

CITY OF MARLBOROUGH MEETING POSTING

Meeting: Planning Board
Date: April 27, 2020
Time: 7:00 PM
Location: REMOTE MEETING NOTICE

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2020 APR 23 P 3:48

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, April 27, 2020 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 using the following phone number and conference ID : Phone Number 1 617-433-9462, Conference ID 258 061 020 #

Agenda Items to be Addressed:

- 1) **Meeting Minutes**
 - A. April 06, 2020
- 2) **Chair's Business**
 - A. May meetings
- 3) **Approval Not Required**
 - A. 19 Ash Street – Applicant: David Skarin, 36 Wethersford Rd. Bellingham, MA 02019; Engineer: Jarvis Land Survey, 29 Grafton Circle, Shrewsbury, MA 01545; Description of Property: Middlesex South Registry of Deeds Book 29963 Page 483; Assessor's Map 43 Parcel 29. Plan representative: David Skarin, Applicant/Owner.
 - i) Engineering Review Letter
 - B. 53 Second Rd. – Applicant: Reginald Ashford, 61 Second Road Marlborough, MA 01752; Engineer: Hancock Associates, 315 Elm St. Marlborough, MA 01752; Description of Property: Middlesex South Registry of Deeds Book 26162 Page 256, Assessor's Map 6 Parcel 30. Plan representative: J. Dan Bremser, Hancock Assoc.
 - i) Engineering Review Letter
- 4) **Public Hearings**
 - A. Continued: Commonwealth Heights Definitive Subdivision – Revised plan
Applicant - The Gutierrez Company; Project Engineer - Connorstone Engineering, Inc.
Location – 10.55 Acres located on the corner of Forest Street and Ames Street. Middlesex Registry of Deeds Book 31932, page 445 (Lot 14).
THE COMMONWEALTH HEIGHTS PUBLIC HEARING WILL BE REOPENED WITH NO TESTIMONY FROM THE PUBLIC BEING HEARD AND CONTINUED UNTIL MAY 18, 2020 AT 7:00 PM.
 - B. Council Order 20-1007947 – Proposed Zoning Amendment to Chapter 650, §5, §17, & §18 – Contractor Storage Yards and the Proposed Rezoning of land located on Farm Road, identified as Map 85 Parcel 12.
THE CONTRACTOR STORAGE YARD AND PROPOSED REZONING PUBLIC HEARING WILL BE OPENED WITH NO TESTIMONY FROM THE PUBLIC BEING HEARD AND CONTINUED UNTIL MAY 18, 2020 AT 7:00 PM.
 - C. CO 20-10079015 Continued Public Hearing - Proposed Zoning Amendment to Section 650 §17 & §18 – Livestock Farms.
- 5) **Subdivision Progress Reports (None)**
- 6) **Preliminary/Open Space /Limited Development Subdivision Submissions (None)**
- 7) **Definitive Subdivision Submissions (None)**
- 8) **Signs (None)**
- 9) **Correspondence**
 - A. Zoning Board of Appeals -Request for comment- Floodplain and Wetland Protection District Special Permit Application
Property located at 339 Boston Post Rd. East, Map 72-35, 73-28, 24,26. (Full application found in posted electronic agenda packet.)
- 10) **Unfinished Business**
 - A. Draft Policy Discussion – Zoning and Variance Requests
- 11) **Calendar Updates**
- 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

April 06, 2020

The **Remote Meeting** of the Marlborough Planning Board was called to order at 7:00 pm. Members present- Barbara Fenby, Sean Fay, Phil Hodge, George LaVenture, Chris Russ and Matthew Elder. City Engineer, Thomas DiPersio, and Planning Board Administrator, Krista Holmi, also participated in the remote meeting. IT Director, Mark Gibbs, participated to provide technical backup.

1. Meeting Minutes

A. March 09, 2020

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the minutes of March 09, 2020. Yea: 6 – Nay: 0; Yea: Fenby, Fay, Hodge, LaVenture, Russ and Elder.

B. March 23, 2020

On a motion by Mr. LaVenture, seconded by Mr. Russ, the board voted to accept and file the minutes of March 23, 2020 with the correction of a typo in paragraph 4. Yea: 6 – Nay: 0; Yea: Fenby, Fay, Hodge, LaVenture, Russ and Elder.

2. Chair's Business

A. Communication from Solicitor Grossfield regarding signed Open Meeting Law Order- Discussion of how to proceed with Planning Board business.

Mr. LaVenture read from the March 13, 2020 email communication from City Solicitor Grossfield which summarized the 3-12-20 Executive Order issued by Governor Baker modifying certain requirements of the Open Meeting Law (effective immediately). If remote meetings require public participation, approaches may include:

- Providing a call-in conference number on the city website so members can deliberate in an "open session", and members of the public can have the opportunity to access and present/participate to the extent required by law.
- Use of video streaming/conferencing service
- Encouraging receipt of comments or public input via email in advance and/or real-time, which can be read by the public body.

On a motion by Mr. LaVenture, seconded by Mr. Elder, the Board voted to accept and file the correspondence. Yea: 6 – Nay: 0; Yea: Fenby, Fay, Hodge, LaVenture, Russ and Elder.

Ms. Fenby acknowledged the Board's ability to join the meeting but wasn't sure if the general public could participate without an invitation. Ms. Holmi explained that the meeting link and call-in phone number was available online at the Planning Board website. There were several people who either called in or used the website link to observe the meeting. The Board will use the Microsoft Teams application moving forward for remote meetings until the Governor's emergency order is lifted.

B. General Policy Discussion – Zoning and Variance Requests

Ms. Fenby requested that Mr. Fay introduce the policy discussion topic. Mr. Fay was not immediately available. He joined the meeting and indicated that he had dropped out for about 20 seconds. Mr. Fay said the Board has a tradition of not acting on sign variance requests and other matters if the property is out of compliance. He recounted two past examples. The first example was a tenant request for a sign variance. The property owner had utilized all available sign space for his own purposes and made no accommodation for tenants. The second variance request noted was for a gas station who had non-compliant signs on the property. The Board did not act on the variance request until the property owner removed the non-compliant signs. Mr. Fay suggested adopting a formal policy of not acting on a variance request when the property was not otherwise in compliance with City Code.

For other matters such as providing recommendations to the City Council regarding zoning changes, Mr. Fay suggested a policy of requesting that the City Council not act on a variance request until the property is brought into compliance. The example provided was a property that is the subject of a rezoning request that is not in compliance with the sign ordinance or that has businesses that are not allowed in the zone other than changes that are the subject of the variance request. Ms. Fenby asked if the Board should set a formal policy and inform applicants of the policy. Ms. Fenby polled the members. Mr. LaVenture likes the idea to require compliance with local ordinances. Mr. Hodge is in favor of establishing a policy. Mr. Russ and Mr. Elder also agree that properties should comply prior to making variance requests or requests for zoning amendments.

Mr. Fay discussed the mechanism for ensuring compliance. Should Code Enforcement be involved in the determination, or should the Planning Board make a judgement? Chair Fenby believes that Code Enforcement has a role. Mr. Russ expressed his preference for making the determination before the matter is presented to the Board. He preferred that the determination be part of the application process. Mr. LaVenture agreed with Mr. Russ and thinks Code Enforcement is the expert for determining compliance. Mr. Hodge and Mr. Elder agree. If an applicant knows that compliance is part of the application, there won't be any surprises.

Ms. Fenby said sign variances are straight forward since the requests are made directly to the Board. What about zoning amendments where matters are referred to the Board from the City Council? The Council will not provide a review prior to referring the matter to the Board. Mr. Fay believes that the Planning Board can encourage the Council to withhold action on the requested zoning amendment until the property is compliant. Ms. Fenby polled the Board. Mr. Elder was called but was muted. Mr. Hodge felt it was reasonable to advise the City Council. Mr. LaVenture concurred. Mr. Elder and Mr. Russ agreed. Chair Fenby asked how to proceed. Should the Board write a policy? Ms. Fenby suggested Mr. Fay draft a policy and forward it to Ms. Holmi for the Board's consideration at a future meeting.

- C. Set New Public Hearing Date: Council Order 20-1007947 – Proposed Zoning Amendment to Chapter 650, §5, §17, & §18 – Contractor Storage Yards and the Proposed Rezoning of land located on Farm Road, identified as Map 85 Parcel 12. The Board selected April 27, 2020 for the public hearing date. (Note: Due to the continuing executive order limiting public gatherings, this hearing will be advertised, opened without public testimony on April 27, and continued until May 18, 2020.)

Before moving on, Chair Fenby asked how the Board should proceed with ANRs? Ms. Holmi referenced a communication from Solicitor Grossfield that was distributed that afternoon. While not explicitly mentioning ANRs, the communication summarized points in a new order, Chapter 53 of Acts of 2020 "An Act to address challenges faced by municipalities and state authorities resulting from COVID-19". Section 17 of this law addresses land use permit applications and deadlines during the Governor's state of emergency. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the correspondence and request a Legal opinion on whether Chapter 53 of Acts of 2020 applies to matters before the Board. Yea: 6 – Nay: 0; Yea: Fenby, Fay, Hodge, LaVenture, Russ and Elder.

Chair Fenby also reminded the Board that the continued public hearing on the proposed zoning amendment on livestock farms is scheduled for April 27th. How should the Board proceed? Ms. Holmi indicated that the public comment portion is closed and that additional comments from the Board of Health and the Building Commissioner will be included on the April 27 agenda. Mr. Russ asked if the Leicester ordinance was shared with the Board of Health and Building Commissioner. Ms. Holmi indicated yes. The Building Commissioner said that it's preferred to have Zoning deal with the authority of allowing the uses and let the Board of Health deal with how to keep and raise livestock.

3. Approval Not Required (None)

4. Public Hearings (None)

5. Subdivision Progress Reports (City Engineer, Updates and Discussion)

- A. Goodale Estates- City Engineer DiPersio updated the site work which included grading of detention basins and the installation of drainage structures and granite curbing. Most (if not all) lots have been sold. The subdivision is in good shape for completion on the existing timeline (June 30, 2020), but an extension on the completion of the subdivision will be required since there will be extensive construction site work on the lots. It is not advisable to finish the roadway until the heavy construction traffic is complete.
- B. Commonwealth Heights – The continuation of the public hearing is scheduled for April 27th. It is anticipated that the hearing will be again continued until a future date, since the state of emergency remains in effect, and no in-person testimony is allowed at this time. The applicant is still working on the required environmental report.
- C. 215 Simarano Drive - Ms. Fenby asked about the Simarano Drive project. Mr. DiPersio confirmed that the applicant had developed an approved site plan, and they will not move forward with the subdivision.

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

7. Definitive Subdivision Submissions (None)

8. Signs (None)

9. Correspondence (None)

10. Unfinished Business

- A. Communication from Assistant City Solicitor Piques – Forest Grove Subdivision - Approval of Lot Release Document
Mr. LaVenture read the email correspondence from Assistant City Solicitor Piques into the record. The correspondence indicates that the release is in proper legal form. Since the state of emergency, the Board is not meeting as a group. Requiring each member to sign the release is cumbersome. Ms. Holmi asked the solicitor's office if Chair Fenby could sign a revised release on behalf of the Board. The solicitor's office indicated yes, if the Board voted to allow the Chair to sign on their behalf. On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the correspondence and to allow Chair Fenby to sign the Forest Grove lot release on behalf of the Board. Yea: 6 – Nay: 0; Yea: Fenby, Fay, Hodge, LaVenture, Russ and Elder.

11. Calendar Updates

- A. Public Hearing- Council Order 20-1007947 – Proposed Zoning Amendment to Chapter 650, §5, §17, & §18 – Contractor Storage Yards and the Proposed Rezoning of land located on Farm Road, identified as Map 85 Parcel 12. Hearing Date: Monday, April 27, 2020 (to be continued without testimony to May 18, 2020).

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

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to adjourn the meeting of the Planning Board.
Yea: 6 – Nay: 0; Yea: Fenby, Fay, Hodge, LaVenture, Russ and Elder.

Respectfully submitted,

/kih

George LaVenture/Clerk

PLANNING BOARD

DATE 4-9-20AGENDA 4-27-20

ACTION _____

APPENDIX A

APPLICATION FOR ENDORSEMENT OF
PLAN BELIEVED NOT TO REQUIRE APPROVAL

File one completed form with the Planning Board and one
copy with the City Clerk in accordance with the
requirements of Section II-B.

Marlborough, Massachusetts

4/9/2020
(Date)

via email

To the Planning Board:

The undersigned, believing that the accompanying plan of his property in the City of Marlborough does not constitute a subdivision within the meaning of the Subdivision Control Law, herewith submit said plan for a determination and endorsement that Planning Board approval under the Subdivision Control Law is not required.

1. Name of Applicant

DAVID SKARIN

Address

36 WETHERSFIELD RD, BELLINGHAM, MA 02019

2. Name of Engineer

JARVIS LAND SURVEY

Address

29 Grafton Circle, Shrewsbury, MA 015453. Deed of Property recorded in Middlesex Registry ofDeeds Book 29963 Page(s) 483

4. Location and description of property:

19 ASH ST, MARLBOROUGH, MA 01750

Signature of Owner

Contact email address: DAVIDSKARIN@EPAKEY.COM

Address:

36 WETHERSFIELD RD
BELLINGHAM, MA
02019Contact phone number: 508-207-2875

pd. ck 137 4-9-20
\$150.00

$$\begin{aligned} L &= 419.21' \\ R &= 1407.94' \end{aligned}$$

N $81^{\circ}02'22''$ E
150.31'

N/F
BISOL
DEED BK. 16200 PG. 550

ZONING DATA:

RESIDENCE A-3	REQUIRED	LOT 1 PROPOSED	LOT 2 PROPOSED
LOT AREA	12,500 S.F	67,523 S.F.	16,857 S.F.
LOT FRONTAGE	100'	192.61'	117.99'
FRONT YARD SETBACK	20'	27.5'	175.4'
SIDE YARD SETBACK	15'	26.9'	9.7'
REAR YARD SETBACK	30'	32.1'	57.2'

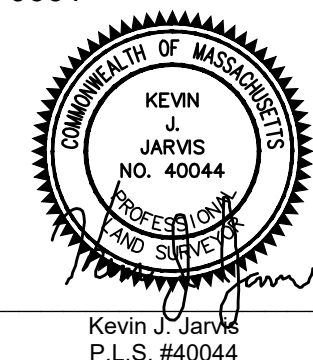
PLANNING BOARD ENDORSEMENT IS NOT A DETERMINATION AS TO CONFORMANCE WITH THE ZONING BYLAWS.

Approval under the subdivision control law not required.
Planning Board of MARLBOROUGH.

DATE: _____

JARVIS LAND SURVEY, INC
29 Grafton Circle
Shrewsbury, MA 01545
Tel. (508) 842-8087 ~ Fax. (508) 842-0661 2-14-2020

THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS IN THE COMMONWEALTH OF MASSACHUSETTS AND IN COMPLIANCE WITH THE RULES AND REGULATIONS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS. THIS CERTIFICATION IS INTENDED TO MEET THE REQUIREMENTS OF THE REGISTRY OF DEEDS AND IS NOT A CERTIFICATION OF THE TITLE OR OWNERSHIP OF THE LAND SHOWN HEREON.



PLAN BOOK 586 PLAN 174
PLAN BOOK 1961 PLAN 974
PLAN BOOK 1965 PLAN 841
PLAN BOOK 1966 PLAN 612
PLAN BOOK 1980 PLAN 1253
PLAN BOOK 1985 PLAN 1030
PLAN BOOK 1999 PLAN 357
PLAN BOOK 1999 PLAN 457
PLAN BOOK 1999 PLAN 820
PLAN BOOK 2001 PLAN 431
PLAN BOOK 2002 PLAN 686

RICHARD W., CAROL, AND DAVID W.
SKARIN
DEED BOOK 29963 PAGE 483
ASSESSORS MAP 43 LOT 29

ASH STREET
MARLBOROUGH, MA

PLAN OF PROPERTY
SURVEYED FOR
DAVID W. SKARIN
19 ASH STREET
MARLBOROUGH, MASSACHUSETTS

DATE: 2/14/2020	CHECK: K.J.J.	CALC: K.J.J.	FIELD: DM/ML	N.B. # 308-45	PLAN: 17-215
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MUNICIPAL SITE
DISTANCE EASEMENT

 $((192.61'))$

**ASH STREET
(PUBLIC WAY)**



City of Marlborough
Department of Public Works

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

JOHN L. GHILONI
COMMISSIONER

April 27, 2019

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

RE: ANR - #19 Ash Street – Trailside Terrace

Dear Dr. Fenby:

Our office has reviewed the following plan, which proposes to create two buildable lots:

Plan of Property Surveyed for David W. Skarin

19 Ash Street, Marlborough, Massachusetts

Prepared by: Jarvis Land Survey, Inc. – 29 Grafton Circle, Shrewsbury, MA 01545

Date: February 14, 2020

The subject property contains 1.94 acres (84,506.40 square feet) and has a total of 310.60 feet of frontage along Ash Street – a public way. There is an existing single-family historic house on the property and a large storage building located on the property. A large portion of the property, where the storage building is located, has been being used as a “contractor’s yard”. The proponent has recently obtained, from the Marlborough City Council, a Special Permit (C.O.# 19-1007809C, recorded at the South Middlesex Registry of Deeds as Book 74024 Page 157) to develop the property with a “pre-existing and con-conforming use” to construct an 11-unit residential townhouse development with five buildings and to convert the historic one family house to a two-family dwelling. The development is known as Trailside Terrace and has also recently received approval from the Site Plan Review Committee.

The purpose of this plan is to subdivide the existing 1.94 acres property, with a total of 310.60 feet of frontage, in two lots:

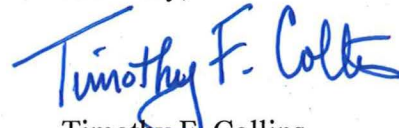
- Lot 1, containing 67,523 square feet (1.55 acres) with a total of 192.61 feet of frontage on Ash Street,
- Lot 2, containing 16,857 square feet (0.39 acres) with a total of 117.99 feet of frontage on Ash Street,

- As per the Special Permit referenced above, Lot #1 is to be developed as an 11-unit residential townhouse project and the single-family house on Lot #2 will be converted to a two-family dwelling. The large storage building will be razed as part of the 11-unit townhouse project.

Lot 2, which currently has a single-family house on it, has the required area and the required frontage for property in a Residence A-3 zone, has “present adequate access” on Ash Street and also meets the “Lot Shape” requirement. The proposed two-family conversion of this dwelling will not change the front, rear or side setbacks for the proposed lot. Lot 1, proposed with an 11-unit townhouse development and approved by the Site Plan Review Committee, has the required area and the required frontage for property in a Residence A-3 zone, meets the required front, rear and side yard setbacks, has “present adequate access” on Ash Street and also meets the “Lot Shape” requirement.

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: John L. Ghiloni – DPW Commissioner
Thomas DiPersio, Jr., P.E., P.L.S. – City Engineer
Priscilla Ryder – Site Plan Review Committee
Davis Skarin

PLANNING BOARD

DATE 4-22-20AGENDA 4-27-20

ACTION _____

APPENDIX A

APPLICATION FOR ENDORSEMENT OF
PLAN BELIEVED NOT TO REQUIRE APPROVAL

File one completed form with the Planning Board and one
copy with the City Clerk in accordance with the
requirements of Section II-B.

Marlborough, Massachusetts

3-23-2020

(Date)

To the Planning Board:

The undersigned, believing that the accompanying plan of his property in the
City of Marlborough does not constitute a subdivision within the meaning of the
Subdivision Control Law, herewith submit said plan for a determination and
endorsement that Planning Board approval under the Subdivision Control Law is
not required.

1. Name of Applicant REGINALD ASHFORDAddress 61 SECOND STREET2. Name of Engineer HANCOCK ASSOC. - J. DAN BREMSERAddress 315 ELM STREET, MARLBOROUGH, MA3. Deed of Property recorded in MIDDLESEX(SO) Registry ofDeeds Book 26162 Page(s) 256

4. Location and description of property:

53 Second Rd. Assessor MAP 6-30

Laurie C. Sordillo
Signature of Owner LAURIE C. SORDILLO

Address: ⁵³ 53 SECOND RD, MARLBOROUGH, MA

pl. ck # 3070
\$150



City of Marlborough
Department of Public Works

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

JOHN L. GHILONI
 COMMISSIONER

April 27, 2019

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

RE: ANR - #53 Second Road

Dear Dr. Fenby:

Our office has reviewed the following plan, which creates a 25-foot non-buildable strip of land, from an existing parcel with excess area and frontage for the Residence A-3 zone in which the land is located:

Plan of Land in Marlborough, MA

Owned by Laurie C. Sordillo – 53 Second Road

Prepared for: Reginald Ashford – 61 Second Road

Prepared by: Hancock Associates – 315 Elm Street, Marlborough MA

Date: April 10, 2020 (Revised April 23, 2020)

The subject property contains 28,029± square feet and has a total of 150.00 feet of frontage along Second Road – a public way. There is an existing single-family house on this property.

The purpose of this plan is to subdivide the existing property creating a 25-foot wide strip of land, and a lot which will contain the existing single-family house:

- Parcel A, containing 4,669± square feet with a total of 25.00 feet of frontage on Second Road,
- Lot 2, containing 23,350± square feet with a total of 125.00 feet of frontage on Second Road,

Lot 2, which currently has a single-family house on it, has the required area and the required frontage for property in a Residence A-3 zone, has “present adequate access” on Second Road and also meets the “Lot Shape” requirement. The front, rear and the right-side setbacks will not change. The left side yard setback will change to 52.6± feet for the house and 12.8± for an existing shed – both well within the zoning requirements for Residence A-3 zoning.

ANR – 53 Second Road

Parcel A, does not meet the zoning requirements for area, frontage or “Lot Shape” and has been correctly identified on the plan as “not a separate buildable lot”, and further notes that it “is only to be used with adjacent property” – owned by Diane MacLeod & Reginald Ashford.

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: John L. Ghiloni – DPW Commissioner
Thomas DiPersio, Jr., P.E., P.L.S. – City Engineer



City of Marlborough
Planning Board

Administrative Offices
135 Neil St.
Marlborough, MA 01752

PLANNING BOARD

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2020 APR 10 P 1:52
Barbara L. Fenby, Chair
Philip Hodge
Sean N. Fay
George LaVenture
Christopher Russ
Matthew Elder
Krista Holmi, Administrator
(508) 624-6910 x33200
kholmi@marlborough-ma.gov

PUBLIC HEARING NOTICE- Marlborough Planning Board

COMMONWEALTH HEIGHTS DEFINITIVE SUBDIVISION REVISED PLAN

Notice is hereby given that the Marlborough Planning Board will reopen the following public hearing remotely on Monday, April 27, 2020: Revised application for approval of a Definitive Subdivision Plan, "Commonwealth Heights". This notice is published in accordance with the provisions of Subdivision Control Law, M.G.L. Chapter 41, Section 81-T. **NOTE: DUE TO THE CONTINUED STATE OF EMERGENCY RELATING TO COVID-19, THIS PUBLIC HEARING WILL BE REOPENED WITHOUT PUBLIC TESTIMONY AND CONTINUED UNTIL MAY 18, 2020 AT 7:00 PM.**

Project Owner: Marlborough/Northborough Land Realty Trust c/o The Gutierrez Company, 200 Summit Dr. Suite 400, Burlington, MA 01803
Project Engineer: Connorstone Engineering, Inc., 10 Southwest Cutoff, Suite 7, Northborough, MA 01532
Location: 10.55 Acres located on the corner of Forest Street and Ames Street. Property Recorded in the Middlesex South Registry of Deeds Book 31932, page 445 (Lot 14). Revised plan consists of twenty-one residential lots. (a reduction of two lots)

A revised plan of the proposed subdivision and application is on file at the Administrative Office of the Planning Board, 135 Neil St., 2nd Floor, Marlborough, MA 01752 (508) 624-6910 x33200 and at the office of the City Clerk, 140 Main St. Marlborough, MA. (508) 460-3775.

**CITY OF MARLBOROUGH
PLANNING BOARD
MARLBOROUGH, MASSACHUSETTS 01752**

**RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH**

LEGAL NOTICE

Public Hearing – Proposed Zoning Amendment to Section 650 §5, §17 & §18 – Contractor Yards and Proposed Zoning Map Amendment, Section 650 §8 – Land on Farm Road, Map 85, Parcel 12.

Notice is hereby given that the Planning Board of the City of Marlborough will hold a Remote Public Hearing on **Monday, April 27, 2020 at 7:00 PM** to amend Chapter 650 §5, §17 & §18 of the Zoning Code of the City of Marlborough and to amend the Zoning Map established by Section 650 §8. **THIS PUBLIC HEARING WILL BE OPENED WITH NO TESTIMONY FROM THE PUBLIC BEING HEARD AND CONTINUED UNTIL MAY 18, 2020 AT 7:00 PM.**

DUE TO SOCIAL DISTANCING MEASURES ISSUED BY THE GOVERNOR IN RESPONSE TO THE COVID-19 PANDEMIC, THIS PUBLIC HEARING WILL BE CONDUCTED REMOTELY. TO ACCESS THE PUBLIC MEETING, SEE LINK ON THE MARLBOROUGH PLANNING BOARD CALENDAR AT <https://www.marlborough-ma.gov/planning-board>.

The notice is also available for viewing online at <https://www.marlborough-ma.gov/planning-board>.

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:

I. Section 650-5, entitled “Definitions; word usage,” is hereby amended, as follows:

- a. By amending the definition in subsection B of “OUTDOOR STORAGE,” by inserting at the end thereof the following sentence: “Outdoor storage shall not include either a contractor’s yard or a landscape contractor’s yard.”
- b. By inserting the following new definitions:

CONTRACTOR’S YARD - Premises used for the storage of equipment and/or materials used for providing contracting services, including but not limited to building construction, heating, plumbing, roofing, and excavation.

LANDSCAPE CONTRACTOR’S YARD – Premises used for the storage of equipment and/or materials used by a business principally engaged in the decorative and functional alteration, planting, and maintenance of grounds, including the installation of hardscape such as stonework, patios, decks, arbors, and other decorative elements of the landscape. Such a business may engage in the installation and construction of underground improvements, but only to the extent that such improvements (e.g., irrigation or drainage facilities) are accessory to the principal business and are necessary to support or sustain the landscaped surface of the grounds being otherwise landscaped.

II. Section 650-17, entitled "Table of Uses," is hereby amended by adding the following new uses:

RR A1 A2 A3 RB RC RCR B CA LI I MV NB WAYS.

Contractor's

Yard (48) N N N N N N N N N SP SP N N N N

Landscape Contractor's

Yard (48) N N N N N N N N N SP SP N N N N

III. Section 650-18, entitled "Conditions for uses," is hereby amended as follows:

a. By inserting in subsection A thereof a new paragraph (48) as follows:

(48) Contractor's yard and landscape contractor's yard.

- (a) **Exemptions; Design Standards for Certain Existing Yards.** All existing contractor's yards and landscape contractor's yards in the CA or LI zoning district as of the date of this amendment that existed prior to December 31, 2014 shall not be required to obtain a special permit, but shall file for site plan review with an as-built plot plan by the City of Marlborough Site Plan Review Committee within nine (9) months of the effective date of this paragraph, and complete site plan review within twenty-four (24) months of the effective date of this paragraph. Said site plan review shall be limited to the following design standards:

(1) *Screening.* To the maximum extent practicable, the yard shall be adequately screened from the street and adjacent properties to obscure the vehicles parked thereon, and the equipment and/or materials stored therein, to create an effective visual barrier.

(2) *Vehicles, Equipment and/or Materials.* To the maximum extent practicable, all vehicles, equipment and/or materials associated with the yard must be stored on and accessed from impervious or otherwise dust-free surfaces.

(3) *Flammable, Combustible or Dangerous Substances.* A yard shall not store excessive quantities of flammable, combustible or dangerous substances, and may be required to comply with the notification, reporting and permitting requirements set forth in SARA Title III (the Emergency Planning and Community Right-To-Know Act, or EPCRA) and/or MGL c. 148.

(4) *Maximum size of yard.* The maximum size of the yard (including all structures, parking and driveways on the lot) shall not exceed the percentage of maximum lot coverage permitted under Section 650-41 for the zoning district in which the lot is located. If the yard exceeds said lot coverage percentage, the yard shall not increase its lot coverage and shall be made compliant within twenty-four (24) months of the effective date of this paragraph.

For yards that are in compliance with a prior special permit or site plan approval, no special permit or site plan review is required.

- (b) **Design Standards for All Other Permissible Yards.** Yards shall require a special permit, and site plan approval by the City of Marlborough Site Plan Review Committee, whose review shall include, but not be limited to, the following design standards.

(1) *Screening.* Yard shall be adequately screened from the street and adjacent properties to obscure the vehicles parked thereon, and the equipment and/or materials stored therein, to create an effective visual barrier from ground level to a height of at least five (5) feet.

(2) *Vehicles, Equipment and/or Materials.* All vehicles, equipment and/or materials associated with the yard must be stored on and accessed from impervious or otherwise dust-free surfaces.

(3) *Flammable, Combustible or Dangerous Substances.* A yard shall not store excessive quantities of flammable, combustible or dangerous substances, and may be required to comply with the notification, reporting and permitting requirements set forth in SARA Title III (the Emergency Planning and Community Right-To-Know Act, or EPCRA) and/or MGL c. 148.

(4) *Maximum size of yard.* The maximum size of the yard, when combined with all structures, parking and driveways on the lot being proposed for the lot on which the yard is proposed to be located, shall not exceed the percentage of maximum lot coverage permitted under Section 650-41 for the zoning district in which the lot is located.

(5) *Proximity to existing residential zoning districts/uses.* (i) Yard shall not be located on a lot less than two hundred (200) feet from a residential zoning district, and on any lot if a residential use is being made of any abutting lot(s); and (ii) *Minimum lot area.* Minimum area of the lot shall be 22,500 square feet.

IV. Zoning Map Amendment

The Zoning Map, Section 650-8, is amended by making the following changes:

Change a portion of Assessor's Parcel 85-12, consisting of less than 6.53 +/- acres, being the portion of the property currently zoned Business (B), to the adjacent Light Industrial (LI) District. The proposed Zoning Map change is shown on the attached map.

Per Order of the City Council
#20-1007947

This Legal Advertisement will be published on www.wickedlocal.com and <http://masspublicnotices.org>.

**CITY OF MARLBOROUGH
PLANNING BOARD
MARLBOROUGH, MASSACHUSETTS 01752**

**RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH**

4C -1

LEGAL NOTICE

2020 APR 10 P 1:52

Public Hearing –Proposed Zoning Amendment to Section 650 §17 & §18 – Livestock Farms.

Notice is hereby given that the Planning Board of the City of Marlborough will continue the above referenced Public Hearing to **Monday, April 27, 2020 at 7:00 PM** to amend Chapter 650 §17 & §18 of the Zoning Code of the City of Marlborough.

The materials are available for viewing in the Office of the City Clerk, City Hall, 140 Main Street, Marlborough, MA 01752, 508-460-3775 and the Administrative Office of the Planning Board, 135 Neil St. Marlborough, MA 01752, 508-624-6910 x33200 and online at <https://www.marlborough-ma.gov/planning-board/pages/planning-board-public-hearing-notice>.

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:

I. Section 18 of Chapter 650, entitled "Conditions for uses," is hereby amended by:

a. Amending paragraph (12), entitled "Livestock farms" as follows (new text shown as underlined):

(12) Livestock farms. The raising of or keeping of a small flock of poultry (other than Chicken hens), less than 10, or of saddle horses, private kennel, livestock, or other farm animals for use only by residents of the premises, provided further, that adequate open space is available for their care.

b. Inserting the following paragraph:

(49) Chicken hens, personal use. The raising or keeping of female chickens (*Gallus gallus domesticus*) for personal use, not to exceed either 6 hens or 12 hens, as stated in the Table of Uses. The raising or keeping of roosters, cocks, or cockerels is prohibited. The slaughtering of Chicken hens for non-personal use is prohibited.

II. Section 17 of Chapter 650, entitled "Table of Uses," is hereby amended by inserting the following:

	RR	A1	A2	A3	RB	RC	RCR	NB	B	CA	LI	I	MV	WAYSIDE
Chicken hens, personal use (6 or fewer) (49)	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N	N	N
Chicken hens, personal use (between 7 and 12) (49)	Y	Y	Y	Y	N	N	N	N	N	N	N	N	N	N

Per Order of the City Council
#20-1007915

This Legal Advertisement will be published on www.wickedlocal.com and <http://masspublicnotices.org>

Communication from
Bldg Commissioner
Livestock Farms

From: Jeffrey Cooke <jcooke@marlborough-ma.gov>
Sent: Wednesday, March 11, 2020 1:58 PM
To: Krista Holmi <kholmi@marlborough-ma.gov>
Cc: Nathan Boudreau <nathan.boudreau@marlborough-ma.gov>; Jason Grossfield <jgrossfield@marlborough-ma.gov>; Jason Piques <jpiques@marlborough-ma.gov>; John Garside <jgarside@marlborough-ma.gov>
Subject: FW: Urban Affairs Posting - Amended Meeting Packet

Krista

I am forwarding to you the packet of information at went to Urban Affairs meeting, in case your board did not receive.

Zoning

It is the desire to add small flocks for homeowner's use.

Zoning is land use.... We want to keep it simple, by adding the Use, to the Table of Uses (650-17) and definitions (650-5) with a statement in the condition of Uses (650-18A # 12 & 49).

Board of Health currently has regulations and issues permits for the keeping of chickens.

Having the Uses in the Table of Uses will allow the activity, and leave all the details of how to keep, manage, care and raising of the hens to the BoH regulations.

What we do not want, is to have items in zoning differ with requirements of BoH.

We do not want to create conflict between ordinances or regulations.

So, it would be preferred to have Zoning deal with the authority of allowing the uses and let BoH deal with how to keep and raise.

Jeffrey Cooke

CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: City Council Urban Affairs Committee

Date: March 10, 2020

Time: 7:00 PM

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

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2020 FEB 26 A 10:34

01-27-2020 – **Order No. 20-1007915:** Proposed Zoning Amendment to Chapter 650 § 17 & § 18 relative to Livestock Farms.

-Refer to Urban Affairs Committee & Planning Board

-Public Hearing: February 24, 2020

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.

The public should take due notice that the Marlborough City Council may have a quorum in attendance due to Standing Committees of the City Council consisting of both voting and non-voting members. However, members attending this duly posted meeting are participating and deliberating only in conjunction with the business of the Standing Committee.

Electronic devices, including laptops, cell phones, pagers, and PDAs must be turned off or put in silent mode upon entering the City Council Chamber, and any person violating this rule shall be asked to leave the chamber. Express authorization to utilize such devices may be granted by the President for recordkeeping purposes.

Sara Corbin

From: City Council
Sent: Wednesday, February 26, 2020 2:58 PM
To: Christian Dumais; David Doucette; Don Landers; John Irish; Karen Boule; Kathleen Robey; Laura Wagner; Mark Oram; Michael Ossing; Mike Ossing; Robert Tunnera; Samantha Perlman; Sean Navin
Cc: Sara Corbin
Subject: FW: Message from "RNP58387920018E"
Attachments: bohanimalregs.pdf

From: Kathleen Robey <atlarge_4@marlborough-ma.gov>
Sent: Wednesday, February 26, 2020 2:25 PM
To: City Council <citycouncil@marlborough-ma.gov>
Subject: Fw: Message from "RNP58387920018E"

I talked to Director Garside today and he sent me the following regulations that have existed in city since 2005. They would apply to chickens in city legally allowed under the amended code. He indicated the process would be that a resident would go to Building Dept. who would then check that the residence is within allowed zone and if it is, then BoH would issue permit.

If appropriate, please share the regs with the councilors as info only at this time.

Katie Robey
 Chairman, Urban Affairs

From: John Garside <jgarside@marlborough-ma.gov>
Sent: Wednesday, February 26, 2020 2:14 PM
To: Kathleen Robey
Subject: FW: Message from "RNP58387920018E"

Hi Councilor Robey,

Attached are our BOH regs for reference.

-John

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

From: BoardofHealth@marlborough-ma.gov <BoardofHealth@marlborough-ma.gov>
Sent: Wednesday, February 26, 2020 2:00 PM
To: John Garside <jgarside@marlborough-ma.gov>
Subject: Message from "RNP58387920018E"

This E-mail was sent from "RNP58387920018E" (MP 4055).

Scan Date: 02.26.2020 13:59:34 (-0500)

Queries to: BoardofHealth@marlborough-ma.gov

MARLBOROUGH BOARD OF HEALTH
REGULATION XVI:
RULES AND REGULATIONS RELATIVE TO RAISING
OR KEEPING OF ANIMALS WITHIN THE
CITY OF MARLBOROUGH

May 2005

SECTION 1: SCOPE

The following regulations are promulgated by the Marlborough Board of Health in order to allow the keeping of animals within the City of Marlborough in such a way as to not create public nuisances, inconveniences and to prevent the spread of disease including but not limited to rabies. Notwithstanding any existing provisions of the Massachusetts General laws and any provisions of the Code of the City of Marlborough.

SECTION 2: DEFINITIONS

- A: ANIMAL - Any animal (poultry, bird, reptile, fish, rodent or any other creature) of any age or any sex
- B: BIRD - any bird, including but not limited to parrots, parakeets, canaries, crows, falcons, game birds and peacocks
- C: POULTRY - domesticated birds, including but not limited to chickens, turkeys, ducks, geese, guineas fowl, pheasants and pigeons
- D: PET SHOP - any store or department of any store or any place of business where dogs, cats, monkeys, rodents, birds, reptiles, fish or any other small animals used as household pets are kept for sale
- E: AVIARY - any building, cage structure, enclosure, or premises or portion thereof where more than four birds of any species are kept or maintained for any purpose
- F: DEPARTMENT STORE - any store keeping a large variety of goods arranged in several departments
- G: BOARD OF HEALTH - appointed Board of Health of the City of Marlborough or any of its agents or employees
- H: FARM ANIMALS - including but not limited to: sheep, goats, llamas/alpacas, cattle, donkey, mule, swine, equines and poultry

SECTION 3: PERMITTING

- A. PERMIT TO KEEP DOGS (see Chapter 85-2)

PAGE 2

B: APPLICATION FOR PERMIT TO KEEP FARM ANIMALS

- 1: Each application shall be in writing upon a form to be furnished by the Board of Health, and shall contain such information as the Board of Health may require.
- 2: Each application must be accompanied by a plot plan, building plan, and/or statement as to how and where the animals are to be kept on the premises.

C: EXEMPTIONS FROM PERMITTING

- 1: Veterinary hospitals, medical research facilities, commercial pet shops, animal pounds or shelters conducted by recognized animal humane societies, and animal pounds or shelters conducted by the City of Marlborough shall be exempted from permitting.

D: STANDARDS FOR PERMITTING

- 1: The applicant must control at least one acre of land to be considered by the Board of Health for permitting of large farm animals.
- 2: A hearing relative to the issuance of an Animal Permit or stable license will be conducted at a regularly scheduled Board of Health meeting.

E: REVOCATION

- 1: A PERMIT TO KEEP ANIMALS may be revoked at any time, after a hearing, when it appears to the Board of Health that such revocation is necessary to protect the public health or safety, when chronic nuisance exist, or when conditions of the permit or license have been violated.
- 2: A PERMIT TO KEEP ANIMALS may be suspended at any time, when in the opinion of the Board of Health or its agents such suspension is necessary to protect the public health or safety.

F: DURATION OF PERMIT OR LICENSE

- 1: A PERMIT TO KEEP ANIMALS shall continue in effect indefinitely unless specifically stated on the permit.
- 2: All holders of a PERMIT TO KEEP ANIMALS shall on or about the first of every year, file an affidavit furnished by the Board of Health listing the types and numbers of animals kept on the licensed premises as of the first of the year.
- 3: Failure to return affidavit by January 15th of each year will result in automatic revocation of the PERMIT.

PAGE 3

SECTION 4: ANIMAL HOUSING AND STRUCTURES

- A: Drinking fountains shall be kept clean and shall be supplied with water at all times.
- B: The structure and surrounding premises used to keep animals shall be well-ventilated, maintained as to discourage flies and other vermin, maintained free from obnoxious odors and maintained in a clean and sanitary condition.

SECTION 5: PROHIBITED ACTS

- A: No roosters or other calling birds shall be kept on any premises unless permission for such keeping is specifically granted by the Board of Health.
- B: No garbage or refuse food shall be fed to animals.
- C: No animal shall be permitted to enter the kitchen or dining area of any licensed food establishment except as hereinafter provided. Nothing in this Regulation shall be construed as to prohibit physically challenged persons from using dogs as aides in entering and leaving public dining areas in licensed food establishments.
- D: It shall be unlawful for the owner or person having custody of any animal, either willfully or through failure to exercise due care or control, allow any such animal to commit any nuisance upon the public.

SECTION 6: VACCINATION AGAINST RABIES

- A: Whoever is the current owner or keeper of a mammal, three months or older, shall be required to have such animal vaccinated against rabies by a licensed veterinarian if a license vaccine is available for that species. In the course of an inspection such owner or keeper of said mammal shall produce a veterinarian's certificate stating the date of vaccination of the animal, and the duration of immunity provided by the vaccine, as stated in Mass General Laws Chapter 140, Section 145B.

- B: Enforcement:

Violations of this Regulation may be enforced as provided by MGL Chapter 111, Section 31; Chapter 111. Section 155 and/or the use of Non-Criminal Disposition.

Except when otherwise provided by law, prosecutions for offense under this regulation shall be made by the Board of Health or any of its agents.

PAGE 4

C: SEVERABILITY:

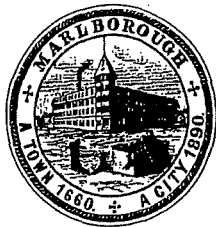
If any section, paragraph, sentence, clause or phrase of these Rules and Regulations shall be decided invalid for any reason whatsoever, such decision shall not affect the remaining portions of these Rules and Regulations which shall remain in full force and effect and to this end the provisions of these Rules and Regulations are hereby declared severable.

D: FINES/VIOLATIONS:

1st offense - written and/or verbal warning then 7 days to comply with rabies vaccination proof for every animal living at this address

2nd offense - \$25 per animal/per day/per offense

3rd offense - hearing with Board of Health, date/time for such hearing to be determined by the Board of Health, fine and/or any corrective actions to be determined at such hearing



City of Marlborough Zoning Board of Appeals

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768

ZBA Case # 1464-2020
Location: 339 Boston Post Rd. East
Applicant: WP Marlborough MA Owner, LLC

Notice of Public Hearing Mass. General Law Chapter 40A, Section 11

Notice is hereby given that a public hearing will be held on 4/14/2020 (Tuesday) at 7:00 PM in the Marlborough City Hall, 140 Main St. 3rd Floor, Memorial Hall, Marlborough, MA on the petition of the below named person seeking an appeal as follows:

Petition: Applicant seeks a Special Permit under Section 650, Article VI, Section 23(D) Floodplain and Wetland Protection District of the City of Marlborough Zoning Ordinance to conduct certain filling and excavation work in a floodplain area, all in connection with its proposed 188-unit multifamily apartment project. Property is located at 339 Boston Post Rd. East, Map 72-35, 73-28, 24, 26.

Plans and other information are on file in the Zoning Board of Appeals Office on the basement level of City Hall. For further assistance, please contact the Board at 508-460-3768. All interested persons are invited to the public hearing.

Applicant or representative must be present

Paul W. Giunta
Chairman
Zoning Board of Appeals

Attached is a ZBA filing for 339 Boston Post Rd. East (former Mcgee Farm)

Distribution of packet: March 11, 2020

Hearing Date: April 14, 2020 7:00 PM

Chapter 650 Zoning....Article VI ...§650-23 Floodplain and Wetland Protection District

Under the Floodplain and Protection District, the

- Board of Health,
- Planning Board,
- Engineering Dept. and
- Conservation Commission

may at their discretion, investigate the application and report in writing their recommendations to the Board of Appeals. The Board of Appeals shall not take final action on such application until it has received a report thereon from the above Boards and Commission, or until such Boards and Commissions have allowed 45 days to elapse after receipt of said application without submission of a report.

I have attached §650-23 into this packet.

**CITY OF MARLBOROUGH
ZONING BOARD OF APPEALS**

Application for Floodplain and Wetland Protection District Special Permit Hearing

Official Use :

Date Received : _____ City Clerk's # _____ ZBA Case # _____

Information : 339 Boston Post Road (East) and 72-35, 73-26A,
Property Address abutting land Zoning District B & A-2 Map# _____ Parcel# 73-28, 73-24, and 73-26

Applicant is: ☐ Owner ☐ Tenant ☒ Prospective Purchaser ☐ Other _____

I am the owner of the property and I have knowledge of, and consent to, this application.

Owner's signature: see attached letter of authorization Date: _____

Owner's name: Heritage Farm, LLC Address 339 Boston Post Road (East), Marlborough

State MA Zip 01752 Phone# 301-814-3519 E-mail GHSmith@mintz.com

Applicant name: WP Marlborough MA Owner, LLC Address 9 West Broad Street, Suite 800, Stamford

State CT Zip 06902 Phone# 203-210-2790 E-mail TMoran@waypointrei.com

Representative Name: Brian R. Falk, Esq. Company Mirick O'Connell

Address 100 Front Street, Worcester

State MA Zip 01608 Phone# 508.929.1678 E-mail bfalk@mirickoconnell.com

Describe below what is being requested, such as what is the proposed action, relief, or construction on the property.

The Applicant seeks a special permit to conduct certain filling and excavation work in a floodplain area, all in connection with its proposed 188 unit multifamily apartment project. The work has been designed to meet all criteria for work in the floodplain by ensuring that compensatory flood storage is provided for any lost volume of flood storage.

Provide below all sections of the Zoning Ordinance (Chapter 650, Article(s), Section(s), Paragraph(s), Subsection(s) which are pertinent to the Special Permit (see denial letter).

Chapter 650, Article VI, Section 23(D)

State why proposed construction and use and/or proposed change in grade will not derogate from the intent and purpose of this district nor endanger the health and safety of the public nor the legitimate use of other land in the City.

The proposed construction has been designed to meet the criteria for work within the floodplain. Specifically, the change of grade will not obstruct or divert flood flow, reduce natural storage or increase stormwater runoff to any significant degree; the proposed drainage will not cause siltation, pollution or otherwise endanger public health; the project has appropriate access that is at least 1' above base flood elevation; and structures designed for human occupancy have lowest floors at least two feet above base flood elevation. See attached stormwater report for further details.

ZBA Case # _____

Application Packet:

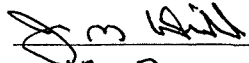
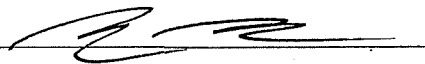
The applicant shall submit fourteen (14) copies of the application packet which shall contain sufficient information to illustrate and defend the applicant's case and as a minimum shall consist of the following:

- ☐ Completed Zoning Board of Appeals Application Form.
- ☐ Abutters List certified by the Assessor's Office.
- ☐ Copy of denial letter from City Official.
- ☐ Required approval letter, with conditions, from other jurisdiction, if applicable.
- ☐ Certified Plot Plan prepared and stamped by a Massachusetts Registered Professional Land Surveyor. A mortgage plan is **NOT** a certified plot plan. The certified plot plan shall include:
 - ☐ Plan Size 8 1/2" x 11" or 11" x 17".
 - ☐ Plans drawn to accurate scale with north arrow.
 - ☐ Owner names and street addresses of directly abutting lots.
 - ☐ Name of streets and zoning districts.
 - ☐ Bearing and distances of subject property.
 - ☐ Dimensions and property line setbacks of all structures on subject property.
 - ☐ Location of driveways, parking areas and other impervious surfaces on subject property.
 - ☐ Location of walls, curbing, major landscaping, fences on subject property.
 - ☐ Location of easements, wetlands and floodplains on subject property, if applicable.
 - ☐ Dimensions and property line setbacks of all proposed work.
 - ☐ Lot Coverage (area covered by all impervious surfaces) existing and proposed.
 - ☐ Location and property line setbacks of structures, fences, driveways etc. on abutting lots that are within fifteen (15) feet of subject property lines.
- ☐ Site plan, including existing and proposed information, prepared and stamped by a Massachusetts Registered Professional Engineer. Site Plan shall include:
 - ☐ The locations, dimensions and elevation above mean sea level of buildings and structures.
 - ☐ Topography at 1 foot contours with spot grades if necessary.
 - ☐ Drainage piping and structures with invert elevations.
 - ☐ Boundaries, elevations and dimensions of wetlands and floodplain areas.
 - ☐ Locations and elevations of on-site sewerage disposal system and domestic well, if applicable.
 - ☐ Areas used for storage of materials including description of materials, if applicable.
 - ☐ Proposed measures to prevent soil erosion and storm water runoff during construction.
- ☐ Submittals prepared and stamped by a Massachusetts Registered Professional Engineer, if applicable:
 - ☐ Hydrology and hydraulic calculations.
 - ☐ Lot area calculations showing portion of lot area in wetlands and floodplain areas.
 - ☐ Study to determine high water level on structure and/or effect of structure/grading on floodplain.
- ☐ Certification and calculations that watertight flood proofing of commercial structure is adequate to resist forces associated with 100 year flood.
- ☐ Architectural plans of new or modified building structure, if applicable.

ZBA Case # _____

Filing Fee :☐ Special Permit (Flood Plain and Wetland Protection District) \$450.00**Hearing Request :**

I hereby request a hearing before the Zoning Board of Appeals regarding this application packet and I am aware that two (2) legal ads will be placed in the MetroWest Daily News or the Marlborough Enterprise Weekly newspaper which will be billed directly to the or my representative. I am further aware that I am responsible for sending copies of the Notice of Hearing to all the abutters on the certified list at least fourteen (14) days prior to the hearing date and that I will submit the receipts confirming this mailing to the zoning office seven (7) days prior to the hearing. Finally, I am aware that I am required to record the board's certified decision and the certified plot plan with the Registry of Deeds in order for it to take effect.

Applicant's signature:  Date: 2/27/20
 Print name: JAMES M. DRISCOLL and/or
 Representative's signature:  Date: 2/28/2020 Print
 name: Brian Falk, Esq.

Official Use Only:

Received from applicant, the sum of \$ _____

Signature of the agent of the Zoning Board of Appeals:

Date: _____

 Susan Brown - Board Secretary
 Department - Zoning Board of Appeals
 140 Main Street
 Marlborough, MA 01752
 Tel# 508-460-3768

E-mail: sbrown@marlborough-ma.gov

The date and signature of the agent of the Zoning Board of Appeals will serve as certification as to when the **COMPLETE** application packet accompanied by the proper filing fee were filed with this office.

December 20, 2019

City of Marlborough
140 Main Street
Marlborough, MA 01752

Re: Letter of Authorization
Applicant: WP Marlborough MA Owner, LLC
Owner: Heritage Farm, LLC
Site: 339 Boston Post Road East (and surrounding lands), Marlborough, MA
Assessor's Parcels: 72-35, 73-26A, 73-28, 73-24, and 73-26.

To Whom It May Concern:

WP Marlborough MA Owner, LLC (the "Applicant") seeks to submit several local permit applications, including but not limited to a Site Plan Application, a Special Permit Application, and a Notice of Intent, to the City of Marlborough in connection with its proposal to develop a residential multifamily structure at the above referenced Site. The undersigned, as the current owner of the Site, hereby grants permission to the Applicant and its agents, attorneys and consultants to submit and pursue any applications necessary to gain the required approvals or permits on the above-referenced Site from the City of Marlborough.

Any fees or charges associated with the applications or permits and any conditions placed on the Applicant shall be the responsibility of the Applicant.

Heritage Farm, LLC

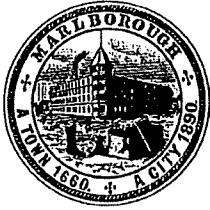
By:

Name:

Title:

(Duly Authorized)

63582531 v1



City of Marlborough

BUILDING DEPARTMENT

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3776 Facsimile (508) 460-3736
building_dept@marlborough-ma.gov

JEFFREY COOKE, C.B.O.
BUILDING COMMISSIONER 9A-7

PATRICK DAHLGREN
ASSISTANT BUILDING
COMMISSIONER

WILLIAM PAYNTON
LOCAL BUILDING INSPECTOR

RICHARD DESIMONE
PLUMBING & GAS INSPECTOR

JOHN CAIN
WIRING INSPECTOR

ZONING DENIAL

February 25, 2020

APPLICANT

WP Marlborough MA Owner, LLC
Tom Moran
9 West Broad Street, Suite 800
Stamford, CT 06902
TMoran@waypointrei.com

OWNER

Heritage Farm, LLC
Valthea M. Fry, Manager
15149 Winesap Drive
North Potomac, MD 20878
david.james.fry@gmail.com

RESIDENT AGENT

Geoffrey H. Smith, Esq.
One Financial Center Mintz,
Boston, MA 02111
GHSmith@mintz.com

Mr. Tom Moran:

Your application to construct a 188 residential dwelling units consisting of 4 building at 339 Boston Post Road East, Marlborough, MA Parcel ID #73-28, 72-35, 73-26, & 73-26A located in the Business & Residence A-2 zoning district (B & A-2) is denied as it does not comply with Chapter 650- 23 Floodplain and Wetland Protection District of City Code of Marlborough. The ordinance states that your use requested, requires a "Special Permit" (SP) issued by the Marlborough Zoning Board of Appeals (ZBA).

650-23 D(1) In a Floodplain and Wetland Protection District, no building or structure shall be constructed, altered or modified in its present use, and no land shall be filled, excavated or otherwise changed in grade, except pursuant to a special permit authorized by the Board of Appeals as hereinafter provided.

I have determined that the proposed project will require work within the Floodplain.

Your use requested requires zoning relief issued by the Marlborough Zoning Board of Appeals (ZBA).

You have the right to continue to the Marlborough Zoning Board of Appeals (SPGA for floodplain) for a Special Permit as stated in the City Code section 650-23 D or you have the right to appeal this decision to the Zoning Board of Appeals as per section 650-58.

An appeal from this denial for a SP may be taken to the Marlborough Zoning Board of Appeals by filling a Notice of Appeal with the City Clerk within 30 days of the date of this denial letter. Further information should be obtained from the Marlborough Zoning Board of Appeals.

The code in its entirety may be found at www.ecode360.com/MA1056
In your appeal, you may request a Special Permit (SP).

Sincerely,

Jeffrey Cooke, C.B.O.
Building Commissioner
Zoning Enforcement Officer

CC: WP Mar., Heritage Farm, LLC & Geoffrey Smith (Via E-mail & first-class mail)
City Council

Date 02/07/2020

Commonwealth of Massachusetts
CITY OF MARLBOROUGH
APPLICATION FOR USE OR CHANGE OF USE

The Marlborough City Code requires that a permit be obtained before any land or structure may be used in any way, and before any use may be changed.

► This does not apply to a change of ownership – only to a change in use.

Applications for permits shall be accompanied by two prints of a plan of the lot, drawn to scale, showing the actual dimensions of the lot, exact location and size of any existing or proposed buildings and streets and ways adjacent to the lot.

Address of property for which use or change of use is applied for:

339 Boston Post Road East 72-35, 73-26A, 73-28 and 73-26 Business "B" and "A-2" Residential
No. / Street Parcel ID# Zoning District

Assessors Init: _____

Description of Use Proposed (as written in Section 650-17 Table of Uses).

Please attach a brief narrative, if necessary.

Multi-family residential dwelling consisting of market rate and affordable units with accessory parking and related amenities.

If Residential, state # of units proposed 188 units, with 28 affordable and 160 market rate.

If Business, state exact type Not applicable.

Present Use of Property, including any existing structures

The present use of the land is a farm with several barns and other horseback riding facilities on the premises.

WP Marlborough MA Owner,

Applicant's Name LLC

Bldg Owner's Name Heritage Farm, LLC

Applicant's Address

Owner's Address

9 West Broad Street, Suite 800

339 Boston Post Road East

Stamford, CT 06902

Marlborough, MA 02878

Applicant's Phone 203-210-2757

Owners Phone 301-814-3519

I, as Owner/Authorized Agent hereby declare that the statements and information on the foregoing application are true and accurate, to the best of my knowledge and belief.

Applicant's Signature

Owner's Signature

I certify that the owner of record below is not delinquent in payments to the City of Marlborough under any circumstances per MGL Chapter 40 Section 57.

Tax Collector

Date

OVER ►

FOR ADMINISTRATION USE ONLY – DO NOT WRITE BELOW THIS LINE

APPROVE
DENIED

ZONING CODE

650-23

REASON FOR DENIAL

Requires SP

ZONING AGENT

25 Feb 2020

DATE

Page 1 of 2

City of Marlborough, MA
Monday, June 3, 2019

Chapter 650. Zoning

Article VI. Special Districts, Overlays and Special Requirements

§ 650-23. Floodplain and Wetland Protection District.

A. Purpose. The Floodplain and Wetland Protection District and the regulations herein have been established with the following purposes intended:

- (1) To protect the public health and safety, persons and property against flooding and the hazard of floodwater inundation.
- (2) To control and regulate the development of land and construction of buildings thereon and structures therein within the Floodplain and Wetland Protection District, particularly in relation to the use of swampland, marshes and areas along watercourses, ponds and lakes and land subject to seasonal and/or periodic flooding.
- (3) To protect the public from the burden of extraordinary financial expenditures for flood control and relief and to protect against unanticipated costs resulting from erosion, siltation, pollution or contamination of drainageways and surface water or groundwater resources of the City or neighboring communities.
- (4) To preserve the capacity of floodplain, watershed or wetland areas to absorb, transmit and store runoff and to assure the retention of sufficient floodway area to convey flows which can reasonably be expected to occur.

B. Location.

- (1) For the purpose of this section, the Floodplain and Wetland Protection Districts shall be considered superimposed on the other districts existing in the same area as shown on the Zoning District Map of the City of Marlborough, Massachusetts, and any buildings, structure or use of land included in the Floodplain and Wetland Protection District shall also be deemed to be within the particular district in which it is located as shown on said Zoning Map and subject to all the regulations and requirements thereof in addition to those set forth in this section.
- (2) The boundaries, elevations and setback requirements of the Floodplain and Wetland Protection District shall be as shown on a map entitled "City of Marlborough, Massachusetts Floodplain and Wetland Protection District 1982" and shall also include all special flood hazard areas designated as Zones A, A1-A30 on the City of Marlborough Flood Insurance Rate Maps dated January 6,

1982, and these maps, as well as the accompanying Marlborough Flood Insurance Study, are hereby, by this reference, made a part of the Zoning Chapter.^[1]

[1] *Editor's Note: Said maps and accompanying studies are on file in the office of the City Clerk.*

C. Prohibited uses. The following uses are prohibited within the Floodplain and Wetland Protection District:

- (1) The storage of buoyant, flammable, explosive or toxic material in a floodplain or wetland.
- (2) The dumping of waste, rubbish, demolition or hazardous materials in a floodplain or wetland area.
- (3) The addition, removal or transfer of such quantities of material, including earth, soil, trees, stumps or vegetation, that would reduce the water storage capacity of the floodplain or wetland, obstruct the flow of water in a floodway or otherwise adversely affect the natural hydrology of the area, except as may be a part of a plan for public flood control, municipal drainage or utility system or organized mosquito control district.
- (4) The digging or drilling of a well intended as a source of domestic water, except for public water supply wells adequately sealed against the infiltration of surface water.
- (5) The construction of an on-site sewage disposal system in the floodplain or designated wetland area.
- (6) Any encroachment in the regulatory floodway, as shown on the Floodway-Flood Boundary Map, that would increase the water surface elevation of the one-hundred-year flood.

D. Special permit required.

- (1) In a Floodplain and Wetland Protection District, no building or structure shall be constructed, altered or modified in its present use, and no land shall be filled, excavated or otherwise changed in grade, except pursuant to a special permit authorized by the Board of Appeals as hereinafter provided. Any application for such permit shall be submitted in quintuplicate (five copies) to the Board of Appeals and shall be accompanied by a plan of the premises in question showing:
 - (a) The boundaries and dimensions of the area.
 - (b) The location, dimensions and elevation above mean sea level of existing and proposed buildings and structures thereon.
 - (c) The existing contours in two-foot intervals of the land and of any proposed changes therefrom.
 - (d) Such other information as is deemed necessary to the Board of Appeals to indicate the complete physical characteristics of the area and the proposed construction and/or grading thereof.

- (2) The portion of any lot in this district may be used to meet lot area requirements for the residential districts over which the Floodplain and Wetland Protection District is superimposed, provided that such portion does not constitute more than 50% of the minimum lot area required in the residential district. Land in the Floodplain and Wetland Protection District may not be used to meet more than 15% of the minimum lot area requirements in Business, Commercial or Industrial Districts.

E. Reference to other boards. Within 10 days after receipt of the application for a special permit as herein provided, the Board of Appeals shall transmit copies thereof, together with copies of the accompanying plan, to the Board of Health, Planning Board, Engineering Department and the Conservation Commission. Such Boards and Commission may, at their discretion, investigate the application and report in writing their recommendations to the Board of Appeals. The Board of Appeals shall not take final action on such application until it has received a report thereon from the above Boards and Commission, or until such Boards and Commission have allowed 45 days to elapse after receipt of said application without submission of a report.

F. Other jurisdictions.

- (1) If approval for filling the land must be obtained from the commonwealth or the United States government or any agency or subdivision thereof, or an order of conditions is necessary from the Marlborough Conservation Commission in accordance with MGL c. 131, § 40, then such approval and any conditions imposed thereon shall be filed with the Board of Appeals with the application.
- (2) If in the opinion of the Board of Appeals such application for approval by other jurisdictions is in sufficient detail and provides the necessary information to furnish the criteria for its decision, then the same application and plan may be used for filing with the Board of Appeals for approval under the Floodplain and Wetland Protection District regulations.

G. Criteria of approval. The Board of Appeals may issue a special permit hereunder, subject to other provisions of this Zoning Chapter, if it finds that the proposed construction and use and/or proposed change in grade will not derogate from the intent and purpose of this district nor endanger the health and safety of the public nor the legitimate use of other land in the City. In deciding on an application for a special permit under this section, but without limiting the generality of the foregoing, the Board shall assure to a degree consistent with a reasonable use of the premises for purposes permitted in the use district in which located that the proposed construction, use and/or change of grade will not obstruct or divert flood flow, reduce natural storage or increase stormwater runoff to the extent of raising high water levels on any other land to any significant degree; the proposed system of drainage and/or private sewage disposal will not cause siltation, pollution or otherwise endanger public health; the proposed construction shall have street or other appropriate access that shall be at least one foot above base flood elevation; and structures designed for human occupancy shall have lowest floor, including basement, heating, electrical and sanitary sewer systems, at least two feet above base flood elevation. Fill deposited to bring the lowest floor to the required elevation shall extend to at least 15 feet beyond the limits of the structure thereon.

H.

Conditions of permit. In granting a special permit hereunder, the Board of Appeals shall impose conditions specifically designed to safeguard the health and safety of occupants of the premises and of other land in and adjacent to the district and to ensure conformity with the provisions thereof. It shall also be the duty of the Board of Appeals to ascertain that the requirements of the FEMA Flood Insurance Program have been met, in that:

- (1) Within Zones A1-A30 of the Flood Insurance Rate Maps of the City of Marlborough, all new construction and substantial improvements the cost of which equals or exceeds 50% of the market value of the structure of residential and nonresidential structures shall have the lowest floor, including basement, elevated to two feet above the base flood elevation (the one-hundred-year flood elevation designated on the FIRM) or, in the case of nonresidential structures, be floodproofed, watertight to the base flood level.
- (2) Within Zone A, where the base flood elevation is not provided on the FIRM the Building Commissioner shall obtain and review any already existing base flood elevation data. If the data is reasonable, it shall be used to require compliance with Subsection H(1) above.
[Amended 10-6-2014 by Ord. No. 14-1005921A]
- (3) Where watertight floodproofing of a structure is permitted, a registered professional engineer or architect shall certify that the methods used are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the one-hundred-year flood.

I. Determination of levels.

- (1) For the purpose of this section, the term "base flood elevation" refers to the flood having a one-percent chance of being equaled or exceeded in any given year, commonly referred to as the "one-hundred-year flood." Where, in the opinion of the Board of Appeals, engineering studies are needed to determine the high water level on a particular premises and/or the effect of a proposed building, structure or grading on flood flow, natural safety of any building or structure, such engineering study shall be at the expense of the petitioner.
- (2) If any land in the Floodplain and Wetland Protection District is proven to the satisfaction of the Zoning Board of Appeals, after the question has been referred to and a recommendation received from the City Engineer, Planning Board, Board of Health and Conservation Commission, as being in fact above the base flood elevation, and that the use of such land will not be detrimental to the public health, safety and/or welfare, the Board of Appeals may, after a public hearing, with due notice, issue a special permit for any use allowed in the underlying district; in which case all other Zoning Chapter and state regulations applicable to such land use shall apply.
- (3) The establishment of a Floodplain and Wetland Protection District hereunder shall not constitute a representation that all land outside of said district will be free from flooding.

J. List of Floodplain and Wetland District areas. The areas placed in said district are shown on the map and include in part the areas designated by FEMA for the flood insurance program and the major wetlands in the City designated by the Massachusetts Department of Environmental Management as being subject to an

order of restriction under MGL c. 131, § 40A. Elevations given are based on the United States Coast and Geodetic Survey datum.

K. Mobile home development regulations.

- (1) Within Zone A1-A30, all mobile homes shall provide that:
 - (a) Stands or lots are elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level.
 - (b) Adequate surface drainage and access for a hauler are provided.
 - (c) In the instance of elevation on pilings, lots are large enough to permit steps, piling foundations are placed in stable soil no more than 10 feet apart and reinforcement is provided for piers more than six feet above ground level.
- (2) The placement of mobile homes, except in an existing mobile home park or mobile home subdivision, is prohibited in the floodway.

From: Krista Holmi
Sent: Friday, April 24, 2020 11:32 AM
To: Krista Holmi
Subject: General Discussion - Draft Policy Re: Sign Variances and Proposed Zoning Amendments

DRAFT

Please be advised that the Marlborough Planning Board has established a standing policy for sign variance requests and for providing recommendations to the City Council involving properties that are not in compliance with applicable City Code. For sign variance requests, the Planning Board will not act on any variance request where there are violations of applicable City Codes on the property. For example, the Board will deny a sign variance request when there is a business located on the subject property that is not permitted in the applicable zone. In addition, the Board will deny a variance request for relief from the requirements of the Sign Ordinance if there are other violations of the sign ordinance located on the property (non-permitted A-frame signs, banners, balloons, signs affixed to a fence or tree, etc.).

For requests for amendments to the City's Zoning By-laws, the Planning Board will provide an unfavorable recommendation to the City Council or a request for the City Council to delay action on the requested zoning amendment until the subject property is brought into compliance with all applicable City Codes. This includes the City's Sign Ordinance, and violation of the City's Table of Uses.

It is the Planning Board's position that it is contrary to the Board's obligation to be impartial, and not in keeping with the expectation that all property owners within the City comply with all requirements of applicable City Code, to provide relief those requirements for property owners who are willfully non-compliant. By way of example, the Planning Board will provide an unfavorable recommendation to the City Council or request that the City Council delay action on the requested zoning amendment for any property owner that is not in compliance with the City's Sign Ordinance, or that permits uses that are not in keeping with the table of uses for the applicable zone.

Prior to acting on a particular matter, the Planning Board members will view the subject property. For sign variance requests and requests for zoning amendments, the Planning Board will request a letter from Inspectional services concerning the subject property's compliance with applicable regulations and any current enforcement actions. The request will list any areas of concern or conditions which the Board believes may constitute a violation of applicable regulations.

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