

## CITY OF MARLBOROUGH MEETING POSTING

Meeting: Planning Board  
Date: March 8, 2021  
Time: 7:00 PM  
Location: REMOTE MEETING NOTICE

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CITY OF MARLBOROUGH

2021 MAR -4 P 12:11

In accordance with the March 12, 2020 Executive Order issued by Governor Baker modifying certain requirements of the Open Meeting Law, the City of Marlborough Planning Board will hold a remote meeting on Monday, March 08, 2021 at 7:00 pm. The public may access the meeting by clicking on the link provided in the Planning Board calendar on the Planning Board Website <https://www.marlborough-ma.gov/planning-board> or by dialing in (audio only) using the following phone number and conference ID : +1 617-433-9462 United States, Boston (Toll) Conference ID: 735 172 601#

### Agenda Items to be Addressed:

1. Draft Meeting Minutes
  - A. February 22, 2021
2. Chair's Business
  - A. Set Public Hearing Date - Proposed Zoning Amendment to Chapter 650 to amend Section 33 the Results Way Mixed-Use Overlay District (RMUOD)
  - B. Communication from Assistant City Solicitor Piques re: Voting Requirements on Regulation Changes
3. Approval Not Required
  - A. Engineering Review Letter (Vote)  
181 Boston Post Road East- Post Road Mobile Homes & Sales Inc.
4. Public Hearings (None)
5. Subdivision Progress Reports (None)
6. Preliminary/Open Space /Limited Development Subdivision (None)
7. Definitive Subdivision Submissions (None)
8. Signs (None)
9. Correspondence (None)
10. Unfinished Business
  - A. 76 Broad St. Definitive Subdivision
    - i. Communication from Assistant City Solicitor Piques – 76 Broad St. Definitive Subdivision Covenant (Vote)
    - ii. City Clerk Certification of No Appeal – Definitive Subdivision 76 Broad St. – (Endorsement Vote)
  - B. Working Group Discussion – Planning Board Rules and Regulations Continued
    - i. Rules and Regulations – Continued Recommendations
    - ii. Assignment of Next Tasks
11. Calendar Updates (None)
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**

**February 22, 2021**

The **remote meeting** of the Marlborough Planning Board was called to order at 7:00 pm. Members present- Barbara Fenby, Matthew Elder, Sean Fay, Phil Hodge, George LaVenture and Chris Russ. Meeting support provided by City Engineer, Thomas DiPersio, Assistant City Solicitor, Jason Piques and Planning Board Administrator, Krista Holmi.

**1. Meeting Minutes**

**A. February 08, 2021**

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the February 8, 2021 meeting minutes. Yea: Fay, Hodge, LaVenture, Russ and Fenby. Nay: 0. Abstained: Elder. Motion carried.

**2. Chair's Business**

- A.** Chair Fenby informed the Board that Councilor Robey has stepped up to review aspects of the sign ordinance. Ms. Fenby thanked her for her efforts. Suggestions were forwarded to Legal for review, and updates will be communicated when available.
- B.** As a matter of record, Ms. Fenby acknowledged that Assistant City Solicitor reviewed the 76 Broad St. covenant. A "Clean Copy" in proper legal form was forwarded to each member. Individuals should review the covenant and report any comments back to Ms. Holmi and the Legal Department. (The covenant will appear on the March 8, 2021 agenda for vote.)

**3. Approval Not Required**

**A. 181 Boston Post Road East**

Applicant: Post Road Mobile Homes and Sales, Inc.

Surveyor: Robert J. Parente, 21 Chapin St., Northborough, MA 01532

Deed: Book 11449, Page 675, Middlesex South Registry

The applicant's representative, plan surveyor Robert J. Parente, joined the meeting to present the plan. The ANR plan is another update to a previously endorsed ANR plan. Mr. Parente explained that there is an existing parking area to the right of the area of the cross-hatched easement area. On the previously endorsed plan, that parking area was retained with Lot 1 (trailer park main) and not Lot 2, which is the portion of the plan associated with the 175 Boston Post Road East structure. There is a proposed tenant for the 175 Boston Post Road East site, and the Building Department indicates that this parking should be retained for use by 175 Boston Post Road East. The parking is not utilized by Lot 1. The purpose of the plan is to realign the lot line to incorporate this parking area into Lot 2. On a motion by Mr. Russ, seconded by Mr. LaVenture, the Board voted to refer the matter to Engineering. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Motion carried.

**4. Public Hearings (None)**

**5. Subdivision Progress Reports (None)**

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

**7. Definitive Subdivision Submissions (None)**

**8. Signs (None)**

## 9. Correspondence

- A. Communication from MassDOT RE: Environmental Notification Form, MBTA Forging Ahead Service Proposal Environmental Notification Form. Mr. LaVenture read the 2-3-21 communication into the record. The MBTA's enabling legislation requires that *"for a system wide decrease in service of 10% or more, the decrease shall be the subject of an environmental notification form initiating review pursuant to sections 61 and 62H, inclusive of chapter 30"* (MGL 161A (S)(d)). The ENF is designed to meet that statutory requirement. On a motion by Mr. Elder, seconded by Mr. LaVenture, the Board voted to accept and file the correspondence. Yea: Elder, Fay, Hodge, LaVenture, Russ, Fenby. Nay: 0. Motion carried.

## 10. Unfinished Business

- A. Working group discussion – Planning Board Rules and Regulations

- i. Rules and Regulations – Continued Recommendations

Mr. LaVenture provided an update to the Board of the working group's most recent meeting on February 17, 2021. He thanked the Engineering Division and Legal Dept. for their work and participation. Mr. LaVenture walked through each of the recommendations as shown in the summaries provided as follows:

10A

### Regulation §A676-7 Adequate access B. Standards of adequacy

#### Proposed change:

(2) Ways abutting, serving or leading to a subdivision. Ways outside a subdivision and providing access to the street within a subdivision, or providing access to lots said not to be within a subdivision, shall normally be considered adequate only if there is assurance that, prior to construction on any lots, access will be in (ADD) substantial compliance with the following (ADD) for a length along the existing roadway to be determined by the Planning Board:

(ADD) Existing Roadway Conditions	8 or fewer Dwelling units	9 to 49 Dwelling Units	50 or more Dwelling units or Business or Industry
Min. R.O.W. width	N/A	N/A	40 feet
Surface type	3 inches Bit. Concrete	3 inches Bit. Concrete	3 inches Bit. Concrete
Min. travelled width	22 feet	26 feet	32 feet
Min. (REMOVE) site (ADD) sight distance	200 feet	200 feet	400 feet
Max. grade	12%	11%	9%

#### Reason for change:

To better define the standard of adequacy.

Mr. Fay asked whether this section should reference a requirement to ensure there is a fee interest vs. an easement to gain access to any lots. He provided a hypothetical example of two neighbors granting easements to a piece of back land in which the (back land) lot owner has no frontage (or insufficient frontage) of their own. His concern is that a landowner could potentially circumvent zoning requirements with an easement.

Members felt this may be an appropriate place for this language, but there will need to be additional research on the topic by the working group/Legal Dept.

**Regulation:** § A676-10 Definitive plan.

**Proposed change:**

(2) A properly executed application Form C (see Appendix C) and Petition for Approval of Final Plan, Form D (see Appendix D), including the name of the record owner of the land and the time within which the subdivider or applicant agrees to complete the ways and install the public utilities in the subdivision, and approval of all plans shall be upon the condition that all ways shown thereon and public utilities required by the Board shall be completed and installed within the time so specified. The Board may decline to approve any plan unless the applicant agrees to complete the ways shown thereon and install the public utilities aforesaid within (REMOVE) two years of the date of approval of his (ADD) a time frame so indicated on a construction schedule approved by the Planning Board for the definitive plan. If the ways in any subdivision are not completed and the utilities aforesaid are not installed within the time so agreed to by the applicant or so required by the Board, no such way shall thereafter be laid out, constructed, completed or opened for public use unless and until (REMOVE) a new application (ADD) an extension of the approval of the Definitive Subdivision Plan is filed with and approved by the Board. (ADD) Any surety securing the completion of the subdivision must be extended to run concurrently with the extension of the Definitive Subdivision Plan approval. Ways not completed or portions thereof (REMOVE) within two years from the date of approval by the Board (ADD) when the approval of the Definitive Subdivision Plan has expired shall thereafter be completed in accordance with the then-in- force construction standards of the Planning Board and the Department of Public Works of the City of Marlborough.

**Reason for change:**

Eliminates the limitation to have the subdivision completed in a two-year time frame and updates the regulation to current practices.

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*Mr. LaVenture said that this section will be discussed further in an upcoming working group meeting. Members may either share their thoughts now or provide comment to Ms. Holmi. Mr. Fay commented on the proposed change. He understands the practical reasoning in allowing a longer completion date. He believes the two-year completion date serves an important function. A shorter timeframe allows the Board the opportunity to evaluate progress and address any performance issues. The authority to grant extensions and control the bond (performance security) protects the interests of the city and neighborhood. The Board needs to consider the potential impact on potential future city developments on remaining large parcels.*

**Proposed change:**

(ADD) (3) Construction phasing. As part of the Definitive Subdivision Plan approval, phased construction of utilities and roadways may be allowed, provided that the following criteria has been met and approved by the Planning Board:

(a) A Phasing Plan showing the different phases proposed. Where utility construction is required to overlap into another phase(s), only the utility main may be installed – all branches and services not associated with active phases will be allowed.

(b) A Phasing Document which details the work to be performed in each phase, to include.

(i) Construction schedule for each phase

(ii) Installation of a temporary turnaround (cul-de-sac) at the end of the constructed roadway

(iii) Construction gates at the end of each phase to limit access to non-active phases

(iv) Immediate stabilization of an excavation in any non-active phase of roadway construction

(v) Non-active phases must remain in an undisturbed state

*Regarding phasing, Mr. Fay has similar concerns to the previous section on the timeframe to complete the subdivision. Phasing could allow the developer to manipulate the process. With approved extensions, the developer can achieve the same effective result. Chair Fenby asked for any additional comments. Mr. Hodge agreed that the Board maintains some leverage by requiring the developer to request extensions.*

**Regulation:** §A676-2 Definitions.

**Proposed changes:**

As used in (REMOVE) this chapter (ADD) these Rules and Regulations, the following terms shall have the meaning indicated (REMOVE). (ADD): The word "shall" is intended to be mandatory, the word "may" is merely permissive; any singular reference includes the plural; any plural reference includes the singular; other words and phrases have the following meanings:

*Mr. Fay suggested a change in the underlined area. The suggested phrase was unclear. It has been modified for clarity, but may need to be further discussed by the Board.*

(ADD)

**AGENT/PROPONENT/REPRESENTATIVE**

A person other than the owner who has permission to speak on behalf of the owner.

**APPLICANT**

The person who applies for an approval from the Planning Board.

**DEVELOPER**

The person who oversees the installation of utilities and the construction of the roadway.

**OWNER**

A person or persons who has the legal or rightful title to property. All legal actions and dealing must be made with the owner(s).

**PRESENTER**

The person who formally appears before the Planning Board with an item for consideration.

**Reason for change:**

Clarity.

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**Regulation:** §A676-9 Preliminary Plan A. General

**Proposed regulation:**

(2) A properly executed application Form B (See Appendix B<sup>(1)</sup>) shall be filed with the preliminary plan submitted to the Planning Board (ADD) along with all applicable fees (see Appendix K<sup>(1)</sup>). The applicant shall also file by delivery or registered mail a notice with the City Clerk stating the date of submission for such approval of a preliminary plan and accompanied by a copy of the completed application Form B.

[1] Editor's Note: Appendix B (ADD) and Appendix K (REMOVE) is (ADD) are on file in the City Clerk's office (ADD) the DPW – Engineering Office.

City Engineer DiPersio noted that he believes all Appendices belong in the Rules and Regulations document. He favors removing this note.

**Reason for change:**

Update the regulation to current practices

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**Regulation:** §A676-9 Preliminary Plan, B.

**Proposed change:**

Contents. The preliminary plan shall be drawn on tracing paper with pencil at a suitable scale, preferably 40 feet to the inch, and five prints of it shall be filed with the Planning Board and one print shall be filed with the Board of Health (REMOVE) ~~at City Hall~~ (ADD) along with twelve half-scale prints for Planning Board members and associated reviews. The plan shall be designated as a "preliminary plan," and to form a clear basis for discussion of the problems of the subdivision and for preparation of the definitive plan, the plan should contain the following:

(1) Major features of the land such as existing walls, fences, buildings, large trees (ADD) having a caliper of 12 inches or greater, wooded areas, outcroppings, ditches, the subdivision name, boundaries, North point, date, scale, legend and title "preliminary plan."

(3) The names of all (REMOVE) ~~abutters~~ (ADD) properties within 100 feet of the subject property, as determined from the most recent local tax list.

**Reason for change:**

Expansion of property owners potentially affected by the construction of a subdivision and to update the regulation to current practices or better.

*Chair Fenby noted that earlier edits removing reference to tracing paper with pencil appear to be missing from this section. Mr. LaVenture stated that previous edits will be incorporated into the final version.*

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**Regulation:** §A676-10 A. General. Any person who submits a definitive plan of a subdivision to the Planning Board for approval shall file with the Board the following:

**Proposed regulation:**

(2) A properly executed application Form C (see Appendix C) and Petition for Approval of Final Plan, Form D (see Appendix D),<sup>(1)</sup> (ADD) along with all applicable fees (see Appendix K<sup>(u)</sup>), including the name of the record owner of the land and the time within which the subdivider or applicant agrees to complete the ways and install the public utilities in the subdivision, and approval of all plans shall be upon the condition that all ways shown thereon and public utilities required by the Board shall be completed and installed within the time so specified. The Board may decline to approve any plan unless the applicant agrees to complete the ways shown thereon and install the public utilities aforesaid within two years of the date of approval of his definitive plan. If the ways in any subdivision are not completed and the utilities aforesaid are not installed within the time so agreed to by the applicant or so required by the Board, no such way shall thereafter be laid out, constructed, completed or opened for public use unless and until a new application is filed with and approved by the Board. Ways not completed or portions thereof within two years from the date of approval by the Board shall thereafter be completed in accordance with the then-in-force construction standards of the Planning Board and the Department of Public Works of the City of Marlborough.

[1] Editor's Note: Appendix C and Appendix D are on file in the office of the City Clerk (ADD) office and the DPW – Engineering office.

City Engineer DiPersio noted that he believes all Appendices belong in the Rules and Regulations document. He favors note removal.

**Reason for change:**

Update the regulation to current practices

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**Regulation:** §A676-10 B. Contents (2) The definitive plan shall contain the following information:

**Proposed change:**

(d) Major features of the land, such as existing waterways, natural drainage courses, walls, fences, buildings, large trees (ADD) - having a caliper of 12 inches or greater, wooded areas, outcroppings and ditches, that exist on or near the site at the time of survey, and the limits of any resource areas as defined under MGL c. 131, §§ 40 and 40A, as determined by a botanist.

**Reason for change:**

Update the regulation to current practices

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**Regulation:** §A676-11 Design guidelines. B. In addition, design and construction shall accomplish the following: (1) Reduce, to the extent reasonably possible:

**Proposed change:**

(c) Number of mature trees (ADD) (having a caliper of 12 inches or greater) removed;

(e) Erosion and siltation (ADD) on the subdivision site shall be minimized and compliant with the City of Marlborough's Stormwater Management Ordinance (§271) and Storm Sewer Ordinance (§511). Illicit discharges onto the neighboring properties is prohibited;

(F) Flood damage (ADD) on the subdivision site shall be minimized and compliant with the City of Marlborough's Stormwater Management Ordinance (§271) and Storm Sewer Ordinance (§511). Illicit discharges onto the neighboring properties is prohibited;

**Reason for change:**

Update the regulation to current practices

*Mr. Fay questioned whether the regulations need to add a definition of Illicit discharge. City Engineer DiPersio stated that this is a term from MS4 Stormwater Regulations. It's possible to add either a definition or a URL site reference. In item F, Mr. Fay also suggested modifying neighboring properties to neighboring properties and abutting roadways.*

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**Regulation:** §A676-24 Street and roadway. A. The roadway shall be graded and prepared for pavement as follows:

**Proposed change:**

§A676-24 Street and roadway. A. The roadway shall be graded and prepared for pavement as follows:

(1) ~~(REMOVE)101.~~ Clearing and grubbing shall be performed to remove stumps, brush, roots, boulders and like from the area of the travelled way, shoulders, sidewalks and utility trenches, but elsewhere existing vegetation shall be preserved wherever feasible.

(2) ~~(REMOVE)120.~~ Roadway earth excavation shall remove all unsuitable materials encountered down to the true surface of the subgrade in preparation for foundation of roadway, sidewalks, driveways and berms. Approved materials such as gravel and loam obtained in the excavation may be used in fills, as required, if in the opinion of the Engineer they are suitable.

(3) ~~(REMOVE)150.~~ When, in the opinion of the Engineer, suitable material is not available within the limits of the highway location to form the subgrade or subbase, the contractor shall obtain such additional material from other sources in accordance with this section and as may be approved by the Engineer.

(4) ~~(REMOVE)170.~~ The subgrade surface (16 inches below the finished surface grade) shall be prepared true to the lines, grades and cross sections given and properly rolled. ~~All (REMOVE) soft or spongy material~~ (ADD) unsuitable material and organic materials below the subgrade surface shall be removed to a depth determined by the Engineer, and the space thus made shall be filled with special gravel borrow, containing no stones over six inches in their largest diameter.

(4 1/2) A layer of geotextile fabric shall be installed beneath the gravel base specified in ~~(ADD) §A676-24.~~ A(5).(amended 5-1-15)

(5) ~~(REMOVE)405.~~ Gravel base course shall consist of approved gravel placed upon the subgrade or subbase as directed and in accordance with these specifications and in reasonably close conformity with the lines and grades shown on the plans or established by the Engineer

(6) ~~(REMOVE)405.60.~~ The gravel shall be spread in layers upon the prepared subgrade from self-spreading vehicles or with power graders of approved types or by hand methods. Gravel shall be spread in layers not more than four inches thick, compacted measure.

(a) The gravel shall be compacted and placed to the tolerance as stipulated in (ADD) MassDOT Standard Specifications for Highways and Bridges (Current Edition) – Section 401 (REMOVE) Gravel or crushed stone subbase (ADD) Gravel Sub-base and Section 402 Dense Grade Crushed Stone for Sub-base.

(b) At the conclusion of this step, the roadway shall be staked in all locations where permanent monuments are to be installed as provided in ~~(REMOVE) Subsection 7.13~~ (ADD) §A676-29.

**Reason for change:**

Update the regulation to current practices

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**Regulation:** §A676-24 Street and roadway.

**Proposed change:**

E. Dust control shall be provided throughout the entire project. Sprinklers, watering trucks, calcium chloride, fencing, etc. shall be employed as directed by the (REMOVE) Planning Board (ADD) DPW – Engineering Division or the Code Enforcement Office.

**Reason for change:**

Update the regulation to current practices

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**Regulation:** § A676-28 Trees.

**Proposed change:**

A. Street trees of a species approved by the ~~(REMOVE) City Forester~~ (ADD) Tree Warden shall be planted on each side of each street in a subdivision, except where the definitive plan showed trees to be retained which are healthy and adequate. Such trees shall be located outside of the right-of-way as shown in the profile and standard cross section plans, Appendix F, approximately at forty-foot intervals, and shall be at least 12 feet in height and a minimum of three-inch caliper. (ADD) Existing trees designated to remain shall be protected in a manner deemed acceptable to the Tree Warden.

C. Removal and disposal of trees not intended for preservation shall be as designated by the ~~(REMOVE)- City Forester~~ (ADD) Tree Warden.

**Reason for change:**

Update the regulation to current practices

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**Regulation:** § A676-41 Inspections.

**Proposed regulation:**

A. Inspections shall be arranged for by the subdivider with the proper City (REMOVE) official (ADD) Department for the purpose prior to the construction of streets and the installation of utilities and during construction as specified herein at each significant construction stage.

B. Inspection shall be requested in writing at least 48 hours in advance of each inspection to the proper City (REMOVE) official (ADD) Department. ~~(REMOVE), and a copy of each request shall be sent to the Clerk of the Planning Board.~~

C. Inspection shall be for the following:

- (1) Satisfactory excavating (ADD) of unsuitable material and excess material;
- (2) Satisfactory filling (ADD) of sub-base material and base material;
- (3) Satisfactory compacting (ADD) of sub-base and base material;
- (4) Satisfactory completion of the pavement (ADD) courses;
- (5) Satisfactory finish grading of grass plots (ADD) and structural soils;
- (6) Satisfactory placing of curbs and gutters;
- (7) Satisfactory construction of sidewalks;
- (8) Satisfactory installation of sanitary sewers and related equipment or on-site disposal systems;
- (9) Satisfactory installation of water mains and appurtenances;
- (10) Satisfactory installation of surface and subsurface drainage system and related equipment; and
- (11) Satisfactory installation of monuments.

D. The Planning Board may establish the order of the required inspection and may require satisfactory completion of one step before the subdivider proceeds to the next. It may require tests to be done by the subdivider as a condition for approval when in the opinion of the Planning Board it is advisable.

E. The proper City official shall indicate on Form G, (Appendix G) provided by the Planning Board the date of inspection and the approval and shall file such form with the Planning Board.

**Working group discussion – Planning Board Rules and Regulations**

**ii. Next steps.**

Mr. LaVenture thanked the more experienced members for their insight. The working group will meet again to review the next sections and revisit any items requiring further discussion.

Mr. Fay would like the group to discuss performance securities. It would also be helpful to provide developers a checklist as a guide. Mr. DiPersio stated that a checklist should be a separate document from the Rules and Regulations. Based on feedback, security language should be changed, since phasing is implied as an option. Mr. Fay would like to further discuss the surety issue with Mr. DiPersio at another time.

Mr. Hodge asked about mailbox placement in neighborhoods. On east-west running streets, he favors placement on the “sunny side” of the street. He requests the working group discuss this matter at their next meeting.

**11. Calendar Updates (None)**

**12. Notices from other Cities and Towns**

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to accept and file remaining items and to adjourn the meeting. Yea: Elder, Fay, Hodge, LaVenture, Russ. Nay: 0. Motion Carried.

Respectfully submitted,

George LaVenture/Clerk

/kih



# IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 22, 2021

ORDERED:

PAGE 1

That the Proposed Zoning Amendment to Chapter 650 to amend Section 33 the Results Way Mixed Use Overlay District (RMUOD), be and is herewith refer to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE A PUBLIC HEARING FOR MONDAY, MARCH 22, 2021.**

Yea: 11 – Nay: 0

Yea: Wagner, Doucette, Dumais, Tunnera, Irish, Navin, Landers, Oram, Ossing, Perlman, & Robey.

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING SUBMITTED FOR ITS OWN 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 AS FOLLOWS:

Chapter 650 §33 – Results Way Mixed Use Overlay District

A. Purpose and objectives.

- (1) The Results Way Mixed Use Overlay District (herein, also RWMUOD) allows the application of supplemental land use controls within the boundaries of a certain overlay district, subject to City Council approval (Hereinafter any reference to City approval shall be deemed to mean approval by the City Council.) as an alternative to land use controls that exist in the underlying district(s). The establishment goals of the Results Way Mixed Used Overlay District are to enhance land use development and encourage desired growth patterns for the benefit of the public health, safety and welfare by promoting integrated, pedestrian-friendly, mixed use development to allow for the development of housing, retail and workplaces within close proximity of each other consistent with the stated economic development objectives of the City (collectively, herein mixed use developments or MUD).
- (2) For the purposes of this section, the RWMUOD shall be superimposed on the other districts existing at the time that any land in any said underlying district is also included in the RWMUOD. The RWMUOD is adjacent to ~~Simarano Drive to the west, and Forest Street to the north, and Puritan Way and Results Way to the east~~ as indicated on the City Zoning Map and more particularly described in Exhibit A annexed hereto and incorporated by reference herein.<sup>1</sup>



# IN CITY COUNCIL

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## ORDERED:

- (3) For the purposes of the Zoning Ordinance, a mixed use development or MUD shall include any eligible use set forth in Subsection E, below, which may be commingled into a single structure or structures with other eligible uses or may be located in separate structures on the site subject to any restrictions and/or limitations set forth in the development agreement described in Subsection C(2) below. Accordingly, mixed use developments shall benefit the public health, safety and welfare through the sharing of parking lots and driveway curb cuts to minimize the amount of impervious paved parking areas, to reduce traffic congestion, to reduce automobile trips, and accordingly to improve air quality.
- B. Authority of permit granting authority.
  - (1) The City Council shall be the permit granting authority for special permit and site plan approval in the RWMUOD. In all instances, a development which proceeds under the RWMUOD overlay is subject to site plan approval in accordance with § 270-2 of the Marlborough City Code, with the exception that the City Council shall be the permit granting authority for special permit and site plan approval in the RWMUOD.
  - (2) The City Council may elect to vary the dimensional and parking requirements of this section by special permit if, in its opinion, such change shall result in a substantially improved project and will not nullify or substantially derogate from the intent or purpose of this section. This authority continues subsequent to occupancy.
- C. Master concept plan; development agreement. ~~The~~ A property owner/developer of within the RWMUOD shall, prior to or simultaneously with the first application for approval of a site plan and/or special permit for a MUD within the RWMUOD, file the following with the City Council for approval:
  - (1) Master concept plan.
    - (a) A master concept plan (master plan) which shall in a general manner show:
      - [1] The location and areas of proposed development;
      - [2] Proposed open space (usable or natural);
      - [3] Proposed site access curb cuts off of Simarano Drive and Forest Street; and
      - [4] Proposed building envelope(s) where construction is anticipated to occur (excluding internal site driveways).



# IN CITY COUNCIL

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ORDERED:

- (b) A table showing approximate acres and calculations of the following:
    - [1] Total land area of each development area (building envelope area);
    - [2] Total development limitations, if any, of uses in any developable area;
    - [3] Total maximum development (square footage/use limitations); and
    - [4] Approximate number of parking spaces ~~for the entire RWMUOD~~  
District.
  - (c) The master plan shall be approved by a super majority (2/ 3) vote of the City Council at a public meeting and shall thereafter become the general development plan governing development at the ~~RWMUOD~~MUD. The master plan may be amended from time to time by a super majority vote (2/3) of the City Council by application from the property owner/developer to reflect changing development conditions.
- (2) A development agreement in recordable form binding upon the developer/property owner.
- (a) The development agreement shall be approved by a super majority (2/3) vote of the City Council prior to the issuances of the first permit/site plan approval for development within the ~~RWMUOD~~MUD, which shall contain, without limitation:
    - a. Required mitigation (including traffic demand management initiatives) to address the impacts arising out of the use and occupancy of the proposed project, or if at the time of execution such impacts are not known, the methodology for assessing and addressing such impacts as the development of the ~~RWMUOD~~MUD progresses.
    - b. Restrictions on development areas and such other development limitations as may be agreed upon.
    - c. Proposed phasing of the development of the ~~RWMUOD~~MUD.
    - d. Obligations with respect to pedestrian and vehicular interconnectivity within the ~~RWMUOD~~MUD to facilitate pedestrian access and parking efficiencies.
    - e. The authority of the City Council to retain the necessary professionals to assist in its review of development applications.



## IN CITY COUNCIL

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ORDERED:

- f. An agreement by the property owner/developer of the residential component of the property to make a onetime financial contribution to the City per residential unit developed at the ~~RWMUOD~~MUD for which a building permit is issued. This payment shall be due at the time of the issuance of the building permit for the unit(s). This amount is to be used by the City acting by and through the City Council to assist in the identification and implementation of zoning, economic and other strategies to foster professional, retail and commercial development initiatives as well as the development of affordable housing which may include, without limitation, the preparation of a housing production plan in accordance with the rules and regulations of the Massachusetts Department of Housing and Community Development (760 CMR 56.03(4)) and the funding of the implementation of the goals and objectives set forth in such plan.
- (b) The development agreement shall govern the implementation of the master plan and development at the MUD.
- (c) Notwithstanding anything contained in any current or future development agreement to the contrary, each development agreement shall only apply to the applicable MUD and shall not govern any development of other MUDs within the RWMUOD.
- D. Exclusivity/control. Except as specifically provided herein, uses and provisions of Article V of Chapter 650 (Zoning) relating to the underlying zoning district not otherwise impacted by this section (§ 650-33 et seq.) shall continue to remain in full force and effect; provided, however, that the City Council shall be the special permit granting and site plan approval authority, if applicable. This section (§ 650-33 et seq.) of the Zoning Ordinance exclusively controls the establishment, development, and design of any MUD undertaken in the RWMUOD and supersedes any other provision of the Zoning Ordinance (except the provisions of the Water Supply Protection District, provided that the maximum total impervious surface coverage for the RWMUD shall be 60% calculated on the entire land area of ~~the RWMUOD~~ each MUD and not on an individual lot basis). In the event of any conflict between the provisions of this section (§ 650-33 et seq.) and any other provision of the Zoning Ordinance, the provisions of this section shall govern and control.



# IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 22, 2021

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## ORDERED:

- E. Eligible uses. Except as specifically set forth below, all uses permitted in the Industrial and Limited Industrial Districts either as of right or by special permit in accordance with § 650-17 of the Zoning Ordinance are permitted in the RWMUOD. If a use requires a special permit under § 650-17, Table of Use Regulations, such use shall continue to require a special permit under this section.
- (1) The following additional uses are also permitted by right in the RWMUOD:
- (a) Research and experimental labs (33). (NOTE: Numbers in parentheses correspond to subsection numbers in § 650-18, Conditions for Uses, as noted in § 650-17, Table of Use Regulations.) Research and development includes, without limitation, laboratories engaged in research, experimental and testing activities, including, but not limited to, the fields of biology, chemistry, electronics, engineering, geology, pharmaceuticals, medicine and physics.
  - (b) Medical office and diagnostic medical laboratories appurtenant to offices of physicians and dentists.
  - (c) Associated/accessory research uses (35). (NOTE: Numbers in parentheses correspond to subsection numbers in § 650-18, Conditions for Uses, as noted in § 650-17, Table of Use Regulations.)
  - (d) Advanced manufacturing, which shall include high technology manufacturing, such as, but not limited to, laser technology, robotics, nanotechnology and computer-associated design and software development.
  - (e) Multifamily dwelling: ~~up to 350 dwelling units within the entire RWMUOD Zoning District~~ the maximum amounts set forth on Exhibit A including, without limitation, age-restricted dwelling units.
  - (f) Retail sales and services: ~~up to 75,000 square feet of total gross floor area; up to 10,000 square feet of gross floor area per establishment~~ the maximum amounts set forth on Exhibit A.
  - (g) Hotels and motels.
  - (h) Hotels with conference facilities and commercial uses.
  - (i) Car parking lots, garages: a structure or a group of structures that facilitate the parking of vehicles at ground level, above or below grade and shall include area for the parking of vehicles at, above and/or below grade under a building or otherwise integrated into another structure.



# IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 22, 2021

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2A

## ORDERED:

- (j) Consumer service establishments complementary to the other principal uses at the property.
  - (k) Restaurant, cafe with or without table service (including outside seating and service).
  - (l) Health, sports and fitness clubs (indoor and/or outdoor) and related facilities.
  - (m) Self-service laundry.
  - (n) Dry cleaning (pickup and dropoff only).
- (2) The following additional uses are also permitted by special permit in the RWMUOD:
- (a) Multifamily dwelling — ~~more than 350 dwelling units within the entire RWMUOD Zoning District~~ the maximum amounts set forth on Exhibit A including, without limitation, age-restricted dwelling units.
  - (b) Drive-through facilities associated with retail (e.g. banks; pharmacies) and food services.
- (3) The foregoing subsections notwithstanding, the uses set forth as follows are expressly prohibited in the RWMUOD:
- (a) Adult entertainment, including an adult bookstore, video store, paraphernalia store, movie theater, or live entertainment establishment.
  - (b) Tattoo and body piercing parlors and shops.
  - (c) Dye works.
  - (d) Biosafety Level 4 laboratories, as defined by the United States Center for Disease Control and Prevention.
  - (e) Establishments for construction in such services as, but not limited to, building, building maintenance, plumbing, landscaping, electrical, masonry, carpentry, well drilling.
  - (f) Electroplating, metal finishing except by special permit as an accessory use to an otherwise permitted principal use.
  - (g) Hazardous and toxic chemical manufacturing, except in accordance with applicable state and federal regulations.
  - (h) Trucking terminal and distribution center.
  - (i) Automotive sales and/or service.
  - (j) Retail gasoline, oil and lubrication stations.
  - (k) Commercial bakeries.
  - (l) On-site sales and rental of heavy machinery and vehicles.



## IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 22, 2021

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### ORDERED:

- (m) Laundry and dry cleaning establishment, except dropoff and pickup operations and facilities designed to service residents of multifamily dwelling.
  - Any activity or use directly or indirectly involving, without limitation, the dispensing, use, sale, growing, storage or transportation of medical marijuana, including any medical marijuana treatment center.
  - Any on-site facility or clinic devoted to the treatment of substance addiction, including any narcotic detoxification and/or maintenance facility.
- F. Dimensional requirements. The RWMUOD shall be subject to the dimensional standards in accordance with Article VII of the Marlborough Zoning Ordinance with the following exceptions:
  - (1) The RWMUOD shall consist of one or more lots. There is no minimum acreage requirement for a lot to be a part of the Results Way Mixed Use Overlay District.
  - (2) Minimum lot frontage measurement shall be no less than 50 feet for any lot wholly located within the boundaries of the RWMUOD.
  - (3) Minimum front yard measurement shall be no less than 30 feet for any lot wholly located within boundaries of a RWMUOD.
  - (4) No less than 15 feet shall separate the structural side wall of any two or more MUD structures. No less than 15 feet shall separate any area behind and/or between structures, and fire suppression vehicles shall have clear and adequate access to all structures.
  - (5) Maximum building height in RWMUOD shall not exceed 80 feet, provided that:
    - (a) Residential structures shall not exceed 70 feet; and
    - (b) No structure located within 120 feet from the center line of Forest Street shall exceed 50 feet.
  - (6) Maximum lot coverage shall be calculated on the entire land area of the RWMUOD-MUD and not on an individual lot basis, and shall not exceed 60% of the total area of the RWMUOD-MUD.



## IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 22, 2021  
PAGE 8

### ORDERED:

- G. Parking and curb cut requirements. Except as otherwise provided in this section, parking and circulation requirements shall conform to the provisions of §§ 650-48 and 650-49 of the Zoning Ordinance.
- (1) General. In the RWMUOD adequate off-street parking shall be provided. The City Council and the applicant shall have as a goal for the purposes of defining adequate off-street parking, making the most efficient use of the parking facilities to be provided and minimizing the area of land to be paved for this purpose. In implementing this goal the City Council shall consider complementary or shared use of parking areas by activities having different peak demand times, and the applicant shall locate adjacent uses in such a manner as will facilitate the complementary use of such parking areas. Implementation of such complementary use of parking areas may result in permitted reductions in the parking requirements.
  - (2) Parking locations. Parking may be provided at ground level, underground or in a parking garage. Parking garages can be freestanding or as part of buildings dedicated to other permitted uses.
  - (3) Parking spaces for each dwelling unit. There shall be a minimum of 1.5 parking spaces for each dwelling unit.
  - (4) Granting of relief from parking regulations. The City Council may waive any of the foregoing requirements or the requirements of § 650-48 if it makes a finding that to do so will enhance the overall design of the RWMUOD.
- H. Signage.
- (1) Except as otherwise provided in this mixed use section, signage shall conform to the provisions of Chapter 526 of the Marlborough City Code, the Sign Ordinance.
  - (2) Granting of relief from signage regulations. The City Council may waive any of the requirements of the Sign Ordinance if it makes a finding that to do so will enhance the overall design of the RWMUOD.

2K



# IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 22, 2021 PAGE 9

## ORDERED:

### I. Application.

- (1) An application for a special permit for a use in the mixed use development in the RWMUOD shall comply with the requirements of § 650-59 et seq. of the Zoning Ordinance. In the matter of a site plan approval, the application shall comply with the requirements of the City Code, Chapter 270, Article II, Permits and Approvals, § 270-2 et seq.
- (2) The City Council in connection with a special permit and/or site plan application shall review such applications with respect to the following design criteria:
  - Compliance of sidewalks with Americans with Disabilities Act (ADA) design standards;
  - Street facade and exterior walls visible from public ways;
  - Public space;
  - Scale of buildings; and
  - External lighting.
- (3) Concurrent with any public hearing/meeting associated with a special permit and/or site plan filing, the applicant shall make a presentation to the City Council to present the proposed architectural design and shall consider the comments and input from the City Council. A final building elevation shall be submitted prior to the close of the public hearing/meeting.

### J. Standards for roadways and drainage.

- (1) Roadways. Internal RWMUOD roadways shall be private ways and shall be maintained by the owners/developers of the RWMUOD and portions thereof. Private ways within the RWMUOD, to the extent feasible, shall be constructed using the methods and materials prescribed in the Rules and Regulations for the Subdivision of Land in the City, but shall not be required to conform to the dimensional requirements thereof, provided that those private roadways shall be adequate for the intended vehicular and pedestrian traffic and shall be maintained by the owner/developer or an association of owners.

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## IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 22, 2021

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### ORDERED:

- (2) Stormwater management system. ~~The~~ Each MUD within the RWMUOD shall have a stormwater management system designed in accordance with the applicable Rules and Regulations for the Subdivision of Land in the City and the Department of Environmental Protection's Storm Water Management Guidelines, as amended.
- K. Amendments. After approval, ~~the~~ an owner/developer may seek amendments to the approved permits. Minor amendments to a special permit and major or minor amendments to a site plan approval may be made by a super majority (2/3) vote of the City Council. It shall be a finding of the City Council, not subject to dispute by the applicant, whether a requested amendment is deemed to be a major amendment or a minor one. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce more than a material increase in impact on City services, the environment or the neighborhood. If it is determined that revisions to a special permit are not minor, per § 650-59 of the Zoning Ordinance, an application for a revised special permit shall be filed, and a public hearing shall be held in the same manner as required for a new application, subject to the fee schedule under Subsection C(3)(f) of § 650-59.



# IN CITY COUNCIL

Marlborough, Mass., FEBRUARY 22, 2021

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ORDERED:

## EXHIBIT A – CHAPTER 650 §33

The RWMUOD shall comprise two separate subdistricts, as described below. Within each subdistrict, one MUD shall be permitted, which shall be subject to a separate development agreement and master plan, and which may contain up to the maximum number of units of multifamily dwellings and gross floor area of retail sales and services uses set forth below.

	<u>Included Parcels</u> <u>[NOTE: To be confirmed by Assessor].</u>	<u>Total number of dwelling units permitted as-of- right (subject to site plan approval as set forth herein)</u>	<u>Total gross floor area of retail sales and services uses allowed</u>
<u>RWMUOD Subdistrict 1</u>	<ul style="list-style-type: none"><li>• <u>PID# 100-1</u></li><li>• <u>PID# 100-1B</u></li><li>• <u>PID #100-2</u></li><li>• <u>PID #100-3</u></li><li>• <u>PID #100-1A</u></li><li>• <u>PID #101-2B</u></li></ul>	<ul style="list-style-type: none"><li>• <u>350 dwelling units as-of-right</u></li></ul>	<ul style="list-style-type: none"><li>• <u>75,000 square feet of total gross floor area (up to 10,000 square feet of gross floor area per establishment)</u></li></ul>
<u>RWMUOD Subdistrict 2</u>	<ul style="list-style-type: none"><li>• <u>PID #100-19</u></li><li>• <u>PID #111-1</u></li><li>• <u>PID #111-2</u></li></ul>	<ul style="list-style-type: none"><li>• <u>100 dwelling units as-of-right</u></li></ul>	<ul style="list-style-type: none"><li>• <u>75,000 square feet of total gross floor area (up to 10,000 square feet of gross floor area per establishment)</u></li></ul>

ADOPTED

ORDER NO. 21-1008216

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CITY OF MARLBOROUGH

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**goulston&storr**s  
counsellors at law

Peter Tamm, Esq.  
ptamm@goulstonstorr.com  
(617) 574-7891 (tel)  
(617) 574-4112 (fax)

February 18, 2021

**VIA OVERNIGHT DELIVERY**

Marlborough City Council  
Marlborough City Hall, Second Floor  
140 Main Street  
Marlborough, MA 01752

**Re: Zoning Amendment affecting the Campus at Marlborough, Simerano Drive and Martinangelo Drive, Marlborough, MA (the "Property")**

Dear Members of the City Council,

On behalf of BH GRP TCAM Owner LLC, an affiliate of Greatland Realty Partners (the "**Proponent**"), I am pleased to submit the following enclosed materials in support of a zoning change at the Property:

1. a plan showing a proposed zoning map amendment extending the adjoining Results Way Mixed Use Overlay District (the "**RWMUOD**") over the Property; and
2. a redline reflecting proposed minor revisions to the RWMUOD text, as described below.

The Proponent is the current owner of the Property, which comprises City of Marlborough Assessing Parcels #100-10, #111-1 and 111-2 and contains a total of approximately 121.16 acres of land presently in the Industrial District. The Property is currently improved with approximately 550,000 square feet of office space constructed as Phase I of "The Campus at Marlborough" master project (the "**TCAM Project**").

As shown on the enclosed plan, the Proponent is seeking to extend the RWMUOD, which currently covers approximately 100 acres of land adjacent to the Property across Simerano Drive, to include the Property. Expanding this overlay zoning designation to the Property is consistent with the City's mixed-use planning and economic development goals. Specifically, Section 4.3.2.2 of the City of Marlborough's 2011 *Economic Development Master Plan* suggests, as a zoning change to facilitate new development in the City's industrial zones, "Specifying mixed-use options for projects in industrial zoning districts, particularly retail/office, retail/industrial and live-work options." Such a zoning change would provide the framework and flexibility to allow the Proponent to fulfill its vision for the TCAM Project by completing the unrealized "Phase 2" commercial component thereof. Following on the construction of the Revance building, which is currently undergoing site plan review by the Site Plan Review Committee, this vision involves the establishment of a central square providing amenities and public dining options, surrounded by a "bio-ring"—consisting of office, life science and biomanufacturing uses—as well as a limited number of townhomes at the base of the hill.

As you are aware, the existing RWMUOD requires that a mixed use development (as defined in the RWMUOD zoning text, a "**MUD**") obtain City Council approval of a master plan and development agreement, followed by site plan approval by the City Council for the construction of each mixed-use component thereof. However, as currently written, the RWMUOD does not contemplate more than one MUD within the district. As a result, the RWMUOD text requires minor adjustments to allow the TCAM Project to proceed as a second MUD within the expanded RWMUOD. If these revisions are approved,

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the Proponent will subsequently file a draft master plan and development agreement for the TCAM Project with the City Council, followed by site plan review applications for individual project components. This iterative process ensures continued input and oversight by the City Council as development plans for Phase 2 are advanced.

In addition to these changes, two minor substantive changes are required to best position the Property for development into a key biomanufacturing hub in the Commonwealth of Massachusetts. The first substantive change to the zoning addresses an ambiguity in the RWMUOD text related to biomanufacturing use in general. Section 650-33E(3)(g) of the RWMUOD contains a general prohibition on "hazardous and toxic chemical manufacturing". However, it is not unusual for modern biomanufacturing to involve some hazardous material. Such biomanufacturing uses are subject to rigorous local, state and federal regulation to ensure that such production is done in a safe and responsible manner. Without revision, the blanket prohibition set forth in Section 650-33E(3)(g) prohibits many of the heavily-regulated and safe uses that the RWMUOD was intended to allow. The proposed revision would clarify this to ensure that the City of Marlborough is "biomanufacturing-ready".

Second, in order to allow for the development of a limited number of townhomes at the base of the hill on the Property, a 100-unit residential cap is proposed to be applied to the newly expanded portion of the district. Although these residences are essential to the mixed-use vision for the TCAM Project, they represent a modest component of the overall TCAM Project, which, at full-build, will become a job and innovation center of over 1.1 million square feet of commercial development.

Please do not hesitate to reach out if you have any questions. Thank you.

Very truly yours,



Peter Tamm, Esq.

Enclosures

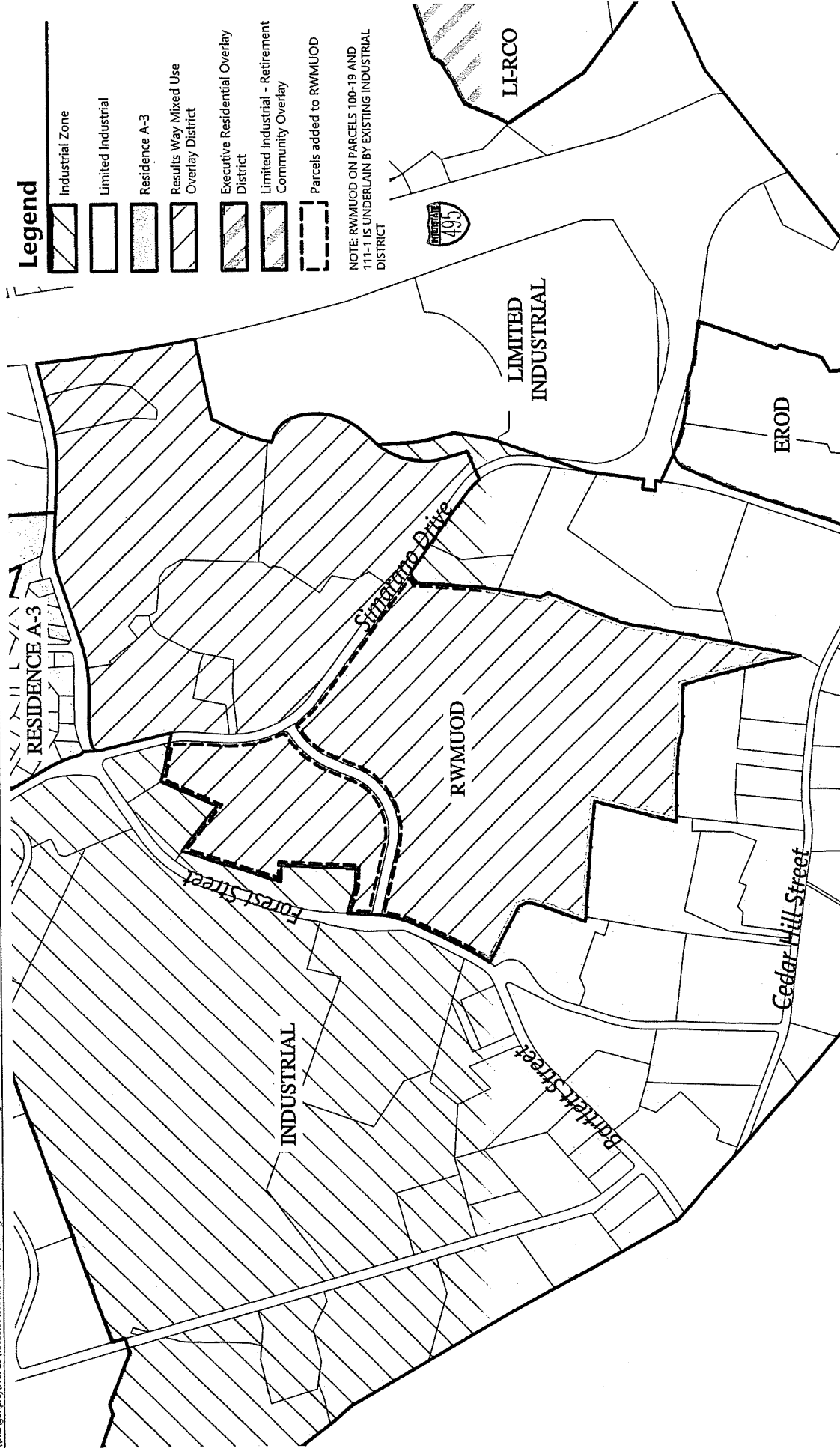
1. Proposed RWMUOD Extension Plan; and
2. Proposed RWMUOD text revisions.

CC (VIA EMAIL DELIVERY):

Mr. Kevin Sheehan, Greatland Realty Partners  
Ms. Teri Ford, Greatland Realty Partners  
Mr. David O. Gillespie, AvalonBay Communities, Inc.

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ATTACHMENT #1: PROPOSED RWMUOD EXTENSION PLAN



Proposed Zoning Revisions  
The Campus at Marlborough

Figure 1

Jan. 22, 2021

2A-15

ZA-16

ATTACHMENT #2: PROPOSED RWMUOD TEXT REVISIONS

2A-17

**§ 650-33. Results Way Mixed Use Overlay District. [Added 12-17-2012 by Ord. No. 12-1005154C], as revised [●], 2021 by Ord. No. 21-[●]]**

**A. Purpose and objectives.**

- (1) The Results Way Mixed Use Overlay District (herein, also RWMUOD) allows the application of supplemental land use controls within the boundaries of a certain overlay district, subject to City Council approval (Hereinafter any reference to City approval shall be deemed to mean approval by the City Council.) as an alternative to land use controls that exist in the underlying district(s). The establishment goals of the Results Way Mixed Used Overlay District are to enhance land use development and encourage desired growth patterns for the benefit of the public health, safety and welfare by promoting integrated, pedestrian-friendly, mixed use development to allow for the development of housing, retail and workplaces within close proximity of each other consistent with the stated economic development objectives of the City (collectively, herein mixed use developments or MUD).
- (2) For the purposes of this section, the RWMUOD shall be superimposed on the other districts existing at the time that any land in any said underlying district is also included in the RWMUOD. The RWMUOD is adjacent to Simarano Drive ~~to the west, and~~ Forest Street ~~to the north, and Puritan Way and Results Way to the east~~ as indicated on the City Zoning Map and more particularly described in Exhibit A annexed hereto and incorporated by reference herein.<sup>1</sup>
- (3) For the purposes of the Zoning Ordinance, a mixed use development or MUD shall include any eligible use set forth in Subsection E, below, which may be commingled into a single structure or structures with other eligible uses or may be located in separate structures on the site subject to any restrictions and/or limitations set forth in the development agreement described in Subsection C(2) below. Accordingly, mixed use developments shall benefit the public health, safety and welfare through the sharing of parking lots and driveway curb cuts to minimize the amount of impervious paved parking areas, to reduce traffic congestion, to reduce automobile trips, and accordingly to improve air quality.

**B. Authority of permit granting authority.**

- (1) The City Council shall be the permit granting authority for special permit and site plan approval in the RWMUOD. In all instances, a development which proceeds under the RWMUOD overlay is subject to site plan approval in accordance with § 270-2 of the Marlborough City

**1. Editor's Note: Exhibit A is on file in the City offices.**

Code, with the exception that the City Council shall be the permit granting authority for special permit and site plan approval in the RWMUOD.

- (2) The City Council may elect to vary the dimensional and parking requirements of this section by special permit if, in its opinion, such change shall result in a substantially improved project and will not nullify or substantially derogate from the intent or purpose of this section. This authority continues subsequent to occupancy.

C. Master concept plan; development agreement. ~~The~~<sup>A</sup> property owner/developer ~~of~~<sup>within</sup> the RWMUOD shall, prior to or simultaneously with the first application for approval of a site plan and/or special permit for a MUD within the RWMUOD, file the following with the City Council for approval:

(1) Master concept plan.

(a) A master concept plan (master plan) which shall in a general manner show:

- [1] The location and areas of proposed development;
- [2] Proposed open space (usable or natural);
- [3] Proposed site access curb cuts off of Simarano Drive and Forest Street; and
- [4] Proposed building envelope(s) where construction is anticipated to occur (excluding internal site driveways).

(b) A table showing approximate acres and calculations of the following:

- [1] Total land area of each development area (building envelope area);
- [2] Total development limitations, if any, of uses in any developable area;
- [3] Total maximum development (square footage/use limitations); and
- [4] Approximate number of parking spaces ~~for the entire RWMUOD District.~~

(c) The master plan shall be approved by a super majority (2/3) vote of the City Council at a public meeting and shall thereafter become the general development plan governing development at the RWMUOD MUD. The master plan may be amended from time to time by a super majority vote (2/3) of the City Council by application from the property owner/developer to reflect changing development conditions.

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(2) A development agreement in recordable form binding upon the developer/property owner.

(a) The development agreement shall be approved by a super majority (2/3) vote of the City Council prior to the issuances of the first permit/site plan approval for development within the RWMUODMUD, which shall contain, without limitation:

- [1] Required mitigation (including traffic demand management initiatives) to address the impacts arising out of the use and occupancy of the proposed project, or if at the time of execution such impacts are not known, the methodology for assessing and addressing such impacts as the development of the RWMUODMUD progresses.
- [2] Restrictions on development areas and such other development limitations as may be agreed upon.
- [3] Proposed phasing of the development of the RWMUODMUD.
- [4] Obligations with respect to pedestrian and vehicular interconnectivity within the RWMUODMUD to facilitate pedestrian access and parking efficiencies.
- [5] The authority of the City Council to retain the necessary professionals to assist in its review of development applications.
- [6] An agreement by the property owner/developer of the residential component of the property to make a onetime financial contribution to the City per residential unit developed at the RWMUODMUD for which a building permit is issued. This payment shall be due at the time of the issuance of the building permit for the unit(s). This amount is to be used by the City acting by and through the City Council to assist in the identification and implementation of zoning, economic and other strategies to foster professional, retail and commercial development initiatives as well as the development of affordable housing which may include, without limitation, the preparation of a housing production plan in accordance with the rules and regulations of the Massachusetts Department of Housing and Community Development (760 CMR 56.03(4)) and the funding of the implementation of the goals and objectives set forth in such plan.

(b) The development agreement shall govern the implementation of the master plan and development at the MUD.

(c) Notwithstanding anything contained in any current or future development agreement to the contrary, each development agreement shall only apply to the applicable MUD and shall not govern any development of other MUDs within the RWMUOD.

D. Exclusivity/control. Except as specifically provided herein, uses and provisions of Article V of Chapter 650 (Zoning) relating to the underlying zoning district not otherwise impacted by this section (§ 650-33 et seq.) shall continue to remain in full force and effect; provided, however, that the City Council shall be the special permit granting and site plan approval authority, if applicable. This section (§ 650-33 et seq.) of the Zoning Ordinance exclusively controls the establishment, development, and design of any MUD undertaken in the RWMUOD and supersedes any other provision of the Zoning Ordinance (except the provisions of the Water Supply Protection District, provided that the maximum total impervious surface coverage for the RWMUD shall be 60% calculated on the entire land area of the RWMUOD each MUD and not on an individual lot basis). In the event of any conflict between the provisions of this section (§ 650-33 et seq.) and any other provision of the Zoning Ordinance, the provisions of this section shall govern and control.

E. Eligible uses. Except as specifically set forth below, all uses permitted in the Industrial and Limited Industrial Districts either as of right or by special permit in accordance with § 650-17 of the Zoning Ordinance are permitted in the RWMUOD. If a use requires a special permit under § 650-17, Table of Use Regulations, such use shall continue to require a special permit under this section.

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(a) Research and experimental labs (33). (NOTE: Numbers in parentheses correspond to subsection numbers in § 650-18, Conditions for Uses, as noted in § 650-17, Table of Use Regulations.) Research and development includes, without limitation, laboratories engaged in research, experimental and testing activities, including, but not limited to, the fields of biology, chemistry, electronics, engineering, geology, pharmaceuticals, medicine and physics.

(b) Medical office and diagnostic medical laboratories appurtenant to offices of physicians and dentists.

- (c) Associated/accessory research uses (35). (NOTE: Numbers in parentheses correspond to subsection numbers in § 650-18, Conditions for Uses, as noted in § 650-17, Table of Use Regulations.)
  - (d) Advanced manufacturing, which shall include high technology manufacturing, such as, but not limited to, laser technology, robotics, nanotechnology and computer-associated design and software development.
  - (e) Multifamily dwelling: up to ~~350 dwelling units within the entire RWMUOD Zoning District~~ the maximum amounts set forth on Exhibit A including, without limitation, age-restricted dwelling units.
  - (f) Retail sales and services: up to ~~75,000 square feet of total gross floor area; up to 10,000 square feet of gross floor area per establishment~~ the maximum amounts set forth on Exhibit A.
  - (g) Hotels and motels.
  - (h) Hotels with conference facilities and commercial uses.
  - (i) Car parking lots, garages: a structure or a group of structures that facilitate the parking of vehicles at ground level, above or below grade and shall include area for the parking of vehicles at, above and/or below grade under a building or otherwise integrated into another structure.
  - (j) Consumer service establishments complementary to the other principal uses at the property.
  - (k) Restaurant, cafe with or without table service (including outside seating and service).
  - (l) Health, sports and fitness clubs (indoor and/or outdoor) and related facilities.
  - (m) Self-service laundry.
  - (n) Dry cleaning (pickup and dropoff only).
- (2) The following additional uses are also permitted by special permit in the RWMUOD:
- (a) Multifamily dwelling — more than ~~350 dwelling units within the entire RWMUOD Zoning District~~ the maximum amounts set forth on Exhibit A including, without limitation, age-restricted dwelling units.

- (b) Drive-through facilities associated with retail (e.g. banks; pharmacies) and food services.

(3) The foregoing subsections notwithstanding, the uses set forth as follows are expressly prohibited in the RWMUOD:

- (a) Adult entertainment, including an adult bookstore, video store, paraphernalia store, movie theater, or live entertainment establishment.
- (b) Tattoo and body piercing parlors and shops.
- (c) Dye works.
- (d) Biosafety Level 4 laboratories, as defined by the United States Center for Disease Control and Prevention.
- (e) Establishments for construction in such services as, but not limited to, building, building maintenance, plumbing, landscaping, electrical, masonry, carpentry, well drilling.
- (f) Electroplating, metal finishing except by special permit as an accessory use to an otherwise permitted principal use.
- (g) Hazardous and toxic chemical manufacturing, except in accordance with applicable state and federal regulations.
- (h) Trucking terminal and distribution center.
- (i) Automotive sales and/or service.
- (j) Retail gasoline, oil and lubrication stations.
- (k) Commercial bakeries.
- (l) On-site sales and rental of heavy machinery and vehicles.
- (m) Laundry and dry cleaning establishment, except dropoff and pickup operations and facilities designed to service residents of multifamily dwelling.
- (n) Any activity or use directly or indirectly involving, without limitation, the dispensing, use, sale, growing, storage or transportation of medical marijuana, including any medical marijuana treatment center.

- (o) Any on-site facility or clinic devoted to the treatment of substance addiction, including any narcotic detoxification and/or maintenance facility.

F. Dimensional requirements. The RWMUOD shall be subject to the dimensional standards in accordance with Article VII of the Marlborough Zoning Ordinance with the following exceptions:

- (1) The RWMUOD shall consist of one or more lots. There is no minimum acreage requirement for a lot to be a part of the Results Way Mixed Use Overlay District.
- (2) Minimum lot frontage measurement shall be no less than 50 feet for any lot wholly located within the boundaries of the RWMUOD.
- (3) Minimum front yard measurement shall be no less than 30 feet for any lot wholly located within boundaries of a RWMUOD.
- (4) No less than 15 feet shall separate the structural side wall of any two or more MUD structures. No less than 15 feet shall separate any area behind and/or between structures, and fire suppression vehicles shall have clear and adequate access to all structures.
- (5) Maximum building height in RWMUOD shall not exceed 80 feet, provided that:
  - (a) Residential structures shall not exceed 70 feet; and
  - (b) No structure located within 120 feet from the center line of Forest Street shall exceed 50 feet.
- (6) Maximum lot coverage shall be calculated on the entire land area of the RWMUODMUD and not on an individual lot basis, and shall not exceed 60% of the total area of the RWMUODMUD.

G. Parking and curb cut requirements. Except as otherwise provided in this section, parking and circulation requirements shall conform to the provisions of §§ 650-48 and 650-49 of the Zoning Ordinance.

- (1) General. In the RWMUOD adequate off-street parking shall be provided. The City Council and the applicant shall have as a goal for the purposes of defining adequate off-street parking, making the most efficient use of the parking facilities to be provided and minimizing the area of land to be paved for this purpose. In implementing this goal the City Council shall consider complementary or shared use of parking areas by activities having different peak demand times, and the applicant shall locate adjacent uses in such a manner as will facilitate the complementary use of such parking areas. Implementation of such

complementary use of parking areas may result in permitted reductions in the parking requirements.

- (2) Parking locations. Parking may be provided at ground level, underground or in a parking garage. Parking garages can be freestanding or as part of buildings dedicated to other permitted uses.
- (3) Parking spaces for each dwelling unit. There shall be a minimum of 1.5 parking spaces for each dwelling unit.
- (4) Granting of relief from parking regulations. The City Council may waive any of the foregoing requirements or the requirements of § 650-48 if it makes a finding that to do so will enhance the overall design of the RWMUOD.

#### H. Signage.

- (1) Except as otherwise provided in this mixed use section, signage shall conform to the provisions of Chapter 526 of the Marlborough City Code, the Sign Ordinance.
- (2) Granting of relief from signage regulations. The City Council may waive any of the requirements of the Sign Ordinance if it makes a finding that to do so will enhance the overall design of the RWMUOD.

#### I. Application.

- (1) An application for a special permit for a use in the mixed use development in the RWMUOD shall comply with the requirements of § 650-59 et seq. of the Zoning Ordinance. In the matter of a site plan approval, the application shall comply with the requirements of the City Code, Chapter 270, Article II, Permits and Approvals, § 270-2 et seq.
- (2) The City Council in connection with a special permit and/or site plan application shall review such applications with respect to the following design criteria:
  - (a) Compliance of sidewalks with Americans with Disabilities Act (ADA) design standards;
  - (b) Street facade and exterior walls visible from public ways;
  - (c) Public space;
  - (d) Scale of buildings; and
  - (e) External lighting.

- (3) Concurrent with any public hearing/meeting associated with a special permit and/or site plan filing, the applicant shall make a presentation to the City Council to present the proposed architectural design and shall consider the comments and input from the City Council. A final building elevation shall be submitted prior to the close of the public hearing/meeting.

J. Standards for roadways and drainage.

- (1) Roadways. Internal RWMUOD roadways shall be private ways and shall be maintained by the owners/developers of the RWMUOD and portions thereof. Private ways within the RWMUOD, to the extent feasible, shall be constructed using the methods and materials prescribed in the Rules and Regulations for the Subdivision of Land in the City, but shall not be required to conform to the dimensional requirements thereof, provided that those private roadways shall be adequate for the intended vehicular and pedestrian traffic and shall be maintained by the owner/developer or an association of owners.
- (2) Stormwater management system. ~~The~~ Each MUD within the RWMUOD shall have a stormwater management system designed in accordance with the applicable Rules and Regulations for the Subdivision of Land in the City and the Department of Environmental Protection's Storm Water Management Guidelines, as amended.

K. Amendments. After approval, ~~the~~ an owner/developer may seek amendments to the approved permits. Minor amendments to a special permit and major or minor amendments to a site plan approval may be made by a super majority (2/3) vote of the City Council. It shall be a finding of the City Council, not subject to dispute by the applicant, whether a requested amendment is deemed to be a major amendment or a minor one. In general, a minor modification shall not produce more than a material increase in the scale of a project nor produce more than a material increase in impact on City services, the environment or the neighborhood. If it is determined that revisions to a special permit are not minor, per § 650-59 of the Zoning Ordinance, an application for a revised special permit shall be filed, and a public hearing shall be held in the same manner as required for a new application, subject to the fee schedule under Subsection C(3)(f) of § 650-59.

2A-26

The RWMUOD shall comprise two separate subdistricts, as described below. Within each subdistrict, one MUD shall be permitted, which shall be subject to a separate development agreement and master plan, and which may contain up to the maximum number of units of multifamily dwellings and gross floor area of retail sales and services uses set forth below.

	<u>Included Parcels</u> <u>[NOTE: To be confirmed by Assessor].</u>	<u>Total number of dwelling units permitted as-of-right (subject to site plan approval as set forth herein)</u>	<u>Total gross floor area of retail sales and services uses allowed</u>
<u>RWMUOD Subdistrict 1</u>	<ul style="list-style-type: none"> <li>• <u>PID# 100-1</u></li> <li>• <u>PID# 100-1B</u></li> <li>• <u>PID #100-2</u></li> <li>• <u>PID #100-3</u></li> <li>• <u>PID #100-1A</u></li> <li>• <u>PID #101-2B</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>350 dwelling units as-of-right</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>75,000 square feet of total gross floor area (up to 10,000 square feet of gross floor area per establishment)</u></li> </ul>
<u>RWMUOD Subdistrict 2</u>	<ul style="list-style-type: none"> <li>• <u>PID #100-19</u></li> <li>• <u>PID #111-1</u></li> <li>• <u>PID #111-2</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>100 dwelling units as-of-right</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>75,000 square feet of total gross floor area (up to 10,000 square feet of gross floor area per establishment)</u></li> </ul>

2B-1

**From:** Jason Piques  
**To:** sohohinnv  
**Cc:** Krista Holmi; Sean Nicholas Fay  
**Subject:** RE: Voting requirements  
**Date:** Tuesday, March 2, 2021 10:55:25 AM

---

Dr. Fenby,

I am in receipt of your email regarding the required number of votes to pass subdivision regulation amendments. Adoption and further amendment of rules and regulations of the Planning Board is governed by MGL c. 41 § 81Q. "Unlike zoning bylaws or ordinances, which must be enacted by a supermajority of the city council or town meeting, a simple majority of the planning board may adopt or amend subdivision regulations." Bobrowski, Handbook of Massachusetts Land Use and Planning Law, S.14.04(A), 4th ed. 2018.

Please do not hesitate to contact me if you have any additional questions.

Jay

Jason Piques  
Assistant City Solicitor  
City of Marlborough  
City Hall, 4th Floor  
140 Main Street  
Marlborough, MA 01752  
T: (508) 460-3771  
F: (508) 460-3698  
jpiques@marlborough-ma.gov

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-----Original Message-----

From: Krista Holmi <kholmi@marlborough-ma.gov>  
Sent: Tuesday, February 23, 2021 10:29 AM  
To: Jason Piques <jpiques@marlborough-ma.gov>  
Subject: FW: Voting requirements

Jay,

Please review Chair Fenby's request below.

Krista Holmi  
Engineering and Planning Board Administrator  
135 Neil St.  
Marlborough, MA 01752  
kholmi@marlborough-ma.gov  
(508) 624-6910 x33200

-----Original Message-----

2B

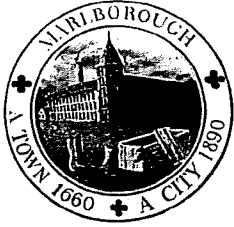
z.B.z

From: BARBARA FENBY <sohohinny@aol.com>  
Sent: Tuesday, February 23, 2021 10:11 AM  
To: Krista Holmi <kholmi@marlborough-ma.gov>  
Cc: Sean Nicholas Fay <sean@faylawoffices.com>  
Subject: Voting requirements

In looking at my cheat sheet on voting, it does not cover changes to our rules and regulations. Closest is reporting on "proposed adoption or amendment of zoning bylaws or ordinance" that requires "Majority of quorum". (Ch 40A&5 MGL) Since we will be voting on our proposed changes in April (?), I need some guidance from Legal on the # of votes required to concur to act favorably - simple majority (of quorum?), majority of membership?, specific number?

In the past there was general unanimity regarding the incremental changes so this was not an issue. This may not be the case with such a major overhaul as we are considering so could you pass this along to Legal asking them to see if there is specific legal guidance or if we are free to set our own criteria?

Thanks  
Babs



*City of Marlborough*  
**Department of Public Works**

135 NEIL STREET  
 MARLBOROUGH, MASSACHUSETTS 01752  
 TEL. 508-624-6910  
 \*TDD 508-460-3610

SEAN M. DIVOLL, P.E.  
 COMMISSIONER

March 2, 2021

Dr. Barbara L. Fenby, Chairwoman - Marlborough Planning Board  
 c/o Krista Holmi - Planning Board Administrator  
 135 Neil Street  
 Marlborough, MA 01752

**RE: ANR (revised) - Post Road Trailer Park and Sales Inc. (Winske)**  
**181 Boston Post Road - East and 100 Phelps Street**

Dear Dr. Fenby:

Pursuant to the request from the Planning Board on February 22, 2021, our office has reviewed the following revised plan:

PLAN OF LAND  
 IN  
 MARLBOROUGH, MASSACHUSETTS

Owned by:  
 Post Road Trailer Park & Sales, Inc.

Location:  
 181 Boston Post Road - East & Phelps Street

Prepared by:  
 RJP Construction & Engineering  
 21 Chapin Street, Northborough, MA

Date: February 7, 2021 (Revised February 26, 2021)

The applicant owns three properties, which are the subject of this revised ANR filing:

- Map 72 Parcel 29 containing 12.73 acres, located off Boston Post Road - East
- Map 72 Parcel 29B (Land Court Lot 6 - Plan 6833F) containing 5,621 sq. ft., located off Phelps Street
- Map 72 Parcel 81 (Land Court Lot 26 - Plan 6833K) containing 5,996 sq. ft., located off Phelps Street

An ANR plan for these properties was endorsed by the Marlborough Planning Board on October 16, 2020 and again on December 21, 2020 to correct an error in one of the property line bearings and distance. Neither of those plans were recorded at the South Middlesex Registry of Deeds.

Situated on these three parcels are two commercial buildings located along Boston Post Road - East, 88 mobile homes and a maintenance garage located behind the two commercial buildings and 32 mobile homes located off Phelps Street.

The purpose of the plan is to divide these combined parcels into two lots:

- Lot 1, containing 11.7560 acres (a decrease of 2,695 square feet from the previous plan showing 11.82 acres) and a total of 203.38 feet of frontage along Phelps Street. Situated on this lot would be a total of 113 mobile homes – 81 mobile homes having access from Boston Post Road – East and 32 mobile homes having access from Phelps Street. Lot 1 would be located in a Business Zone (500-foot offset from Boston Post Road – East) and in a Residence A-2 Zone.
- Lot 2, containing 78,043 square feet (an increase of 2,695 square feet from the previous plan showing 75,348 square feet) and having a total of 273.57 feet of frontage along Boston Post Road – East. Situated on this lot would be the two commercial buildings located along Boston Post Road - East, 7 mobile homes and the maintenance garage. Lot 2 would be located in a Business Zone.

The plan contains as Access & Utility Easement off Boston Post Road – East, over Lot 2 for the benefit of Lot 1 and an Access Easement over Lot 1 for the benefit of Lot 2.

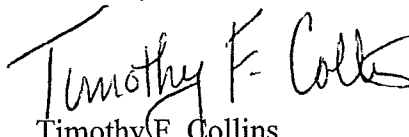
In accordance with City of Marlborough Ordinance §650-18 – Conditions for use, (5) Trailer; mobile homes. (a) Trailer coaches; mobile homes. No trailer coach or mobile home may be occupied except in a trailer park operating under a license from the Board of Health and by special permit of the City Council. The following note has been placed on the Plan:

*"A subdivision of the property and/or change in the ownership may require a new License to Operate and a new Special Permit."*

Lots 1 and 2 have adequate area, the required frontage, meet the Lot Shape requirement and have present adequate access for buildable lot within their respective zoning boundaries.

Should you have any question regarding the above, please do not hesitate to contact me at (508) 624-6910.

Sincerely,

  
Timothy F. Collins  
Assistant City Engineer

xc: Sean M. Divoll, P.E. – DPW Commissioner  
Thomas DiPersio, Jr., P.E., P.L.S. – City Engineer  
Jeffrey Cooke – Building Commissioner  
Jason Grossman – City Solicitor  
John Garside – Director of Public Health  
Post Road Trailer Park & Sales, Inc.



# *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

**JASON D. GROSSFIELD**  
CITY SOLICITOR

**JASON M. PIQUES**  
ASSISTANT CITY SOLICITOR

**HEATHER H. GUTIERREZ**  
PARALEGAL

March 4, 2021

Planning Board  
135 Neil Street  
Marlborough, MA 01752  
kholmi@marlborough-ma.gov

Re: 76 Broad Street Definitive Subdivision.

Dear Dr. Fenby and Members of the Planning Board:

Enclosed please find a tracked and clean version of the Covenant. I hereby certify the attached Covenant, as amended, is in proper legal form.

Please contact me if you have any questions.

Respectfully,

/s/ Jay Piques  
Jay Piques  
Assistant City Solicitor

Enclosure

## COVENANT

This Covenant recorded in the Middlesex South District Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_ is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021. The undersigned Gary White, as Manager of W.R.E., LLC, hereinafter called "W.R.E.," with a principal place of business of 319 Stow Road, Marlborough, County, Massachusetts, hereinafter called the "Covenantor," having submitted to the Planning Board for the City of Marlborough, hereinafter called the "Planning Board," a Definitive Plan of a subdivision, entitled "Definitive Subdivision Plan, Residential Subdivision and Site Development 76 Broad Street Marlborough, MA" hereinafter called the "Plan" on land identified on the City of Marlborough Assessor's Map as Map 68, Parcel 123, located on 76 Broad Street, owned by W.R.E., further identified in the Middlesex South District Registry of Deeds in Book 72215 Page 106 and consisting of 1.86 acres of land does hereby covenant and agree with said Planning Board, pursuant to M.G.L. c. 41, § 81U, as amended, that:

1. The Covenantor is the owner of record of the premises including four (4) lots ("Lots") as shown on said Plan which is to be recorded in the Middlesex South District Registry of Deeds herewith as Plan \_\_\_\_\_ of 2021 and is referred to herein.
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 executors, administrators, devisees, heirs, successors and assigns of the Covenantor, and their successors in title to the premises shown on said 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 easement(s) shown on the Plan and will grant to the City of Marlborough the easement(s) shown thereon. Further, the Covenantor will submit to the City Solicitor's Office a written Attorney's Certification of Title, Title Commitment, or Policy to such easement(s) to the City of Marlborough, specifying that the Covenantor has good and marketable title to said easement(s) and that said easement(s) are free and clear of all encumbrances at the time of conveyance to the City. Said Certification of Title, Title Commitment, or Policy shall be a condition precedent to consideration by the City to accept the subdivision road as shown on the Plan.
6. Prior to 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 built upon until such time as it has been approved by the Marlborough Board of Health.
9. 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.
10. Pursuant to M.G.L. c. 41, § 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:

**1) Section A676-12 Streets, § B.(5) Alignment**

**REQUIRED:** Property lines at street intersections shall have a radius equal to 30 feet at intersections involving a major street and 25 feet at other intersections.

**ALLOWED:** Right-of-way lines as shown on "Lotting Plan."

**2) Section A676-12 Streets, § C.(1)(a) Width**

**REQUIRED:** 50 feet for all secondary roads.

**ALLOWED:** Right-of-way width of 49.2 feet at STA1+75. Right-of-way lines as shown on "Lotting Plan."

**3) Section A676-12 Streets, § D.(3): Grade**

**REQUIRED:** Where changes in grade exceed 1%, reasonable vertical curves, as required by the commissioner of public works, will be provided..."

**ALLOWED:** Grade break at proposed crosswalk from 2% to 4.9%.

**4) Section A676-20: Sidewalks, grass plots, trees**

**REQUIRED:** See cross sections in Appendix F" "Typical cross section #1: Secondary residential street.

**ALLOWED:** 3' Landscaping strip between curb and sidewalk, sidewalk with no curb reduced to 5.5-foot width. Varied tree locations.

**5) Section A676-23 General, § A**

**REQUIRED:** No street of way through private property shall be accepted by the city unless the same be previously constructed and completed in accordance with the standard cross section

**ALLOWED:** Right-of-way deviates from standard cross-section, see item 4 above

**6) Section A676-24 Streets and roadway, § B**

**REQUIRED:** Roadways shall be constructed for the full length of all streets within the subdivision and shall have the same curb radius required in § A676-13B above”(30 Feet)

**ALLOWED:** Curb radius at western corner of intersection =25 feet. Curb radius at Eastern corner of intersection = 22 feet.

**7) Section A676-28. Trees, § A**

**REQUIRED:** Street trees of a species approved by the city forester shall be planted on each side of each street in a subdivision, except where the definitive plan showed trees to be retained which are healthy and adequate. Such trees shall be located outside of the right-of-way as shown in the profile and standard cross section plans, Appendix F, approximately at forty-foot intervals, and shall be at least 12 feet in height and a minimum of three-inch caliper.

**ALLOWED:** Street trees as shown on “landscape Plan”.

The Planning Board has granted these waivers after determining that such action is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law and with the Planning Board Rules and Regulations.

11. The following section are specific conditions of approval of the Plan and of this Covenant:

- a. 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.
- b. W.R.E. shall comply with all conditions of the Marlborough Conservation Commission, as set forth in any Order of Conditions for the Development.
- c. W.R.E. 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.
- d. W.R.E. shall record at the Middlesex South District Registry of Deeds an executed copy of the Certificate of Vote, this Covenant, and the approved Plan, and shall forthwith provide those copies to the Planning Board and the Solicitor’s office.
- e. In seeking approval of the amended Plan, the W.R.E. voluntarily agrees to build no greater than one (1) two (2) family house on any lot of the Subdivision.

- f. 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.
  - g. All conditions herein shall apply to W.R.E., its successors and assigns, and to its successors in title to the Development.
12. 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.

13. Upon the proper completion of all improvements and their approval by the City Engineer, and if said improvements comply with the applicable state laws, city ordinances, and Planning Board Rules and Regulations and requirements, the City may then, and only then, accept the improvements.
14. Pursuant to Section A676-10.H<sup>1</sup>/<sub>4</sub> of the Rules and Regulations, immediately upon providing the performance guarantee to construct the approved definitive subdivision plans, the Applicant shall deed to the City the subdivision road(s) as well as all municipal utility easements, if any; and shall provide the City with a certificate of liability insurance, naming the City as an additional insured relative to the subdivision road as well as all municipal utility easements, if any, to be deeded to the City. Further, the Covenantor will submit to the City Solicitor's Office a written Attorney's Certification of Title, Title Commitment, or Policy to the subdivision road(s) to the City of Marlborough, specifying that the Covenantor has good and marketable title to said subdivision road(s) and that said subdivision road(s) are free and clear of all encumbrances at the time of conveyance to the City. Said Certification of Title, Title Commitment, or Policy shall be a condition precedent to consideration by the City to accept the subdivision road as shown on the Plan.
15. The Covenantor agrees to include the following paragraph in all deeds to Lots within the subdivision:

*"Grantor reserves to his or her benefit, the fee simple in the proposed right-of-way within the subdivision and also reserves to his or her benefit any easement(s) within the proposed Lots of the subdivision which are shown on the Plan. Grantor also reserves the right, upon written approval of the Planning Board, to relocate any easement(s) shown on the Plan, within a Lot, as conditions and local regulations require and permit."*

16. The Covenantor shall prepare a grant of authority to the Marlborough Police Department to enforce all traffic regulations dictated by the traffic signage approved and shown on the Plan, during the period the subdivision road is a private way.
17. The City of Marlborough shall not be responsible for the maintenance and care of the subdivision road or other improvements, until the same have been accepted. 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.
18. 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. The subdivision road will not be considered for acceptance until such plans and profiles have been approved by the City Engineer. Copies of all the site plans prepared for each of the individual building Lots shall be forwarded to the City Engineer and to the Planning Board at the time they are submitted to the Building Inspector for a Building Permit.
19. Prior to the execution of this Covenant, the Covenantor agrees to submit a work schedule, and a progress report every month after the commencement of work, 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.
20. 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.
21. 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.
22. This Covenant shall take effect upon the approval of the Plan.
23. 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 (2) 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 Office, City Hall, Marlborough, MA within three (3) business days of the date of recording.
24. 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.

*[Signature Page to Follow.]*

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

COVENANTOR:  
W.R.E., LLC.

By: \_\_\_\_\_  
Gary White, Manager

**COMMONWEALTH OF MASSACHUSETTS**

Middlesex: SS

On this \_\_\_\_ day of \_\_\_\_\_ 2021, before me, the undersigned notary public, personally appeared Gary White, Manager of W.R.E., LLC. proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding document and acknowledged to me that he signed it voluntarily for its stated purpose.

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

Approved and Accepted: \_\_\_\_\_, 2021

**MARLBOROUGH PLANNING BOARD**

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

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

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

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

\_\_\_\_\_  
Christopher P. Russ

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

10 A, ii

**CERTIFICATE OF VOTE  
DEFINITIVE SUBDIVISION PLAN  
76 BROAD STREET**

RECEIVED  
CITY CLERK'S OFFICE  
CITY OF MARLBOROUGH

February 8, 2021

2021 FEB 12 A 11: 34

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 February 8, 2021, it voted to **approve** a Definitive Subdivision Plan for a Residential Subdivision for property located on 76 Broad Street owned by W.R.E., LLC as follows:

**PROCEDURAL FINDINGS:**

1. On September 9, 2020, an application (the "Application") was filed on behalf of the W.R.E., LLC with a principal place of business of 319 Stow Rd, Marlborough MA 01752 (the "Applicant" or "W.R.E."), 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 a four (4) two family housing unit definitive subdivision plan as shown on a plan entitled "Definitive Subdivision Plan, Residential Subdivision and Site Development 76 Broad Street Marlborough, MA" prepared by Hancock Associates Inc., 315 Elm Street, Marlborough, Massachusetts, dated September 9, 2020 and last revised on February 4, 2021 (the "Plan"), on land identified on the City of Marlborough's Assessor's Map ("Assessor's Map") as Map 68, Parcel 123, located on 76 Broad Street, owned by W.R.E., LLC, further identified in the Middlesex South District Registry of Deeds in Book 72215 Page 106 and consisting of 1.86 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 Board of Health, Building Commissioner, Conservation Commission, Department of Public Works, Fire Chief, City Engineer and City Solicitor.
3. The Board of Health submitted an email correspondence dated October 19, 2020 indicating that in its review the Board of Health was not opposed to the issuance of subdivision approval subsequent to review by the city engineer of the stormwater drainage design and calculations.
4. The Conservation Commission submitted a letter to the Board October 5, 2020 indicating that no Conservation Commission review will be required as there are no wetlands located within the proposed Development, but further requesting that the drainage design meet the higher water quality standard as outlined in the Water Supply Protection District regulations as the property drains into Lake Williams, attention to ground water impact, in particular on any downhill properties, and inspection of the system during construction. The Conservation Commission also recommended the applicant prepare a full construction sequencing and erosion control plan and for the preservation of as many large trees as possible.

5. Pamela A. Wilderman, Code Enforcement Officer, submitted a letter dated October 20, 2020, in support of the subdivision due to enforcement actions in the rear of the site.
6. 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 September 14, 2020, September 21, 2020, and October 19, 2020. The Planning Board closed the public hearing on October 19, 2020.
7. Planning Board members Barbara Fenby, Sean Fay, Phillip Hodge, George LaVenture, Christopher Russ, and Matthew Elder were present for the public hearing.
8. The Plan was further amended on 10-29-20, 12-16-20, 1-15-21 and 2-4-21, to incorporate details and to address the comments and requirements of City Engineer Thomas DiPersio and the Planning Board.
9. Planning Board members Barbara Fenby, Sean Fay, Phillip Hodge, George LaVenture, Christopher Russ, and Matthew Elder deliberated on the Application at duly authorized meetings on October 19, 2020, November 16, 2020, December 21, 2020, January 11, 2021, January 25, 2021, and February 8, 2021

#### **PROJECT FINDINGS:**

1. The subject property consists of one (1) lot owned by W.R.E. identified on the City Assessors Maps as follows: Map 68, Parcel 123.
2. The Applicant proposes a 484.12 foot  $\pm$  new road and cul-de-sac to serve four new lots (lot 1 proposed to be 10,012 square feet  $\pm$ , lot 2 proposed to be 10,620 square feet  $\pm$ , lot 3 proposed to be 10,024 square feet  $\pm$ , and lot 4 proposed to be 18,860 square feet  $\pm$ .)
3. In seeking approval of the amended Plan, the Applicant voluntarily agrees to build no greater than one (1) two (2) family house per any of the above lots, subject to conditions set forth below.
4. 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.
5. 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 February 8, 2021, by a vote of 5 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) **Section A676-12 Streets, § B.(5) Alignment**

**REQUIRED:** Property lines at street intersections shall have a radius equal to 30 feet at intersections involving a major street and 25 feet at other intersections.

**ALLOWED:** Right-of-way lines as shown on "Lotting Plan."

2) **Section A676-12 Streets, § C.(1)(a) Width**

**REQUIRED:** 50 feet for all secondary roads.

**ALLOWED:** Right-of-way width of 49.2 feet at STA1+75. Right-of-way lines as shown on "Lotting Plan."

3) **Section A676-12 Streets, § D.(3): Grade**

**REQUIRED:** Where changes in grade exceed 1%, reasonable vertical curves, as required by the commissioner of public works, will be provided..."

**ALLOWED:** Grade break at proposed crosswalk from 2% to 4.9%.

4) **Section A676-20: Sidewalks, grass plots, trees**

**REQUIRED:** See cross sections in Appendix F" "Typical cross section #1: Secondary residential street.

**ALLOWED:** 3' Landscaping strip between curb and sidewalk, sidewalk with no curb reduced to 5.5-foot width. Varied tree locations.

5) **Section A676-23 General, § A**

**REQUIRED:** No street of way through private property shall be accepted by the city unless the same be previously constructed and completed in accordance with the standard cross section

**ALLOWED:** Right-of-way deviates from standard cross-section, see item 4 above

6) **Section A676-24 Streets and roadway, § B**

**REQUIRED:** Roadways shall be constructed for the full length of all streets within the subdivision and shall have the same curb radius required in § A676-13B above"(30 Feet)

**ALLOWED:** Curb radius at western corner of intersection =25 feet. Curb radius at Eastern corner of intersection = 22 feet.

7) **Section A676-28. Trees, § A**

**REQUIRED:** Street trees of a species approved by the city forester shall be planted on each side of each street in a subdivision, except where the definitive plan showed trees to be retained which are healthy and adequate. Such trees shall be located outside of the right-of-way as shown in the profile and standard cross section plans, Appendix F, approximately at forty-foot intervals, and shall be at least 12 feet in height and a minimum of three-inch caliper.

**ALLOWED:** Street trees as shown on "landscape Plan".

The Planning Board granted these waivers after determining that such action is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law and with the Rules and Regulations.

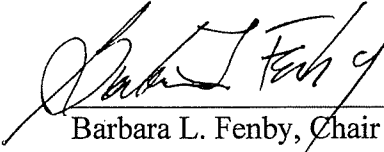
**CONDITIONS:**


The Planning Board on February 8, 2021, by a vote of 5 to 0, approved the Plan, as amended, as described above, subject to the following conditions:


1. 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.
2. The Applicant shall comply with all conditions of the Marlborough Conservation Commission, as set forth in any Order of Conditions for the Development.
3. 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.
4. 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.
5. In seeking approval of the amended Plan, the Applicant voluntarily agrees to build no greater than one (1) two (2) family house on any lot of the Subdivision.
6. 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.
7. All conditions herein shall apply to Applicant, its successors and assigns, and to its successors in title to the Development.
8. All required easements shall be delivered by the developer prior to any release of lots.

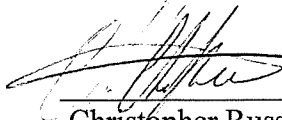
**RECORD OF VOTE:**

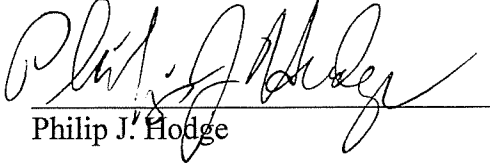
The following members of the Planning Board voted on February 8, 2021, to approve the Plan, as amended:

  
Barbara L. Fenby, Chair

  
Sean N. Fay

  
George LaVenture, Clerk

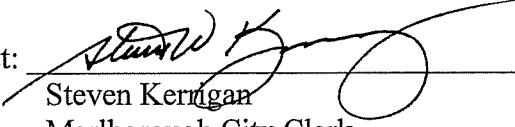
  
Christopher Russ

  
Philip J. Hodge

**CERTIFICATE**

I hereby certify that twenty (20) days have elapsed since the filing of the above-referenced Certificate of Vote in the Office of Marlborough City Clerk on February 12, 2021, 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

March 4, 2021  
Date

>> Proposed language from legal disallowing easements to open access to "land locked" parcels – including recommendation of where it should be placed

MPBSWG referred to Legal for review.

>> *Proposed language from legal regarding establishing the submission date for Defin, Prelim, and ANRs*  
**Current Regulation:**

§ A676-10 Definitive plan. A. General. Any person who submits a definitive plan of a subdivision to the Planning Board for approval shall file with the Board the following:

(3) (Reserved)

**Proposed regulation:**

§ A676-10 Definitive plan. A. General. Any person who submits a definitive plan of a subdivision to the Planning Board for approval shall file with the Board the following:

(3) (REMOVE)(Reserved) (ADD) For the purpose of establishing the official submission date, said submission date shall be the date the plan was presented to the Planning Board at a regularly scheduled meeting of the Planning Board.

*In order to have the language consistent throughout the Regulations, the following changes should be made:*

**Current regulation:**

§ A676-3 Plan believed not to require approval.

A. Submission of plan.

(1) Any person who wishes to cause to be recorded in the Registry of Deeds or to be filed with the Land Court a plan and who believes that his plan does not require approval under the Subdivision Control Law may submit his plan and application Form A (see Appendix A) to the Planning Board accompanied by the necessary evidence to show that the plan does not require approval. For the purpose of establishing the official submission date, said submission shall be made to the Planning Board at a regularly scheduled meeting of the Planning Board. The Planning Board requests the applicant to arrange for the Engineering Department to review the plans prior to said submission to the Planning Board as outlined above. Said person shall also file, by delivery or registered mail, a notice with the City Clerk stating the date of submission for such determination accompanied by a copy of said application and describing the land to which the plan relates sufficiently for identification. If the notice is given by delivery, the City Clerk shall, if required, give a written receipt therefor.

**Proposed change:**

(1) For the purpose of establishing the official submission date, said submission (REMOVE) shall be made (ADD) date shall be the date the plan was presented to the Planning Board at a regularly scheduled meeting of the Planning Board. The Planning Board (REMOVE) requests the applicant to arrange for the

(ADD) suggests that the applicant Engineering Department to review the plans(ADD) for prior to said submission to the Planning Board as outlined above.

**Current regulation:**

§ A676-9 Preliminary plan. A. General.

(1) A preliminary plan of a subdivision may be submitted by the subdivider to the Planning Board and to the Board of Health for discussion and approval, modification or disapproval, by each board. The submission of such a preliminary plan, which is not a binding commitment, will enable the subdivider, the Planning Board, the Board of Health, other municipal agencies, and owners of property abutting the subdivision to discuss and clarify the problems of such subdivision before a definitive plan is prepared. Therefore, it is strongly recommended that a preliminary plan be filed in each case. For the purpose of establishing the official submission date, said submission shall be made to the Planning Board at a regularly scheduled meeting of the Planning Board.

**Proposed change:**

(1) A preliminary plan of a subdivision may be submitted by the subdivider to the Planning Board and to the Board of Health for discussion and approval, modification or disapproval, by each board. The submission of such a preliminary plan, which is not a binding commitment, will enable the subdivider, the Planning Board, the Board of Health, other municipal agencies, and owners of property abutting the subdivision to discuss and clarify the problems of such subdivision before a definitive plan is prepared. Therefore, it is strongly recommended that a preliminary plan be filed in each case. For the purpose of establishing the official submission date, said submission (REMOVE) shall be made (ADD) date shall be the date the plan was presented to the Planning Board at a regularly scheduled meeting of the Planning Board.

**Reason for changes:**

For uniformity with ANR plans and Preliminary plans, stated with more clarity.

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>> Tightening up the language on bonds/security by it making clear from our rules and regulations alone that every applicant signs a covenant when the approved plan is endorsed.

**Current Regulation:**

**G. Performance guarantee.**

Before endorsement of the Board's approval of a definitive plan of subdivision, the subdivider shall agree to complete the required improvements specified in Article V for any lots in a subdivision, such construction and installation to be secured by one, or in part by one and in part by the other, of the following methods, which may from time to time be varied by the applicant with the written consent of the Planning Board.

(1) Approval with bonds or surety. The subdivider shall either file a proper bond or a deposit of money or negotiable securities in an amount determined by the Planning Board to be sufficient to cover the cost of all or any part of the improvements specified in Article V not covered by a covenant under Subsection G(2) hereof. Such bond or security, if filed or deposited, shall be approved as to form and manner of execution by the City Solicitor and as to sureties by the City Treasurer and shall be contingent on the completion of such improvements within two years of the date of the bond.

(2) Approval with covenant.

(a) The subdivider shall file a covenant, executed and duly recorded in the Registry of Deeds by the owner of record, running with the land, whereby such ways and services as specified in Article V, not covered by bond or deposit under Subsection G(1) hereof, shall be provided to serve any lot before such lot may be built upon or conveyed other than by mortgage deed.

(b) The developer shall also note on his definitive plan that any and all lots within the subdivision are subject to the restrictions of the covenant.

MPBSWG referred to Legal for review. Legal Department has stated that this section can not be changed. The Applicant, by Law, has the right to "secured by one, or in part by one and in part by the other, of the following methods, which may from time to time be varied by the applicant with the written consent of the Planning Board".

(1) Approval with bonds or surety

(2) Approval with covenant

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>> If the Board doesn't address permitting phasing and changing the 2-year deadline in the near future, what changes are required in the surety section?

**Current Regulation: § A676-10 Definitive plan.**

A. General. Any person who submits a definitive plan of a subdivision to the Planning Board for approval shall file with the Board the following:

(2) A properly executed application Form C (see Appendix C) and Petition for Approval of Final Plan, Form D (see Appendix D), including the name of the record owner of the land and the time within which the subdivider or applicant agrees to complete the ways and install the public utilities in the subdivision, and approval of all plans shall be upon the condition that all ways shown thereon and public utilities required by the Board shall be completed and installed within the time so specified. The Board may decline to approve any plan unless the applicant agrees to complete the ways shown thereon and install the public utilities aforesaid within two years of the date of approval of his definitive plan. If the ways in any subdivision are not completed and the utilities aforesaid are not installed within the time so agreed to by the applicant or so required by the Board, no such way shall thereafter be laid out, constructed, completed or opened for public use unless and until a new application is filed with and approved by the Board. Ways not completed or portions thereof within two years from the date of approval by the Board shall thereafter be completed in accordance with the then-in-force construction standards of the Planning Board and the Department of Public Works of the City of Marlborough.

**Proposed change: required to continue current practice**

(2) A properly executed application Form C (see Appendix C) and Petition for Approval of Final Plan, Form D (see Appendix D), including the name of the record owner of the land and the time within which the subdivider or applicant agrees to complete the ways and install the public utilities in the subdivision, and approval of all plans shall be upon the condition that all ways shown thereon and public utilities required by the Board shall be completed and installed within the time so specified. The Board may decline to approve any plan unless the applicant agrees to complete the ways shown thereon and install the public utilities aforesaid within two years of the date of approval of his definitive plan. If the ways in any subdivision are not completed and the utilities aforesaid are not installed within the time so agreed to by the applicant or so required by the Board, no such way shall thereafter be laid out, constructed, completed or opened for public use unless and until (REMOVE) a new application (ADD) an extension of the approval of the Definitive Subdivision Plan is filed with and approved by the Board. (ADD) Any surety securing the completion of the subdivision must be extended to run concurrently with the extension of the Definitive Subdivision Plan approval. Ways not completed or portions thereof (REMOVE) within two years from the date of approval by the Board (ADD) when the approval of the Definitive Subdivision Plan has expired shall thereafter be completed in accordance with the then-in-force construction standards of the Planning Board and the Department of Public Works of the City of Marlborough.

**Reason for change:**

Conformity with current practice.

>> Addition to A676-2 Definitions changing "the singular includes the plural" to "the singular includes the plural and the plural includes the singular"

**Current regulation:** §A676-2 Definitions.

As used in this chapter, the following terms shall have the meaning indicated.

§ A676-2 Definitions. As used in this chapter, the following terms shall have the meanings indicated:

**Proposed changes:**

As used in (REMOVE) this chapter (ADD) these Rules and Regulations, the following terms shall have the meaning indicated (REMOVE); (ADD): The word "shall" is intended to be mandatory, the word "may" is merely permissive, the singular includes the plural, (AMENDED) the plural includes the singular, and the present tense includes the future and other words and phrases have the following meanings.

§ A676-2 Definitions. As used in this chapter, the following terms shall have the meanings indicated:

**(ADD) SHADE TREE**

Any tree which casts a shadow large enough for an individual to enjoy passive recreation while being protected from the effects of the sun or, in the opinion of the Tree Warden, will cast such a shadow when mature.

**(ADD) STREET TREE**

Any existing tree located within 15 feet from the edge of the roadway layout that casts a shadow upon the sidewalk area or a tree planted in the required landscape easement that will, in the opinion of the Tree Warden, casts a shadow on the sidewalk area when mature.

**Reason for change:**

Stated with more clarity.

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>> Is the Clerk's office required to have hard copies of the Rules including, Forms and Fees [assuming a full pdf is online]? If not should we remove the Editor's Notes throughout as Tim suggests?

(CLARIFICATION) All reference to Editor's Note, such as [1] *Editor's Note: Appendix B is on file in the City Clerk's office* shall be removed. Appendixes (Forms, Cross-sections and Details) shall be made a part of the Rules and Regulations. A copy of the Regulations

**Current Regulation:**

Article I  
General Provisions

§ A676-1 Authority. Under the authority vested in the Planning Board of the City of Marlborough by MGL c. 41, § 81O, said Board hereby adopts these rules and regulations governing the subdivision of land in the City of Marlborough. These regulations shall be effective after approved and certified by the Register of Deeds and Recorder of Land Court.

**Proposed change:**

(ADD) The current version of the Planning Board Rules and Regulations were adopted by the Marlborough Planning Board on \_\_\_\_\_ and have been recorded at the South Middlesex Registry of Deeds, Book \_\_\_\_\_ Pages \_\_\_\_\_. A copy of the current version of the Planning Board Rules and Regulations are available at the Marlborough City Clerk's Office and the City Engineer's Office or may be obtained on the City of Marlborough's website: [www.marlborough-ma.gov](http://www.marlborough-ma.gov).

**Reason for change:**

Stated with more clarity.

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>> Definition of "illicit discharge" perhaps referring to MS-4? Preventing discharge onto neighboring properties and roadways. Remedial actions?

**Current regulation:**

§ A676-10: Definitive Plan

B. Contents

(n) Hydraulic and hydrologic calculations shall be prepared by a registered professional engineer in accordance with the requirements of the City Engineer. (ADD) : A Stormwater Management Design Report showing that measures to mitigate stormwater impacts of the proposed subdivision have been designed, and that such measures meet the requirements set forth in the Stormwater Management Standards promulgated by the DEP under the Clean Water Act, M.G.L. c. 21, Sections 26-53 and its accompanying regulations 314 CMR 9.0 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters within the Commonwealth; and 310 CMR 10.0 Wetlands Protection Act Regulations.

(ADD)

(s) An Erosion Control Plan showing that construction erosion and sediment controls have be designed to ensure that no off-site impacts to abutting properties or wetland resource areas will result during construction of the project, and that such controls have been designed to the satisfaction of the City Engineer and, if applicable, the NPDES General Permit for Storm Water Discharges from Construction Activities and/or the Wetlands Protection Act.

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>> Thought after the ANR presentation last night – changes to proposals, especially those already approved by the Board, need to be more clearly indicated. Perhaps using color coding, bolding, or other means.

Discussion among the MPDSWG recommend that the “presenter” be given permission to present at the meeting. With the presenter having control of the screen during the presentation, and not the Administrator, the presentation should go smoother.

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>> Creating a developer check list with timings

MPBSWG agreed that this would be a great help to guide someone through the process but did not feel that it should be part of the regulations.

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>> Suggestion regarding putting mailboxes on the sunny side of an east-west street

MPBSWG agreed that placement of the mailboxes is an issue for the local Post Office, as they determine the location of the mailboxes. The Detail shown for mailbox placement was derived from the standard set by the United States Postal Service. [How to Install a Mailbox | USPS](#)

### **Can you move a mailbox?**

The Postal Service permits moving a mailbox, but it must be placed in a location that is readily accessible by a mail carrier. For example, roadside mailboxes must in a location where mail carriers can place mail from their delivery vehicles.

Does one have to get permission from the USPS to move the ...  
[www.quora.com/Does-one-have-to-get-permission-from-t...](http://www.quora.com/Does-one-have-to-get-permission-from-t...)

See all results for this question

### **Can USPS mailboxes be relocated?**

The USPS does not legislate the relocation of residential mailboxes nationally. Rather, they allow local postmasters to decide what is best for their geographic location and mail service.

Relocating Residential Mailbox – USPS Mailbox Guidelines  
[www.mailboxworks.com/blog/relocating-residential-mailb...](http://www.mailboxworks.com/blog/relocating-residential-mailb...)

See all results for this question

### **Is the placement of mailboxes determined by the USPS?**

YES! The placement of every mailbox is determined by the USPS - for safety, efficiency of the route/driver. Before moving/replacing your mailbox one is encouraged to visit the post office and ask for instructions. You will be given general instructions on where/how a mailbox must be placed.

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**Current regulation:** § A676-16 Protection of natural features.

Due regard shall be shown for all natural features, such as large trees, wooded areas, watercourses, scenic points, historic spots, and similar community assets, which, if preserved, will add attractiveness and value to the subdivision. Whenever feasible, shade trees 12 inches in diameter or larger shall not be removed.

**Proposed change:**

Due regard shall be shown for all natural features, such as large trees, wooded areas, watercourses, scenic points, historic spots, and similar community assets, which, if preserved, will add attractiveness and value to the subdivision. Whenever feasible, shade trees 12 inches in diameter or larger shall not be removed. (ADD) The Applicant may be required to hire a certified consulting arborist to identify those trees which can be saved and thrive upon the completion of the subdivision, show those trees on the Definitive Subdivision Plans and certify as to such.

"I hereby certify that the trees shown on this plan, as to be retained (RET.), if preserved, will add attractiveness and value to the subdivision."

**Reason for change:**

To reduce total tree clearing of lots prior to lot development.

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**Current regulation: § A676-28 Trees.**

- A. Street trees of a species approved by the City Forester shall be planted on each side of each street in a subdivision, except where the definitive plan showed trees to be retained which are healthy and adequate. Such trees shall be located outside of the right-of-way as shown in the profile and standard cross section plans, Appendix F, approximately at forty-foot intervals, and shall be at least 12 feet in height and a minimum of three-inch caliper.
- B. The subdivider shall plant other trees as needed to provide at least two areas of shade to each lot.
- C. Removal and disposal of trees not intended for preservation shall be as designated by the City Forester.

**Proposed change:**

A. Street trees of a species approved by the (REMOVE) City Forester (ADD) Tree Warden shall be planted on each side of each street in a subdivision, except where the definitive plan showed trees to be retained which are healthy and adequate. Such trees shall be located outside of the right-of-way as shown in the profile and standard cross section plans, Appendix F, approximately at forty-foot intervals, and shall be at least 12 feet in height and a minimum of three-inch caliper.

B. The subdivider shall plant (REMOVE) other (ADD) shade trees as needed to provide at least two areas of shade to each lot.

(REMOVE) C. Removal and disposal of trees not intended for preservation shall be as designated by the City Forester.

(ADD) If allowed by the Tree Warden, Shade Trees located within 15 feet of the roadway layout may also be designated as Street Trees and be designated as both a Shade Tree and a Street Tree.

(ADD) Street tree compensation. For those street trees required, that cannot be planted within the required landscape strip adjacent to the roadway right-of-way and there are not any trees adjacent to the roadway that can be considered as street trees, compensation for those street trees may be given in one of the following ways: (1) monetary value given to the City of Marlborough for the purpose of planting trees, (2) as trees planted elsewhere in the subdivision, or (3) trees planted within the City of Marlborough at the discretion of the Planning Board with approval from the Tree Warden.

(REVISION) APPENDIX F – Cross-section text was updated to state “MINIMUM 2 SHADE TREES PER LOT”.

**Reason for Change:**

Update to meet current practices.

City Forester is no longer a City position – Replaced with the position of Tree Warden, who has been charged with the care of public trees.

>> When should the Historical Association or any other outside body [not part of Site Plan Review] be brought into a submission review?

Current Proposed regulations covered this issue in the Preliminary Plan and Definitive Plan review, with the added verse: *"and any other city departments or agencies that the Planning Board deems necessary"*.