

Councilors-at-Large

Mark A. Oram
Michael H. Ossing
Samantha Perlman
Kathleen D. Robey



Ward Councilors

Ward 1 – Laura J. Wagner
Ward 2 – David Doucette
Ward 3 – J. Christian Dumais
Ward 4 – Teona C. Brown
Ward 5 – John J. Irish
Ward 6 – Sean A. Navin
Ward 7 – Donald R. Landers, Sr.

Council President

Michael H. Ossing

Council Vice-President

Kathleen D. Robey

CITY OF MARLBOROUGH CITY COUNCIL MEETING MINUTES MONDAY, APRIL 10, 2023

The regular meeting of the City Council was held on Monday, April 10, 2023, at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Ossing, Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Perlman & Robey. Meeting adjourned at 9:17 PM.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of the City Council meeting, MARCH 27, 2023, **FILE**; adopted.

That the PUBLIC HEARING on the Application for a Special Permit from Attorney Sem Aykanian, on behalf of SUCIU LLC, d/b/a Exela Storage, to add additional storage units to a nonconforming storage facility located at 846 Boston Post Road East within the Wayside District, Order No. 23-1008823A, all were heard who wish to be heard, hearing closed at 8:22 PM, adopted.

Councilors Present: Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Ossing, Perlman & Robey.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from the Mayor, re: Veto of City Council Order 22/23-1008721C, Ordinance Amendments to Chapter 650 “Zoning”, relative to certain provisions concerning mixed-use and affordable housing, referred to **URBAN AFFAIRS COMMITTEE & TABLED UNTIL APRIL 24, 2023**; adopted.

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Transfer Requests totaling \$748,290.00 from Economic Development to MEDC Funding for the FY 2024 Operating Budget for MEDC (\$648,290.00), and the Economic Development Toolbox (\$100,000.00), referred to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Mayor					FISCAL YEAR:	2023		
		FROM ACCOUNT:					TO ACCOUNT:			
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$1,291,812.60	\$648,290.00	27000099	42440	Economic Development	\$648,290.00	11740006	53950	MEDC Funding		\$0.00
	Reason:	To allow the MEDC to continue it's work in promoting the economic development of the City for FY24								
	\$648,290.00	Total			\$648,290.00	Total				

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Mayor					FISCAL YEAR:	2023		
		FROM ACCOUNT:					TO ACCOUNT:			
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$1,291,812.60	\$100,000.00	27000099	42440	Economic Development	\$100,000.00	11740006	53950	MEDC Funding		\$0.00
	Reason:	To replenish the Economic Development Toolbox for FY24								
	\$100,000.00	Total			\$100,000.00	Total				

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED: That the Transfer Request in the amount of \$393,854.64 from PEG Funds to Marlboro Cable Trust to fund the operation of WMCT-TV for FY 2024, referred to **FINANCE COMMITTEE**; adopted.

Councilor Ossing read a Disclosure of Appearance of Conflict of Interest into the record.

CITY OF MARLBOROUGH										
BUDGET TRANSFERS --										
	DEPT:	Mayor					FISCAL YEAR:	2023		
		FROM ACCOUNT:					TO ACCOUNT:			
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$644,371.44	\$393,854.64	27000099	47750	Receipts Reserved-PEG Funds	\$393,854.64	89000	25581	Marlboro Cable Trust		\$0.00
	Reason:	To fund WMCTS FY24 Budget								
	\$393,854.64	Total			\$393,854.64	Total				

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Appointment of Joseph Delgenio to the Fort Meadow Commission for a 3-year term to expire on September 27, 2025, replacing Lee Thomson, referred to **PERSONNEL COMMITTEE**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Reappointment of Paul Gould to the Fort Meadow Commission for a 3-year term to expire on February 24, 2026, referred to **PERSONNEL COMMITTEE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from City Solicitor Jason Grossfield, re: Application for Site Plan Approval from Attorney Brian Falk on behalf of JW Capital Partners, LLC to build a mixed-use project at 57 Main Street in the Marlborough Village District, in proper legal form, Order No. 22/23-1008694C, **MOVED TO ITEM 17 & FILE**; adopted.

Councilor Dumais Recused.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from Assistant City Solicitor Jeremy McManus, re: Application for a Special Permit from Stephen Copper, on behalf of Alliance Health & Human Services to renovate 10,490 sf of an existing building to provide 12 additional rest home beds at 720 Boston Post Road East within the Wayside Zoning District, in proper legal form, Order No. 22/23-1008768B, **MOVED TO ITEM 16 & FILE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Request for Approval of two (2) Replacement Flat Wall Signs, Mobil, 656 Boston Post Road East, within the Wayside District, **APPROVED**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Request for Approval of two (2) Flat Wall Signs, Mosaka, 58 Apex Drive, Unit A, within the Hospitality and Recreation Mixed Use Overlay District (HRMUOD), **APPROVED**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Public Input regarding the Application for Site Plan Approval from Attorney Falk on behalf of JW Capital Partners, LLC, to build a mixed-use project at 57 Main Street in the Marlborough Village District, Order No. 22/23-1008694C, as amended, be and is herewith accepted and placed on **FILE**; adopted.

Councilor Dumais Recused.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of following Boards, Commissions and Committees, **FILE**; adopted.

- a) School Committee, February 28, 2023.
- b) Board of Assessors, April 8, 2022, April 20, 2022 & April 29, 2022.
- c) Board of Registrars, March 28, 2023.
- d) Conservation Commission, March 2, 2023.
- e) Council on Aging, February 7, 2023.
- f) Municipal Aggregation Committee, March 23, 2023.

Motion by Councilor Perlman, seconded by the Chair to adopt the following:

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

- a) Matthew Marden, 22 Blaiswood Avenue, pothole or other road defect.
- b) Deanna Swan, 849 Boston Post Road East, #4G, other property damage and/or personal injury.
- c) Bernadette Syppko, 181 Beach Street, pothole or other road defect.

Reports of Committees:

THERE WERE NO REPORTS OF COMMITTEE.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the City Council Urban Affairs Committee review the Proposed Amendments to Chapter 650 “Zoning” relative to Section 17 “Table of Use Regulation” and Section 34 “Marlborough Village District” as submitted by Councilor Robey, referred to the **URBAN AFFAIRS COMMITTEE**; adopted.

Amend Zoning 650-17 Table of Use Regulations to strike Y in MV and insert SP

Business Use	RR	A-1	A-2	A-3	RB	RC	RCR	NB	B	CA	L I	I	MV	Wayside
Mixed-Use Developments (42)	N	N	N	N	N	N	N	SP	SP	N	N	N	Y SP	SP

650-34 Marlborough Village District (MV)

B. Site plan review.

Add in a new (4) to read:

(4) Site plan review by Site Plan Review Committee and City Council

For hotels and projects over 10,000 square feet, the plans shall be referred to Site Plan Review Committee for its initial comments to the City Council. Time limits for their review shall follow those specified in §270-2 Site plan review and approval E. (4) (c) & (d). Once Site Plan Review has completed its initial review, it shall forward comments to the City Council. Once the City Council begins review, it shall follow the time limits as specified in §270-2 Site plan review and approval E. (4) (c) & (d). Once a special permit has been issued by the City Council, the Site Plan Review Committee will complete its formal review before a building permit is issued.

E. Parking requirements for the Marlborough Village District. Strike E (a) (2) in its entirety; insert new language at end of (b) (1) to read: unless the use is part of a mixed-use development where off-street parking would be determined during the site plan review process; Strike E (2) in its entirety and renumber (3) to (2).

(1) General parking requirements. The following provisions are applicable within the Marlborough Village District.

(a) Residential projects.

[1] For residential and the residential component of mixed-use projects:

[a] Studio and one-bedroom units: 0.75 space per unit.

[b] Two-bedroom units: 1.25 spaces per unit.

[2] Spaces in City-owned garages and lots within 1,000 feet of the development can be counted to fulfill the required spaces, with payment in-lieu required.

(b) Retail, restaurant, other business uses.

[1] Eliminate parking minimums per the existing off-street parking (§ 650-48) **unless the use is part of a mixed-use development where off-street parking would be determined during the site plan review process.**

[2] A maximum of three spaces per 1,000 square feet for these uses.

~~(2) Payment in lieu of parking. In the Marlborough Village District, any new commercial or mixed use structure that is required to provide parking spaces may make payments to the City of Marlborough in lieu of providing for all or part of the on-site required parking.~~

~~(a) Payment made to the City of Marlborough in lieu of providing some or all of the required off-street parking spaces for a project in the Marlborough Village District (MV) shall be allowed by right, subject to site plan and design review.~~

~~(b) A one time fee to be paid shall be \$10,000 per parking space, which shall be paid prior to the receipt of an occupancy permit.~~

~~(c) Fees in lieu of parking shall be deposited into the City of Marlborough Downtown Parking Reserve Account, or such account as the City Council shall deem appropriate, to be used solely for expenses related to maintenance and capital repairs to the existing parking garages, improving the utilization of existing parking spaces (e.g., signage, parking management activities); reducing the need for new parking to serve the Marlborough Village District (e.g., bicycle parking, improved transit), or expenses (e.g., land acquisition, design/engineering services and construction costs) related to adding parking spaces. Requests to appropriate funds out of this reserve account, or such account as the City Council shall deem appropriate, shall be filed with the City Council and referred to the appropriate committee of the City Council, which committee shall have 60 days to forward its comments and recommendations before a City Council vote of the appropriation is taken. Fees collected are not to be used for routine parking lot maintenance, such as sweeping or plowing snow, or for salaries of municipal staff.~~

F. Heights of structures. In F (1) Strike sentence as shown; in F (2) strike “as may be increased by special permit” at end of last sentence.

(1) To encourage redevelopment and reuse of parcels within the Marlborough Village District, minimum and maximum heights are established. Minimum heights shall be 35 feet; maximum height is six stories and up to 70 feet except for where a proposed structure is within 50 feet of a residential district boundary, where the height limit shall be 52 feet. ~~By grant of a special permit, maximum building height; including building areas within 50 feet of a residential district boundary, may be increased to seven stories and up to 85 feet.~~ Height limits do not include roof-mounted mechanical appurtenances; however, said appurtenances, and the screening required for them in §650-34D(2)(b), shall be subject to site plan review and design standards. Rooftop mechanical equipment, including wireless communications equipment, shall be located and screened to minimize impacts on abutters and the general public. No interior space shall be occupied for any purpose above these height limits. This shall not preclude the use of a flat roof for purposes allowed in this section.

- (2) Roof decks, providing recreation and amenity areas for residents and businesses on the roof above the top story of a building, shall be encouraged in the Marlborough Village District. Roof decks may include open space areas for sitting and gardens; open air areas covered by permanent roofs (flat or sloped); indoor areas for social gathering, meetings, common kitchens, restrooms, and storage; spaces for mechanical equipment; and enclosures for elevators and stairs. The portions of a building designed as a roof deck shall be subject to maximum height restrictions; ~~as may be increased by special permit.~~

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED

IN CITY COUNCIL

**DECISION ON A SPECIAL PERMIT
MARIE ESTHER HEALTH CENTER, INC.
ORDER NO. 22/23-1008768C**

The City Council of the City of Marlborough hereby **GRANTS** the Application for a Special Permit to Marie Esther Health Center, Inc. (the “Applicant”) for expansion of the existing convalescent home/nursing home use at 720 Boston Post Road East, as provided in this Decision and subject to the following Findings of Fact and Conditions.

FINDINGS OF FACT

1. The Applicant, Marie Esther Health Center, Inc., is a registered not-for-profit corporation formed under Chapter 180 of the General Laws and exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code, with an address of 144 Turnpike Road, Suite 220, Southborough, MA 01772.
2. The Applicant is the owner of the property located at 720 Boston Post Road E, Marlborough, Massachusetts, being shown as Parcel 7 on Assessors Map 61 (the “Site”).
3. In accordance with Article IV, Section 650-12.B of the Zoning Ordinance of the City of Marlborough (the “Zoning Ordinance”), the Applicant proposes to renovate 10,490 square feet of the preexisting nonconforming convalescent home/nursing home use at the Site to create 12 additional rest home beds (the “Use”). As shown on the Plans referenced in paragraph 5 below, the Use consists of a commercial building containing the convalescent home/nursing home operation, loading areas, accessory parking, and landscaped areas.
4. The Applicant, by and through its Executive Director, filed with the City Clerk of the City of Marlborough an Application for a Special Permit (“Application”) for the Use.
5. In connection with the Application, the Applicant submitted a certified list of abutters, filing fees, and a site plan entitled “Title Commitment By: Fidelity National Title Insurance Company Commitment Number: 18T963-2022 Effective Date: 4/20/2022 Date of Field Survey: 4/5/2022” by Blew & Associates, P.A., dated May 16, 2022, in accordance with the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit (the “Plans”), attached hereto as **“ATTACHMENT A.”**
6. The Application was certified as complete by the Building Commissioner of the City of Marlborough, acting on behalf of the City Planner for the City of Marlborough, in accordance with the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.

7. The Site is located in the Wayside Zoning District and has an area of 984,090 square feet +/-, as shown on the Plans.
8. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.
9. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, opened a public hearing on the Application on Monday, January 23, 2023. The public hearing was held at the Marlborough City Hall, 140 Main Street. The hearing was closed on January 23, 2023.
10. The Applicant, through its representatives, presented testimony at the public hearing detailing the Use, including describing its impact upon the neighborhood.
11. As part of the public hearing, no members of the public expressed support or opposition about the Use or its potential impacts.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING
FINDINGS AND TAKES THE FOLLOWING ACTIONS**

- A. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.
- B. The City Council finds that the proposed expansion of the convalescent home/nursing home use to include an additional 12 rest home beds would not be substantially more detrimental to the neighborhood than the existing convalescent home/nursing home use of the Site.
- C. The City Council finds that the preexisting nonconforming convalescent home/nursing home use of the Site has not been abandoned or not used for a period of two years or more.
- D. The City Council finds that the proposed Use is not enlarged to more than 25% of the floor and ground area of the preexisting nonconforming convalescent and nursing home use, as no changes are proposed to the exterior of the building on the Site.
- E. 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 expand the preexisting nonconforming convalescent home/nursing home use at the Site as shown on the Plans filed, **SUBJECT TO THE FOLLOWING CONDITIONS**, which conditions shall be binding on the Applicant, its successors and/or assigns:
 1. Construction in Accordance with Applicable Laws. Construction at 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.
 2. Future Site Changes. Future changes to the exterior of the building or to the Site shall be subject to site plan review.

3. Incorporation of Submissions. All plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of the Application, and as amended or revised during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
4. Operations. Operations will be continuous as the Use at the Site will be 24 hours a day each day of the year.
5. Staffing. As a skilled nursing facility licensed by the Massachusetts Department of Public Health, the Applicant will maintain the required staffing levels for all licensed beds, including the additional 12 rest home beds. The Applicant will maintain staffing levels as needed to care for the new rest home residents and maintain its DPH licensure.
6. Lighting. Exterior lighting at the Site shall remain unchanged by this renovation.
7. Signs. Signage at the Site shall comply with the City's Sign Ordinance.
8. Noise and Air Quality. The Applicant shall comply with the City's Noise Ordinance and shall comply with all state and federal requirements governing air quality and emissions.
9. Recording of Decision. In accordance with the provisions of Massachusetts General Laws, Chapter 40A, Section 11, the Applicant, its successors and/or assigns, at its expense shall record this Special Permit in the Middlesex South 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. Upon recording, the Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office, the Building Department, and the City Solicitor's office.

Yea: 11 – Nay: 0

Yea: Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Ossing, Perlman, & Robey.

Motion by Councilor Robey, to move the recommendation of the Urban Affairs Committee, which was to approve the Site Plan for 57 Main Street:

ORDERED That the City Council of the City of Marlborough does hereby approve, pursuant to § 650-34.B(3) of the Marlborough Zoning Ordinance, the Site Plan Permit, which sets an approval with conditions of the site plans submitted by JW Capital Partners, LLC to construct a mixed use project at 57 Main Street.

Councilor Dumais Recused.

Motion by Councilor Robey, seconded by Councilor Doucette to AMEND the Site Plan Permit as follows:

In Section A, Insert new language as the new paragraph (1) and renumber 1 and 2 to 2 and 3

1. Final Plans: Prior to endorsement of the Site Plans, the Applicant must provide a final set of revised Site Plans to reflect the following conditions in this Site Plan Approval: B(3), G(1)(a), and G(2). The plans shall be reviewed for accuracy and conformance with this Site Plan Approval with Conditions by the Site Plan Review Committee and attached hereto as Exhibit A.

In section B. Prior to Issuance of a Building Permit, Insert new language as new paragraph 3 and renumber 3 & 4 as appropriate

3. Design standards The building plans shall show compliance with Section 650-34 “A. Purpose and vision” for development that is compatible with the character of downtown Marlborough and Section 650-34 “D. Design standards” noting the purpose of the design standards is to promote quality development emphasizing the City’s sense of history, with new buildings reflecting the preference for moderate scale structures that are in harmony with the existing historic brick structures while incorporating green building techniques.

In Section G Prior to Issuance of the Certificate of Occupancy Insert New paragraph 1 (a). after sentence beginning with Minor amendments

- 1(a). Notwithstanding any of the above, applicant shall provide at a minimum 60 parking spaces on site, payment in lieu to be adjusted accordingly.

G 2 Off-site Parking

Insert at end of current language the following sentence

“Applicant shall not seek to use the city owned Bolton Street lot for residential parking. “

Motion to Amend – **CARRIES**.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED That the City Council of the City of Marlborough does hereby approve as amended, pursuant to § 650-34.B(3) of the Marlborough Zoning Ordinance, the Site Plan Permit which sets an approval with conditions of the site plans submitted by JW Capital Partners, LLC to construct a mixed use project at 57 Main Street, **APPROVED**; adopted.

Yea: 7 – Nay: 3 – Abstain: 1

Yea: Wagner, Doucette, Brown, Irish, Landers, Oram & Robey.

Nay: Navin, Ossing & Perlman

Abstain: Dumais

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED There being no further business, the regular meeting of the City Council is herewith adjourned at 9:17 PM; adopted.