

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, DECEMBER 18, 2023

The regular meeting of the City Council was held on Monday, December 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 8:25 PM.

Council President Ossing expressed his sorrow on the passing of former Ward 3 City Councilor and Assessor Anthony “Tony” Arruda” and a moment of silence was observed in his memory.

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

ORDERED: That the Minutes of the City Council meeting, DECEMBER 4, 2023, **FILE**; adopted.

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

ORDERED: That the Communication from Council President Ossing, re: Appointment of Councilor Robey as City Council Representative on the Richer School Building Committee, **APPROVED**; adopted.

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

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$19,800.00 from the MA Department of Environmental Protection, Sustainable Materials Recovery Program, awarded to the Department of Public Works to be used to offset the rising costs of processing recyclable materials; adopted.

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

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$5,063.00 from the Brigham Family Trust, awarded to the Police Department to be used to assist in funding the Youth Police Academy; adopted.

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

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Gift Acceptance in the amount of \$5,000.00 from the Estate of Ernest Ginnetti awarded to the Council on Aging to be used to assist seniors with unanticipated expenses this winter season; adopted.

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

ORDERED: That the Communication from the Mayor, re: Notification of Extension of Temporary Appointment pursuant to MGL Chapter 41 §61A of David Williams as Interim Comptroller/Treasurer for an additional 60-day term to expire February 2, 2024, **FILE**, adopted.

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

ORDERED: That the Communication from the Mayor, re: Notification of Temporary Appointment pursuant to MGL Chapter 41 §61A of Louis J. Turieo as Interim Parking Clerk for a period of 60-days to expire on February 1, 2024, **FILE**, adopted.

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

ORDERED: That the Communication from the Mayor, re: Accomplishments and Initiatives, **FILE**; adopted.

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

ORDERED: That the Mayoral Veto of City Council Order 22/23-1008691A, Acceptance of Gikas Lane as a Public Way, **TABLED UNTIL THE NEXT CITY COUNCIL MEETING**; adopted.

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

ORDERED: That the Communication from City Solicitor Jason Grossfield, re: Opinion on the Application for Special Permit from SUCIU LLC d/b/a Exela Storage, 846 Boston Post Road East, Order No. 23-1008823, **FILE**; adopted.

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

ORDERED: That the Communication from City Solicitor Jason Grossfield, re: Proposed Zoning Ordinance Amendment to Chapter 650 “Zoning” of the Code to add a new section to create the “Red Spring Road Overlay District” (RSR), in proper legal form, Order No. 23-1008951, **MOVED TO REPORT OF COMMITTEE & FILE**; adopted.

Councilor Oram Recused.

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

ORDERED: That there being no objection thereto set **THE FIRST MEETING IN FEBRUARY 2024**, as the **DATE FOR PUBLIC HEARING**, on the Application from ViewPoint Sign and Awning on behalf of Best Western Royal Plaza Hotel for replacement of a Free-Standing EMC Sign at 181 Boston Post Road West, referred to the **URBAN AFFAIRS COMMITTEE & CARRY OVER TO THE 2024/2025 LEGISLATIVE SESSION**; adopted.

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

ORDERED: That there being no objection thereto set **THE FIRST MEETING IN FEBRUARY 2024**, as the **DATE FOR PUBLIC HEARING**, on the Application from Barlo Signs on behalf of Kennedys Restaurant and Market for installation of a Free-Standing EMC Sign at 247 Maple Street, referred to the **URBAN AFFAIRS COMMITTEE & CARRY OVER TO THE 2024/2025 LEGISLATIVE SESSION**; adopted.

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

ORDERED: That the Communication from Attorney Sem Aykanian, on behalf of SUCIU LLC, d/b/a Exela Storage re: Request to Withdraw without Prejudice, the Application for a Special Permit to add additional storage units to a nonconforming storage facility, to be located at 846 Boston Post Road East within the Wayside District, Order No. 23-1008823, **APPROVED**; adopted.

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

ORDERED: That the Communication from Attorney Brian Falk, on behalf of the Red Spring Road Homeowners Association, Inc., re: Proposed Agreement Right of First Refusal, Red Spring Road 10-acre parcel, referred to the **CITY SOLICITOR & CARRY OVER TO THE 2024/2025 LEGISLATIVE SESSION**; adopted.

Councilor Oram Recused.

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

ORDERED: That the Communication from the Public Employee Retirement Administration Commission (PERAC) re: Required FY25 Appropriation in the amount of \$11,219,878.00, **FILE**; adopted.

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

ORDERED: That the Communication from Central MA Mosquito Control Project, re: Notice of 2024 Commission meeting dates, **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) Commission on Disabilities, June 12, 2023.
- b) Cultural Council, November 15, 2023.
- c) Library Trustees, September 5, 2023 & October 3, 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) Nanci Buchan, 65 Country Lane, other property damage and/or personal injury.
- b) Johanna Haagens, 29 Violetwood Circle, pothole or other road defect.
- c) Lynn Hubbard, 149 Main Street, #11, other property damage and/or personal injury.

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

**City Council Urban Affairs Committee
December 5, 2023
Minutes and Report**

This meeting convened at 7:30 PM in the City Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8 or Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's website, home page (www.marlborough-ma.gov).

Urban Affairs & Housing Committee voting members present were Chairman Katie Robey, Councilor Doucette, Councilor Landers, Councilor Navin, and Councilor Wagner.

Also present were Councilors Perlman and Ossing.

Order No. 21-1008823: Application for Special Permit from Attorney Sem Aykanian on behalf of SUCIU, LLC D/B/A Excelsa Storage to add additional units to a nonconforming storage facility to be located at 846 Boston Post Road East, in the Wayside District.

Present for petitioner were Attorney Aykanian; Alexe Suciu, owner Excelsa Storage; and Dan Bremser, Hancock Associates.

The public hearing for this was held on April 10, 2023, with an extension approved until December 31, 2023 as the petitioner worked with department heads on issues with the site. Councilors received a new site plan (dates as last revised 11/17/2023) as well as a revised Special Permit Decision. The chair read the communication from Commissioner Htway stating in his opinion the changes made to the site do not constitute significant changes to the original proposal and would not require a new filing. Also read was communication from David Giorgi, Marlborough Police Chief stating he did not recall issues pertaining to traffic flow or vehicle movement but understood that there was discussion regarding the aesthetics of design with the city engineer addressing it in his response; communication from Kevin Breen, Fire Chief stating the draft special permit was reviewed and he agreed the changes were minor with respect to changing the foundational support and overall scope of the project; and a communication from Thomas DiPersio, City Engineer offering the following recommendations-1.) adding to 5. Storm Water and Erosion Control Management: "Stormwater from new impervious surfaces such as the proposed walkway shall be managed through new infiltration structure(s). Stormwater from the gravel parking area shall be managed through new vegetated swale, buffer strip, or equivalent. These measures shall be approved during detailed Site Plan Review." 2.) Adding an additional condition be added: "Screening: The site shall be screened from view from Boston Post Road with fence and/or vegetation. The applicant shall request permission from MassDOT to plant vegetation within the roadway layout in front of the proposed fence. He also questioned whether the structure encroachments into the city layout of Old Boston Post Road had been corrected. Attorney Aykanian indicated that the new plans show the revised structure is not in the city's layout.

Discussion was held on the lack of any drawings showing what the new site would look like as well as concerns about using storage containers which would be stacked 2 high. The petitioner explained there would a 6 ft high vinyl fence in front of the units running horizontally along Rt. 20 and with the drop on the site from the roadway, very little of the units would be visible.

There was consensus to add the two recommendations from the city engineer as well as adding language suggested by Councilor Wagner-"The containers used must be new and be the same color."

Reports of Committee Continued:

Councilor Wagner moved to approve Order No. 21-1008823, with the revised Special Permit Decision for Excelsa Storage, seconded by the chair; the vote carried 3-2 (Navin, Robey).

With this special permit requiring eight votes and there being only one more council meeting, it was agreed the petitioner would work with the city solicitor to have this in proper form for the December 18th council meeting so this can be voted on by the current council. This will be reported out at the December 18th meeting with a request to suspend the rules. (Note the revised decision has the Plan's last revision date of November 6, 2023, but should read November 17, 2023).

Order No. 23-1008951: Proposed Zoning Amendment to Chapter 650 Zoning to add a new section to create the "Red Spring Overlay District."

Present were Attorney Brian Falk, attorney for petitioner; Mr. Robert Durand, President, Red Spring Road Homeowners Assn.Inc., Trustee of the Red Spring Shores Condominium; and Robert Parente, Central Mass Engineering, Inc. Also present were Tin Htway, Building Commissioner; Priscilla Ryder, Conservation/Sustainability Officer; and Thomas DiPersio, City Engineer.

This was tabled in committee from November 30, 2023, meeting. Councilors received a new copy of the language for the order, a Condominium Site Plan and a 2-page draft Plan of Building Envelope Areas marked in red which was a request from the November 30th meeting. This document will show 15 ft and 20 ft separation between exclusive use areas and when completed to include all the properties, would become Exhibit B.

Attorney Falk discussed the most recent revisions to the order. Commissioner Htway was asked to comment on the Plan marking exclusive use areas. He stated when he received a building permit for this site, it would include the portion of the Exclusive Use Plan for the homeowner as a reference on where the building would occur, and this document will help his office as they review the permit. Councilor Landers asked where the 10 acres of land that is now excluded from the overlay maps and if it could be developed. The response was it could be developed by extending Cullinane Drive but the Condo Association has not entered any sales agreement. Attorney Falk discussed the Agreement of First Refusal that councilors were given. The condo association needs to vote and sign the document and then it would be brought to the council to be accepted which would give the city an opportunity to purchase the land.

Mr. Durand stated he had been in conversation with Priscilla Ryder about adding this to the Open Space Plan and ways to find funds to purchase the property. Ms. Ryder stated there had been informal conversation on purchasing the property and having the right of first refusal would help keep option open.

The chair went through the latest version of order to cover the changes and offered a further change, to add *twenty-nine* in D1(a) which reads "Single-family dwellings" to then read "Twenty-nine single-family dwellings." Consensus was to add this. Councilor Doucette asked for clarification on how the Right of First Refusal would be incorporated into the order. Attorney Falk said it wouldn't be, but the two separate documents could be voted on at same time. It was noted again that the condo association has to approve this first.

Councilor Wagner moved to approve Order No. 23-1008951 Red Spring Road Overlay District as amended; it was seconded, and the motion carried 4-1 (Landers).

Attorney Falk will work with petitioner to finalize the Plan showing the Exclusive Use Areas and fill in the missing date for Plan in E.1 and work with the solicitor to have this in final form for the December 18 council agenda. He will also work with the solicitor on the Right of First Refusal. The chair would report this out and ask for suspension.

Reports of Committee Continued:

Councilor Doucette moved to adjourn, seconded and carried 5-0. Meeting adjourned at 9:08 PM.

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

**City Council Finance Committee
December 11, 2023
Minutes and Report**

This meeting convened at 7:00 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, Robey, and Doucette

School Superintendent Mary Murphy and Director of Finance & Operations Thomas LaFleur addressed the Mayor's transfer request.

Order No. 23-1009021: Communication from Mayor Vigeant together with Order in proper legal form and request for a Transfer in the amount of \$2 Million Dollars for the feasibility study phase of the Massachusetts School Building Authority (MSBA) process for the Raymond C. Richer Elementary School project.

The proposed Order has been reviewed by the Legal Department and MSBA to ensure that the vote conforms to all requirements.

Chair Irish read the Mayor's letter, dated December 4, 2023, into the record. The superintendent and Director of Finance and Operations addressed the transfer and answered questions from councilors.

On motion by Councilor Perlman, seconded by Chair, the committee voted 5-0 to approve the order and transfer.

Motion made and seconded to adjourn; meeting adjourned at 7:39 PM

Suspension of the Rules requested – granted.

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

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING RECEIVED FOR ITS 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 BY AMENDING AND ADDING THERETO AS FOLLOWS:

- I. Chapter 650, Article VI, entitled “Special Districts, Overlays and Special Requirements” is hereby amended by inserting a new Section 650-39A, entitled “Red Spring Road Overlay District”, which shall read as follows:

§650-39A – RED SPRING ROAD OVERLAY DISTRICT

- A. Purpose and Objectives. The Red Spring Road Overlay District (“RSR”) allows the application of supplemental land use controls within the boundaries of a certain overlay district as an alternative to land use controls that exist in the underlying districts. The establishment goals of the RSR are to incorporate an existing condominium neighborhood within the Zoning Ordinance, to encourage improvements to existing structures, and to regulate modifications to a unique lakeside residential community. The RSR regulates land use and not form of ownership.
- B. Location of RSR; Underlying Zoning.
1. For the purposes of this Section (§650-39A et. seq.), the RSR is located on the southerly side of Fort Meadow Reservoir along Red Spring Road between Reservoir Street and Cullinane Drive containing approximately 40 acres as indicated on the City Zoning Map and more particularly described in Exhibit “A” annexed hereto and incorporated by reference herein.
 2. Except as specifically provided herein, the provisions of the Zoning Ordinance relating to the underlying zoning districts not otherwise impacted by this Section (§650-39A et. seq.) shall continue to remain in full force and effect. In the event of any conflict between the provisions of this Section (§650-39A et. seq.) and any other provision of the Zoning Ordinance, the provisions of this Section (§650-39A et. seq.) shall govern and control.
- C. Authority of Permit Granting Authorities.
1. The Zoning Board of Appeals shall be the special permit granting authority in the RSR for: (a) single-family dwelling uses for purposes of §650-12 and §650-58B(3); and (b) condominium common areas, substantially as shown on Exhibit B annexed hereto as referenced below, which may not be developed except for common facilities accessible only to the condominium unit owners as authorized by special permit from the Zoning Board of Appeals.
 2. The City Council shall be the special permit granting authority in the RSR for other uses allowed by special permit.
 3. At the request of an applicant, the City Council may elect to vary the dimensional, parking, design, and landscaping requirements applicable to a use or structure by special permit upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of this Section (§650-39A et. seq.).

D. Use Regulations.

1. The following uses are permitted as of right in the RSR:
 - a. Up to 29 single-family dwellings.
 - b. Uses allowed as of right in the underlying zoning district, as set forth in the Table of Use Regulations, §650-17 of the Zoning Ordinance.
 - c. Accessory buildings and accessory uses.
2. Uses allowed by special permit in the underlying zoning district may be allowed by special permit in the RSR.
3. All uses not specified in Section 650-39A.D.1 and Section 650-39A.D.2 above shall be deemed prohibited in the RSR.

E. Dimensional Regulations for Lots in a Condominium Form of Ownership.

1. Within the RSR, multiple principal and accessory buildings and uses may be located on the same lot under a condominium form of ownership, provided that: (i) each principal building shall be located within an exclusive use area of at least 8,000 square feet and only one principal building shall be located in each exclusive use area, (ii) there shall be no yard setbacks or landscaped strips required as to exclusive use areas or minimum distances between structures, except for a building envelope within each exclusive use area set 20 feet from Red Spring Road and 15 feet from the side and rear boundaries of each exclusive use area, substantially as shown on a plan entitled “Building Setback Plan Red Spring Road Condominiums” by Chappell Engineering Associates LLC, last revised December 8, 2023, annexed hereto as Exhibit “B”, and a principal or accessory building shall only be located within the building envelope, (iii) any building permit application for a new structure or expansion of an existing structure shall be accompanied by evidence that such work is authorized by the governing condominium organization, and (iv) the maximum number of exclusive use areas in the RSR shall be 29, laid out substantially as shown on Exhibit B.
2. Notwithstanding any provisions of the Zoning Ordinance to the contrary, a lot under a condominium form of ownership in the RSR shall be subject to the following dimensional requirements:
 - a. Minimum Lot Area: 18,000 square feet.
 - b. Minimum Lot Frontage: none.
 - c. Minimum Front, Side, and Rear Yards: none (See Section 650-39A.E.3).
 - d. Maximum Building Height: 2 ½ stories.
 - e. Maximum Lot Coverage: 30%, over the entire RSR.
 - f. Maximum Gross Floor Area of a Single-Family Dwelling: 3,000 square feet.
 - g. Maximum Accessory Building Floor Area: for all accessory buildings in a single exclusive use area, the greater of (i) 50% of the gross floor area of the principal building, or (ii) 1,500 square feet, except as authorized by special permit from the Zoning Board of Appeals.
3. With the exception of structures erected prior to July 1, 2023, all structures on a lot under a condominium form of ownership in the RSR shall be set back a minimum of 15 feet from the RSR district boundary line.
4. Parking for single-family dwellings on a lot under a condominium form of ownership in the RSR shall be provided as feasible. Parking for other uses within the RSR shall conform with the provisions of §650-48.A of the Zoning Ordinance.

5. Driveways and roadways serving a lot under a condominium form of ownership in the RSR shall be maintained to provide safe access and egress for vehicular and pedestrian traffic and emergency services but shall not be subject to the design standards set forth in §650-49 of the Zoning Ordinance or subdivision standards.
- F. Dimensional Regulations for Other Lots. Lots not under a condominium form of ownership in the RSR and lots created after the effective date of this Section 650-39A shall be subject to the dimensional requirements of the underlying zoning district.
- II. The Zoning Map described in § 650-8 is amended as stated herein and in Exhibit “A” annexed hereto. The newly established “Red Spring Road Overlay District” shall include portions of the property shown on the Assessors Map as existing at the passage of this Ordinance, which property includes the following parcel of land (herein identified by the Assessors’ Map and Parcel Number): 30-10, with the exception of a portion of said parcel with an area of approximately 10 acres as shown on the plan entitled “Plan of Land to be Excluded from ‘The Red Spring Road Overlay District’” dated November 8, 2023 annexed hereto as part of Exhibit “A”.
- III. The City Clerk is authorized to assign other numbering for the new section 650-39A as deemed appropriate for sequential ordering in the Zoning Ordinance.
- IV. The effective date of these amendments shall be the date of their passage.

First Reading, suspended; Second Reading, adopted; DOES NOT CARRY

President Ossing declared the hand count vote of seven Councilors in favor.

Councilor Oram Recused.

Suspension of the Rules requested – granted.

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

ORDERED: That the William Camuso on behalf of Leigh Enterprises, Ltd., re: Request to continue the exemption to the hours of operation under City Code Chapter 342, Article 1, Section 342-2, allowing the Shell Gas Station at 431 Lincoln Street to be open for business from 5:00 AM to 11:00 PM for one additional year, **FILE**; adopted.

Suspension of the Rules requested – granted.

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

ORDERED: That the request of William Camuso on behalf of Leigh Enterprises, Ltd. to continue the exemption to the hours of operation under City Code Chapter 342, Article 1, Section 342-2, allowing the Shell Gas Station at 431 Lincoln Street to be open for business from 5:00 AM to 11:00 PM for one additional year, along with original conditions. **APPROVED**; adopted.

Suspension of the Rules requested – granted.

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

ORDERED: That the “Vision for Donald Lynch Boulevard” document which includes a Proposed Zoning Ordinance Amendment to Chapter 650 “Zoning” to create the new Donald Lynch Boulevard Overlay District as submitted by President Ossing, **CARRIED OVER TO THE 2024/2025 LEGISLATIVE SESSION**; adopted.

Suspension of the Rules requested – granted.

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

ORDERED: That the Proposed Zoning Amendments to Chapter 650 “Zoning” to add a new §37A “Multi-Family MBTA Housing Overlay District” relative to Multi-Family Zoning Requirements for MBTA Communities, as submitted by the Mayor **CARRIED OVER TO THE 2024/2025 LEGISLATIVE SESSION**; adopted.

Suspension of the Rules requested – granted.

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

ORDERED: That the Mayoral Veto of City Council Order 22/23-10088721M, Zoning Ordinance Amendment to Chapter 650 “Zoning” of the Code relative to Definitions, Affordable Housing, and the Marlborough Village District (MV), **TABLED UNTIL THE NEXT CITY COUNCIL MEETING**; adopted.

City Council President Ossing read a proclamation from the City Council and presented it to outgoing Councilor-At-Large Samantha Perlman.

City Councilor Perlman spoke and thanked her family, the residents of Marlborough and the current and former members of the Council.

City Council President Ossing turned the podium over to Councilor Perlman to adjourn the meeting.

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 8:25 PM; adopted.