

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, SEPTEMBER 18, 2023

The regular meeting of the City Council was held on Monday, September 18, 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 10:06 PM.

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

ORDERED: That the Minutes of the City Council meeting, September 11, 2023, **FILE**; adopted.

That the CONTINUED PUBLIC HEARING on the Petition from Massachusetts Electric and Verizon New England, to install a new joint owned Pole (Pole 3-5) on High Street approximately 300' east of the centerline of the intersection of High Street and Bolton Street and to install a new Manhole (1) and underground conduit from Pole 3-5 to new Manhole (1) and to existing Transformer 1-2 on Exchange Street, Order No. 23-1008950A, all were heard who wish to be heard, hearing closed at 8:04 PM; adopted.

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

That the PUBLIC HEARING on the Application for Special Permit from Attorney Brian Falk on behalf of Post Road Realty, LLC to construct a mixed-use, multi-family residential and commercial (retail/restaurant/other commercial use) project in the Executive Residential Overlay District (EROD) which will consist of 475 residential units at the corner of Simarano Drive and Cedar Hill Street, Order No. 23-1008952, all were heard who wish to be heard, hearing closed at 8:34 PM; adopted.

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

That the PUBLIC HEARING on the Proposed Zoning Ordinance Amendment to Chapter 650 "Zoning" of the Code relative to Definitions, Affordable Housing, and the Marlborough Village District (MV), Order No. 22/23-1008721H, all were heard who wish to be heard, hearing closed at 9:42 PM; adopted.

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

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

ORDERED: That the Certification from Ward 4 Councilor Teona Brown as required under MGL Chapter 39 §23D (“Mullin Rule”), regarding the Application for Special Permit from George Voyiatzis to convert an existing structure into a multi-family residential building consisting of seventeen (17) units in the Neighborhood Business District (NB) at 358 Lincoln Street, **FILE**; adopted.

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

ORDERED: That the Communication from the Mayor, re: Notification of Appointment of Paul Dinwoodie as the Director of Public Health by the Board of Health pursuant to MGL Chapter 111 §30, **FILE**; adopted.

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

ORDERED: That the Communication from City Solicitor Jason Grossfield, re: Request for Executive Session to discuss litigation strategy relative to JW Capital Partners, LLC, and Marlborough TOTG LLC v. City of Marlborough (Land Court No. 23 MISC 000199), **MOVED TO THE END OF AGENDA & FILE**; 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 Special Permit from Rick Marino, Trustee on behalf of Marco Realty Trust to expand a pre-existing nonconforming use pursuant to City Code Chapter 650 “Zoning” 12 (B) at 13-15 Mechanic Street in the Marlborough Village District (MV), in proper legal form, Order No. 23-1008926E, **MOVED TO ITEM 15 & FILE**; adopted.

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 Special Permit from George Voyiatzis to convert an existing structure into a multi-family residential building consisting of seventeen (17) units at 358 Lincoln Street in the Neighborhood Business District (NB), in proper legal form, Order No. 23-1008939B, **MOVED TO ITEM 16 & FILE**; adopted.

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

ORDERED: That the City Council has no objections to the deviations described in items 1 and 2 of the letter from Assistant Building Commissioner William Paynton, dated September 11, 2023, and supports the continued compliance with item “Q” of the Special Permit for 487 Lincoln Street (Cozy Café), Order No. 16/17-1006735H, **APPROVED**; adopted.

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

ORDERED: That the Communication from a resident, re: Opposition to the Proposed Amendment to City Code, Chapter 650 “Zoning” by adding a new section to create the “Sasseville Way Residential Overlay District”, Order No. 23-1008941, **FILE**; adopted.

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, August 29, 2023.
- b) Conservation Commission, August 17, 2023.
- c) Cultural Council, July 19, 2023.
- d) Planning Board, June 26, 2023 & July 24, 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) Krishna Ramachandra, 480 Farm Road, other property damage and/or personal injury.
- b) Barbara Ross, 32 Belmont Street, other property damage and/or personal injury.

Suspension of the Rules requested – granted.

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

ORDERED: That the Communication from City Engineer Thomas DiPersio, re: Proposed Acceptance of Permanent Sidewalk Easement and Temporary Construction Easement from the property owner of 249 and 257 Cedar Hill Street (IPG Photonics), **FILE**; adopted.

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

ORDERED: That the City Council for the City of Marlborough hereby accepts from IPG Photonics Corporation, a Delaware corporation, with a usual place of business at 377 Simarano Drive, Marlborough, Massachusetts (the “Grantor”), a temporary construction easement and permanent sidewalk easement on a certain portion of the Grantor’s land located at 249 and 257 Cedar Hill Street, Marlborough, Massachusetts, in substantially the form as attached hereto in the Easement Deed.

DESCRIPTION

The “Easement Area” is a ten foot (10’) wide strip of land shown as “10’ WIDE SIDEWALK EASEMENT” on a plan (the “Plan”) entitled, “Easement Plan, #249 & #257 Cedar Hill Street, Marlborough, MA” Prepared for City of Marlborough, 140 Main Street, Marlborough, MA 01752, Prepared By: Bruce Saluk & Associates, Inc. Civil Engineering & Surveying, 576 Boston Post Road East, Marlborough, MA 01752, Date: June 12, 2023, Scale: 1”=40’”, said Easement Area contains 1,989 square feet, more or less, on the 249 Parcel plus 6,841 square feet, more or less, on the 257 Parcel.

The “Temporary Easement Area” is a twenty-five foot (25’) wide strip of land shown as “25’ TEMPORARY EASEMENT” on the Plan. Said Temporary Easement Area contains 4,967 square feet, more or less, on the 249 Parcel plus 17,087 square feet, more or less, on the 257 Parcel according to said Plan.

APPROVED; adopted.

Councilor Irish reported the following out of the Finance Committee:

**City Council Finance Committee
September 14, 2023
Minutes and Report**

This meeting convened at 6:30 PM in the Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8/Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's home page, www.marlborough-ma.gov.

Voting Members Present: Chair Irish, Councilors Dumais, Perlman, Oram and Brown.

Non-Voting Members Present: Councilors Ossing, Doucette, Robey and Landers.

Fire Chief Breen, Asst. Fire Chief Emanuelson, Police Chief Giorgi, Police Lt. Jusseaume, and the consultant for Motorola were present to address the funding for the public safety communications.

Also present were City Auditor Diane Smith and Asst. Fire Chief Gogan.

Order No. 23-1008934: Communication from Mayor Vigeant, together with FY24 Capital Bond request in the amount of Four Million Nine Hundred Twenty-Five Thousand (\$4,925,000.00) Dollars for emergency communications systems and public safety equipment.

Item added to Agenda on September 8, 2023– Transfer request from Mayor Vigeant

Order No.23-1008961: Communication from Mayor Vigeant, together with Transfer request in the amount of \$4,925,000.00 from Undesignated Fund (Free Cash) to Public Safety Equipment, for public safety communication upgrades.

Chair Irish read two communications from Mayor Vigeant, one addressing the bond and the second addressing the free cash transfer as the Mayor's preferred method for funding the upgrades. Fire Chief Breen turned the presentation over to Asst. Fire Chief Emanuelson to describe the new system which he explained in detail including the fact that certain aspects have been out of date since 2018 while others have been out of date for eight years.

Police Chief Giorgi explained an issue that occurred on Labor Day when all communications had to occur on one channel as the second channel was unavailable.

President Ossing opposed funding the public safety communications system entirely with free cash and favored bonding the project, stating it would not be fiscally responsible to spend down the free cash for this City Council and the next administration, stating there is a difference of two weeks' time between the bonding and the use of free cash.

The representative from Motorola stated he would approach Motorola to request the extension of time until October 6, 2023, for the discount. Chief Breen and Asst. Chief Emanuelson will inform the City Council of any extension dates with Motorola.

No.23-1008934: On a motion by Councilor Oram, seconded by the Chair, the committee recommends approval of the bond in the amount of \$4,925,000.00 for public safety communication upgrades.

Vote 4-1 Dumais opposed.

No.23-1008961: On a motion made by Councilor Oram, seconded, and approved 5-0, the free cash transfer was filed.

On a motion made and seconded, the meeting adjourned at 7:20 PM.

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

ORDERED: That the Petition from Mass Electric and Verizon New England to install two new jointly owned poles, #22-25, and #22-26, on Forest Street approximately 1500' east of the centerline of the intersection of Forest Street and Sandini Road to serve a new building at 201 Forest Street, **APPROVED WITH THE FOLLOWING CONDITIONS**; adopted.

1. Any necessary easements are to be obtained from affected property owners.
2. A street opening permit must be applied for by the proposed contractor performing the work.
3. The contractor performing the work must obtain a street opening bond with the City of Marlborough.
4. The contractor shall provide the Engineering Division preconstruction photos of driveways, sidewalks, lawn areas, and roadway areas impacted by all construction activities.
5. A proper staging area is to be located/acquired before work commences – material and equipment is not to be parked/stockpiled within the city right of way and or private property unless permission is granted in writing by the property owner.
6. The contractor is to ensure residents are always able to enter and exit their driveways (have necessary steel plating on site and accessible).
7. Ensure construction safety controls are established (signage, drums, police details, etc...) and are in accordance with the latest MUTCD standards.
8. Trench backfilling, compacting, temporary, and final paving are to be done in accordance with the City of Marlborough standard trenching details.
9. Trenches are to be paved or completely backfilled and compacted at the end of each workday. Trenches are never to be left unattended.
10. Post construction loaming and seeding are to be done in accordance with the 1995 MHD Standard Specifications sections 751 & 765.
11. Proposed utility pole(s) shall not put any sidewalks or sidewalk ramps into non-compliance with current ADA standards.

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

ORDERED:

DECISION ON A SPECIAL PERMIT

ORDER NO. 23-1008926F

The City Council of the City of Marlborough hereby **GRANTS** the Application for a Special Permit to Marco Realty Trust (the “Applicant”) for an automobile repair use at 13-15 Mechanic Street, as provided in this Decision and subject to the following Findings of Fact and Conditions.

FINDINGS OF FACT

1. The Applicant, Rick Marino, Trustee of Marco Realty Trust, is a Massachusetts real estate trust with an address of 19 Mechanic Street, Marlborough, MA 01752.

2. The Applicant is the owner of the property located at 13-15 Mechanic Street, Marlborough, Massachusetts, being shown as Parcel 378 on Assessors Map 69 (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 a change of the preexisting nonconforming glass repair use of the Site to an automobile repair use to complement and serve as part of an expansion of the current automobile repair use on the adjacent property located at 19 Mechanic Street, Marlborough, MA, including making certain non-structural modifications to the existing garage at the Site, improving the front façade, installing two garage doors along the side of the garage, new bathroom, equipment storage platform, and three automotive lifts, all within the current structural envelope (the "Use"). As shown on the Plans referenced in paragraph 5 below, the Use consists of an existing metal commercial garage to contain the general automotive repair operation, accessory parking area, and front landscaped area along Mechanic Street.
4. The Applicant, by and through its counsel, filed with 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 "Certified Plot Plan in Marlborough, MA" prepared for: Marco Realty Trust prepared by J.D. Marquedant & Associates, Inc., dated March 8, 2023, site plan entitled "13-15 Mechanic Street" Proposed Conditions and Erosion Control, Plan of Land prepared for: Marco Realty Trust prepared by J.D. Marquedant & Associates, Inc with a last revised date of July 3, 2023 and architectural drawings and plans entitled "Renovations to: Professional Automotive - 13 Mechanic St Shop", prepared by Context Studios LLC dated December 22, 2022, in accordance with the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit (collectively, 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 has an area of 8,843 square feet +/- as shown on the Plans.
8. The Site has hosted various residential and commercial uses, most recently a variety of glass repair service uses, since the early 1980s.
9. The Site was rezoned from Residential Business to Marlborough Village in 2014. Following this Zoning Map amendment, the Site became preexisting nonconforming with respect to use.
10. 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.
11. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, opened a public hearing on the Application on Monday, July 24, 2023. The public hearing was held at the Marlborough City Hall, 140 Main Street. The hearing was closed on July 24, 2023.

12. The Applicant, and the Applicant's representatives, presented testimony at the public hearing detailing the Use, the former history of the use of the locus, describing the impact of the Use and proposed non-structural modifications on the neighborhood, and traffic.
13. As part of the public hearing, approximately 75 people attended the hearing, and many voiced their support for the Use. Numerous letters were received in support of the Use. A letter with concerns about the Use negatively affecting one's property was submitted by a commercial neighbor, whose opposition to the Use was noted at the public hearing.

**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 non-structural modifications to the garage and the general auto repair use would not be substantially more detrimental to the neighborhood than the existing glass repair use of the Site.
- C. The City Council finds that the preexisting nonconforming 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 use, as no changes are proposed to the footprint of the building or the Site with the exception of certain improvements to be made to the front façade of the garage (cement brickface and molding identical to 19 Mechanic Street garage).
- 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 change the preexisting nonconforming glass repair use of the Site to an automobile repair use to complement and serve as part of an expansion of the current automobile repair use on the adjacent property located at 19 Mechanic Street, Marlborough, MA, including making certain non-structural modifications to the existing garage at the Site, improving the front façade, installing two garage doors along the side of the garage, new bathroom, equipment storage platform, and three automotive lifts, all within the current structural envelope, as shown on the Plans, **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. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review by the Site Plan Review Committee, in accordance with the City of Marlborough Site Plan Review Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications, or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit, and no occupancy permit shall be issued until the Applicant has complied with all conditions. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plans submitted, reviewed, and approved by the City Council as the Special Permit Granting Authority. Site Plan Review shall consider among other things drainage, curbing, parking, construction of a retaining wall and guard rail along with signage and plantings.

3. Landscaping: As part of Site Plan Review, additional plantings may be required beyond that specified in the Zoning Ordinance in order to improve the Site appearance on this prominent and visible section of Main Street.
4. 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.
5. Access. The Applicant shall maintain and provide access to 7-9 Mechanic Street Right of Way in accordance with any applicable instrument/plan of record.
6. Operations. All auto repair activities shall take place indoors. All loading and unloading shall take place within the Site and not on Mechanic Street, and no deliveries of materials or equipment or shipments from the Site shall be permitted on Sunday. The operating hours shall be limited to Monday through Saturday from 7:00 AM to 7:00 PM. There shall be no operation of the Use on Sunday. The sale of vehicles is prohibited on the Site. Outdoor storage is prohibited on the Site.
7. Lighting. Exterior lighting at the Site shall be downward facing and shielded to minimize impacts on neighboring properties. Exterior lighting at the Site shall be shut off outside of operating hours, except for lighting necessary for security and emergency access.
8. Signs. Signage at the Site shall comply with the City's Sign Ordinance with any free-standing sign at the Site's driveway entrance being substantially the same as the sign shown in the photo attached hereto as "ATTACHMENT B".
9. 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.
10. 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: 10 – Nay: 1

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

Nay: Wagner.

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

ORDERED:

DECISION ON A SPECIAL PERMIT

ORDER NO. 23-1008939D

The City Council of the City of Marlborough hereby **GRANTS** the Application for a Special Permit to George Voyiatzis (the “Applicant”) for a multifamily dwelling project at 358 and 364 Lincoln Street in the Neighborhood Business Zoning District, as provided in this Decision and subject to the following Findings of Fact and Conditions.

FINDINGS OF FACT

1. The Applicant, George Voyiatzis, is the Manager of Lincoln 358 Realty, LLC, which owns the property located 358 and 364 Lincoln Street in Marlborough, MA, being shown on Assessors Map 69 as Parcels 265 and 267, as shown on the Plans referenced in paragraph 5 below (the “Site”). The Applicant has a mailing address of 115 Pleasant Street, Cambridge, MA 02139.
2. In accordance with Section 650-12.B, Section 650-17, Section 650-18(A)(4), and Section 650-39 of the Zoning Ordinance of the City of Marlborough (the “Zoning Ordinance”), the Applicant proposes a multifamily dwelling at the Site (the “Use”). As shown on the Plans referenced in paragraph 5 below, the Use consists of 17 residential units in a former armory building, a parking area with 32 spaces, and landscaped areas.
3. The Applicant filed with the City Clerk of the City of Marlborough an Application for a Special Permit (“Application”) for the Use.
4. In connection with the Application, the Applicant submitted a certified list of abutters, filing fees, and a site plan entitled “Proposed Addition To: 358 Lincoln Street” by Spruhan Engineering, P.C., with the last revision date of July 22, 2023 (the “Plans”) attached hereto as **“ATTACHMENT A”**.
5. 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.
6. The Site is located in the Neighborhood Business Zoning District.
7. The Site has an area of 24,768 square feet +/- as shown on the Plans.
8. The armory building on the Site is preexisting nonconforming with respect to front, side, and rear yard setbacks, and parking.
9. 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.

10. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, opened a public hearing on the Application on Monday, August 21, 2023. The public hearing was held at the Marlborough City Hall, 140 Main Street. The hearing was closed on August 21, 2023.
11. The Applicant, through its representatives, presented testimony at the public hearing detailing the Use, describing its impact upon municipal services, the neighborhood, and traffic.
12. At the public hearing, five members of the public spoke in favor of the use and no members of the public spoke in opposition to the Use.
13. Councilor Teona Brown was absent from the single session of the public hearing on the Application. Prior to the vote on this decision, Councilor Brown filed a written certification as to examination of all the evidence and testimony received at the hearing session as set forth in **“ATTACHMENT B”** hereto, made as part of the record of the hearing, in accordance with Massachusetts General Laws Chapter 39, Section 23D.

**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 change of the preexisting nonconforming building to a multifamily dwelling use with parking areas and landscaping would not be substantially more detrimental to the neighborhood than the prior armory use of the Site.
- C. The City Council finds that the floor and ground area of the preexisting nonconforming building is not enlarged by more than 25% as part of the Use.
- D. The City Council finds that the proposed Use of the Site is an appropriate use and 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. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.
- 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 for a multifamily dwelling 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 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 Plans as may be amended during Site Plan Review.

2. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review by the Site Plan Review Committee, in accordance with the City of Marlborough Site Plan Review Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications, or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit, and a final certificate of occupancy shall not be issued until the Applicant has complied with all conditions, provided that the Site Plan Committee may authorize the phasing of site and building work depending upon weather conditions and other factors. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plans submitted, reviewed, and approved by the City Council as the Special Permit Granting Authority.
3. Modification of Plans. Notwithstanding conditions #1 and #2 above, the Site Plan Review Committee may approve minor amendments to the Plan's, so long as said changes do not materially increase the impervious area of the Use, alter traffic flow, or materially increase the size of the building, or increase the number of residential units, all as shown on the Plans.
4. 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.
5. Storm Water and Erosion Control Management. The Applicant shall ensure that its site superintendent during construction of the project is competent in stormwater and erosion control management. This individual(s)' credentials shall be acceptable to the Engineering Division of the City's Department of Public Works and the City's Conservation Commission. This individual(s) shall be responsible for checking the Site before, during, and after storm events including weekends and evenings when storms are predicted. This individual(s) shall ensure that no untreated stormwater leaves the Site consistent with the State's and the City's stormwater regulations. This individual(s) shall ensure compliance with the approved sequence of construction plan and the approved erosion control plan. The Applicant shall grant this individual(s) complete authority of the Site as it relates to stormwater and erosion controls.
6. Landscaping and Screening. As part of site plan review, the Site Plan Review Committee shall review the Site's landscaping and screening and shall be authorized to require additional fencing or landscaping as needed to provide appropriate buffers and screening for the adjacent properties and future residents of the Site.
7. Landscaping Easement over 31 Gay Street. Prior to the issuance of a building permit for the Use, the Applicant shall obtain and have recorded with the Middlesex South District Registry of Deeds a permanent landscaping easement over a portion of the abutting property located at 31 Gay Street, as shown on the Plans. The landscaping shown on the approved site plan within this easement area shall be maintained in perpetuity as part of the 358 and 364 Lincoln Street property maintenance.
8. Lighting. Exterior lighting at the Site shall be downward facing and shielded to minimize impacts on neighboring properties, with a lighting plan for the Site to be reviewed and further conditioned during the Site Plan Review process.

9. Electric Utilities. The Use shall have all-electric utilities, including heat, air conditioning, and hot water.
10. Compliance with Applicable Laws. The Applicant shall comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of the Use.
11. Recording of Decision. In accordance with the provisions of Massachusetts General Laws, Chapter 40A, Section 11, the Applicant, 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: 10 – Nay: 0 – Abstain: 1

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

Abstain: Dumais

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

ORDERED: That the Marlborough City Council meet in executive session under Purpose 3 of the Open Meeting Law, MGL c. 30A, s. 21(a)(3), to “discuss strategy with respect to...litigation if an open meeting may have a detrimental effect on the...litigating position of the public body” regarding the pending matter, *JW Capital Partners, LLC and Marlborough TOTG LLC v. Marlborough City Council* (Land Court No. 23 MISC 000199), as the chair hereby declares that discussion in an open session may have a detrimental effect on the City and the City Council's litigating position.

The City Council will not re-convene in open session after the Executive Session.

APPROVED; adopted.

Yea: 10 – Nay: 0 – Abstain: 1

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

Abstain: Dumais.

Motion by Councilor Robey, 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 10:06 PM; adopted.