

CITY OF MARLBOROUGH MEETING POSTING

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CITY OF MARLBOROUGH
2024 JAN -4 PM 1:53

Meeting: **Planning Board**
Date: January 8, 2024
Time: **7:00 PM**
Location: Memorial Hall, 3rd Floor, City Hall, 140 Main Street, Marlborough, MA 01752

This meeting of the Planning Board will be held in Memorial Hall on Monday, January 8, 2024, at 7:00 PM.

PUBLIC ATTENDANCE IS PERMITTED

Agenda Items to be Addressed:

Draft Meeting Minutes

- A. December 18, 2023
2. **Chair's Business**
 - A. City Council's draft schedule
3. **Approval Not Required (None)**
4. **Public Hearings (None)**
5. **Subdivision Progress Reports (None)**
6. **Preliminary/Open Space/Limited Development Subdivision**
 - A. Open Space Definitive Subdivision Application, Stow Road, Map and Parcels 8-164, 8-163, and 20-150A
 - Name of Applicant: Kendall Homes, Inc. (P.O. Box 766, Southborough, MA 01772)
 - Name of Owner: McCabe Family Irrevocable Trust & Judith McCabe
(6 Erie Drive, Hudson, MA 01749)
 - Name of Surveyor: Connorstone Engineering, Inc. (10 Southwest Cutoff, Northborough, MA 01532)
 - i. Flowchart
 - ii. Correspondence from Assistant City Solicitor, Jeremy McManus
 - iii. Draft Certificate of Vote
 - iv. Draft Covenant
7. **Definitive Subdivision (None)**
8. **Signs (None)**
9. **Correspondence (None)**
10. **Unfinished Business**
 - A. Working Group
11. **Calendar Updates (None)**
12. **Public Notices of other Cities & Towns (None)**

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

December 18, 2023

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

1. Draft Meeting Minutes

A. December 4, 2023

On a motion by Dr. Fenby, seconded by Mr. LaVenture, the Board voted to accept and file the December 4, 2023, meeting minutes. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

2. Chair's Business

A. Right of First Refusal - Red Spring Road – Correspondence from Brian Falk, Mirick O'Connell

On a motion by Dr. Fenby, seconded by Mr. Russ, the Board voted to accept and file the correspondence. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

B. Beauchemin Estates – 689 Pleasant Street – Lot Release

Mr. DiPersio explained Beauchemin Estates is the most recently approved 7 lot subdivision off Pleasant Street. Lot 7 was drawn around the existing house on the property. The covenant for this subdivision speaks about all 7 lots and he explained lot 7 shouldn't have been part of the covenant. Lot 7 is not dependent on the new roadway; it has an existing driveway and utilities off of Pleasant Street. The owner is selling lot 7 separate from selling the subdivision lots and roadway to a developer, as part of the closing, it was note by the attorney that lot 7 is restricted by the covenant.

Mr. DiPersio explained he spoke with the Legal Department, and they drafted the release of lot(s) and agreed the best option would be to release lot 7 from the covenant now.

On a motion by Dr. Fenby, second by Mr. LaVenture, the Board voted to authorize the lot release. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

Mr. Fay endorsed the release of lot(s).

3. Approval Not Required

A. 982 Boston Post Road East, Marlborough, MA 01752, Map and Parcel 62-3 & 3A

Name of Applicant/Owner: Dasilva Farms LLC (110 Dartmouth Street, Marlborough, MA 01752)

Name of Surveyor: Richard Reid Jr., c/o Engineering Design Consultants, Inc.
(32 Turnpike Road, Southborough, MA 01772)

Deed Reference: Book: 75382 Page: 28

i. Flowchart

ii. Form A

iii. Correspondence from City Engineer, Thomas DiPersio – Engineering Review

Mr. LaVenture read the December 12, 2023, correspondence into the record.

iv. Plan of Land

Dated: December 5, 2023

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Peter Bemis spoke on behalf of the ANR plan and explained the plan shows the former lot line, new lot line and the remaining land. The plan cuts out the existing house located at 982 Boston Post Road East and reconfigures the existing lot. The plan is to remove the existing barn and to build a new home on lot 1. Mr. Fay asked if a permit has been pulled for this. Mr. Bemis explained he believes it has been filed but not issued. Mr. Bemis explained their plan is to get the plan recorded in 2023 for taxation and the ability to convey the lots and remaining land in 2024.

On a motion by Mr. LaVenture, second by Dr. Fenby, the Board voted to accept and file the December 12, 2023, correspondence from City Engineer, Thomas DiPersio and to endorse the above referenced Plan of land dated December 5, 2023, as Approval Not Required under the Subdivision Control Law. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

- B. 547 Stow Road, Marlborough, MA 01752 Map and parcel 8-163 & 164, 20-150A
- Name of Applicant/Owner: Kendall Homes (PO Box 766, Southborough, MA 01772)
- Name of Surveyor: Varoujan Hagopian, PLS, Connorstone Engineering, Inc.
(10 Southwest Cutoff, Suite 7, Northborough, MA 01532)
- Deed Reference: Book: 78814 Page: 590
Book: 66136 Page: 582
- i. Flowchart
 - ii. Form A
 - iii. Correspondence from City Engineer, Thomas DiPersio – Engineering Review
Mr. LaVenture read the December 14, 2023, correspondence into the record.
 - iv. Plan of Land Dated: November 21, 2023, Revised: December 7, 2023

Mr. Daniel Burger spoke on behalf of the ANR and explained the ANR shows the reconfigured lot lines for lots 1 and 2 and included the proposed surface soil relocation area for the arsenic contaminated soil on ANR lot 1.

Mr. Fay asked if there was anything different on the configurations of the ANR lots from the configurations of the of the ANR lots on the definitive subdivision plans the Board has been reviewing. Mr. Burger explained he didn't believe so.

Mr. Fay and Mr. DiPersio discussed if the surface soil relocation area could be referenced in the covenant. Mr. DiPersio explained the contaminated soil is coming from lot 1 and staying on lot 1. Mr. Fay asked if this had any bearing on whether or not the Board could vote on the ANR plan. Mr. DiPersio said no, and explained and the soil management plan needs to go to the Board of Health for review and approval. He explained he spoke with the Health Director about how the surface soil relocation area gets documented on the record in perpetuity, in a deed restriction and on the plan once recorded.

The Board discussed the word "proposed" on the plan. Mr. Burger explained anywhere the area is referenced, it would be referenced by referring to the language as displayed on the plan "proposed surface soil relocation area".

The Board discussed the relocation area and Mr. DiPersio explained the area does not require any setbacks.

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On a motion by Dr. Fenby, second by Mr. LaVenture, the Board voted to accept and file the December 14, 2023, correspondence from City Engineer, Thomas DiPersio, to endorse the above referenced Plan of land dated November 21, 2023, revised December 7, 2023, as Approval Not Required under the Subdivision Control Law and to notify the Board of Health of the proposed surface soil relocation area on ANR lot 1, and advise it to require a deed restriction in perpetuity. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

4. Public Hearings (None)

5. Subdivision Progress Reports (None)

6. Preliminary/Open Space/Limited Development Subdivision

A. Open Space Definitive Subdivision Application, Stow Road, Map and Parcels 8-164, 8-163, and 20-150A

Name of Applicant: Kendall Homes, Inc. (P.O. Box 766, Southborough, MA 01772)

Name of Owner: McCabe Family Irrevocable Trust & Judith McCabe
(6 Erie Drive, Hudson, MA 01749)

Name of Surveyor: Connorstone Engineering, Inc. (10 Southwest Cutoff, Northborough, MA 01532)

i. Flowchart

ii. Extension Request to January 30, 2024

iii. Draft Certificate of Vote

iv. Draft Covenant

The Board reviewed the certificate of vote and covenant.

Mr. LaVenture addressed concerns on the language under item 8 on the covenant. "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." He argued we have the bonds to ensure the completion of the roadway and the infrastructure, if the bond expires, that means the bond hasn't been reduced or turn to 0, and the work hasn't been completed. If the work isn't completed, and we don't have a bond there to ensure that work is completed, what happens to the lots that have already been turned over to a third party or mortgage? He argued they're left with land that has no completed infrastructure.

Mr. Fay explained item 8 would bring the lots not transferred to a third party of mortgage back under the covenant, the lot releases would be expired, but that doesn't address the issue of a partially completed subdivision.

The administrator confirmed item 8 is the same language from the previously approved covenant.

The Board and Mr. Burger discussed the sidewalk waiver and the Board agreed this was not a waiver they approved and requested it be removed from both the certificate of vote and covenant.

Mr. Fay and Mr. Burger discussed what was changed, and Mr. Burger explained he updated the departments and confirmed he did not change the two-year timeline.

Mr. LaVenture suggested implementing a procedure that would require applicants to use the tracked changes feature when drafting the certificate of vote and covenant to help the Board and their review process.

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The Board discussed requesting the developer to label the street as private until the roadway has been accepted as a public way. Mr. DiPersio suggested putting a private way sign above the street name sign during the one-year maintenance period as a condition of the final bond reduction. The Board reviewed and discussed the option of temporary sign reading "Notice Unaccepted Street, maintenance is the responsibility of the Developer or Abutters, not the City of Marlborough".

On a motion by Dr. Fenby, seconded by Mr. Russ, the Board voted to refer the Certificate of Vote and Covenant to the Legal Department for review. In addition to the Legal Departments general review, the Board is looking for a detailed review on the language under item 8 on the covenant pertaining to the expiration and to determine if the soil management plan can be referenced on the covenant. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

ii. Extension Request to January 30, 2024

Mr. LaVenture read the December 13, 2023, correspondence into the record.

On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to accept and file the December 13, 2023, correspondence from Daniel J. Burger, Esq. and to grant the extension for the decision on the Open Space Definitive Subdivision on Stow Road (547 Stow Road) to January 30, 2024. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture and Russ Nay: 0. Motion carried. 7-0.

7. Definitive Subdivision (None)

8. Signs (None)

9. Correspondence (None)

10. Unfinished Business

A. Working Group

Mr. LaVenture updated the Board and explained the working group had meet on December 12th. They have reached out to a number of people regarding porous pavement including the Burlington, Department of Public Works since they have an existing porous pavement parking lot and companies, such as natural path landscaping and Northeast Porous Paving.

Mr. LaVenture summarized information from a study he found that was released in April of 2023 by a Professor and staff from UMass Amherst. This study looked at the Eastern Massachusetts watershed area and it states that Massachusetts is now subject to a paradoxical situation, which summer drought follows spring flooding.

He explained the study ran models through a FORTRAN program and project trends for the year 2100, resulting in the following:

- Decrease of 51% of forested land
- Increase of 75% of impervious areas
- Increase of 3% in annual stream flow
- Increase of 69% in annual runoff
- Increase of 54% of topsoil found in runoff
- Increase of 12% of phosphorus concentration found in runoff
- Increase of 13% of nitrogen concentration found in runoff

He went over ways to slow down the runoff, such as rain gardens, pervious surfaces, and vegetated swales and discussed the benefits porous pavement.

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He explained the Working Group plans to meet with one of the companies and hopes that they will come to a future Board meeting. The Board discussed the importance of learning about porous pavement options to implement during future projects.

Mr. Russ explained he spoke with a colleague of his, and he had explained the technology is not ready for roadway use. He has used it on a couple of driveways with varying success. It needs to be designed in a manner that on days with heavy rainfall there is an overflow system.

11. Calendar Updates

- A. Planning Board Holiday Party – December 18th

12. Public Notices of other Cities & Towns

- A. Town of Northborough – Public Hearing Notice

On a motion by Dr. Fenby, second by Mr. LaVenture, the Board voted to accept and file the town of Northborough public hearing notice. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

Dr. Fenby endorsed the ANR plans for 982 Boston Post Road East and 547 Stow Road.

On a motion by Mr. Hughes, seconded by Mr. LaForce, the Board voted to adjourn the meeting. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 7-0.

Respectfully submitted,

/kmm

George LaVenture/Clerk

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CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

CITY COUNCIL REGULAR MEETING SCHEDULE 2024

2024 JAN -3 PM 4:40

January 1
(Organizational Meeting)

January 8

January 22

February 12

February 26

March 11

March 25

April 8

April 22

May 6

May 20

June 3

June 17

July 22

August 19

September 9

September 23

October 7

October 21

November 4

November 18

December 2
(Agenda closes 5:00 PM Tuesday November 26th)
(Tax Classification Public Hearing)

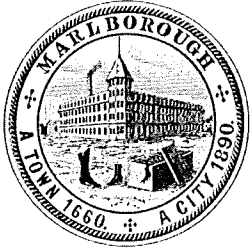
December 16

Marlborough Planning Board

6A.i

Procedure for Definitive Plans Stow Road, 8-164, 8-163, and 20-150A, Marlborough, MA 01752

[] Step 1	Application filed at the [X] Planning Board Office [X] Board of Health Office [X] City Clerk's Office	① Preliminary plan filed? [X] Yes [] No	Date: <u>August 16, 2023</u>
[] Step 2	Application complete?	No →	Date: _____
	Yes ↓		
[] Step 3	Put on next Planning Board Agenda - date of meeting: <u>August 21, 2023</u>		
[] Step 4	Applicant presents plan to the Planning Board. Planning Board refers the plan to Engineering for review and sets date for public hearing - ① 90/135 day clock starts ending: <u>November 19, 2023</u> ②	Extension Granted through January 30, 2024	Date: <u>August 21, 2023</u>
[] Step 5	Public hearing advertised ③ date of public hearing: <u>September 11, 2023</u>		
[] Step 6	Public hearing held, Engineering comments to the Planning Board, along with the Board of Health and any other Departments as requested ④		
[] Step 7	Revisions requested?	Yes →	Date: <u>October 23, 2023</u>
	No ↓	Applicant's Engineer provides revised plans to the Planning Board	
[] Step 8	Public hearing closed, Planning Board takes action on any waiver requests and to approve, modify and approve, or deny the plan		Date: <u>November 13, 2023</u> Board Action: _____
[] Step 9	Planning Board notified the City Clerk and applicant of decision by certified mail	① If preliminary plan was filed, clock = 90 days If no preliminary plan was filed, clock = 135 days Note: For non-residential subdivisions, Preliminary plan is required	
[] Step 10	If plan approved, Planning Board receives security from the applicant for the construction of ways and installation of municipal services and for the acceptance of the roadway as a public way	② For Planning Board to take final action by approving, modifying and approving, or disapproving plan.	
[] Step 11	Planning Board endorses the plan following expiration of 20-day appeal period	③ By publication in a newspaper of general circulation in the City once in each of two successive weeks, first publication being not less than 14 days before the day of the public hearing, and by mailing a copy of such advertisement to the applicant and to abutters who appear on the most recent tax list.	
		④ Planning Board may not take final action on definitive plan until after public hearing and after receiving report of Board of Health (or lapse of 45 days after plan is filed without report from Board of Health).	



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

JEREMY P. MCMANUS
ASSISTANT CITY SOLICITOR

BEATRIZ R. ALVES
PARALEGAL

VIA E-MAIL ONLY

January 4, 2024

Sean Fay, Chair
Planning Board
City of Marlborough
140 Main Street
Marlborough, MA 01752

Re: Open Space Development Definitive Subdivision, 547 Stow Road

Dear Honorable Planning Board Members:

As requested, I have reviewed the proposed form of the Certificate of Vote and Covenant, in connection with the above-referenced subdivision plan. Enclosed for the Board's consideration, please find a red-line version showing recommended revisions, and a clean version which is in proper legal form incorporating these revisions. I have confirmed that all revisions are acceptable to the applicant, including editing the Covenant to be executed by the owners of the premises instead of the applicant to comply with the provisions of G.L. c. 41, § 81U ("§ 81U"). Accordingly, I have asked the applicant to forward the Covenant to the owners for their signatures. Pursuant to § 81U, I recommend that the Board not endorse the plan until it receives the executed Covenant (or another form of adequate security).

Additionally, I have brought to the applicant's attention that Paragraph 9 of the Covenant references a "Lot 6," but this subdivision only contains three lots. Pursuant to Planning Board Rules and Regulations section A676-10(L)(1)(B), a lot must be selected to be retained and not built upon or conveyed in any means until after all requirements of the City to complete the street acceptance process have been met. I have changed references to "Lot 6" in Paragraph 9 to blanks for this purpose and recommend that the Board review the accompanying language regarding basins and a drainage system to ensure its applicability to the lot that is selected.

You have also asked for a legal opinion regarding specific language contained within Covenant condition number 8. Specifically, you asked why the Covenant includes language to not void lot releases for transferred or mortgaged lots if bonding expires. In my opinion, this language – which this office notes has consistently existed in covenants that the Board has executed dating back to at least 1993 – was drafted because the owners and/or mortgagors of such lots legally acquire their interests in the lots yet do not assume a legal responsibility to complete the subdivision. Instead, Massachusetts courts have stated that only legal successors to *developers themselves* assume an obligation to construct subdivisions. See Fox Gate LLC v.

Town of Millbury, No. 09 MISC 395474, at *7 (Land Ct. 2011)¹. Therefore, in my opinion, there is no practical or legal reason to require developers to include individual lots that have been sold and/or mortgaged in a covenant drafted to ensure subdivision completion. Instead, the Board's mechanism to ensure completion of such lots is to monitor the bond's expiration date. This way, the Board can exercise its rights under the bond if an adequate agreement for additional security cannot be reached before the bond expires.

Finally, you have asked whether the Covenant may require the management of soil conditions on an adjacent lot that is not part of the subdivision. In my opinion, the Covenant may not include this condition because, as Massachusetts courts have held, ground water and soil contamination – regardless of location – are under the purview of the board of health and are not properly considered as part of the subdivision approval process. See Mass. Broken Stone Co. v. Planning Bd. of Weston, 45 Mass.App.Ct. 738, 746-47 (1998) (“The third condition set by the board of health, that prior to any construction, evidence be submitted demonstrating the absence of harmful chemical contaminants in the ground water and soil, has no apparent relation to the merits of the subdivision plan. While the concern of the board of health may be legitimate, that board has the power to require such testing independent of the subdivision approval process, and the absence of such testing during the subdivision approval process does not constitute a proper basis for disapproving the subdivision plan”).

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

Respectfully,



Jeremy P. McManus
Assistant City Solicitor

cc: Thomas DiPersio, Jr., City Engineer

¹ According to the Land Court in that case, “[a] clear distinction is to be drawn between one who acquires an individual subdivision lot or lots...and one who succeeds to the rights of a developer upon foreclosure...In the latter instance, the successor or assignee of the rights of [the developer] intends to develop the subdivision as a whole, conveying out individual lots as part of that effort.” See Fox Gate LLC, at *7.

CERTIFICATE OF VOTE

_____, 202~~43~~

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 _____, 202~~43~~, it voted to approve a Definitive Subdivision Plan for a Residential Subdivision for property located on land identified on the City of Marlborough's Assessor's Map ("Assessor's Map") as Map 8, Parcel 164, located on Stow Road, Marlborough, MA 01752, owned partially by Judith McCabe, individually, and owned partially by Alison McCabe Quinn, as trustee of the McCabe Family Irrevocable Trust u/d/t dated September 9, 2015, ~~or its Assignee~~, as follows:

PROCEDURAL FINDINGS:

1. On ~~August December~~ 1~~63~~, 202~~32~~, an application (the "Application") was filed on behalf of Kendall Homes, Inc., having a principal mailing address of P.O. Box 766, Southborough, MA 01772 (hereinafter referred to as the "Applicant"), pursuant to MGL, c. ~~41, s. 81~~~~Q40A~~, and the Planning Board's Rules and Regulations Governing the Subdivision of Land in Marlborough (the "Rules and Regulations"), seeking approval of a three (3) lot, single-family definitive subdivision plan as shown on a plan entitled "~~Preliminary-Definitive Subdivision Plan of, Open Space Concept Plan~~, Stow Road Subdivision in Marlborough, ~~Massachusetts~~" dated ~~August 3-December 2~~, 202~~32~~, and revised on ~~October February~~ 1~~89~~, 2023, prepared by Connorstone Engineering, Inc., 10 Southwest Cutoff, Suite 7, Northborough, MA 01532, (hereinafter referred to as the "Plan"), on land identified on the City of Marlborough's Assessor's Map ("Assessor's Map") as Map 8, Parcel 164, located on Stow Road, Marlborough, MA 01752, owned partially by Judith McCabe, individually, and owned partially by Alison McCabe Quinn, as trustee of the McCabe Family Irrevocable Trust u/d/t dated September 9, 2015, further identified in the Middlesex South District Registry of Deeds in Book 66136, Page 582, and in Book 78814, Page 590 and consisting of 6.~~384~~⁺/- acres of land (the "Development").
2. The Planning Board provided copies of the Application to other City boards and commissions, departments and officials, including, but not limited to, the Building Commissioner, Board of Health, Conservation Commission, Department of Public Works, Fire Chief, City Engineer and City Solicitor~~Engineer~~. The Applicant further provided a copy of the Application to the Board of Health.
3. The Board of Health did not submit a report in response to the Applicationsubmitted an email correspondence dated January 12, 2023, indicating that the Board had reviewed the Definitive Subdivision Plan for 547 Stow Road and had no objections to the approval of

~~said Plan and noted a 1939 aerial photo appears to show that a portion of the property was once an apple orchard.~~

4. The City Engineer submitted ~~a~~ review letters dated ~~January 18~~ September 6, 2023 and November 3, 2023, summarizing engineering-related comments on the plans.

- ~~5. The Conservation Commission submitted a review letter dated January 19, 2023, confirming the proposed project satisfied the design guidelines and summarizing conservation-related comments on the plans.~~

- ~~6.5.~~ After notice and publication was provided pursuant to applicable provisions of M.G.L. c. 41, s. 81T of the Subdivision Control Law, and the applicable provisions of the Rules and Regulations, a public hearing was commenced on September 11, 2023 and held during duly authorized meetings on September 11, 2023, September 18, 2023, October 2, 2023, October 23, 2023 and November 13, 2023. ~~Continuances of the public hearing were requested at meetings held on September 18, 2023, October 2, 2023, November 13, 2023.~~ The Planning Board closed the public hearing on November 13, 2023 ~~*[has not been closed yet].~~

- ~~7.6.~~ ~~Planning Board members Sean Fay, Barbara Fenby, James Fortin, Patrick Hughes, Dillon LaForce and George LaVenture were present for the public hearing held on September 11, 2023.~~ Any Planning Board member(s) who were absent from a single session of the public hearing on the Application, prior to the vote on this decision, filed a written certification as to examination of all the evidence and testimony received at the hearing session, made as part of the record of the hearing, in accordance with Massachusetts General Laws, Chapter 39, Section 23D.

- ~~8.7.~~ The Plan was further amended on ~~February~~ October 18, 2023 ~~and August 3, 2023~~ to incorporate details and to address the comments and requirements of City Engineer Thomas DiPersio.

- ~~9.8.~~ Planning Board members ~~Sean Fay, Barbara Fenby, James Fortin, Dillon LaForce, George LaVenture, and Christopher Russ were present and~~ deliberated on the Application at duly authorized meetings including on September 11, 2023, September 18, 2023, October 2, 2023, October 23, 2023 and November 13, 2023.

PROJECT FINDINGS:

- A. The subject property consists of three (3) lots owned partially by Judith McCabe, individually, and owned partially by Alison McCabe Quinn, as trustee of the McCabe Family Irrevocable Trust u/d/t dated September 9, 2015 identified on the City Assessor's Maps as follows: Map 8, Parcel 164.

- B. In seeking approval of the *amended* Plan, the Applicant proposes to build a new road providing access to, and servicing, three (3) lots of a three (3) lot subdivision, subject to the conditions set forth below.
- C. 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.
- D. 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.
- E. WAIVERS –

After the public hearing, followed by deliberations on the Plan as amended, the Planning Board did on ____, 2024~~3~~, by a vote of ____ in favor and ____ opposed, grant the following waivers to the Rules and Regulations, in connection with the Plan, as amended (citations below are to the Marlborough City Code, Chapter A676, entitled “Subdivision Regulations”):

1. Article IV Section 676-7.8(2) adequate access –
Required: The required width for the existing roadway providing access to a subdivision street is twenty-two (22) feet
Requested: ~~The~~A reduction in width of the existing roadway providing access to the subdivision street to Stow Road along the frontage of the property is eighteen and six tenths (18.6) feet
☒ Approved ☐ Denied
2. ~~*[TBD]~~ Article V Section 676-24.B(2)(b) minimum width of roadways –
Required: Secondary streets requires a paved roadway width of twenty-eight (28) feet of pavement
Requested: ~~The request is to allow~~ A reduction of the paved roadway width to twenty-six (26) feet of pavement
☒ Approved ☐ Denied

CONDITIONS:

The Planning Board on _____, 2024~~3~~, by a vote of ____ to ____, approved the Plan, as amended, as described above, subject to the following conditions:

- A. All easements, if any, shown on the Plan for the benefit of the abutters/lots shall be deeded to the respective abutters/lots after the Plan and covenant are recorded.
- B. 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.

- C. 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.
- D. The Applicant shall comply with all conditions of the Open Space Development Special Permit granted by the Planning Board dated June 26, 2023 and recorded at the Middlesex South Registry of Deeds in Book 81818, Page 363.
- E. The Applicant shall record at the Middlesex County 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.
- 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., c. 41, s. 81W.
- G. All conditions herein shall apply to Applicant, its successors and assigns, and to its successors in title to the Development.

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CERTIFICATE OF VOTE
DEFINITIVE SUBDIVISION PLAN
689 PLEASANT STREET
STOW ROAD SUBDIVISION

RECORD OF VOTE:

The following members of the Planning Board voted on _____, 20243, to approve the Plan, *as amended*:

Sean N. Fay

Barbara L. Fenby

James Fortin

Patrick Hughes

Dillon LaForce

George LaVenture

Christopher Russ

CERTIFICATE

I hereby certify that twenty (20) days have elapsed since the Board's filing of a copy of the above-referenced vote in the Office of Marlborough City Clerk on _____, 20243, and that no notice of an appeal of that decision has been timely filed with said office.

A True Copy Attest:

Steven Kerrigan
Marlborough City Clerk

Date

COVENANT

This Covenant recorded in the Middlesex County South District Registry of Deeds at Book _____, Page _____, is made this _____ day of _____, 2024~~3~~. The undersigned, ~~Kendall Homes, Inc., having a principal mailing address of P.O. Box 766, Southborough, MA 01772~~ Judith McCabe, individually, and Alison McCabe Quinn, as trustee of the McCabe Family Irrevocable Trust u/d/t dated September 9, 2015 (hereinafter referred to collectively as the “Covenantor”), having submitted to the Marlborough Planning Board (hereinafter referred to as the “Planning Board”) a definitive plan of a subdivision entitled “Preliminary-Definitive Subdivision Plan, Open Space Concept Plan, of Stow Road Subdivision in Marlborough, ~~Massachusetts~~ A” dated ~~August~~ December ~~32~~, 2023~~2~~, and revised on ~~February~~ October ~~189~~, 2023, prepared by Connorstone Engineering, Inc., 10 Southwest Cutoff, Suite 7, Northborough, MA 01532, ~~(hereinafter referred to as the “Plan”)~~, on land identified on the City of Marlborough’s Assessor’s Map (“Assessor’s Map”) as Map 8, Parcel 164, located on Stow Road, Marlborough, -MA 01752, (said plan being hereinafter referred to as the “Plan”), in accordance with the conditions of Approval as voted by the Planning Board on _____, 2024~~3~~, does hereby covenant, and agree with the Planning Board, pursuant to Massachusetts General Laws (Ter.Ed.), Chapter 41, Section 81U, as amended that:

1. The Covenantor is the owner of record of the premises, including 3 house lots (“Lots”), Lots S1, S2, and S3, as shown on the Plan, which is to be recorded in the Middlesex South District Registry of Deeds herewith as Plan No. _____ of 2024~~3~~ and is referred to herein. The ~~covenantor undersigned, Alison McCabe Quinn, as trustee of the McCabe Family Irrevocable Trust, hereby~~ certifies that she is the original trustee, that the trust is in full force and effect, and that she has been directed by all beneficiaries to execute and deliver this Covenant. There are no mortgages of record or otherwise on any of said premises.
2. This Covenant shall run with the land and shall operate as restrictions upon the land included in the subdivision and shall be binding upon any executor, administrators, devisees, heirs, successors and assigns of the Covenantor and any of its successors in title to the premises shown on the Plan.
3. The construction of the subdivision roadway and the installation of municipal services shall be provided to serve any and all Lots in accordance with the applicable Rules and Regulations of the Planning Board before any such Lot may be built upon or conveyed, other than by mortgage deed; provided, however, that a mortgagee who acquires title to the mortgaged premises or any part thereof may sell any such Lot, subject only to that portion of this Covenant which provides that no Lot so sold shall be built upon until such ways and services have been provided to serve such Lot.
4. Nothing contained herein shall be deemed to prohibit a conveyance subject to this Covenant, by a single deed, of the entire parcel of land shown on the Plan or all Lots not previously released by the Planning Board without first providing such subdivision road

and services. A deed of any part of the premises shown on the Plan in violation of any portion of the above referenced statute shall be voidable by the grantee prior to the release of the Covenant, but not later than three (3) years from the date of such deed.

5. The Covenantor agrees to the easements shown on the Plan for the benefit of the abutters and shall be deeded to the abutters after the Plan and covenant are recorded.
6. Prior to the release by the Planning Board of any Lots shown on the Plan from the terms of this Covenant, the Covenantor or its assignee(s) 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 the 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 A676-10.G.1(a), as amended, such bond or security, when filed or deposited shall be reviewed as to form and manner of execution by the City Solicitor's Office, and as to sureties by the City Finance Director.
8. No Lot shall be sold or built upon until released by the Planning Board after acceptable bonding. If at any time said bonding as required in Paragraph 6 expires, then all Lot releases of Lots not transferred to third party purchasers or mortgaged subsequent to release, shall be void.
9. Pursuant to the Planning Board Rules and Regulations, lot 6 shall be retained and may not be built upon or conveyed in any means until after the Covenantors have met all requirements of the City to complete the street acceptance process, except that basins and a drainage system can be built on said Lot 6.
10. Pursuant to Massachusetts General Laws (M.G.L.) Chapter 41, Section 81R, as amended, the Planning Board has not agreed to waive compliance with its Rules and Regulations, as set forth in the Marlborough City Code, Chapter A676, entitled "Subdivision Regulations", except as follows:

1. Article IV Section 676-7.B8(2) adequate access –

Required: The required width for the existing roadway providing access to a subdivision street is twenty-two (22) feet

Allowed: ~~The A reduction in width of Stow Road of the existing roadway providing access to the subdivision street along the frontage of the property is to~~ eighteen and six tenths (18.6) feet

32. ~~*[TBD]— Article V Section 676-24.B(2)(b) minimum width of roadways -~~

Required: Secondary streets requires ~~a paved roadway width of~~ twenty-eight (28) feet ~~of pavement~~

Allowed: ~~The request is to allow A reduction of the paved roadway width to~~ twenty-six (26) feet ~~of pavement~~

11. The construction of all ways and the installation of all municipal services shall be completed in accordance with the applicable Rules and Regulations of the Planning Board within a period of two (2) years from the date of 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.
12. 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 specific completion date is necessary for the Code Enforcement Officer to examine the said premises and make a proper determination.
13. The Covenantor shall comply with all conditions of the Open Space Development Special Permit granted by the Planning Board dated June 26, 2023 and recorded at the Middlesex South Registry of Deeds in Book 81818, Page 363.
14. The City of Marlborough shall not be responsible for the maintenance and care of the subdivision road or other improvement. In emergency situations as determined by the City Engineer, the City of Marlborough may take steps to correct a condition(s) within the subdivision which, if not corrected, would jeopardize public health and safety. In these instances, any and all costs so incurred by the City to correct said condition(s), shall be reimbursed to the City within thirty (30) days of notice to the Covenantor. Failure to reimburse the City within this period will be considered cause to rescind approval of the Plan.
15. All as-built plans and profiles pertaining to the Plan shall be submitted to the City Engineer forthwith after the completion of said subdivision road. Copies of all the site

plans prepared for each of the individual building Lots shall be submitted to the City Engineer for review and approval to be included with the application for a Building Permit.

16. Prior to the execution of this Covenant, the Covenantor agrees to submit a work schedule, and a progress report every month beginning 60-days after the Covenant is signed, to the City Engineer, with copies to the Planning Board, until said subdivision has been completed. Said progress reports shall be delivered to the Planning Board prior to the third Monday of each and every month. Failure to comply with the provisions of this paragraph shall give the Planning Board the right to rescind the approval of the application for subdivision approval after notice to the Covenantor and opportunity to be heard.
17. 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.
18. 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.
19. This Covenant shall take effect upon the approval of the Plan.
20. Reference to this Covenant shall be entered upon the Plan and the Covenant shall be recorded with the Plan. Covenantor further agrees that it shall cause two certified copies of this Covenant as recorded at the Middlesex South District Registry of Deeds to be delivered to the City Solicitor's Office and the Planning Board Administrator – DPW, Engineering Office, Marlborough, Massachusetts within three business days of the date of recording.
21. 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.

REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY
SIGNATURE PAGES TO FOLLOW

EXECUTED AS A SEALED INSTRUMENT this ____ day of _____, 202~~4~~³.

Covenantor: ~~KENDALL HOMES, INC.~~ Judith McCabe

By: _____
~~Charles K. Black, President & Treasurer~~ Judith McCabe

Commonwealth of Massachusetts
County of _____

On this ____ day of _____, 202~~4~~³, before me, the undersigned notary public, personally appeared, ~~Judith McCabe~~ Charles K. Black, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily as his/her free act and deed for its stated purpose, ~~as President and Treasurer of Kendall Homes, Inc., a corporation~~

Notary Public:
My Commission expires:

EXECUTED AS A SEALED INSTRUMENT this _____ day of _____, 2024.

Covenantor: Alison McCabe Quinn, as trustee of the McCabe Family Irrevocable Trust

By: _____
Alison McCabe Quinn, as trustee of the McCabe Family Irrevocable Trust

Commonwealth of Massachusetts
County of _____

On this _____ day of _____, 2024, before me, the undersigned notary public, personally appeared, Alison McCabe Quinn, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily as his/her free act and deed for its stated purpose.

Notary Public:
My Commission expires: _____

CITY OF MARLBOROUGH
COMMONWEALTH OF MASSACHUSETTS

| Approved and Accepted: _____, 202^{[43](#)}
Marlborough Planning Board, City of Marlborough

Sean N. Fay

Barbara L Fenby

James Fortin

Patrick Hughes

Dillon LaForce

George LaVenture

Christopher Russ

~~EXHIBIT A~~