



**CITY OF MARLBOROUGH  
OFFICE OF CITY CLERK  
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**FEBRUARY 25, 2019**

Regular meeting of the City Council held on Monday, February 25, 2019 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Juare, Oram, Ossing, Robey, Delano, Doucette, Dumais, Tunnera, Irish and Landers. Meeting adjourned at 8:59 PM.

**ORDERED:** That the Communication from the Mayor, re: Request to address the City Council to provide an update on the state of the City, **FILE**; adopted.

**ORDERED:** That the Minutes of the City Council meeting FEBRUARY 11, 2019, **FILE AS AMENDED**; adopted.

**ORDERED:** That the PUBLIC HEARING On the Application for Special Permit from Attorney Sem Aykanian to modify existing Special Permit issued to Main Street Bank, 81 Granger Boulevard on June 22, 2009, Order No. 09-1002152C, to modify permit to allow for an electronic digital display (electronic message board) sign, Order No. 18/19-1007461A, X09-1002152C, X12-1004081C, all were heard who wish to be heard, hearing closed at 8:14 PM; adopted.

**Councilor Delano recused.**

**Councilors Present: Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juare, Oram, Ossing & Robey.**

**ORDERED:** That the PUBLIC HEARING On the Application for Sign Special Permit, from Main Street Bank, 81 Granger Boulevard to operate an electronic message center sign at its bank located at 81 Granger Boulevard, Order No. 18/19-1007423B, X18-1007461A, all were heard who wish to be heard, hearing closed at 8:16 PM; adopted.

**Councilor Delano recused.**

**Councilors Present: Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juare, Oram, Ossing & Robey.**

**ORDERED:** That the PUBLIC HEARING On the Application for Special Permit from Marc Buchan to raze an existing one story single family residence and build a new two story single family residence on the same existing foundation footprint, 180 Cullinane Drive, Order No. 19-1007512, all were heard who wish to be heard, hearing closed at 8:19 PM; adopted.

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

**ORDERED:** That the Transfer request in the amount of \$510,832.30 which moves funds from PEG Fees to Marlborough Cable Trust to fund the operation of WMCT for FY20, refer to **FINANCE COMMITTEE**; adopted.

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

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
	DEPT:	Mayor					FISCAL YEAR:	2019	
		FROM ACCOUNT:					TO ACCOUNT:		
Available									Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance
\$545,477.04	\$510,832.30	27000	33010	Receipts Reserved-PEG Funds	\$510,832.30	89000	25581	Marlboro Cable Trust	\$0.00
	Reason:	To fund WMCT operations with PEG fees							
	\$510,832.30	Total			\$510,832.30	Total			

**ORDERED:** That the Transfer request in the amount of \$182,500.00 which moves funds from Free Cash to IT Equipment to purchase, install and maintain security cameras at the Jaworek and Richer Elementary Schools, refer to **FINANCE COMMITTEE**; adopted.

CITY OF MARLBOROUGH									
BUDGET TRANSFERS --									
	DEPT:	IT					FISCAL YEAR:	2019	
		FROM ACCOUNT:					TO ACCOUNT:		
Available									Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance
\$7,101,961.00	\$182,500.00	10000	35900	Undesignated Fund	\$182,500.00	19300006	58618	IT Equipment	\$14,806.58
	Reason:	Security camera related projects							
	\$182,500.00	Total			\$182,500.00	Total			

**ORDERED:** Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Grant Acceptance in the amount of \$825.00 from the Massachusetts Cultural Council awarded to the Mayor's Office to be used to beautify an electrical box utilizing the wrap technique; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Amendments to the Master Concept Plan and Development Agreement relative to the Results Way Mixed Use Overlay District (RWMUOD), in proper legal form, Order No. 18/19-1007313A, **MOVED TO ITEM 29**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Site Plan Approval with conditions for AvalonBay Communities, Inc. for 123-unit Luxury Apartment Community located on a portion of 200 Forest Street in the RWMUOD, in proper legal form, Order No. 18/19-1007315A, **MOVED TO ITEM 30**; adopted.

ORDERED: Communication from City Solicitor, Donald Rider, re: Special Permit for AvalonBay Communities, Inc., for a 123-unit Luxury Apartment Community located on a portion of Forest Street within the RWMUOD, in proper legal form, Order No. 18/19-1007314E, **MOVED TO ITEM 31**; adopted.

ORDERED: Communication from City Solicitor, Donald Rider, re: Special Permit for Marlborough TOTG, LLC, to construct a mixed-use project at 57 Main Street to exceed by 4% the maximum lot coverage of 80% allowed in the Marlborough Village District, in proper legal form, Order No. 18/19-1007424D, **MOVED TO ITEM 32**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Site Plan Approval with conditions for Marlborough TOTG, LLC, to construct a mixed-use project at 57 Main Street, in proper legal form, Order No. 18/19-1007425A, **MOVED TO ITEM 33**; adopted.

ORDERED: That the Communication from the Planning Board, re: Favorable Recommendation of Cider Mill Estates Subdivision, Acceptance of Goodwin Street and McDermot Way as Public Ways, Order No. 19-1007530, **FILE** and refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY MARCH 25, 2019** as **DATE FOR PUBLIC HEARING** On Petition from Massachusetts Electric, to install 461 feet of underground primary from P13 on Framingham Road up to Pad 1-99 on Beverly Drive and to install 262 feet of underground secondary from Pad 1-99 to HH 0-2, all work to remain in the public way, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH HEREBY ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING THE ZONING MAP, SECTION 650-8, AS FOLLOWS:

That, upon the petition of St. Mary's Credit Union, the Zoning Map established under Chapter 650, the City of Marlborough's Zoning Ordinance, in Article III, entitled "Establishment of Districts" is hereby amended in subsection 8 thereof, entitled "Boundaries Established; Zoning Map". Said Zoning Map is amended by including Assessors Map 82, Parcels 112 and 113, and adjacent portions of John Street to the center line, in the Business District.

Refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE PUBLIC HEARING FOR MONDAY, APRIL 8, 2019**; adopted.

**Councilor Delano recused.**

ORDERED: That there being no objection thereto set **MONDAY, APRIL 8, 2019** as **DATE FOR PUBLIC HEARING** On the Application for Special Permit from Fabricio DaSilva, to construct a new 5 x 18 front porch on an existing structure, 3 Jonas Court, refer to **URBAN AFFAIRS COMMITTEE & ADVERTISE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY, APRIL 8, 2019** as **DATE FOR PUBLIC HEARING** On the Application for Special Permit from Attorney Brian Falk, on behalf of E on Main, to construct a Mixed-Use Development in the Marlborough Village District consisting of both residential and commercial space at 161-175 Main Street, refer to **URBAN AFFAIRS COMMITTEE & ADVERTISE**; adopted.

ORDERED: That the Communication from Attorney Falk on behalf of Vincenza Sambataro, re: Updated Site Plan Approval, E on Main, 161-175 Main Street, to build a mixed-use development in the Marlborough Village District, X16-1006668A, refer to **URBAN AFFAIRS COMMITTEE**; adopted.

ORDERED: That the Minutes, Ad-Hoc Municipal Aggregation Committee, February 11, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Board of Health, December 3, 2018 & January 14, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Conservation Commission, January 10, 2019 & January 24, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Council on Aging, January 8, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, January 28, 2019, **FILE**; adopted.

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

- a) Rocco DeVito, 39 Girard Street, pothole or other road defect.
- b) Matheus DeSouza, 109 Edinboro Street, pothole or other road defect.
- c) Paul Graves, 239 Ridge Road, other property damage and/or personal injury.
- d) William MacCormac, 168 Farm Road, residential mailbox claim (2b).
- e) Corey Marsh, 96 Bunker Hill Parkway, West Boylston, pothole or other road defect.
- f) Chanchal Patil, 37 Littlefield Lane, residential mailbox claim (2b).
- g) Neftali Pena, 302 North Street, Leominster, pothole or other road defect.
- h) Naila Ramirez, 201 Broad Street, #2L, pothole or other road defect.
- i) Majid Sairafi, 81 Woodland Drive, pothole or other road defect.
- j) Lan Sun, 102 Milk Street, Westborough, other property damage and/or personal injury.
- k) Andrew Zupan, 14 Brigham Road, Framingham, pothole or other road defect.

Reports of Committees:

**THERE WERE NO REPORTS OF COMMITTEE.**

ORDERED: That there being no objection thereto set **MONDAY, MARCH 11, 2019** as the **DATE FOR PUBLIC HEARING** On the proposal relative to Municipal Aggregation Order, refer to **FINANCE COMMITTEE & ADVERTISE**; adopted.

1. This order supersedes Order No. 17-1006881 dated April 10, 2017.
2. The goal of the Ad-Hoc Municipal Aggregation Committee is to obtain competitive electric supply offers that will provide stability and predictability and on a yearly average be lower than the National Grid Fixed Basic Service Rates during the same period.
3. Establish an Ad-Hoc Municipal Aggregation Committee that will review competitive electric supply agreements and make recommendations to the Mayor. The Municipal Aggregation Committee will consist of 5 members including:
  - The Mayor
  - Two City Councilors (appointed by the City Council President)
  - The Chief Procurement Officer
  - The DPW Commissioner (or designee)
  - A quorum shall consist of a minimum of 3 members
4. The Ad-Hoc Municipal Aggregation Committee will provide periodic updates to the City Council on Municipal Aggregation implementation.
5. All suppliers of electricity licensed by the Department of Public Utilities and qualified to do business in the Commonwealth of Massachusetts can participate in the City's Municipal Aggregation Program.

**BACKGROUND:**

On October 15, 2018, the City Council approved Order #18-1007435 to have the Ad-Hoc Municipal Aggregation Committee review Council Order 17-1006881 regarding item #2 "The goal of Municipal Aggregation is to require that the R-1 (residential) class rates be lower than the prevailing National Grid Fixed Basic Service Rate" and report back to the City Council. The purpose of the review was to determine if there may be a financial benefit to the residents of Marlboro by entering into agreements for longer electricity supply contracts that may contain savings over the long run but may be occasionally higher than the National Grid Fixed Basic Service Rate. The Ad-Hoc Municipal Aggregation Committee meeting minutes from February 11, 2019 document the Committee's unanimous decision to revise the order to allow the City to enter into longer electrical supply contracts to provide stability and predictability for electrical supply rates while potentially providing greater savings to Marlboro residents than the current process. Recommend the above order be referred to the Finance Committee, set a public hearing for March 11, 2019 and advertise. Submitted by Councilor Ossing

ORDERED: WHEREAS, in the opinion of the City Council of the City of Marlborough, the common convenience and necessity require:

that ALLIS ROAD be accepted as a public way

from Framingham Road at Station 0+00 and intersecting Bemis Road (Station 0+00) at Station 1+71.75, and

that BEMIS ROAD be accepted as a public way

from Allis Road (Station 1+71.75) at Station 0+00 and terminating at Station 1+57.88 to the south and Station 1+81.31 to the north,

and that their appurtenant easements be accepted as municipal easements,

as shown on plans thereof and as hereinafter described:

#### DESCRIPTION

Plan entitled, "Plan of Acceptance of Allis, Bemis Road and Municipal Easements, Marlborough, Massachusetts," Prepared for: The City of Marlborough; Prepared By: Bruce Saluk & Associates, Inc., Civil Engineering & Land Surveying, 576 Boston Post Road East, Marlborough, MA 01752; Dated: June 1, 2018, last revised December 12, 2018; Scale: 1"=120' (Sheet 1 of 2), 1"=60' (Sheet 2 of 2), which plan is to be recorded herewith.

Title to the roadways shown as ALLIS ROAD and BEMIS ROAD on said plan, and title to all the municipal easements shown on said plan as:

#### Drain Easements:

- Drainage Easement #1, over Parcel "A", containing 920 square feet
- Drainage Easement #2, over Lot #9 (1 Bemis Road), containing 730 square feet
- Drainage Easement #3, over 87 Framingham Road, containing 81 square feet
- Drainage Easement #7, over 87 Framingham Road, containing 328 square feet
- Drainage Easement #8, over Lot #9 (1 Bemis Road), containing 4,407 square feet
- Drainage Easement #9, over Lot #4 (4 Allis Road), containing 822 square feet

#### Flowage Easements

- Flowage Easement #4, over 79 Framingham Road, containing 5,059 square feet
- Flowage Easement #5, over 87 Framingham Road, containing 2,882 square feet
- Flowage Easement #6, over Lot #9 (1 Bemis Road), containing 2,751 square feet

#### Sewer Easements:

- Sewer Easement #10, over Lot #8 (7 Bemis Road), containing 1,953 square feet
- Sewer Easement #11, over Lot #9 (1 Bemis Road), containing 467 square feet

#### Landscape Easements:

- Landscape Easement, over Lot #4, containing 3,035 square feet
- Landscape Easement, over Lot #5, containing 2,829 square feet
- Landscape Easement, over Lot #6, containing 1,130 square feet
- Landscape Easement, over Lot #7, containing 1,427 square feet
- Landscape Easement, over Lot #8, containing 1,450 square feet
- Landscape Easement, over Lot #9, containing 1,255 square feet

has been granted to the City of Marlborough in a quitclaim deed from Melanson Development Group, Inc., a Massachusetts corporation with a principal place of business at 5 Robertson Way, Woburn, Massachusetts, said deed to be recorded herewith at the Middlesex County (South District) Registry of Deeds.

IT IS THEREFORE ORDERED THAT:

ALLIS ROAD and BEMIS ROAD be accepted as public ways, and their appurtenant easements be accepted as municipal easements, in the City of Marlborough.

**APPROVED;** adopted.

**Yea: 11 – Nay: 0**

**Yea: Delano, Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juair, Oram, Ossing & Robey.**

**ORDERED:** That the Police Department transfer request in the amount of \$62,800.00 which moves funds from Reserved for Salaries account to Sick Leave Buy Back account to fund the sick leave retirement benefit of a retired Police Officer, **APPROVED;** adopted.

BUDGET TRANSFERS --										
DEPT.	POLICE								FY:	2019
		FROM ACCOUNT:						TO ACCOUNT:		
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$816,832.65	\$62,800.00	11990006	57820	Reserve for Salaries	\$62,800.00	12100003	51920	Sick Leave Buy back		\$9,910.41
	Reason:	Budgeted retirement payment to officer						Contractual sick leave retirement payment		
	\$62,800.00	Total			\$62,800.00	Total				

ORDERED: That Police Department transfer request in the amount of \$11,000.00 which moves funds from Educational Incentive account to Initial Equipment account to pay for the initial equipment and clothing for new officers, **APPROVED**; adopted.

BUDGET TRANSFERS --										
DEPT.	POLICE								FY:	2019
		FROM ACCOUNT:				TO ACCOUNT:				
Available										Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:		Balance
\$310,434.44	\$11,000.00	12100003	51440	Educational Incentive	\$11,000.00	12100006	51975	Initial Equipment		\$225.72
	Reason:	Account surplus				Equipment for three new officers				
	\$11,000.00	Total			\$11,000.00	Total				

ORDERED: That the City Council of the City of Marlborough hereby **APPROVES** the following; adopted.

- 1) By a super majority (2/3) vote pursuant to Chapter 650-33.C(1)(c) of the City's Zoning Ordinance, the City Council hereby approves the Master Concept Plan presented by Atlantic-Marlboro Realty LLC on a plan entitled, "Marlborough Hills, Concept Master Plan," dated January 23, 2019;" and
- 2) By a super majority (2/3) vote pursuant to Chapter 650-33.C(2) of the City's Zoning Ordinance, the City Council hereby approves the First Amendment to Development Agreement by and between Atlantic-Marlboro Realty LLC and the City of Marlborough, as consented to by Avalon Marlborough, LLC.

**Yea: 11 – Nay: 0**

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

#### **Suspension of the Rules requested – granted**

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Amendment to condition number 22 of the proposed Site Plan Approval for AvalonBay Communities, Inc., Order No. 18/19-1007315A, **APPROVED**; adopted.

ORDERED: That the City Council of the City of Marlborough does hereby approve and adopt, pursuant to § 650-33.B(1) of the Marlborough Zoning Ordinance, the Site Plan Review Committee's Site Plan Permit #SC-2019-01, which sets forth the Committee's recommended approval, with conditions, of the site plans submitted by AvalonBay Communities, Inc., and most recently revised on January 30, 2019, to construct 123 multifamily dwelling units, together with parking and associated improvements, at 0 Simarano Drive, **APPROVED**; adopted.



**Suspension of the Rules requested – granted**

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Amendment to Special Permit deleting paragraph 2 and substituting with new language as provided for AvalonBay Communities, Inc., Order No. 18/19-1007314E, **APPROVED**; adopted.

ORDERED:

**DECISION ON A SPECIAL PERMIT**

**AVALONBAY COMMUNITIES, INC.**  
**0 Simarano Drive, Marlborough, MA**

**CITY OF MARLBOROUGH**  
**CITY COUNCIL ORDER NO. 18/19-1007314F**

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

**EVIDENCE**

1. On May 21, 2018, AvalonBay Communities, Inc., a duly organized and existing Maryland corporation with a principal place of business of 600 Atlantic Avenue, 20<sup>th</sup> Floor, Boston, Massachusetts 02110 (the “**Applicant**”), filed with the City Clerk of the City of Marlborough, an Application for Special Permit (the “**Application**”) seeking authorization to construct: (i) 123 multifamily dwelling units; and (ii) parking and improvements associated therewith (collectively, the “**Project**”).
2. The Project is proposed on a property located on the corner of Simarano Drive and Forest Street in Marlborough, MA, more particularly identified on the City of Marlborough Assessor’s Maps as Parcel 1 on Map 100, and furthermore particularly shown as Lot 1D-4 on that certain plan entitled, “Plan of Land in Marlborough, Massachusetts (Middlesex County),” Scale: 1”= 100’, dated February 7, 2019, prepared by BSC Group, Inc. (the “**Site**”). Said Plan of Land is being submitted to the Marlborough Planning Board at its February 25, 2019 meeting; is subject to revision by the Marlborough DPW Engineering Division prior to any vote of endorsement by the Board; and, as may be so revised, is anticipated to be voted upon by the Board for endorsement purposes at its March 11, 2019 meeting. If and when said Plan of Land is so revised and endorsed, this Special Permit shall adopt said Plan of Land, with its latest date of revision, as identifying the Site for purposes of this Special Permit.
3. The Site is owned by Atlantic-Marlboro Realty LLC, a duly organized Delaware limited liability company (the “**Owner**”). The Owner has consented to the Applicant filing the Application.
4. The Site is located within the Results Way Mixed Use Overlay District (the “**RWMUOD**”), subject to § 650-33 of the Zoning Ordinance of the City of Marlborough (the “**Zoning Ordinance**”), which allows multifamily dwelling use up to 350 units as-of-right and in excess of 350 units pursuant to a Special Permit issued by the City Council.

5. In accordance with Zoning Ordinance § 650-33.C(1), on May 6, 2013 the City Council approved a Master Concept Plan setting forth the general development plan governing development in the RWMUOD, which Master Concept Plan is proposed by the Owner to be amended by a vote of the City Council scheduled for its February 25, 2019 regular meeting, and to be replaced with that certain plan entitled, “Marlborough Hills, Concept Master Plan,” dated January 23, 2019 (as so amended, the “**Amended Master Concept Plan**”).
6. In accordance with Zoning Ordinance § 650-33.C(2), on May 7, 2013 the City Council and the Owner entered into a Development Agreement setting forth restrictions, proposed phasing, and all required mitigation for development within the RWMUOD, including a one-time per-unit financial contribution associated with residential development within the RWMUOD (the “**Residential Development Contribution**”), which Development Agreement is proposed by the Owner to be amended by a vote of the City Council scheduled for its February 25, 2019 regular meeting (as so amended, the “**First Amendment to Development Agreement**”).
7. Pursuant to Site Plan Permit #SC-2013-0012 dated September 23, 2013, an affiliate of the Applicant constructed 350 multifamily dwelling units on adjacent property also located within the RWMUOD.
8. As a result, pursuant to Zoning Ordinance § 650-33.E(2)(a), the Project requires a Special Permit from the City Council because it involve the construction of a total number of multifamily dwelling units within the RWMUOD in excess of 350 units.
9. On May 21, 2018, the Building Commissioner, acting on behalf of the City Planner, provided to the City Council a Certificate of Completeness of Application as required by Paragraph 7 of the Rules and Regulations of Application/Petition for Special Permit set forth in Zoning Ordinance § 650-59.
10. The City Council held a public hearing on August 27, 2018, in compliance with the requirements of the Code of the City of Marlborough and by the provisions of M.G.L. Chapter 40A, as amended, and all necessary abutters were provided notice as required by law, as certified by the Office of the Board of Assessors of Marlborough. Following testimony by the Applicant and members of the public, the City Council closed the public hearing and the matter was referred to the Urban Affairs & Housing Committee. By agreement of the parties, the time for the Council to take final action on the Application has been extended to April 9, 2019.
11. The Urban Affairs Committee held open meetings on the matter on January 22, 2019 and February 4, 2019, following which the Urban Affairs Committee voted to recommend that the City Council approve the Application, as amended.

12. At each of the August 27, 2018 City Council public hearing and the January 22, 2019 and February 4, 2019, Urban Affairs Committee open meetings, the Applicant presented oral testimony and demonstrative evidence representing that the Project meets all applicable Special Permit criteria provided by M.G.L. Chapter 40A, as amended, and the Code of the City of Marlborough including, without limitation, Zoning Ordinance § 650-18(A)(4) and § 650-59, and that the use sought and its impact and characteristics are not in conflict with public health, safety, convenience and welfare and not detrimental nor offensive so long as the conditions, safeguards or limitations imposed herein are complied with.
13. Together with the Application, the Applicant submitted a plan set, including site plans and architectural plans, entitled, “Avalon Marlborough II, 200 Forest St. (Map 100, Parcel 1), Marlborough, MA - Application for Special Permit & Site Plan Approval,” consisting of 39 sheets: T0.01-T0.03; ALTA/NSPS Land Title Survey - Lot 1D-3 (1 of 1); Civil Drawings: C1-C5, C6A-C6B, C7-C12; Landscape Drawings: L1.0, L2.0, L4.1, L5.2, L6.2, L7.1, L9.1, L10.0, L10.1, L11.0, L11.1, L11.2; D1.0, D5.0-D6.0; Architectural Drawings: A1.01-A1.07,” prepared by H.W. Moore Associates, Inc. (Civil Engineer) and The Architectural Team, Inc. (Architect), dated May 17, 2018, last revised January 30, 2019 (the “Plans”).
14. The Applicant has complied with all the Rules and Regulations promulgated by the City Council as they pertain to the Application.
15. The Plans are attached hereto as “Attachment A.”

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

**FINDINGS OF FACT**

- A. The Applicant has complied with all the Rules and Regulations promulgated by the City Council as they pertain to the Application for a Special Permit to construct the Project on the Site.
- B. All necessary fees for the proposed Special Permit have been paid.
- C. The Application was properly completed and filed by Applicant, and all necessary abutters were provided notice as required by law, as certified by the Assessor’s Office of Marlborough prior to Application submission.
- D. The Plans accompanying the Application were completed in accordance with the all applicable Rules and Regulations.
- E. The Summary Impact Statement filed with the Application is sufficient for the Application and no further studies or requirements, other than the Traffic Impact Evaluation dated April 11, 2018 and conducted by VHB for the Applicant, are necessary.
- F. The City Department reports, as required by the Code of the City of Marlborough, have been received and incorporated as deemed appropriate by the City Council into this Special Permit.

- G. The uses sought by Applicant, and their impacts and characteristics, are not in conflict with the public health, safety, convenience and welfare and are not detrimental or offensive to the neighborhood, so long as the conditions, safeguards or limitations imposed herein are complied with; and further, the construction of the Project on the Site is appropriate for the Site and is in harmony with, and does not derogate from, the intent and purpose of M.G.L. Chapter 40A and/or the Zoning Ordinance for the City of Marlborough.
- H. The Project is consistent with the Amended Master Concept Plan and the First Amendment to Development Agreement.

### **GRANT OF SPECIAL PERMIT WITH CONDITIONS**

The City Council, pursuant to its authority under M.G.L. Chapter 40A and the Code of the City of Marlborough, therefore **GRANTS** to the Applicant a Special Permit to construct the Project on the Site, **SUBJECT TO THE FOLLOWING CONDITIONS**, which shall pertain to Applicant, its parent company(ies), subsidiaries, successors and assigns:

#### **CONDITIONS**

1. The City Council conditions its approval of the Special Permit on its site plan review of the Project, as delegated in part to the Site Plan Review Committee for administrative site plan review as provided under Chapter 270 of the City Code entitled, "Building and Site Development." Conditions imposed by administrative site plan review, as approved by the City Council pursuant to Zoning Ordinance § 650-33.B(1), shall be conditions of this Special Permit, and any violations of those conditions shall be violations of this Special Permit. The Plans may be subject to further modification by the City Council to the extent allowed by the Code of the City of Marlborough; and insofar as so modified, would be subject to further administrative site plan review. Other conditions and limitations which are not inconsistent with any term or condition attached to this Special Permit may be imposed at the time of the final site plan approval by the City Council, and any violations of those conditions and limitations shall be violations of this Special Permit.
2. All plans, floor plans, photos, renderings, site evaluations, studies, reports, 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 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.
3. All work performed at the Site under the Special Permit shall be in compliance with this Special Permit. No other building or construction under the Special Permit shall occur or happen without a change or modification of the Special Permit as approved by the City Council, except if the Building Commissioner deems a change to the Plans to be minor in nature as per General Provision 1 in the Site Plan Review Committee's recommended conditions.
4. Construction of the Project shall be in accordance with all applicable building codes currently in effect in the City of Marlborough. 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 Project.

5. The Applicant shall satisfy all applicable conditions or mitigation requirements set forth in the First Amendment to Development Agreement, including the payment of the Residential Development Contribution associated with the additional 123 units included in the Project. In accordance with Zoning Ordinance § 650-33.C(2) and as contemplated by the First Amendment to Development Agreement, these payments shall be the only mitigation payments required for the construction, use or occupancy of the Project; provided, however, that for purposes of this Condition 5, the \$25,000 payment recited in Condition 22 of the Site Plan Review Committee's recommended conditions shall not be considered as a mitigation payment nor as any part of the Residential Development Contribution, but shall be considered as separate and distinct therefrom.
6. The architectural design of the Project shall be reasonably consistent with the architectural plans, floor plans and renderings submitted by Applicant to the City Council and the Urban Affairs Committee.
7. The exterior features of the Project, including landscaping, shall be maintained in good condition and shall be reasonably consistent with the plans submitted and representations made to the City Council.
8. In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant at its expense shall record this Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and before the Applicant shall apply to the Building Commissioner for a building permit concerning the Project. The Applicant shall provide a copy of the recorded Special Permit to the City Council's office, the Building Commissioner's office, and the City Solicitor's office.

**Yea: 11 – Nay: 0**

**Yea: Delano, Doucette, Dumais, Tunnera, Irish, Clancy, Landers, Juairé, Oram, Ossing & Robey.**

ORDERED:

**DECISION ON AN APPLICATION FOR SPECIAL PERMIT**

**MARLBOROUGH TOTG, LLC  
57 Main Street, Marlborough, MA**

**CITY OF MARLBOROUGH  
CITY COUNCIL ORDER No. 18/19-1007424E**

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

**EVIDENCE**

1. The Applicant is Marlborough TOTG, LLC ("TOTG"), a duly organized and existing Massachusetts Limited Liability Corporation with a principal mailing address of 206 Ayer Road, Suite 5, Harvard, MA 01451 (the "Applicant"). Mark C. O'Hagan is the manager of the Applicant.

2. The location of the proposed project is 57 Main Street, Marlborough, MA and more particularly identified on the City of Marlborough Assessor's Map 70 on Parcels 291, 293, 294, and furthermore particularly described in deeds recorded with the Middlesex South District Registry of Deeds, Book 14539, Page 250; Book 14548, Page 518; and Book 28065, Page 95 (the "Site").
3. The owners of the Site are John P. Rowe Funeral Home, Inc. (as to Parcels 291 and 294); and John P. Rowe, Jr. and J. Peter Rowe, as tenants in common (as to Parcel 293).
4. The commercial structure currently housing a funeral home on the Site was constructed in approximately 1850. The Site is located within the Marlborough Village (MV) zoning district.
5. The Applicant proposes to construct a mixed use project with a total of approximately 86,600 square feet within a 5-story building, which will include approximately 11,000 square feet of commercial space (office and restaurant) on the ground floor, 55 residential housing units on floors 2 through 5, and 83 parking spaces in the basement and at ground level (the "Project"). The Project is in general accordance with the requirements of the MV zoning district in chapter 650-34 of the Marlborough Zoning Ordinance; however, the proposed lot coverage for the Site is 84% as compared to the maximum of 80% as set forth in Chapter 650-41 of the Zoning Ordinance. The incremental increase in lot coverage is attributable to the proposed widening of Exchange Street, a proposed exterior patio for commercial use, and associated access ramps required by the Americans with Disabilities Act. The incremental increase in lot coverage requires a special permit from the City Council, pursuant to footnote 13 to the table in Chapter 650-41.
6. At present, Exchange Street is approximately nineteen feet wide near its intersection with Main Street. The City Engineer expressed concerns that the roadway could not safely accommodate the increase in traffic that the Project will generate. As there is no room within the right-of-way limits to widen the street, the Applicant has agreed to grant, on the Site, a permanent easement to the City of Marlborough for the purpose of widening the street. An Easement Plan has been drafted and submitted to the DPW Engineering Division for review. The Site Plans show that, with the proposed widening, Exchange Street would be a consistent twenty-three feet wide from Main Street to High Street. The encroachment of the street pavement onto the Site contributes to the increase in lot coverage for which the Special Permit is sought. The Applicant has also agreed to make other improvements to Exchange Street, both at its intersection with Main Street where the concrete apron will be removed and the wheelchair ramps will be replaced, as well as at its intersection with High Street where the radius of the rounding will be increased.

7. West of the Site and adjacent thereto lies Union Common. Although this area is owned by the First Church of Marlborough (Congregational), it is an important City landmark and many City-sponsored events are hosted on the Common. The Applicant has worked with City staff to review and limit necessary tree clearing and has agreed to upgrade the fencing separating the two properties. The Applicant has executed a Memorandum of Understanding with the First Church for the fence updates, and is working with the First Church to secure a recordable agreement. Said agreement will be provided to the Marlborough City Council upon execution and recordation.
8. The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application for permission to increase lot coverage at the proposed mixed use building by 4% above the 80% maximum set forth in Chapter 650-41 of the Marlborough Zoning Ordinance. Specifically, the Application filed on October 2, 2018 with the City Clerk's office consisted of an original and two copies of the following: (a) Application to the City Council for Issuance of Special Permit; (b) Special Permit-Summary Impact Statement; (c) filing fee check; (d) plan delivery certification; (e) tax payment certification; (f) abutters list; (g) the proposed site plans and architectural plans, further described hereinbelow; and (h) the certification of the Building Commissioner on behalf of the Planning Director as to the Application's having complied with the provisions of Section 650-59C(7) (a), (b) and (c) of the City's Zoning Ordinance.
9. A public hearing was held on December 3, 2018, in compliance with the requirements of the City's Zoning Ordinance and the provisions of MGL Chapter 40A, as amended. All necessary abutters were provided notice as required by law, as certified by the Marlborough Assessors office. The time for the City Council to take final action on the Application is March 3, 2019.
10. The Applicant presented oral testimony and demonstrative evidence at the public hearing and represented that the proposed increase in lot coverage meets all applicable special permit criteria provided by MGL Chapter 40A, as amended, and the City's Zoning Ordinance.
11. The site plans submitted with the Application are entitled, "Tavern on the Green, 57 Main Street, Marlborough, MA Site Plan;" owner: John P. Rowe Funeral Home, Inc., 57 Main Street, Marlborough, MA 01752; applicant: Mark O'Hagan, MCO & Associates, Inc., 206 Ayer Road – Suite 5, Harvard, MA 01451; prepared by: Bruce Saluk & Assoc., Inc., Civil Engineering & Land Surveying, 576 Boston Post Road East, Marlborough, MA 01752; last revised: February 4, 2019; scale: 1" = 60' (7 sheets plus cover sheet) (the "Site Plans"), attached hereto as "Attachment A."
12. The architectural plans submitted with the Application are entitled "57 MAIN STREET - Marlborough;" Architect: Reeves Design Associates; last revised: February 4, 2019 (6 sheets plus cover sheet) (the "Architectural Plans"), attached hereto as "Attachment B."

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

- A. The City Council finds that it may grant a special permit (“Special Permit”) subject to such terms and conditions as it deems necessary and reasonable to protect the citizens of the City of Marlborough (also referenced herein as the “City”).
- B. The City Council finds the Application for the Special Permit does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough, or MGL c. 40A.
- C. The City Council finds the coverage area being utilized beyond the 80% represents an appropriate use and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough.
- D. In particular, the proposed coverage increase is necessary and appropriate for site access and traffic improvements, and works towards enhancing the goals of the MV zoning district.
- E. The Applicant has complied with all the procedural rules and regulations of the City Council of the City of Marlborough and Chapter 650 (Zoning Code) of the City of Marlborough and MGL c. 40A, §§ 9 and 11.

**GRANT OF SPECIAL PERMIT WITH CONDITIONS**

The City Council, pursuant to its authority under MGL Chapter 40A and the City of Marlborough Zoning Ordinance, Chapter 650, **GRANTS** the Applicant a Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS**, which shall pertain to Applicant, its successors and assigns:

- 1. Since the Project exceeds 10,000 square feet, the City Council, acting pursuant to Chapter 650-34.B(3) of the Zoning Ordinance, conditions its approval of the Special Permit on its site plan review of the Project, as delegated in part to the Site Plan Review Committee for administrative site plan review under Chapter 270 of the City Code. Conditions imposed by administrative site plan review, as approved by the City Council, shall be conditions of this Special Permit, and any violations of those conditions shall be violations of this Special Permit. The Site Plans may be subject to modification by the City Council to the extent allowed by the Code of the City of Marlborough; and insofar as so modified, would be subject to further administrative site plan review. Other conditions and limitations may be imposed at the time of the final site plan approval by the City Council which are not inconsistent with any term or condition included in this Special Permit, and any violations of those conditions and limitations shall be violations of this Special Permit.



2. All plans, floor plans, photos, renderings, site evaluations, studies, reports, 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 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.
3. Construction of the proposed building and related site improvements is to be done in accordance with all applicable codes in effect in the City of Marlborough as of the time when the building permit application is submitted to the Building Commissioner. 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 Project.
4. All work performed at the Site shall be in compliance with this Special Permit decision, including but not limited to the Site Plans and the Architectural Plans.
5. The Special Permit is conditioned on the Applicant's signing a permanent easement, in a form satisfactory to the City Solicitor's office, granting the City the right to use the Site to widen and, as widened, to maintain and repair, the roadway of Exchange Street, said easement being subject to eventual acceptance by the City Council.
6. In accordance with the provisions of MGL c. 40A, § 11, the Applicant at its expense shall record this Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and before the Applicant shall apply to the Building Commissioner for a building permit. The Applicant shall provide a copy of the recorded Special Permit to the City Council's office, to the Building Department, and to the City Solicitor's office.

**Yea: 10 – Nay: 0 – Abstain: 1**

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

**Abstain: Dumais**

**ORDERED:** That the City Council of the City of Marlborough does hereby approve and adopt, pursuant to § 650-34.B(3) of the Marlborough Zoning Ordinance, the Site Plan Review Committee's Site Plan Permit #SC-2019-02 (attached hereto), which sets forth the Committee's recommended approval, with conditions, of the site plans submitted by Marlborough TOTG, LLC, and most recently revised on February 4, 2019, to construct a mixed use project at 57 Main Street, **APPROVED**; adopted.

**Councilor Dumais recused.**

ORDERED: The City Council further approves, pursuant to § 650-34.H(4) of the Marlborough Zoning Ordinance, the LLC's request, made as part of its site plan approval application, for a waiver of from the requirement, set forth in § 650-34.H of the Marlborough Zoning Ordinance, that would otherwise require the LLC to provide a total of 5,500 sf of private open space at the proposed project. Due to site-specific circumstances, the waiver is granted for 2,750 sf of private open space that would otherwise be required on the ground level of the project; the LLC will provide the remaining 2,750 sf of private open space within the proposed building, **APPROVED**; adopted.

**Councilor Dumais recused.**

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 8:59 PM; adopted.