



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK
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NOVEMBER 19, 2018

Regular meeting of the City Council held on Monday, November 19, 2018 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Delano, Juare, Oram, Ossing, Doucette, Dumais, Irish and Landers. Absent: Robey & Tunnera. Meeting adjourned at 8:55 PM.

ORDERED: That the Minutes of the City Council meeting OCTOBER 29, 2018, **FILE**; adopted.

ORDERED: That the Minutes of the City Council meeting NOVEMBER 5, 2018, **TABLED UNTIL THE DECEMBER 3, 2018 CITY COUNCIL MEETING**; adopted.

ORDERED: That the PUBLIC HEARING On the Proposed Zoning Change, amending Chapter 650 §34 and §41 in the Marlborough Village District, Order No. 18-1007404B, all were heard who wish to be heard, hearing closed at 8:22 PM.

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

Absent: Robey & Tunnera.

ORDERED: That the Disposition of Surplus Property – 25 East Main Street, refer to **LEGISLATIVE AND LEGAL AFFAIRS COMMITTEE**; adopted.

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.

- (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”:

(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)

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.

Refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE PUBLIC HEARING FOR MONDAY, DECEMBER 17, 2018;** adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Special Permit for Raphael B. Fischetti, to build a 2-story single-family home, 89 Spring Street in proper legal form, Order No. 18-1007387C, **MOVED TO ITEM 24;** adopted.

ORDERED: That the Communication from Assistant City Solicitor, Cynthia Panagore Griffin, re: Proposed Zoning Amendment to Chapter 650, Neighborhood Business District, in proper form, Order No. 18-1007337C, **MOVED TO ITEM 25;** adopted.

ORDERED: That the Communication from Building Commissioner, Jeffrey Cooke, re: Application for LED Sign Special Permit for Main Street Bank, 81 Granger Boulevard, Order No. 18-1007423, **MOVED TO ITEM 12;** adopted.

Councilor Delano recused.

ORDERED: That the Communication from DPW Commissioner John Ghiloni, re: Proposed Assignment of Retaining Wall Easement, 27 Jefferson LLC, Order No. 18-1007451, X18-1007245C, **MOVED TO REPORTS OF COMMITTEE;** adopted.

Councilor Dumais recused.

ORDERED: That the request to extend time limitations on Application for Special Permit to increase the number of units from 350 to 473 on a portion of 200 Forest Street within the Results Way Mixed Use Overlay District (RWMUOD), until 10:00 PM on January 29, 2019, Order No. 18-1007314B **APPROVED;** adopted.

ORDERED: That the Communication from Christopher White, re: Request to Withdraw application for Special Permit to build a 24 x 26 garage on a non-conforming lot at 22 Brimsmead Street, Order No. 18-1007320B, **MOVED TO REPORTS OF COMMITTEE;** adopted.

ORDERED: That there being no objection thereto set **MONDAY, JANUARY 7, 2019** as **DATE FOR PUBLIC HEARING** On the Application for Special Permit from Attorney Sem Aykanian to modify existing Special Permit issued to Main Street Bank, 81 Granger Boulevard on June 22, 2009, Order No. 09-1002152C, to modify permit to allow for an electronic digital display (electronic message board) sign, refer to **URBAN AFFAIRS COMMITTEE & ADVERTISE;** adopted.

Councilor Delano recused.

ORDERED: That the Communication from Building Commissioner, Jeffrey Cooke, re: Application for LED Sign Special Permit for Main Street Bank, 81 Granger Boulevard, Order No. 18-1007423 **FILE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, JANUARY 7, 2019** as **DATE FOR PUBLIC HEARING** On the Application for Sign Special Permit, Main Street Bank, 81 Granger Boulevard Marlborough to operate an electronic message center sign at its bank located at 81 Granger Boulevard, refer to **URBAN AFFAIRS COMMITTEE & ADVERTISE**; adopted.

Councilor Delano recused.

ORDERED: That there being no objection thereto set **MONDAY, DECEMBER 17, 2018** as **DATE FOR PUBLIC HEARING** On the Application for Special Permit from Melynda Gallagher on behalf of Lost Shoe Brewing and Roasting Company to allow for coffee roasting at their establishment within the Marlborough Village District, 19 Weed Street, refer to **URBAN AFFAIRS COMMITTEE & ADVERTISE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY DECMEBER 3, 2018** as **DATE FOR PUBLIC HEARING** On Petition from Massachusetts Electric and Verizon New England, Inc., to install new joint owned Pole #47-5, Bolton Street, to service new school at 441 Bolton Street, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Communication from Weston Solutions, Inc., re: Notification of Phase I Tier Classification Submittal relative to 33 Hayes Memorial Drive, refer to **BOARD OF HEALTH**; adopted.

ORDERED: That the Notice of Filing and Public Hearing, Department of Public Utilities, NSTAR Gas Company d/b/a Eversource Energy, DPU 18-115, **FILE**; adopted.

ORDERED: That the Notice of Filing and Public Hearing, Department of Public Utilities, Massachusetts Electric d/b/a National Grid, DPU 18-118, **FILE**; adopted.

ORDERED: That the Communication from Cross Roads Industrial Park-Parcel G, re: Environmental Notification Form (EEA #15928) – Alternatives Analysis, **FILE**; adopted.

ORDERED: That the Minutes, Commission on Disabilities, July 3, 2018 & August 7, 2018, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, September 10, 2018, September 24, 2018, October 15, 2018 & October 29, 2018, **FILE**; adopted.

ORDERED: That the Minutes, Zoning Board of Appeals, October 31, 2018, **FILE**; adopted.

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

- a) Christian Donaldson, 28 Waters Street, Millbury, pothole or other road defect.
- b) John Barrington, 397 Bolton Street, #F6, pothole or other road defect.

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

**Marlboro City Council Finance Committee
Tuesday November 13, 2018
In Council Chambers**

Finance Committee Members Present: **Chairman Ossing; Councilors Robey, Oram, Irish and Dumais.**

Finance Committee Members Absent: **None**

Other Councilors in Attendance: **Councilors Clancy, Landers, Juaire, Doucette and Delano (present for agenda items 1 & 2).**

The meeting convened at 7:00 PM.

1. **Order #18-1007439 – Bond Order for \$23,780,902.00 to Fund the Library Renovation Project:** The Finance Committee reviewed the Mayor's letter dated October 25, 2018 requesting a bond order for \$23,780,902.00 to fund the renovation and construction of the Marlboro Public Library. The Massachusetts Board of Library Commissioners (voted July 12, 2018) awarded the City a grant in the amount of \$10,186,626.00 that will be used to offset the bond. Any excess costs will be made up by the Library's Capital Campaign Committee. To date the Library's Capital Campaign Committee has pledges for over \$400,000.00. **The Finance Committee took the following actions:**
 - **The Finance Committee voted 5 - 0 to approve the bond order for \$23,780,902.00 to fund the renovation and construction of the Marlboro Public Library.**
 - **The Finance Committee voted 5 – 0 to request a suspension of the rules at the November 19, 2018 City Council meeting to approve the advertising of the bond.**
2. **Order #18-1007440 – Bond Order for \$10,000,000.00 to Fund the New Fire Station on West Side of the City:** The Finance Committee reviewed the Mayor's letter dated October 25, 2018 requesting a bond order for \$10,000,000.00 to fund a new fire station on the west side of the City. The Finance Committee voted 5 – 0 to table the bond order until a more definitive cost estimate, location and decision on whether there will be three or four fire stations going forward. The Mayor indicated the report from the Fire Station evaluation committee should be available in late December.

Reports of Committee Continued:

- 3. Order #18-1007441 – Grant for \$6,219.00 for Two Electric Vehicle Charging Stations:** The Finance Committee reviewed the Mayor’s letter dated October 25, 2018 requesting the approval of a \$6,219.00 grant from the Massachusetts Electric Vehicle Incentive Program to fund 50% of the costs to purchase two Level 2 Electric Vehicle Charging stations to be placed behind City Hall. The matching funds will be from the DPW Capital Outlay – Equipment Account. **The Finance Committee voted 4 – 1 (Councilor Robey Opposed) to approve the grant with the following conditions:**

- **The two charging stations will be set up to require patrons to pay for charging their electric vehicles.**
- **The parking spaces for the charging stations will have a 4-hour charging limit for non-municipal employees.**

The Finance Committee adjourned at 8:54 PM.

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

Meeting Name: City Council Urban Affairs Committee

Date: November 13, 2018

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

Convened: 5:31 PM – Adjourned: 6:18 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Juare, Landers, Doucette, and Tunnera; Councilors Clancy, Ossing, and Robey; Jeffrey Cooke (Building Commissioner, City of Marlborough), Glenn Davis (Davis Architects)

Order No. 18-1007422: Communication from Peter Grahm, PG Realty Trust, regarding the request to extend the reconstruction period of two years for 182 West Main Street. The Urban Affairs Committee met with Architect Glenn Davis who appeared on behalf of Peter Grahm, owner of 182 West Main Street. Chairman Delano reviewed the site history explaining there was a fire in February of 2016 and there is a two-year time limit to rebuild which has passed. They need to review a new timetable for repairs with some reasonable assurances that the repairs will be done correctly because there are current issues with the structural integrity of the roof and roof rafters, the stairway must become ADA compliant, and the recently installed windows were not in compliance. Mr. Davis gave a summary of the site’s history as well as describing issues they have had with the insurance company especially for the code related items in the building that need to be corrected. Mr. Davis anticipated it would take three months to receive their necessary approvals from the State and City and an additional nine months for completion of the work therefore he requested an extension of a year for the reconstruction period.

Reports of Committee Continued:

It was noted for the record that petitioner was aware of the two-year reconstruction period soon after the fire. Councilors expressed general concern that the project would encounter additional delays and requested regular updates on project status over the following year. Mr. Davis agreed to submit regular reports to the Building Commissioner during the reconstruction period. This is a gentlemen's agreement, as suggested by Chairman Delano. Chairman Delano also submitted that the Building Commissioner should begin fining petitioner if work is not complete at the end of the extended date. Replying to Councilor Juaire, Mr. Davis submitted that the two submittals to the state will be complete in the next two weeks. Councilor Juaire stated he would check on the status of the state submittals prior to the final vote by the City Council.

Motion made by Councilor Doucette, seconded by the Chair, to approve the extension of the reconstruction period until November 19, 2019. The motion carried 5-0.

Order No. 18-1007320: Application for Special Permit from Christopher White, regarding Building a 24 X 26 garage on a non-conforming lot, 22 Brimsmead Street. Mr. White communicated with the City Council Office that he planned to withdraw his application without prejudice and would submit the appropriate paperwork. Chairman Delano stated the committee should report this item out without a recommendation in anticipation of receiving a letter of withdrawal without prejudice from the applicant. If the letter is not received by the time of the full City Council vote, the City Council can vote to deny the application.

Motion made by Councilor Juaire, seconded by the Chair, to refer to the City Council without recommendation. The motion carried 5-0.

Motion made and seconded to adjourn. The motion carried 5-0. The meeting adjourned at 6:18 PM.

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

City Council Legislative and Legal Affairs Committee
Tuesday, November 13, 2018 6:25 PM– In Council Chambers
Minutes and Report

Present: Chairman Katie Robey, Councilor Delano and Councilor Landers.
Other Councilors present: Councilors Clancy, Doucette, Juaire and Ossing.
Also attending were City Solicitor Donald Rider and City Engineer Tom DiPersio.

Reports of Committee Continued:

Order No 18-1007451: Communication from City Solicitor Rider regarding Proposed Assignment of Retaining Wall Easement to 27 Jefferson LLC in order No. 18-1007245C. Solicitor Rider's November 1, 2018 letter was discussed where he gave us information about a condition dealing with an existing retaining wall along Jefferson Street in the special permit granted to Jefferson LLC. A letter from Commissioner Ghiloni serving notice that the DPW has determined the City's easement interest in the 3' wide strip of land on Map 56, Parcels 160, 161, and 162 was no longer needed by the city and available for transfer from the DPW to the City Council for assignment of the easement to 27 Jefferson LLC, its successors and/or assigns. The committee was also provided a draft of an assignment of easement.

Councilor Delano moved to approve the transfer from the DPW to the City Council for another specific municipal purpose; namely, assignment of the easement to the LLC, its successors and/or assigns and to authorize assignment of the easement and authorize the mayor to execute the assignment. The motion was adopted 3-0.

It was noted by Solicitor Rider that the City Council should take this as a 2-part vote with the transfer of easement requiring a 2/3 vote and the vote to authorize the mayor to execute the assignment of easement a simple majority vote.

Order No 18-1007445: Communication from City Solicitor Rider regarding Mauro Farm Subdivision-Acceptance of Open Space Parcel. The October 25, 2018 letter from Solicitor Rider was read into the record. It details development known as Mauro Farm and the plans which show open space parcels to be deeded to the Conservation Commission. The Committee was given a copy of the Quitclaim Deed.

Councilor Delano moved to accept from Mauro Farms LLC the deed of land identifying Parcels 20, 21, 30, 31, and 32 which are to be managed and controlled by the Marlborough Conservation Commission for the purposes of the promotion and development of natural resources, watershed protection, passive recreation and conservation. The motion was adopted 3-0.

The Committee adjourned at 6:40 PM.

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

Meeting Name: City Council Public Services Committee

Date: November 13, 2018

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

Convened: 6:45 PM – Adjourned: 6:55 PM

Present: Chairman Landers; Public Services Committee Members
Councilors Doucette and Irish; and Councilors Clancy, Delano, Juairé,
Ossing, and Robey; Tom DiPersio (City Engineer, City of Marlborough);
Donald Rider (City Solicitor, City of Marlborough)

Reports of Committee Continued:

Order No. 18-1007444: Communication from City Solicitor, Donald Rider, regarding Mauro Farm Subdivision - Acceptance of Nolan Way, Spenser Circle & Reagin Lane as Public Ways. The Public Services Committee met with City Solicitor Donald Rider and City Engineer Tom DiPersio regarding the Mauro Farms Subdivision and the acceptance of Nolan Way, Spenser Circle, and Reagin Lane as public ways. City Solicitor Rider explained the subdivision began back in 2007 and there are several easements (5 utility, 6 drainage, 3 sewerage, 2 water, and 24 landscape) associated with these three roads as part of their acceptance package as public ways. The matter was referred to the Planning Board, but their next meeting is not until December 3, 2018. Mr. DiPersio reported engineering was satisfied the work was complete and the roads were ready for acceptance.

Motion made by Councilor Doucette, seconded by the Chair, to approve the acceptance of Nolan Way, Spenser Circle, and Reagin Lane as public ways pending a recommendation from the Planning Board. The motion carried 3-0.

Motion made and seconded to adjourn. The motion carried 3-0.

Meeting adjourned at 6:55 PM.

Suspension of the Rules requested – granted

ORDERED: At the Regular Meeting of the Marlborough City Council on November 19, 2018, the following bond, **ORDERED ADVERTISED**; adopted.

LIBRARY CONSTRUCTION BOND

That the City of Marlborough, Massachusetts (“the City”) appropriate the amount of \$23,780,902.00 (twenty-three million seven hundred eighty thousand nine hundred and two dollars) for the purpose of paying the costs of the renovation and construction project at the Marlborough Public Library located at 35 West Main Street. Costs shall include demolition, landscaping, paving, utility, and other site improvements incidental or directly related to such construction, renovation and expansion, architectural, engineering or other professional and legal expenses and fees associated with this project, temporary library operational space, storage and moving expenses, furnishings and equipment, and all other costs incidental or related to the Marlborough Public Library building.

To meet this appropriation, the Comptroller/Treasurer, with the approval of the Mayor, is authorized to borrow said amount under and pursuant to M.G.L. Chapter 44, as amended and supplemented, or pursuant to any other enabling authority, and that the Mayor is authorized to contract for and expend any grants, aid, or gifts available for this project; and that the Mayor is authorized to take any other action necessary or convenient to carry out this project.

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 the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. Chapter 44, Section 20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

ORDERED: That the Communication from Christopher White, re: Request to Withdraw application for Special Permit to build a 24 x 26 garage on a non-conforming lot at 22 Brimsmead Street, **WITHDRAWN WITHOUT PREJUDICE**; adopted.

ORDERED: That the Communication from DPW Commissioner John Ghiloni, re: Proposed Assignment of Retaining Wall Easement, 27 Jefferson LLC, Order No. 18-1007451, X18-1007245C, **FILE**; adopted.

Councilor Dumais recused.

ORDERED: That the Petition from Eversource Energy to install 775' of 6" IP plastic gas main as a system improvement on Stow Road from the intersection of Simpson Road to the intersection of Fitzgerald Road, **APPROVED WITH THE FOLLOWING CONDITIONS**; adopted.

- 1) The exact location of the new pipe in the roadway shall be pre-approved in the field by the Engineering Division prior to the start of work.
- 2) A traffic management plan shall be submitted to the Engineering Division for approval prior to the start of work.
- 3) Final trench/paving requirements will be set by the Engineering Division as conditions of the road opening permit.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Special Permit for Raphael B. Fischetti, to build a 2-story single-family home, 89 Spring Street in proper legal form, Order No. 18-1007387C, **FILE**; adopted.

ORDERED:

IN CITY COUNCIL

DECISION ON A SPECIAL PERMIT

Application of:

Raphael Fischetti

Locus:

89 Spring Street, Marlborough, MA 01752

Assessors Map 68, Parcel 316

**DECISION ON A SPECIAL PERMIT
ORDER NO. 18-1007387C**

The City Council of the City of Marlborough hereby GRANTS the Application for Special Permit of Applicant (the "Application"), as provided in the Decision and SUBJECT TO THE FOLLOWING FINDINGS OF FACT AND CONDITIONS:

EVIDENCE

1. The Applicant, Raphael B. Fischetti is an individual with a principal address of 617 Pawtucket Boulevard, Unit 3, Lowell, MA 01834 (the "Applicant").
2. The location of the proposed project is 89 Spring Street, Marlborough, MA and more particularly identified on the City of Marlborough Assessor's Maps as Parcel 68 on Plate 316, and furthermore particularly described in deeds recorded with the Middlesex South District Registry of Deeds, Book 70255, Page 444 (the "Site").

4. The owner of the Site is the Applicant. The Site is located in the Residence A-3 zoning district.
5. The single-family dwelling previously located on the Site was built in 1890 and updated in 1975. The house was built prior to the establishment of a residential zoning district. The property was subsequently taken by the city for non-payment of taxes, in 2012, the City demolished the existing house in 2013, the property as vacant land was sold at City of Marlborough Tax Title Auction and purchased by the Applicant on October 18, 2017.
6. The Applicant proposes to build a single-family dwelling on the Site consisting of a 30' x 24' two-story house. The Applicant plans to use the same driveway that currently exists on the property and the stone wall in the front of the property. The prior structure was 25' x 36', while the proposed structure will be 24' x 30'. The width of the proposed structure is one (1') foot narrower than the prior structure.
7. The Building Commissioner has determined the new structure seeks to expand a lawful pre-existing nonconforming structure. Based on a photo of the prior structure, the Building Commissioner has determined that the prior structure had approximately the same side yard setbacks as is now proposed for the new structure, namely, setbacks of 12.2' on the left side and 8.3' on the right side. However, Chapter 650-41 of the City Code of Marlborough, entitled "Table of Lot Area, Yards, and Height of Structures" (the "Table"), states that the minimum side yard setback in the Residence A-3 zoning district is 15'. Thus, the prior structure was non-conforming as to side yard setbacks. Since the Applicant proposes to increase the height of the prior structure from 1½ to 2 stories, the Applicant is proposing to intensify the pre-existing side yard setback nonconformity, as the proposed additional ½-story would be a further encroachment into the side yard setbacks. The Building Commissioner has determined that such intensification requires that the Applicant request zoning relief in the form of a special permit from the Marlborough City Council.
8. A public hearing was held on October 15, 2018, in compliance with the requirements of the City's Zoning Ordinance and the provisions of MGL Chapter 40A, as amended. All necessary abutters were provided notice as required by law, as certified by the Office of Marlborough Assessors office. The time for the City Council to take final action on the Application is January 13, 2019.
9. The Applicant presented oral testimony and demonstrative evidence at the public hearing and represented that the Project meets all applicable special permit criteria provided by MGL Chapter 40A, as amended, and the City's Zoning Ordinance.
10. The site plan submitted with the application is entitled, "Proposed Plot Plan # 3 of land in Marlborough, MA (Middlesex County); Prepared for Raphael B. Fischetti of 617 Pawtucket Boulevard, Unit 3, Lowell, MA 01834;" Prepared by Hancock Associates 315 Elm Street, Marlborough, MA 01752, scale 1" = 20', dated June 29, 2018 (the "Site Plan"), and is attached hereto as "Attachment A."

11. The architectural drawings submitted with the Application are labelled “89 Spring Street, Marlborough, MA,” by Clark Architectural, North Chelmsford, MA, scale 1” = 10’ (the “Architectural Plans”) and are attached hereto as “Attachment B.”

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

- A. The City Council finds that it may grant as Special Permit (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 find the Application for the Special Permit does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough, or MGL c. 40A.
- C. The City Council find that the legally nonconforming residential use of the Site, as increased or intensified by the proposed construction of a single-family dwelling, is an appropriate use, and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough. The construction of the dwelling will complement the nature of the abutting properties and surround neighborhood.
- D. In particular, the proposed construction of the single-family dwelling, with sidelines of 12.2’ on the left and 8.3’ on the right is not more detrimental to the neighborhood than the prior existing dwelling.
- E. The Applicant has complied with all the procedural rules and regulations of the City Council of the City of Marlborough and Chapter 650 (Zoning Code) of the City of Marlborough and MGL Chapter 40A, Sections 9 and 11.

GRANT OF SPECIAL PERMIT WITH CONDITIONS

The City Council, pursuant to its authority under MGL Chapter 40 and the City of Marlborough Zoning Ordinance, Chapter 650, **GRANTS** the Applicant a special permit (the “Special Permit”), **SUBJECT TO THE FOLLOWING CONDITIONS:**

- A. Construction of the building of a single-family residence is to be done in accordance with all applicable building codes in effect in the City of Marlborough as of the time when the building permit application is submitted to the Building Commissioner and in accordance with the proposed Site Plan and Architectural Plans submitted to the City Council.
- B. All work performed at the Site shall be in compliance with this Special Permit decision.
- C. The stone wall in the front of the lot shall be repaired and maintained by the Applicant.
- D. The driveway shall remain the same length as it currently is or smaller.
- E. The house shall contain no more than a total of six (6) finished rooms, including no more than three (3) bedrooms.

- F. No additions shall be added to the proposed house or the Site, and the deck shall be attached only in the rear of the house.
- G. In accordance with the provisions of MGL c. 40A, § 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 this Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Commissioner for a building permit concerning the proposed expansion. The 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: 9 – Nay: 0 – Absent - 2

Yea: Delano, Doucette, Dumais, Irish, Clancy, Landers, Juaire, Oram, & Ossing.
Absent: Tunnera & Robey

ORDERED: That the Communication from Assistant City Solicitor, Cynthia Panagore Griffin, re: Proposed Zoning Amendment to Chapter 650, Neighborhood Business District, in proper form, Order No. 18-1007337C, **FILE**; adopted.

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 BE FURTHER AMENDED AS FOLLOWS:

- I. Section 7 of Chapter 650, entitled "Districts Enumerated," is hereby amended as follows:
 - (1) By deleting from the first sentence the number "12" and inserting in place thereof the number "13."
 - (2) By inserting at the end of the list of District types, the following:

Neighborhood Business District NB
- II. Section 17 of Chapter 650, entitled "Table of Uses," is hereby amended as provided in the highlighted portions of Exhibit "A" attached to this order, which Exhibit "A" includes amendments not limited to the following:
 - (1) By inserting under the heading entitled "Zoning District Abbreviations" a new zoning district abbreviation as follows: "NB"; and
 - (2) By inserting beneath said new district abbreviation NB the letters "Y," "N," or "SP" as shown on said Exhibit "A."
- III. Section 41 of Chapter 650, entitled "Table of Lot Area, Yards, and Height of Structures," is hereby amended as provided in the highlighted portions of Exhibit "B" attached to this order.
- IV. Chapter 650, is hereby amended by inserting a new § 39, entitled "Neighborhood Business District (NB)," as follows:

§ 650-39 NEIGHBORHOOD BUSINESS DISTRICT (NB)**A. Purposes and Objectives.**

The purposes and objectives of the Neighborhood Business District are to encourage retail establishments and services that primarily serve the surrounding neighborhoods; enable multi-family residential and/or mixed use projects to be developed, particularly on underutilized parcels; encourage re-use/redevelopment of existing commercial, industrial or institutional properties located in the neighborhood; and assist the neighborhood to reach its full potential by encouraging restaurants, uses that take advantage of nearby open space, such as the Assabet River Rail Trail, and uses that take advantage of adjacent walkable, pedestrian-oriented neighborhoods.

B. Parking Requirements. Except as otherwise provided in this section, parking and circulation requirements shall conform to the provisions of §§ 650-48 and 650-49 of the Zoning Ordinance.**(1) The following provisions are applicable within the Neighborhood Business District:**

[a.] Retail sales: 1 space per 250 Square feet of Gross Floor Area;

[b.] Multi-family dwelling units: 1 space per bedroom to a maximum of 2 spaces per unit; and

[c.] Restaurants, brew pubs and other eating places: The Special Permit Granting Authority may reduce the total number of required spaces by 50% if there is a municipally-owned lot, shared parking arrangement, or significant amount of on-street spaces within 300 feet of said uses.

C. Open Space Requirements for Conversion from a 2-Family Dwelling to a 3-Family Dwelling and for Multifamily dwellings.

(1) Minimum Open Space. The minimum amount of Open Space per residential unit shall be 100 sq. ft. The open space shall be designed as usable space for sitting, recreation, etc. Up to 50% of the required open space may be private open space placed in the building (recreation rooms, pools, etc.); as individual unit balconies large enough for a table and chairs; or on the roof of the structure as a garden or sitting area. Front yard planting/buffer strips which are designed for public seating or other amenities to improve the public realm, and which are made available to the public, may be included in the required open space; other required buffer and planting strips shall not count towards the required open spaces.

(2) Ground Level Open Space. All or a portion of ground level open space may be reserved for residents of the development, or made available for public use. Special permit proposals for developments which include public benefits such as public seating areas are preferred.

- (3) Joint Open Space. Two or more developments may cooperate to share usable open space on one lot, as long as the minimum square footage per unit is maintained, and the joint open space is within 300 feet of participating developments.
- (4) Waiver as Part of Special Permit or Under Site Plan Review. In development or redevelopment proposals where, because of site-specific circumstances, it is not possible to meet the minimum standards for Open Space, or where there is not sufficient space for ground level open space on the parcel, or where it is not desirable or possible to establish the required amount of open space for other reasons, the City Council, as part of Special Permit or Site Plan Review, may negotiate with the developer and may set other conditions of approval to ensure or encourage other open space benefits, or may waive strict adherence to this provision. Improvements to be made by the developer to an nearby existing public open space parcel or the Assabet River Rail Trail may be included in these negotiations.

D. Project Review.

- (1) Site Plan Review. Projects within the Neighborhood Business District shall be subject to site plan approval in accordance with § 270-2 of the City Code.
 - (a) Site plan review applies to as of right uses and uses available by grant of a special permit within the Neighborhood Business 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.
- (2) Multi-family Design Review Guidelines and Review Criteria. Multi-family projects within the Neighborhood Business District will be reviewed consistent with the non-mandatory Multi-family Design Review Guidelines and Review Criteria, which guidelines and criteria will be available at the Building Department and/or on the official website of the City of Marlborough.

E. Authority of the Special Permit Granting Authority. The City Council shall be the permit granting authority for special permit approval in the Neighborhood Business District.

- V. The Zoning Map described in § 650-8 is hereby amended as follows. The newly established Neighborhood Business District shall include those certain properties shown on the Zoning Map existing at the passage of this Ordinance, which properties are the following parcels, or portions of parcels, of land (herein identified by the Assessors' Map and Parcel Number):

Map 68, Parcels 115, 116, 118, 119, 121, 129, 130, 131, 132, 134, 135, 136, 154, 155, 156, 157, 158, 159, 160, 162, 163, 164, 166, 167, 168, 182, 183, 184, 185, 186, 188, 189, 190, 200, 201, 202, 203, 204, 205; and

Map 69, Parcels 19, 19B, 20, 21, 22, 23, 24, 25, 26, 27, 83, 84, 85, 86, 87, 88, 89, 90, 91, 94, 95, 96, 97, 98, 99, 106, 107, 108, 109, 239, 240, 241, 242, 243, 243A, 243B, 257, 258, 259, 260, 261, 262, 263, 265, 267, 268, 269, 271, 274, 275, 276, 280, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 336, 337, 338, 338A, 339, 339A, 340, 341, 342, 343, 345, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 357A, 357B, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 523, 523A, 528;

Map 56, Parcels 80, 81 and 85; and

The portions of Map 69 Parcel 334 and Map 56 Parcel 79 which are located within the B zoning district as of the day of these amendments. The portions of said parcels which are located within the CA zoning district as of the day of these amendments shall remain in the CA district.

VI. The effective date of these amendments shall be the date of their passage.

Councilor Dumais recused.

APPROVED; adopted.

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

ORDERED:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING § 551-1, ENTITLED "STREET NAMES," OF CHAPTER 551 AS FOLLOWS:

- I. Chapter 551 is hereby amended by deleting the title of § 551-1 in its entirety and inserting in place thereof the following title:

Names of public streets, highways, places, buildings, spaces and other public assets.

- II. Chapter 551 is hereby amended by inserting into § 551-1 the following new paragraph:

- C. The Board of Library Trustees, having care, custody, management and supervision of the Marlborough Public Library pursuant to § 11 of chapter 78 of the Massachusetts General Laws and § 28 of Division 3 of the Charter of the City of Marlborough may name public assets located in and at the Marlborough Public Library, including internal and external spaces, furnishings, collections, equipment or fixtures, under such terms and conditions as may be specified in a naming policy adopted by the Board of Library Trustees for said public assets which are not otherwise governed by paragraphs A. and B. herein. Said authority of the Board of Library Trustees is in addition to, and not in lieu of, such powers and authorities of the Board of Library Trustees as may be provided by statute, regulation, ordinance or law.

APPROVED; adopted.

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

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:55 PM; adopted.