



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK
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SEPTEMBER 11, 2017

Regular meeting of the City Council held on Monday, September 11, 2017 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Juaire, Oram, Ossing, Robey, Delano, Doucette, Elder, Tunnera, Irish and Landers. Meeting adjourned at 10:25 PM.

A moment of silence was observed in memory of the terrorist attacks on September 11, 2001.

President Clancy introduced and the Council welcomed the newest member of the Marlborough Police Department, Officer David Monti.

ORDERED: That the Minutes of the City Council meeting AUGUST 28, 2017, **FILE;** adopted.

ORDERED: That the PUBLIC HEARING On the Proposed Moratorium on Recreational Marijuana Establishments and Retailers, all were heard who wish to be heard, hearing recessed at 8:20 PM.

Councilors Present: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juaire, Oram, Ossing & Robey.

ORDERED: That the PUBLIC HEARING On the Proposed Zoning Amendment – Assabet River Rail Trail Overlay District, (ARRTOD), all were heard who wish to be heard, hearing recessed at 8:45 PM.

Councilors Present: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juaire, Oram, Ossing & Robey.

ORDERED: That the School Project Update, refer to **OPERATIONS & OVERSIGHT COMMITTEE;** adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance from the Executive Office of Public Safety & Security Highway Division in the amount of \$3,000.00 to fund the High Visibility Traffic Enforcement & Traffic Enforcement Patrols; adopted.

Note: Councilor Robey & Landers were not in the City Council Chambers at the time of City Council approval.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant from Target in the amount of \$1,400.00 which is being made through Target's Heroes and Helpers Holiday Program in which Police Officers will use the gift cards to help children shop for gifts for their families; adopted.

ORDERED: That the Communication from City Solicitor Rider re: BSL Marlborough Development, LLC, Amended Special Permit, 421 Bolton Street, in proper legal form, **MOVED TO ITEM 16**; adopted.

ORDERED: That the Communication from City Solicitor Rider re: BSL Marlborough Development, LLC, Request for Fee Interest in Sewer Parcel and for Drainage Easement, 421 Bolton Street, in proper legal form, **MOVE TO REPORTS OF COMMITTEES**; adopted.

A Communication from DPW Commissioner John Ghiloni was entered into the record regarding Benchmark – Sewer Parcel & Sewer Easement.

**MOTION made by Councilor Delano to remove from Table – Carries.
Councilor Elder opposed.**

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING THE ZONING MAP ESTABLISHED BY CHAPTER 650 ZONING ARTICLE III ESTABLISHMENT OF DISTRICTS SECTION 650-8 “BOUNDARIES ESTABLISHED; ZONING MAP”. SAID ZONING MAP IS AMENDED BY SUPERIMPOSING THE RETIREMENT COMMUNITY OVERLAY DISTRICT OVER ASSESSORS MAP 73, PARCELS 52 AND 53, AND ASSESSORS MAP 85, PARCELS 14 AND 15:

Refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE PUBLIC HEARING FOR MONDAY OCTOBER 16, 2017**; adopted.

ORDERED: That the Minutes, Planning Board, June 19, 2017 & July 24, 2017, **FILE**; adopted.

ORDERED: That the Minutes, School Building Committee, May 16, 2017 & June 6, 2017, **FILE**; adopted.

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

- a. Thomas Ruggiero, 122 Taylor Road, pothole or other road defect.
- b. William Brewin, 126 Woodridge Road, other property damage and or personal injury.

Reports of Committees:

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

City Council Legislative and Legal Affairs Committee
Tuesday, September 5, 2017, 7:30 PM – In Council Chambers
Minutes and Report

Present: Chairman Katie Robey, Councilor Delano, Councilor Juare, & Councilors Clancy, Ossing. Also attending was Tom DiPersio, City Engineer.

Order No. 17-1007000 Order of Taking by Eminent Domain regarding Hudson Street/Mechanic Street Roadway Improvements Project.

The Mayor's letter of August 24, 2017 was read into the record. The order pertains to two properties, one at 8 Hudson Street and one at 159 Mechanic Street to improve sight lines at the 4-way intersection of Hudson/Mechanic/Elm Streets. The Hudson Street property will have a permanent easement for roadway widening. The Mechanic Street property will have a temporary easement to remove the current rock wall and move it back to improve sight lines and a permanent easement for road widening purposes. No funds are needed for the awards, as they will be covered under the Elm Street road project.

Councilor Delano moved to recommend approval of Order No. 17-1007000, Taking by Eminent Domain regarding Hudson Street/Mechanic Street Roadway Improvements Project. The motion carried 3-0. It was agreed that a Suspension of the Rules would be asked for at the September 11, 2017 Council meeting to take up this order.

Order No. 17-1007003 Order Conveying land and easements at 421 Bolton Street, X17-1006816C.

Also, present for this Order were City Solicitor Don Rider, Eric Gardner from Benchmark and Attorney McCay representing BSL Marlborough Development LLC. This order entails two parts.

Part One is regarding a 13,401 SF +/- Sewer Parcel that the City has a fee interest in and written notification from the Commissioner of Public Works that the City's fee interest is no longer needed for sewer purposes as long as the City retains an 8,461 SF +/- easement in, on and under the Sewer Parcel for sewer purposes. The City Council will 1.) transfer the Sewer Parcel from the DPW to the City Council for conveyance of the fee interest to BSL Marlborough Development LLC while retaining an easement; 2.) declare the Sewer Parcel is available for disposition by sale of the City's fee interest; 3.) set the minimum price to be paid for the fee interest in the 13,401 SF +/- Sewer Parcel at \$14,000; and 4.) authorize the Mayor to convey the Sewer Parcel by sale to BSL subject to the City's retention of the easement for sewer purposes and the conveyance to the City of 10 acres +/- located at 421 Bolton Street and described in Council Order No. 17-1006816D.

Report of Committees Cont'd:

Part Two of the Order is regarding the fee interest in land located at 421 Bolton Street, Assessors Map 30, Parcel 12 (the School Parcel) and written notification from the School Committee that a 1,123 SF +/- area within this parcel is not needed for school purposes. The City Council will then 1.) transfer from the School Committee to the City Council the 1,123 SF +/- Drainage Easement Area for a conveyance to BSL; 2.) declare that the Drainage Easement Area is available for disposition by sale to BSL; 3.) set the minimum price to be paid for the area at \$1,000; and 4.) authorize the Mayor to convey a drainage easement by sale to BSL.

It was pointed out by Solicitor Rider that the order reads, "...subject to receipt of written notification." Therefore, the notifications from the Commissioner of Public Works and the School Committee can come after this order is approved. Members were given an updated copy of the draft order after the Solicitor and Attorney McCay made changes.

Councilor Delano moved to recommend approval of Order No. 17-1007003, Conveying land and easements at 421 Bolton Street, X17-1006816C as amended. The motion carried 3-0.

It was agreed that a Suspension of Rules would be asked for at the September 11, 2017 Council meeting to take up the order. It was also agreed that when the full Council acts on this order that it be taken up with 2 separate votes — one vote for the 4 items in Part One and one vote for the 4 items in Part Two. Voting will be by Roll Call with a 2/3 Yea Vote required for passage.

It was moved and seconded to adjourn; motion carried 3-0. The meeting adjourned at 8:15 PM.

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

Meeting Name: City Council Urban Affairs Committee

Date: August 29, 2017

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

Convened: 5:30 PM – Adjourned: 7:22 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Elder (left meeting at 6:47 PM), Juare, Tunnera and Landers; and Councilors Clancy and Robey. Also attending was Kevin Eriksen (Walker Realty LLC); Robert Walker (Walker Realty LLC)

Order No.16/17-1006443Y - Apex Sign Requests 21 & 160 Apex Drive, Order No. 16/17-1006443V. The Urban Affairs Committee met with Attorney Kevin Eriksen and Robert Walker of Walker Realty LLC for a discussion of Apex Center Sign requests for the Apex Center of New England, Pit Stop Tavern, and Breakout Games, all located at 21 Apex Drive, as well as Sports Clips Haircuts and Hot Table Panini, located at 160 Apex Drive. The committee reviewed each of the sign packages individually as submitted by Barlo Signs of Hudson, NH on behalf of Walker Realty LLC.

Report of Committees Cont'd:

Motion made by Councilor Elder, seconded by Chair, to approve the sign package as presented for Apex Center of New England, including the bowling pin shape light fixtures, 21 Apex Drive. The motion carried 5-0.

Motion made by Councilor Elder, seconded by Chair, to approve the sign package as presented for Pit Stop Tavern, 21 Apex Drive. The motion carried 5-0.

Motion made by Councilor Elder, seconded by Chair, to approve the sign package as presented for Breakout Games, 21 Apex Drive. The motion carried 5-0.

Motion made by Councilor Elder, seconded by Chair, to approve the sign package (both signs) as presented for Sports Clips Haircuts, 160 Apex Drive. The motion carried 5-0.

Motion made by Councilor Elder, seconded by Chair, to approve the sign package (three signs) as presented for Hot Table Panini, 160 Apex Drive. The motion carried 5-0.

Order No. 16/17-1006443X - Communication from Attorney Eriksen, Walker Realty LLC, on behalf of Walker Realty LLC, re: renderings of 21 Apex Drive, Order No. 16/17-1006443V. The Urban Affairs Committee met with Attorney Kevin Eriksen and Robert Walker of Walker Realty LLC for a discussion of the colors of the Apex Center of New England building. Chairman Delano explained the current appearance of the building was not as previously approved by the City Council. Mr. Walker explained initial rendering was not meant to show the final color scheme as the tenants influence the appearance which is currently highlighted by the orange, blue, white, and grey. The building colors also relate to the approved monument signs for continuity throughout the site. The Councilors provided their opinions on the appearance of the building at 21 Apex Drive and agreed to support the revised rendering as presented.

Motion made by Councilor Tunnera, seconded by Councilor Landers, to approve the renderings as presented. The motion carried 5-0.

Motion made by Councilor Juaire, seconded by Chair, to adjourn. The motion carried 4-0 (Councilor Elder absent.) The meeting adjourned at 7:22 PM.

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

Meeting Name: City Council Urban Affairs Committee

Date: September 5, 2017

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

Convened: 6:09 PM – Adjourned: 7:26 PM

Present: Chairman Delano; Urban Affairs Committee Members Councilors Elder, Juaire, Tunnera and Landers; and Councilors Clancy, Ossing and Robey. Also attending was Kevin Eriksen (Walker Realty LLC); Robert Walker (Walker Realty LLC), Priscilla Ryder (Conservation Officer, City of Marlborough); Michael Radner (Radner Design Associates)

Report of Committees Cont'd:

Order No. 16/17-1006443V - Communication from Attorney Eriksen, Walker Realty LLC, regarding Apex Center Landscaping Plan. The Urban Affairs Committee met with Attorney Kevin Eriksen and Robert Walker of Walker Realty LLC for a discussion of the Apex Center Landscaping Plan along with City of Marlborough Conservation Officer Priscilla Ryder and Michael Radner of Radner Design Associates. The committee discussed the landscaping plan and agreed that while it was close, several changes were required to incorporate the feedback of the consultant, Michael Radner, and conservation agent, Priscilla Ryder, and of the neighbors on Glen Street as a result of the neighborhood meeting held earlier that evening.

Before the item was tabled, the committee agree to take this item under suspension at the next full City Council meeting, if the proponent incorporated the feedback as requested.

Motion made by Councilor Elder, seconded by Chair, to table. The motion carried 5-0.

Motion made and seconded to adjourn. The motion carried 5-0. The meeting adjourned at 7:26 PM.

Suspension of the Rules requested – granted

ORDERED:

Eminent Domain Order of Taking

WHEREAS, the City Council of the City of Marlborough has determined that the public welfare, safety, and common convenience require that legal interests in certain portions of land located on Hudson Street and Mechanic Street, as more particularly described herein, be taken for the purpose of the reconstruction, construction, repair and maintenance of roadway improvements on Hudson Street and Mechanic Street, and for other municipal purposes, and that the taking by eminent domain is reasonable and necessary to carry out the aforementioned purposes; and,

WHEREAS, in order to promote the public welfare, safety, common convenience, and necessity, it is necessary to take by Eminent Domain the easement interests in the land for the purposes and duration described herein; and,

WHEREAS, all preliminary requirements of Massachusetts General Laws Chapter 79 having been complied with;

NOW, THEREFORE, IT IS HEREBY ORDERED that the City Council of the City of Marlborough, acting in accordance with the power and authority conferred by the City Charter, Division 1, Section 30, Massachusetts General Laws, Chapter 79 and every power and authority thereto enabling, and in the exercise of the power and authority conferred by said laws, does hereby take by Eminent Domain the easement interests or fee simple interest in the following described land, including all trees and other vegetation thereon.

DESCRIPTION OF LAND TAKEN**1. Street address: 8 Hudson Street, Marlborough, MA 01752**

Permanent easement for roadway widening purposes: Being an approximately 191.77 S.F. portion of the property located on 8 Hudson Street, Marlborough, MA, known and numbered as Map 56, Parcel 107 on the Assessors' Map of the City of Marlborough and shown as Parcel B on a plan entitled "Plan of Land in Marlborough, MA," dated April 30, 2016 and prepared by Thomas Dipersio, Jr. & Associates, Inc., 641 Concord Road, Marlborough, MA 01752, said plan to be recorded herewith.

OWNER: Bryan Rijo
8 Hudson Street
Marlborough, MA 01752

2. Street Address: 159 Mechanic Street, Marlborough, MA

Temporary easement for construction purposes: Being an approximately 1,242.27 S.F. portion of the property located at 159 Mechanic Street, Marlborough, MA, known and numbered as Map 56, Parcel 101 on the Assessors' Map of the City of Marlborough and shown as Parcel A on a plan entitled "Plan of Land in Marlborough, MA," dated April 30, 2016 and prepared by Thomas Dipersio, Jr. & Associates, Inc., 641 Concord Road, Marlborough, MA 01752, said plan to be recorded herewith.

Said temporary easement shall automatically terminate and be of no further force or effect on and after the third anniversary of the date of entry by the City of Marlborough, its agents and employees, onto said land for the purposes of the reconstruction, construction, and maintenance of improvements to Hudson Street and Mechanic Street.

Permanent easement for roadway widening purposes: Being an approximately 686.39 S.F. portion of the property located at 159 Mechanic Street, Marlborough, MA, known and numbered as Map 56, Parcel 101 on the Assessors' Map of the City of Marlborough and shown as Parcel C on a plan entitled "Plan of Land in Marlborough, MA," dated April 30, 2016 and prepared by Thomas Dipersio, Jr. & Associates, Inc., 641 Concord Road, Marlborough, MA 01752, said plan to be recorded herewith.

OWNER: Victor Alecio
159 Mechanic Street
Marlborough, MA 01752

The ownership of said parcels and each of them are supposed to be as stated herein, but said easements and each of them are hereby taken whether the ownership is as stated herein or otherwise. We determine that the damages, set forth in the Table of Awards below, have been sustained by the owners of said parcels upon which said easements, so taken, are located.

TABLE OF AWARDS

The City Council hereby makes the following awards for damages for the owner or owners of record:

<u>OWNERS</u>	<u>MARLBOROUGH ASSESSORS' MAP/PARCEL</u>	<u>AREA OF TAKING</u>	<u>AWARD</u>
Bryan Rijo Hudson Street Marlborough, MA 01752	56/107	191.77 S.F. +/- (permanent easement)	\$959
Victor Alecio 159 Mechanic Street Marlborough, MA 01752	56/101	1,242.27 S.F. +/- (temporary easement)	\$755
		686.39 S.F. +/- (permanent easement)	\$2,402

APPROVED; adopted.

Yea: 11 – Nay: 0

Yea: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing & Robey

Suspension of the Rules requested – granted

ORDERED:

1. Having taken by eminent domain the fee interest in 13,401± SF of land off Bolton Street for sewer purposes, said land being shown on City Assessor’s Map 30 as Parcel 700 (the “Sewer Parcel”), and subject to receipt of written notification from the Commissioner of Public Works, having charge of the Sewer Parcel, of his determination pursuant to M.G.L. c. 40, §§ 15 and 15A that the City’s fee interest in the Sewer Parcel is no longer needed for sewer purposes so long as the City retains an easement in, on and under the Sewer Parcel for sewer purposes in the area labeled “Proposed 30 FT Wide Sewer Easement (8,461± SF)” on a plan entitled “Proposed Easement Sketch Plan” dated 8/16/2017 prepared by Bohler Engineering and filed herewith, the City Council hereby:
 - a. Pursuant to M.G.L. c. 40, § 15A, transfers the Sewer Parcel from the Department of Public Works to the City Council for the purpose of conveyance of the fee interest therein to BSL Marlborough Development LLC (“BSL”) while retaining an 8,461± SF easement therein for sewer line access, maintenance, repair and related sewer purposes;
 - b. Pursuant to M.G.L. c. 30B, § 16(a), declares that the Sewer Parcel is available for disposition by sale of the City’s fee interest therein to BSL;

- c. Pursuant to M.G.L. c. 40, § 15, sets the minimum price to be paid for the fee interest in the Sewer Parcel at \$14,000 pursuant to a determination of value set forth in a November 1, 2016 appraisal by Kenneth J. Croft III, Esq. of Foster Appraisal & Consulting Co., Inc; and
 - d. Pursuant to M.G.L. c. 40, § 15, authorizes the Mayor, pursuant to M.G.L. c. 40, § 3, to convey the Sewer Parcel by sale to BSL, subject to: (1) the City's retention of an easement for sewer purposes consistent with this Order; and (2) the conveyance to the City of approximately 10 acres of the property located at the 421 Bolton Street site and as described as the "Donated Land" in a Special Permit Decision, City Council Order No. 17-1006816D. The Mayor's executed deed conveying the City's fee interest in the Sewer Parcel shall be held in escrow to be recorded at the Middlesex South Registry of Deeds simultaneously with the conveyance of the Donated Land at the time of the closing of BSL's acquisition of the 421 Bolton Street site.
2. Having taken by eminent domain the fee interest in land located at 431 Bolton Street for school purposes, said land being shown on City Assessor's Map 30 as Parcel 12 (the "School Parcel"), and subject to receipt of written notification from the School Committee, having charge of the School Parcel, of its determination pursuant to M.G.L. c. 40, §§ 15 and 15A that an 1,123± SF area of the School Parcel labeled "Proposed 30 FT Wide Drainage Easement (1,123± SF)" on a plan entitled "Proposed Easement Sketch Plan" dated 8/16/2017 prepared by Bohler Engineering and filed herewith (the "Drainage Easement Area"), is not needed for school purposes, the City Council hereby:
 - a. Pursuant to M.G.L. c. 40, § 15A, transfers from the School Committee to the City Council the Drainage Easement Area for the purpose of conveyance of a drainage easement therein to BSL Marlborough Development LLC ("BSL");
 - b. Pursuant to M.G.L. c. 30B, § 16(a), declares that the Drainage Easement Area is available for disposition by sale to BSL;
 - c. Pursuant to M.G.L. c. 40, § 15, sets the minimum price to be paid for the Drainage Easement Area at \$1,000; and
 - d. Pursuant to M.G.L. c. 40, § 15, authorizes the Mayor, pursuant to M.G.L. c. 40, § 3, to convey a drainage easement within the Drainage Easement Area by sale to BSL consistent with this Order.

APPROVED; adopted.

Yea: 11 – Nay: 0

Yea: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juaire, Oram, Ossing & Robey

ORDERED: That the Communication from City Solicitor Rider re: BSL Marlborough Development, LLC, Request for Fee Interest in Sewer Parcel and for Drainage Easement, 421 Bolton Street, in proper legal form, **FILE**; adopted.

**MOTION made to remove from Table from Urban Affairs Committee – Carries
Suspension of the Rules requested – granted**

ORDERED: That the attached Apex Center Landscaping Plan, entitled “Apex Center, Landscape Plan,” consisting of Sheet 1 (L-100), Sheet 2 (L-101) and Sheet 3 (L-102); prepared by: Elliott Brundage, Landscape Design, 190 High Plain Road, Andover, MA 01810; dated: August 2, 2017, last revised: August 17, 2017 (the “Landscape Plan”), be and is herewith **APPROVED WITH THE FOLLOWING CONDITIONS** per the attached letter dated September 11, 2017 from the City of Marlborough’s landscape architect, Michael Radner:

1. Walker Realty LLC shall update and submit to the City Council the attached plan graphic depicted on the LLC’s sketch plan, entitled “Sketch 1, Apex Center,” so that the graphic accurately reflects the plant schedule also depicted on that sketch plan;
2. Walker Realty LLC shall update and submit to the City Council the Landscape Plan once it has been updated and stamped by the LLC’s landscape architect so as to reflect the LLC’s updating of the sketch plan referenced in condition 1 above; and
3. Walker Realty LLC shall provide the City Council with a) calculations which demonstrate a minimum of 3% interior parking lot planting that meet the requirements of Section 650-47.H(2)(a) of the City Code; and b) shrub counts that meet the requirements of Section 650-47.D(5)(a) of the City Code; adopted.

Yea: 11 – Nay: 0

Yea: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing & Robey

ORDERED: That the Fire Chief appear before Operations and Oversight to discuss response times of his department west of 495. The Chief will discuss with the Committee average response times to the various apartment complexes in the Southwest Quadrant of the city, as well as possible compliance issues we currently face. The Chief will also discuss the impact of further development on his department, refer to **OPERATIONS & OVERSIGHT COMMITTEE**; adopted.

ORDERED: At a regular meeting of the Marlborough City Council held on Monday, August 28, 2017 at 8:00 PM in the City Council Chambers, City Hall, the following proposed amendment to the Code of the City of Marlborough, “**COMPENSATION SCHEDULE**”, having been read was ORDERED ADVERTISED as follows:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 125, SECTION 6, SALARY SCHEDULE AS FOLLOWS:

Position	Effective Date	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
		Start	6 months of service	1 year of service	2 years of service	3 yrs. of service	4 yrs. of service	5 yrs. of service
Principal Assessor	July 1, 2017	\$91,405.26	\$93,233.10	\$95,098.68	\$96,999.96	\$98,940.00	\$100,918.80	\$102,937.38

TABLED UNTIL THE SEPTEMBER 25, 2017 CITY COUNCIL MEETING AS THE LEGAL AD WAS PUBLISHED ON SATURDAY, SEPTEMBER 7, 2017, THEREFORE CAN NOT BE FURTHER ADDRESSED UNTIL THE SEPTEMBER 25, 2017 CITY COUNCIL MEETING TO COMPLY WITH THE TEN DAY PERIOD; adopted.

ORDERED: That the door to door permit fee be increased to \$35.00 and fine be not less than \$35.00 by amending Chapter 468, Section 17.B and Section 28.A respectively, refer to **CITY SOLICITOR TO PLACE IN PROPER LEGAL FORM;** adopted.

ORDERED:

IN CITY COUNCIL

DECISION ON A SPECIAL PERMIT

Special Permit
 BSL Marlborough Development LLC
 Order No. 17-1006816E

**DECISION ON A SPECIAL PERMIT
 CITY COUNCIL ORDER NO. 17-1006816E**

The City Council of the City of Marlborough hereby GRANTS the Application for a Special Permit to BSL Marlborough Development LLC (the “Applicant”) to build and operate an assisted living facility with a special care unit at 421 Bolton Street, Marlborough, Massachusetts, as provided in this Decision and subject to the following Procedural Findings and Findings of Facts and Conditions.

FINDINGS OF FACT AND RULING

1. The Applicant, BSL Marlborough Development LLC, is a duly organized and existing Limited Liability Company having a business address c/o Benchmark Senior Living, 201 Jones Road, Third Floor West, Waltham, Massachusetts 02451.
2. Richard and Jill Cochrane are the owners of the property located at 421 Bolton Street, Marlborough, Massachusetts, as shown on the Marlborough Assessors Maps as Map 30, Parcels 13 and 14, and the City of Marlborough is the owner of the property shown on the Marlborough Assessors Maps as Map 30, Parcel 700 (the “Site”).
3. The Applicant proposes to build and operate a new 104-bed, 60,823+/- square foot assisted living facility with a special care unit at the Site (the “Use”).

4. The Site is located in the Residence A-2 Zoning District, north of U.S. Route 20 and with frontage on Massachusetts State Route 85.
5. The Site has an area of approximately 677,332 square feet (15.5 acres).
6. 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, as provided in this Decision.
7. In connection with the Application, the Applicant has submitted a certified list of abutters, filing fees, and a detailed site plan entitled “Site Development Plans for Benchmark Senior Living” prepared by Bohler Engineering and dated January 20, 2017, revised March 28, 2017, May 31, 2017 and July 18, 2017 (the “Plans”).
8. The Plans were certified by the Building Commissioner of the City of Marlborough, acting on behalf of the City Planner for the City of Marlborough, as having complied with Rule 4, items (a) through (m), of the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
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 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, held a public hearing on the Application on Monday, May 8, 2017. The hearing was opened and closed on that date. On June 19, 2017, the City Council approved an Agreement to Extend Time Limitations to extend the time for final action on the Application to September 12, 2017.
11. The Applicant, through its representatives, presented testimony at the public hearing detailing the Project, describing its impact upon municipal services, the neighborhood, and traffic.

**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 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.
- C. In accordance with Section 650-18(44)(c) of the Zoning Ordinance of the City of Marlborough, the City Council also finds that:

1. There is adequate access to and from the proposed assisted living facility for emergency response vehicles, insofar as the Plans demonstrate sufficient space for emergency response vehicles to enter and exit the Site.
 2. Alternative access to the Site is not necessary, based upon the sufficiency of the Site's primary access in the event of an emergency evacuation.
 3. There are sufficient provisions for medical transport, based upon the Site's access ways and layout.
 4. The overall impact of the proposed assisted living facility will not adversely affect the neighborhood or the City, as the Site is located in the vicinity of similar or complimentary land uses and the Use, as conditioned in this Decision, will have minimal impact on the neighborhood and the City.
- D. In accordance with Section 650-18(44).d.(1) and Section 650-59.C(12)(a) of the Zoning Ordinance of the City of Marlborough, the City Council also finds that the Applicant has agreed to donate approximately 10 acres of the Site to the City for municipal purposes (the "Donated Land"). The Donated Land will benefit the City and its citizens generally, and prior to the separation of the Donated Land from the Site, the Use conformed to the dimensional criteria set forth in Section 650-41 of the Zoning Ordinance of the City of Marlborough.
- E. The Donated Land includes a walking trail in the southeast corner as shown on Sheet 4 of the Plans. The walking trail connects the 1LT Charles W. Whitcomb School and the athletic fields on the Marlborough High School property, although the trail was disturbed as a result of the construction of the athletic fields. The Applicant has agreed to clear the vegetation for a path to make the connection from the base of the slope by the athletic field around the slope out to Stevens Street. Such work shall be complete before the issuance of a final Occupancy Permit for the Use. The precise location of the clearing to reconnect the path will be identified in the field by the Applicant and the City Conservation Officer.
- F. The City Council finds that the Plans comport with the design standards set forth in Section 650-18(44).d(3).
- G. 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 build and operate an assisted living facility with a special care unit 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. Compliance with Applicable Laws. The Applicant, its successors and/or assigns agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of the Project.
3. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review 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.
4. Modification of Plans. Notwithstanding conditions #1 and #3 above, the City Council or the Site Plan Review Committee may make engineering changes to the Plans, so long as said changes do not change the use of the Project as approved herein, or materially increase the impervious area of the Project, reduce the green area, alter traffic flow, increase the size, shape or position of the building, or alter the fencing bordering the property, all as shown on the Plans.
5. 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.
6. Storm Water and Erosion Control Management. The Applicant, its successors and/or assigns 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, its successors and/or assigns shall grant this individual(s) complete authority of the Site as it relates to stormwater and erosion controls.

7. Parking. The Applicant shall provide 65 parking spaces at the Site, plus 10 additional overflow parking spaces, as shown on the Plans, which exceeds the parking required for the Use under Section 650-48.A(16) of the Zoning Ordinance of the City of Marlborough by 15 spaces. Prior to the issuance of the final Occupancy Permit, the Applicant shall enter into a written agreement with a third party for the provision of any off-site parking needed for holidays and special events at the Site.
8. Donated Land; Lot Coverage. Pursuant to Finding D of this Decision and in accordance with Section 650-18(44)d(1) of the Zoning Ordinance of the City of Marlborough, the Applicant shall donate the Donated Land to the City for municipal purposes, and following the conveyance of the Donated Land to the City, the maximum lot coverage allowed for the Use as shown on the Plans may exceed 30% notwithstanding the dimensional criteria set forth in Section 650-41 of the Zoning Ordinance of the City of Marlborough. The Donated Land shall be deeded to the City at the time of the closing of the Applicant's acquisition of the Site, subject to the City's conveyance of the "Sewer Parcel" and "drainage easement" as referenced in condition 9 below.
9. Mitigation Payment. The Applicant has agreed to donate One Hundred and Fifty Thousand Dollars (\$150,000, the "Mitigation Payment") to the City to mitigate the impacts of the Use on the City. The Mitigation Payment shall be made to the City within 60 days of the issuance of the Building Permit for the Use. The Mitigation Payment will benefit the City and its citizens generally. The Mitigation Payment includes Fourteen Thousand Dollars (\$14,000) in compensation to be paid by the Applicant to the City pursuant to the Applicant's February 16, 2017 Request to Purchase or Have City-Owned Property Abandoned for 13,401 SF+/- Land Off of Bolton Street, Assessor's Map No. 30, Parcel No. 700 ("Sewer Parcel"), subject to the City Council's approval of the Applicant's Request by the City Council. The City would retain a permanent sewer easement in the Sewer Parcel. The \$14,000 valuation of the Sewer Parcel was established pursuant to a November 1, 2016 appraisal by Kenneth J. Croft III, Esq. of Foster Appraisal & Consulting Co., Inc. The Mitigation Payment also includes any compensation to be paid by the Applicant to the City for the acquisition of a drainage easement from the northern property line of the Site to the Proposed Connection to Existing Catch Basin on the property of the City of Marlborough (Marlborough Assessors Maps, Map 30, Lot 12) between the property line to the Site and Poirier Drive, as shown on Sheet 6 of the Plans, and subject to the City Engineer's review and the City Council's approval. The Mitigation Payment is intended to subsidize the City's construction of a concession stand and bathrooms for the athletic fields at the 1LT Charles W. Whitcomb School.

10. Traffic Mitigation. To mitigate any traffic-related concerns related to the proposed project, the Applicant has agreed to make the improvements specified in June 20, 2017 Memorandum of Jason Adams, P.E., PTOE of McMahon Transportation Engineers & Planners re “Vehicle Speed and Safety Assessment, Bolton Street (Route 85), Marlborough, Massachusetts;” and the June 25, 2017 Memorandum from Timothy F. Collins, Assistant City Engineer to the Traffic Commission re “Traffic Safety Plan in the Vicinity of #421 Bolton Street – for Benchmark Senior Living,” all as approved by the City’s Traffic Commission on July 25, 2017. Such traffic-related improvements shall be complete before the issuance of the final Occupancy Permit for the Use.
11. The Applicant shall hold a job fair in the City for the purpose of giving Marlborough residents an opportunity to apply for employment at the assisted living facility. This condition may be satisfied by the Applicant’s participation in a job fair organized by the Marlborough Economic Development Corporation.
12. Recording of Decision. In accordance with the provisions of M.G.L. c. 40A, § 11, 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, 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: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juaire, Oram, Ossing & Robey

ORDERED: That the Communication from City Solicitor Rider re: BSL Marlborough Development, LLC, Amended Special Permit, 421 Bolton Street, in proper legal form, **FILE**; adopted.

ORDERED: That the Communication from Nicholas Harron regarding applicant’s formal request for waiver pursuant to Section 650-35H.(8) to allow for three building signs for the proposed Evviva Cucina restaurant located at 142 Apex Drive, **APPROVED**; adopted.

ORDERED: That the Communication from Code Enforcement Officer, Pam Wilderman, re: Sign Request, Hilton Garden Inn, 170 Forest Street, **APPROVED**; adopted.

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 10:25 PM.