

# CITY OF MARLBOROUGH MEETING POSTING

Meeting: Planning Board

Date: January 24, 2022

Time: 7:00 PM

Location: Memorial Hall, 3<sup>rd</sup> Floor, City Hall, 140 Main Street, Marlborough, MA 01752

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CITY OF MARLBOROUGH

2022 JAN 20 P 2:26

This meeting of the Planning Board will be held in Memorial Hall on Monday, January 24, 2022 at 7:00 PM.

## PUBLIC ATTENDANCE IS PERMITTED

### Agenda Items to be Addressed:

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**1. Draft Meeting Minutes**

A. January 10, 2022

**2. Chair's Business (None)**

**3. Approval Not Required (None)**

**4. Public Hearings (None)**

**5. Subdivision Progress Reports**

A. Commonwealth Heights Subdivision – ongoing discussion

**6. Preliminary/Open Space/Limited Development Subdivision (None)**

**7. Definitive Subdivision Submissions**

A. 342 Sudbury Street, Marlborough, MA 01752 – Definitive Subdivision Plan – ongoing discussion

Owner of Land: The 342 Sudbury Street Trust

Name of Engineer: Robert Parente, P.E., P.L.S. (328 Desimone Drive, Marlborough, MA 01752)

Deeds Reference: Book: 77825 Page: 110

Documents from the Legal Department:

- Correspondence from City Solicitor Jason Grossfield
- Covenant
- Certificate of vote
- Performance bond

**8. Signs (None)**

**9. Correspondence (None)**

**10. Unfinished Business (None)**

**11. Calendar Updates**

A. Vote on 342 Sudbury Street Definitive Subdivision Application – February 27, 2022

**12. Public Notices of other Cities & Towns (None)**

THE LISTING OF TOPICS THAT THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING IS NOT INTENDED AS A GUARANTEE OF THE TOPICS THAT WILL HAVE BEEN DISCUSSED. NOT ALL TOPICS LISTED MAY IN FACT BE DISCUSSED, AND OTHER TOPICS NOT LISTED MAY ALSO BE BROUGHT UP FOR DISCUSSION TO THE EXTENT PERMITTED BY LAW.

**MINUTES**  
**MARLBOROUGH PLANNING BOARD**  
**MARLBOROUGH, MA 01752**

1A

**Call to Order**

**January 10, 2022**

The Meeting of the Marlborough Planning Board was called to order at 7:00 pm in Memorial Hall, 3rd Floor City Hall, 140 Main Street, Marlborough, MA. Members present: Barbara Fenby, Sean Fay, Phil Hodge, George LaVenture, Chris Russ, and Matthew Elder. Meeting support provided by City Engineer, Thomas DiPersio.

**First Order of Business: Planning Board Organizational Meeting – Election of Chairperson and Clerk**

Dr. Fenby opened the organizational meeting.

Mr. Elder opened the nominations for the Planning Board Chairperson. Mr. Russ nominated Dr. Barbara Fenby, seconded by Mr. LaVenture. There were no additional nominations. On a motion by Mr. Russ, seconded by Mr. LaVenture the board voted to elect Dr. Barbara Fenby as Chairperson of the Marlborough Planning Board for the year 2022. Yea: Elder, Fay, Hodge, LaVenture and Russ. Nay: 0. Motion carried.

Dr. Fenby opened the nominations for the Planning Board Clerk. Mr. Russ nominated Mr. George LaVenture, seconded by Mr. Elder. There were no additional nominations. On a motion by Mr. Russ, seconded by Mr. Elder the board voted to elect Mr. George LaVenture as Clerk of the Marlborough Planning Board for the year 2022. Yea: Elder, Fay, Hodge, Russ, and Fenby. Nay: 0. Motion carried.

**1. Draft Meeting Minutes**

**A. December 20, 2021**

On a motion by Mr. Fay, seconded by Mr. Elder, the Board voted to accept and file the December 20, 2021 meeting minutes with minor typo edits. Yea: Elder, Fay, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried.

**2. Chair's Business**

**A. Proposed 2022 Planning Board Meeting Calendar**

The Board reviewed the draft 2022 Planning Board meeting calendar.

On a motion by Mr. LaVenture, seconded by Mr. Fay the board voted to adopt the draft calendar as the 2022 Planning Board calendar. Yea: Elder, Fay, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried.

**B. Certification Pursuant to G.L. c. 39, Section 23D ("Mullin Rule")**

Dr. Fenby announced Mr. Elder had filed the Certification Pursuant to G.L. c. 39, Section 23D ("Mullin Rule") regarding the November 8, 2021, 342 Sudbury Street Definitive Subdivision Plan's public hearing allowing him to vote on the decision. – See attached.

**3. Approval Not Required**

**A. 547 Stow Road, Marlborough, MA 01752 – ongoing discussion**

Applicant: McCabe Family Irrevocable Trust and Judith Mello McCabe

Deed Reference: Book: 66136 Page: 582

Deed Reference: Book: 78814 Page: 591

Surveyor: Robert Parente, P.E., P.L.S. (328 Desimone Drive, Marlborough, MA 01752)

Mr. LaVenture read the January 7, 2022 correspondence from City Engineer, Thomas DiPersio, Engineering Division into the record.

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to accept, file, and endorse the 547 Stow Road Plan of Land dated December 15, 2021, revised January 6, 2022, as Approval Not required under the Subdivision Control Law. Yea: Elder, Fay, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

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**4. Public Hearings (None)**

**5. Subdivision Progress Reports**

**A. Commonwealth Heights Subdivision – ongoing discussion**

Mr. LaVenture read the December 27, 2021 correspondence from City Solicitor, Jason Grossfield, Legal Department into the record.

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the correspondence. Yea: Elder, Fay, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried.

The Board discussed their opinions on the definition of “commencement of work” and the need for standards the Board will follow to determine if the Board has factual basis to make a rescission. The Board discussed specifics on past rescissions and the Board’s history of holding developers accountable.

On a motion by Mr. Elder, seconded by Mr. LaVenture the Board voted to send the City Solicitor, Jason Grossfield communication requesting him to attend the next Planning Board meeting on January 24, 2022 and to provide standards and procedural guidance for rescission. Yea: Elder, Fay, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried.

**6. Preliminary/Open Space/Limited Development Subdivision (None)**

**7. Definitive Subdivision Submissions**

**A. 342 Sudbury Street, Marlborough, MA 01752 – Definitive Subdivision Plan – ongoing discussion**

Owner of Land: The 342 Sudbury Street Trust

Name of Engineer: Robert Parente, P.E., P.L.S. (328 Desimone Drive, Marlborough, MA 01752)

Deeds Reference: Book: 77825 Page: 110

Mr. LaVenture read the December 16, 2021 correspondence from abutters residing at (24, 36 & 45 Harper Circle Marlborough, MA 01752) into the record.

Mr. LaVenture read the January 7, 2022 correspondence from City Engineer, Thomas DiPersio, Engineering Division into the record.

Mr. LaVenture read the January 6, 2022 correspondence from Neal Vigeant into the record.

On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence. Yea: Elder, Fay, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried.

The Board reviewed the draft certificate of vote.

Dr. Fenby explained she had a discussion with Priscilla Ryder about the Conservation Commission’s willingness to enforce the buffer zone.

Mr. Fay suggested a change on page 4, number 3. “That the Conservation Commission be specified as the entity designated to enforce the buffer zone and may delegate enforcement authority to Code Enforcement at their discretion.”

Mr. Fay suggested a change on page 3, adding a number 6. “The above findings are based on the minimal impact posed by a one buildable lot subdivision.”

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The Board reviewed the draft covenant.

Mr. Fay suggested a change on page 2, number 10, a. "The Natural Buffer Zone shall be protected as shown on the Plan in perpetuity. At the request of the Planning Board the Conservation Commission or Code Enforcement if the Conservation Commission so delegates, is the recommended steward for enforcement, and for any questions relative to allowed uses or activities in this buffer zone."

Mr. Fay and Mr. Russ discussed standards for future subdivision language and suggested a change on page 3, number 14. "Prior to the execution of this Covenant, the Covenantor agrees to submit a work schedule, and a progress report every month beginning 60-days after the Covenant is signed, to the City Engineer, with copies to the Planning Board, until said subdivision has been completed. Said progress reports shall be delivered to the Planning Board prior to the third Monday of each and every month. Failure to comply with the provisions of this paragraph shall give the Planning Board the right to rescind the approval of the application for subdivision approval after notice to the Covenantor and opportunity to be heard."

Mr. Parente and the Planning Board Administrator discussed dates that need to be updated from December 15, 2021 to January 6, 2022 referencing the most recent revised plan dates in both the draft certificate of vote and the draft covenant.

On a motion by Mr. LaVenture, seconded by Mr. Russ the board voted to send the draft covenant and draft certificate of vote to the Legal Department for review. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Motion carried. 6-0.

On a motion by Mr. Fay, seconded by Mr. Elder, the Board voted to approve all motions related to the waivers based upon the findings contained in the certificate of vote and the Board's determination that the approval of the waivers is in the best interest of the City. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Motion carried. 6-0.

**Waiver Votes:**

- 1) On a motion by Mr. Fay, seconded by Mr. Elder, it was duly voted:  
To grant a waiver of Article IV. Design Standards § A676-12.C.1.a, to allow the reduction in the roadway layout to 40 feet. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Motion carried. 6-0.
- 2) On a motion by Mr. Elder, seconded by Mr. LaVenture, it was duly voted:  
To grant a waiver of Article V. Required Improvements for an Approved Subdivision § A676-24.B.2.a, to allow a reduction in the pavement width to 18 feet including berms. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Motion carried. 6-0.
- 3) On a motion by Mr. Elder, seconded by Mr. Russ, it was duly voted:  
To grant a waiver of Article V. Required Improvements for an Approved Subdivision § A676-26.A, to allow the elimination of sidewalks. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0 Motion carried. 6-0.
- 4) On a motion by Mr. Elder, seconded by Mr. Russ, it was duly voted:  
To grant a waiver of Article V. Required Improvements for an Approved Subdivision § A676-26.B, to allow cape cod berm in lieu of granite curbing. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Motion carried. 6-0.

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- 5) On a motion by Mr. Elder, seconded by Mr. Russ, it was duly voted:  
To grant a waiver of Article V. Required Improvements for an Approved Subdivision § A676-24.A.4-1/2 and A676-24.C, to allow the construction of the roadway in accordance with the cross section on the profile sheet, including the elimination of the geotextile fabric under the road base and the reduction of the pavement thickness to four inches of bituminous concrete. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Motion carried. 6-0.
- 6) On a motion by Mr. Elder, seconded by Mr. Russ, it was duly voted:  
To grant a waiver of Article IV. Design Standards § A676-12.E.2, to allow the construction of a hammerhead turnaround in lieu of a circular 44' radius paved turnaround. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Motion carried. 6-0.
- 7) On a motion by Mr. Elder, seconded by Mr. Russ, it was duly voted:  
To grant a waiver of Article V. Required Improvements for an Approved Subdivision § A676-25.C.2, to allow the use of HDPE drainage pipe in lieu of RCP pipe. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Motion carried. 6-0.
- 8) On a motion by Mr. Elder, seconded by Mr. Russ, it was duly voted:  
To grant a waiver of Article IV. Design Standards § A676-21, to allow the elimination of street lighting in the roadway. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Motion carried. 6-0.
- 9) On a motion by Mr. Elder, seconded by Mr. Russ, it was duly voted:  
To grant a waiver of Article IV. Design Standards A676-10.L.1, to allow the roadway to remain in private ownership and to be owned and maintained by the Owner of Lot 2. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Motion carried. 6-0.

On a motion by Mr. Elder, seconded by Mr. Russ, it was duly voted:  
To approve the following definitive subdivision plan with each of the nine waivers granted:

Definitive Subdivision Plan of 342 Sudbury Street, Marlborough, Massachusetts 01752  
Owner: Neal Vigeant, Trustee of the 342 Sudbury Street Trust  
Subdivider: Neal Vigeant, Trustee of the 342 Sudbury Street Trust  
Prepared by: Robert Parente, P.E., P.L.S. (328 Desimone Drive, Marlborough, MA 01752  
Date: October 15, 2021 (Last revised January 6, 2022)

Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Motion carried. 6-0.

**8. Signs (None)**

**9. Correspondence (None)**

**10. Unfinished Business (None)**

**11. Calendar Updates**

- A. Vote on 342 Sudbury Street Definitive Subdivision Application – February 27, 2022

**MINUTES  
MARLBOROUGH PLANNING BOARD  
MARLBOROUGH, MA 01752**

**12. Public Notices of other Cities & Towns**

A. Town of Hudson – Zoning Board of Appeals

On a motion by Mr. Elder, seconded by Mr. LaVenture, the Board voted to accept and file the public notices. Yea: Elder, Fay, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried.

The Board signed the 547 Stow Road mylar for the Approval Not Required.

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to adjourn the meeting. Yea: Elder, Fay, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried.

Respectfully submitted,

/kmm

George LaVenture/Clerk



# *City of Marlborough*

## **Legal Department**

140 MAIN STREET  
MARLBOROUGH, MASSACHUSETTS 01752  
TEL (508) 460-3771 FAX (508) 460-3698 TDD (508) 460-3610  
[LEGAL@MARLBOROUGH-MA.GOV](mailto:LEGAL@MARLBOROUGH-MA.GOV)

7A

*JASON D. GROSSFIELD*  
CITY SOLICITOR

VIA E-MAIL ONLY

January 20, 2022

Barbara Fenby, Chair  
Planning Board  
City of Marlborough  
140 Main Street  
Marlborough, MA 01752

Re: Definitive Subdivision Plan, 342 Sudbury Street

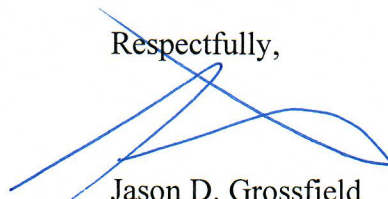
Dear Honorable Planning Board Members:

As requested, I have reviewed the proposed form of the certificate of vote and covenant, in connection with the above-referenced subdivision plan. Enclosed for the Board's consideration, please find a red-line version showing recommended revisions, and a clean version which is in proper legal form incorporating these revisions.

As I understand that a cash deposit form of surety may be forthcoming, I've also prepared a draft form of performance bond secured by cash deposit for the Planning Board's consideration.

Please don't hesitate to contact me with any questions.

Respectfully,



Jason D. Grossfield  
City Solicitor

Enclosures

cc: Applicant  
Thomas DiPersio, Jr., City Engineer

**CERTIFICATE OF VOTE  
DEFINITIVE SUBDIVISION PLAN  
342 SUDBURY STREET**

January ~~14~~<sup>24</sup>, 2022

Pursuant to ~~§ A-676~~MGL c. 41, s. 81 and the Planning Board's Rules and Regulations Governing the Subdivision of the Land in Marlborough ~~City Code~~, the Planning Board of the City of Marlborough (the "Planning Board") hereby certifies that on January 10, 2022 it voted to approve a Definitive Subdivision Plan for a Residential Subdivision for property located on 342 Sudbury Street, Marlborough, MA 01752 owned by Neal Vigeant, Trustee of the 342 Sudbury Street Trust as follows:

**PROCEDURAL FINDINGS:**

1. On October 15, 2021, an application (the "Application") was filed on behalf of Neal Vigeant, Trustee of the 342 Sudbury Street Trust with a principal place of business of 342 Sudbury Street, Marlborough MA 01752 (the "Applicant"), pursuant to M.G.L. c. 41, ~~§ 81W81O~~, and the Planning Board's Rules and Regulations Governing the Subdivision of Land in Marlborough (the "Rules and Regulations"), seeking approval of two (2) lot, single-family definitive subdivision plan as shown on a plan entitled "Definitive Subdivision Plan, 342 Sudbury Street" prepared by Robert Parente, P.E., P.L.S., 21 Chapin Street., Northboro, MA 01532, dated October 15, 2021 and last revised on January 6, 2022 (the "Plan"), on land identified on the City of Marlborough's Assessor's Map ("Assessor's Map") as Map 23, Parcel 7, located on 342 Sudbury Street, Marlborough, MA 01752, owned by The 342 Sudbury Street Trust ("Trust"), further identified in the Middlesex South District Registry of Deeds in Book 77,82577825 Page 110 and consisting of 3.35 acres of land ("Development").
2. The Planning Board provided copies of the Application to other City boards and commissions, departments and officials including, but not limited to, the Building Commissioner, Conservation Commission, Department of Public Works, Fire Chief, City Engineer and City Solicitor. The Applicant further provided a copy of the Application to the Board of Health.
3. The Conservation Commission submitted a letter to the Board dated November 8, 2021 requesting confirmation that any work relative to this project is outside of the 100' buffer zone and 200' riverfront area to the adjacent stream located between the 342 Sudbury Street lot and Harper Circle. The letter indicated the final plan should include the following: the 100' buffer zone, the 200' riverfront area, a clear definition of the referenced "Natural Buffer" to ease future enforcement and erosion controls to prevent mud from fracking or flowing into Sudbury Street or onto adjacent downhill properties to protect native wildlife in the area.
4. The Board of Health submitted an email correspondence dated November 19, 2021 indicating the Board of Health had reviewed the Definitive Subdivision Plans for 342 Sudbury Street and sees no objections to the Planning Board issuing a subdivision approval



if they deem it appropriate given their concerns were engineering, and conservation based which were both addressed in the November 15, 2021 revised plans.

5. The City Engineer submitted review letters dated November 1, 2021, November 19, 2021 and December 16, 2021 summarizing engineering-related comments on the plans. The City Engineer indicated that all engineering-related issues have been addressed, and that there would be a benefit to the City not requiring a fully-constructed public roadway for this one-house subdivision.
6. The Assistant Fire Chief submitted an emailed correspondence dated August 27, 2021 indicating that the Fire Department did not have an issue with the proposed hammerhead turn-around with respects to emergency access.
7. After notice and publication was provided pursuant to the applicable provisions of M.G.L. c. 41, § 81T of the Subdivision Control Law, and the applicable provisions of the Rules and Regulations, a public hearing on the Application commenced on November 8, 2021. The Planning Board closed the public hearing on November 8, 2021.
8. Planning Board members Barbara Fenby, Sean Fay, Phillip Hodge, George LaVenture, Christopher Russ, Matthew Elder and William Fowler were present for the public hearing. Any member(s) who were absent from a single session of the public hearing on the Application ~~Prior~~, prior to the vote on this decision, filed a written certification as to examination of all the evidence and testimony received at the hearing session, made as part of the record of the hearing, in accordance with Massachusetts General Laws Chapter 39, Section 23D.
9. The Plan was further amended on November 15, 2021, December 15, 2021 and January 6, 2022 to incorporate details and to address the comments and requirements of City Engineer Thomas DiPersio and the Planning Board.
10. Planning Board members Barbara Fenby, Sean Fay, Phillip Hodge, George LaVenture, Christopher Russ, Matthew Elder, and William Fowler, deliberated on the Application at duly authorized meetings on October 18, 2021, November 8, 2021, November 22, 2021, December 6, 2021, December 20, 2021, and January 10, 2022.

## **PROJECT FINDINGS:**

1. The subject property consists of one (1) lot owned by the 342 Sudbury Street Trust identified on the City Assessors Maps as follows: Map 23, Parcel 7.
2. In seeking approval of the amended Plan, the Applicant proposes to build one (1) single-family home, subject to conditions set forth below.
3. The Development, as governed by the conditions set forth in this Certificate of Vote, is consistent with the applicable provisions of the Subdivision Control Law and the Rules and Regulations.

4. The Development, as governed by the conditions of this Certificate of Vote, will not present a public safety hazard to the City or surrounding properties.

## **WAIVERS:**

After the public hearing and deliberations on the amended Plan, the Planning Board did on January 10, 2022, by a vote of 6 in favor and 0 opposed, grant the following waivers to the Rules and Regulations, in connection with the Plan, as amended (citations below are to the Marlborough City Code, Chapter A676, entitled "Subdivision Regulations"):

- 1) Article IV § A676-12.C.1.a: "To allow the reduction in the roadway layout to 40 feet."
- 2) Article V § A676-24.B.2.a: "To allow a reduction in the pavement width to 18 feet."
- 3) Article V § A676-26.A: "To allow the elimination of sidewalks."
- 4) Article V § A676-26.B: "To allow cape cod berm in lieu of granite curbing."
- 5) Article V § A676-24.A.4-1/2 and A676-24.C: "To allow the construction of the roadway in accordance with the cross section on the profile sheet, including the elimination of the geotextile fabric under the road base and the reduction of the pavement thickness to four inches of bituminous concrete."
- 6) Article IV § A676-12.E.2: "To allow the construction of a hammerhead turnaround in lieu of a circular 44' radius paved turnaround."
- 7) Article V § A676-25.C.2: "To allow the use of HDPE drainage pipe in lieu of RCP pipe."
- 8) Article IV § A676-21: "To allow the elimination of street lighting in the roadway."
- 9) Article IV § A676-10.L.1: "To allow the roadway to remain in private ownership and to be owned and maintained by the Owner of Lot 2."

The Planning Board granted these waivers after making the following determinations:

- 1) "Applicant has demonstrated to the satisfaction of the Board that the construction of an as-of-right subdivision is not in the public's best interest or the best interest of the abutters; and that a less intrusive subdivision is more in keeping with the character of the neighborhood."
- 2) "The buffer zone delineated on the subdivision plan alleviates, in part, the concerns raised by the neighbors."
- 3) "The developer has established, to the satisfaction of the City Engineer, that the subdivision as proposed will not exacerbate water runoff issues in the neighborhood."
- 4) "The developer has demonstrated to the Board that the subdivision property is unique in character and that this subdivision cannot and should not be used as a precedent for other potential developments within the City. For example, not as justification for cape cod berms in lieu of granite curbs on other roadways."
- 5) "The subdivision as proposed does not present the sight line issues and roadway width issues the Board has encountered in the past with proposed subdivisions on Sudbury Street."
- 6) "The above findings are based on the minimal impact posed by a one buildable lot subdivision."

## CONDITIONS:

The Planning Board on January 10, 2022, by a vote of 6 to 0, approved the Plan, as amended, as described above, subject to the following conditions:

- ~~1. "The proposed buffer zone be included as a restriction in all deeds~~ Natural Buffer Zone ("NBZ") shall be protected as shown on the Plan in perpetuity."
- ~~2. "That no and lot deeds shall reference same. No~~ storage structures shall be allowed in the ~~buffer zone."~~
- ~~1. "ThatNBZ. The Planning Board is authorized to enforce the conditions herein. The Board may consult with the Conservation Commission be specified as the entity designated to enforce the buffer zone, and may delegate enforcement authority and/or Building Department with respect to Code Enforcement at their discretion."~~ the use of the NBZ in conformance with the Plan and these conditions.
- ~~2. A pre-construction meeting shall be held, on site at least seven (7) days prior to the start of construction with the City Engineer and the Conservation Officer or their respective designees.~~
- ~~3. This plan has been approved with the specific condition that the roadway area will remain in private ownership to be included in the deed for Lot 2. The owner of Lot 2 shall be responsible and liable for the costs of the maintenance, snow removal, drainage system, repairs and reconstruction of the roadway, and the City of Marlborough assumes no responsibility for any future repairs, upgrades, or maintenance, in perpetuity. The roadway shall not be eligible for acceptance by the City of Marlborough as a public way, and the Applicant shall not petition for such acceptance. This condition shall also be referenced in the deeds for all Lots in the subdivision.~~
- ~~4. All easements, if any, shown on the Plan for the benefit of the abutters/lots shall be deeded to the respective abutters/lots after the Plan and covenant are recorded.~~
- ~~3.5.~~ Prior to their installation, all final landscaping, signage and/or improvements within the subdivision road's right of way shall be approved by the City Engineer.
- ~~4.6.~~ The Applicant shall comply with any conditions of the Marlborough Conservation Commission, as set forth in any Order of Conditions for the Development.

~~5.7.~~ The Applicant shall provide for a Performance Guarantee, in a manner acceptable to the Planning Board, to ensure that the required improvements will be constructed and/or installed in accordance with the approved Plan.

~~6.8.~~ The Applicant shall record at the Middlesex South District Registry of Deeds an executed copy of this Certificate of Vote and of the approved Plan and shall forthwith provide those copies to the Planning Board and the Solicitor's office.

~~7.9.~~ Any future change, modification or amendment to the approved Plan, as may be approved by the Planning Board, shall be in accordance with the requirements of M.G.L. Chapter 41, § 81W.

~~8.10.~~ All conditions herein shall apply to Applicant, its successors and assigns, and to its successors in title to the Development.

**RECORD OF VOTE:**

The following members of the Planning Board voted on January 10, 2022 to approve the Plan, as amended:

\_\_\_\_\_  
Barbara L. Fenby, Chair

\_\_\_\_\_  
Matthew Elder

\_\_\_\_\_  
George LaVenture, Clerk

\_\_\_\_\_  
Christopher Russ

\_\_\_\_\_  
Philip J. Hodge

\_\_\_\_\_  
Sean N. Fay

**CERTIFICATE**

I hereby certify that twenty (20) days have elapsed since the Board's filing of a copy of the above-referenced Certificate of Vote in the Office of Marlborough City Clerk on January 10, \_\_\_\_\_, 2022, and that no notice of an appeal of that decision has been timely filed with said Office.

A True Copy Attest: \_\_\_\_\_  
Steven Kerrigan  
Marlborough City Clerk

\_\_\_\_\_  
Date

**CERTIFICATE OF VOTE  
DEFINITIVE SUBDIVISION PLAN  
342 SUDBURY STREET**

January 24, 2022

Pursuant to MGL c. 41, s. 81 and the Planning Board's Rules and Regulations Governing the Subdivision of Land in Marlborough, the Planning Board of the City of Marlborough (the "Planning Board") hereby certifies that on January 10, 2022 it voted to approve a Definitive Subdivision Plan for a Residential Subdivision for property located on 342 Sudbury Street, Marlborough, MA 01752 owned by Neal Vigeant, Trustee of the 342 Sudbury Street Trust as follows:

**PROCEDURAL FINDINGS:**

1. On October 15, 2021, an application (the "Application") was filed on behalf of Neal Vigeant, Trustee of the 342 Sudbury Street Trust with a principal place of business of 342 Sudbury Street, Marlborough MA 01752 (the "Applicant"), pursuant to M.G.L. c. 41, § 81O, and the Planning Board's Rules and Regulations Governing the Subdivision of Land in Marlborough (the "Rules and Regulations"), seeking approval of two (2) lot, single-family definitive subdivision plan as shown on a plan entitled "Definitive Subdivision Plan, 342 Sudbury Street" prepared by Robert Parente, P.E., P.L.S., 21 Chapin Street., Northboro, MA 01532, dated October 15, 2021 and last revised on January 6, 2022 (the "Plan"), on land identified on the City of Marlborough's Assessor's Map ("Assessor's Map") as Map 23, Parcel 7, located on 342 Sudbury Street, Marlborough, MA 01752, owned by The 342 Sudbury Street Trust ("Trust"), further identified in the Middlesex South District Registry of Deeds in Book 77825 Page 110 and consisting of 3.35 acres of land ("Development").
2. The Planning Board provided copies of the Application to other City boards and commissions, departments and officials including, but not limited to, the Building Commissioner, Conservation Commission, Department of Public Works, Fire Chief, City Engineer and City Solicitor. The Applicant further provided a copy of the Application to the Board of Health.
3. The Conservation Commission submitted a letter to the Board dated November 8, 2021 requesting confirmation that any work relative to this project is outside of the 100' buffer zone and 200' riverfront area to the adjacent stream located between the 342 Sudbury Street lot and Harper Circle. The letter indicated the final plan should include the following: the 100' buffer zone, the 200' riverfront area, a clear definition of the referenced "Natural Buffer" to ease future enforcement and erosion controls to prevent mud from fracking or flowing into Sudbury Street or onto adjacent downhill properties to protect native wildlife in the area.
4. The Board of Health submitted an email correspondence dated November 19, 2021 indicating the Board of Health had reviewed the Definitive Subdivision Plans for 342 Sudbury Street and sees no objections to the Planning Board issuing a subdivision approval

if they deem it appropriate given their concerns were engineering, and conservation based which were both addressed in the November 15, 2021 revised plans.

5. The City Engineer submitted review letters dated November 1, 2021, November 19, 2021 and December 16, 2021 summarizing engineering-related comments on the plans. The City Engineer indicated that all engineering-related issues have been addressed, and that there would be a benefit to the City not requiring a fully-constructed public roadway for this one-house subdivision.
6. The Assistant Fire Chief submitted an emailed correspondence dated August 27, 2021 indicating that the Fire Department did not have an issue with the proposed hammerhead turn-around with respects to emergency access.
7. After notice and publication was provided pursuant to the applicable provisions of M.G.L. c. 41, § 81T of the Subdivision Control Law, and the applicable provisions of the Rules and Regulations, a public hearing on the Application commenced on November 8, 2021. The Planning Board closed the public hearing on November 8, 2021.
8. Planning Board members Barbara Fenby, Sean Fay, Phillip Hodge, George LaVenture, Christopher Russ, Matthew Elder and William Fowler were present for the public hearing. Any member(s) who were absent from a single session of the public hearing on the Application, prior to the vote on this decision, filed a written certification as to examination of all the evidence and testimony received at the hearing session, made as part of the record of the hearing, in accordance with Massachusetts General Laws Chapter 39, Section 23D.
9. The Plan was further amended on November 15, 2021, December 15, 2021 and January 6, 2022 to incorporate details and to address the comments and requirements of City Engineer Thomas DiPersio and the Planning Board.
10. Planning Board members Barbara Fenby, Sean Fay, Phillip Hodge, George LaVenture, Christopher Russ, Matthew Elder, and William Fowler, deliberated on the Application at duly authorized meetings on October 18, 2021, November 8, 2021, November 22, 2021, December 6, 2021, December 20, 2021, and January 10, 2022.

#### **PROJECT FINDINGS:**

1. The subject property consists of one (1) lot owned by the 342 Sudbury Street Trust identified on the City Assessors Maps as follows: Map 23, Parcel 7.
2. In seeking approval of the amended Plan, the Applicant proposes to build one (1) single-family home, subject to conditions set forth below.
3. The Development, as governed by the conditions set forth in this Certificate of Vote, is consistent with the applicable provisions of the Subdivision Control Law and the Rules and Regulations.
4. The Development, as governed by the conditions of this Certificate of Vote, will not present a public safety hazard to the City or surrounding properties.

## **WAIVERS:**

After the public hearing and deliberations on the amended Plan, the Planning Board did on January 10, 2022, by a vote of 6 in favor and 0 opposed, grant the following waivers to the Rules and Regulations, in connection with the Plan, as amended (citations below are to the Marlborough City Code, Chapter A676, entitled "Subdivision Regulations"):

- 1) Article IV § A676-12.C.1.a: "To allow the reduction in the roadway layout to 40 feet."
- 2) Article V § A676-24.B.2.a: "To allow a reduction in the pavement width to 18 feet."
- 3) Article V § A676-26.A: "To allow the elimination of sidewalks."
- 4) Article V § A676-26.B: "To allow cape cod berm in lieu of granite curbing."
- 5) Article V § A676-24.A.4-1/2 and A676-24.C: "To allow the construction of the roadway in accordance with the cross section on the profile sheet, including the elimination of the geotextile fabric under the road base and the reduction of the pavement thickness to four inches of bituminous concrete."
- 6) Article IV § A676-12.E.2: "To allow the construction of a hammerhead turnaround in lieu of a circular 44' radius paved turnaround."
- 7) Article V § A676-25.C.2: "To allow the use of HDPE drainage pipe in lieu of RCP pipe."
- 8) Article IV § A676-21: "To allow the elimination of street lighting in the roadway."
- 9) Article IV § A676-10.L.1: "To allow the roadway to remain in private ownership and to be owned and maintained by the Owner of Lot 2."

The Planning Board granted these waivers after making the following determinations:

- 1) "Applicant has demonstrated to the satisfaction of the Board that the construction of an as-of-right subdivision is not in the public's best interest or the best interest of the abutters; and that a less intrusive subdivision is more in keeping with the character of the neighborhood."
- 2) "The buffer zone delineated on the subdivision plan alleviates, in part, the concerns raised by the neighbors."
- 3) "The developer has established, to the satisfaction of the City Engineer, that the subdivision as proposed will not exacerbate water runoff issues in the neighborhood."
- 4) "The developer has demonstrated to the Board that the subdivision property is unique in character and that this subdivision cannot and should not be used as a precedent for other potential developments within the City. For example, not as justification for cape cod berms in lieu of granite curbs on other roadways."
- 5) "The subdivision as proposed does not present the sight line issues and roadway width issues the Board has encountered in the past with proposed subdivisions on Sudbury Street."
- 6) "The above findings are based on the minimal impact posed by a one buildable lot subdivision."



## CONDITIONS:

The Planning Board on January 10, 2022, by a vote of 6 to 0, approved the Plan, as amended, as described above, subject to the following conditions:

1. The Natural Buffer Zone (“NBZ”) shall be protected as shown on the Plan in perpetuity and lot deeds shall reference same. No storage structures shall be allowed in the NBZ. The Planning Board is authorized to enforce the conditions herein. The Board may consult with the Conservation Commission and/or Building Department with respect to the use of the NBZ in conformance with the Plan and these conditions.
2. A pre-construction meeting shall be held, on site at least seven (7) days prior to the start of construction with the City Engineer and the Conservation Officer or their respective designees.
3. This plan has been approved with the specific condition that the roadway area will remain in private ownership to be included in the deed for Lot 2. The owner of Lot 2 shall be responsible and liable for the costs of the maintenance, snow removal, drainage system, repairs and reconstruction of the roadway, and the City of Marlborough assumes no responsibility for any future repairs, upgrades, or maintenance, in perpetuity. The roadway shall not be eligible for acceptance by the City of Marlborough as a public way, and the Applicant shall not petition for such acceptance. This condition shall also be referenced in the deeds for all Lots in the subdivision.
4. All easements, if any, shown on the Plan for the benefit of the abutters/lots shall be deeded to the respective abutters/lots after the Plan and covenant are recorded.
5. Prior to their installation, all final landscaping, signage and/or improvements within the subdivision road’s right of way shall be approved by the City Engineer.
6. The Applicant shall comply with any conditions of the Marlborough Conservation Commission, as set forth in any Order of Conditions for the Development.
7. The Applicant shall provide for a Performance Guarantee, in a manner acceptable to the Planning Board, to ensure that the required improvements will be constructed and/or installed in accordance with the approved Plan.
8. The Applicant shall record at the Middlesex South District Registry of Deeds an executed copy of this Certificate of Vote and of the approved Plan and shall forthwith provide those copies to the Planning Board and the Solicitor’s office.
9. Any future change, modification or amendment to the approved Plan, as may be approved by the Planning Board, shall be in accordance with the requirements of M.G.L. Chapter 41, § 81W.
10. All conditions herein shall apply to Applicant, its successors and assigns, and to its successors in title to the Development.

**RECORD OF VOTE:**

The following members of the Planning Board voted on January 10, 2022 to approve the Plan, as amended:

\_\_\_\_\_  
Barbara L. Fenby, Chair

\_\_\_\_\_  
Matthew Elder

\_\_\_\_\_  
George LaVenture, Clerk

\_\_\_\_\_  
Christopher Russ

\_\_\_\_\_  
Philip J. Hodge

\_\_\_\_\_  
Sean N. Fay

**CERTIFICATE**

I hereby certify that twenty (20) days have elapsed since the Board's filing of a copy of the above-referenced vote in the Office of Marlborough City Clerk on \_\_\_\_\_, 2022, and that no notice of an appeal of that decision has been timely filed with said Office.

A True Copy Attest: \_\_\_\_\_  
Steven Kerrigan  
Marlborough City Clerk

\_\_\_\_\_  
Date

## COVENANT

This Covenant recorded in the Middlesex South District Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_ is made this \_\_\_\_\_ day of \_\_\_\_\_, 2022. The undersigned, Neal Vigeant-, Trustee of the 342 Sudbury Street Trust under Declaration of Trust dated May 17, 2021 and recorded in the Middlesex South District Registry of Deeds on May 20, 2021 in Book 77825 Page 113, having a usual place of business c/o 20 Brigham St Unit #4 Marlboro, MA 01752 (hereinafter referred to as the "Covenantor"), having submitted to the Marlborough Planning Board (hereinafter referred to as the "Planning Board") a definitive plan of a subdivision entitled "Definitive Subdivision of 342 Sudbury St. " in Marlborough, Massachusetts," dated October 15, 2021 and revised through January 6, 2022, drawn by Robert J. Parente-, 328 Desimone Drive, Marlborough, MA. (said plan being hereinafter called the "Plan"), in accordance with the conditions of Approval as voted by the Planning Board on January 10, 2022, does hereby covenant, and agree with the Planning Board, pursuant to Massachusetts General Laws (Ter. Ed.) Chapter 41, Section 81U, as amended that:

1. The Covenantor is the owner of record of the premises, including 2 house lots ("Lots<sup>2</sup>"), Lots 1 and 2", as shown on the "Plan", which is to be recorded in the Middlesex South District Registry of Deeds herewith as Plan No \_\_\_\_\_ of 2022 and is referred to herein. There are no mortgages of record or otherwise on any of said premises.
2. This Covenant shall run with the land and shall operate as restrictions upon the land included in the subdivision and shall be binding upon any executor, administrators, devisees, heirs, successors and assigns of the Covenantor and any of its successors in title to the premises shown on the Plan.
3. The construction of the subdivision roadway and the installation of municipal services shall be provided to serve any and all Lots in accordance with the applicable Rules and Regulations of the Planning Board before any such Lot may be built upon or conveyed, other than by mortgage deed; provided, however, that a mortgagee who acquires title to the mortgaged premises or any part thereof may sell any such Lot, subject only to that portion of this Covenant which provides that no Lot so sold shall be built upon until such ways and services have been provided to serve such Lot.
4. Nothing contained herein shall be deemed to prohibit a conveyance subject to this Covenant, by a single deed, of the entire parcel of land shown on the Plan or all Lots not previously released by the Planning Board without first providing such subdivision road and services. A deed of any part of the premises shown on the Plan in violation of any portion of the above referenced statute shall be voidable by the grantee prior to the release of the Covenant, but not later than three (3) years from the date of such deed.
5. The Covenantor agrees to the easements shown on the Plan for the benefit of the abutters and shall be deeded to the respective abutters after the Plan and covenant are recorded.
6. Prior to the release by the Planning Board of any Lots shown on the Plan from the terms of this Covenant, the Covenantor shall deposit with the City of Marlborough a Performance Bond in an amount to be determined by the Planning Board, said bond to be secured by the posting of cash, or by surety company bond or by such other form of security as may be approved by the Planning Board. Said bond shall be to secure the performance by the Covenantor of the construction of the subdivision road and the installation of municipal

services as required by the Approval of the "Plan", within the time requirements as stipulated herein. The amount of the bond may be reduced from time to time by said Planning Board. However, due to present and anticipated future inflationary conditions, the amount of the Performance Bond is subject to annual redetermination by the Planning Board.

7. Pursuant to the Rules and Regulations of the Planning Board, Section III.B.7(a), as amended, such bond or security, when filed or deposited shall be reviewed as to form and manner of execution by the City Solicitor's Office, and as to sureties by the City ~~Comptroller~~ Finance Director.
8. No Lot shall be sold or built upon until released by the Planning Board after acceptable bonding. If at any time said bonding as required in Paragraph 6 expires, then all Lot releases of Lots not transferred to third party purchasers or mortgaged subsequent to release, shall be void.
9. Pursuant to Massachusetts General Laws (M.G.L.) Chapter 41, Section 81R, as amended, the Planning Board has not agreed to waive compliance with its Rules and Regulations, as set forth in the Marlborough City Code, Chapter A676, entitled "Subdivision Regulations," except as follows:

§ A676-12.C.1.a: "To allow the reduction in the roadway layout to 40 feet."

§ A676-24.B.2.a: "To allow a reduction in the pavement width to 18 feet."

§ A676-26.A: "To allow the elimination of sidewalks."

§ A676-26.B: "To allow cape cod berm in lieu of granite curbing."

§ A676-24.A.4-1/2 and A676-24.C: "To allow the construction of the roadway in accordance with the cross section on the profile sheet, including the elimination of the geotextile fabric under the road base and the reduction of the pavement thickness to four inches of bituminous concrete."

§ A676-12.E.2: "To allow the construction of a hammerhead turnaround in lieu of a circular 44' radius paved turnaround."

§ A676-25.C.2: "To allow the use of HDPE drainage pipe in lieu of RCP pipe."

§ A676-21: "To allow the elimination of street lighting in the roadway."

§ A676-10.L.1: "To allow the roadway to remain in private ownership and to be owned and maintained by the Owner of Lot 2."

The Planning Board has made these waivers after finding that the shape and proposed Natural Buffer zone for this project are in the public interest and are consistent with the intent and purpose of the Subdivision Control Law and with the Planning Board Rules and Regulations.

10. **This section is a specific condition of approval of this Plan and of this Covenant:** A Pre-construction meeting shall be held, on site at least seven (7) days prior to the start of

construction with the City Engineer and the Conservation Officer or their respective designees.

a. The Natural Buffer Zone (“NBZ”) shall be protected as shown on the Plan in perpetuity. At and lot deeds shall reference same. No storage structures shall be allowed in the request of the NBZ. The Planning Board is authorized to enforce the conditions herein. The Board may consult with the Conservation Commission or Code Enforcement if the Conservation Commission so delegates, is the recommended steward for enforcement, and for any questions relative to allowed uses or activities in this buffer zone and/or Building Department with respect to the use of the NBZ in conformance with the Plan and these conditions.

b. This plan has been approved with the specific condition that the roadway area will remain in private ownership (to be included in the deed for Lot 2). The owner of Lot 2 shall be responsible and liable for the costs of the maintenance, snow removal, drainage system, repairs and reconstruction of the roadway, and the City of MarlboroMarlborough assumes no responsibility for any future repairs, upgrades, or maintenance, in perpetuity. The roadway shall not be eligible for acceptance by the City of Marlborough as a public way, and the Applicant shall not petition for such acceptance. This condition shall also be referenced in the deeds for all Lots in the subdivision.

11. The construction of all ways and the installation of all municipal services shall be completed in accordance with the applicable Rules and Regulations of the Planning Board within a period of two (2) years from the date of the “approval of the Plan”. Failure to so complete or to obtain an extension shall automatically rescind approval of the Plan as to Lots not yet released from this Covenant and full re-application for approval of such Lots will be required.

The Covenantor hereby agrees that the two (2)-year time period for completion of the subdivision may be extended at the sole discretion of the Planning Board, but only upon the condition that the City of Marlborough has received, on or before the specified completion date, payment of all real estate taxes owed as to the premises shown on the Plan, and upon the further condition that the Board has received, on or before the specified completion date, a certification from the City’s Code Enforcement Officer determining that no conditions exist on the said premises that are in violation of the City’s so-called Anti-Blight Ordinance set forth in Chapter 485 of the Marlborough City Code; provided, however, that the Anti-Blight condition may be waived temporarily by a majority vote of the Board if the Board finds that an extension of no more than thirty (30) calendar days from the specified completion date is necessary for the Code Enforcement Officer to examine the said premises and make a proper determination.

12. The City of Marlborough shall not be responsible for the maintenance and care of the subdivision road or other improvement. In emergency situations as determined by the City Engineer, the City of Marlborough may take steps to correct a condition(s) within the subdivision which, if not corrected, would jeopardize public health and safety. In these instances, any and all costs so incurred by the City to correct said condition(s), shall be reimbursed to the City within thirty (30) days of notice to the Covenantor. Failure to

reimburse the City within this period will be considered cause to rescind approval of the Plan.

13. All as-built plans and profiles pertaining to the ~~above-described~~ Plan shall be submitted to the City Engineer forthwith after the completion of said subdivision road. Copies of all the site plans prepared for each of the individual building Lots shall be submitted to the City Engineer for review and approval to be included with the application for a Building Permit.
14. Prior to the execution of this Covenant, the Covenantor agrees to submit a work schedule, and a progress report every month beginning 60-days after the Covenant is signed, to the City Engineer, with copies to the Planning Board, until said subdivision has been completed. Said progress reports shall be delivered to the Planning Board prior to the third Monday of each and every month. Failure to comply with the provisions of this paragraph shall give the Planning Board the right to rescind the approval of the application for subdivision approval after notice to the Covenantor and opportunity to be heard.
15. If the City, by its Planning Board, determines that there is a violation of the applicable state laws, City ordinances, Planning Board Rules and Regulations and/or the terms and provisions of this Covenant, it shall seek a cease-and-desist order after appropriate application to a court of competent jurisdiction, and it shall seek any and all other equitable and legal relief it deems necessary. If in the opinion of the Covenantor, there has not been a violation of said applicable state laws, city ordinances, Planning Board Rules and Regulations, or the terms and provisions of this Covenant, nothing herein shall be construed as the ~~Covenantor's~~Covenantor's consent to cease and desist from work on the Subdivision without Court order.
16. The Covenantor's applications, all plans and profiles, calculations, and other supporting data relating to the Plan, state laws, city ordinances, Planning Board Rules and Regulations and all terms, provisions, and conditions of final approval of the Plan are incorporated herein by reference, as if set forth in full, except as expressly modified herein.
17. This Covenant shall take effect upon the approval of the Plan.
18. Reference to this Covenant shall be entered upon the Plan and the Covenant shall be recorded with the Plan. The Covenantor further agrees that it shall cause two certified copies of this Covenant as recorded at the Middlesex South District Registry of Deeds to be delivered to the City Solicitor's Office and the Planning Board Administrator – DPW, Engineering Office, Marlborough, Massachusetts within three business days of the date of recording.
19. The provisions of this Covenant are severable, and if any of these provisions shall be held to be illegal or unconstitutional by any Court of competent jurisdiction, then the remaining provisions of this Covenant shall continue in effect.
20. The undersigned, Neal Vigeant, Trustee of the 342 Sudbury St. Trust, hereby certifies that (i) the Trust remains in full force and effect and has not been altered, amended, rescinded, revoked or terminated in whole or in part; (ii) Neal Vigeant ~~is the sole~~ TrusteesTrustee of the Trust; (iii) none of the beneficiaries of the Trust is a corporation, no person who at any

time has been a beneficiary of the Trust has died, and all of the beneficiaries of the Trust are eighteen (18) years of age or older, and of sound mind, and (iv) that we have been authorized and directed by all of the beneficiaries of the Trust to execute and deliver this Covenant.

*Remainder of Page Intentionally Left Blank*  
*Signature Page to Follow*

EXECUTED AS A SEALED INSTRUMENT this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Covenantor:

342 Sudbury Street Trust

\_\_\_\_\_  
Neal Vigeant, Trustee and not individually

**THE COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, SS

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public, personally appeared, Neal Vigeant, Trustee and not Individually of the 342 Sudbury Street Trust, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the ~~persons~~person whose ~~names are~~name is signed on the preceding or attached document(s), and acknowledged to me that they signed it voluntarily for its stated purpose.

(official seal)

\_\_\_\_\_  
Notary Public

My Commission Expires:



**CITY OF MARLBOROUGH  
COMMONWEALTH OF MASSACHUSETTS**

**Approved and Accepted: August \_\_\_\_\_, 2022**  
**Marlborough Planning Board, City of Marlborough**

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Barbara L. Fenby – Chair

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George LaVenture – Clerk

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Philip J. Hodge

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Sean N. Fay

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Christopher P. Russ

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Matthew Elder

## COVENANT

This Covenant recorded in the Middlesex South District Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_ is made this \_\_\_\_\_ day of \_\_\_\_\_, 2022. The undersigned, Neal Vigeant, Trustee of the 342 Sudbury Street Trust under Declaration of Trust dated May 17, 2021 and recorded in the Middlesex South District Registry of Deeds on May 20, 2021 in Book 77825 Page 113, having a usual place of business c/o 20 Brigham St Unit #4 Marlboro, MA 01752 (hereinafter referred to as the "Covenantor"), having submitted to the Marlborough Planning Board (hereinafter referred to as the "Planning Board") a definitive plan of a subdivision entitled "Definitive Subdivision of 342 Sudbury St. " in Marlborough, Massachusetts," dated October 15, 2021 and revised through January 6, 2022, drawn by Robert J. Parente, 328 Desimone Drive, Marlborough, MA. (said plan being hereinafter called the "Plan"), in accordance with the conditions of Approval as voted by the Planning Board on January 10, 2022, does hereby covenant, and agree with the Planning Board, pursuant to Massachusetts General Laws (Ter. Ed.) Chapter 41, Section 81U, as amended that:

1. The Covenantor is the owner of record of the premises, including 2 house lots ("Lots"), Lots 1 and 2", as shown on the Plan, which is to be recorded in the Middlesex South District Registry of Deeds herewith as Plan No \_\_\_\_\_ of 2022 and is referred to herein. There are no mortgages of record or otherwise on any of said premises.
2. This Covenant shall run with the land and shall operate as restrictions upon the land included in the subdivision and shall be binding upon any executor, administrators, devisees, heirs, successors and assigns of the Covenantor and any of its successors in title to the premises shown on the Plan.
3. The construction of the subdivision roadway and the installation of municipal services shall be provided to serve any and all Lots in accordance with the applicable Rules and Regulations of the Planning Board before any such Lot may be built upon or conveyed, other than by mortgage deed; provided, however, that a mortgagee who acquires title to the mortgaged premises or any part thereof may sell any such Lot, subject only to that portion of this Covenant which provides that no Lot so sold shall be built upon until such ways and services have been provided to serve such Lot.
4. Nothing contained herein shall be deemed to prohibit a conveyance subject to this Covenant, by a single deed, of the entire parcel of land shown on the Plan or all Lots not previously released by the Planning Board without first providing such subdivision road and services. A deed of any part of the premises shown on the Plan in violation of any portion of the above referenced statute shall be voidable by the grantee prior to the release of the Covenant, but not later than three (3) years from the date of such deed.
5. The Covenantor agrees to the easements shown on the Plan for the benefit of the abutters and shall be deeded to the respective abutters after the Plan and covenant are recorded.
6. Prior to the release by the Planning Board of any Lots shown on the Plan from the terms of this Covenant, the Covenantor shall deposit with the City of Marlborough a Performance Bond in an amount to be determined by the Planning Board, said bond to be secured by the posting of cash, or by surety company bond or by such other form of security as may be approved by the Planning Board. Said bond shall be to secure the performance by the Covenantor of the construction of the subdivision road and the installation of municipal services as required by the Approval of the Plan, within the time requirements as stipulated

herein. The amount of the bond may be reduced from time to time by said Planning Board. However, due to present and anticipated future inflationary conditions, the amount of the Performance Bond is subject to annual redetermination by the Planning Board.

7. Pursuant to the Rules and Regulations of the Planning Board, Section III.B.7(a), as amended, such bond or security, when filed or deposited shall be reviewed as to form and manner of execution by the City Solicitor's Office, and as to sureties by the City Finance Director.
8. No Lot shall be sold or built upon until released by the Planning Board after acceptable bonding. If at any time said bonding as required in Paragraph 6 expires, then all Lot releases of Lots not transferred to third party purchasers or mortgaged subsequent to release, shall be void.
9. Pursuant to Massachusetts General Laws (M.G.L.) Chapter 41, Section 81R, as amended, the Planning Board has not agreed to waive compliance with its Rules and Regulations, as set forth in the Marlborough City Code, Chapter A676, entitled "Subdivision Regulations," except as follows:

§ A676-12.C.1.a: "To allow the reduction in the roadway layout to 40 feet."

§ A676-24.B.2.a: "To allow a reduction in the pavement width to 18 feet."

§ A676-26.A: "To allow the elimination of sidewalks."

§ A676-26.B: "To allow cape cod berm in lieu of granite curbing."

§ A676-24.A.4-1/2 and A676-24.C: "To allow the construction of the roadway in accordance with the cross section on the profile sheet, including the elimination of the geotextile fabric under the road base and the reduction of the pavement thickness to four inches of bituminous concrete."

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§ A676-25.C.2: "To allow the use of HDPE drainage pipe in lieu of RCP pipe."

§ A676-21: "To allow the elimination of street lighting in the roadway."

§ A676-10.L.1: "To allow the roadway to remain in private ownership and to be owned and maintained by the Owner of Lot 2."

The Planning Board has made these waivers after finding that the shape and proposed Natural Buffer zone for this project are in the public interest and are consistent with the intent and purpose of the Subdivision Control Law and with the Planning Board Rules and Regulations.

10. **This section is a specific condition of approval of this Plan and of this Covenant:** A Pre-construction meeting shall be held, on site at least seven (7) days prior to the start of construction with the City Engineer and the Conservation Officer or their respective designees.

a. The Natural Buffer Zone (“NBZ”) shall be protected as shown on the Plan in perpetuity and lot deeds shall reference same. No storage structures shall be allowed in the NBZ. The Planning Board is authorized to enforce the conditions herein. The Board may consult with the Conservation Commission and/or Building Department with respect to the use of the NBZ in conformance with the Plan and these conditions.

b. This plan has been approved with the specific condition that the roadway area will remain in private ownership to be included in the deed for Lot 2. The owner of Lot 2 shall be responsible and liable for the costs of the maintenance, snow removal, drainage system, repairs and reconstruction of the roadway, and the City of Marlborough assumes no responsibility for any future repairs, upgrades, or maintenance, in perpetuity. The roadway shall not be eligible for acceptance by the City of Marlborough as a public way, and the Applicant shall not petition for such acceptance. This condition shall also be referenced in the deeds for all Lots in the subdivision.

11. The construction of all ways and the installation of all municipal services shall be completed in accordance with the applicable Rules and Regulations of the Planning Board within a period of two (2) years from the date of the approval of the Plan. Failure to so complete or to obtain an extension shall automatically rescind approval of the Plan as to Lots not yet released from this Covenant and full re-application for approval of such Lots will be required.

The Covenantor hereby agrees that the two (2)-year time period for completion of the subdivision may be extended at the sole discretion of the Planning Board, but only upon the condition that the City of Marlborough has received, on or before the specified completion date, payment of all real estate taxes owed as to the premises shown on the Plan, and upon the further condition that the Board has received, on or before the specified completion date, a certification from the City’s Code Enforcement Officer determining that no conditions exist on the said premises that are in violation of the City’s so-called Anti-Blight Ordinance set forth in Chapter 485 of the Marlborough City Code; provided, however, that the Anti-Blight condition may be waived temporarily by a majority vote of the Board if the Board finds that an extension of no more than thirty (30) calendar days from the specified completion date is necessary for the Code Enforcement Officer to examine the said premises and make a proper determination.

12. The City of Marlborough shall not be responsible for the maintenance and care of the subdivision road or other improvement. In emergency situations as determined by the City Engineer, the City of Marlborough may take steps to correct a condition(s) within the subdivision which, if not corrected, would jeopardize public health and safety. In these instances, any and all costs so incurred by the City to correct said condition(s), shall be reimbursed to the City within thirty (30) days of notice to the Covenantor. Failure to reimburse the City within this period will be considered cause to rescind approval of the Plan.
13. All as-built plans and profiles pertaining to the Plan shall be submitted to the City Engineer forthwith after the completion of said subdivision road. Copies of all the site plans prepared for each of the individual building Lots shall be submitted to the City Engineer for review and approval to be included with the application for a Building Permit.
14. Prior to the execution of this Covenant, the Covenantor agrees to submit a work schedule,

and a progress report every month beginning 60-days after the Covenant is signed, to the City Engineer, with copies to the Planning Board, until said subdivision has been completed. Said progress reports shall be delivered to the Planning Board prior to the third Monday of each and every month. Failure to comply with the provisions of this paragraph shall give the Planning Board the right to rescind the approval of the application for subdivision approval after notice to the Covenantor and opportunity to be heard.

15. If the City, by its Planning Board, determines that there is a violation of the applicable state laws, City ordinances, Planning Board Rules and Regulations and/or the terms and provisions of this Covenant, it shall seek a cease-and-desist order after appropriate application to a court of competent jurisdiction, and it shall seek any and all other equitable and legal relief it deems necessary. If in the opinion of the Covenantor, there has not been a violation of said applicable state laws, city ordinances, Planning Board Rules and Regulations, or the terms and provisions of this Covenant, nothing herein shall be construed as the Covenantor's consent to cease and desist from work on the Subdivision without Court order.
16. The Covenantor's applications, all plans and profiles, calculations, and other supporting data relating to the Plan, state laws, city ordinances, Planning Board Rules and Regulations and all terms, provisions, and conditions of final approval of the Plan are incorporated herein by reference, as if set forth in full, except as expressly modified herein.
17. This Covenant shall take effect upon the approval of the Plan.
18. Reference to this Covenant shall be entered upon the Plan and the Covenant shall be recorded with the Plan. The Covenantor further agrees that it shall cause two certified copies of this Covenant as recorded at the Middlesex South District Registry of Deeds to be delivered to the City Solicitor's Office and the Planning Board Administrator – DPW, Engineering Office, Marlborough, Massachusetts within three business days of the date of recording.
19. The provisions of this Covenant are severable, and if any of these provisions shall be held to be illegal or unconstitutional by any Court of competent jurisdiction, then the remaining provisions of this Covenant shall continue in effect.
20. The undersigned, Neal Vigeant, Trustee of the 342 Sudbury St. Trust, hereby certifies that (i) the Trust remains in full force and effect and has not been altered, amended, rescinded, revoked or terminated in whole or in part; (ii) Neal Vigeant is the sole Trustee of the Trust; (iii) none of the beneficiaries of the Trust is a corporation, no person who at any time has been a beneficiary of the Trust has died, and all of the beneficiaries of the Trust are eighteen (18) years of age or older, and of sound mind, and (iv) that we have been authorized and directed by all of the beneficiaries of the Trust to execute and deliver this Covenant.

*Remainder of Page Intentionally Left Blank  
Signature Page to Follow*

**EXECUTED AS A SEALED INSTRUMENT** this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**Covenantor:**

**342 Sudbury Street Trust**

\_\_\_\_\_  
**Neal Vigeant, Trustee and not individually**

**THE COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, SS

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public, personally appeared, Neal Vigeant, Trustee and not Individually of the 342 Sudbury Street Trust, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document(s), and acknowledged to me that they signed it voluntarily for its stated purpose.

*(official seal)*

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**CITY OF MARLBOROUGH  
COMMONWEALTH OF MASSACHUSETTS**

**Approved and Accepted: \_\_\_\_\_, 2022  
Marlborough Planning Board, City of Marlborough**

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Barbara L. Fenby – Chair

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George LaVenture – Clerk

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Philip J. Hodge

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Sean N. Fay

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Christopher P. Russ

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Matthew Elder

**PERFORMANCE BOND - SECURED BY CASH DEPOSIT**

Neal Vigeant, Trustee and not Individually of the 342 Sudbury Street Trust, of Marlborough, MA hereby binds and obligates itself and its executors, administrators, devisees, heirs, successors and assigns to the City of Marlborough by its Planning Board, a Massachusetts municipal corporation, in the sum of \_\_\_\_\_dollars, and has secured this obligation by the deposit with the Finance Director/Treasurer of said City of Marlborough of said sum in money or negotiable securities.

The condition of this obligation is that if the undersigned or its executors, administrators, devisees, heirs, successors and assigns shall fully and satisfactorily observe and perform in the manner and in the time therein specified, all of the covenants, conditions, plan approval, agreements, terms and provisions contained in or in connection with the application signed by the undersigned and dated \_\_\_\_\_, 20\_\_\_\_, under which approval of a definitive plan of a certain subdivision, entitled \_\_\_\_\_and dated \_\_\_\_\_, 20 \_\_\_\_, has been granted by the Marlborough Planning Board, then this obligation shall be void; otherwise, it shall remain in full force and effect and the aforesaid security for said sum shall become and be the sole property of said City of Marlborough as liquidated damage.

IN WITNESS WHEREOF the undersigned has hereunto set its hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned notary public, personally appeared, Neal Vigeant, Trustee and not Individually of the 342 Sudbury Street Trust, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document(s), and acknowledged to me that they signed it voluntarily for its stated purpose.

*(official seal)*

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Notary Public  
My Commission Expires: