



**CITY OF MARLBOROUGH
OFFICE OF CITY CLERK
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APRIL 8, 2019

Regular meeting of the City Council held on Monday, April 8, 2019 at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Clancy, Juaire, Oram, Ossing, Robey, Delano, Doucette, Dumais, Tunnera, Irish and Landers. Meeting adjourned at 10:35 PM.

ORDERED: That the Minutes of the City Council meeting, MARCH 25, 2019, **FILE**; adopted.

Suspension of the Rules requested – granted

ORDERED: That the Communication from Fabricio DaSilva, re: Request to **WITHDRAW WITHOUT PREJUDICE**, Application for Special Permit to construct a new 5 x 18 front porch on an existing structure, 3 Jonas Court, **FILE**; adopted.

ORDERED: That the Application for Special Permit from Fabricio DaSilva, to construct a new 5 x 18 front porch on an existing structure, 3 Jonas Court, **WITHDRAWN WITHOUT PREJUDICE**; adopted.

ORDERED: That the PUBLIC HEARING On the Proposed Zoning Ordinance Amendment, Chapter 650, §5, §17, §18 & §48 relative to adding Food Trucks to the Table of Uses, Order No. 19-1007543, all were heard who wish to be heard, hearing closed at 8:05 PM; adopted.

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

ORDERED: That the PUBLIC HEARING On the Proposed Zoning Map Amendment from Attorney Brian Falk on behalf of St. Mary's Credit Union, re: Rezoning of land located on John Street, Order No. 19-1007569, all were heard who wish to be heard, hearing closed at 8:18 PM; adopted.

Councilor Delano recused.

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

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Donation Acceptance in the amount of \$3,000.00 for the Fire Department from Dwayne Thompson, Michael Burnell and Andrew Eick of Cummings Properties, LLC to be used for employee appreciation; adopted.

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Donation Acceptance in the amount of \$20.00 for the Police Department from Marilyn Gaudette to be used for summer programs; adopted.

ORDERED: That the 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, Order No. 19-1007571, all were heard who wish to be heard, hearing closed at 8:51 PM; adopted.

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

ORDERED: That the Communication from Councilor Ossing, re: Municipal Aggregation – Six-month fixed price contract with DYNEGY, May, 2019 through October, 2019, **FILE**; adopted.

ORDERED: That the Transfer Request in the amount of \$699,088.00 which moves funds from Economic Development to MEDC Funding to fund the FY20 operations, refer to **FINANCE COMMITTEE**; adopted.

		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	
<u>\$1,661,109.48</u>	<u>\$699,088.00</u>	<u>27000099</u>	<u>42440</u>	<u>Economic Development</u>			<u>\$699,088.00</u>	<u>11740006</u>	<u>53950</u>	<u>MEDC Funding</u>	<u>\$0.00</u>	
	Reason:	To allow the MEDC to continue it's work in promoting the economic development of the City for FY20										
	\$699,088.00	Total					\$699,088.00	Total				

ORDERED: Under authority of MGL Chapter 44, Section 53A, the City Council hereby **APPROVES** the Reimbursement Acceptance for the Fire Department in the amount of \$7,409.02 from FEMA for storm expenditures from the snow event of March 13, 2018; adopted.

ORDERED: That the City Council, upon reconsideration, hereby removes the conditions currently set forth in Order No. 18-1007441A for acceptance of a grant in the amount of \$6,219.00 awarded to the DPW to fund 50% of the cost to purchase two Level 2 Electric Vehicle Charging Stations and imposes the following new conditions in place thereof, **APPROVED**; adopted.

- 1) The two (2) charging stations will be set up for City vehicle use only.
- 2) The charging stations will be installed on the first floor of the parking garage or a location that the DPW Commissioner sees fit.

President Clancy declared a hand count of six Councilors in favor (Doucette, Irish, Clancy, Landers, Oram & Ossing) and five Councilors opposed (Delano, Dumais, Tunnera, Juair & Robey).

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Special Permit for Marc Buchan, to demolish the existing one story single-family dwelling and construct a new two-story single-family dwelling on the same foundation footprint at 180 Cullinane Drive, in proper legal form, Order No. 19-1007512B, **MOVED TO ITEM 32**; adopted.

ORDERED: That the proposed amendment to Chapter 650 as outlined in Order No. 18/19-1007452D is hereby further amended by striking out in 650-22 C (i) 5 the words “and any approved ancillary residential community are” and inserting in place thereof the word “is”, so the section would now read “The lot or lots on which an RCO-D/T community is located shall contain, on a consolidated basis, at least 7,000 square feet per housing unit.”, **APPROVED**; adopted.

ORDERED: That the proposed amendment to Chapter 650 as outlined in Order No. 18/19-1007452D is hereby further amended by striking out in 650-22 C (i) 9 the words “and in any permitted ancillary residential community”, so the section would now read “Maximum combined lot coverage in an RCO-D/T community shall not exceed 40% of the total lot size.”, **APPROVED**; adopted.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Proposed Zoning Ordinance Amendment, Chapter 650 §22 & §5, relative to Multifamily Retirement Community, 90 Crowley Drive, in proper legal form, Order No. 18/19-1007452D (X18-1007198G), **MOVED TO ITEM 31**; adopted.

ORDERED: That the Communication from the Planning Board, re: Favorable Recommendation on the Proposed Zoning Amendment to Chapter 650 which will create the Executive Residential Overlay District in the Simarano Drive and Cedar Hill Road area, Order No. 19-1007533A, **FILE**; adopted.

ORDERED: That the Communication from the Planning Board, re: Favorable Recommendation on the Proposed Zoning Map Amendment, land off Valley Street, Order No. 19-1007552A, **FILE**; adopted.

ORDERED: That the Communication from the Planning Board, re: Decision for Colbea Enterprises, LLC, Request for Sign Variance, 342 Boston Post Road East, **FILE**; adopted.

ORDERED: That the Application for Renewal of Junk Dealer/Second Hand Dealer License, TVI, Inc., d/b/a Savers, 222A East Main Street, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That there being no objection thereto set **MONDAY APRIL 29, 2019** as **DATE FOR PUBLIC HEARING** Petition from MA Electric to install a new pole 47-84 to use as a stub pole for poles 47 and 47-5 on Bolton Street, refer to **PUBLIC SERVICES COMMITTEE**; adopted.

ORDERED: That the Minutes, School Committee, March 12, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Board of Assessors, March 20, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Conservation Commission, March 7, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Council on Aging, February 11, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Historical Commission, March 7, 2019, **FILE**; adopted.

ORDERED: That the Minutes, License Board, February 11, 2019, February 27, 2019 & March 21, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Planning Board, March 11, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Retirement Board, February 26, 2019, **FILE**; adopted.

ORDERED: That the Minutes, Traffic Commission, February 27, 2019, **FILE**;

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

- a) Meryl Cheney, 5 Whispering Pine Drive, Milford, pothole or other road defect.
- b) Andrea Kotufo, 103 Cook Lane, pothole or other road defect.
- c) Christine McCarthy, 73 Wayside Inn Road, residential mailbox claim (2b).

Reports of Committees:

Councilor Ossing reported the following out of the Finance Committee:

**Marlboro City Council Finance Committee
Monday April 1, 2019
In Council Chambers**

Finance Committee Members Present: **Chairman Ossing; Councilors Robey, Oram and Irish.**

Finance Committee Members Absent: **Councilor Dumais**

Other Councilors in Attendance: **Councilors Delano, Landers and Doucette.**

The meeting convened at 7:12 PM.

- 1. Order No. 19-1007607 – Transfer \$60,000.00 For Fire Department Vehicle Maintenance:** The FINANCE COMMITTEE reviewed the Mayor's letter dated March 20, 2019 requesting a \$60,000.00 transfer from various Fire Department Accounts to the Fire Department Vehicle Maintenance and Repair account due to an increased number of repairs for existing (older) apparatus. The FINANCE COMMITTEE voted 4 – 0 to approve all the transfers.

- 2. Order No. 19-1007618 – Review FY19 Abbreviated Budget and Recommend FY20 Budget Format** – The FINANCE COMMITTEE reviewed an order submitted by Councilor Ossing that appeared on the March 25, 2019 City Council agenda (Agenda item 19) to review the results of the FY19 abbreviated budget process and approve the abbreviated budget authorization format for all departments for the FY20 City budget.

By way of background information, the City Council approved the abbreviated budget process for FY18 on April 24, 2017 (Order Number 17-1006856A) and FY19 on April 23, 2018 (Order No. 18-1007236). In its 2006 Financial Management Review of the City of Marlboro, the Massachusetts Department of Revenue recommended that the City adopt several best financial practices including approving the City budget with the salary and expenditure accounts for each department as opposed to the past practice of approving each individual line item. This recommendation was also made in the City's Fiscal Year 2016 audit performed by Roselli, Clark & Associates. Department heads would not be able to add funds to their approved salary or expenditure accounts without City Council approval. The Auditor will provide a summary of all transfers within a department's budget each month to the City Council.

- The FINANCE COMMITTEE reviewed the FY19 abbreviated budget process (summarized in Attachment 1) and voted 4 - 0 that the process was working properly.
- The FINANCE COMMITTEE voted 4 - 0 to approve the order for the abbreviated budget format for the FY20 budget process that includes the sunset clause to have the City Council assess the results in April 2020 to determine if the practice will continue.
- The FINANCE COMMITTEE agreed to support suspending the rules at the April 8, 2019 City Council meeting to approve the Order to review the results of the FY19 abbreviated budget process and approve the abbreviated budget authorization format for all departments for the FY20 City budget.

- 3. FY20 Finance Committee Budget Review Schedule:** The Finance Committee reviewed the timeline and schedule for the upcoming Finance Committee meetings to review the Mayor's FY20 budget. The Finance Committee agreed to meet on May 9, 13 and 14, 2019 to review the FY20 budget.

The Finance Committee adjourned at 7:35 PM.

Councilor Landers reported the following out of the Public Services Committee:

Meeting Name: City Council Public Services Committee

Date: April 1, 2019

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

Convened: 6:00 PM – Adjourned: 6:55 PM

Present: Chairman Landers; Public Services Committee Members Councilors Doucette and Irish; and Councilor Oram, Ossing, and Robey; Donald Rider (City Solicitor, City of Marlborough)

Reports of Committee Continued:

Order No. 19-1007568: 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. The Public Services Committee met with Albert Galvin of National Grid regarding their petition 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. Mr. Galvin explained the purpose is to install upgraded wire with all new conduit. They were requested to stay off the sidewalks since the area was recently repaved and the plan is to hug the curb with the installation to bring to the residents on Beverly Drive. Chairman Landers expressed the concern about cutting into new streets that were recently done. The road cut is on Framingham Road at Pole 13 across to Beverly Drive where it will on the road against the sidewalk as the request was for them not to touch the sidewalk and minimize disturbance to the road.

Motion made by Councilor Doucette, seconded by the Chair, to approve the petition. The motion carried 3-0.

Order No. 19-1007609: Application for Renewal of Junk Dealer/Second Hand Dealer License, Tony Bitar, d/b/a Hannoush Jewelers, 601 Donald J. Lynch Boulevard. Police Chief Giorgi approved the CORI report for Tony Bitar and had no objection to his application for a Junk Dealer's/Second Hand License. Mr. Bitar stated his business does not do much in the way of buying used jewelry, but he keeps the license as a service to his customers. He informed the committee most of the people who try to use the service are scammers attempting to sell fake jewelry. Mr. Bitar stated they always test the product and he is experienced enough to tell the difference. He provided an update of the business and explained how they do a good business on jewelry repair.

Motion made by Councilor Doucette, seconded by the Chair, to approve the license renewal. The motion carried 3-0.

Order No. 19-1007610: Application for Renewal of Junk Dealer/Second Hand Dealer License, Roman Kimyagarov, d/b/a Arthur & Sons Shoe Repair, 107 Main Street. Police Chief Giorgi approved the CORI report for Roman Kimyagarov and had no objection to his application for a Junk Dealer's/Second Hand License. Mr. Kimyagarov explained his business is to buy jewelry, gold, and precious metals. He buys scrap gold, broken jewelry, and items people no longer wish to wear. The business of buying gold and silver has been up and down this past year and not as busy as in the past. He also shared some of his experiences with people trying to sell fake gold/silver jewelry as well as gold and silver-plated items. Mr. Kimyagarov discussed the leather repair portion of his business.

Motion made by Councilor Irish, seconded by the Chair, to approve the license renewal. The motion carried 3-0.

Reports of Committee Continued:

Order No. 19-1007605: Communication from President Clancy, regarding Proposed Amendment to Chapter 473 of the City Code, Small Cell Wireless Facilities Within Public Rights of Way. Councilor Ossing provided some background on this proposed amendment to the City Code. Recently through the Wireless Communications Committee, there were petitions for pole-mounted, wireless, 5G facilities. During the review of those petitions, the City Solicitor discovered recently issued FCC rules in October 2018 that gave communities 90-days to implement or 180-days to put rules in place for their locality for aesthetic type requirements, i.e. where to locate, how to mount, and color. Through research in other communities, it was decided to implement the process for application fees, application review, what the community is looking for, etc. The City Solicitor compiled the proposed amendment to the City Code based on those from several communities and the FCC knowing it would require some revision going forward. The deadline was 180-days from the FCC rules otherwise the community would be subject to those issued by the FCC. City Solicitor Rider explained the four new sections proposed for the City Code, Chapter 473. The committee discussed the proposed amendment to the City Code and acknowledged it needed approval by their next meeting on April 8, 2019 but had at least two concerns they wanted to review for future revisions. Those two concerns were no small cell facilities be allowed on leaning poles and the timing of a recertification fee in relation to when the initial fee was paid.

Motion made by Councilor Irish, seconded by Councilor Doucette, to approve Order No. 19-1007605. The motion carried 3-0.

Motion made by Councilor Irish, seconded by the Chair, to request a suspension of the rules at the April 8, 2019 City Council meeting to vote on the Proposed Amendment to Chapter 473 of the City Code, Small Cell Wireless Facilities Within Public Rights of Way. The motion carried 3-0.

Motion made and seconded to adjourn. The motion carried 3-0. Meeting adjourned at 6:55 PM.

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

City Council Legislative and Legal Affairs Committee

Monday, April 1, 2019 – 7:05 PM

In Council Chambers

Minutes and Report

Present: Chairman Katie Robey, Councilor Landers, and Councilor Delano.
Other attendees: Councilors Doucette, Irish, Oram and Ossing; City Solicitor Donald Rider; Conservation Officer Priscilla Ryder; and Attorney Kevin Eriksen from Walker Realty LLC.

Order No. 16/17/18/19-1006443D-5: Open Space Covenant and Restriction for certain land on a plan entitled “Open Space Exhibit for Apex Center, 240 Boston Post Road West, Marlborough, MA, dated March 21, 2018.”

Reports of Committee Continued:

The item was removed from the table. The chairman reminded those attending this item had been approved by city council but wasn't signed by Walker Realty as they had an issue with one of the conditions. With the Conservation Commission, having finalized the Snow Storage Plan for the site, the attorneys were able to craft satisfactory language to cover the City Council's concern about snow being dumped in the Open Space area. **It was moved and seconded to approve the order which will become Exhibit B, the Open Space Exhibit which will become Exhibit A and to approve and accept the gift thereof, the amended Open Space Covenant And Restriction as follows: Section III Prohibited and Permitted Acts and Uses, A. Prohibited Acts and Uses -remove the words "and snow" in #5, add in a new #6 to read, "The stockpiling of snow, except in accordance with an approved snow management plan, which plan shall be on file with the City of Marlborough Conservation Commission." Renummer remainder of the items in A as 7-10. Motion carried 3-0.**

A Suspension of Rules will be requested on April 8 to refer this to the City Solicitor to be placed in proper legal form.

It was moved and seconded to adjourn; motion carried 3-0. The meeting adjourned at 7:15 PM.

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

Meeting Name: City Council Urban Affairs Committee

Date: March 26, 2019

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

Convened: 6:57 PM – Adjourned: 7:04 PM

Present: Chairman Juaire (Acting); Urban Affairs Committee Members Councilors Landers and Doucette; Councilor Clancy.

Absent: Chairman Delano (recused) and Councilor Tunnera.

Order No. 18/19-1007461 (X18/19-1007423): 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. The Urban Affairs Committee met with attorney Sem Aykanian regarding Main Street Bank's request to modify their existing special permit to allow for an electronic digital display sign. Mr. Aykanian explained when the original special permit was issued in June of 2009, these types of signs were not done. Since that time, several other banks have applied for and received approval for their own electronic digital display signs and they are requesting the same treatment as these other businesses. They will follow all the City's regulations regarding the operation of their sign.

Reports of Committee Continued:

The Original Special Permit is amended by removing Condition #7 in its entirety and inserting in place thereof the following:

7) The location and design of any signage on the Site shall be reviewed and approved by the City of Marlborough in accordance with § 526-13 entitled, Electronic Message Center Signs and Digital Display Signs, as set forth in the City Code of the City of Marlborough.

Motion made by Councilor Doucette, seconded by Councilor Landers, to approve the application for special permit. The motion carried 3-0.

Order No. 18/19-1007423 (X18/19-1007461): Application for LED Sign Special Permit, Main Street Bank, 81 Granger Boulevard. The Urban Affairs Committee met with attorney Sem Aykanian regarding Main Street Bank's request for a LED Sign Special Permit. There was one condition for the operation of the sign as follows:

1. The Sign shall be operated in accordance with the EMC and Digital Display Sign Ordinance of the City of Marlborough.

Motion made by Councilor Doucette, seconded by the Chair, to approve the application for LED Sign Special Permit. The motion carried 3-0.

Motion made and seconded to adjourn. The motion carried 3-0. The meeting adjourned at 7:04 PM.

Suspension of the Rules requested – granted

ORDERED: That pursuant to Order No. 18-1007236 the City Council Finance Committee reviewed the abbreviated budget process utilized for FY19 and concluded that it worked effectively and further recommends to the full City Council that the practice be continued for FY20, **APPROVED**; adopted.

Suspension of the Rules requested – granted

ORDERED: That the City Council hereby approves the Massachusetts Department of Revenue Financial Review Recommendation for adopting an abbreviated budget authorization format for all departments for the FY20 budget.

It is further moved that the City Council will assess the results in April, 2020 to determine if the practice will continue.

APPROVED; adopted.

Suspension of the Rules requested – granted

ORDERED: BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CITY CODE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED BY AMENDING CHAPTER 473, ENTITLED "POLES, WIRES AND CONDUITS," AS FOLLOWS:

- I. By adding to Chapter 473 a new Article III, entitled "Small Cell Wireless Facilities within Public Rights of Way," as follows:

Sec. 473-27. Purpose.

A. The purpose and intent of this Article III is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of small cell wireless telecommunications facilities in the City of Marlborough. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with small cell wireless facilities. This Article III provides standards necessary to:

- (1) preserve and promote harmonious land uses and the public rights of way in the City;
- (2) promote and protect public health and safety, community welfare, visual resources, and the aesthetic quality of the City;
- (3) provide for the orderly, managed, and efficient development of small cell wireless telecommunications facilities in accordance with federal and state laws, rules, and regulations; and
- (4) encourage new and more efficient technology in the provision of small cell wireless telecommunications facilities.

B. This chapter is not intended, nor shall it be interpreted or applied, to:

- (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services;
- (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulation for rights-of-way management;
- (3) unreasonably discriminate among providers of functionally equivalent services;
- (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; or
- (5) otherwise authorize the City to preempt any applicable federal or state law.

Sec. 473-28. Application Process.

Applications for permits to install small cell wireless facilities shall be processed as follows.

A. Fees. Applications shall be submitted to the City Council by filing with the City Clerk's Office in accordance with subsection D below, accompanied by the application filing fee of \$500.00 per application, payable to the City of Marlborough. The \$500.00 fee will cover up to five (5) locations. Each application for more than 5 installations is subject to a separate fee of \$100.00 per installation.

- B. Public Hearing Notices. The applicant must also pay for legal notices of the public hearing to be mailed to abutters directly abutting, and across the street from, the property where the pole for the proposed small cell wireless facility currently is, or is proposed to be, located. The applicant is responsible for obtaining the abutters list for each pole location contained within the application.
- C. Pre-Submittal Verification by DPW Engineering. No application will be filed as provided in subsection D below unless and until the Engineering Division of the City's Department of Public Works ("DPW Engineering") shall have first verified that the applicant has assembled, to DPW Engineering's satisfaction, all of the application contents listed in subsection E below.
- D. Payment of Application Filing Fees and Number of Application Copies. The applicant shall pay all application filing fees to the City Clerk's Office and shall file the following number of sets of application materials at the offices set forth below:

Number of Sets	Office
3	City Clerk's Office
1	City Engineer
1	Building Commissioner
12	City Council Office

- E. Contents of Application. Applications shall include the following information:
- (1) Applicant's name, address, telephone number and email address.
 - (2) Names, addresses, telephone numbers, and email addresses of anyone acting on behalf of the applicant with respect to the application.
 - (3) Detailed drawings and descriptions of the equipment to be mounted on the pole(s) in question, including:
 - a. Type of equipment;
 - b. Specifications of equipment (including but not limited to dimensions and weight);
 - c. Equipment mount type and material;
 - d. Power source or sources for equipment, including necessary wires, cables, and conduit;
 - e. Expected life of equipment;
 - f. Coverage area of equipment, including:
 - i. Amount of antennas
 - ii. Antenna model
 - iii. Antenna length
 - iv. Antenna height
 - v. Typical coverage area radius;
 - g. Hardening, including:
 - i. If there is a battery backup
 - ii. If there is a generator backup; and
 - h. Renderings/photo simulations and elevation of equipment.

- (4) Detailed map with locations of the poles on which equipment is to be located, including specific pole identification number, if applicable, and the geographic areas the equipment will service.
 - (5) Detailed map showing existing and proposed small cell installations within 500 feet of the application site.
 - (6) Certification by a registered professional engineer that the pole will safely support the proposed equipment.
 - (7) Written consent by the pole owner to the proposed installation.
 - (8) Affidavit from a radio frequency engineer outlining the network/network service requirements in Marlborough and how each installation addresses that need in Marlborough. Such affidavit should characterize, through or with coverage maps, the current level of coverage and how the desired installation(s) will change the current level of coverage, including current and proposed coverage, and the breakdown of “excellent,” “good,” and “poor” reception areas.
 - (9) Liability insurance certificate, naming the City of Marlborough as an additional insured.
 - (10) Description as to why the desired location is superior to other similar locations, from a community perspective, including but not limited to:
 - a. Visual aspects; and
 - b. Proximity to single-family residences.
 - (11) Description of efforts to locate the equipment on existing poles which currently exist or are under construction. A good faith effort to locate on such poles is required and evidence of such efforts must be included within the application.
 - (12) An affidavit from the applicant which certifies that it will maintain the installations in good repair and according to FCC standards, and will remove any installation not in such good repair, or not in use, within sixty (60) days of being no longer in good repair or no longer in use.
- F. Placement of Application on Agenda. Once the application has been submitted and all filing fees have been paid, the City Clerk’s Office will place the application on the City Council agenda for the scheduling of a public hearing.

- G. Shot Clocks. The City Council shall have sixty (60) days from the application's filing date for processing an application for collocation of a small cell wireless facility using a pre-existing pole, and ninety (90) days for processing an application for attachment of small cell wireless facility proposing a new pole. These shot clocks may be extended by mutual written agreement of the City Council and the applicant, such agreement to be timely filed with the City Clerk's Office and a copy of that filing to be submitted for informational purposes on the agenda for the next regular Council meeting; provided, however, that by vote of the standing Council committee to which any given application has been referred by the full Council, that committee may, by simple majority vote at a duly noticed public meeting, authorize the following committee members to sign the written extension agreement on behalf of the full Council: a) the chairman of the committee; or, b) in his or her absence or incapacity, its vice-chairman; or, c) when a quorum of the committee is otherwise not present, the Council President or Vice-President sitting for that meeting as an ex officio member of that committee.
- H. Council Decision. The City Council may grant, grant with conditions, or deny the application based on inadequate capacity of the pole or mounting structure, safety concerns, reliability concerns, failure to meet applicable engineering standards, and/or failure to meet applicable aesthetic requirements as hereinbelow set forth.

Sec. 473-29. Annual Re-Certification and Affidavit.

- A. Annual Re-Certification and Affidavit. Each year on July 1, the small cell wireless equipment owner shall submit an affidavit which shall list, by location, all small cell wireless installations it owns within the City of Marlborough, and shall certify:
- (1) each such installation that remains in use;
 - (2) that such in-use installations remain covered by liability insurance naming the City as an additional insured; and
 - (3) each such installation which is no longer in use.
- B. Annual Re-Certification Fee. The equipment owner shall pay to the City of Marlborough an annual re-certification fee of \$250.00 per installation which remains in use.
- C. Facility No Longer in Use. Any small cell wireless facility which is no longer in use shall be removed by the owner, at the owner's expense, within sixty (60) days of the City Council's receipt of the annual re-certification affidavit.
- D. Non-Removal of Facility No Longer in Use. Any small cell wireless installation which is not removed by the owner, at the owner's expense, within sixty (60) days after being listed in the annual re-certification affidavit as no longer in use shall be subject to a fine of \$100/day until such installation is removed by the owner.

- E. Failure to Timely Submit Re-Certification/Remove Facility No Longer in Use.
Where such annual re-certification has not been timely submitted, or equipment no longer in use has not been removed within the 60-day period, no further applications for small cell wireless installations will be accepted by the City Clerk's Office until such time as the annual re-certification has been submitted and all fees and fines have been paid.

Sec. 473-30. Aesthetics and Additional City Requirements.

A. Poles.

- (1) No small cell wireless equipment shall be installed on double poles.
- (2) Within the public right of way, only pole-mounted antennas shall be permitted and all telecommunications towers within the meaning of City Code sec. 650-25.A are prohibited.
- (3) Absent City Council permission, no new poles are permitted within the public right of way that are not replacing an existing pole. If an applicant proposes to replace a pole in order to accommodate the small cell wireless facility, the pole shall match the appearance of the original pole to the extent feasible, including size, height, color, materials and style, unless another design better accomplishes the objectives of this section as determined by the Council. Such replacement pole shall not exceed the height of the pole it is replacing by more than seven (7) feet.
- (4) If a new pole is permitted by the City Council to be placed within the public right of way, the new pole shall be designed to resemble existing poles in the right of way, including size, height, color, materials and style, unless another design better accomplishes the objectives of this section as determined by the Council. Such new poles that are not replacement poles shall be located no closer than ninety (90) feet to an existing pole.
- (5) Small cell wireless installation equipment (meters, boxes, etc.) shall be mounted on the pole a minimum of eleven (11) feet above ground level.
- (6) No small cell wireless installation equipment shall be replaced or altered on a pole without a re-application, hearing and approval from the City Council, unless the equipment is no longer functioning and it is being replaced with the same or substantially similar equipment.
- (7) The maximum height of any antenna mounted to an existing pole shall not exceed 24 inches above the height of the then-existing pole; provided that in any event:
 - a. no small cell wireless facility shall be located on a pole that is less than twenty-six (26) feet in height; and
 - b. no facility shall exceed thirty-five (35) feet in height, including but not limited to the pole and any antenna that protrudes above the pole.
- (8) Pole-mounted equipment shall not exceed six (6) cubic feet in dimension.
- (9) Not more than one (1) small cell wireless facility shall be mounted per pole.

B. Location.

- (1) Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the right of way, or safety hazards to pedestrians and motorists.
- (2) A facility shall not be located within any portion of the public right of way interfering with access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other vital public health and safety facility.
- (3) Each pole-mounted small cell wireless telecommunications facility must be separated by at least 1,500 feet.
- (4) All new wires needed to service the wireless telecommunications facility must be installed within the width of the existing pole so as to not exceed the diameter and height of the existing pole.

C. Americans with Disabilities Act Compliance. All facilities shall be built and maintained in compliance with the Americans with Disabilities Act (ADA)/Architectural Access Board (AAB).

D. Residential Neighborhoods. If an applicant seeks to place a small cell wireless facility in a residentially-zoned neighborhood, the applicant:

- a. Should seek to avoid attaching to poles that are within twenty-five (25) feet of an existing driveway so that the property owner can plant trees that could shield the wireless equipment from view; and
- b. Should seek to avoid poles where the installation and/or ongoing maintenance will require significant tree trimming due to the wireless equipment.

E. Satisfactory Material, Construction and Work. The small cell wireless facility shall be of such material and construction, and all installation and maintenance work shall be done in such manner, as to be satisfactory to the City Council and DPW Engineering. If the DPW Engineering shall determine that such material, construction and/or work is (a) placing or tending to place at risk the public health, safety, and welfare, (b) interfering or tending to interfere with pedestrian and/or vehicular traffic, and/or (c) causing or tending to cause damage to the public right of way or any property adjacent to the location of the pole in question, the DPW Engineering shall forthwith notify the City Council, which shall review that determination for possible further action as to the applicant.

F. Indemnification. The applicant shall indemnify and hold harmless the City against all damages, injuries, costs, expenses, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and equity, allegedly caused by the acts or neglect of the applicant, its employees, agents and servants, in any manner arising out of the rights and privileges granted herein to the applicant for its small cell wireless facility. Such indemnification shall not be limited by the amount of the applicant's liability insurance naming the City as an additional insured.

- G. City Streets and/or Sidewalks. All cutting of and/or digging into City streets and/or sidewalks by or on behalf of an applicant in conjunction with its small cell wireless facility is prohibited, as is all underground installation associated with the small cell wireless facility; provided, however, that the grounding rod proposed to be installed as part of the small cell wireless facility is permitted as long as:
- 1) The applicant installs the rod immediately adjacent to the pole so as to cause minimal disturbance to the surface of the street or sidewalk; and
 - 2) The applicant restores the street or sidewalk surface to its pre-disturbance condition to the satisfaction of the DPW Engineering.
- H. Repair of Damage. The applicant shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to City streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation or maintenance of a wireless telecommunications facility in the public right of way. The applicant shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the applicant fails to complete such repair within the number of days stated on a written notice from the City Engineering Division, the Division shall cause such repair to be completed at the applicant's sole cost and expense.
- I. Visual Impact Minimization. The small cell wireless facility shall be color-coordinated so as to best minimize the visual impact of the facility.
- J. Side of Pole on which to Mount Equipment. The small cell wireless facility's equipment cabinet, circuit breaker box, and electric meter main shall be mounted on the side of the pole facing away from the roadway.
- K. Future Road Reconstruction/Repair. Any future road reconstruction or repair project by the City and/or the Commonwealth requiring the relocation of the pole shall result in the applicant's moving its small cell wireless facility to another pole in a timely fashion after having been notified by the DPW Engineering about the road project; provided, however, that any such relocation shall require further City Council approval.
- L. Construction and/or Installation Schedule. Prior to the commencement of construction and/or installation of the small cell wireless facility, the applicant shall provide the DPW Engineering with a written construction and/or installation schedule satisfactory to DPW Engineering.

- M. Removal Bond. Prior to the commencement of construction and/or installation of its small cell wireless facility, an applicant shall provide the City's Chief Procurement Officer (the "City CPO") with a bond from a surety authorized to do business in Massachusetts and satisfactory to the City CPO in an amount equal to the cost of removal of the small cell wireless facility from the pole in question and for the repair and/or restoration of the public way, in the vicinity of the pole in question, to the condition the public way was in as of the date when the relevant application was submitted to the City Clerk's Office, said amount to be determined by DPW Engineering. The amount of the bond shall be the total of the estimate by DPW Engineering plus an annual increase of 3% for the operating life of the small cell wireless facility. The applicant shall notify the City CPO and DPW Engineering of any cancellation of, or change in the terms or conditions in, the bond.
- N. Each Requirement a Permit Condition. Each and every requirement set forth in sections 29 and 30 of this Chapter 473 shall be deemed to be continuing conditions on the applicant's pole location permit granted by the City Council.
- O. Failure to Comply with Conditions. An applicant's failure to comply with any of the City Council's conditions to the Council's satisfaction or, as applicable, DPW Engineering or the City CPO, shall result in the City Council's review of the applicant's pole location permit(s).

II. This amendment shall become effective immediately upon passage.

APPROVED; adopted.

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. No objection to passage in one evening.

Suspension of the Rules requested – granted

ORDERED: That the Open Space Covenant and Restriction for certain land on a plan entitled "Open Space Exhibit for Apex Center, 240 Boston Post Road West, Marlborough, MA, refer to the **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE APRIL 29, 2019 CITY COUNCIL MEETING**; adopted.

Suspension of the Rules requested – granted

ORDERED: That 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, refer to the **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE APRIL 29, 2019 CITY COUNCIL MEETING**; adopted.

Councilor Delano recused.

Suspension of the Rules requested – granted

ORDERED: That the Application for LED Sign Special Permit, Main Street Bank, 81 Granger Boulevard, refer to the **CITY SOLICITOR TO BE PLACED IN PROPER LEGAL FORM FOR THE APRIL 29, 2019 CITY COUNCIL MEETING**; adopted.

Councilor Delano recused.

ORDERED: That the Reappointment of Patricia Pope as Executive Director of the Council on Aging for a three-year term to expire from date of City Council approval, **APPROVED**; adopted.

Councilor Juaire recused.

ORDERED: That the Order relative to Municipal Aggregation that was approved by the City Council on April 10, 2017 (Order No. 17-1006881) is hereby replaced and the following adopted in place thereof:

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.

APPROVED; adopted.

Councilor Doucette opposed.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Proposed Zoning Ordinance Amendment, Chapter 650 §22 & §5, relative to Multifamily Retirement Community, 90 Crowley Drive, in proper legal form, Order No. 18/19-1007452D (X18-1007198G), **FILE**; adopted.

ORDERED: 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. Section 650-5, entitled “Definitions; word usage,” is hereby amended by striking out in its entirety the definition of “retirement community” and inserting in place thereof the following new definitions:

RETIREMENT COMMUNITY - DETACHED AND TOWNHOMES

– A community consisting of detached or attached (only alongside walls in so-called “townhouse” style) structures, constructed expressly for use as housing for persons aged 55 or over, on one parcel or on contiguous parcels of land, subject to the provisions of MGL c. 151B, § 4, as amended.

RETIREMENT COMMUNITY - MULTIFAMILY – A community consisting of a single multiple unit structure constructed expressly for use as housing for persons aged 55 or over, on one parcel or on contiguous parcels of land, subject to the provisions of MGL c. 151B, § 4, as amended.

- II. Section 650-22, entitled “Retirement Community Overlay Districts,” is hereby amended as follows:

- a. By striking out in its entirety subsection A thereof, entitled “Purpose,” and inserting in place thereof a new subsection A, entitled “Purpose,” as follows:

Purpose. The purpose of the Retirement Community Overlay District shall be to advance the public health, safety and welfare by providing for the development of retirement communities that provide housing choices for persons aged 55 or over on sites which are otherwise zoned for other purposes but which, because of the size of the parcel being developed and its proximity to other residential neighborhoods and/or residential amenities and supportive services, will provide an appropriate environment for a retirement community

- b. By amending subsection C thereof, entitled “Permitted uses,” as follows:

- i. by striking out in the introduction thereto the words “retirement community” and inserting in place thereof the following words:

Retirement Community - Detached and Townhomes, or
a Retirement Community – Multifamily

- ii. by striking out the numbered provisions in subsection C which follow the introduction thereto and inserting in place thereof a new sub-subsection (i), entitled "Retirement Community - Detached and Townhomes (RCO-D/T)," as follows:

(i) Retirement Community - Detached and Townhomes (RCO-D/T).

- (1) No building in an RCO-D/T community shall be more than 2 1/2 stories in height.
- (2) Each building in an RCO-D/T community shall face either upon an existing street or upon a public or private way constructed within said RCO-D/T community and shall have a minimum front yard of no less than 20 feet from the edge of the paved way to the closest point of the structure and a side yard of not less than 10 feet from the edge of the paved way to the closest point of the structure. Each building, whether principal or accessory, shall be at least 10 feet distant from any other building by airline distance between the nearest points of the buildings.
- (3) No dwelling in an RCO-D/T community shall contain less than 1,000 square feet of living area or more than 2,400 square feet of living area.
- (4) All dwelling units in an RCO-D/T community shall be detached from the others or attached only alongside walls in the so-called "townhouse" style.
- (5) The lot or lots on which an RCO-D/T community is located shall contain, on a consolidated basis, at least 7,000 square feet per housing unit.
- (6) No part of any principal building in an RCO-D/T community shall be less than 25 feet from any exterior lot line or less than 50 feet from the side of any public way.
- (7) Each dwelling unit in an RCO-D/T community shall have its own attached yard area.

- (8) Required off-street parking for each dwelling unit in an RCO-D/T community shall be adjacent thereto. Each unit shall be required to provide at least one parking space inside a garage and an additional space in front of a garage, said garage to be attached to said unit. The City Council may, as a condition of its special permit, require additional off-street parking areas to be used in common by dwelling unit owners and their invitees. In addition, the City Council may, as a condition of the special permit, require the adoption of legally enforceable condominium bylaws or other similar regulations to limit or prohibit the presence in an RCO-D/T community, either entirely or except in designated locations, of boats, boat trailers, campers, or other recreational vehicles.
- (9) Maximum combined lot coverage in an RCO-D/T community shall not exceed 40% of the total lot size.
- (10) Each lot or contiguous lots upon which an RCO-D/T community is located shall have total frontage on an existing public way of at least 250 feet. Each lot or combination of lots shall have a total size of not less than 10 acres. The underlying zoning district for all said land shall be either Industrial or Limited Industrial.
- (11) The City Council may, as a permit condition, require that all proposed condominium bylaws or similar binding RCO-D/T community regulations which may be relevant to the issuance of the permit, including but not limited to bylaw provisions prohibiting the presence of children residing in an RCO-D/T community and limiting or prohibiting the presence in a RCO-D/T community of boats, boat trailers, or recreational vehicles, be made a part of the special permit and that any change to or failure to enforce said provisions shall be a violation of said special permit.

- (12) The City Council may, as a permit condition, require that a proposed RCO-D/T community be constructed entirely on one lot, and that, from and after the date of the issuance of the building permit for said community or any portion thereof, no subdivision of said lot shall be allowed without the express approval of the City Council; provided, however, that the recording of a condominium master deed and the conveyance of condominium units within the area covered by said deed shall be allowed.
 - (13) No unit in an RCO-D/T community shall have more than three bedrooms.
 - (14) If an RCO/DT community is proposed which contains at least 30 acres of land, the following provisions shall supersede those found elsewhere in § 650-22:
 - (a) The lot or lots on which an RCO/DT community is located shall contain at least 5,000 square feet per unit in the RCO/DT community;
 - (b) Maximum lot coverage in the RCO/DT community shall not exceed 50% of the total lot size, excluding from the lot size any land which, prior to development of the site as a RCO/DT community, would be defined as a "resource area," as that term is defined in M.G.L. c. 131, §40.
 - (c) Each lot or contiguous set of lots upon which a RCO/DT community is located shall have total frontage on an existing public way, or on a private way laid out by the City Council pursuant to M.G.L. c. 82, §21, of at least 250 feet; provided, however, that said frontage need not be continuous.
- iii. by inserting after new sub-subsection (i), entitled "Retirement Community – Detached and Townhomes (RCO-D/T)," a new sub-subsection (ii), entitled "Retirement Community - Multifamily (RCO-MF)," as follows:
- (ii) Retirement Community - Multifamily (RCO-MF).

- (1) The total area of the tract of contiguous parcels to be developed as an RCO-MF shall not be less than ten (10) acres. The underlying zoning district for all said land shall be either Industrial or Limited Industrial and be located within the area that lies within the perimeter of the following roadways: commencing at the Fitchburg Street intersection at the Rte. 85/290 Connector Road; then west along the Rte. 85/290 Connector Road to the intersection of Rte. 495; then south along Rte. 495 to where it passes over the intersection with Berlin Road; then southeasterly along Berlin Road to the intersection with West Hill Road; then easterly along West Hill Road to the intersection with Pleasant Street; then north along Pleasant Street to the intersection with Fitchburg Street; then north along Fitchburg Street to the intersection with the Rte. 85/290 Connector Road. All of said land being in reasonable proximity to the UMass Memorial Marlborough Hospital and the interstate highway intersection of Rte. 495 and Rte. 290.
- (2) An RCO-MF may contain one (1)- and two (2)-bedroom units and studio units for independent living persons, and may include services and amenities for its residents, including but not limited to, dining facilities, in-unit kitchens, common rooms, activity rooms, exercise rooms, theater, chapel, library, pharmacy/gift shop/convenience store, beauty salon, barber shop, personal banking services, offices and accessory uses or structures, concierge and valet services, third-party vendor services, and recreation facilities.
- (3) No building in an RCO-MF shall be more than 3 stories in height.
- (4) The total number of dwelling units in an RCO-MF shall be limited to 12 units per acre.
- (5) No part of any principal building in an RCO-MF shall be less than 50 feet from any exterior lot line or less than 100 feet from any public way.
- (6) Maximum combined lot coverage in an RCO-MF, including any permitted accessory structures, shall not exceed 40% of the tract or contiguous parcels.

- (7) The tract or contiguous parcels upon which an RCO-MF is located shall have a minimum total frontage on an existing public or private way of at least 200 feet.
- (8) The City Council may, as a permit condition, require that all proposed condominium bylaws or similar binding RCO-MF regulations which may be relevant to the issuance of the permit, including but not limited to bylaw provisions prohibiting the presence of children residing in a retirement community and limiting or prohibiting the presence in a retirement community of boats, boat trailers, or recreational vehicles, be made a part of the special permit and that any change to or failure to enforce said provisions shall be a violation of said special permit.
- (9) The City Council may, as a permit condition, require that a proposed RCO-MF be constructed entirely on one tract and that, from and after the date of the issuance of the building permit for said community no subdivision of said tract shall be allowed without the express approval of the City Council; provided, however, that the recording of a condominium master deed and the conveyance of condominium units within the area covered by said deed shall be allowed.
- (10) A minimum of 1.0 parking space per dwelling unit shall be provided in an RCO-MF. Attached and detached garages shall count toward this parking requirement.
- (11) No dwelling unit in an RCO-MF shall contain less than 500 square feet of living area or more than 1300 square feet of living area.

- (12) No building in an RCO-MF need be located or placed further from the exterior line of any street or public way than the average distance from such street or way line of the dwellings or other principal buildings located on the lots adjacent thereto on either side. In determining such average, a vacant side lot having a frontage of 50 feet or more shall be considered as though occupied by a building having the required setback, and a lot separated from the lot in question only by a vacant lot having a frontage of less than 50 feet shall be deemed an adjacent lot. The point of measurement of the average distance shall be from the closest point of the principal building to the street or public way regardless of parcel ownership.
- (13) In an RCO-MF, there shall be provided with each multifamily building a landscaped area equal to the greatest single floor area of the building, provided that such landscaped area may include undisturbed natural areas such as vegetated areas, woodlands, wetlands and floodplain areas.

APPROVED; adopted.

Councilor Irish opposed.

First Reading, suspended; Second Reading, adopted; Passage to Enroll, adopted; Passage to Ordain; adopted. No objection to passage in one evening.

ORDERED: That the Communication from City Solicitor, Donald Rider, re: Special Permit for Marc Buchan, to demolish the existing one story single-family dwelling and construct a new two-story single-family dwelling on the same foundation footprint at 180 Cullinane Drive, in proper legal form, Order No. 19-1007512B, **FILE;** adopted.

ORDERED:

DECISION ON A SPECIAL PERMIT

MARC BUCHAN
180 Cullinane Drive, Marlborough, MA

CITY OF MARLBOROUGH
CITY COUNCIL ORDER NO. 19-1007512C

DECISION ON AN APPLICATION FOR SPECIAL PERMIT

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Marc Buchan of 180 Cullinane Drive, Marlborough, MA 01752, as provided in this Decision and subject to the following Findings of Fact and Conditions:

PROCEDURAL FINDINGS

1. Marc Buchan, with an address of 180 Cullinane Drive, Marlborough, MA 01752, is the owner of real property located at 180 Cullinane Drive, Marlborough, MA 01752 (the "Applicant").
2. The Applicant is the owner of said real property which is described in a deed recorded with the Middlesex South District Registry of Deeds at Book 68745, Page 400, and identified on the City of Marlborough Assessor's Maps as Map 6, Parcel 115 (the "Site").
3. The Applicant, on or about December 18, 2018, filed with the City Clerk of the City of Marlborough an Application to City Council for Issuance of Special Permit (the "Application") under Section 12, Paragraph B of Chapter 650 (Zoning Ordinance) of the Code of the City of Marlborough to demolish the existing one story single-family dwelling located on the Site and to construct a new two-story single-family dwelling on the same existing foundation footprint (the "Project").
4. The Application 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 in the amount of \$300.00, (d) Plan Delivery Certification, (e) Tax Payment Certification, (f) Abutters List, (g) Existing and Preliminary Site Plans, (h) Architectural Drawings, (i) Certificate of Completeness of Application, and (j) Zoning Denial Letter (dated November 20, 2018), (collectively the "Documents"), which Documents are incorporated herein and become a part of this Decision. Eleven sets of documents were delivered to the City Council and one set each to the Police Chief, the Fire Chief, the City Planner (Building Commissioner), the City Engineer, and the Conservation Officer, all in accordance with Section 59 of Chapter 650 of the Zoning Ordinance of the City of Marlborough.
5. In accordance with the Rules and Regulations of the City Council and M.G.L. c. 40A, §§ 9 and 11, the City Council established a date for a public hearing on the Application, and caused to be advertised notice of said hearing and the date thereof in the Main Street Journal. All necessary abutters, as certified by the Office of the Marlborough Assessors, were provided notice as required by law.

6. The Marlborough City Council held a public hearing on the Application on February 25, 2019 in accordance with the published notice (the “Public Hearing”). The time for the City Council to take final action on the Application is May 26, 2019, a Sunday; per M.G.L. c. 4, § 9 the next succeeding business day for final action is Tuesday, May 28, 2019.
7. The Applicant presented testimony at the Public Hearing detailing the Project, its impact upon the neighborhood, and such issues as the City Council and members of the public deemed appropriate. Members of the public had the opportunity to testify at the Public Hearing. Subjects of concern were the deteriorated condition of the existing single-family dwelling, the proposed new two story single-family dwelling, and the existing foundation side setback. A direct abutter, Shawn McCarthy of 185 Cullinane Drive, spoke in support of the Project.
8. The Site is located in the A-3 zoning district.
9. The Building Commissioner has determined that the existing one-story single-family dwelling, which is located on a nonconforming lot, is a legal pre-existing nonconforming structure with respect to side yard setback; and that the proposed two-story single-family dwelling would increase or intensify the setback nonconformity. Specifically, the A-3 zoning district, where the Site is located, requires a side yard setback of 15', whereas the existing one-story single-family dwelling does not conform because of its existing side yard setback of 5'. The proposed reconstruction of the dwelling would add an additional second floor within the side yard setback area, thereby intensifying the setback nonconformity and requiring a special permit from the City Council. The Zoning Denial Letter of the Building Commissioner, dated November 20, 2018, is attached hereto as “Attachment A.”
10. The existing site plan submitted with the Application is entitled, “Existing Conditions Plan, Located at 180 Cullinane Drive, Marlborough MA; Prepared for: Marc Buchan, 65 Country Lane, Marlborough, MA 01752;” Prepared by: Land Planning, Inc., 167 Hartford Ave., Bellingham, MA 02019; graphic scale 1" = 10'; dated April 30, 2018 (Sheet No. 1) (the “Existing Conditions Plan”), attached hereto as “Attachment B.”
11. The site plan submitted with the Application is entitled, “Site Plan, Located at 180 Cullinane Drive, Marlborough MA; Prepared for: Marc Buchan, 65 Country Lane, Marlborough, MA 01752;” Prepared by: Land Planning, Inc., 167 Hartford Ave., Bellingham, MA 02019; graphic scale 1" = 10'; dated March 24, 2017 (Sheet No. 1) (the “Site Plan”), attached hereto as “Attachment C.”
12. The architectural drawings submitted with the Application are entitled “Private Residence, 180 Cullinane Drive, Marlborough, MA;” Prepared by: VU Architecture, 167 Annie Moore Road, Bolton, MA 01740; dated August 31, 2017 (Drawing Nos. A-1, A-2, A-3, A-4) (the “Architectural Drawings”) attached hereto as “Attachment D.”

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

- A. The City Council finds that it may grant a 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.
- C. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.
- D. The City Council makes these findings subject to the completion and adherence by the Applicant, his successors and/or assigns to the conditions more fully set forth herein.
- E. The City Council finds that the expansion or alteration of the existing legally nonconforming one story single-family structure at the Site, by demolition thereof and construction of the proposed new two-story single-family dwelling, is not substantially more detrimental to the neighborhood than the existing non-conforming use and structure, that it is an appropriate use, and that is 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.
- F. The City Council, pursuant to its authority under M.G.L. c. 40A and the Zoning Ordinance of the City of Marlborough, hereby GRANTS the Applicant a Special Permit to build a single-family dwelling as shown on the Plans filed, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding on the Applicant, his successors and/or assigns:
 - 1. Demolition and Construction in Accordance with Applicable Laws. Demolition and 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 Site Plan and Architectural Drawings as may be subject to minor modifications with prior written approval of the Building Commissioner.
 - 2. Work in Conformance with Special Permit. All work performed at the Site shall be done in compliance with this Special Permit decision.
 - 3. Recording of Special Permit. In accordance with the provisions of M.G.L. c. 40A, Section 11, the Applicant at his 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 the 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 proposed expansion. 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.

APPROVED; adopted.

Yea: 11 – Nay: 0

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

ORDERED: It is moved, in conformance with MGL c. 30A, § 21(a)(3), that the Marlborough City Council conduct an executive session for the purpose of discussing strategy in litigation involving property off Williams Street, as an open meeting may have a detrimental effect on the litigating position of the City Council, and the chair hereby declares that an open meeting may have that effect.

It is further moved and stated that the City Council will re-convene in open session after the executive session for the purposes of adjournment only.

APPROVED; adopted.

Yea: 11 – Nay: 0

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

ORDERED: There being no further business, the regular meeting of the City Council is herewith adjourned at 10:35 PM; adopted.