

CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: CITY COUNCIL SPECIAL MEETING

Date: Monday, March 18, 2019

Time: 6:50 PM

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

Agenda Items to be addressed:

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2019 MAR 14 P 12:00

Notice is hereby given that the City Council of the City of Marlborough will hold a **SPECIAL MEETING** on Monday, March 18, 2019 at 6:50 PM, in City Council Chambers, City Hall, 140 Main Street, Marlborough, MA.

Per order of City Council President Clancy

1. **Order No.18/19-1007460:** Communication from Solicitor Rider together with Proposed Zoning Petition from Councilor Delano, Chairman of the Urban Affairs Committee, to vest the ZBA with jurisdiction over applications for special permits that seek to increase or intensify the existing nonconforming nature of single or two-family residential structures, as it currently rests with the City Council.

THE LISTING OF TOPICS THAT THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING IS NOT INTENDED AS A GUARANTEE OF THE TOPICS THAT WILL HAVE BEEN DISCUSSED. NOT ALL TOPICS LISTED MAY IN FACT BE DISCUSSED, AND OTHER TOPICS NOT LISTED MAY ALSO BE BROUGHT UP FOR DISCUSSION TO THE EXTENT PERMITTED BY LAW.

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.

SPECIAL MEETING

MARCH 18, 2019

TIME: 6:50 PM

IN CITY COUNCIL

ABSENT

LOCATION: CITY HALL, 140 MAIN STREET, 2ND FLOOR

CONVENED:

ADJOURNED

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CITY OF MARLBOROUGH

2019 MAR 14 A 7:50

UNFINISHED BUSINESS:

From Urban Affairs Committee

1. **Order No.18/19-1007460: Communication from Solicitor Rider together with Proposed Zoning Petition from Councilor Delano, Chairman of the Urban Affairs Committee, to vest the ZBA with jurisdiction over applications for special permits that seek to increase or intensify the existing nonconforming nature of single or two-family residential structures, as it currently rests with the City Council.**

The Urban Affairs Committee met to discuss the proposed zoning petition that would allow the Zoning Board of Appeals (ZBA) the jurisdiction to review the applications for special permits from the owners of single-family and two-family residential structures who look to increase or intensify the existing nonconforming nature of their residence by either expanding the residence or constructing a garage or deck as examples. These types of cases were not previously before the City Council, but recent court rulings have dictated these requests must go before the City Council as the Special Permit granting authority. By approving this proposed zoning petition, the City Council may delegate their authority to the ZBA. The Planning Board at its regularly scheduled meeting on January 7, 2019 voted to make a favorable recommendation to the City Council on the proposed zoning amendment.

Motion made by Councilor Doucette, seconded by the Chair, to approve the proposed zoning petition. The motion carried 4-1 (Landers opposed).

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City of Marlborough Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

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LEGAL@MARLBOROUGH-MA.GOV

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
DONALD V. RIDER, JR.
CITY SOLICITOR

2018 NOV 15 11:35
SYNTILIA M. PANAGORE GRIFFIN
ASSISTANT CITY SOLICITOR

ELLEN M. STAVROPOULOS
PARALEGAL

November 15, 2018

Edward Clancy
President
Marlborough City Council

RE: Proposed Zoning Amendment --
Lawful Pre-Existing Nonconforming Single and Two-Family Residential Structures

Dear President Clancy and Members:

In his capacity as chairman of the Urban Affairs Committee, Councilor Delano has requested that I place on the agenda a zoning amendment proposing to vest the ZBA with jurisdiction over applications for special permits that seek to increase or intensify the existing nonconforming nature of single or two-family residential structures. Currently, that jurisdiction rests with the City Council.

This proposed amendment is an effort to provide a more streamlined permitting process for homeowners who seek to 'upgrade' their single or two-family homes, as well as for members of the public who stand to be affected by the 'upgrade' project in question. Oftentimes, such homeowners may need to apply to the ZBA for a variance because the Building Commissioner has determined their project involves creating what would be a *new* nonconformity. At the same time, some of these homeowners may potentially be faced with also applying to the Council for a special permit seeking to allow the homeowner to increase or intensify an *existing* nonconformity.

Thus, the potential for inefficiency and inconvenience arises for a given homeowner who may need to obtain 2 separate forms of zoning relief with 2 separate processes involving 2 separate public hearings taking place on 2 different evenings before 2 separate public bodies – the ZBA for variances and the Council for special permits.

By vesting the ZBA with authority to act on special permit applications seeking to increase or intensify the existing nonconforming nature of single or two-family residential structures, the enclosed proposal is offered as a less inefficient and inconvenient, and thus more streamlined, approach to zoning relief for such residential structures.

Thank you for your attention to this matter.

Very truly yours,


Donald V. Rider, Jr.
City Solicitor

Enclosure

cc: Arthur Vigeant, Mayor
Jeffrey Cooke, Building Commissioner
Zoning Board of Appeals, c/o Susan Brown, Board Secretary



IN CITY COUNCIL

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ORDERED:

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING SUBMITTED FOR ITS OWN CONSIDERATION CHANGES IN THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, TO FURTHER AMEND CHAPTER 650, NOW ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED AS FOLLOWS:

1. Section 650-12, entitled "Nonconforming uses," is hereby amended by deleting the words
"except that no special permit is needed if the alteration or expansion is to a nonconforming single- or two-family dwelling and said alteration or expansion does not increase the nonconforming nature of the dwelling," and inserting in place thereof the following words: -

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).
2. Section 650-58, entitled "Provisions for Board of Appeals," is hereby amended by adding to subsection B thereof, entitled "Powers and duties," after sub-subsection (2), entitled "Variances," the following new sub-subsection (3), entitled "Lawful pre-existing nonconforming single-family dwellings and two-family houses":
- (3) Lawful pre-existing nonconforming single-family dwellings and two-family houses.
 - (a) As of right. Lawful pre-existing nonconforming single-family dwellings and two-family houses may be altered, reconstructed, extended or structurally changed as a matter of right upon a determination by the Building Commissioner that a proposed alteration, reconstruction, extension or change would not increase or intensify the existing nonconforming nature of the dwelling or house in question. Upon such a determination, an application to the Board of Appeals for a special permit need not be made, and the owner may apply to the Building Commissioner for a building permit.



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ORDERED:

- (b) By special permit. Upon a determination by the Building Commissioner that a proposed alteration, reconstruction, extension or structural change to a lawful pre-existing nonconforming single-family dwelling or two-family house would increase or intensify the existing nonconforming nature thereof, the owner of such dwelling or house shall be required to apply to the Board of Appeals for a special permit to allow such alteration, reconstruction, extension or structural change. The Board may grant a special permit to allow such alteration, reconstruction, extension or structural change; provided, however, that the Board determines, by a finding under M.G.L. c. 40A, § 6, that the proposed alteration, reconstruction, extension or structural change shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use; and provided, further, that any such special permit shall comply with the requirements of the Zoning Ordinance of the City of Marlborough, as may be amended from time to time, including but not limited to Section 650-12, entitled "Nonconforming uses," as well as Section 650-59.A(1) pertaining to the powers and duties of special permit granting authorities. Application for a special permit to allow such alteration, reconstruction, extension or structural change shall be made to the Board pursuant to the procedures set forth in Subsection C(5) of this Section 650-58.
- (c) By variance. Upon the determination by the Building Commissioner that a proposed alteration, reconstruction, extension or structural change to a lawful pre-existing nonconforming single-family dwelling or two-family house would create a new nonconformity(ies), the owner of such dwelling or house shall be required to apply to the Board of Appeals for a variance to allow such alteration, reconstruction, extension or structural change; provided, however, that the Board shall decide upon a variance petition pursuant to the Board's powers and duties set forth in Subsection B(2), and pursuant to the procedure set forth in Subsection C(1)-(4), of this Section 650-58.
3. Section 650-58, entitled "Provisions for Board of Appeals," is hereby amended by adding to subsection C thereof, entitled "Procedure," after sub-subsection (4), the following new sub-subsection (5), entitled "Special permit procedure":



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ORDERED:

(5) Special permit procedure. Except as set forth below, the provisions set forth in Section 650-59.B and C, pertaining to the procedures and rules applicable to special permit granting authorities, as such provisions may be amended from time to time, shall, so far as apt, be applicable to the Board of Appeals acting upon an application for a special permit proposing an alteration, reconstruction, extension or structural change which, per the determination of the Building Commissioner, would increase or intensify the existing nonconforming nature of a lawful pre-existing nonconforming single-family dwelling or two-family house. In particular, each special permit application to the Board of Appeals filed under this subsection shall contain the information as itemized in Section 650-59.C(4), and shall be accompanied by a preliminary site plan which shall contain the information as itemized in Section 650-59.C(5).

Each application filed under this subsection shall be filed with the Office of the City Clerk in accordance with MGL Chapter 40A, on a form provided by that Office, and shall be accompanied by a filing fee in the amount calculated to be the same as for special permit applications submitted to the City Council under Section 650-59.C(3). The application for the special permit shall be made in writing by the applicant or its duly authorized agent, who shall file the following number of sets of application materials at the Office of the City Clerk, which shall keep the original and forward all copies to the Board of Appeals, which shall distribute those copies as follows:

Number of Sets	Office
8	Board of Appeals
1	Building Department
1	Office of the City Council
1	City Engineer
1	Legal Department
1	Conservation Officer (if wetlands are affected)



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ORDERED:

The Board of Appeals shall hold a public hearing on each special permit application filed under this subsection. The procedures for the public hearing and for the notice thereof to parties in interest shall be in conformance with M.G.L. c. 40A and the Zoning Ordinance of the City of Marlborough, as either or both may be amended from time to time; provided, however, that the Board shall hold the public hearing on a special permit application on the same evening as it would be holding the public hearing on any variance petition that may be associated with the same proposed work (alteration, reconstruction, extension or structural change) on the same dwelling or house.

Within 90 days after the close of the public hearing on the special permit application filed under this subsection, the Board of Appeals shall take final action on a decision to grant or deny the requested special permit; provided, however, that no special permit shall be granted by the Board under this subsection if any variance petition that may be associated with the same proposed work (alteration, reconstruction, extension or structural change) on the same dwelling or house is denied by the Board.

The Board may adopt rules and regulations for the issuance of special permits under this subsection in accordance with M.G.L. c. 40A and the Zoning Ordinance of the City of Marlborough, as either or both may be amended from time to time.

Be and is herewith refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE PUBLIC HEARING FOR MONDAY, DECEMBER 17, 2018.**

ADOPTED

ORDER NO. 18-1007460



City of Marlborough Planning Board

Administrative Offices
135 Neil St.
Marlborough, MA 01752

PLANNING BOARD

Barbara L. Fenby, Chair
Philip Hodge
Sean N. Fay
George LaVenture
Christopher Russ
Matthew Elder

Krista Holmi, Administrator
(508) 624-6910 x33200
kholmi@marlborough-ma.gov

January 14, 2019

Edward Clancy
Marlborough City Council
140 Main St.
Marlborough, MA 01752

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2019 JAN 14 P 1:43

RE: Council Order 18-1007460, Proposed Zoning Amendment: Lawful Pre-Existing
Nonconforming Single and Two-Family Residential Structures

Honorable President Clancy and Councilors:

At its regularly scheduled Planning Board meeting on January 7, 2019, the Board took the following action regarding the above referenced Council order:

On a motion by Mr. Hodge and seconded by Mr. LaVenture, the Board voted to make a favorable recommendation to the City Council on the proposed zoning amendment. Motion carried.

Sincerely,

Barbara L. Fenby
Chairperson

cc: City Clerk
File

CITY COUNCIL URBAN AFFAIRS COMMITTEE REPORT

Meeting Name: City Council Urban Affairs Committee

Date: February 26, 2019

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

Convened: 5:30 PM – Adjourned: 6:59 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Juaire, Landers, Tunnera and Doucette; Councilors Clancy, Dumais, Ossing, and Robey; Donald Rider (City Solicitor, City of Marlborough);

Order No.16/17/18/19-1006443AAA-1: Communication from Code Officer regarding Application for Temporary, freestanding sign for VENTURE X at 11 Apex Drive; Approval from Walker Realty LLC attached to the Application.

The Urban Affairs Committee met with Ryan Gagne, CEO of RDG Enterprises, Inc. and owner of Venture X. Mr. Gagne explained the business model to the committee as a shared, coworking space. There is the opportunity for flex space or private loft offices and the amenities fit each based on the scale of the space. Each space can be leased as either one-day per month or 24/7/365 access and provides businesses flexibility in the modern age. They have placed a marquee sign on the corner of the building, but their request for the temporary, freestanding sign is for about eight months. Their expectation is for them to be at a level of capacity for the business to survive and not require the necessity of the sign after that point.

Motion made by Councilor Juaire, seconded by the Chair, to approve the sign request from Venture X for a temporary sign for a period of eight months after the building permit is issued. The motion carried 5-0.

Order No.18/19-1007460: Communication from Solicitor Rider together with Proposed Zoning Petition from Councilor Delano, Chairman of the Urban Affairs Committee, to vest the ZBA with jurisdiction over applications for special permits that seek to increase or intensify the existing nonconforming nature of single or two-family residential structures, as it currently rests with the City Council.

The Urban Affairs Committee met to discuss the proposed zoning petition that would allow the Zoning Board of Appeals (ZBA) the jurisdiction to review the applications for special permits from the owners of single-family and two-family residential structures who look to increase or intensify the existing nonconforming nature of their residence by either expanding the residence or constructing a garage or deck as examples. These types of cases were not previously before the City Council, but recent court rulings have dictated these requests must go before the City Council as the Special Permit granting authority. By approving this proposed zoning petition, the City Council may delegate their authority to the ZBA. The Planning Board at its regularly scheduled meeting on January 7, 2019 voted to make a favorable recommendation to the City Council on the proposed zoning amendment.

Motion made by Councilor Doucette, seconded by the Chair, to approve the proposed zoning petition. The motion carried 4-1 (Landers opposed).

Motion made and seconded to adjourn. The motion carried 5-0. The meeting adjourned at 6:59 PM.

*Reported by: Chairman Delano
March 11, 2019*