

# CITY OF MARLBOROUGH MEETING POSTING

Meeting: Planning Board

Date: April 25, 2022

Time: 7:00 PM

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

RECEIVED  
CITY CLERK'S OFFICE  
CITY OF MARLBOROUGH

APR 21 P 1:00

This meeting of the Planning Board will be held in Memorial Hall on Monday, April 25, 2022, at 7:00 PM.

## PUBLIC ATTENDANCE IS PERMITTED

### Agenda Items to be Addressed:

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#### 1. Draft Meeting Minutes

- A. April 11, 2022

#### 2. Chair's Business

- A. Referred from City Council, Order #22-1008571: Proposed Zoning Amendment to Chapter 650 to amend Section 39 Neighborhood Business District. – **Set Public Hearing Date**

#### 3. Approval Not Required

- A. 547 Stow Road                      Map: 20                      Parcel: 4  
   Map: 20                      Parcel: 150  
Applicant:                      McCabe Family Irrevocable Trust and Judith Mello McCabe  
   (547 Stow Rd, Marlborough, MA 01752)  
Deed Reference:                      Book: 66136                      Page: 582  
Deed Reference:                      Book: 78814                      Page: 591  
Surveyor:                      Robert Parente, P.E., P.L.S. (328 Desimone Dr, Marlborough, MA 01752)
  - i. Correspondence from Thomas DiPersio, City Engineer, Engineering Division
  - ii. Plan of Land                      Dated: April 5, 2022
- B. 36 Jefferson Street                      Map: 56                      Parcel: 153  
Deed Reference:                      Book: 65099                      Page: 275  
Name of Applicant:                      Raimundo Coelhoaraujo Neto (36 Jefferson St, Marlborough, MA 01752)  
Name of Surveyor:                      William Tirrell, Chappell Engineering (201 Boston Post Rd W, Marlborough, MA, 01752)
  - i. June 24, 2020, denial letter of ANR plan dated April 15, 2020, revised June 16, 2020  
   (1) ANR Plan                      Dated: April 15, 2020, Revised: June 16, 2020
  - ii. Correspondence from Thomas DiPersio, City Engineer, Engineering Division
  - iii. Correspondence from Jason Grossfield, City Solicitor, Legal Department
  - iv. ANR Plan                      Dated: March 31, 2022
- C. 401 & 405 Maple Street Map: 93                      Parcel: 52  
   Map: 93                      Parcel: 51  
Applicant:                      Fazza Properties, LLC (708 Boston Post Road, Sudbury, MA 01776)  
Deed Reference:                      Book: 79591                      Page: 128  
Surveyor:                      Norman G. Hill, P.L.S., Land Planning, Inc. (214 Worcester St., N. Grafton, MA 01536)
  - i. Form A
  - ii. 2 Lot Combination ANR Plan                      Dated: April 14, 2022

# CITY OF MARLBOROUGH MEETING POSTING

## 4. Public Hearings

- A. 7:00 PM - Referred from City Council: Proposed Zoning Map Amendment for parcels of land location on Jefferson and a small portion of Lincoln Streets, identified as Map 56, Parcel 147, 148, 150, 151, 152, & 153 in addition to Map 56, Parcels 154, 155, 156, 157, & 158.
  - i. Legal Notice
  - ii. Correspondence from Brian R. Falk, Mirick O'Connell (100 Front Street, Worcester, MA 01608)
  - iii. Proposed Zoning Change Commercial Automotive to NB & RB GIS Map

## 5. Subdivision Progress Reports

- A. Acceptance of Gikas Line as Public Way
  - i. Correspondence from Arthur G. Vigeant, Mayor
  - ii. Photos of current road condition

## 6. Preliminary/Open Space/Limited Development Subdivision

- A. **No Discussion Required**  
Beauchemin Estates, Preliminary Open Space Concept Plan – **Public Hearing Date set for May 9, 2022**  
689 Pleasant Street, Marlborough, MA 01752  
Owner of Land: Joyce Beauchemin Realty Trust, Timothy L. Beauchemin, Trustee  
(P.O. Box 1067, Townsend, MA 01469)  
Name of Engineer: Daniel Koravos, P.E. (59 Granite Lane, Chester, NH 03036)  
Deed Reference: Book: 45210 Page: 560

## 7. Definitive Subdivision Submissions

- A. **No Discussion Required**  
Colchester Drive, Definitive Subdivision Plan - **Public Hearing Date set for May 9, 2022**  
Map 44, Parcel 148 (0 Stevens Street), Marlborough, MA 01752  
Owner of Land: James & Rebecca Chaousis (283 Bolton Street, Marlborough, MA 01752)  
Name of Applicant: Charles Bourque (P.O. Box 642, Weston, MA 02493)  
Name of Engineer: Jason Lavoie, WSP, (100 Summer Street, 13<sup>th</sup> Floor, Boston, MA 02110)  
Deed Reference: Book: 9742 Page: 148

## 8. Signs (None)

## 9. Correspondence (None)

## 10. Unfinished Business

- A. Working Group Discussion - Update

## 11. Calendar Updates

- A. Colchester Drive, Definitive Subdivision Plan, 135 days is Sunday July 24, 2022, vote by **June 27, 2022**, meeting.

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

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

1A

**Call to Order**

**April 11, 2022**

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

**1. Draft Meeting Minutes**

**A. March 28, 2022**

On a motion by Mr. LaVenture, seconded by Mr. Elder, the Board voted to accept and file the March 28, 2022, meeting minutes. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried 7-0.

On a motion by Mr. LaVenture, seconded by Mr. Russ the Board voted to move up item 5.) Subdivision Progress Reports, A.) 342 Sudbury Street, new bond request/release of cash bond request. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried 7-0.

**5. Subdivision Progress Reports**

**A. 342 Sudbury Street, new bond request/release of cash bond request**

**i. Correspondence from City Solicitor Jason Grossfield, Legal Department**

Mr. LaVenture read the April 11, 2022, correspondence from Jason Grossfield into the record. – See attached.

On a motion by Mr. Elder, seconded by Mr. LaVenture, the Board voted to approve and authorize signing of the Novation and the Subdivision Performance Agreement Secured by Bond, and authorize release of the currently held cash bond, effective upon receipt of proof of recorded deed to KCO Realty Trust. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 7-0.

The Board signed the following documents – see attached.

- Novation
- Subdivision Performance Agreement Secured by Surety Bond

**2. Chair's Business**

**A. Correspondence from City Engineer, Thomas DiPersio – Update on Subdivision Road Names**

Mr. LaVenture read the April 14, 2022, correspondence from Mr. DiPersio in the record.

On a motion by Mr. Elder, seconded by Mr. LaVenture, the board voted to accept and file the correspondence. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried 7-0.

**B. Referred from City Council: Proposed Zoning Map Amendment for parcels of land location on Jefferson and a small portion of Lincoln Streets, identified as Map 56, Parcel 147, 148, 150, 151, 152, & 153 in addition to Map 56, Parcels 154, 155, 156, 157, & 158. **Public Hearing Date set for April 25, 2022 – No discussion took place at this meeting.****

**3. Approval Not Required**

**A. 547 Stow Road**

Map: 20 Parcel: 4

Map: 20 Parcel: 150

Applicant: McCabe Family Irrevocable Trust and Judith Mello McCabe

Deed Reference: Book: 66136 Page: 582

Deed Reference: Book: 78814 Page: 591

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

**i. Form A**

**ii. Correspondence from Bill Paynton, Inspectional Services/Building Department**

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

iii. Plan of Land                      Dated: April 5, 2022

Robert Parente went over the April 5, 2022, ANR Plan and explained that one property line was changed so the homeowner could keep the shed on lot 3. The Applicant contacted the Building Department and were told the shed can be deemed an accessory structure which is allowed to be 5 feet off the property line. The shed situated mainly on parcel 4A is to be removed.

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to refer the 547 Stow Road Approval Not Required to Engineering for review. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried 7-0.

ii. Correspondence from Bill Paynton, Inspectional Services/Building Department

***(This was read after 3.) Approval Not Required B.) 36 Jefferson Street, time stamp: 15:16)***

Mr. LaVenture read the April 7, 2022, correspondence from Bill Paynton, Inspectional Services/Building Department into the record.

On a motion by Mr. LaVenture, seconded by Mr. Russ, the board voted to accept and file the correspondence. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried 7-0.

B. 36 Jefferson Street              Map: 56              Parcel: 153  
Deed Reference:                      Book: 65099        Page: 275  
Name of Applicant:                  Raimundo Coelhoaraujo Neto  
Name of Surveyor:                  William Tirrell, Chappell Engineering (201 Boston Post Rd W, Marlborough, MA, 01752)

i. Form A

ii. ANR Plan                              Dated: March 31, 2022

William Tirrell went over the March 31, 2022, ANR Plan and explained the purpose of this plan is to separate the proposed lot 2 from the residential property on the proposed lot 1 due to the zoning requirements restricting commercial uses on the property because of the already an existing residential structure.

Barbara Fenby asked Mr. Tirrell if he was aware this property is to be rezoned. He explained he was unaware.

Mr. Russ and Mr. DiPersio discussed the 50-foot setback requirements in a CA zone and determined it would be up to the Tin Htway, Building Commissioner on whether the proposed lot 2 would be subject to the 50-foot setback requirement.

Mr. Fowler asked Mr. Tirrell if he would be gaining access to the property from the residential proposed lot 1 and Mr. Tirrell explained no, they would be gaining access from the corner of the proposed lot 2.

On a Motion by Mr. Elder, seconded by Mr. Russ the Board voted to refer the ANR submission for 36 Jefferson Street to the Legal Department and Engineering for review. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay 0 Motion carried 7-0.

Mr. Fay requested the previous denial letter for 36 Jefferson Street be included on the next agenda.



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

**4. Public Hearings (None)**

**6. Preliminary/Open Space/Limited Development Subdivision**

**A. 204 Farm Road – Informal discussion**

Map: 94              Parcel: 66

Map: 94              Parcel: 26B

i. Correspondence from William Tirrell, Chappell Engineering (201 Boston Post Rd W, Marlborough, MA, 01752)

ii. Concept Plan

William Tirrell went over the concept plan and explained this property is deeded as two separate lots on one deed, the lots are separated by a 1890 sewer taking owned by the City of Marlborough. Mr. Tirrell asked, would the Board consider these two separate parcels and allow a building on the vacant parcel? The Board explained this was a question for the Building Department. He also asked, would the Board allow a reconfiguration of the lot lines and using land from the abutting lot, giving both parcels the required frontage and adequate space for the required engineering box shape on Farm Road?

Mr. Russ, Mr. Tirrell, and Mr. DiPersio discussed the existing easement on the property and ownership/access rights to the easement. Mr. Russ expressed his concerns on adequate access from this frontage. Mr. Tirrell explained there would not be adequate access from the Farm Road frontage but there would be an easement for a common driveway.

David Dowd, the manager of the LLC who owns the property explained they are looking for guidance on how to achieve their goal: to have two lots with the required setbacks and frontage, to build a home on the vacant lot, and to sell them separately with a common drive. He explained he has had conversations with the Conservation Commission and Tin Htway, Building Commissioner who explained it might be possible geometrically for the vacant lot to be considered a buildable lot.

Mr. Fay explained to Mr. Dowd and Mr. Tirrell they must present a plan for a subdivision to demonstrate to the Board the ability to create the required setbacks and frontage for the proposed home and then the Board would then consider if a common driveway would be more fitting for the scenario.

Mr. DiPersio mentioned how the common driveway section of the ordinance may impact this scenario and advised Mr. Tirrell to review this language.

On a motion by Mr. LaVenture, seconded Mr. Russ, the Board voted to accept and file all correspondence. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay 0 Motion carried 7-0.

**B. Beauchemin Estates, Preliminary Open Space Concept Plan – SET PUBLIC HEARING DATE  
689 Pleasant Street, Marlborough, MA 01752**

Owner of Land:              Joyce Beauchemin Realty Trust, Timothy L. Beauchemin, Trustee  
   (P.O. Box 1067, Townsend, MA 01469)

Name of Engineer:        Daniel Koravos, P.E. (59 Granite Lane, Chester, NH 03036)

Deed Reference:            Book: 45210      Page: 560

i. Plan set                      Dated: February 10, 2022, Revised date: April 6, 2022

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

**May 9, 2021, 7:15 pm** was selected for the Planning Board's public hearing on the Beauchemin Estates, Preliminary Open Space Concept Plan.

***(This was discussed after 7.) Definitive Subdivision Submission A.) Colchester Drive, Definitive Subdivision Plan time stamp: 35:30)***

Daniel Koravos went over the revised plans and explained the change in the wetland set back, lot reconfigurations and the revisions made to address the concerns regarding adequate access to lot 6.

Mr. Russ pointed out a cross country drain on one of the plans which needs to be removed to match the other plan. Mr. Russ addressed concerns on the wetland replication piece and the 30-foot set back on lot 4 and discussed specifications on the building foot prints on the open space plan with Mr. Koravos.

On a Motion by Mr. LaVenture seconded by Mr. Elder, the Board voted to refer the 689 Pleasant Street Open Space Development Plan to the Conservation Commission and Engineering for review. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay 0 Motion carried 7-0.

**7. Definitive Subdivision Submissions**

**A. Colchester Drive, Definitive Subdivision Plan - Public Hearing Date set for May 9, 2022**

Map 44, Parcel 148 (0 Stevens Street), Marlborough, MA 01752

Owner of Land: James & Rebecca Chaousis (283 Bolton Street, Marlborough, MA 01752)

Name of Applicant: Charles Bourque (P.O. Box 642, Weston, MA 02493)

Name of Engineer: Jason Lavoie, WSP, (100 Summer Street, 13<sup>th</sup> Floor, Boston, MA 02110)

Deed Reference: Book: 9742 Page: 148

**i. Correspondence from John Garside, Board of Health**

Mr. LaVenture read the April 5, 2022, correspondence from John Garside, Board of Health into the record.

On a motion by Mr. Elder, seconded by Mr. Russ, the voted to accept and file the correspondence. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay 0 Motion carried 7-0.

**8. Signs (None)**

**9. Correspondence (None)**

**10. Unfinished Business (None)**

**11. Calendar Updates**

A. Colchester Drive, Definitive Subdivision Plan, 135 days is Sunday July 24, 2022, vote by **June 27, 2022**, meeting.

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

In other discussion, Mr. Russ suggested a compilation of accurate complete submissions be provided for reference, for projects such as, ANR, Open Space Developments, Definitive Subdivision, including all items like the covenant, certificate of vote and or special permits. He requested these be available for the public to model their submissions off of. The Board Administrator determined she would compile these documents and post them on the Planning Board Website for public viewing.

On a motion by Mr. Fay, seconded by Mr. Elder, the Board voted to put in a request to the IT Department for each planning board member to have a City of Marlborough email address. Yea: Elder, Fay, Fowler, Hodge, LaVenture, Russ, and Fenby. Nay 0 Motion carried 7-0.

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

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

Respectfully submitted,

/kmm

George LaVenture/Clerk

DRAFT

## NOVATION

### PARTIES:

Neal Vigeant, Trustee of the 342 Sudbury Street Trust under Declaration of Trust dated May 17, 2021 and recorded in the Middlesex South District Registry of Deeds on May 20, 2021 in Book 77825 Page 113, having a usual place of business c/o 20 Brigham St Unit #4 Marlboro, MA 01752 (hereinafter referred to as the "Original Covenantor"),

Marlborough Planning Board, of 140 Main Street Marlboro, MA 01752 (hereinafter referred to as the "Planning Board")

Kevin C. O'Malley, Trustee of KCO Realty Trust, under declaration of trust dated July 19, 2018, recorded in Middlesex South Registry of Deeds on July 20, 2018 in Book 71349 Page 118 (hereinafter referred to as "New Covenantor").

**WHEREAS**, Original Covenantor executed a Covenant with the Planning Board, dated February 24, 2022, and recorded with the Middlesex South District Registry of Deeds, Book 79735, Page 524 ("hereinafter referred to as Covenant"); and

**WHEREAS**, Original Covenantor has agreed to sell property known as 348 Sudbury Street, Marlboro, MA, more particularly described as Lot 2 as shown on a certain Plan of Land entitled, "Definitive Subdivision Plan in Marlborough, Massachusetts, location: 342 Sudbury Street (Map 23 Parcel 7) owned by: The 342 Sudbury Street Trust, prepared by : Robert Parente, PE PLS, date: October 15, 2021, rev December 15, 2021, rev January 6, 2022, scale 1"=40', recorded with the Middlesex South District Registry of Deeds, Plan #113 of 2022 ("Plan"), Lot 2 containing 2.0127 acres, more or less, according to said Plan to new Covenantor; and

**WHEREAS**, all parties are desirous of replacing Old Covenantor with New Covenantor in said Covenant;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the undersigned parties agree as follows:

1. New Covenantor unconditionally assumes all of the obligations under the aforesaid Covenant and by novation is hereby substituted in the stead of Old Covenantor under the Covenant, and further ratifies and confirms its obligations as Covenantor as set forth in the Covenant.
2. Old Covenantor is hereby released and forever discharged from each and every obligation, cause of action, and demand of every kind, whether vested or contingent, voluntary or involuntary, known or unknown, with respect to the Covenant.
3. Planning Board hereby accepts the novation of New Covenantor for Old Covenantor under the Covenant as provided herein, and agrees to release to Old Covenantor the February 14, 2022 Performance Bond – Secured by Cash Deposit in the amount of \$190,000.00 it currently holds upon:  
(1) Receipt of the recorded deed conveying the said Lot from Old Covenantor to New Covenantor;

and (2) Planning Board's approval and receipt of an acceptable replacement bond from the New Covenantor.

4. Except as expressly provided herein to acknowledge the New Covenantor as the successor to the Old Covenantor, the Covenant shall remain in full force and effect without modification.

5. The New Covenantor further agrees that it shall cause two certified copies of this document 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.

*The rest of this page intentionally left blank*

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

Old Covenantor:

342 Sudbury Street Trust

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

**THE COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, SS

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


*(official seal)*

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

EXECUTED AS A SEALED INSTRUMENT this 11<sup>th</sup> day of April, 2022.

New Covenantor:

KCO Realty Trust

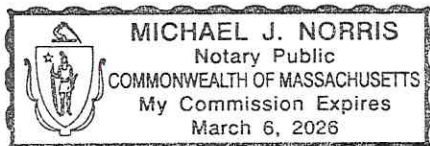
  
Kevin C. O'Malley, Trustee and not individually

THE COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

On this 11<sup>th</sup> day of April, 2022, before me, the undersigned notary public, personally appeared, Kevin O'Malley, proved to me through satisfactory evidence of identification, which was personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document(s), and acknowledged to me that they signed it voluntarily for its stated purpose.

(official seal)



  
Notary Public  
My Commission Expires:



**CITY OF MARLBOROUGH  
COMMONWEALTH OF MASSACHUSETTS**

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

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Barbara L. Fenby – Chair

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George LaVenture – Clerk

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Philip J. Hodge

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Sean N. Fay

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Christopher P. Russ

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Matthew Elder

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William Fowler

**SUBDIVISION PERFORMANCE  
AGREEMENT SECURED BY SURETY BOND**

AGREEMENT made this 11<sup>th</sup> day of April, 2022 between **Kevin C. O'Malley, Trustee** acting by and through **KCO Realty Trust** under Declaration of Trust dated July 18, 2018 and recorded in the Middlesex South District Registry of Deeds on July 20, 2018 in Book 71349, Page 118, successor in interest to **Neal Vigeant, Trustee of the 342 Sudbury Street Trust** under Declaration of Trust dated May 17, 2021 and recorded in the Middlesex South District Registry of Deeds on May 20, 2021 in Book 77825 Page 113, having a usual place of business c/o 20 Brigham St Unit #4 Marlboro, MA 01752 (the "Developer"), and the **CITY OF MARLBOROUGH**, a municipal corporation duly organized by law, acting by and through its duly authorized Planning Board (the "City" or "Planning Board").

WITNESSETH

WHEREAS, on January 10, 2022, the Planning Board approved a Definitive Subdivision Plan entitled "Definitive Subdivision Plan, Marlborough, Massachusetts" recorded at the Registry as Plan 113 of 2022 (the "Plan");

WHEREAS, the Planning Board endorsed the Plan pursuant to the Developer executing and delivering a covenant, in accordance with M.G.L. Chapter 41, Section 81U, recorded at the Registry on February 24, 2022 in Book 79735, Page 524 (the "Covenant");

WHEREAS, the Developer seeks, in accordance with the provisions of M.G.L. Chapter 41, Section 81U, to vary the method of securing its performance of the construction of ways and the installation of municipal services (the "Work") to serve lots numbered 1 and 2, as shown on the Plan; and

WHEREAS, the Developer requested that the Planning Board release lots numbered 1 through 2 as shown on the Plan, from certain specific provisions of the Covenant.

NOW THEREFORE, in consideration of the promises exchanged herein and other adequate consideration, the sufficiency of which is hereby acknowledged, it is hereby mutually agreed as follows:

1. To secure the Developer's completion of the Work, the Developer is held and firmly bound unto the City in the sum of One Hundred Ninety Thousand Dollars and 00/100 (\$190,000.00), for which payment, well and truly made, the Developer binds itself, its heirs, executors and administrators, successors and assigns, jointly and severally by these presents in the form of a Performance Bond, Number 2328325, dated April 7<sup>th</sup>, 2022 (the "Security"), issued by North American Specialty Insurance Company, with a principal place of business at 100 Trade Center, Suite G-700, Woburn, MA 01801, and licensed to act as a surety in Massachusetts (the "Surety").

2. The Security shall be renewed or replaced prior to expiration with either a renewal of the then current Security or with a replacement Security, satisfying the requirements

of this Agreement, in either case extending the expiration of the Security for at least twelve (12) months. At least sixty (60) days prior to the expiration of the then-current Security, the Developer shall notify the City in writing of its intention to deliver an original renewal or a replacement Security. The Developer shall deliver an original renewal or a replacement Security to the City at least thirty (30) days prior to expiration of the then current Security. If a satisfactory renewal or replacement Security has not been delivered to the City at least thirty (30) days prior to the expiration of the then current Security, the City shall be entitled to draw on the then existing Security and shall hold the funds in escrow until such time as a replacement Security has been provided to the City and/or apply the funds to complete the Work, at the City's sole discretion.

3. The Developer shall complete the Work in accordance with the covenants, conditions, agreements, terms and provisions contained in the following:

(a) The terms and conditions set forth in the Certificate of Vote of Definitive Subdivision Plan, filed at the office of the City Clerk on **February 1, 2022** and recorded with the Registry in Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Approval");

(b) The terms and conditions of the Covenant, excepting any terms explicitly released by the City as to sale or building on a Lot(s);

(c) The Plan as qualified by the Approval; and

(d) The Subdivision Control Law and the Planning Board's Subdivision Rules and Regulations.

4. This Agreement shall remain in full force and effect until the Developer has fully and satisfactorily performed all obligations under the terms of this Agreement and any amendments hereto, or until the City completes the Work pursuant to Section 9, hereunder.

5. The Developer shall complete the Work on or before **February 1, 2024** (the "Completion Date"), which may be extended by an amendment to this Agreement, subject to the requirements of the Planning Board's Rules and Regulations.

6. At least sixty (60) days before the Completion Date, or any duly authorized extension thereof, the Developer shall provide written notice to the Planning Board as to whether the Work will be completed as scheduled. If the Developer anticipates that the Work will not be completed on time, then the Developer may formally request an extension of the Completion Date. Upon the Developer first supplying an extension of the Security, the Planning Board may authorize an extension of the Completion Date, reflecting a time extension equal to the extension of the Security.

7. Upon receipt of a written request from the Developer, the Planning Board may vote to authorize a reduction in the amount of Security. The Planning Board's approval shall be based upon inspection of the property by a duly authorized employee or agent of the City. Notwithstanding any reduction in the amount of the Security, the Planning Board reserves the right to require corrective work at any time from the Developer, until the Work secured hereunder has been fully completed by the Developer.



8. Should the Developer fail to perform the Work and bring it to completion in a continuous and expeditious a manner, the Planning Board may declare the Developer in default of its obligations hereunder and the Planning Board shall make a demand upon the Developer to cure such default. If the Developer fails to cure the default, the City may proceed to recover the Security pursuant to the terms and procedures in Section 9, hereunder.

9. In the event the Developer (i) abandons the Work; (ii) fails to prosecute the work in a continuous and expeditious manner, (iii) fails to complete the Work in accordance with the Approval; or (iv) fails to complete the Work by the Completion Date set forth therein, the Planning Board may vote to declare the Developer in default of this Agreement and authorize a claim on the Security to complete the Work. Upon receipt of funds from a claim upon the Security, the City shall apply the funds received to the completion of the Work. Upon completion of the Work by the City, any unused portion of the Security shall be released by the City and returned to the Developer.

10. The City shall have recourse to the Security notwithstanding any transfer in title or foreclosure, assignment, bankruptcy, or imposition of lien by or against the Developer. The City shall also have the right to require new and/or additional forms of security in the event of same.

11. Upon the satisfactory completion of the Work by the Developer, the Developer shall send by registered mail to the City Clerk and the Planning Board a written statement that the Work has been completed in accordance herewith. Such statement shall contain the address of the Developer. If the Planning Board determines that the Work has been completed, it shall release the City's interest in the Security by an appropriate amendment hereto (which may be recorded). If the Planning Board determines that said Work has not been completed, it shall specify in a notice sent by registered mail to the Developer and to the City Clerk the details wherein said construction or installation fails to comply herewith. If the Planning Board fails to provide such notice within forty-five (45) days after receipt by the City Clerk of the statement from the Developer that the Work has been completed, the Developer may seek a certificate from the City Clerk that this Agreement has terminated by operation of law, pursuant to M.G.L. Chapter 41, Section 81U.

12. The City shall have no responsibility, duty, obligation, or liability to complete the Work for the benefit of the Developer, the Surety, or any other party. The obligations of the parties hereunder are to be construed consistent with the provision of the Subdivision Control Law and no rights granted thereunder are waived.

13. This Agreement may be amended only upon a written amendment duly executed by the parties hereto. Such amendments shall not otherwise affect any other substantive terms of the Agreement, which shall remain in full force and effect until the recording of a final amendment releasing the City's interest and certifying the Developer's completion of all required work hereunder.

14. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. Any action arising out of this Agreement shall be brought and maintained in a state or federal court in Massachusetts which shall have exclusive jurisdiction thereof.

15. If any clause or portion of this Agreement shall be held invalid, the remainder of this Agreement shall remain in full force and effect.

16. Developer shall record this Agreement at the Middlesex South Registry of Deeds at its expense, and submit a copy of the recorded Agreement to the Planning Board office within 30 days of approval of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their duly authorized representatives on the date first written above:

**CITY OF MARLBOROUGH**

By its Planning Board

By: \_\_\_\_\_  
Barbara Fenby, Chair

**KCO Realty Trust**

By:  \_\_\_\_\_  
Kevin C. O'Malley, Trustee  
Duly Authorized

As authorized by vote of the  
Planning Board on \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this \_\_\_\_ day of April, 2022, before me, the undersigned notary public, **Barbara Fenby, as Chair of the City of Marlborough Planning Board**, personally appeared, 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 she signed it voluntarily for its stated purpose as the voluntary act of the **City of Marlborough Planning Board**.

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

Printed Name: \_\_\_\_\_

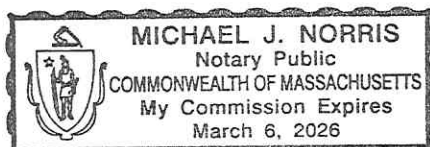
My Commission Expires: \_\_\_\_\_

[Seal]

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 14<sup>th</sup> day of April, 2022, before me, the undersigned notary public, **Kevin C. O'Malley**, personally appeared, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as the voluntary act of the **KCO Realty Trust**.



  
\_\_\_\_\_  
Notary Public: Michael J. Norris  
My Commission Expires: March 6, 2026

[Seal]





## IN CITY COUNCIL

Marlborough, Mass., APRIL 11, 2022

## ORDERED:

That the Communication from Attorney Brian Falk on behalf of Alta Marlborough, LLC (Wood Partners), re: Proposed Zoning Amendment to Chapter 650 §39 "Neighborhood Business District", be and is herewith referred to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE A PUBLIC HEARING FOR MONDAY, MAY 9, 2022.**

**Councilor Dumais Recused.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT THE CODE OF THE CITY OF MARLBOROUGH, AS MOST RECENTLY AMENDED, BE FURTHER AMENDED BY AMENDING CERTAIN PROVISIONS OF ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, MASSACHUSETTS, CHAPTER 650 §39 "NEIGHBORHOOD BUSINESS DISTRICT", BY ADDING A NEW PARAGRAPH F AS FOLLOWS:

- F. The City Council may, by special permit, elect to vary the dimensional, parking, design, and landscaping requirements applicable to a mixed-use development in the Neighborhood Business District upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of this section (650-39, et seq.). This authority continues subsequent to occupancy.

ADOPTED

ORDER NO. 22-1008571

---

# MIRICK O'CONNELL

---

A T T O R N E Y S   A T   L A W

15  
RECEIVED  
CITY CLERK'S OFFICE  
CITY OF MARLBOROUGH

Brian R. Falk 22 APR - 7 A 10: 22  
Mirick O'Connell  
100 Front Street  
Worcester, MA 01608-1477  
bfalk@mirickoconnell.com  
t 508.929.1678  
f 508.983.6256

April 6, 2022

URBAN

**BY HAND DELIVERY**

Councilor Michael Ossing, President  
Marlborough City Council  
City Hall  
Marlborough, MA 01752

Re: Proposed Zoning Amendment: Mixed-Use Developments in the NB District

Dear Councilor Ossing:

I represent Alta Marlborough, LLC (Wood Partners), the prospective buyer of several parcels at the corner of Lincoln Street and Mechanic Street located in the Neighborhood Business Zoning District.

As noted in the enclosed letters of authorization, the Marlborough Economic Development Corporation and Koby, Incorporated request, in accordance with M.G.L. c. 40A, Sec. 5, that the City Council consider amending the Zoning Ordinance to authorize the City Council to modify, by special permit, the dimensional, parking, and landscaping requirements applicable to mixed-use development projects in the Neighborhood Business District, as specified in the enclosed Proposed Order. The zoning amendment would give the City Council and developers flexibility to address issues unique to particular sites and projects in the Neighborhood Business District, without the need for a variance from the Zoning Board of Appeals.

Wood Partners' plans for a mixed-use project at the corner of Lincoln Street and Mechanic Street are constrained by some of the zoning requirements applicable in the Neighborhood Business District, which are particularly challenging on a corner lot. We believe that with a few modifications authorized by special permit, Wood Partners may develop a vibrant mixed-use project that is accessible and well-integrated with the neighborhood.

Based upon recent amendments to M.G.L. c. 40A, Sec. 5, we believe this zoning amendment may be approved by simple majority vote of the City Council rather than a two-thirds vote. Under M.G.L. c. 40A, Sec. 5, the following zoning amendments may be approved by simple majority vote:

{Client Matter 32306/00001/A7707410.DOCX}

MIRICK O'CONNELL

Marlborough City Council  
April 6, 2022  
Page 2

“an amendment to a zoning ordinance ... to allow by special permit ... mixed-use development in an eligible location; (b) an increase in the permissible density of population or intensity of a particular use in a proposed multi-family or mixed use development pursuant to section 9 ... or (d) a diminution in the amount of parking required for residential or mixed-use development pursuant to section 9...”

The term “eligible location” is defined in M.G.L. c. 40A, Sec. 1A as:

“areas that by virtue of their infrastructure, transportation access, existing underutilized facilities or location make highly suitable locations for residential or mixed use smart growth zoning districts or starter home zoning districts, including without limitation: (i) areas near transit stations, including rapid transit, commuter rail and bus and ferry terminals; or (ii) areas of concentrated development, including town and city centers, other existing commercial districts in cities and towns and existing rural village districts.”

The proposed zoning amendment would allow, by special permit, mixed use development in the Neighborhood Business Zoning District, which is an area of concentrated development encompassing French Hill and close to Downtown Marlborough. Further, the proposed zoning amendment would allow, by special permit, an increase in the permissible density of population or intensity of the residential and commercial components of mixed-use projects and the diminution in the amount of parking required for mixed-use developments.

Therefore, we believe the zoning amendment qualifies for a reduced quantum of vote under M.G.L. c. 40A, Sec. 5.

Please refer this matter to the Planning Board and take the appropriate steps for review by the City Council.

Thank you for your time and attention to this matter.

Sincerely,



Brian R. Falk

BRF/

Encl.

cc: Client  
Arthur P. Bergeron, Esq.

## **PROPOSED CITY COUNCIL ORDER**

### **ORDERED:**

Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as most recently amended, be further amended by amending certain provisions of Zoning Ordinance of the City of Marlborough, Massachusetts, Section 650-39, by adding a new paragraph F as follows:

F. The City Council may, by special permit, elect to vary the dimensional, parking, design, and landscaping requirements applicable to a mixed-use development in the Neighborhood Business District upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of this section (§ 650-39, et seq.). This authority continues subsequent to occupancy.

### **ADOPTED**

In City Council  
Order No. 22-

Adopted

Approved by Mayor  
Arthur G. Vigeant  
Date:

A TRUE COPY  
ATTEST:

April 1, 2022

Council President Ossing  
Marlborough City Council  
City Hall  
Marlborough, MA 01752

RE: Lincoln and Mechanic Street Project

Honorable President Ossing and Councilors,

As you know, Marlborough Economic Development Corporation (MEDC) is the owner of several parcels located off Lincoln Street and Mechanic Street in Marlborough, shown on Assessors Map 69 as Parcels 337, 338, 338A, 339, and 339A, all located in the City's Neighborhood Business Zoning District. MEDC hereby authorizes Mirick O'Connell, on behalf of Alta Marlborough LLC, to submit to the City Council for consideration a proposed zoning amendment governing mixed-use development projects in the Neighborhood Business District and to file any land use applications necessary for Alta Marlborough LLC to pursue a mixed-use development project for this site.

Thank you for your time and attention to this matter.

Marlborough Economic Development Corporation

By: 

Name: Meredith Harris

Title: Executive Director

KOBY, INCORPORATED  
297 Lincoln Street  
Marlborough, MA 01752

March 31, 2022

Councilor Michael Ossing, President  
Marlborough City Council  
City Hall  
Marlborough, MA 01752

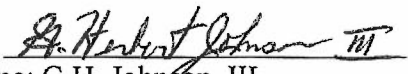
RE: Lincoln and Mechanic Street Project

Dear Councilor Ossing:

Please be advised that the undersigned is the owner of several parcels located off of Lincoln Street in Marlborough, shown on Assessors Map 56 as Parcel 85, and on Assessors Map 69 as Parcels 340, 341, 342, and 343, all located in the City's Neighborhood Business Zoning District. The undersigned hereby authorizes Mirick O'Connell, on behalf of Alta Marlborough LLC, to submit to the City Council for consideration a proposed zoning amendment governing mixed-use development projects in the Neighborhood Business District and to file any land use applications necessary for Alta Marlborough LLC to pursue a mixed-use development project at the properties.

Thank you for your time and attention to this matter.

Koby, Incorporated

By:   
Name: G.H. Johnson, III  
Title: President and Treasurer



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

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

SEAN M. DIVOLL, P.E.  
 COMMISSIONER

April 20, 2022

Marlborough Planning Board

RE: ANR Plan  
 Stow Road

Chair Fenby and Board Members,

At the request of the Planning Board at their April 11, 2022 meeting, the Engineering Division has reviewed the following ANR Plan:

“Plan of Land in Marlborough, Massachusetts”

Site Address: 547 Stow Road

Owned by: McCabe Family Irrevocable Trust and Judith Mello McCabe

Prepared By: Robert J. Parente, P.L.S.

Dated: April 5, 2022

Scale: 1" = 40'

The purpose of the plan is to subdivide the two existing properties, Marlborough Assessors Map 20, Parcels 4 and 150, into three building lots and one remaining parcel. The plan is a revision of the plan endorsed by the Planning Board on January 10, 2022. The plan revision involves the line dividing “Lot 2” and “Lot 3”, which has been moved in order to circumvent the existing shed. No other changes to the previously endorsed plan are shown, and “Lots 1, 2, and 3” as shown on the revised plan still have the minimum frontage required by zoning on an existing way, and also have the required area and the ability to accommodate the required lot shape rectangle. The revised plan also contains the note indicating that “Parcel 4A” is not an independent building lot.

Based on our review we can recommend endorsement of this ANR Plan by the Planning Board. Should you have any question regarding the above, please do not hesitate to contact me at (508) 624-6910.

Sincerely,

Thomas DiPersio, Jr., PE, PLS  
 City Engineer

copy: Sean Divoll, P.E. – DPW Commissioner  
 Applicant and representative

THEODORE L. SCOTT, P.E.  
 ASST. COMMISSIONER, OPERATIONS

CHRISTOPHER S. LAFRENIERE  
 ASST. COMMISSIONER, UTILITIES

THOMAS DIPERSIO, JR. P.E., P.L.S.  
 CITY ENGINEER



PLAN NO. 946  
OF 2000

POLE 53

LOT 1- SEE NOTE BELOW  
AREA= 44,142 SF ±

EXISTING DIVISION LINE BETWEEN  
JUDITH MELLO MCCABE AND  
MCCABE FAMILY IRREVOCABLE TRUST

30' WIDE CITY OF MARLBORO  
SEWER EASEMENT.  
SEE EMINENT DOMAIN TAKING AT  
BOOK 28,785 PAGES 86-93

APPROXIMATE LIMIT OF  
BORDERING VEGETATED  
WETLANDS

APPROXIMATE LIMIT OF  
BORDERING VEGETATED  
WETLANDS

PARCEL 4A= SEE NOTE  
AREA= 6.3547 AC. +

NOTE:  
PARCEL 4A IS NOT AN INDEPENDENT BUILDING LOT  
AND IS A COMBINATION OF LAND OWNED BY JUDITH  
MELLO MCCABE AND THE MCCABE FAMILY  
IRREVOCABLE TRUST.

17.63'

N 08°09'02" W

49.42'

N 08°09'02" W

42.11'

N 12°21'51" W

185.00'

N 81°50'25" E

164.38'

N 79°43'44" E

R=20.00'

Δ= 92°06'32"

L=32.16'

195.84'

S 79°43'44" W

R=20.00'

Δ= 92°06'32"

L=32.16'

LOT 2  
AREA= 44,493 SF ±

EXISTING DIVISION LINE BETWEEN  
JUDITH MELLO MCCABE AND  
MCCABE FAMILY IRREVOCABLE TRUST

LAND PRESENTLY OWNED  
BY THE MCCABE FAMILY  
IRREVOCABLE TRUST

CITY OF MARLBOROUGH  
BOOK 31,904 PG 536

ZONING DISTRICT - RURAL RESIDENCE

APPROVAL UNDER THE SUBDIVISION CONTROL  
LAW NOT REQUIRED.

MARLBOROUGH PLANNING BOARD

MEMBER

DATE:

I HEREBY CERTIFY THAT I HAVE CONFORMED  
WITH THE RULES AND REGULATIONS OF THE  
REGISTERS OF DEEDS IN PREPARING THIS PLAN.

ROBERT J. PARENTE, P.L.S. #35,787

NOTE: THIS PLAN IS MEANT AND INTENDED TO SUPERCEDE  
PLAN NO. 78 OF 2022.

0 40 80 120  
BAR SCALE

# PLAN OF LAND IN MARLBOROUGH, MASSACHUSETTS

LOCATION: 547 STOW RD  
OWNED BY: MCCABE FAMILY IRREVOCABLE TRUST -MAP 20 PARCEL 150  
BOOK 66,136 PAGE 582  
JUDITH MELLO MCCABE-MAP 20 PARCEL 4  
BOOK 78814 PAGE 591  
PREPARED BY: ROBERT J. PARENTE, P.L.S.  
DATE: APRIL 5, 2022 SCALE: 1"=40'

FOR REGISTRY USE ONLY

NOTE:  
LOT 1 IS A COMBINATION OF LAND OWNED BY JUDITH  
MELLO MCCABE AND MCCABE FAMILY IRREVOCABLE TRUST.  
THE PORTION OWNED BY THE TRUST IS SHOWN AS  
PARCEL 150A FOR DESCRIPTIVE PURPOSES ONLY AND  
IS NOT AN INDEPENDENT BUILDING LOT.

NOTE:  
THE PURPOSE OF THIS PLAN IS TO DIVIDE 547 STOW ROAD  
AND ADJACENT LAND IN TO 3 LOTS USING  
STREET FRONTAGE ON STOW ROAD. SINCE ALL LOTS  
WILL HAVE MORE THAN THE MINIMUM 180' OF FRONTAGE  
REQUIRED IN THE RURAL RES. ZONE APPROVAL UNDER THE  
SUBDIVISION CONTROL LAW WILL NOT BE REQUIRED.

NOTE:  
STOW ROAD IS A SCENIC ROAD AND ANY REMOVAL  
OF WALLS OR TREES IN THE CITY LAYOUT MAY REQUIRE  
A SPECIAL PERMIT FROM THE CITY OF MARLBOROUGH.

STOW ROAD  
(PUBLIC-VARIABLE WIDTH)

HOUSE  
# 547

SHED

BARN

EXISTING SHED  
(TO BE REMOVED)

EXISTING SHED  
(TO REMAIN)

CITY OF MARLBOROUGH

CITY OF MARLBOROUGH





# City of Marlborough Planning Board

RECEIVED  
CLERK'S OFFICE  
CITY OF MARLBOROUGH  
2020 JUN 25 A 10 48  
Barbara L. Fenby, Chair  
Philip Hodge  
Sean N. Fay  
George LaVenture  
Christopher Russ  
Matthew Elder

Administration Office  
135 Neil St.  
Marlborough, MA 01752

Krista Holmi, Administrator  
Phone: (508) 624-6910 x33200  
[kholmi@marlborough-ma.gov](mailto:kholmi@marlborough-ma.gov)

June 24, 2020

Mr. Steve Kerrigan, City Clerk  
City of Marlborough  
140 Main St.  
Marlborough, MA 01752

RE: ANR Decision – 36 Jefferson St.

Dear Mr. Kerrigan:

At its regular meeting on Monday, June 22, 2020, the Planning Board took the following action:

On a motion by Mr. Fay, seconded by Mr. LaVenture, it was duly voted:  
To deny any endorsement of a plan of land submitted as Approval Not Required under the Subdivision Control Law.

Applicant: Raimundo Coelho Araujo Neto, 36 Jefferson St., Marlborough, MA 01752.  
Prepared by: D. O'Brien Land Surveying, 48 West Central St., Franklin, MA 02038, Plan dated April 15, 2020  
(Revised: June 16, 2020);  
Deed of property recorded in Middlesex South Registry of Deeds Book 65099 page 247  
Location and description of property: 36 Jefferson St., Marlborough, MA 01752, Assessor's Map 56-153.

Following a review by the City's Engineering Division, the Board finds that a stone retaining wall impedes the ability to claim that the proposed lot B-1 has "Present Adequate Access".

Sincerely,

Barbara L. Fenby  
Chairperson

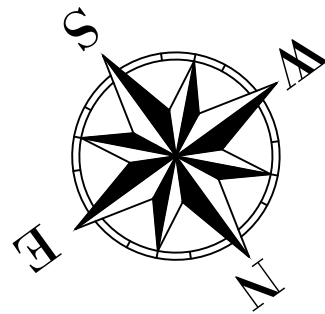
/kih

cc: Applicant  
File



LOCUS - NOT TO SCALE

ZONE - CA (COMMERCIAL AUTOMOTIVE)	
AREA (MIN.)	5,000 SQ. FT.
FRONTAGE (MIN.)	50'
FRONT SETBACK (MIN.)	50'
SIDE SETBACK (MIN.)	50'
REAR YARD SETBACK (MIN.)	NONE



APPROVAL UNDER SUBDIVISION CONTROL LAW NOT REQUIRED.  
CITY OF MARLBOROUGH PLANNING BOARD:

BEING A MAJORITY, DATED \_\_\_\_\_

PLANNING BOARD ENDORSEMENT OF THIS PLAN DOES NOT CONSTITUTE COMPLIANCE WITH CITY ZONING, STATE AREA REQUIREMENTS, BUILDING CODE OR ZONING SIDELINE SETBACK REQUIREMENTS, AND IS NOT A DETERMINATION AS TO COMPLIANCE WITH ZONING.

RESERVED FOR REGISTRY

Dennis O'Brien P.L.S.

DATE: \_\_\_\_\_

I CERTIFY THAT I HAVE CONFORMED WITH THE REGULATIONS OF THE REGISTERS OF DEEDS IN PREPARING THIS PLAN.

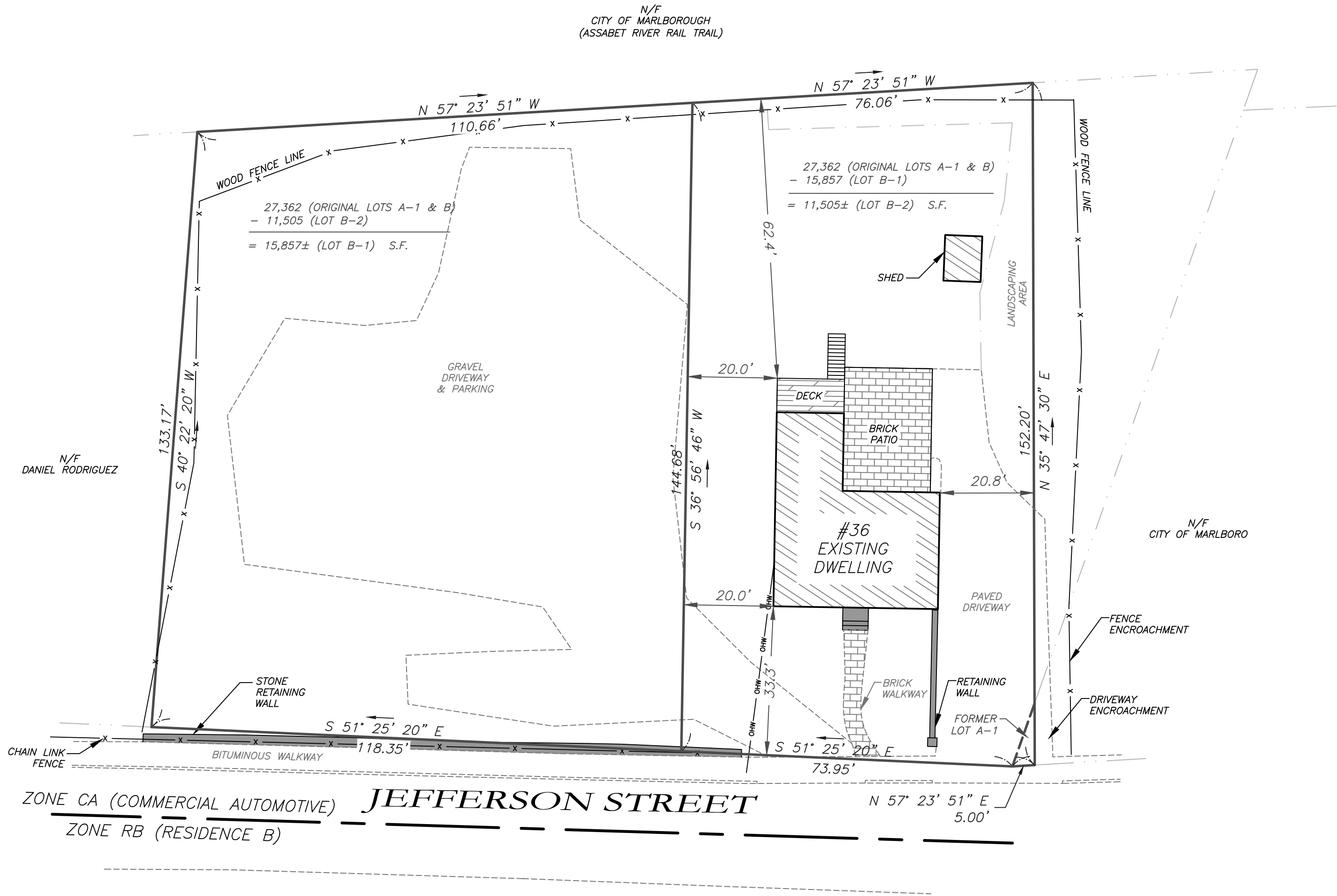
NOTES:

THIS SURVEY & MAP HAVE BEEN PREPARED IN CONFORMANCE WITH THE RULES AND REGULATIONS OF THE PROCEDURAL AND TECHNICAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS. (MGL CMR 250, 6.0)

THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

THE PURPOSE OF THIS PLAN IS TO COMBINE LOT A-1 & LOT B AS SHOWN ON PLAN 275 OF 1984 AND TO CREATE TWO CONFORMING LOTS (LOT B-1 & B-2).

SIDE YARD SETBACK REQUIREMENTS FOR LOT B-1 (20 FEET VS. THE REQUIRED 50 FEET) WILL REQUIRE A VARIANCE FROM THE MARLBOROUGH ZONING BOARD OF APPEALS. ENDORSEMENT OF THIS PLAN DOES NOT CONSTITUTE COMPLIANCE WITH ZONING REQUIREMENTS, NOR THAT EITHER LOT SHOWN IS BUILDABLE WITHOUT REQUIRED VARIANCES.)

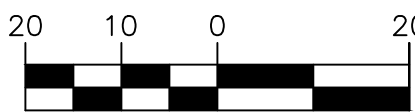


DEED REFERENCE:

DEED BOOK 15481 PAGE 362

PLAN 275 OF 1984

OWNER: RAIMUNDO COELHO ARAUJO NETO



PROPOSED SUBDIVISION OF LAND 36 JEFFERSON STREET MARLBOROUGH, MA MIDDLESEX COUNTY				
SCALE: 1:20	DATE: 4/15/2020	REVISED: 6/16/2020	DRAWN BY: A.R.M.	CHECKED BY: D.O.





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

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

SEAN M. DIVOLL, P.E.  
 COMMISSIONER

April 21, 2022

Marlborough Planning Board

RE: ANR Plan  
 36 Jefferson Street

Chair Fenby and Board Members,

At the request of the Planning Board at their April 11, 2022 meeting, the Engineering Division has reviewed the following ANR Plan:

“ANR Plan, 36 Jefferson Street, Marlborough, Massachusetts”

Owner: Raimundo Coelho Araujo Neto

Prepared By: William E. Tirrell, PLS, Chappell Engineering Associates, LLC

Dated: March 31, 2022

Scale: 1" = 10'

The purpose of the plan is to subdivide the existing property, Marlborough Assessors Map 56, Parcel 153, into two building lots. The property lies within the Commercial Automotive (CA) zoning district, in which the minimum lot requirements are 50' frontage and 5,000 s.f. of area. This ANR Plan shows “Lot 1” to have 70.93' frontage on Jefferson Street and 11,282 s.f. of area, and “Lot 2” to have 126.36' frontage and 16,078 s.f. of area. The proposed lots can also accommodate the required lot shape rectangle.

I offer the following comments on this plan:

1. The Planning Board voted to not endorse a previous ANR Plan on this property on June 22, 2020. The reason for the vote was that the proposed “Lot 2” did not have “present adequate access” from its frontage on Jefferson Street, due to the presence of a retaining wall, between 1 and 6 feet high, along the front property line. As part of the review of the new plan I visited the site and noted that a portion of the property has recently been filled with gravel, such that the retaining wall at the northwest corner of “Lot 2” has been buried and this part of the lot is no longer substantially lower than Jefferson Street. With the construction of a new driveway, adequate access to “Lot 2” could be gained from this part of its frontage.
2. The plan does not contain the proper language “Approval Under the Subdivision Control Law Not Required” with the Planning Board signature lines. Instead, the plan contains a certification similar to that required under MGL Chapter 41 Section 81X, which is not appropriate for this plan in my opinion. The proper ANR language should be added to the plan.

THEODORE L. SCOTT, P.E.  
 ASST. COMMISSIONER, OPERATIONS

CHRISTOPHER S. LAFRENIERE  
 ASST. COMMISSIONER, UTILITIES

THOMAS DIPERSIO, JR. P.E., P.L.S.  
 CITY ENGINEER

3. There is an existing house on the property (which is a pre-existing, non-conforming use for CA zoning district). The minimum side yard requirement for the CA zoning district is 50'. The proposed lot line dividing "Lot 1" and "Lot 2" is only 20' from the existing house. This will create a zoning violation which would require a variance from the Zoning Board of Appeals. The plan should contain a note stating this, and the applicant should inform the Planning Board as to whether this variance has been obtained or sought. While this zoning violation in and of itself cannot preclude the Planning Board's endorsement of the plan, the plan should also contain a note indicating "The endorsement of this plan by the Planning Board is not a determination of conformance with zoning regulations".
4. As the board is aware, the property is part of the proposed Zoning Map Amendment presently before the City Council. The proposal would change the zoning district for this lot from CA to Neighborhood Business (NB). For the board's information, the zoning requirements for NB are also 50' frontage and 5,000 s.f. of area.

Based on our review and the comments noted above, I cannot recommend endorsement of this ANR Plan by the Planning Board, at least until the proper certifications and language are added. Should you have any question regarding the above, please do not hesitate to contact me at (508) 624-6910.

Sincerely,



Thomas DiPersio, Jr., PE, PLS  
City Engineer

copy: Sean Divoll, P.E. – DPW Commissioner  
Applicant and representative

**Katlyn Miller**

---

**From:** Jason Grossfield  
**Sent:** Thursday, April 21, 2022 2:44 PM  
**To:** Katlyn Miller  
**Cc:** Thomas DiPersio; Jeremy McManus  
**Subject:** RE: 36 Jefferson Street - ANR Submission - Planning Board

Dear Honorable Planning Board Members: As requested, I reviewed the proposed ANR plan generally based on the Board's referral. In response, I offer the following guidance:

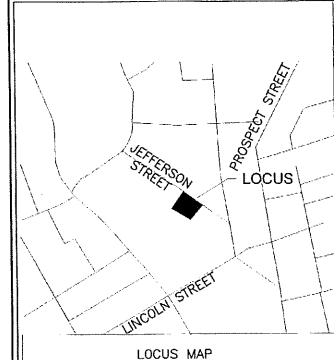
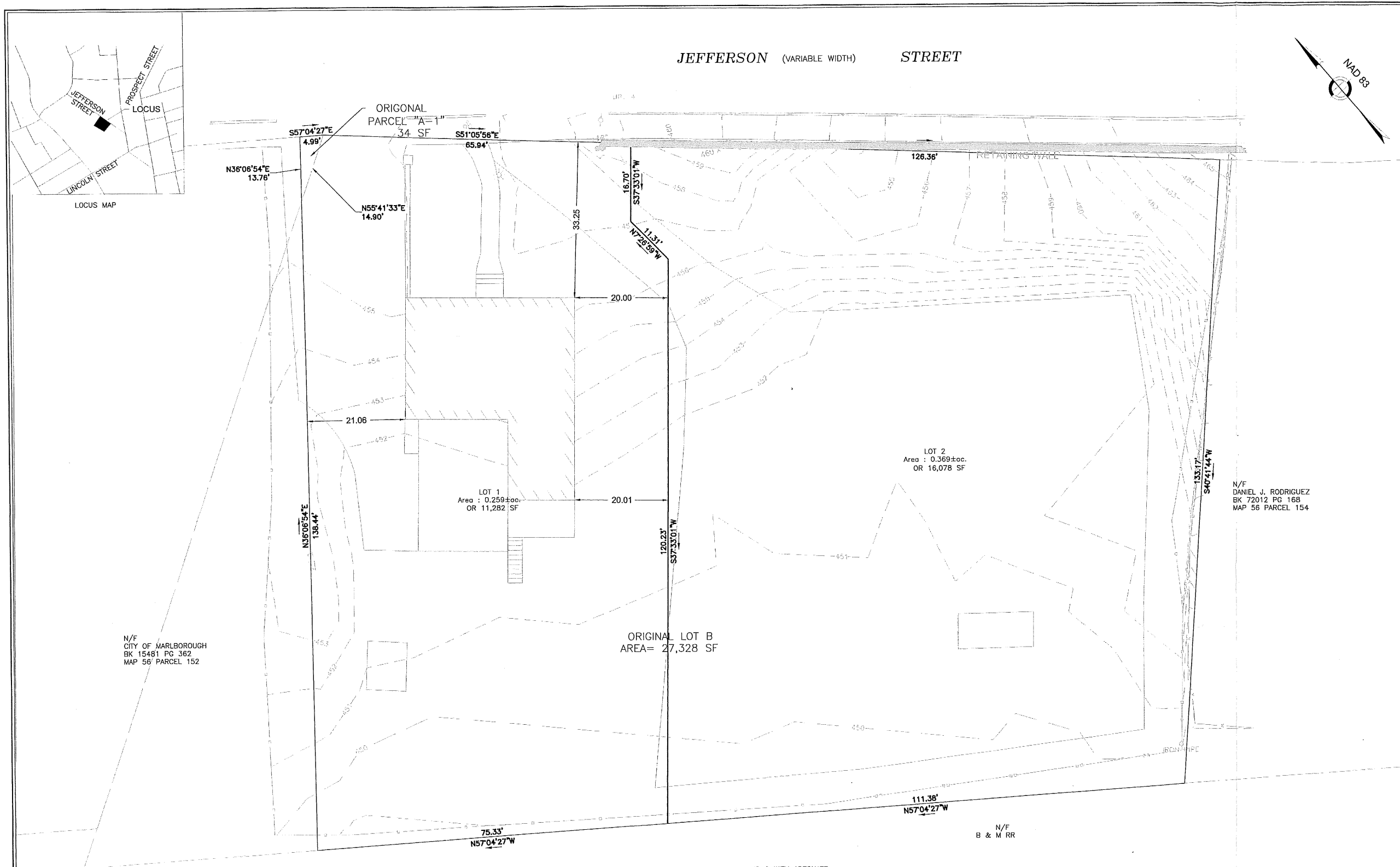
An "ANR" plan is one showing a division of land that does not meet the definition of a "subdivision" under the Subdivision Control Law, G.L. c. 41, § 81L, and endorsement shall not be withheld unless such plan shows a "subdivision". G.L. c. 41, § 81P. In my opinion, the Board's review of the plan is based on the limited criteria necessary to determine if endorsement is required (i.e. lots as having sufficient frontage on a public way, a way shown on an approved subdivision plan, etc.), and does not include determining if the lots shown on the plan are in compliance with the zoning ordinance, except for the required frontage. Smalley v. Planning Bd. of Harwich, 10 Mass. App. Ct. 599 (1980). Per the City Engineer's memorandum, the frontage requirement remains the same in both the current and proposed zoning districts. Endorsement of an ANR plan is "only a finding that the plans did not show a subdivision requiring approval under the Subdivision Control Law...[it involves]...no consideration of the use of the lots..." NextSun Energy LLC v. Fernandes, 2021 WL 669059, at \*11 (Mass. Land Ct. Feb. 22, 2021).


Please let me know if you have any questions.

Thank you,  
-Jason

Jason D. Grossfield  
City Solicitor  
City of Marlborough  
City Hall, 4th Floor  
140 Main Street  
Marlborough, MA 01752  
T: (508) 460-3771  
F: (508) 460-3698  
[jgrossfield@marlborough-ma.gov](mailto:jgrossfield@marlborough-ma.gov)

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FOR REGISTRY OF DEEDS USE ONLY	
PLANNING BOARD SIGNATURE	
OWNER: RAIMUNDO COELHO ARAUJO NETO BOOK 65099 PAGE 275 MAP 56 PARCEL 153	
ANR PLAN 36 JEFFERSON STREET MARLBOROUGH, MASSACHUSETTS	
SCALE: 1" = 10'	
DATE: MARCH 31, 2022	
<div> CHAPPELL ENGINEERING ASSOCIATES, LLC</div> <div>Civil Structural Land Surveying 201 BOSTON POST ROAD WEST-SUITE 101 MARLBOROUGH, MA 01752 TEL (508) 481-7400 www.chappellengineering.com</div>	

PLAN REFERENCES:  
274 OF 1984  
275 OF 1984  
1061 OF 1996  
1283 OF 1973  
279 OF 1938 (JEFFERSON ST LAYOUT)  
1131 OF 1937  
PLAN BOOK 442C-124(VAL PLAN)

THE PURPOSE OF THIS PLAN IS TO LOTS 1 AND 2 WITH ADEQUATE FRONTAGE.  
ORIGINAL LOTS ARE SHOWN AS "PARCEL A-1" AND "LOT B" ON PLAN 275 OF 1984. WITH A TOTAL AREA OF 27,362 SF

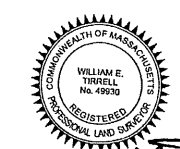
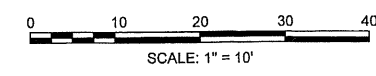
THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS IN THE COMMONWEALTH OF MASSACHUSETTS AND IN COMPLIANCE WITH THE RULES AND REGULATIONS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS. THIS CERTIFICATION IS INTENDED TO MEET THE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

I HEREBY CERTIFY THAT THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES OF OWNERSHIPS, AND THE LINES OF THE STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT ALL LOTS HAVE ADEQUATE FRONTAGE AND ACCESS TO SAID ACCEPTED PUBLIC WAY.

FIELD SURVEY PERFORMED BY CHAPPELL ENGINEERING ASSOCIATES, LLC. COMPLETED ON FEBRUARY 18TH, 2022.

PROPERTY LINE INFORMATION SHOWN IS CALCULATED FROM FIELD OBSERVATIONS, TOWN OF MARLBOROUGH, MASS. RECORDS AND PLANS & DEEDS RECORDED AT THE ESSEX COUNTY REGISTRY OF DEEDS.

HORIZONTAL DATUM: NORTH AMERICAN DATUM OF 1983 (NAD83)



4/5/22 *William E. Tirrell*  
DATE WILLIAM E. TIRRELL PLS # 49930



## FORM A

## APPLICATION FOR ENDORSEMENT OF PLAN BELIEVED NOT TO REQUIRE APPROVAL

File one completed form with the Planning Board and then file a copy  
with the City Clerk in accordance with the requirements of §A676-3.

Marlborough, Massachusetts

Note: Use as many sheets as necessary to fully describe  
all of the properties affected in this plan submission.

April 16, 2022  
(Date)

To the Marlborough Planning Board:

The undersigned, believing that the accompanying plan of their 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: Fazza Properties, LLC  
Address: 708 Boston Post Road, Sudbury, MA  
Email: Dell@dellrealty.com Telephone: 508-294-8566
2. Name of Surveyor: Norman G. Hill, PLS.  
Address: Land Planning Inc., 214 Worcester St., W. Groton, MA 01536  
Email: nhill@landplanninginc.com Telephone: 508-839-9526
3. Deed of Property in the South Middlesex Registry of Deeds: 79591-128
4. Property address, description of property and plan reference: Map: 93 Parcel: 52  
93 51

The purpose of this plan is to combine two abutting  
properties, at 401 and 405 Maple Street into one lot

5. Number of lots altered: 2Number of lots created: -1


Signature of Owner

Print

Address: \_\_\_\_\_

PLANNING BOARD KMDATE 4/21/22 Check # 50459AGENDA 4/25/22

ACTION \_\_\_\_\_

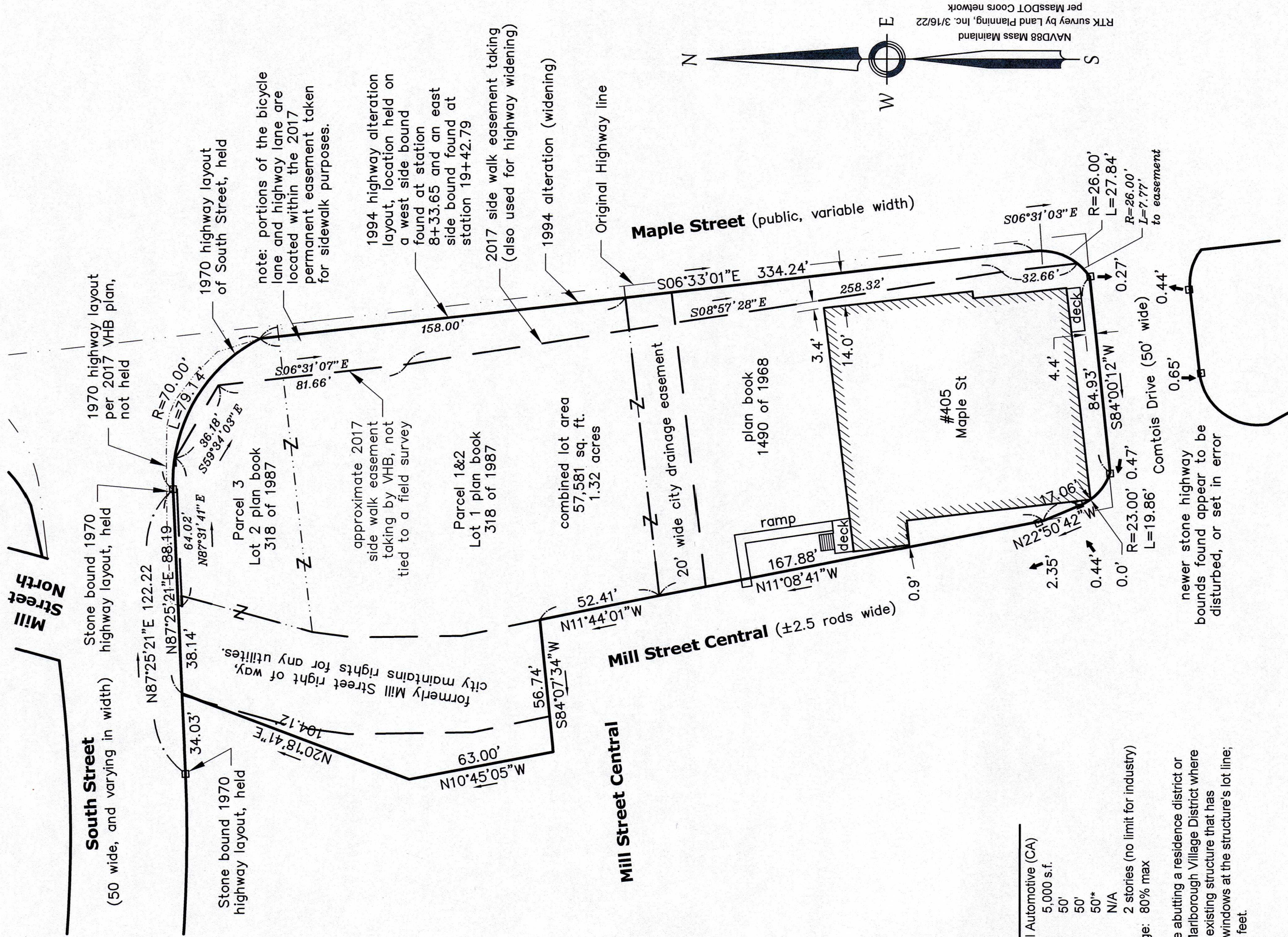


RESERVED FOR OFFICIAL USE



A copy must be delivered to the City Clerk's Office





**Zoning**  
Commercial Automotive (CA)  
Lot Area: 5,000 s.f.  
Frontage: 50'  
Frontyard: 50'  
Side yard: 50'  
Rear yard: N/A  
Height: 2 stories (no limit for industry)  
Lot Coverage: 80% max

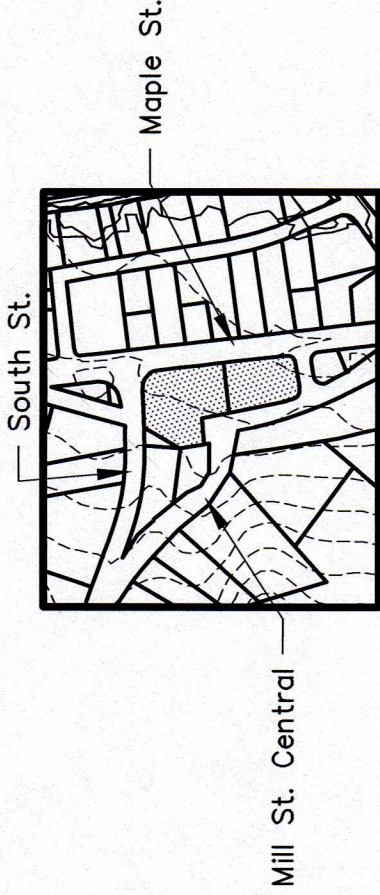
note\*:Where abutting a residence district or within the Marlborough Village District where abutting an existing structure that has side-facing windows at the structure's lot line; otherwise 0 feet.

highway bound  
removed property line  
building line  
tie line  
easement line  
property line

**References**  
#401 Maple Street  
deed book 79591 page 128  
Assessor's Map # Parcel #  
Parcel 1  
Plan # 160 of 1968  
Parcel 1 and 2 combined previously  
Plan #318 of 1987 (Lot 1)  
Parcel 3  
Plan #318 of 1987 (Lot 2)  
Note: Parcel 3 lacks the required land area for a lot so it is already combined with parcels 1 & 2 by zoning merger theory.  
#405 Maple Street  
deed book 79591 page 136  
Assessor's Map # parcel #  
Plan #1632 of 1962

**ANR Justification / Purpose Statement**  
The purpose of this plan is to combine two existing abutting properties, owned by Fazza Properties, LLC at 401 and 405 Maple Street, into one contiguous property. Combining these two existing legal lots, which are located and currently accessed from a maintained and constructed public road (Maple St.), creates no new zoning compliance issues.

**Disclaimer**  
Any underground utility locations shown are based on field evidence and records provided to Land Planning, Inc. These locations should be considered approximate. Other utilities may exist which are not evident or for which record information was not found. The contractor must contact all utility companies and "Dig Safe" before excavation begins. We assume no responsibility for damages incurred as a result of utilities omitted or inaccurately shown.



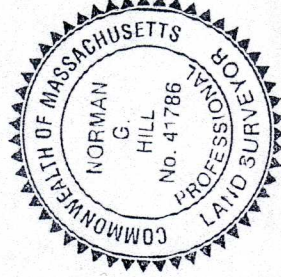
**LOCUS MAP**  
scale 1" = 500'  
Linework, from MassGIS Oliver data layers to be considered approximate, layers shown are the level 3 parcels, 3 meter contours, and DEP wetland linear features

FOR REGISTRY OF DEEDS USE ONLY

PLANNING BOARD  
APPROVAL UNDER THE  
SUBDIVISION CONTROL LAW  
NOT REQUIRED

DATE  
PLANNING BOARD ENDORSEMENT DOES NOT  
NECESSARILY MEAN THAT THIS PLAN  
CONFORMS TO THE CURRENT ZONING  
REQUIREMENTS

I CERTIFY THAT THE PREPARATION OF THIS  
PLAN CONFORMS TO THE RULES AND  
REGULATIONS OF THE REGISTERS OF DEEDS.



*Norman G. Hill*  
NORMAN G. HILL, DATE: 4-15-22 P.L.S. #41786

Field By:	NH/PP	3/18/22
Calcs By:	BDH	4/13/22
Checked By:	NGH	4/14/22

**Land Planning, Inc.**  
Civil Engineers • Land Surveyors  
Environmental Consultants

**Bellingham**  
167 Hartford Ave.  
Bellingham, MA 02019  
508-966-4130

**North Grafton**  
214 Worcester St.  
N. Grafton, MA 01536  
508-339-9526

**Hanson**  
1115 Main Street  
Hanson, MA 02341  
781-294-4144

www.landplanninginc.com

**2 Lot Combination  
ANR Plan**  
located at  
**401 & 405 Maple Street  
Marlborough, MA**

Owned by  
**Fazza Properties, LLC**  
708 Boston Post Rd.  
Sudbury, MA

Scale  
1"=40' 0' 20' 40' 80'

Date  
April 14, 2022

Job No. G22054

Sheet No.  
**1 of 1**



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

**LEGAL NOTICE**

RECEIVED  
CITY CLERK'S OFFICE  
CITY OF MARLBOROUGH

4A.i

2022 APR 11 P 2:43

**Public Hearing –Proposed Zoning Map Amendment, Section 650-8 – Parcels of land located on Jefferson and a small portion of Lincoln Streets, identified as Map 56, Parcels 147, 148, 150, 151, 152 & 153 and Map 56, Parcels 154, 155, 156, 157 & 158**

Notice is hereby given that the Planning Board of the City of Marlborough will hold a Public Hearing on **Monday, April 25, 2022, at 7:00 PM** in the Memorial Hall, 3<sup>rd</sup> floor, City Hall, 140 Main Street, Marlborough, Massachusetts to amend the zoning map established by Section 650-8.

The materials are available for viewing in the Office of the City Clerk, City Hall, 140 Main Street, Marlborough, MA 01752, Telephone 508-460-3775.

THAT, PURSUANT TO SECTION 5 OF CHAPTER 40A OF THE GENERAL LAWS, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARLBOROUGH THAT CHAPTER 650 OF THE CODE OF THE CITY OF MARLBOROUGH, AS MOST RECENTLY AMENDED, BE FURTHER AMENDED AS FOLLOWS:

I. The Zoning Map established by Chapter 650, Zoning, Article III Establishment of Districts, Section 650-8 “Boundaries Established; Zoning Map” is hereby amended as follows:

a. The zoning map amendments set forth herein shall be as shown on the map attached herewith entitled “Proposed Zoning Change Commercial Automotive to NB & RB”.

b. The land shown on said attached map as “CA to NB” shall be included in the Neighborhood Business (NB) District. Said land includes the following:

City Assessor Map 56, Parcels 147, 148, 150, 151, 152, 153, and land within the rail trail corridor including the former rail spur; and

c. The land shown on said attached map as “CA to RB” shall be included in the Residence B (RB) District. Said land includes the following:

City Assessor Map 56, Parcels 154, 155, 156, 157, and 158.

II. The effective date of these amendments shall be the date of passage.

***Per Order of the City Council  
#21/22-1008475B***

**Brian R. Falk**  
Mirick O'Connell  
100 Front Street  
Worcester, MA 01608-1477  
bfalk@mirickoconnell.com  
t 508.929.1678  
f 508.983.6256

April 21, 2022

**VIA EMAIL**

Dr. Barbara L. Fenby, Chair  
Marlborough Planning Board  
City Hall  
Marlborough, MA 01752

Re: Neighborhood Business District Zoning Map Amendment;  
Jefferson and Lincoln Streets; City Council Order No. 21/22-1008475B

Dear Dr. Fenby and Board Members:

I represent Alta Marlborough, LLC, the applicant for a mixed-use project at the corner of Lincoln Street and Mechanic Street. Alta Marlborough is in support of the proposed Zoning Map amendment affecting parcels along Jefferson Street and Lincoln Street.

Alta Marlborough's development site is located primarily in the Neighborhood Business District, but a small portion of City-owned land within the site is zoned Commercial Automotive. For your reference, I have enclosed an excerpt of the Zoning Map focusing on the development site, which is outlined in black. The former rail spur land extending within the site would be rezoned from Commercial Automotive to Neighborhood Business under the proposed Zoning Map amendment. As a result, the development site would no longer be divided between zoning districts.

Mixed-use projects are not allowed in the Commercial Automotive District but are allowed in the Neighborhood Business District. Without the Zoning Map amendment, the Alta Marlborough project would require a significant redesign to work around this small portion of the site, resulting in a less efficient building layout. Separate from the Alta Marlborough proposal, any potential redevelopment project at this underutilized site would benefit from the Zoning Map amendment based upon the variety of uses allowed in the Neighborhood Business District.

We encourage the Planning Board to report a favorable recommendation to the City Council on the proposed Zoning Map amendment.

**MIRICK O'CONNELL**

Marlborough Planning Board  
April 21, 2022  
Page 2

Thank you for your time and attention to this matter.

Sincerely,

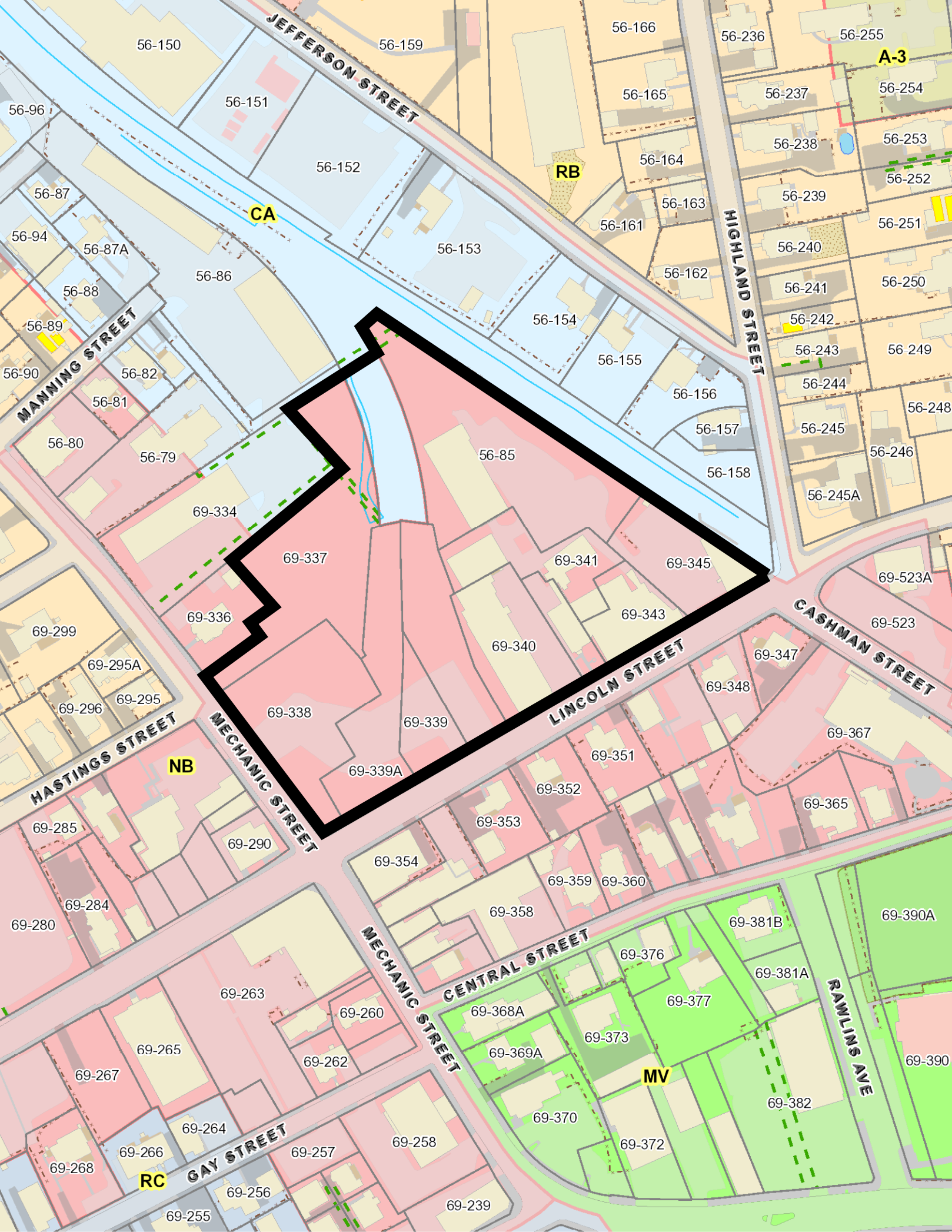
A handwritten signature in black ink, appearing to read 'BRF', with a horizontal line extending to the right.

Brian R. Falk

BRF/

Encl.

cc: City Council  
Client











*City of Marlborough*  
*Office of the Mayor*

140 Main Street  
Marlborough, Massachusetts 01752  
508.460.3770 Fax 508.460.3698 TDD 508.460.3610  
[www.marlborough-ma.gov](http://www.marlborough-ma.gov)

*Arthur G. Vigeant*  
MAYOR

*Patricia M. Bernard*  
EXECUTIVE AIDE

*Ryan P. Egan*  
EXECUTIVE SECRETARY

April 11, 2022

Council President Ossing  
Marlborough City Council  
140 Main Street  
Marlborough, MA 01752

**RE: Acceptance of Gikas Lane as Public Way**

Honorable President Ossing and Councilors,

I am writing to you in regard to the proposed road acceptance of Gikas Lane, which came before you on your March 28 City Council agenda. I highly recommend that you each take time to visit the road to review and inspect it before formal acceptance is considered. The road currently has multiple cracks that need to be sealed prior to its approval.

The Planning Board has been cc'd on this letter in order to share this concern with them. It is my hope that before streets or roads are accepted, that they are visited by both the Planning Board and City Council.

Please feel free to reach out to my office with any questions.

Sincerely,

Arthur G. Vigeant  
Mayor

cc: Marlborough Planning Board

5A.ii

