order No. _____

Adopted

Approved by Mayor

Arthur G. Vigeant

Date:

A TRUE COPY

ATTEST:

APPROXIMATE COORDINATES: LAT: 42.352556° N LONG: 71.529969° W



550 COCHUATE ROAD
FRAMINGHAM, MA 01701



95 RYAN DRIVE
RAYNHAM, MA 02767



1400 OSBORN STREET
BUILDING 20 NORTH SUITE 300
N. ANDOVER, MA 01845

TEL: (978) 858-5558
FAX: (978) 336-6586

CHECKED BY: AT

APPROVED BY: DJC

SUBMITTALS

NO.	DATE	DESCRIPTION	BY
3	04/07/16	REVISED PER COMMENTS	JM
1	02/18/16	REVISED PER COMMENTS	JM
1	10/01/15	REVISED PER COMMENTS	SE
0	06/02/15	ISSUED FOR REVIEW	SE

CLUSTER AND NODE NUMBER:
AREA 5_87A

SITE ID:
AREA 5_87A
SITE ADDRESS:
28 CONCORD ROAD
MARLBOROUGH, MA 01752
MIDDLESEX COUNTY

SHEET TITLE:
KEY PLAN AND
ELEVATION

SHEET NUMBER

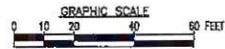
A-1



KEY PLAN

22x34 SCALE: 1"=20'
11x17 SCALE: 1"=40'

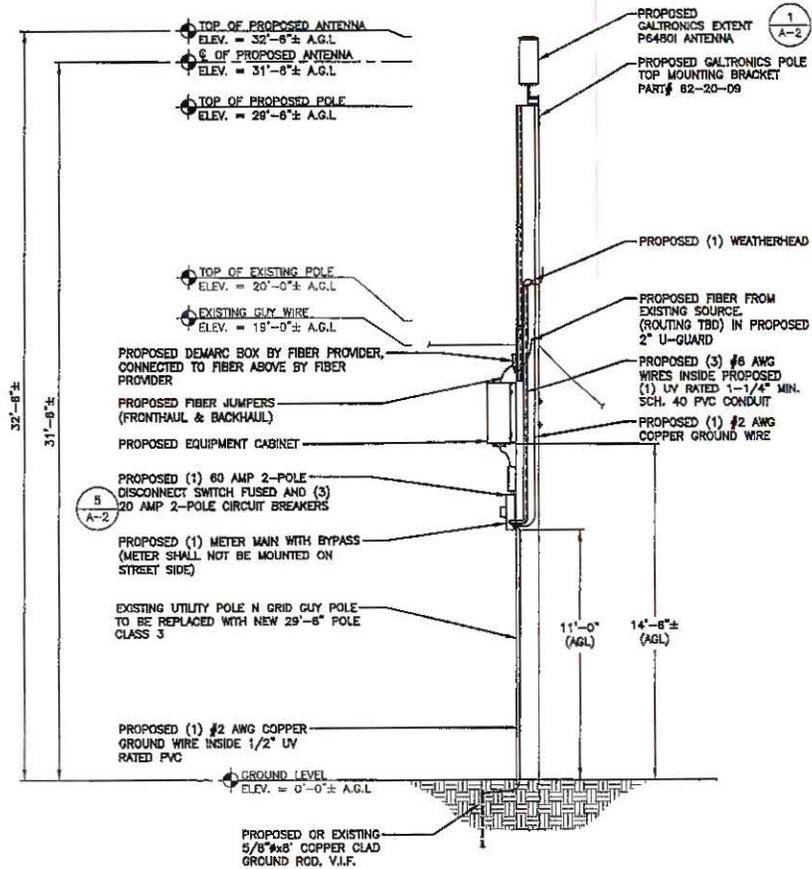
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A-1



EXISTING CONDITIONS PHOTO DETAIL

SCALE: N.T.S.

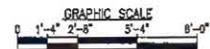
2
A-1

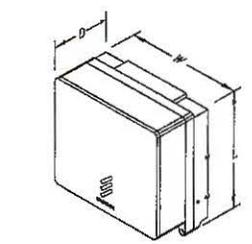
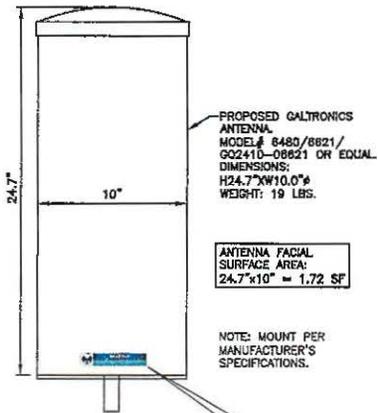


ELEVATION

22x34 SCALE: 3/8"=1'-0"
11x17 SCALE: 3/16"=1'-0"

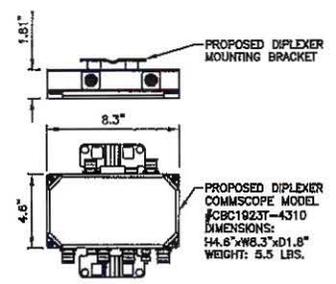
3
A-1





MODEL	QTY	L	W	D	WGT.
2203	2	8.0"	8.0"	4.0"	11 LB
2205	1	8.0"	8.0"	4.0"	11 LB

RRH DETAIL
SCALE: N.T.S.

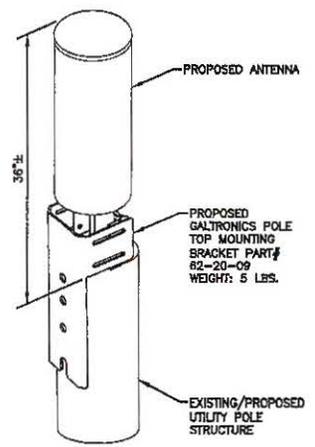


DIPLEXER DETAIL
(AS REQUIRED)
SCALE: N.T.S.

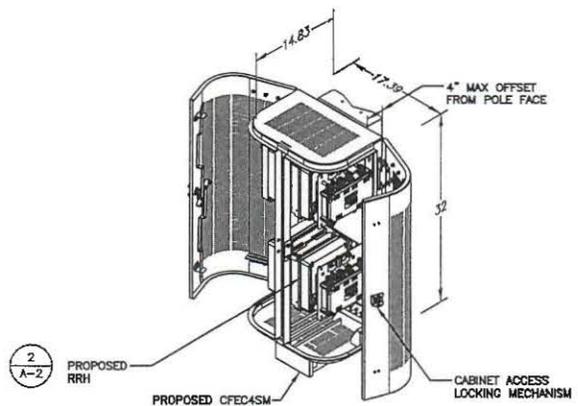
NOTICE
RF energy emitted by this device may exceed the FCC's permitted limits exceeding 100mV. This device is 1 feet from the FCC device. Call 800-435-3632 for info if you need details within 5 feet.

NO1-CD-16 1"x6" NOTICE DECAL
PLACE THREE NOTICE STICKERS EQUALLY SPACED AROUND THE BOTTOM OF ANTENNA RADOME

ANTENNA DETAIL
SCALE: N.T.S.



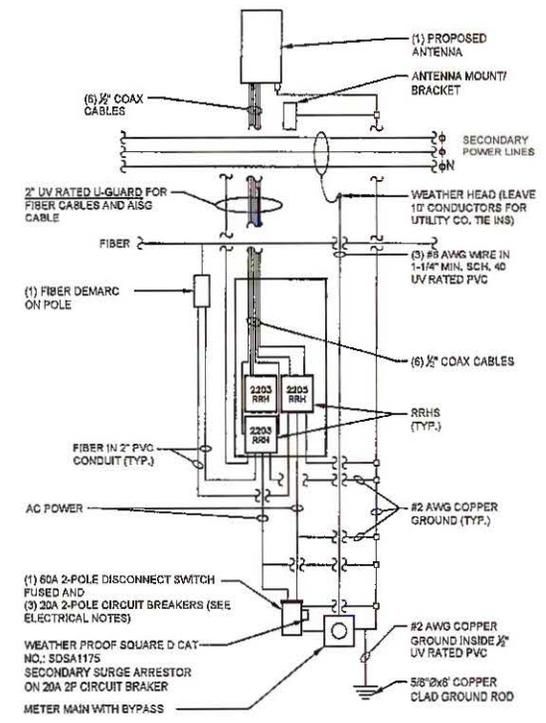
ANTENNA MOUNT DETAIL
SCALE: N.T.S.



NO BATTERY BACKUP OR AUXILIARY OUTLETS FOR BACKUP POWER ARE BEING PROVIDED IN THIS DESIGN

NOTE: MOUNT PER MANUFACTURER'S SPECIFICATIONS.

EQUIPMENT CABINET DETAIL
SCALE: N.T.S.



GENERAL WIRING DIAGRAM
SCALE: N.T.S.



CHECKED BY: AT

APPROVED BY: DJC

SUBMITTALS			
REV.	DATE	DESCRIPTION	BY
3	04/18/16	REVISED PER COMMENTS	WA
1	04/15/16	REVISED PER COMMENTS	ME
1	02/01/17	REVISED PER COMMENTS	SB
0	03/03/17	ISSUED FOR REVIEW	SB

CLUSTER AND NODE NUMBER:
AREA 5_87A

SITE ID:
AREA 5_87A

SITE ADDRESS:
28 CONCORD ROAD
MARLBOROUGH, MA 01752
MIDDLESEX COUNTY

SHEET TITLE
EQUIPMENT DETAILS

SHEET NUMBER
A-2



City of Marlborough
Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508) 460-3610

LEGAL@MARLBOROUGH-MA.GOV

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2019 JUN 13 4:11:21
JASON D. GROSSFIELD
CITY SOLICITOR

June 13, 2019

Edward J. Clancy, President
Marlborough City Council
City Hall
140 Main Street
Marlborough, MA 01752

Re: City Council Order No. 19-1007612B; Application for Special Permit of Thomas Coder, 21 Patten Drive, Marlborough

Dear Honorable President Clancy and Councilors:

In accordance with Chapter 650-59C(13) of the Marlborough Zoning Ordinance, I provide this letter as to the legal form of the City Council's proposed findings on the above-referenced special permit application submitted by Thomas Coder relating to 21 Patten Drive, Marlborough.

Enclosed is a copy of the proposed decision, with the insertion of a new Condition #2 as recommended by the Urban Affairs Committee at its May 22, 2019 meeting. I certify that it is in proper legal form.

Please contact me if you have any questions or concerns.

Respectfully,

Jason D. Grossfield
City Solicitor

Enclosure

cc: Arthur G. Vigeant, Mayor
Jeffrey Cooke, Building Commissioner

IN CITY COUNCIL

21 Patten Drive, Marlborough, MA June 17th, 2019

DECISION FOR SPECIAL PERMIT

IN CITY COUNCIL

Special Permit
Thomas P. Coder
21 Patten Drive
Marlborough, MA 01752

Order No. 19-1007612

DECISION ON AN APPLICATION FOR SPECIAL PERMIT

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Thomas P. Coder of 21 Patten Drive, Marlborough MA 01752, as provided in this Decision and subject to the following Findings of Fact and Conditions:

PROCEDURAL FINDINGS

1. Thomas Coder, with an address of 21 Patten Drive, Marlborough, MA 01752, is the owner of real property located at 21 Patten Drive, Marlborough, MA 01752 (the "Applicant").
2. The Applicant is the owner of said real property which is described in a deed recorded with the Middlesex South District Registry of Deeds at Book 71802, Page 461, and identified on the City of Marlborough Assessor's Maps as Map 5, Parcel 80 (the "Site").
3. The Applicant, on or about March 11, 2019 filed with the City Clerk of the City of Marlborough an Application to City Council for Issuance of Special Permit (the "Application") under Section 12, Paragraph B. of Chapter 650 (Zoning) of the Code of the City of Marlborough to demolish the existing one story single-family dwelling located on the Site and to construct a new two story single-family dwelling on a new poured concrete foundation footprint (the "Project").
4. The Application consisted of an original and two copies of the following: (a) Application to the City Council for Issuance of Special Permit, (b) Special Permit-Summary Impact Statement, (c) Filing Fee check in the amount of \$300.00, (d) Plan Delivery Certification, (e) Tax Payment Certification, (f) Abutters List, (g) Existing and Preliminary Site Plans, (h) Architectural Drawings, (i) Certificate of Completeness of Application, and (j) Zoning Denial Letter (dated March 4th, 2019), (collectively the "Documents"), which Documents are incorporated herein and become a part of this Decision. Eleven sets of documents were

delivered to the City Council and one set each to the Police Chief, the Fire Chief, the City Planner (Building Commissioner), the City Engineer, and the Conservation Officer, all in accordance with Section 59 of Chapter 650 of the Zoning Code of the City of Marlborough.

5. In accordance with the Rules and Regulations of the City Council and Massachusetts General Laws Chapter 40A, Sections 9 and 11, the City Council established a date for a public hearing on the Application, caused to be advertised notice of said hearing and the date thereof in the Marlborough Enterprise. All necessary abutters, as certified by the Office of the Marlborough Assessors, were provided notice as required by law.
6. The Marlborough City Council held a public hearing on the Application on April 29th, 2019 in accordance with the published notice (the "Public Hearing"). The time for the City Council to take final action on the Application is July 29th, 2019.
7. The Applicant presented testimony at the Public Hearing detailing the Project, its impact upon the neighborhood, and such issues as the City Council and members of the public deemed appropriate. Members of the public had the opportunity to testify at the Public Hearing. Subjects of concern were the deteriorated condition of the existing single-family dwelling, the proposed new two-story single-family dwelling, on a new concrete foundation.
8. The Site, located in the A-3 zoning district, has side setback of 11.5' to the foundation and 9.5' to the roof. With a rear setback reduced to 22 feet and is comprised of approximately 1,767 SF of land. Chapter 650-41 of the Zoning Code of the City of Marlborough requires 15' side setback and a lot size of 5,000 SF.
9. The Building Commissioner has determined that the existing single-story single-family dwelling is a legal pre-existing nonconforming structure with respect to lot size and setbacks, and that the proposed two-story single-family dwelling would increase or intensify the nonconformities of said structure. The proposed single-family dwelling would conform to requirements of the City of Marlborough Zoning Code in all respects except for the side yard, back yard setback requirements. Thus, the proposed reconstruction of the dwelling with an additional second floor within setback area intensifies the pre-existing legally non-conformity structure and requires a special permit from the City Council. The Zoning Denial Letter of the Building Commissioner, dated March 4th, 2019, is attached hereto as "**Attachment A.**"
10. The existing site plan submitted with the Application (as thereafter revised to its current attached version, if applicable) is entitled, "ZBA Petition Plan, 21 Patten Drive, Marlborough MA; Prepared for Thomas Coder" by Connorstone Engineering, 10 Southwest Cutoff, Suite 7, Northborough, MA 01532, graphic scale 1" = 20', dated March 7, 2019, attached hereto as "**Attachment B.**"
11. The architectural drawings submitted with the Application are entitled "Coder Residence, 21 Patten Drive, Marlborough, MA," by Silver Street Architects. Daniel Wezniak, AIA, dated February 5, 2019 (the "Architectural Drawings" A-0, A-1, A-2, A-3, A-4, A-5) and are attached hereto as "**Attachment C.**"

BASED ON THE ABOVE, THE MARLBOROUGH CITY COUNCIL MAKES THE FOLLOWING FINDING OF FACT AND TAKES THE FOLLOWING ACTIONS:

- A. The City Council finds that it may grant a Special Permit subject to such terms and conditions as it deems necessary and reasonable to protect the citizens of the City of Marlborough (also referenced herein as the “City”).
- B. The City Council finds the Application for the Special Permit does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough.
- C. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.
- D. The City Council makes these findings subject to the completion and adherence by the Applicant, his successors and/or assigns to the conditions more fully set forth herein.
- E. The City Council finds that the expansion or alteration of the existing legally nonconforming one story single-family structure, by demolition thereof and construction of the proposed new two story single-family dwelling, is not substantially more detrimental to the neighborhood than the existing non-conforming structure, that it is an appropriate use, and that is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions as provided herein.
- F. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby GRANTS the Applicant a Special Permit to build a single-family dwelling as shown on the Plans filed, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding on the Applicant, his successors and/or assigns:
 1. Construction in Accordance with Applicable Laws. 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 and shall be built according to the Site Plan and Architectural Drawings as may be subject to minor modifications with approval of the Building Commissioner.
 2. No additional decks. No deck(s) shall be constructed or permitted beyond what is expressly shown on the Plan in Attachment B.
 3. Recording of Special Permit. In accordance with the provisions of Massachusetts General Laws c. 40A, Section 11, the Applicant at his expense shall record this Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing the Special Permit has elapsed with no appeal having been filed, and before the Applicant shall apply to the Building Commissioner for a building permit concerning the proposed

expansion. Applicant shall provide a copy of the recorded Special Permit to the City Council's office, to the Building Department and to the City Solicitor's office.

Yea: Nay: Absent:

ADOPTED
In City Council

President

Edward Clancy
City Council

A TRUE COPY
ATTEST:

AH. A



City of Marlborough
BUILDING DEPARTMENT

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3776 Facsimile (508) 460-3736
building_dept@marlborough-ma.gov

JEFFREY COOKE, C.B.O.
BUILDING COMMISSIONER

PATRICK DAHLGREN
ASSISTANT BUILDING
COMMISSIONER

WILLIAM PAYNTON
LOCAL BUILDING INSPECTOR

RICHARD DESIMONE
PLUMBING & GAS INSPECTOR

JOHN CAIN
WIRING INSPECTOR

ZONING DENIAL

March 4, 2019

To: Thomas P. Coder
3 Atwood Street
Southborough, MA 01772

RE: 21 Patten Drive, Marlborough, MA

Mr. Coder:

Your application to demolish the existing single story SFD and construct a two story SFD at 21 Patten Drive, Marlborough, MA Parcel ID #5-80, located in the Residence A-3 zoning district (A-3) is denied as it does not comply with Chapter 650-41 of City Code of Marlborough. The "Table of Lot Area, Yards, and Height of Structures" state that your use requires 100' of frontage and 12,500 SF of area. Your existing lot contains 50' frontage and 5,000 SF of area. As a pre-existing, non-conforming lot, the construction of a new larger SFD that increases the non-conformity requires a "Special Permit" (SP) issued by the Marlborough City Council.

I have determined that the proposed structure is increasing intensifying the non-conformity.

- The existing structure is approximately 733 square feet (SF) of area the proposed is approximately 1767 SF.
- In the required yard setback area, the building increases in height from 1 story to 2 stories.

Please note that the supplied proposed plot plan is incorrect regarding the proposed structure. The plot plan appears to be based on the proposed basement size of 27' wide x 55' deep, while the plans show a proposed structure of 31' x 57', 1767 lot coverage (2' eaves overhang). The plot plan submitted shows a proposed side setback of 11.5 feet when in actuality, the side setbacks will be 9.5 feet, with a rear setback reduced to 22 feet. You will need to provide a plot plan that accurately reflects what is proposed.

Your use requested requires a Zoning relief issued by the Marlborough City Council.

You have the right to continue to the Marlborough City Council (SPGA) for a Special Permit as stated in the City Code section 650-12B or you have the right to appeal this decision to the Zoning Board of Appeals as per section 650-58.

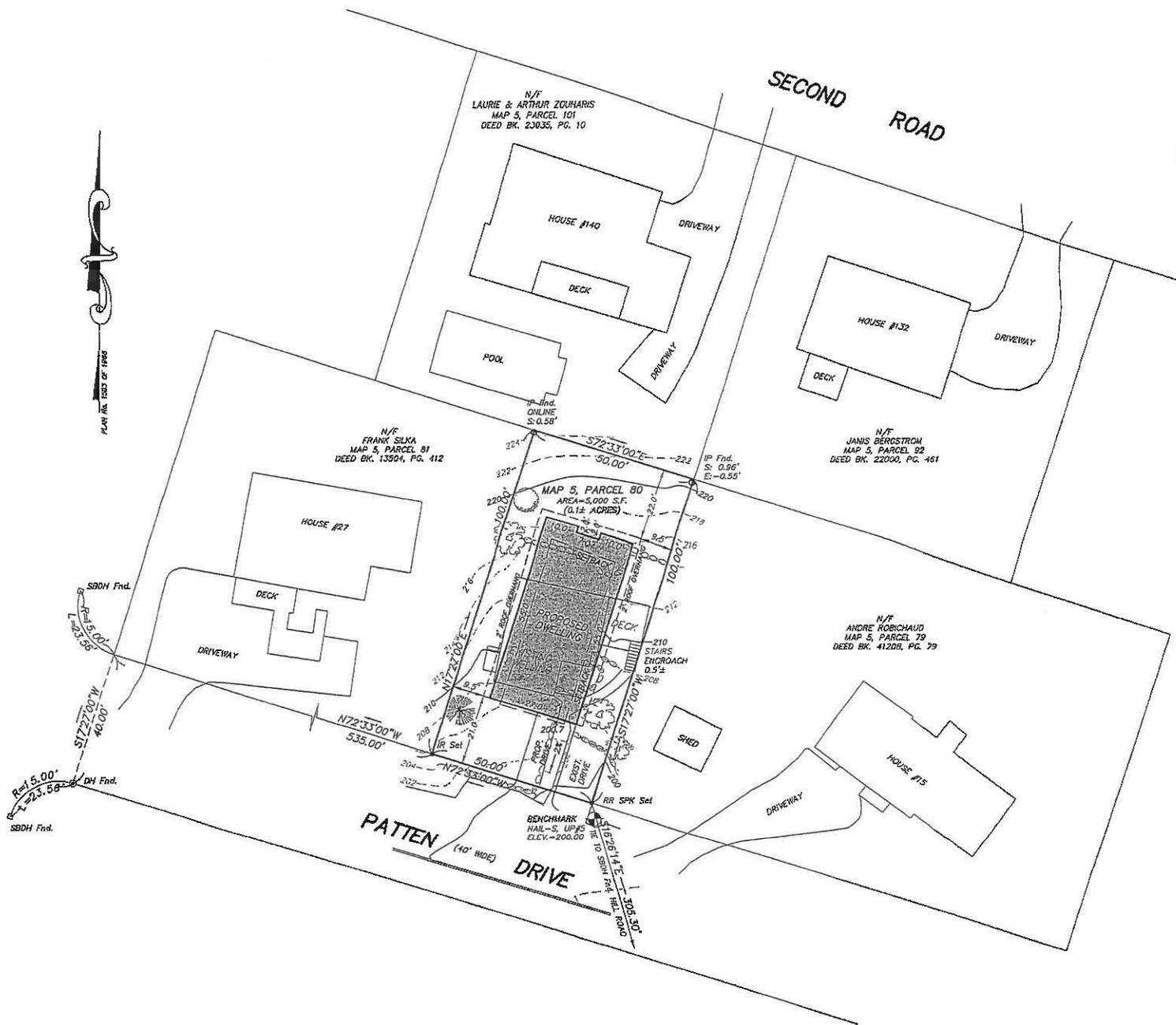
An appeal from this denial for a SP may be taken to the Marlborough City Council by filling a Notice of Appeal with the City Clerk within 30 days of the date of this denial letter. Further information should be obtained from the Marlborough City Council.

The code in its entirety may be found at www.ecode360.com/MA1056

Sincerely,

Jeffrey Cooke, C.B.O., Building Commissioner, Zoning Enforcement Officer

ATT. B



THE TIES TO THE LOT LINES SHOWN HEREON ARE NOT TO BE USED IN THE SETTING OF FENCES, HEDGES, ETC.

THE PROPOSED DWELLING SHOWN HEREON WILL REQUIRE A VARIANCE FROM THE CITY OF MARLBOROUGH ZONING BOARD OF APPEALS.

THE LOT SHOWN AND THE DWELLING THEREON ARE NOT LOCATED WITHIN THE 100 YEAR FEDERAL FLOOD HAZARD AREA AS SHOWN ON THE FLOOD INSURANCE RATE MAPS FOR THE CITY OF MARLBOROUGH, PANEL 481 OF 656, MAP NUMBER 25017C0481F, DATED JULY 7, 2014.

ZONED: RESIDENCE A3 -- PROPOSED DWELLING

	REQUIRED	EXISTING HOUSE	PROPOSED HOUSE*
AREA	12,500 sf	5,000 sf	5,000 sf
FRONTAGE	100 feet	50 feet	50 feet
FRONT	20 feet	28.0'	21.0'
SIDE	15 feet	8.2'	11.5' (VARIANCE)
REAR	30 feet	40.1'	24.0' (VARIANCE)
ACCESSORY	5 feet	N/A	N/A

EXISTING IMPERVIOUS LOT COVERAGE = 1,211 S.F.± (24.2%)
 PROPOSED IMPERVIOUS LOT COVERAGE = 1,723 S.F.± (24.5%); JOX MAX (VARIANCE REQ.)

*BUILDING PER ZONING DEFINITION

ABUTTING LOT INFORMATION, HOUSES, DRIVEWAYS, ETC. TAKEN FROM CITY OF MARLBOROUGH GIS DATA.

RIDGE HEIGHT, EXISTING DWELLING = 225.2'
 RIDGE HEIGHT, PROPOSED DWELLING = 228.8'



PREPARED FOR:
 THOMAS CODER
 21 PATTEN DRIVE
 MARLBOROUGH, MA 01752

REVISED: MARCH 7, 2019
 REVISED: FEBRUARY 11, 2019
 REVISED: AUGUST 1, 2018
 DATE: AUGUST 2, 2017 SCALE: 1"=20'

ZBA PETITION PLAN

21 PATTEN DRIVE

MARLBOROUGH, MA

CONNORSTONE ENGINEERING
 CONSULTING CIVIL ENGINEERS
 AND LAND SURVEYORS
 10 SOUTHWEST CUTOFF, SUITE 7
 NORTHBOROUGH, MASSACHUSETTS 01532



DANIEL J. MERNIAK AIA
300 West Main Street Building A
Northborough, Massachusetts 01532
PH: 508.339.1100
WWW.SILVERSTREETARCHITECTS.COM

GENERAL NOTES:

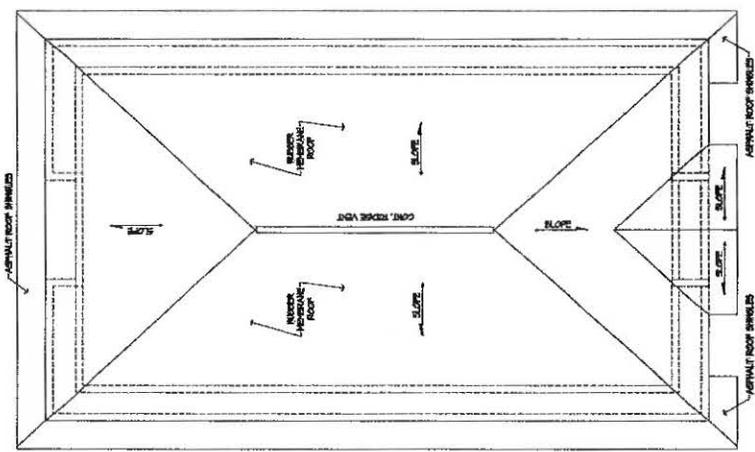
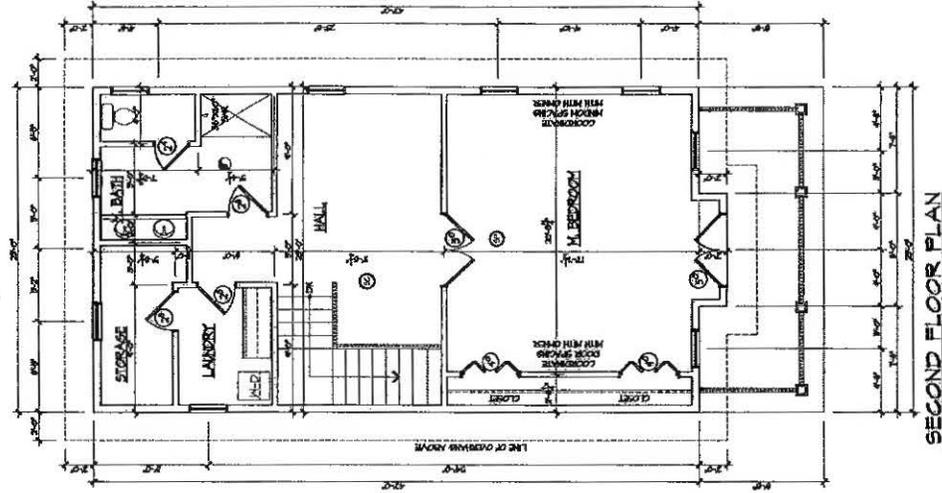
INFORMATION:
This drawing is the property of Silver Street Architects and is to be used only for the project and location specified. It is not to be reproduced, copied, or used for any other project without the written consent of Silver Street Architects. The user of this drawing is responsible for obtaining all necessary permits and approvals from the appropriate authorities. The user is also responsible for ensuring that the drawing is used in accordance with the applicable laws and regulations. Silver Street Architects is not responsible for any errors or omissions in this drawing.

No.	Revisions/Notes	Date
1		
2		
3		
4		

FLOOR PLANS
CROSS SECTION

CODER RESIDENCE
21 WATER DRIVE
SANDBOROUGH, MA

PROJECT NO: 020814
DATE: 1/14/10
A1.1



Silver Street Architects LLC



City of Marlborough
Department of Public Works

135 NEIL STREET
MARLBOROUGH, MASSACHUSETTS 01752
TEL. 508-624-6910
*TDD 508-460-3610

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
JOHN L. GHILONI
COMMISSIONER
2019 JUN 13 A 11:50

June 13, 2019

Arthur G. Vigeant, Mayor
City Hall
140 Main Street
Marlborough, MA 01752

Re: Proposed Easement for Sudbury Street Sewer Project, Phase 4 (55 Hanlon Drive)

Dear Mayor Vigeant:

I request that you send to the City Council, for their action, the enclosed proposed order and form of Grant of Sewer Easement to the City of Marlborough from Allen Supynuk and Wendy McDonald, in connection with the Sudbury Street Sewer Project, Phase 4, scheduled for construction during Summer 2019. The documents, which have been reviewed by the Legal Department and are in proper legal form are currently being reviewed by the property owners and will be signed prior to a request for vote by the City Council.

City Engineer Thomas DiPersio, Jr., is available to answer any questions concerning this matter. Please feel free to contact me as well if you have any questions or concerns.

Respectfully,

John L. Ghiloni
Commissioner of Public Works

Enclosure

cc: Jason D. Grossfield, City Solicitor
Thomas DiPersio, Jr., City Engineer

ORDERED:

WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience and necessity require that the permanent sewer easement shown as "Proposed Easement A", constituting a portion of the "Proposed 30' Wide Sewer Easement" as shown, more or less, on a plan entitled "Easement Plan of Land in Marlborough, MA, Prepared By: City of Marlborough Department of Public Works, Engineering Division, 135 Neil Street, Marlborough, MA 01752, Scale: 1" = 40'; Date: June 10, 2019" (the "Plan"). Containing 11,496+/- square feet, more or less, according to said plan, be accepted as a municipal easement as shown on plan thereof and as hereinafter described:

DESCRIPTION

The 30'-wide sewer easement shown as "Proposed Easement A", constituting a portion of the "Proposed 30' Wide Sewer Easement" as shown, more or less, on a plan entitled "Easement Plan of Land in Marlborough, MA, Prepared By: City of Marlborough Department of Public Works, Engineering Division, 135 Neil Street, Marlborough, MA 01752, Scale: 1" = 40'; Date: June 10, 2019" (the "Plan"), said plan to be recorded at the Middlesex County South Registry of Deeds herewith. Containing 11,496+/- square feet, more or less, according to said plan. Said easement and plan are attached hereto.

IT IS THEREFORE ORDERED THAT:

The 30'-wide sewer easement shown as "Proposed Easement A", constituting a portion of the "Proposed 30' Wide Sewer Easement" as shown, more or less, on a plan entitled "Easement Plan of Land in Marlborough, MA, Prepared By: City of Marlborough Department of Public Works, Engineering Division, 135 Neil Street, Marlborough, MA 01752, Scale: 1" = 40'; Date: June 10, 2019" (the "Plan"), said plan to be recorded at the Middlesex County South Registry of Deeds herewith. Containing 11,496+/- square feet, more or less, according to said plan. Said easement and plan are attached hereto.

Being portions of the property owned by ALLEN G. SUPYNUK and WENDY MCDONALD and described in a deed recorded in the Middlesex South District Registry of Deeds, Book 42958 Page 450, be accepted as a municipal easement in the City of Marlborough.

ADOPTED
In City Council
Order No. 19-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:

GRANT OF SEWER EASEMENT

ALLEN G. SUPYNUK and WENDY MCDONALD, of Marlborough, Mass., hereinafter known, collectively, as Grantors, its successors and assigns, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration as provided in the covenants herein, receipt and sufficiency of which is hereby acknowledged,

Hereby grant to the CITY OF MARLBOROUGH, a municipal corporation formed under the laws of the Commonwealth of Massachusetts, and having an address at 140 Main Street, Marlborough, MA 01752 in Middlesex County, hereinafter referred to as Grantee, its successors and assigns forever, with quitclaim covenants, an exclusive and perpetual right and easement to operate, construct, maintain, replace, repair, inspect, and improve a sanitary sewer, a system of sewerage, and other appurtenances thereto to consisting of but not limited to pipes, conduits, manholes, vaults and castings on, through, over and under a portion of land located off of Hanlon Drive, Marlborough, Middlesex County, Massachusetts and being more particularly described as follows:

DESCRIPTION

The 30'-wide sewer easement shown as "Proposed Easement A", constituting a portion of the "Proposed 30' Wide Sewer Easement" as shown, more or less, on a plan entitled "Easement Plan of Land in Marlborough, MA, Prepared By: City of Marlborough Department of Public Works, Engineering Division, 135 Neil Street, Marlborough, MA 01752, Scale: 1" = 40'; Date: June 10, 2019" (the "Plan"), said plan to be recorded at the Middlesex County South Registry of Deeds herewith.

Containing 11,496+/- square feet, more or less, according to said plan.

Being portions of the property owned by the Grantor and described in a deed recorded in the Middlesex South District Registry of Deeds, in Book 42958 Page 450.

The above granted rights being more particularly described as the right to lay, inspect, construct, reconstruct, relocate, operate, maintain, alter, renew, replace, add to and remove for a sanitary sewer and system of sewerage the necessary pipes, conduits, manholes, vaults, castings and/or other appurtenances that are or shall be required to install and operate a sewer line, on, over and under the easement area and to do all other acts incidental to the foregoing, including the right to pass and repass over the land of Grantor, its successors and assigns, with people, equipment, supplies for access thereto for all of the above purposes.

And, Grantee shall construct a sewer connection stub and approximately sixty feet of service piping for connection of the existing house to the new sewer line to be located within the easement, remove a 24 inch diameter pine tree from the property near the existing house, and remove and reset part of an existing fence within the easement.

And, for the same consideration aforesaid, the Grantor does hereby give, grant, transfer and deliver unto the Grantee and its successors and assigns forever sanitary sewer conduits, manholes, vaults, castings and/or other appurtenances thereto that are now or hereafter constructed or installed in, through, or under the above described land by the Grantor or the Grantor's successors and assigns.

Also granted is the perpetual right and easement at any time and from time to time to clear and keep cleared that portion and areas of the premises wherein the utilities are located, of trees, roots, branches, shrubs, brush, bushes, structures, objects and surfaces as may, in the reasonable opinion of the Grantee, its successors and assigns, interfere with the safe and efficient operation and maintenance of said sanitary sewer and system of sewerage.

The Grantee, for itself, its successors and assigns, further agrees that it will promptly restore the surface disturbed by it in the exercise of the rights herein granted, in a good and workmanlike manner, substantially to the same condition as existed prior to its being disturbed.

Grantor, its successors and assigns may not place any building, shed or other permanent object or encroachment within the easement area which would materially or unreasonably affect and/or interfere with the purpose of the easement.

It is intended that this easement be conveyed by the Grantor to the City of Marlborough. The grant of easement is and shall be binding upon the Grantor, its successors and/or assigns, and inure to the benefit of the Grantee.

Grantor warrants that it has good title to transfer the same, and that it will defend the same against claims of all persons.

In witness whereof, this Grant of Sewer Easement is executed under seal this ___ day of

_____, 2019.

ALLEN G. SUPYNUK

WENDY MCDONALD

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ___st day of _____, 2019, before me, the undersigned notary public, personally appeared ALLEN G. SUPYNUK, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ___st day of _____, 2019, before me, the undersigned notary public, personally appeared WENDY MCDONALD, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:



City of Marlborough
Department of Public Works

135 NEIL STREET
MARLBOROUGH, MASSACHUSETTS 01752
TEL. 508-624-6910
*TDD 508-460-3610

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
JOHN L. GHILONI
COMMISSIONER
2019 JUN 13 A 11:50

June 13, 2019

Arthur G. Vigeant, Mayor
City Hall
140 Main Street
Marlborough, MA 01752

Re: Proposed Easement for Sudbury Street Sewer Project, Phase 4 (263 Sudbury Street)

Dear Mayor Vigeant:

I request that you send to the City Council, for their action, the enclosed proposed order and form of Grant of Sewer Easement to the City of Marlborough from Daniel and Kelly Sarazen, in connection with the Sudbury Street Sewer Project, Phase 4, scheduled for construction during Summer 2019. The documents, which have been reviewed by the Legal Department and are in proper legal form are currently being reviewed by the property owners and will be signed prior to a request for vote by the City Council.

City Engineer Thomas DiPersio, Jr., is available to answer any questions concerning this matter. Please feel free to contact me as well if you have any questions or concerns.

Respectfully,

John L. Ghiloni
Commissioner of Public Works

Enclosure

cc: Jason D. Grossfield, City Solicitor
Thomas DiPersio, Jr., City Engineer

ORDERED:

WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience and necessity require that the permanent sewer easement shown as "Proposed Easement E", constituting a portion of the "Proposed 30' Wide Sewer Easement" as shown, more or less, on a plan entitled "Easement Plan of Land in Marlborough, MA, Prepared By: City of Marlborough Department of Public Works, Engineering Division, 135 Neil Street, Marlborough, MA 01752, Scale: 1" = 50'; Date: June 10, 2019" (the "Plan"). Containing 1,647+/- square feet, more or less, according to said plan, be accepted as a municipal easement as shown on plan thereof and as hereinafter described:

DESCRIPTION

The 30'-wide sewer easement shown as "Proposed Easement E", constituting a portion of the "Proposed 30' Wide Sewer Easement" as shown, more or less, on a plan entitled "Easement Plan of Land in Marlborough, MA, Prepared By: City of Marlborough Department of Public Works, Engineering Division, 135 Neil Street, Marlborough, MA 01752, Scale: 1" = 50'; Date: June 10, 2019" (the "Plan"), said plan to be recorded at the Middlesex County South Registry of Deeds herewith. Containing 1,647+/- square feet, more or less, according to said plan. Said easement and plan are attached hereto.

IT IS THEREFORE ORDERED THAT:

The 30'-wide sewer easement shown as "Proposed Easement E", constituting a portion of the "Proposed 30' Wide Sewer Easement" as shown, more or less, on a plan entitled "Easement Plan of Land in Marlborough, MA, Prepared By: City of Marlborough Department of Public Works, Engineering Division, 135 Neil Street, Marlborough, MA 01752, Scale: 1" = 50'; Date: June 10, 2019" (the "Plan"), said plan to be recorded at the Middlesex County South Registry of Deeds herewith. Containing 1,647+/- square feet, more or less, according to said plan. Said easement and plan are attached hereto.

Being portions of the property owned by DANIEL A. SARAZEN and KELLY A. SARAZEN and described in a deed recorded in the Middlesex South District Registry of Deeds, in Book 49004 Page 82, be accepted as a municipal easement in the City of Marlborough.

ADOPTED
In City Council
Order No. 19-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:

GRANT OF SEWER EASEMENT

DANIEL A. SARAZEN and KELLY A. SARAZEN, of Marlborough, Mass., hereinafter known, collectively, as Grantors, its successors and assigns, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration as provided in the covenants herein, receipt and sufficiency of which is hereby acknowledged,

Hereby grant to the CITY OF MARLBOROUGH, a municipal corporation formed under the laws of the Commonwealth of Massachusetts, and having an address at 140 Main Street, Marlborough, MA 01752 in Middlesex County, hereinafter referred to as Grantee, its successors and assigns forever, with quitclaim covenants, an exclusive and perpetual right and easement to operate, construct, maintain, replace, repair, inspect, and improve a sanitary sewer, a system of sewerage, and other appurtenances thereto to consisting of but not limited to pipes, conduits, manholes, vaults and castings on, through, over and under a portion of land located off of Sudbury Street, Marlborough, Middlesex County, Massachusetts and being more particularly described as follows:

DESCRIPTION

The 30'-wide sewer easement shown as "Proposed Easement E", constituting a portion of the "Proposed 30' Wide Sewer Easement" as shown, more or less, on a plan entitled "Easement Plan of Land in Marlborough, MA, Prepared By: City of Marlborough Department of Public Works, Engineering Division, 135 Neil Street, Marlborough, MA 01752, Scale: 1" = 50'; Date: June 10, 2019" (the "Plan"), said plan to be recorded at the Middlesex County South Registry of Deeds herewith.

Containing 1,647+/- square feet, more or less, according to said plan.

Being portions of the property owned by the Grantor and described in a deed recorded in the Middlesex South District Registry of Deeds, in Book 49004 Page 82.

The above granted rights being more particularly described as the right to lay, inspect, construct, reconstruct, relocate, operate, maintain, alter, renew, replace, add to and remove for a sanitary sewer and system of sewerage the necessary pipes, conduits, manholes, vaults, castings and/or other appurtenances that are or shall be required to install and operate a sewer line, on, over and under the easement area and to do all other acts incidental to the foregoing, including the right to pass and repass over the land of Grantor, its successors and assigns, with people, equipment, supplies for access thereto for all of the above purposes.

And, Grantee shall remove three certain dead trees and a treehouse on the Property.

And, for the same consideration aforesaid, the Grantor does hereby give, grant, transfer and

deliver unto the Grantee and its successors and assigns forever sanitary sewer conduits, manholes, vaults, castings and/or other appurtenances thereto that are now or hereafter constructed or installed in, through, or under the above described land by the Grantor or the Grantor's successors and assigns.

Also granted is the perpetual right and easement at any time and from time to time to clear and keep cleared that portion and areas of the premises wherein the utilities are located, of trees, roots, branches, shrubs, brush, bushes, structures, objects and surfaces as may, in the reasonable opinion of the Grantee, its successors and assigns, interfere with the safe and efficient operation and maintenance of said sanitary sewer and system of sewerage.

The Grantee, for itself, its successors and assigns, further agrees that it will promptly restore the surface disturbed by it in the exercise of the rights herein granted, in a good and workmanlike manner, substantially to the same condition as existed prior to its being disturbed.

Grantor, its successors and assigns may not place any building, shed or other permanent object or encroachment within the easement area which would materially or unreasonably affect and/or interfere with the purpose of the easement.

It is intended that this easement be conveyed by the Grantor to the City of Marlborough. The grant of easement is and shall be binding upon the Grantor, its successors and/or assigns, and inure to the benefit of the Grantee.

Grantor warrants that it has good title to transfer the same, and that it will defend the same against claims of all persons.

In witness whereof, this Grant of Sewer Easement is executed under seal this ___ day of _____, 2019.

DANIEL A. SARAZEN

KELLY A. SARAZEN

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ___st day of _____, 2019, before me, the undersigned notary public, personally appeared DANIEL A. SARAZEN, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ___st day of _____, 2019, before me, the undersigned notary public, personally appeared KELLY A. SARAZEN, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:



City of Marlborough
Department of Public Works

135 NEIL STREET
MARLBOROUGH, MASSACHUSETTS 01752
TEL. 508-624-6910
*TDD 508-460-3610

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
JOHN L. GHILONI
COMMISSIONER
2019 JUN 13 A 11: 50

June 13, 2019

Arthur G. Vigeant, Mayor
City Hall
140 Main Street
Marlborough, MA 01752

Re: Proposed Easement for Sudbury Street Sewer Project, Phase 4 (299 Sudbury Street)

Dear Mayor Vigeant:

I request that you send to the City Council, for their action, the enclosed proposed order and form of Grant of Sewer Easement to the City of Marlborough from Fred and Lee Ann Brewitt, in connection with the Sudbury Street Sewer Project, Phase 4, scheduled for construction during Summer 2019. The documents, which have been reviewed by the Legal Department and are in proper legal form are currently being reviewed by the property owners and will be signed prior to a request for vote by the City Council.

City Engineer Thomas DiPersio, Jr., is available to answer any questions concerning this matter. Please feel free to contact me as well if you have any questions or concerns.

Respectfully,

John L. Ghiloni
Commissioner of Public Works

Enclosure

cc: Jason D. Grossfield, City Solicitor
Thomas DiPersio, Jr., City Engineer

ORDERED:

WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience and necessity require that the permanent sewer easement shown as "Proposed Easement C", constituting a portion of the "Proposed 30' Wide Sewer Easement" as shown, more or less, on a plan entitled "Easement Plan of Land in Marlborough, MA, Prepared By: City of Marlborough Department of Public Works, Engineering Division, 135 Neil Street, Marlborough, MA 01752, Scale: 1" = 50'; Date: June 10, 2019" (the "Plan"), containing 2,847+/- square feet, more or less, according to said plan, be accepted as a municipal easement as shown on plan thereof and as hereinafter described:

DESCRIPTION

The 30'-wide sewer easement shown as "Proposed Easement C", constituting a portion of the "Proposed 30' Wide Sewer Easement" as shown, more or less, on a plan entitled "Easement Plan of Land in Marlborough, MA, Prepared By: City of Marlborough Department of Public Works, Engineering Division, 135 Neil Street, Marlborough, MA 01752, Scale: 1" = 50'; Date: June 10, 2019" (the "Plan"), said plan to be recorded at the Middlesex County South Registry of Deeds herewith. Containing 2,847+/- square feet, more or less, according to said plan. Said easement and plan are attached hereto.

IT IS THEREFORE ORDERED THAT:

The 30'-wide sewer easement shown as "Proposed Easement C", constituting a portion of the "Proposed 30' Wide Sewer Easement" as shown, more or less, on a plan entitled "Easement Plan of Land in Marlborough, MA, Prepared By: City of Marlborough Department of Public Works, Engineering Division, 135 Neil Street, Marlborough, MA 01752, Scale: 1" = 50'; Date: June 10, 2019" (the "Plan"), said plan to be recorded at the Middlesex County South Registry of Deeds herewith. Containing 2,847+/- square feet, more or less, according to said plan. Said easement and plan are attached hereto.

Being portions of the property owned by FRED B. BREWITT and LEE ANN A. BREWITT and described in a deed recorded in the Middlesex South District Registry of Deeds, in Book 11198 Page 484, be accepted as a municipal easement in the City of Marlborough.

ADOPTED

In City Council

Order No. 19-

Adopted

Approved by Mayor

Arthur G. Vigeant

Date:

A TRUE COPY

ATTEST:

GRANT OF SEWER EASEMENT

FRED B. BREWITT and LEE ANN A. BREWITT, of Marlborough, Mass., hereinafter known, collectively, as Grantors, its successors and assigns, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration as provided in the covenants herein, receipt and sufficiency of which is hereby acknowledged,

Hereby grant to the CITY OF MARLBOROUGH, a municipal corporation formed under the laws of the Commonwealth of Massachusetts, and having an address at 140 Main Street, Marlborough, MA 01752 in Middlesex County, hereinafter referred to as Grantee, its successors and assigns forever, with quitclaim covenants, an exclusive and perpetual right and easement to operate, construct, maintain, replace, repair, inspect, and improve a sanitary sewer, a system of sewerage, and other appurtenances thereto to consisting of but not limited to pipes, conduits, manholes, vaults and castings on, through, over and under a portion of land located off of Sudbury Street, Marlborough, Middlesex County, Massachusetts and being more particularly described as follows:

DESCRIPTION

The 30'-wide sewer easement shown as "Proposed Easement C", constituting a portion of the "Proposed 30' Wide Sewer Easement" as shown, more or less, on a plan entitled "Easement Plan of Land in Marlborough, MA, Prepared By: City of Marlborough Department of Public Works, Engineering Division, 135 Neil Street, Marlborough, MA 01752, Scale: 1" = 50'; Date: June 10, 2019" (the "Plan"), said plan to be recorded at the Middlesex County South Registry of Deeds herewith.

Containing 2,847+/- square feet, more or less, according to said plan.

Being portions of the property owned by the Grantor and described in a deed recorded in the Middlesex South District Registry of Deeds, in Book 11198 Page 484.

The above granted rights being more particularly described as the right to lay, inspect, construct, reconstruct, relocate, operate, maintain, alter, renew, replace, add to and remove for a sanitary sewer and system of sewerage the necessary pipes, conduits, manholes, vaults, castings and/or other appurtenances that are or shall be required to install and operate a sewer line, on, over and under the easement area and to do all other acts incidental to the foregoing, including the right to pass and repass over the land of Grantor, its successors and assigns, with people, equipment, supplies for access thereto for all of the above purposes.

And, Grantee shall construct a sewer connection stub and approximately twenty five feet of service piping for connection of the existing house to the new sewer line to be located within the easement.

And, for the same consideration aforesaid, the Grantor does hereby give, grant, transfer and

deliver unto the Grantee and its successors and assigns forever sanitary sewer conduits, manholes, vaults, castings and/or other appurtenances thereto that are now or hereafter constructed or installed in, through, or under the above described land by the Grantor or the Grantor's successors and assigns.

Also granted is the perpetual right and easement at any time and from time to time to clear and keep cleared that portion and areas of the premises wherein the utilities are located, of trees, roots, branches, shrubs, brush, bushes, structures, objects and surfaces as may, in the reasonable opinion of the Grantee, its successors and assigns, interfere with the safe and efficient operation and maintenance of said sanitary sewer and system of sewerage.

The Grantee, for itself, its successors and assigns, further agrees that it will promptly restore the surface disturbed by it in the exercise of the rights herein granted, in a good and workmanlike manner, substantially to the same condition as existed prior to its being disturbed.

Grantor, its successors and assigns may not place any building, shed or other permanent object or encroachment within the easement area which would materially or unreasonably affect and/or interfere with the purpose of the easement.

It is intended that this easement be conveyed by the Grantor to the City of Marlborough. The grant of easement is and shall be binding upon the Grantor, its successors and/or assigns, and inure to the benefit of the Grantee.

Grantor warrants that it has good title to transfer the same, and that it will defend the same against claims of all persons.

In witness whereof, this Grant of Sewer Easement is executed under seal this __ day of

_____, 2019.

Fred B. Brewitt

Lee Ann A. Brewitt

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ___st day of _____, 2019, before me, the undersigned notary public, personally appeared Fred B. Brewitt, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ___st day of _____, 2019, before me, the undersigned notary public, personally appeared Lee Ann A. Brewitt, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public:
My Commission Expires:

City of Marlborough
Commonwealth of Massachusetts

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH



2019 JUN 13 A 11:47

Ethan Lippitt
Code Enforcement Officer
140 Main Street
Marlborough, MA 01752
Phone: (508) 460-3776 XT 30201
Fax: (508) 460-3736
Email: elippitt@marlborough-ma.gov

6/13/2019

Edward Clancy, President
Marlborough City Council
140 Main Street
Marlborough, MA 01752

RE: Synopsys Sign
Apex Drive

Dear President Clancy and Members,

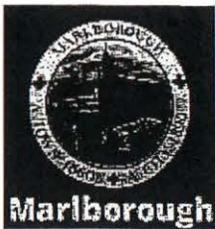
Enclosed please find the application for a sign at the Apex Center for Synopsys. It appears to fall in line with the city ordinances for approved signs at Apex Drive.

As always please feel free to contact my office should you have any questions regarding this sign or if this department can be of further assistance for you.

Sincerely,

Ethan Lippitt
Code Enforcement Officer

CC File
City Council



CITY OF MARLBOROUGH

Building Department
(508) 460-3776

BUILDING PERMIT

JOB WEATHER CARD

PERMIT NO

BP-2019-000837

ISSUE DATE

05/29/2019

APPLICANT

BATTEN BROTHERS, INC.

PERMIT TO

Flat wall Sign

AT (LOCATION)	11 APEX DR, MARLBOROUGH, MA 01752	ZONING DISTRICT	I	Bldg. Type:	Commercial
SUBDIVISION MAP BLOCK LOT	78-14	BUILDING IS TO BE:	CONST TYPE	USE GROUP	Business

WORK DESCRIPTION
Installation of Flat Wall Sign "Synopsys" Length 196", Width 36", Area 49 SQFT, West.

Elc perm Regd. 50.00

AREA (SQ FT)	925,388,204	EST COST(\$)	8800.00	PERMIT FEE (\$)	0.00
OWNER	GUTIERREZ ARTURO J TR				
ADDRESS	1 WALL ST				

BUILDING DEPT BY
[Signature] 6/13/19

CONTRACTOR

LICENSE	0000
	Construction Supervisor
SIGN INSTALLATION	1

PHONE *617-212-2347*

THIS PERMIT CONVEYS NO RIGHT TO OCCUPY ANY STREET, ALLEY OR SIDEWALK OR ANY PART THEREOF, EITHER TEMPORARILY OR PERMANENTLY. ENCROACHMENTS ON PUBLIC PROPERTY, NOT SPECIFICALLY PERMITTED UNDER THE BUILDING CODE, MUST BE APPROVED BY THE JURISDICTION. STREET OR ALLEY GRADES AS WELL AS DEPTH AND LOCATION OF PUBLIC SEWERS MAY BE OBTAINED FROM THE DEPARTMENT OF PUBLIC WORKS. THE ISSUANCE OF THIS PERMIT DOES NOT RELEASE THE APPLICANT FROM

MINIMUM INSPECTIONS REQUIRED FOR ALL CONSTRUCTION WORK: 1) FOUNDATIONS OR FOOTINGS. 2) PRIOR TO COVERING STRUCTURAL MEMBERS (READY FOR LATH OR FINISH COVERING) 3) FINAL INSPECTION BEFORE OCCUPANCY 4) REFER TO DETAILED INSPECTION SCHEDULE	APPROVED PLANS MUST BE RETAINED ON JOB AND THIS CARD KEPT POSTED UNTIL FINAL INSPECTION HAS BEEN MADE. WHERE A CERTIFICATE OF OCCUPANCY IS REQUIRED, SUCH BUILDING SHALL NOT BE OCCUPIED UNTIL FINAL INSPECTION HAS BEEN MADE.	WHERE APPLICABLE SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL PLUMBING/GAS AND MECHANICAL INSTALLATIONS.
---	--	--

POST THIS CARD SO IT IS VISIBLE FROM STREET

BUILDING INSPECTIONS APPROVALS		
	REQUIRED INSPECTIONS LISTED ON REVERSE	
	OTHER:	

WORK SHALL NOT PROCEED UNTIL THE INSPECTOR HAS APPROVED THE VARIOUS STAGES OF CONSTRUCTION

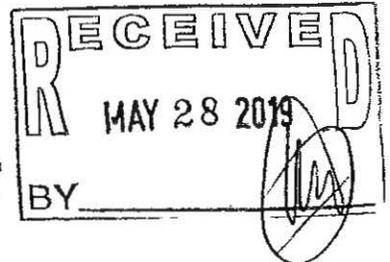
PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE PERMIT IS ISSUED AS NOTED ABOVE

INSPECTIONS INDICATED ON THIS CARD CAN BE ARRANGED FOR BY TELEPHONE OR WRITTEN NOTIFICATION.



10-58 (L)

City of Marlborough BUILDING DEPARTMENT 140 Main Street Marlborough, Massachusetts 01752



Date: 05.24.19

Permit No. BP-2019-000837

Address/Location of Sign 11 APEX DRIVE

Name of Business SYNOPSISYS

Name of Owner of Business DAVE WEBB / JOHN CHAU Telephone (781) 995-7703

Type of Sign: (check off which applies)

X Flat Wall Free Standing Awning Banner Projecting

Does this site have a Special Permit YES X NO

Is this a replacement of a same size existing sign(s) YES X NO

Dimensions Sign:

Length 196" Width 36" Height (Free Standing) N/A Area 49 SF

Location of Sign on Bld. North South East West X

Dimensions Façade:

Length 120' (New Section) Width 68' (New Section) Area 8,160 SF

Signature of Responsible Party JEFFREY SARRA Telephone (617) 212-2367

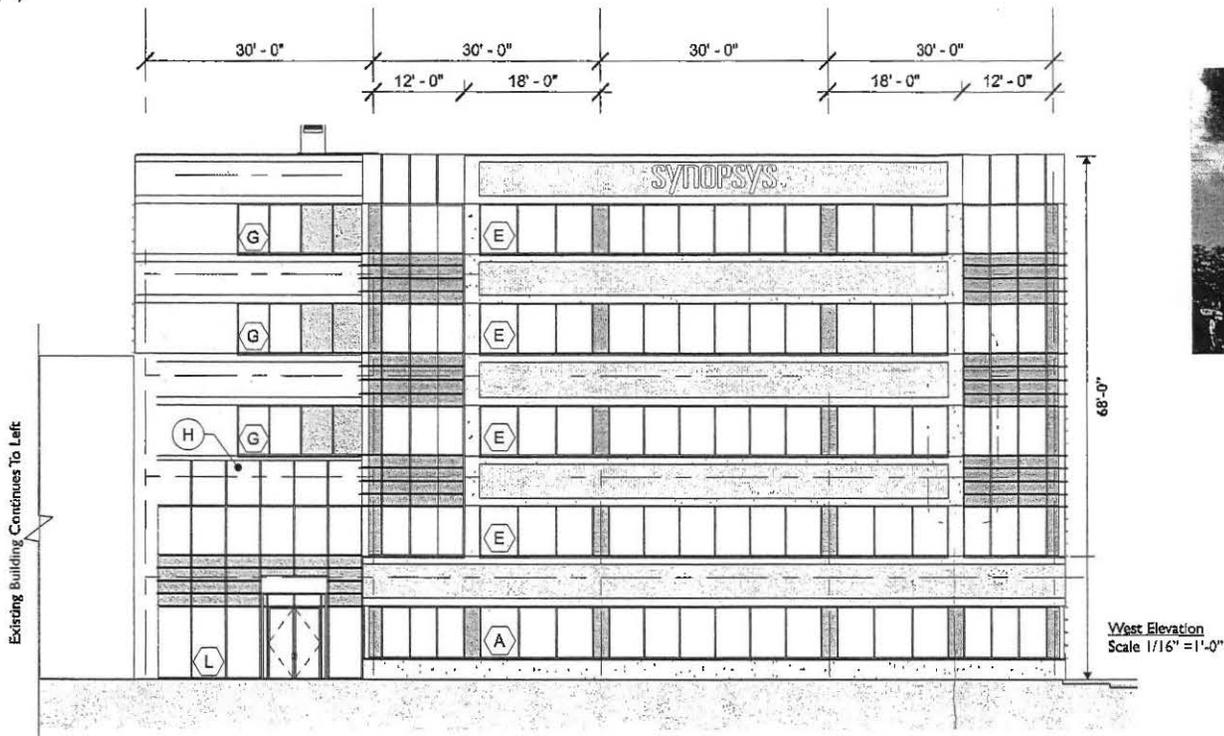
Installer Company BATTEN BROS., INC Telephone (617) 212-2367

Email JEFF@BATTENSIGN.COM

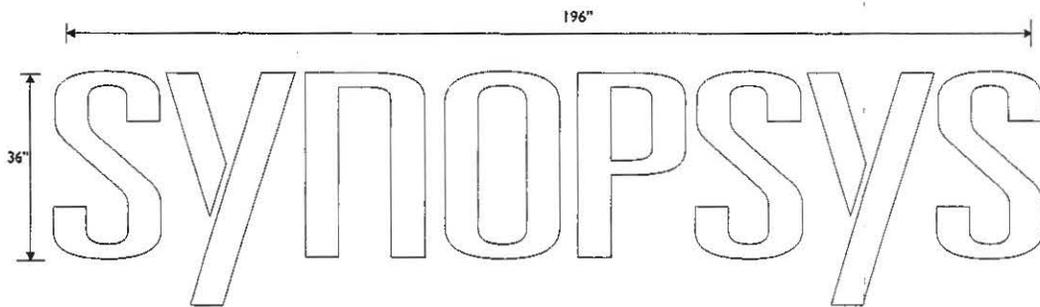
I hereby declare that I have the authority to request this permit and that the statements and information provided are true and accurate to the best of my knowledge and belief as well as to conform to the City's current Sign Ordinance and MA State Building Code, signed under the pains and penalties of perjury.

Signature Date 05/24/2019

Cost of Sign(s) \$8,800- Permit Fee \$



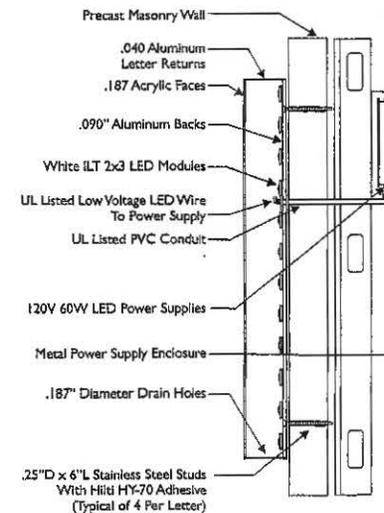
West Elevation
Scale 1/16" = 1'-0"



Internally Illuminated Channel Letters

Scale: .50" = 1'-0"

- Fabricated Aluminum Channel Letters
- .040 White Aluminum Returns
- .187" White Acrylic Faces
- 2" White Trimcap
- Internal Illumination By White LEDs
- Remote 120V 60W Power Supplies
- UL Listed



Section View
NTS

Project:		Location:		Revised	
Batten Bros. Inc. Sign Advertising		11 Apex Drive Marlborough, MA			
893 Plain Street Worcester, MA 01880 781.245.4800		Job Description: Internally Illuminated Channel Letters			
Account: J. Sarra		Designer: R. Myerow			
Scale: Noted		File Name:			
Date: 05.09.19		Sketch #:			

This is an original copyright drawing created by and owned by Batten Bros., Inc. - It is submitted for your personal use in connection with a project being planned for you by Batten Bros., Inc. It is not to be shown to anyone outside your organization, nor is it to be used, reproduced, copied or exhibited in any fashion.

MIRICK O'CONNELL

ATTORNEYS AT LAW

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2019 JUN 13 A 10:50

Brian R. Falk
Mirick O'Connell
100 Front Street
Worcester, MA 01608-1477
bfalk@mirickoconnell.com
t 508.929.1678
f 508.983.6256

June 13, 2019

VIA HAND DELIVERY

Councilor Edward Clancy, President
Marlborough City Council
City Hall
Marlborough, MA 01752

Re: St. Mary's Credit Union – 133 South Bolton Street;
Special Permit Application for Drive-Thru Facilities

Dear Councilor Clancy:

On behalf of my client, St. Mary's Credit Union, I respectfully submit an application seeking a special permit for two drive-thru facilities associated with a bank and coffee shop building to be located at 133 South Bolton Street.

The project will consist of a single 4,600 square foot building for a new St. Mary's branch and a Starbucks coffee shop. The site will include a dedicated drive-thru facility for the bank, a dedicated drive-thru facility for Starbucks, 49 parking spaces, and landscaped areas. In addition to the enclosed application packet and site plan, I incorporate by reference the traffic study for the project dated May 6, 2019 by MDM Transportation Consultants, Inc., which was previously submitted to the City Council.

A Marlborough institution for over 100 years, St. Mary's Credit Union believes this project will bring significant value to the City and dramatically improve the aesthetics of the property, which is a gateway to the downtown area. St. Mary's is also looking to work with the Council through the special permit process to enhance parking options for the nearby John Street Playground.

Please take the appropriate steps for a public hearing and review by the City Council. Thank you for your time and attention to this matter.

Sincerely,



Brian R. Falk

BRF/ljk

Encl.

cc: Client
Arthur Bergeron, Esq.

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

WORCESTER | WESTBOROUGH | BOSTON

www.mirickoconnell.com

**CITY OF MARLBOROUGH
OFFICE OF THE CITY CLERK**

APPLICATION TO CITY COUNCIL FOR ISSUANCE OF SPECIAL PERMIT

1. Name and address of Petitioner or Applicant:

St. Mary's Credit Union, 133 South Bolton Street

2. Specific Location of property including Assessor's Plate and Parcel Number.

133 South Bolton Street, 31 and 35 John Street; Assessor's Map 70, Parcel 242A, and Map 82, Parcels 112 and 113

3. Name and address of owner of land if other than Petitioner or Applicant:

Same

4. Legal interest of Petitioner or Applicant (owner lessee, prospective owner, etc.)

5. Specific Zoning Ordinance under which the Special Permit is sought:

Sec. 650-14.B(2), Sec. 650-17, Sec. 650-18(31)

Article V Section _____ Paragraph _____ Sub-paragraph _____

6. Zoning District in which property in question is located:

Business

7. Specific reason(s) for seeking Special Permit

The applicant seeks to build a new bank and coffee shop building with a dedicated drive-thru facility for the bank and a separate dedicated drive-thru facility for the coffee shop. The project would replace the existing bank building and two residential buildings on the site.

8. List of names and addresses of abutter. SEPARATE SHEET ATTACHED

PETITION IS HEREBY MADE FOR THE ISSUANCE OF A SPECIAL PERMIT BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH AND IS BASED ON THE WITHIN PETITION OR APPLICATION AS FILED HEREWITH AND MADE PART OF SAID PETITION.



Signature of Petitioner or Applicant
Brian R. Falk, Attorney for the Applicant
Address: Mirick, O'Connell, DeMallie & Lougee, LLP
100 Front Street
Worcester, MA 01608

Telephone No. (508) 929-1678

Date: 6/13/19

LIST OF NAMES AND ADDRESS OF ABUTTERS
AS REQUESTED ON THE APPLICATION FOR SPECIAL PERMIT OF:

St. Mary's Credit Union - South Bolton

(Name of Petitioner)

FOR THE ISSUANCE OF SPECIAL PERMIT BY THE CITY COUNCIL OF THE CITY OF
MARLBOROUGH UNDER CHAPTER 650, ZONING, OF THE CODE OF THE CITY OF
MARLBOROUGH.

(Abutters as defined in §650-59, Section 4H, **Powers and Procedure of Special-Permit Granting
Authorities**)

Abutters List for 133 South Bolton St, 31 & 35 John St 400 ft
MARLBOROUGH, MA

Map	Block	Lot	Unit	Owner's Name	Co Owner's Name	Address	City	ST Zip	Parcel Location
70	166			TSAVIDIS KATHERINE M TR	TSAVIDIS FAMILY TRUST	15 GRACE CIR	MARLBOROUGH	MA 01752	69 HOWE ST
70	169			FRONGILLO JOHN	CRISTINA ROSARIO LAFONTAINE	75 HOWE ST	MARLBOROUGH	MA 01752	75 HOWE ST
70	172			CANCIO AIRES F		9 MARGARET CIR	HUDSON	MA 01749	79 HOWE ST
70	176			PITTOL VANDERLANDO		399 BERLIN RD	MARLBOROUGH	MA 01752	85 HOWE ST
70	181			MONROY MARIA		1 IRVING ST	MARLBOROUGH	MA 01752	1 IRVING ST
70	182			WILUSZ DAVID E		91 HOWE ST	MARLBOROUGH	MA 01752	91 HOWE ST
70	183			LOURENCO LUCIANA		845 SARATOGA ST	BOSTON	MA 02128	93 HOWE ST
70	184			GOLDMAN CARRIE A	N/O JAHIR LOPEZ	35 WILSON ST	FRAMINGHAM	MA 01702	97 HOWE ST
70	185			CHRISTENSEN ERIC	JESSIE CHRISTENSEN	53 EWALD AVE	MARLBOROUGH	MA 01752	99 HOWE ST
70	186			BRASWEL ELEANOR H	GARY R ROY	12 BELMONT ST	MARLBOROUGH	MA 01752	103 HOWE ST
70	187			SOLIS NARCISO B	PATRICIA M BARAJAS	20 LEONARD DR	MARLBOROUGH	MA 01752	2 SPRUCE ST
70	188			ESTES CHARLES L III TR	CONNIE M ESTES TR	250 STOW RD	MARLBOROUGH	MA 01752	4 SPRUCE ST
70	190			MATSIKIS JAMES	CHRISTINA MATSIKIS	30 BRIDGE ST	MARLBOROUGH	MA 01752	30 BRIDGE ST
70	191			ANDREWS WAYNE L		40 BRIDGE ST	MARLBOROUGH	MA 01752	40 BRIDGE ST
70	192			YEHOSHUA HOLDINGS LLC		PO BOX 1802	BROOKLINE	MA 02446	3 SPRUCE ST
70	193			GIRON RENE M	OLIMPIA E GIRON	1 SPRUCE ST	MARLBOROUGH	MA 01752	1 SPRUCE ST
70	194			PETERS PAUL R	NANCY M PETERS	4 LENA RD	NATICK	MA 01760	100 HOWE ST
70	195			HOLDEN CHERYL M		98 HOWE ST	MARLBOROUGH	MA 01752	98 HOWE ST
70	196			MEYER FREDERICK W JR		125 SANDINI RD	MARLBOROUGH	MA 01752	94 HOWE ST
70	197			LANDRY ANDRIA J		90 HOWE ST	MARLBOROUGH	MA 01752	90 HOWE ST
70	198			SPENCER DALE L	LAURA J SPENCER	48 BRIDGE ST	MARLBOROUGH	MA 01752	48 BRIDGE ST
70	199			FERRECCHIA STEFANIE R TR	46 BRIDGE STREET REALTY TRUST	172 SHAWMUT AVE	MARLBOROUGH	MA 01752	46 BRIDGE ST
70	200			RENAUD MELISSA E	STEPHEN M STUKA	44 BRIDGE ST	MARLBOROUGH	MA 01752	44 BRIDGE ST
70	204			ARAK II LLC	C/O RITE AID CORPORATION	PO BOX 3165	HARRISBURG	PA 17105	75 SOUTH BOLTON ST
70	238			MILLER HENRI M		62 COTTING AVE	MARLBOROUGH	MA 01752	62 COTTING AVE
70	239			ES BIGHAM LLC	C/O DOUGLAS BIGHAM	54 BOSTON RD	CHELMSFORD	MA 01824	66 COTTING AVE
70	240			HUDSON NATIONAL BANK		PO BOX 460049	HOUSTON	TX 77056	96 SOUTH BOLTON ST
70	243			DECIERO FRANCIS P	MARYANNE DECIERO	17 WILKINS ST	HUDSON	MA 01749	95 MAPLE ST
70	245			EVANGELOUS MARK E TR	MATTHEW D EVANGELOUS TR	128 SOUTH BOLTON ST	MARLBOROUGH	MA 01752	128 SOUTH BOLTON ST
70	247			ARCHILA PROPERTIES LLC		21 BALCOM RD	MARLBOROUGH	MA 01752	8 BRIDGE ST
70	248			WILLIAMS TONG LI		1 SCHIPPER FARM LN	SOUTHBOROUGH	MA 01772	69 MAPLE ST
70	251			KANE MAPLE ST LLC		63 MAPLE ST	MARLBOROUGH	MA 01752	55 MAPLE ST
70	462			RESNICK MARC TR	PERRY D STOLBERG TR	100 FELTON ST STE 201	WALTHAM	MA 02453	64-66 MAPLE ST
70	481			WOLF RICHARD R	BETH TAPLER	14 SHAWMUT AVE	MARLBOROUGH	MA 01752	14 SHAWMUT AVE
70	482			LEGER PAUL J		2 SHAWMUT AVE	MARLBOROUGH	MA 01752	2 SHAWMUT AVE
70	483			JOHN A RAWLINS BUILDING ASSOCIATION		90 MAPLE ST	MARLBOROUGH	MA 01752	90 MAPLE ST
70	484			GILROY EDWARD J JR	JOAN S GILROY	4 CRESTVIEW DR	SOUTHBOROUGH	MA 01772	23 SHAWMUT AVE
70	495			WALSH TIMOTHY S TR	LISA M WALSH TR	104 MAPLE ST	MARLBOROUGH	MA 01752	104 MAPLE ST
70	496			AYOTTE JONATHAN T		9 GREENDALE AVE	MARLBOROUGH	MA 01752	9 GREENDALE AVE
70	497			ORJI CHERKUBE MARY		13 GREENDALE AVE	MARLBOROUGH	MA 01752	13 GREENDALE AVE
70	129A			COMMONWEALTH OF MASSACHUSETTS	DEPT OF TRANSPORTATION	10 PARK PLAZA SUITE 4160	BOSTON	MA 02116	0 JOHN ST
70	251A			COMMUNITY NATIONAL BANK		PO BOX 460049	HOUSTON	TX 77056	SOUTH BOLTON ST
70	496A			SPENCE FRANK B		3 GREENDALE AVE	MARLBOROUGH	MA 01752	3 GREENDALE AVE
82	98			ZINDLE HARRY G	MARSHA ZINDLE	56 RELAXED CIR	HYPOLUXO	FL 33462	135 HOWE ST
82	100			DEMERS MATTHEW R		125 HOWE ST	MARLBOROUGH	MA 01752	125 HOWE ST
82	101			TSIANATELIS MEROPI		15 FOWLER ST	MARLBOROUGH	MA 01752	117 HOWE ST

**Abutters List for 133 South Bolton St, 31 & 35 John St 400 ft
MARLBOROUGH, MA**

Map	Block	Lot	Unit	Owner's Name	Co Owner's Name	Address	City	ST Zip	Parcel Location
82	102			ARMOUR JOHN P	CHERYL A ARMOUR	2 COTTAGE ST	MARLBOROUGH	MA 01752	2 COTTAGE ST
82	104			DAVIS RICHARD M		107 HOWE ST	MARLBOROUGH	MA 01752	107 HOWE ST
82	105			TOMANEK RICHARD C		1 CORTLAND DR	HUDSON	MA 01749	111 HOWE ST
82	106			BATISTA MARIA DE FATIMA		115 HOWE ST	MARLBOROUGH	MA 01752	115 HOWE ST
82	107			MONROY JOSE D	MARIA Y MONROY	108 HOWE ST	MARLBOROUGH	MA 01752	108 HOWE ST
82	108			FERRO MICHAEL A	CHRISTINE M FERRO	112 HOWE ST	MARLBOROUGH	MA 01752	112 HOWE ST
82	109			BAILEY ELIZABETH A		47 JOHN ST	MARLBOROUGH	MA 01752	47 JOHN ST
82	110			VALIANTI PAUL E	LINDA VALIANTI	126 EDINBORO ST	MARLBOROUGH	MA 01752	41 JOHN ST
82	111			EMANS CHARLES W		39 JOHN ST	MARLBOROUGH	MA 01752	39 JOHN ST
82	115			GLEASON CYNTHIA		32 KNIGHT RD	FRAMINGHAM	MA 01701	48 JOHN ST
82	116			ZINDLE JODIE M	DOUGLAS F ZINDLE	128 HOWE ST	MARLBOROUGH	MA 01752	128 HOWE ST
82	117			FOIRIER RONALD A		134 HOWE ST	MARLBOROUGH	MA 01752	134 HOWE ST
82	118			TURIEO SALVATORE D	KAREN C TURIEO	142 HOWE ST	MARLBOROUGH	MA 01752	142 HOWE ST
82	125			MARLBOROUGH HUB LLC		128 SOUTH BOLTON ST	MARLBOROUGH	MA 01752	HOWE ST
82	126	138	1	TEMPLE ROBERTA B LI EST		138 HOWE ST #1	MARLBOROUGH	MA 01752	138 HOWE ST #1
82	126	140	2	NEY RUSSELL H	KATHLEEN NEY	140 HOWE ST #2	MARLBOROUGH	MA 01752	140 HOWE ST #2
82	131			GREMAR REALTY LLC		759 WAVERLY ST	FRAMINGHAM	MA 01702	135 MAPLE ST
82	241			WILLIAMS TONG LI		1 SCHIPPER FARM LN	SOUTHBOROUGH	MA 01772	134 MAPLE ST
82	242			LOPEZ LUIS ALBERTO OSORIO	RUTH N JIMENEZ	130 MAPLE ST	MARLBOROUGH	MA 01752	130 MAPLE ST
82	243			MONFALCONE JOSEPH	CHRISTINE MONFALCONE	126 MAPLE ST	MARLBOROUGH	MA 01752	126 MAPLE ST
82	244			CAMACHO IVELISSE	LINETTE CAMACHO	15 GREENWOOD ST	MARLBOROUGH	MA 01752	15 GREENWOOD ST
82	246			GRASSO MICHAEL A	CYNTHIA M GRASSO	10 GREENWOOD ST	MARLBOROUGH	MA 01752	10 GREENWOOD ST
82	279			ZINDLE HARRY G JR	MARSHA A ZINDLE	56 RELAXED CIR	HYPOLUXO	FL 33462	HOWE ST
82	284			METROPOLITAN DISTRICT COMMISSION	N/O DEPT OF CONSERVATION & RECREATI	251 CAUSEWAY ST STE 500	BOSTON	MA 02114-2104	0 MAPLE STREET
82	115B			DASILVA AGENOR L JR	FATIMA DASILVA	52 JOHN ST	MARLBOROUGH	MA 01752	52 JOHN ST
82	131A			RAPS REALTY LLC		499 WASHINGTON ST	AUBURN	MA 01501-2740	141 MAPLE ST
82	246A			MONTEIRO EDSON	MARIA MONTEIRO	14 GREENWOOD ST	MARLBOROUGH	MA 01752	14 GREENWOOD ST

MARLBOROUGH ASSESSORS

Anthony C. Amore
Allen Silverstein
David May

SPECIAL PERMIT-SUMMARY IMPACT STATEMENT

Applicant's Name: St. Mary's Credit Union Address: 133 South Bolton Street

Project Name: St. Mary's Credit Union - S. Bolton Address: 133 South Bolton Street

1. PROPOSED USE: (describe) New bank and coffee shop building with a drive-thru for the bank and a drive-thru for the restaurant.

2. EXPANSION OR NEW: New

3. SIZE: floor area sq. ft. 4,600 s.f. 1st floor 4,600 s.f. all floors 4,600 s.f.

buildings 1 # stories 1 lot area (s.f.) 62,630 s.f.

4. LOT COVERAGE: 55.9 % Landscaped area: 44.1 %

5. POPULATION ON SITE: Number of people expected on site at anytime:

Normal: 20-40 Peak period: 40-65

6. TRAFFIC:

(A) Number of vehicles parked on site:

During regular hours: 15-30 Peak period: 25-40

(B) How many service vehicles will service the development and on what schedule?

Daily truck deliveries of perishable items, regular truck deliveries of non-perishable items as needed, trash pickup as needed, bank courier twice daily, and other service vehicles as needed.

7. LIGHT: How will the development be lit at the exterior? How much light will leave the property and enter the abutting property? Standard downward facing light fixtures.

8. NOISE:

(A) Compare the noise levels of the proposed development to those that exist in the area now.

Same

(B) Describe any major sources of noise generation in the proposed development and include their usual times of operation. Drive-in speakers and noises generated by customers on the drive-in

queue.

9. AIR: What sources of potential air pollution will exist at the development? Vehicle exhaust

10. WATER AND SEWER: Describe any unusual generation of waste. None

11. HAZARDOUS MATERIAL: List any types of Hazardous Waste that will be on-site. How will this waste be stored? Where? How much will be in storage on a daily basis? How will it be disposed? None

***Attach additional sheets if necessary**



CITY OF MARLBOROUGH
MARLBOROUGH, MASSACHUSETTS 01752

City Hall
140 Main St.

Marlborough, Massachusetts 01752

Voice (508) 460-3775 Facsimile (508) 460-3723 TTD (508) 460-3610

President and Members City Council

Date: 6/13/2019

SPECIAL PERMIT APPLICATION
CERTIFICATION BY PLANNING DEPARTMENT

Project Name: St. Mary's Credit Union - South Bolton

Project Use Summary: Bank and restaurant with 2 drive-thrus

Project Street Address: 133 South Bolton Street

Plate: _____ Parcel: 70-242A; 82-112; 82-113

Applicant/Developer Name: St. Mary's Credit Union

Plan Date: 6/6/2019

Revision Date: _____

Dear President and Members:

In accordance with the City Council's Rules for Special Permit Applications, I hereby certify that the Site Plan filed with the City Clerk has been reviewed by the Building Department within the limits of work shown on the plan, and that said plan meets all prior referenced informational requirements of Section 7; that the plan conforms in all aspects to City Code and to these Rules and Regulations, and that any necessary zoning variances have been already granted by the Marlborough Zoning Board of Appeals, and any applicable appeal period concerning said variances have run.

Very truly yours,


Jeffrey K. Cooke
Acting Director of Planning

**Application Fee to submit to
City Clerk's office**

\$500⁰⁰



**City of Marlborough, Massachusetts
CITY CLERK DEPARTMENT**

**Steven W. Kerrigan
City Clerk**

Dear Applicant,

To ensure that each department listed below receives a copy of your completed Special Permit application, please hand-deliver to each department as instructions indicate below.

PLACE A CHECK-MARK AFTER HAND-DELIVERING THE APPLICATION TO THE FOLLOWING DEPARTMENTS AND SIGN YOUR NAME & DATE IT ACCORDINGLY. MAKE SURE THIS PAGE IS SIGNED AND RETURNED TO THE CITY CLERK'S OFFICE WITH THE COMPLETED APPLICATION. THE CITY CLERK'S OFFICE WILL NOT ACCEPT THE APPLICATION WITHOUT THE SIGNATURE OF THE APPLICANT OR PETITIONER AS INDICATED BELOW.

1 SET	POLICE CHIEF <input checked="" type="checkbox"/>
1 SET	FIRE CHIEF <input checked="" type="checkbox"/>
1 SET	CITY ENGINEER <input checked="" type="checkbox"/>
1 SET	DIRECTOR OF PLANNING <input checked="" type="checkbox"/>
1 SET	CONSERVATION OFFICER (IF WETLANDS AFFECTED) <input checked="" type="checkbox"/>
1 SET	BUILDING COMMISSIONER <input checked="" type="checkbox"/>
12 SETS	OFFICE OF THE CITY COUNCIL <input checked="" type="checkbox"/>
3 SETS	OFFICE OF THE CITY CLERK <input checked="" type="checkbox"/> (MUST be Original & 2 Complete Sets)

Signature

Date

Thank you for your cooperation in this matter.

Sincerely,

Steven W. Kerrigan
City Clerk

**City of Marlborough, Massachusetts
CITY CLERK DEPARTMENT**

**Steven W. Kerrigan
City Clerk**



I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all Municipal tax returns and paid all Municipal taxes required under law.

Company Name

St. Mary's Credit Union

Owner Name/Officer Name of LLC or Corporation

Same

Owner/Officer Complete Address and Telephone Number

133 South Bolton Street

Marlborough, MA

Signature of Applicant

Attorney on behalf of Applicant, if applicable

Atty: Brian R. Falk, Esq.

The Special Permit Package will not be accepted unless this certification clause is signed by the applicant and the Tax Collector.

Eileen Bristol

Tax Collector

BRIAN FALK

5-13/110

1656

6/13 20 19

Pay To: City of Marlborough
The Order Of

\$ 500.00

Five hundred and 00/100

Dollars



Security Features
Included.
Details on Back.

BANK OF AMERICA

ACH RVT 011000138

For St. Mary's Special Permit

MP

City of Marlborough
Office of the City Clerk
140 Main St, Marlborough, MA 01752
(508) 460-3775

Clerk: #19 6/13/2019 10:50AM
Transaction ID: #41757

Permits - Special
-- St Mary's Credit Union (CK #1656)
\$500.00

Total: \$500.00

BOHLER ENGINEERING

PROFESSIONAL LANDSCAPE ARCHITECTS AND PLANNERS
 1000 WEST 10TH AVENUE, SUITE 1000
 DENVER, COLORADO 80202
 PHONE: (303) 733-1111
 FAX: (303) 733-1112
 WWW.BOHLERENGINEERING.COM

NO.	DATE	COMMENT
1		
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PRELIMINARY

PROJECT: ST. MARY'S CREDIT UNION

LOCATION: 1000 WEST 10TH AVENUE, SUITE 1000, DENVER, CO 80202

SPECIAL PERMIT PLANS

FOR: ST. MARY'S CREDIT UNION

ST. MARY'S CREDIT UNION
 1000 WEST 10TH AVENUE, SUITE 1000
 DENVER, CO 80202

BOHLER ENGINEERING

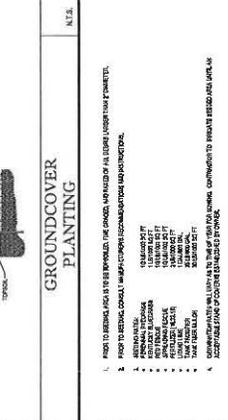
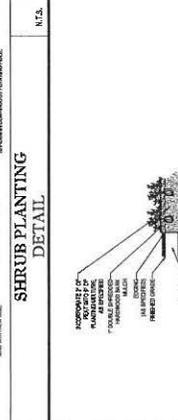
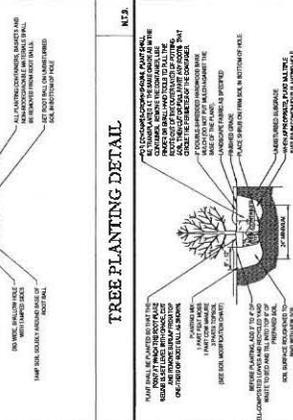
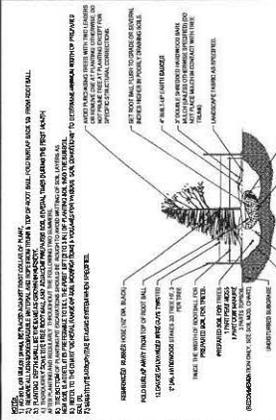
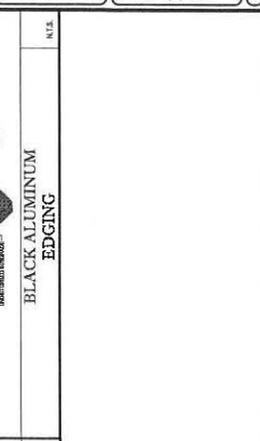
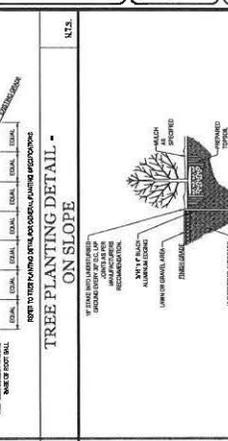
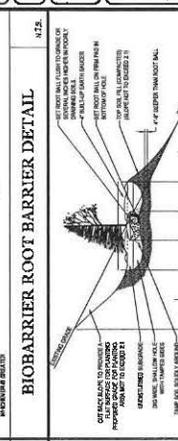
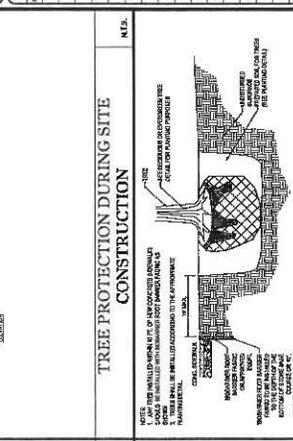
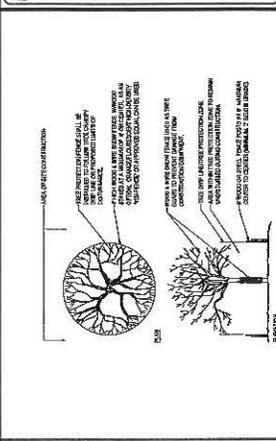
300 TURKEY HOLE DRIVE
 SUITE 1000
 DENVER, CO 80202



LANDSCAPE NOTES & DETAILS SHEET

SHEET NUMBER: 8 OF 1

REV. C. 10/2010



LANDSCAPE SPECIFICATIONS

1. **GENERAL NOTES:**
 1.1. ALL MATERIALS AND METHODS OF CONSTRUCTION SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 1.2. ALL MATERIALS AND METHODS OF CONSTRUCTION SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 1.3. ALL MATERIALS AND METHODS OF CONSTRUCTION SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 1.4. ALL MATERIALS AND METHODS OF CONSTRUCTION SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 1.5. ALL MATERIALS AND METHODS OF CONSTRUCTION SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.

2. **PLANTING SPECIFICATIONS:**
 2.1. ALL PLANTS SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 2.2. ALL PLANTS SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 2.3. ALL PLANTS SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 2.4. ALL PLANTS SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 2.5. ALL PLANTS SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.

3. **CONSTRUCTION SPECIFICATIONS:**
 3.1. ALL CONSTRUCTION SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 3.2. ALL CONSTRUCTION SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 3.3. ALL CONSTRUCTION SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 3.4. ALL CONSTRUCTION SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 3.5. ALL CONSTRUCTION SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.

4. **FINISHES AND MATERIALS:**
 4.1. ALL FINISHES AND MATERIALS SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 4.2. ALL FINISHES AND MATERIALS SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 4.3. ALL FINISHES AND MATERIALS SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 4.4. ALL FINISHES AND MATERIALS SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
 4.5. ALL FINISHES AND MATERIALS SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.

To: Marlboro City Council Members,

Toure Foster

Tue 6/11/2019 10:29 PM

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2019 JUN 12 A 8:40

To: Marlboro City Council Members,

I, Touré Foster (Owner & Operator of New England Enterprises, Inc.) and property owner of 278 West Main Street as well as 36 Bolton Street and 99 Wilson Street would like to go on public record in my opposition to the proposed zoning ordinance changes, particularly as it relates to contractor yards.

I feel this ordinance goes too far and will force many small companies like mine out of business.

Small business owners are the back bone of America, it is our dream and promise, that we all have as Americans, to be able to work for ourselves, provide for our families and be successful entrepreneurs. We are taught that with hard work, determination, faith, sacrifice and a bit of luck we may be able to achieve this American dream. I am one of these stories, 30 years ago at the age of 21, I started my company at 278 West Main Street in Marlboro. I worked my tail off and made no money for at least 10 years, what I did make was re-invested into my business.

Finally after 15-20 years of work my family and I started to see some fruits of our labor. Today after 30 years in business we are able enjoy a comfortable life style with a well established service based Excavation and Landscape Construction company. 30 years is a long time, I have invested my life into my business and to have it threatened by a zoning ordinance change is infuriating.

When I started in the late 1980s, I went to City Hall, I got a business certificate and talked to the Building Inspector about my plans, I was told at that time my property was in a commercial zone and the business use was allowed. I have quietly existed in this location since, we have not had any code enforcement issues, nor have we been disruptive to the neighborhood. In fact we aren't even in a neighborhood, are abutters are a U-Haul / self storage yard, a gas station and a plaza parking lot.

My property on West main Street has been in my family since it was built in 1860s, my great grandmother Anna Walker was born on the property in 1902 I come from a family of entrepreneurs, and there has been a multitude of business on the property, including gas station, cafe, bar room, penny candy, hot dog and fried chicken store. And today my contracting business.

The City of Marlboro apparently never had any ordinance regarding contractor yards, and/or never enforced any ordinances they did have, and now all of the sudden they want everyone to comply with new rules? This doesn't make sense. At the first public hearing I brought this up, existing business should be grandfathered, buildings are grandfathered in there use and nonconformity, a yard should be too. Since the first draft of the ordinance I see the addition of the "grandfather clause" but it doesn't protect any business except those before 1969. It says legal, pre-existing, non-conforming yards shall be grandfathered, but based on what we were told in previous meetings no contractor yards were ever allowed, in fact they were disallowed. If they were not allowed were they ever legal? And if they were never legal how will this

grandfather clause protect business like mine?

When I first heard about all of these zoning issues a group of business owners and 2 City Council members had a meeting, we raised our concerns, and we were hopeful that our feedback would be incorporated into the proposed ordinance, but it's seems that only some of the larger more recognized business owners are receiving any relief. Like I said at the public hearing work with us not against us. We are part of the community too.

I know that all of you have worked really hard on this issue, and it's not easy, but honestly I feel it needs a bit more work and modifications in order to be fair for all businesses.

There seems to be a sense of urgency to pass this ordinance, but I am hopeful that at least some of you will slow down and work on getting it right before passing this and killing guys like me. I mean what's the rush we have gone 50 years or more with out this?

This is about more than just truck parking, this is about people's livelihoods. This is how we put food on the table, pay our mortgages, taxes and support our family. If you regulate all business to death, who will provide services to our community? Please carefully consider the ramifications of your legislation.

Thank you for your attention to this matter.

Sincerely,
Touré E. Foster
New England Enterprises, Inc.

Sent from my iPad



Massachusetts State Lottery Commission

DEBORAH B. GOLDBERG
Treasurer and Receiver General

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
MICHAEL R. SWEENEY
Executive Director

2019 JUN 13 A 10:45

June 10, 2019

Marlborough City Council
140 Main Street
Marlborough, MA 01752

Dear Sir/Madam:

The Massachusetts State Lottery is offering a KENO monitor to existing KENO To Go agent/s in your city/town, to display the game at their location. In accordance with M.G.L. c 10, section 27A, as amended, you are hereby notified of the Lottery's intent to install a monitor at the following location/s in your community:

Marlboro Smoke Shop
170 Pleasant st
Marlboro

If you object to these agent(s) receiving a monitor, you must do so, in writing, within twenty-one (21) days of receipt of this letter. Please address your written objection to Gregory Polin, General Counsel, Legal Department, Massachusetts State Lottery Commission, 150 Mount Vernon Street, Dorchester MA 02125. Should you have any questions regarding this program or any other issues relative to the Lottery, please call me at 781-849-5555. I look forward to working with you as the Lottery continues its' efforts to support the 351 cities and towns of the Commonwealth.

Sincerely,

Michael R. Sweeney
Executive Director

Return Receipt Certified:
7001 2510 0004 5229 3030



Supporting the 351 Cities and Towns of Massachusetts



IN CITY COUNCIL

Marlborough, Mass., _____ JANUARY 28, 2019

ORDERED:

That a communication be sent to the MA State Lottery Commission, re: Keno to Go, Marlboro Smoke Shop, 170 Pleasant Street, outlining the concerns of the City Council, be and is herewith **APPROVED**.

ADOPTED

ORDER NO. 19-1007534



Massachusetts State Lottery Commission

19

DEBORAH B. GOLDBERG
Treasurer and Receiver General

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

MICHAEL R. SWEENEY
Executive Director

2019 JAN 10 P 12:14

January 8, 2019

Marlborough City Council
140 Main Street
Marlborough, MA 01752

Dear Sir/Madam:

The Massachusetts State Lottery is offering existing, non-pouring agents our KENO To Go game, a transaction which is identical to the already existing on-line games, such as Megabucks and Mass Cash. At this time, the Lottery is not providing agents with a KENO monitor as part of this program.

In accordance with M.G.L. c 10, section 27A, as amended, you are hereby notified that the following existing agent(s) in your community will be eligible to sell the KENO To Go product:

Marlboro Smoke Shop
170 Pleasant St.

If you object to these agent(s) selling KENO To Go, you must do so, in writing, within twenty-one (21) days of receipt of this letter. Please address your written objection to Carol-Ann Fraser, General Counsel, Legal Department, Massachusetts State Lottery Commission, 60 Columbian Street, Braintree, MA 02184. Should you have any questions regarding this program or any other issue relative to the Lottery, please call me at 781-849-5555. I look forward to working with you as the Lottery continues its' efforts to support the 351 cities and towns of the Commonwealth.

Sincerely,

Michael R. Sweeney
Executive Director

7001 2510 0004 5229 0169



Supporting the 351 Cities and Towns of Massachusetts



City of Marlborough
Office of the City Council

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3711 Fax (508) 460-3710 TDD (508) 460-3610
Email citycouncil@marlborough-ma.gov

Edward J. Clancy
PRESIDENT

Joseph F. Delano, Jr.
VICE-PRESIDENT

Karen A. Boule
CITY COUNCIL SECRETARY

January 31, 2019

Carol-Ann Fraser, General Counsel
Legal Department
Massachusetts State Lottery Commission
60 Columbian Street
Braintree, Massachusetts 02184

Re: Marlboro Smoke Shop, 170 Pleasant Street, Marlborough, MA -- KENO To Go

Dear Ms. Fraser:

At its regular meeting of January 28, 2019, the Marlborough City Council discussed the notification from the Lottery Commission that Marlboro Smoke Shop located at 170 Pleasant Street, Marlborough, Massachusetts 01752 will be eligible to sell the KENO To Go product and informing that objections should be in writing within 21 days of receipt of the letter and sent to your office.

At this time, the body is without objection to the Marlboro Smoke Shop selling KENO To Go. By telephone conversation with Mr. Buckley of the Lottery Commission, we were advised that there are no monitors associated with KENO to Go. He explained that retail customers would buy a ticket and leave the store.

Discussions with the Marlborough Building Commissioner indicate that KENO To Go would be in keeping with the retail use of the Marlboro Smoke Shop. However, zoning restrictions, under a VARIANCE, attached to the plaza where the shop is located would not permit tables and chairs for patrons to sit and stay, thereby converting the shop to a place of assembly from its present retail use. Although at this time we were informed that monitors are not being provided to KENO To Go agents, we are concerned that the program could be changed in the future to permit monitors.

In summation, the Marlborough City Council is not opposed to KENO to Go at the Marlboro Smoke Shop at 170 Pleasant Street at this time but would be opposed to an expansion that would permit monitors where patrons would remain on the premises.

Sincerely,

MARLBOROUGH CITY COUNCIL

Edward J. Clancy
Edward J. Clancy, President

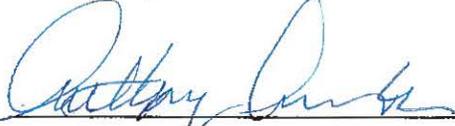
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2019 FEB - 1 A 7 36

CITY OF MARLBOROUGH BOARD OF ASSESSORS

MEETING MINUTES: May 1, 2019

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2019 JUN -5 A 10:43

1. CALL TO ORDER: 9:00 am
2. MEMBERS PRESENT: Anthony Arruda, Ellen Silverstein
Also in Attendance: Harald Scheid, Nathaniel Cramer, Regional Assessors, Paula Murphy, Clerk
3. MOTION TO ACCEPT: Minutes of the April 17, 2019 meeting: Mr. Arruda, second Ms. Silverstein
Vote 2-0
4. APPROVE & SIGN: State Tax Form 3ABC List of Filers
5. APPROVE & SIGN: Clause Exemptions List
6. DISCUSS & VOTE: Commercial Real Estate Abatement Application: 103-A Mechanic St
Motion to Deny: Mr. Arruda, second Ms. Silverstein
Vote: 2-0
7. DISCUSS & VOTE: new information presented regarding 165 Cameron Dr Real Estate Abatement
Denial of 4/3/19
Motion to Uphold Denial: Mr. Arruda, second Ms. Silverstein
Vote:2-0
8. DISCUSS & VOTE: Residential Real Estate Abatement Applications: 18 Bowood Ln #38,
91 Chandler St, 820 Concord Rd, 40 Cotting Ave, 158 Howe St, 23 Kirby St , 161 Lakeshore Dr
3 Spruce St, 183 Stevens St
Motion to Deny: Mr. Arruda, second Ms. Silverstein
Vote: 2-0
9. DISCUSS & VOTE: Residential Real Estate Abatement Applications: 0 Berlin Rd (41-38C),
3 Bowood Ln #54, 26 Bowood Ln #41, 123 Lakeshore Dr, 270 Mechanic St, 202 Reservoir St
2 Wilshire Way #55, 10 Wilshire Way #58
Motion to Grant: Mr. Arruda, second Ms. Silverstein
Vote: 2-0
10. MOTION TO CONCLUDE – Mr. Arruda, second Ms. Silverstein
Meeting Adjourned – 11:15 am





2019 JUN -7 P 4:05

CITY OF MARLBOROUGH
CONSERVATION COMMISSION

Minutes

May 16, 2019 (Thursday)

Marlborough City Hall - 3rd Floor, Memorial Hall

7:00 PM

Present: Edward Clancy – Chairman, David Williams, Allan White, Karin Paquin, Dennis Demers and William Dunbar. Also present was Priscilla Ryder-Conservation Officer.

Absent: John Skarin

Approval of Minutes: The minutes of April 4th and May 2nd, 2019 were unanimously approved as written.

Discussion:

- DEP 212-1104 Sudbury sewer project – DPW – next phase pre-construction meeting. As required in the Order of Conditions, each phase of this project must come back to the Commission to review the construction sequencing and protocol with the contractor doing the work. A representative from Revoli Construction Co. and Tom DiPersio, City Engineer were both present. Mr. DiPersio provided an overview of the layout of the sewer line changes that are required due to the discovery of the septic system which was in the way at 315 Sudbury St. The realignment makes the pipe a little straighter and allows for the crossing to shift a little downstream. The Commission discussed the locations of the manholes to be sure they weren't too close to the stream. The easement is 30' wide which will be cut; however, the trench will be 12-15' wide. The representative from Revoli Construction Co. explained that he is proposing to sequence the project as outlined in the memo he provided, with 1) cutting of trees, 2) installation of erosion controls 3) grubbing, then doing some drilling to locate exact location of rocks for better planning; 4) add a 24" pipe in the stream with sand bags on the upstream end to direct water into it. The pipe will be 40' long as they will need to get construction equipment in and out of it. They will leave a slight depression over the pipe and add stone, so during large storms that might exceed the 24" capacity pipe it can have a channel to travel without washing everything out. As required in the Order of Conditions, because of turtle habitat, they do need to sweep the area with a biologist prior to work. The representative from Revoli Construction Co. explained that they have been in touch with a biologist and will present the name and protocol for this "sweep" as soon as this person is on board and can evaluate the situation. He discussed erosion controls and silt sacks in the street drainage system. The Commission noted that trout and turtles were of concern in this location; so, the utmost care is needed to protect both during construction. After some

additional discussion, the Commission was satisfied with the information provided and noted that a review of the biologist's information when provided. The Chairman thanked them for coming.

- DEP 212-831 Avalon Orchards – review Conservation Restriction (CR). Scott Dale and a representative from Avalon Orchards were present. Ms. Ryder indicated that she and Ms. Paquin had walked the site with a consultant for Avalon Orchards who performed a baseline study and report which was a requirement of the CR. The CR was drafted and reviewed by City Solicitor Rider and Ms. Ryder with the Avalon Orchards attorneys, and then reviewed by the State Division of Conservation Services (DCS), it has received everyone's blessing. The next step is for the Conservation Commission review, approval and recommendation to City Council, and the last step is for the City Council to sign. Once the local community has approved it, the Secretary of EOEEA at the state must review and sign before it gets recorded.

The Commission reviewed the CR language and the plan and discussed the property. Then voted unanimously 6-0 to approve the CR as presented and recommend approval to the City Council. Ms. Ryder will convey.

Ms. Ryder also noted that the trail easement would be reviewed by the City Council shortly, it wasn't ready when the CR was submitted for review.

Certificates of Compliance:

- DEP 212-831 Avalon Orchards – Boston Post Rd. – full certificate - Ms. Ryder explained that the last remaining condition that needs to be met for this request is the finalization of the CR, which as noted above, is in process. The Commission reviewed the plans and voted unanimously 6-0 to issue a full Certificate of Compliance, however, they asked Ms. Ryder to hold it until the CR has been finalized before issuing it to the applicant.
- DEP 212-964 226-238 Berlin Rd. – Berlin Farms – full certificate - Ms. Ryder noted that the City Engineer is still waiting for information to officially accept this roadway, until that has been resolved, it would be helpful to hold off on issuing this Certificate since now we have someone who wants to close things out. This item was continued.

Emergency Certificate:

- 215 Maple St. – Fire Station generator replacement and tank removal. Ms. Ryder noted that she has issued an Emergency Certificate to the City's Facilities Department to replace the existing generator and remove an underground storage tank that serves the existing generator. Mr. DiPersio explained that this needs to be done to allow proper functioning

of the backup generator for the fire station. He realizes that the timing and coordination for this work had not taken into consideration the wetland permitting, and this work is scheduled shortly with an LSP hired to be on site to confirm there is no leak. Chairman Clancy noted that although the removal of the underground storage tank was a benefit to the wetland and the generator replacement on the existing pad would not be an issue, on principal the City should have filed a wetland permit, however, given the emergency, he would recommend approval of the Emergency Certificate. The Commission suggested that an Request for Determination of Applicability (RDA) be filed after the fact at the next meeting, so that the project gets a valid permit. Everyone agreed. The Commission voted 6-0 to ratify the Emergency Certificate and require the filing of an RDA for this work at the next meeting.

Correspondence/Other Business:

- DEP 212-1155 81 Dufresne Dr. (Lot 10) – revised plan - Ms. Ryder noted that the plans reflect the request at the last meeting and the walls have been installed accordingly.
- Tennessee Gas Pipeline – a letter was received by the Commission regarding some work behind 50 Langelier Ln. to repair the pipeline. The Commission asked Ms. Ryder to clarify with them as to the limit of work as this is near wetlands. Ms. Ryder will inquire.
- 150 Hayes Memorial Dr. – Ms. Ryder noted that there was a breach of the silt fence a few weeks ago and that the applicant Gutierrez Co. has hired Goddard Consultants to oversee the repair and silt cleanup which has been done. A report has been submitted and will be distributed by e-mail to the Commission for review.

Next Meeting – June 6, 2019

Adjournment - There being no further business, the meeting was adjourned at 7:57 PM

Respectfully Submitted,


Priscilla Ryder
Conservation Officer

Marlborough Historical Commission
May 16, 2019
140 Main Street, City Hall, 1st Floor Committee Meeting Room

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CITY OF MARLBOROUGH
2019 JUN -4 A 8 53

Attendees: Robert Fagone, Lee Wright, Andrea Bell Bergeron, Melanie Whapham,
Alan Slattery
Absent: Brendan Downey

Meeting called to order 7:05PM

Demolition Delay:

Melanie and Andrea brief overview of the Committee's PowerPoint presentation. When finalized, presentation to be made to Mayor and City Council proposing Demolition Delay as a By Law. Point: Demo Delay is a preservation tool, not a hindrance to economic development. Next Meeting: try to invite President of the Council to sit in on this discussion.

Correspondence and Communications:

Chair accepted committee's in-put on how to continue to reach out to individuals who have shown an interest in historical preservation, particularly George Voyiatzis (Armory) and Blanca Silva (Clisbee Mansion).

Site Plan Committee Meetings:

Chair attends these meetings regularly. Commission must make its presence felt at the initial stages of any new site plan. Especially with reference to "downtown" design ordinances. The commission should have early input into "design" as an historical initiative and not just as an economic issue. Next Meeting invite "E on Main Street" architects to discuss their design proposals.

Museum in the Streets:

Production delays from manufacturer in Maine. New Roll-Out date set for Labor Day festivities. This will make the roll-out part of a larger event. School Superintendent's office has helped with Spanish and Portuguese translations for all the historical panels: Spanish translations complete; ¾ of Portuguese translations complete.

Historic Homes Signage:

Chair to contact High School wood-shop teacher that project is now in a holding pattern. Committee questions still remain about materials and design. Fagone still wants school (student) participation in this project.

Committee Homework:

Review Downtown Design Ordinance.

Motion to Adjourn and seconded.

Respectfully submitted,
Andrea Bell Bergeron

Marlborough High School
School Council
Meeting Minutes – June 10, 2019

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CITY OF MARLBOROUGH
2019 JUN 13 A 8 37

In attendance – Dan Riley, Marlene Manell, Marcia Adams, Sue Pearl, Rita Smith, Ann Kinslow, Gail Yosca, Tino Pizzarella, Heather Kohn, Sheldon Vigeant

Absent - David Friess, Edson Farias, Darren McLaughlin

I. Welcome and Sign-In

- a) Graduation review: 4 officers on duty. As much of school as possible was locked-down. At crossroads with graduation. Roughly 2000-2200 yesterday. Capacity 1400 per fire code. Current junior class wants to move it to DCU Center. Capacity at DCU 2800. Temperature control (A/C). Plenty of parking but have to pay for it. Could send busses from MHS to DCU and back to help with transportation. Spend roughly 12.5k on graduation at MHS while approximately 9k at DCU. Discussion ensued of pros/cons of keeping vs moving graduation. Junior class has booked Union Station for Friday, May 30th for prom. Will have conversations with the City about possible venue change.

II. Budget review – in packet. Just about all money was spent.

III. School Improvement Plan template

- a) Follow-up from leadership meeting. Dan gave School Council feedback. Before template can be finalized, must see what other district schools are doing.

IV. Review/input of expectations documents

- a) MHS has overarching academic, social and civic expectation. We can come up with protocols to meet expectations. For example, what is “timely manner” (sharing grading results with students)? The MHS Grading Protocol specifies short assessments/classwork are input to Aspen within 3 school days. How to police expectations? If you are clear most people will adhere to expectations. Protocols are meant to encourage teacher collaboration. Most cases attendance correlates to academic achievement. Approach to absenteeism must separate academic achievement from social expectation of consistent and timely attendance. Proposal: 2 unauthorized absences from classes = 1 hour of community service. Removal of privileges like parking, no cell phone or earbuds in school.

Meeting Minutes Respectfully Submitted by Sue Pearl



City of Marlborough
Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL. (508) 460-3771 FACSIMILE (508) 460-3698 TDD (508) 460-3610

LEGAL@MARLBOROUGH-MA.GOV

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CITY OF MARLBOROUGH

2019 MAY 30 A 10:48

JASON D. GROSSFIELD
CITY SOLICITOR

May 30, 2019

Edward J. Clancy
President
Marlborough City Council

RE: Avalon Orchards
91 Boston Post Road East
Proposed Grant of Public Trail Easement, Proposed Conservation Restriction, Proposed
Regulatory Agreement

Dear President Clancy and Members:

As follow-up to the May 28, 2019 meeting of the Legislative and Legal Affairs Committee, I am submitting to the Council a proposed Grant of Public Trail Easement, along with an order of acceptance.

Further, I have enclosed the proposed conservation restriction reviewed by L&L, along with the proposed regulatory agreement which has been updated to remove the name of the CDA's former director and his email address.

All documents are in proper legal form and ready for Council action.

Thank you for your attention to this matter.

Very truly yours,

Jason D. Grossfield
City Solicitor

Enclosures

cc: Arthur Vigeant, Mayor
Priscilla Ryder, Conservation Officer
Paul Momnie, Esquire

ORDERED:

That the City Council for the City of Marlborough hereby accepts from Avalonbay Orchards, Inc., a Maryland corporation, with an address of 671 N. Glebe Road, Suite 800, Arlington, Virginia 22203 (the "Grantor"), a Grant of Public Trail Easement on a certain portion of the Grantor's land located at 91 Boston Post Road East, Marlborough, Massachusetts. The Public Trail Easement consists of an area of 25,250 s.f. (0.580 acres) and is ten (10) feet in width in the location approximately shown as "Trail Easement" on the plan attached to the Grant of Public Trail Easement as Exhibit A, entitled "Easement Plan, Avalon Orchards, Boston Post Road, Marlborough, Mass.," dated May 22, 2003, prepared by Harry R. Feldman, Inc., Land Surveyors, 112 Shawmut Avenue, Boston, Mass. 02118; Scale: 1"=50' (2 sheets) (the "Plan"). The Plan is to be recorded along with the Grant of Public Trail Easement at the Middlesex County (South District) Registry of Deeds.

The Public Trail Easement is for the purpose of providing the perpetual right and non-exclusive easement for the general public to pass and repass on an approximately five (5) foot wide trail located within the Public Trail Easement for walking, hiking, jogging, snowshoeing, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape, do not degrade environmental quality, and do not involve more than minimal use for commercial recreational activities.

A copy of the Grant of Public Trail Easement, including the Plan, is attached hereto.

ADOPTED
In City Council
Order No. 19-
Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:

GRANT OF PUBLIC TRAIL EASEMENT

AVALONBAY ORCHARDS, INC., a Maryland corporation, with an address of 671 N. Glebe Road, Suite 800, Arlington, Virginia 22203 (the "Grantor"), for consideration paid of Ten (\$10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in conformance with Condition #11 of a September 26, 2000 Comprehensive Permit issued by the Marlborough Zoning Board of Appeals and recorded with the Middlesex County (South District) Registry of Deeds (the "Registry") on May 21, 2001 in Book 32898, Page 157, does hereby grant to the CITY OF MARLBOROUGH, MASSACHUSETTS, having an address of 140 Main Street, Marlborough, Massachusetts 01752 (the "Grantee"), with QUITCLAIM COVENANTS, a perpetual right and non-exclusive easement on a certain portion of the Grantor's land located at 91 Boston Post Road East, Marlborough, Massachusetts.

The easement is ten (10) feet in width in the location approximately shown as "Trail Easement" (the "Public Trail Easement") on the plan attached hereto as Exhibit A, entitled "Easement Plan, Avalon Orchards, Boston Post Road, Marlborough, Mass.," dated May 22, 2003, prepared by Harry R. Feldman, Inc., Land Surveyors, 112 Shawmut Avenue, Boston, Mass. 02118; Scale: 1"=50' (2 sheets).

The purpose of the Public Trail Easement is to provide the perpetual right and non-exclusive easement for the general public to pass and repass for walking, hiking, jogging, snowshoeing, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape, do not degrade environmental quality, and do not involve more than minimal use for commercial recreational activities (the "Permitted Trail Uses").

Upon acceptance of the Public Trail Easement by the Grantee, the Grantee and the members of the general public shall have the right to enter onto the Public Trail Easement granted herein. The Grantor shall not be obligated to construct, install or maintain any facility or improvement within the Public Trail Easement, except for the construction and maintenance of a trail on or within the Public Trail Easement to be maintained by Grantor in a reasonable manner acceptable to the City, including removal of physical obstructions to the trail on or within the Public Trail Easement, and Grantor shall retain the right to access any portion of the Public Trail Easement for such purpose. The Grantor shall not be obligated to remove snow from the Public Trail Easement, nor shall the Grantor deposit snow onto or so as to obstruct the Public Trail Easement. The Grantor and the Grantee shall each have the right to post reasonable way-finding signage along the trail, to post rules and regulations concerning the Permitted Trail Uses, and to post signage warning of potentially hazardous conditions and disclaiming liability, all at the sole

cost and expense of the party posting the signage. The rights established herein shall be appurtenant to and for the benefit of the City, and shall be binding on, enforceable against, and burden the land owned by, the Grantor and its successors and assigns.

Notwithstanding any language to the contrary contained in this easement, Grantor and Grantee shall all have the benefit and protection of the limitation on liability contained in Massachusetts General Laws Chapter 21, Section 17C to the fullest extent provided therein. Use of any portion of the Public Trail Easement by members of the general public shall be at their own risk. Neither Grantor nor Grantee shall assume any duty to or for the benefit of the general public for defects in the location, design, installation, maintenance or repair of the Public Trail Easement; for any unsafe conditions within the Public Trail Easement; for the failure to inspect for or warn against possibly unsafe conditions, or to close the Public Trail Easement to public access when unsafe conditions may be present.

Grantor reserves to itself, and its successors and assigns, (i) the right to relocate, at Grantor's sole cost and expense, the Public Trail Easement as may be necessary or desirable for Grantor's use and development of the Grantor's land, so long as the portion of the Public Trail Easement located or to be located within a Conservation Restriction conveyed or to be conveyed by the Grantor to the Grantee remains located therein; and provided, further, that (a) Grantor notifies Grantee in writing in advance, which such notice shall contain a new description and plan, both to be prepared and recorded at Grantor's sole cost and expense, and Grantee approves the proposed relocation in writing, and further provided that (b) the relocated Public Trail Easement does not significantly lessen the utility of the Public Trail Easement, does not increase the burdens on the use and enjoyment of the Public Trail Easement by the Grantee and members of the general public, and does not frustrate the purpose for which the Public Trail Easement was created but continues to provide the public with the right to pass and repass as hereinbefore specified; (ii) the right to use the Public Trail Easement for any and all purposes that do not interfere with the enjoyment by the Grantee and the members of the general public of the rights granted herein; (iii) the right to cut trees or otherwise disturb resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to persons on or about the Public Trail Easement; and (iv) the right to remove or exclude from the Public Trail Easement any person(s) who is (are) not engaged in Permitted Trail Uses.

The rights and obligations established herein shall run with Grantor's land and shall be binding upon the Grantor and inure to the benefit of the Grantee, and their respective successors and assigns. If Grantor conveys to a third party(ies) any land through which the Public Trail Easement granted herein passes, any and all such conveyances shall be made expressly subject to the Public Trail Easement granted herein. The Public Trail Easement granted herein may not be amended without written consent of the Grantor and the Grantee.

For Grantor's title reference, see deed recorded with the Registry in Book 32898, Page 152.

WITNESS its hand and seal as of this _____ day of _____, 2019.

AVALONBAY ORCHARDS, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

_____, ss

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as _____, for AvalonBay Orchards, Inc., a Maryland corporation.

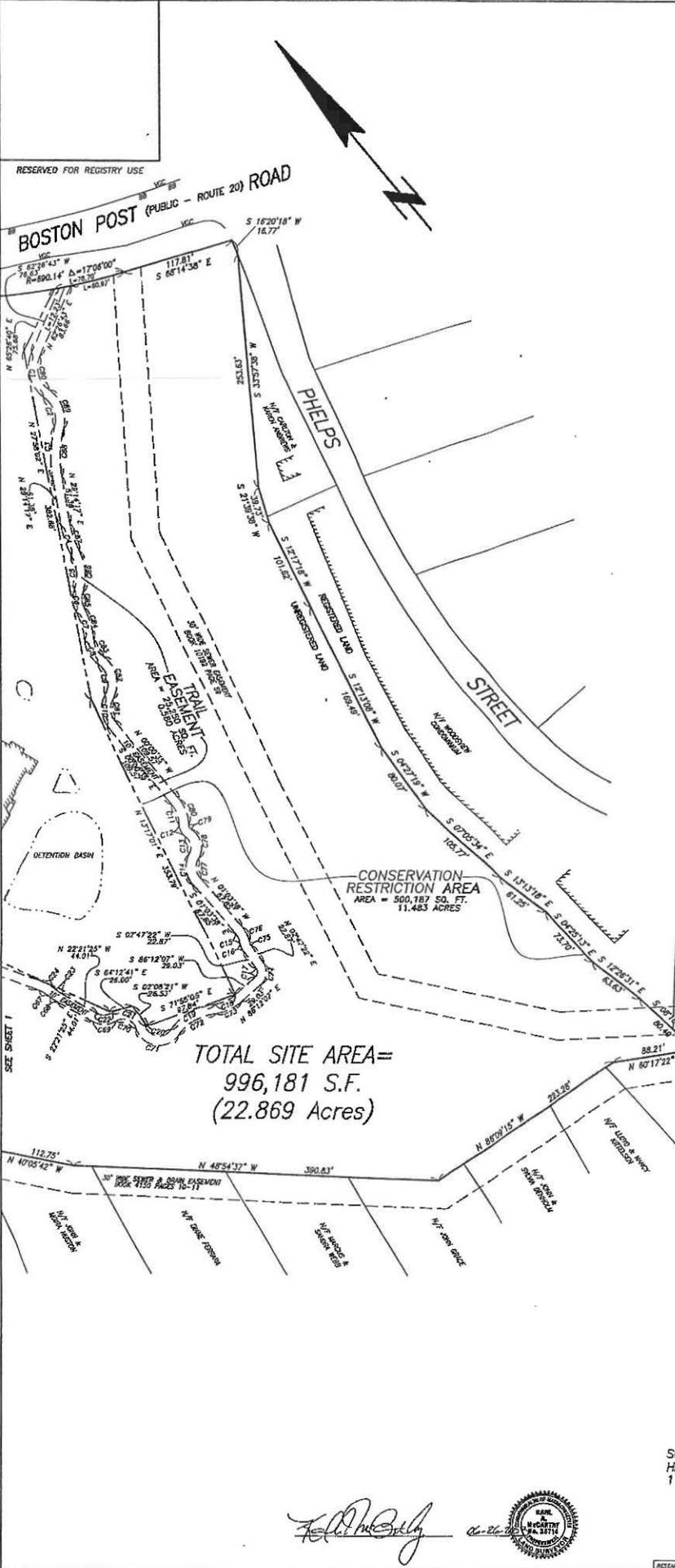
Notary Public: _____
My commission expires: _____

STATE OF CONNECTICUT

_____, ss

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared Joanne M. Lockridge, proved to me through satisfactory evidence of identification, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose as Senior Vice President Finance and Assistant Treasurer, for AvalonBay Orchards, Inc., a Maryland corporation.

Notary Public: _____
My commission expires: _____



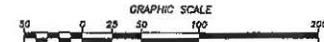
CHORD	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	BETTA ANGLE
C1	45.00	24.47	20.25	S 23°51'14" W	77°52'33"
C2	30.00	35.83	33.82	S 18°48'31" W	86°57'33"
C3	15.00	58.87	58.86	S 41°19'00" W	123°22'58"
C4	105.00	54.80	54.79	S 17°44'00" W	119°00'00"
C5	45.00	37.23	38.42	S 34°32'08" W	47°40'28"
C6	25.00	51.84	51.84	S 34°14'00" W	127°39'54"
C7	60.00	29.23	30.61	S 21°57'41" W	23°04'33"
C8	30.00	39.28	38.59	S 08°42'24" W	59°01'01"
C9	15.00	78.56	78.56	S 34°14'00" W	127°39'54"
C10	30.00	38.07	38.84	S 34°38'00" W	88°53'11"
C11	15.00	58.87	58.86	S 41°19'00" W	123°22'58"
C12	17.00	15.28	15.77	S 12°11'17" W	51°30'37"
C13	15.00	21.04	15.38	S 24°38'08" W	80°21'40"
C14	17.00	15.28	15.77	S 12°11'17" W	51°30'37"
C15	20.00	12.80	13.51	S 13°38'08" W	20°03'41"
C16	20.00	12.80	13.51	S 13°38'08" W	20°03'41"
C17	7.00	10.10	8.73	S 13°38'08" W	25°12'57"
C18	20.00	12.80	13.51	S 13°38'08" W	20°03'41"
C19	40.00	24.37	25.20	N 78°20'34" W	34°04'33"
C20	15.00	58.87	58.86	S 41°19'00" W	123°22'58"
C21	15.00	58.87	58.86	S 41°19'00" W	123°22'58"
C22	15.00	58.87	58.86	S 41°19'00" W	123°22'58"
C23	60.00	8.58	8.58	N 18°34'10" W	108°41'18"
C24	15.00	58.87	58.86	S 41°19'00" W	123°22'58"
C25	45.00	26.74	28.53	N 18°38'10" W	29°24'43"
C26	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C27	60.00	47.00	48.81	N 30°10'00" W	75°05'00"
C28	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C29	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C30	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C31	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C32	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C33	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C34	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C35	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C36	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C37	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C38	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C39	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C40	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C41	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C42	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C43	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C44	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C45	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C46	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C47	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C48	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C49	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C50	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C51	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C52	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C53	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C54	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C55	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C56	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C57	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C58	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C59	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C60	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C61	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C62	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C63	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C64	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C65	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C66	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C67	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C68	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C69	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C70	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C71	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C72	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C73	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C74	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C75	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C76	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C77	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C78	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C79	25.00	7.29	7.69	N 14°12'28" W	17°43'24"
C80	25.00	7.29	7.69	N 14°12'28" W	17°43'24"

TOTAL SITE AREA =
996,181 S.F.
(22.869 Acres)

SHEET 2 OF 2
EASEMENT PLAN
AVALON ORCHARDS
BOSTON POST ROAD
MARLBOROUGH, MASS.

SCALE: 1"=50' MAY 22, 2003
HARRY R. FELDMAN, INC. LAND SURVEYORS
112 SHAWMUT AVENUE BOSTON, MASS 02118
PHONE: (617)357-9740

Harry R. Feldman

GRANTOR: AVALONBAY ORCHARDS, INC.
GRANTEE: CITY OF MARLBOROUGH
ADDRESS OF PREMISES: 91 Boston Post Road East,
Marlborough, MA 01752
FOR GRANTOR'S TITLE SEE: Middlesex County
(S.D.) Registry of Deeds at Book 32898, Page 152

CONSERVATION RESTRICTION

AVALONBAY ORCHARDS, INC., a Maryland corporation, constituting the owner, for its successors and assigns ("Grantor"), acting pursuant to Sections 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, grants with QUITCLAIM COVENANTS to the CITY OF MARLBOROUGH, with an address of City Hall, 140 Main Street, Marlborough, Massachusetts 01752, acting by and through its Conservation Commission by authority of Section 8C of Chapter 40 of the Massachusetts General Laws, and its permitted successors and assigns ("Grantee"), for nominal consideration, IN PERPETUITY AND EXCLUSIVELY FOR CONSERVATION PURPOSES, the following Conservation Restriction on an 11.483-acre portion of a 22.869-acre parcel of land located in the City of Marlborough, Massachusetts (the "Premises"), which Premises is shown as "Conservation Restriction Area, Area = 500,187 sq. ft., 11.483 acres" on a plan entitled "Easement Plan, Avalon Orchards, Boston Post Road, Marlborough, Mass.," dated May 22, 2003, prepared by Harry R. Feldman, Inc., Land Surveyors, 112 Shawmut Avenue, Boston, Mass. 02118; Scale: 1"=50' (2 sheets), recorded in the Middlesex County (S.D.) Registry of Deeds as Plan No. ____ of 2019 (the "Plan"), which Premises is more particularly described on Exhibit A and shown on a reduced copy of the Plan in Exhibit B, both of which exhibits are incorporated herein.

I. PURPOSES

This Conservation Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the General Laws and otherwise by law. The purpose of this Conservation Restriction is to assure that the Premises will be maintained in perpetuity for conservation purposes, in a natural, scenic and undeveloped condition, and to prevent any use or change that would impair or interfere with its conservation and preservation values (the "conservation values").

This Conservation Restriction is required by the following permits:

- (1) Comprehensive Permit dated September 26, 2000 issued to the Grantor pursuant to M.G.L. c. 40B, §§ 20-23 by the City of Marlborough Zoning Board of Appeals for a 156-unit multi-family development with related amenities and improvements on the project known as “Avalon Orchards” (the “Development”), which Comprehensive Permit was recorded with the Middlesex (S.D.) Registry of Deeds (“Deeds”) in Book 32898, Page 157 (the “Comprehensive Permit”).
- (2) Order of Conditions dated December 21, 2000 issued to the Grantor by the City of Marlborough Conservation Commission (the “Conservation Commission”) related to the Development, which Order of Conditions was recorded with Deeds in Book 32898, Page 177 (the “Order of Conditions”).

The Premises contain unique and unusual qualities, the protection of which in their predominantly natural and open state will be of lasting benefit to the public and to the citizens of the City of Marlborough. These include qualities such as the natural, scenic, wooded and open condition of the Premises. The purpose of this Conservation Restriction is to retain the Premises in their natural, scenic and open condition.

The conservation values include the following:

- Open Space Protection. The Premises contributes to the protection of the scenic and natural character of the City of Marlborough and the protection of the Premises will enhance the open-space value of these and nearby lands.
- Preservation of Water Quality. The Premises is mapped as Outstanding Resource Waters located within a drainage area to a public water supply, as well as provide the many other public benefits of wetlands protection recognized by the Commonwealth of Massachusetts (Massachusetts General Laws Chapter 131, section 40).
- Public Access. Public access to the Premises will be allowed for passive outdoor recreational activities as defined herein.

The Conservation Values, as well as the current uses of and existing improvements on the Premises, such as, but not limited to, trails, woods roads, structures, meadows or other cleared areas, agricultural areas, and scenic views, are described in a Baseline Documentation Report (“Baseline Report”) prepared by Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents and on file with the Grantee and referenced herein. The Baseline Report (i) is acknowledged by Grantor and Grantee to be a complete and accurate representation of the condition and values of the Premises as of the date of this Conservation Restriction, and (ii) is intended to serve as an objective information baseline for subsequent monitoring of compliance with the terms of this Conservation Restriction as described herein. Notwithstanding the foregoing, the parties may utilize any evidence of the condition of the Premises at the time of this grant other than the Baseline Report, should the Baseline Report be unavailable or if it does not adequately address the issues presented.

II. PROHIBITED ACTS AND USES, EXCEPTIONS THERETO, AND PERMITTED USES

A. Prohibited Acts and Uses

Subject to the exceptions set forth herein, the Grantor will not perform or allow others to perform the following acts and uses which are prohibited on, above, and below the Premises:

- (1) Constructing, placing or allowing to remain any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, asphalt or concrete pavement, sign, fence, billboard or other advertising display, antenna, utility pole, tower, solar panel, solar array, conduit, line or other temporary or permanent structure or facility on, above or under the Premises;
- (2) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit or otherwise making topographical changes to the area;
- (3) Placing, filling, storing or dumping of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, tree and other vegetation cuttings generated off-site, waste or other substance or material whatsoever or the installation of underground storage tanks;
- (4) Cutting, removing or otherwise destroying trees, grasses or other vegetation;
- (5) Activities detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, wildlife habitat, or archaeological conservation;
- (6) Use, parking or storage of vehicles including motorcycles, mopeds, all-terrain vehicles, trail bikes, or any other motorized vehicles on the Premises except for vehicles necessary for public safety (i.e., fire, police, ambulance, other government officials) in carrying out their official duties or as necessary for the mobility impaired;
- (7) Subdivision or conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted), and no portion of the Premises may be used towards building or development requirements on this or any other parcel;
- (8) The use of the Premises for business, residential or industrial use, or for more than *de minimis* commercial recreation;
- (9) Any other use of the Premises or activity which is inconsistent with the purpose of this Conservation Restriction or which would impair its conservation values.

B. Reserved Rights and Exceptions

The Grantor reserves the right to conduct or permit the following activities and uses on the Premises, but only if such uses and activities do not impair the conservation values or purposes of this Conservation Restriction.

- (1) Vegetation Management. The selective minimal removing of brush, pruning and cutting to prevent, control or remove hazards, disease, insect or fire damage, or to preserve the present condition of the Premises, woods, fence lines, and trails and meadows;
- (2) Non-native or nuisance species. The removal of non-native or invasive species, the interplanting of native species, and the control of species in a manner that minimizes damage to surrounding, non-target species and preserves water quality;
- (3) Composting. The stockpiling and composting of stumps, trees, brush, limbs, and similar biodegradable materials originating on the Premises, provided that such stockpiling and composting is in locations where the presence of such activities will not impair the conservation values (including scenic values) of this Conservation Restriction. No such activities will take place closer than one hundred (100) feet from any wetland, waterbody or stream. All exercise of this reserved right shall take into account sensitive areas and avoid harm to nesting species during nesting season;
- (4) Wildlife Habitat Improvement. With the prior written permission of Grantee, measures designed to restore native biotic communities, or to maintain, enhance or restore wildlife, wildlife habitat, or rare or endangered species including selective planting of native trees, shrubs and plant species;
- (5) Archaeological Investigations. The conduct of archaeological activities, including without limitation survey, excavation and artifact retrieval, following submission of an archaeological field investigation plan and its approval in writing by Grantee and the State Archaeologist of the Massachusetts Historical Commission (or appropriate successor official).
- (6) Trails. The marking, clearing and maintenance of existing footpaths, including a trail of approximately 5 feet in width in the location shown as "Trail Easement" on the Plan, and with prior approval of the Grantee, the construction of new trails or the relocation or alteration of existing trails, provided that any construction, relocation, or alteration results in trails that are no wider than 5 feet;
- (7) Signs. The erection, maintenance and replacement of signs with respect to trespass, trail access, identity and address of the occupants, sale of the Premises, the Grantee's interest in the Premises, any gift, grant, or other applicable source of support for the conservation of the Premises, the Reserved Rights, and the protected conservation values;
- (8) Outdoor Passive Recreational Activities. Hiking, horseback riding, cross-country skiing and other non-motorized outdoor recreational activities that do not materially alter the landscape, do not degrade environmental quality, and do not involve more than minimal use for commercial recreational activities;

- (9) Forestry and Cutting. Conducting or permitting others to conduct sound silvicultural uses of the Premises, including the right to commercially harvest forest products (as such term may be defined from time to time in General Laws, Ch. 61, Sec. 1, or successor law) and the establishment of new woods roads in accordance with prudent and sound silvicultural practices that conform at least to the minimum standards set forth in the Massachusetts Forest Cutting Practices Act (General Laws, Ch. 132, or its successor) and carried out pursuant to a Forest Stewardship Plan.

Before any harvest of forest products occurs on the Premises, Grantor shall submit a Forest Stewardship Plan to the Grantee, the Massachusetts Department of Conservation and Recreation (or appropriate successor agency) and to any other required state agencies for their approval. The Stewardship Plan shall be prepared by a forester licensed through the Massachusetts Department of Conservation and Recreation in conformance with the "Directions for the Preparation of the Chapter 61 Forest Management Plans and Forest Stewardship Plans" and such statutes, regulations and directions in effect at the time of the approval of said Stewardship Plan. The Stewardship Plan shall include provisions designed to minimize soil erosion, conserve surface and groundwater quality, scenic views, wildlife habitat, and to protect the conservation values of this Conservation Restriction.

The Stewardship Plan shall be effective for a ten (10) year period and shall be resubmitted once every ten (10) years as necessary if additional timber harvests occur. All cutting plans and designated access routes shall avoid any stone structures or historical and cultural resources and shall be reasonably required to prevent any damage thereto. All cutting operations shall be supervised by a licensed forester;

- (10) Site Restoration. Any work undertaken in conjunction with the Reserved Rights described in this Paragraph B shall seek to minimize disturbance to the Conservation Values and other natural features within the Premises that may be impacted as a result of exercising of any of the Reserved Rights described herein. Upon completion of any site work performed in conjunction with the Reserved Rights described in this Paragraph B, any disturbed areas shall be restored substantially to the conditions with respect to soil material, grade, and vegetated ground cover as documented in the Baseline Report, as applicable, or in conformance with the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work, if said work is done in any area not documented in the Baseline Report.
- (11) Permits, Regulations, Laws. The exercise of any right reserved by Grantor under this Paragraph B shall be in compliance with zoning, the Wetlands Protection Act, and all other applicable federal, state and local laws, rules, regulations, and permits. The inclusion of any reserved right requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position whether such permit should be issued.

- (12) Best Management Practices. The exercise of any right reserved by Grantor under this Paragraph B shall follow, when available and if applicable, established, up to date, and regionally-applicable Best Management Practices or similar standards developed by a governmental agency or other entity with known expertise in the area of practice and designed to protect the natural features potentially affected by the action(s).

C. Notice and Approval.

Whenever notice to or approval by Grantee is required, Grantor shall notify Grantee, by a method requiring proof of receipt, in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within 60 days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not impair the purposes of this Conservation Restriction.

Subject to any applicable law or regulation, failure of Grantee to respond in writing within 60 days shall be deemed to constitute approval by Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after 60 days in the notice, the requested activity is not prohibited herein, and the activity will not impair the conservation values or purposes of this Conservation Restriction.

III. LEGAL REMEDIES OF THE GRANTEE

A. Legal and Injunctive Relief.

The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to their condition prior to the time of the injury complained of (it being agreed that the Grantee will have no adequate remedy at law). The rights hereby granted shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee for the enforcement of this Conservation Restriction. Grantee agrees to cooperate for a reasonable period of time prior to resorting to legal means in resolving issues concerning violations provided Grantor ceases objectionable actions and Grantee determines there is no ongoing diminution of the conservation values of the Conservation Restriction.

Grantor covenants and agrees to reimburse to Grantee all reasonable costs and expenses (including reasonable counsel fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy, abate or correct any violation thereof, provided that a violation of this Conservation Restriction is acknowledged by Grantor or determined by a court of competent jurisdiction to have occurred. In the event of a dispute over the boundaries of the Conservation Restriction, Grantor shall pay for a survey and to have the boundaries permanently marked.

B. Non-Waiver.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee. Any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

C. Disclaimer of Liability

By acceptance of this conservation restriction, the Grantee does not undertake any liability or obligation relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or its agents.

D. Acts Beyond the Grantor's Control

Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any actions against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. In the event of any such occurrence, the Grantor and Grantee will cooperate in the restoration of the Premises, if desirable and feasible.

IV. ACCESS

The Grantor hereby grants to the Grantee, or its duly authorized agents or representatives, the right to enter the Premises upon reasonable notice and at reasonable times, for the purpose of inspecting the Premises to determine compliance with or to enforce this Conservation Restriction. The Grantor also grants to the Grantee, after notice of a violation and failure of the Grantor to cure said violation, the right to enter the Premises for the purpose of taking any and all actions with respect to the Premises as may be necessary or appropriate to remedy or abate any violation hereof, including but not limited to the right to perform a survey of boundary lines.

The Grantor agrees to take no action to prohibit or discourage access to and use of the Premises by the general public, but only for daytime use and only as described in Section II(B)(8) provided that such agreement by Grantor is subject to the Grantor's reserved right to establish reasonable rules, regulations, and restrictions on such permitted recreational use by the general public for the protection of the purposes and conservation values of this Conservation Restriction. Grantor has the right to control, limit, or prohibit by posting and other reasonable means activities or uses of the Premises not authorized in Section II(B)(8). The Grantor's right to grant public access across the Premises is subject to the restrictions described in this Conservation Restriction. Any public use which is permitted by the terms of this Conservation Restriction constitutes permission to use the Premises for purposes described in the Massachusetts General Laws Chapter 21, Section 17C and the Grantor and Grantee hereto

benefit from exculpation from liability to the extent provided in such section. The Grantee may require the Grantor to post the Premises against any use that may result in rutting or erosion or other damage to the natural resources of the Premises.

V. EXTINGUISHMENT

A. If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with paragraph B below, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.

B. Proceeds. Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Restriction, determined at the time of the conveyance, bears to the value of the unrestricted Premises. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds will be distributed only after complying with the terms of any gift, grant, or other funding requirements.

C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or any part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with paragraph V. B above, after complying with the terms of any law, gift, grant, or funding requirements. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

VI. DURATION & ASSIGNABILITY

A. Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

B. Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction; the Grantor, on behalf of itself and its successors and assigns, appoints the Grantee their

attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit. The benefits of this Conservation Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, except in the following instances:

As a condition of any assignment, the Grantee shall require that the purpose of this Conservation Restriction continues to be carried out; that the Assignee is not an owner of the fee in the Property, and the Assignee, at the time of the assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and is a donee eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of Massachusetts. Any assignment will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

VII. SUBSEQUENT TRANSFERS

The Grantor agrees to incorporate by reference the terms of this Conservation Restriction in any deed or other legal instrument which grants any interest in all or a portion of the Premises, including a leasehold interest, and to notify the Grantee not less than twenty (20) days prior to the execution of such transfer. Failure to do any of the above shall not impair the validity or enforceability of this Conservation Restriction. Any transfer will comply with Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

The Grantor shall not be liable for violations occurring after its ownership. Liability for any acts or omissions occurring prior to any transfer and liability for any transfer in violation of this Conservation Restriction shall survive the transfer. Any new owner shall cooperate in the restoration of the Premises or removal of violations caused by prior owner(s) and may be held responsible for any continuing violations.

VIII. ESTOPPEL CERTIFICATES

Upon request by the Grantor, the Grantee shall, within sixty (60) days execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance or non-compliance with any obligation of the Grantor contained in this Conservation Restriction.

IX. NON MERGER

The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner that is qualified under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder and is eligible to receive this Conservation Restriction under Section 32 of Chapter 184 of the General Laws of

Massachusetts in order to ensure that merger does not occur and that this Conservation Restriction continues to be enforceable by a non-fee owner.

X. AMENDMENT

If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this conservation restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation value. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Art. 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Middlesex (S.D.) Registry of Deeds.

XI. EFFECTIVE DATE

This Conservation Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by Section 32 of Chapter 184 of the General Laws have been obtained, and it has been recorded in a timely manner in the Middlesex (S.D.) Registry of Deeds.

XII. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor:

c/o AvalonBay Communities, Inc.
Attention: Scott Dale, Senior Vice President - Development
600 Atlantic Avenue, 20th Floor
Boston, Massachusetts 02210
Email: sdale@avalonbay.com

With copies to:

c/o AvalonBay Communities, Inc.
Attention: Legal Department / Brian Lerman, Vice President –
Assistant General Counsel
Ballston Tower
671 N. Glebe Road, Suite 800

Arlington, Virginia 22203
Email: brian_lerman@avalonbay.com

And to Goulston & Storrs
400 Atlantic Avenue
Boston, Massachusetts 02110
Attention: Steven Schwartz, Esq.
Email: sschwartz@goulstonstorrs.com

To Grantee: City of Marlborough
Conservation Commission
City Hall
140 Main Street
Marlborough, Massachusetts 01752
e-mail: pryder@marlborough-ma.gov

and

City of Marlborough
Legal Department
City Hall, 4th Floor
140 Main Street
Marlborough, Massachusetts 01752
e-mail: legal@marlborough-ma.gov

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties.

XIII. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purpose of this Conservation Restriction and the policy and purposes of Chapter 184, Sections 31, 32, and 33 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, any interpretation consistent with the purpose of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Conservation Restriction or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Conservation Restriction shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Conservation Restriction and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Restriction, all of which are merged herein.

XIV. MISCELLANEOUS

A. Pre-existing Public Rights. Approval of this Conservation Restriction pursuant to Chapter 184, Section 32 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

B. Subordination. The Grantor attests that, as of the date hereof, there is no mortgage, promissory note, loan, lien, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a security interest affecting the Premises.

C. Attached hereto and incorporated herein by reference are the following:

Signature pages:

Grantor
Grantee Acceptance
Approval by City Council
Approval of the Secretary of Energy and Environmental Affairs.

Exhibits:

Exhibit A: Legal Description of Premises
Exhibit B: Reduced Copy of Plan of Premises

4819-5520-2422.8

Executed under seal this ____ day of _____, 2019.

BY: AVALONBAY ORCHARDS, INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

_____, SS

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as _____, for AvalonBay Orchards, Inc., a Maryland corporation.

Notary Public: _____
My commission expires: _____

STATE OF CONNECTICUT

_____, SS

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared Joanne M. Lockridge, proved to me through satisfactory evidence of identification, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose as Senior Vice President Finance and Assistant Treasurer, for AvalonBay Orchards, Inc., a Maryland corporation.

Notary Public: _____
My commission expires: _____

**ACCEPTANCE OF GRANT BY THE
CITY OF MARLBOROUGH CONSERVATION COMMISSION**

We, the undersigned, being a majority of the Conservation Commission of the City of Marlborough, Massachusetts, hereby certify that at a public meeting duly held on _____, 2019, the Conservation Commission voted to approve the foregoing Conservation Restriction from AvalonBay Orchards, Inc., pursuant to M.G.L. Chapter 184 Section 32 and Chapter 40 Section 8C, and do hereby accept the foregoing Conservation Restriction, subject to approval by the City Council of the City of Marlborough.

MARLBOROUGH CONSERVATION
COMMISSION

Edward Clancy

Dave Williams

John Skarin

Allan White

Dennis Demers

William Dunbar

Karin Paquin

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss:

On this _____ day of _____, 2019, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the person whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

APPROVAL BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH

We, the undersigned, being a majority of the City Council of the City of Marlborough, hereby certify that at a public meeting duly held on _____, 2019, the City Council voted to approve the foregoing Conservation Restriction from AvalonBay Orchards, Inc. to the City of Marlborough acting by and through its Conservation Commission in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

MARLBOROUGH CITY COUNCIL

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss:

On this _____ day of _____, 2019, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

APPROVAL BY THE MAYOR OF THE CITY OF MARLBOROUGH

I, Arthur Vigeant, the undersigned, the Mayor of the City of Marlborough, hereby approve the foregoing Conservation Restriction from AvalonBay Orchards, Inc. to the City of Marlborough acting by and through its Conservation Commission in the public interest pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

MAYOR

Arthur Vigeant

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss:

On this ____ day of _____, 2019, before me, the undersigned notary public, personally appeared _____, and proved to me through satisfactory evidence of identification which was _____ to be the persons whose names are signed on the proceeding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction from AvalonBay Orchards, Inc. to the City of Marlborough acting by and through its Conservation Commission, has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: _____, 2019

KATHLEEN A. THEOHARIDES
Secretary of Energy and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

On this _____ day of _____, 2019, before me, the undersigned notary public, personally appeared KATHLEEN A. THEOHARIDES, and proved to me through satisfactory evidence of identification which was _____ to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT A

Description of the Premises

The Premises subject to this Conservation Restriction is the entirety of the 11.483 acre area shown as "Conservation Restriction Area, Area = 500,187 sq. ft., 11.483 acres" on a plan of land entitled "Easement Plan, Avalon Orchards, Boston Post Road, Marlborough, Mass.," dated May 22, 2003, prepared by Harry R. Feldman, Inc., Land Surveyors, 112 Shawmut Avenue, Boston, Mass. 02118, Scale: 1"=50' (2 sheets), said plan recorded at the Middlesex County (South District) Registry of Deeds in Book ____, Page ____, a reduced copy of which is attached hereto as Exhibit B.

Street Address: 91 Boston Post Road East, Marlborough, MA 01752

EXHIBIT B - Reduced Copy of Plan of Premises

[See attached copy]

For official full size plan see Middlesex (South) County Registry of Deeds as plan No. ____ of
2019

REGULATORY AGREEMENT

This Regulatory Agreement (the "Agreement") is made this _____ day of _____, 2019 by AVALONBAY ORCHARDS, INC., a Maryland corporation, with an address of 671 N. Glebe Road, Suite 800, Arlington, Virginia 22203, its successors and assigns ("AvalonBay") and the CITY OF MARLBOROUGH, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, with an address of 140 Main St, Marlborough, Massachusetts 01752 (the "City").

BACKGROUND:

A. AvalonBay owns and operates a development consisting of 156 rental units with related amenities and improvements commonly known as "Avalon Orchards" and having an address of 3 Avalon Drive, Marlborough, Massachusetts 01752 (the "Development"). The Development is located on land more particularly described on Exhibit A attached hereto (the "Property").

B. The Development was developed pursuant to a comprehensive permit issued under M.G.L. c. 40B and its implementing regulations (collectively, "Chapter 40B") by the Marlborough Zoning Board of Appeals by decision dated September 26, 2000, recorded with the Middlesex (S.D.) Registry of Deeds (the "Registry") on May 21, 2001 in Book 32898, Page 157 (the "Comprehensive Permit").

C. AvalonBay has repaid in full the loan in the original principal amount of \$20,679,509 (the "Loan") funded by revenue bonds issued by the Massachusetts Housing Finance Agency ("MHFA"), which Loan was secured by, among other things, that certain Mortgage, Security Agreement, and Assignment of Rents and Leases with respect to the Property dated as of June 27, 2003 from AvalonBay to MHFA, which was recorded in the Registry in Book 39713, Page 493 (the "MHFA Mortgage").

D. In connection with the Loan, AvalonBay and MHFA entered into a certain Regulatory Agreement dated as of June 27, 2003, which was recorded with the Registry in Book 39713, Page 528 (the "Regulatory Agreement") and a certain Disposition Agreement dated as of June 27, 2003, which was recorded with the Registry in Book 39713, Page 486 (the "Disposition Agreement"). The Regulatory Agreement, the Disposition Agreement and the MHFA Mortgage are sometimes collectively referred to herein as the "MHFA Agreements."

E. The MHFA Agreements set forth, among other things, certain affordability requirements with respect to low or moderate income housing to be provided as part of the Development.

F. The MHFA Agreements, among other things, were discharged by instrument dated August 6, 2018 which was recorded with the Registry in Book 71510, Page 336 (the "Discharge").

G. In light of the Discharge, the City and AvalonBay wish to memorialize their understanding as to the affordability requirements that will continue to apply to the Development so long as the Development or Property continues to be used as multi-family housing pursuant to

the Comprehensive Permit (which shall be, at a minimum, until the expiration of the Minimum Term, as such term is hereinafter defined).

NOW THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AvalonBay and the City hereby agree and covenant as follows.

1. The term of this Agreement shall commence as of the date the Loan was or is repaid in full and shall continue in perpetuity as may be permitted by law. In entering into this Agreement, the parties intend for the restrictions, rights and obligations herein to be perpetual. To that end, if for any reason this Agreement or any of the restrictions, rights or obligations contained herein shall be deemed subject to sun-setting provisions, invalid, terminated, void or voidable on any grounds, or other principles requiring duration less than perpetual, then AvalonBay and its successors, assigns and transferees shall carry out all necessary measures to extend, adopt and/or renew the terms of this Agreement to renew and extend this Agreement and otherwise to ensure that the City holds in perpetuity the rights and restrictions set forth herein for the benefit of the City in a manner consistent with the terms and intent of this Agreement.

2. During the term of this Agreement, AvalonBay covenants, agrees, and warrants that the Development and each Affordable Unit, as hereinbelow defined, will remain suitable for occupancy and in compliance with all federal, state, and local health, safety, building, sanitary, environmental, and other laws, codes, rules, and regulations, including without limitation laws relating to the operation of adaptable and accessible housing for the disabled.

3. To the maximum extent permitted by law, throughout the term of this Agreement, AvalonBay shall reserve, market and lease, as "low or moderate income housing," as that term is defined in M.G.L. c. 40B, § 20, twenty five percent (25%) of the units in the Development to Low or Moderate Income Persons or Families (the "Affordable Units"). For the purposes hereof, the term Low or Moderate Income Persons and Families shall mean persons or families earning not more than eighty percent (80%) of the applicable area median income ("AMI") adjusted for household size, as determined by the U.S. Department of Housing and Urban Development ("HUD"), the Comprehensive Permit and this Agreement.

4. For so long as this Agreement is in effect, the annual rental expense for each of the Affordable Units shall be equal to the gross rent plus allowances for all tenant-paid utilities (including tenant-paid heat, hot water and electricity) and shall not exceed thirty percent (30%) of 80 percent (80%) of the AMI, adjusted for household size (the "Maximum Rents"). The Maximum Rents shall be determined on an annual basis by AvalonBay in accordance with the rental determination regulations adopted by MHFA (or its successor agency) or Massachusetts Department of Housing and Community Development ("DHCD"), as the same may be amended from time to time, and any policy regulations promulgated thereunder. Annually, AvalonBay shall submit to the City a proposed schedule of monthly rent expenses for all Affordable Units in the Development. Rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days' prior written notice by AvalonBay to all affected tenants. If the City fails to respond to a submission of the proposed schedule of rents for the Affordable Units as set forth above within thirty (30) days of the City's receipt thereof, the City shall be deemed to have approved the submission. If rentals of the Affordable Units are

subsidized under any state or federal housing subsidy program providing rental or other subsidy to the Development (a "Housing Subsidy Program"), then the rent applicable to the Affordable Units may be limited to that permitted by such Housing Subsidy Program, provided that the tenant's share of rent does not exceed the Maximum Rents as provided in this Agreement.

5. AvalonBay will advise the Director of the City's Community Development Authority (the "Director") of any revisions to the designation of any Affordable Units on an annual basis and will provide the Director an annual report with respect to the Development certifying in writing (i) that the Affordable Units have been maintained in a manner consistent with the Comprehensive Permit and this Agreement, and (ii) a listing of each Affordable Unit tenant rent and income. AvalonBay shall deliver the annual report within one hundred twenty (120) days of the end of each calendar year during the term of this Agreement.

6. The Affordable Units will be intermingled with all other dwelling units in the Development and will have access to all common facilities of the Development for use and enjoyment equal to that of other tenants. All Affordable Units constructed and/or to be constructed as part of the Development must be similar in exterior appearance to other units in the Development. Materials used for the interiors of the Affordable Units must be of good quality.

7. If, after initial occupancy, the income of a household occupying an Affordable Unit increases and, as a result of such increase, exceeds the maximum income permitted hereunder for such household, AvalonBay shall not be in default hereunder so long as either (i) the household's income does not exceed one hundred forty percent (140%) of the maximum income permitted (in which case the unit in question shall continue to be counted as an Affordable Unit) or (ii) AvalonBay rents the next available unit at the Development as an Affordable Unit in conformance with Section 3 of this Agreement. If a unit that formerly was an Affordable Unit no longer qualifies as an Affordable Unit due to an increase in the income of the household occupying such unit to an amount in excess of one hundred forty percent (140%) of the maximum income permitted hereunder for such household, AvalonBay may charge a market rental rate for such unit, provided that AvalonBay promptly and continuously markets and leases a different unit or units that are not already Affordable Units as Affordable Units to mitigate the reduction in the number of Affordable Units and to maintain the total number of Affordable Units at the Development as required by Section 3 above.

8. If at any time fewer than the required number of Affordable Units are leased, rented or occupied by Low or Moderate Income Persons or Families, the next available units with at least the same number of bedrooms shall all be leased, rented or otherwise made available to Low or Moderate Income Persons or Families until the required number of units occupied by Low or Moderate Income Persons or Families is again obtained.

9. AvalonBay shall enter into a lease with each tenant for a minimum term of one year. Such leases shall contain clauses, among others, wherein each resident of such Affordable Unit agrees and certifies compliance with the accuracy of information provided.

10. In fulfilling its obligations under this Agreement, AvalonBay will accept referrals of tenants from the public housing authority in the City, and will not unreasonably refuse

occupancy to any prospective tenants so referred who meet the requirements of any applicable tenant selection plan. Notwithstanding the foregoing, in no event shall this Agreement require AvalonBay to take any action which would result in a violation of the federal Fair Housing Act or any other applicable federal, state or local law, rule, ordinance, regulation or requirement or which is inconsistent with any applicable guidelines, rules or regulations. Without limiting the generality of the foregoing, there shall be no discrimination upon the basis of race, creed, color, religion, disability, sex, sexual orientation, national origin, age or familial status in the lease, use or occupancy of the Development.

11. AvalonBay will obtain, at the time of initial rental and on each anniversary of the rental during the term of such rental, and maintain on file certifications of tenant eligibility with respect to the Affordable Units in a form prescribed by MHFA or another qualified agency overseeing affordable housing in the Commonwealth of Massachusetts. Such certifications shall be filed with the Director annually as part of the report required under Section 5 hereof. AvalonBay shall make good faith efforts to verify that the income provided by an applicant in an income certification is accurate.

12. The Director shall represent the interests of the City concerning the enforcement of the terms and conditions of this Agreement. As such, the Director and any person(s) designated by the Director (whether such person(s) are employees of the City or agents acting on behalf of the Director or the City) shall be the person authorized to monitor AvalonBay's compliance with the terms and conditions of this Agreement. AvalonBay will maintain complete and accurate records pertaining to the Affordable Units, and during reasonable business hours and upon reasonable notice, will permit the Director and any person(s) designated by the Director to inspect the books and records of AvalonBay pertaining to the Affordable Units.

13. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Agreement must be in writing and executed by all of the parties hereto. The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions hereof.

14. All notices to be given pursuant to this Agreement shall be in writing and shall be deemed given when delivered by hand or when mailed by certified or registered mail, postage prepaid, return receipt requested, by e-mail, or by reputable overnight courier (such as Federal Express), to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate by written notice:

To AvalonBay:

AvalonBay Communities, Inc.
1499 Post Road, Second Floor
Fairfield, Connecticut 06824
e-mail: joannel@avalonbay.com
Attn: Joanne Lockridge, Senior Vice President -- Finance

With copies to:

AvalonBay Communities, Inc.
671 N. Glebe Road, Suite 800

Arlington, Virginia 22203
e-mail: alan_adamson@avalonbay.com
Attn: Alan Adamson, Esq., Vice President & Associate General Counsel

and

Goulston & Storrs PC
400 Atlantic Avenue
Boston, Massachusetts 02110-3333
Facsimile: (617) 574-7636
Attn: Steven Schwartz, Esq
e-mail: sschwartz@goulstonstorrs.com.

To City:

Marlborough Community Development Authority
250 Main Street
Marlborough, Massachusetts 01752
Attention: Director

and

City of Marlborough
Legal Department
City Hall, 4th Floor
140 Main Street
Marlborough, Massachusetts 01752
e-mail: legal@marlborough-ma.gov

15. This Agreement and all of the covenants, agreements and restrictions contained herein shall be deemed to be an affordable housing restriction as that term is defined in M.G.L. c. 184, § 31 and as that term is used in M.G.L. c.184, § 26, 31, 32 and 33, in perpetuity. This Agreement is made for the benefit of the City, which shall be deemed to be the holder of the affordable housing restriction created by this Agreement. In addition, this Agreement is intended to be superior to the lien of any mortgage on the Development and survive any foreclosure or exercise of any remedies thereunder. The City has determined that the acquiring of such affordable housing restriction is in the public interest. For the purposes hereof, the term "perpetuity" shall mean for so long as the Development is being used for multi-family housing pursuant to the terms of the Comprehensive Permit, which shall be, at a minimum, for a term (the "Minimum Term") ending on May 21, 2045. Notwithstanding the foregoing or anything in this Agreement to the contrary but subject to the provisions of the next sentence, the term of this Agreement shall expire, and this Agreement shall be of no further force and effect, at such time as no portion of the Development or Property is used as multi-family housing pursuant to the Comprehensive Permit (but no sooner than the expiration of the Minimum Term). Further, this Agreement shall terminate and be of no further force and effect with respect to all the Affordable Units to the extent that the provisions of M.G.L. Chapter 40B (or any amendment or successor statute thereto) no longer require that any of the units in the Development be restricted for low and moderate income housing.

16. Nothing in this Agreement shall be deemed to prohibit the conversion of the use of the property on which the Development is built for other uses permitted by the applicable zoning then in effect, so long as no such conversion takes place, at a minimum, until the expiration of the Minimum Term; provided, however, that any conversion of the Property to condominium use may take place after the expiration of the Minimum Term; and provided, further, that in the event of such condominium conversion after such period, the Affordable Units shall remain in perpetuity as "low or moderate income housing," in conformance with Section 3 of this Agreement, in the form either of home ownership units or of rental units as may be agreed to by AvalonBay and the Marlborough Zoning Board of Appeals. In the event of such a condominium conversion, AvalonBay shall execute and record all necessary documents (including but not limited to deed restrictions on the unit deeds for the Affordable Units which will be subject to the affordability restriction approved by DHCD pursuant to M.G.L. c. 184) to ensure that the affordability restriction as to such units will continue in force for the entire term hereof, in accordance with the terms relative to qualifying purchasers and maximum sales prices for initial sales and re-sales in accordance with the regulations promulgated by MHFA (or, if MHFA has ceased to promulgate such regulations, then such terms shall be determined based on substitute regulations and requirements of DHCD, and thereafter of a federal or state governmental agency providing subsidies for low or moderate income home ownership as shall be reasonably determined by AvalonBay). In addition, in the event of such a conversion, AvalonBay shall establish in the condominium master deed a provision for the maintenance of the Development and Property, including, but not limited to, roadway maintenance and repair, snow plowing, trash removal / recycling, and other amenities relating to the Development and Property. Further, in the event of such a conversion, a Deed Rider shall be attached to the deed of each Affordable Unit, and substantially similar restrictions as are in the Deed Rider shall be contained within the condominium master deed; such Deed Rider shall be in a form which is reasonably acceptable to the City, DHCD and any federal or state subsidizing agency providing a subsidy in connection with such conversion to condominium use. In no event shall any conversion of the use of the Property at any time, whether during or subsequent to the expiration of the Minimum Term, impair or interfere with the conservation values protected by the Conservation Restriction granted or to be granted in perpetuity by AvalonBay to the City of Marlborough, acting by and through its Conservation Commission.

17. Subject to the rights of any mortgage lender, AvalonBay agrees that if the Development, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, AvalonBay shall have the right, but not the obligation, to repair and restore the Development to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Development in accordance with the terms of this Agreement. Notwithstanding the foregoing, in the event of a casualty in which some but not all of the buildings in the Development are destroyed, if such destroyed buildings are not restored by AvalonBay, AvalonBay shall be required to maintain the same percentage of Affordable Units (namely, 25%, as set forth in Section 3 of this Agreement) to the total number of units then remaining in the Development.

18. AvalonBay intends, declares and covenants on behalf of itself and its successors and assigns, and the parties hereto agree (i) that this Agreement and the covenants, agreements and restrictions contained herein shall be and are covenants running with the land, encumbering the Development for the term of this Agreement accepted by the City by its execution of this

Agreement, and are binding upon AvalonBay's successors in title, (ii) are not merely personal covenants of AvalonBay, and (iii) shall bind AvalonBay, its successors and assigns for the term of the Agreement, and shall inure to the benefit of the parties hereto and their respective successors and assigns. AvalonBay hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Agreement to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full. AvalonBay shall cause this Agreement to be recorded in the Registry. AvalonBay shall pay all fees and charges incurred in connection with such recording or filing.

19. If any default, violation or breach by AvalonBay of the terms of this Agreement is not cured within thirty (30) days after notice to AvalonBay thereof (or such longer period of time as is reasonably necessary to cure such a default so long as AvalonBay is diligently and continuously prosecuting such a cure), then the City may take one or more of the following steps: (a) by mandamus or other suit, action or other proceeding at law or in equity, require AvalonBay to perform its obligations under this Agreement; (b) have access to, and inspect, examine and make copies of all of the books and records of AvalonBay pertaining to the Development; or (c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of AvalonBay under this Agreement. If the City brings any claim to enforce this Agreement, and the City finally prevails in such claim, AvalonBay shall reimburse the City for its reasonable attorneys' fees and expenses incurred in connection with such claim. No delay or omission on the part of the City in enforcing the covenants, agreements and restrictions contained herein shall operate as a waiver of the City's right to enforce them, nor shall any delay, omission or waiver on any one occasion be deemed to be a bar to or waiver of the same or of any other right on any future occasion.

20. Recognizing that each party may find it necessary to establish to third parties, such as accountants, banks, potential or existing mortgagees, potential purchasers or the like, the then current status of performance hereunder, either party on the request of the other party made from time to time, will promptly furnish to the requesting party a statement of the status of any matter pertaining to this Agreement, including, without limitation, acknowledgments that (or the extent to which) each party is in compliance with its obligations under the terms of this Agreement.

(Signatures on following page)

CITY:

CITY OF MARLBOROUGH

By: _____

Arthur G. Vigeant

Mayor

Hereunto duly authorized by vote
of the Marlborough City Council

Order No. _____

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX, ss:

On this _____ day of _____, 2019 before me, the undersigned notary public, personally appeared Arthur G. Vigeant, in his capacity as Mayor of the City of Marlborough, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

(SEAL)