

CITY OF MARLBOROUGH MEETING POSTING

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2021 JUN 17 P 1:44

Meeting: **Planning Board**

Date: June 21, 2021

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, June 21, 2021 at 7:00 PM.

PUBLIC ATTENDANCE IS PERMITTED.

Agenda Items to be Addressed:

1. Draft Meeting Minutes

A. June 7, 2021

2. Chair's Business (None)

3. Approval Not Required (None)

4. Public Hearings

A. 7:10 PM - **VOTE** - Referred from City Council: Order # 21-1008293 Proposed Zoning Amendment to Chapter 650 to add a new Section to create the "Commercial Village Overlay District"

5. Subdivision Progress Reports (None)

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

7. Definitive Subdivision Submissions (None)

8. Signs

A. Sign Variance Application 191-237 Boston Post Road West, Marlborough, MA 01752
Representative: Michael Brangwynne, Fletcher Tilton PC (12 Post Office Square, 6th Floor, Boston, MA 02109)
Continued from April 5, 2021, continued to July 19, 2021 – **No discussion required at this meeting**

B. Sign Variance Application 121 Bolton Street, Marlborough, MA 01752
Representative: Brian Falk, Mirick O'Connell (100 Front Street, Worcester, MA 01608)
Continued from June 7, 2021
Correspondence from Assistant City Solicitor Jason Piques

9. Correspondence (None)

10. Unfinished Business

A. Working Group Discussion – Planning Board Rules and Regulations Continued

11. Calendar Updates (None)

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

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

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

1A

Call to Order

June 7, 2021

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

1. Draft Meeting Minutes

A. May 10, 2021

On a motion by Mr. LaVenture, seconded by Mr. Hodge, the Board voted to accept and file the May 10, 2021 meeting minutes. Yea: Fay, Hodge, LaVenture and Fenby. Nay: 0. Absent during time of vote: Mr. Elder and Mr. Russ. Motion carried.

B. May 24, 2021

On a motion by Mr. LaVenture, seconded by Mr. Hodge, the Board voted to accept and file the May 24, 2021 meeting minutes. Yea: Hodge, LaVenture, and Fenby. Nay: 0. Absent during time of vote: Mr. Elder. Motion carried. Mr. Fay abstained from the vote.

2. Chair's Business

A. Sign Ordinance discussion with Code Enforcement Officer Pamela Wilderman

Code Enforcement Officer Pamela Wilderman updated the Board on current enforcement within the City. Officer Ms. Wilderman explained due to COVID-19 there was an ease on enforcement during the last year. With direction from the Mayor's Office she has been informed to begin enforcement again within the City. Enforcement plans to notify establishments of violations and to follow up with them. Officer Ms. Wilderman encouraged the Board to notify her of any current violations they encounter. The Board requested to be added to the distribution list of current violations within the City. Officer Ms. Wilderman requested the Board wait until after June to address fence sign violations.

On a motion by Mr. Fay, seconded by Mr. Hodge, the Board voted to move up 4A) Proposed Zoning Amendment to Chapter 650 to add a new Section 61 Temporary Moratorium for Multi-Family Housing Projects, and 4B) Proposed Zoning Amendment, Section 650-8 – Land at 290 Hudson Street, Map 43, Parcel 38. Yea: Fay, Hodge, LaVenture, and Fenby. Nay: 0. Motion carried.

4. Public Hearings

A. Proposed Zoning Amendment to Chapter 650 to add a new Section 61 Temporary Moratorium for Multi-Family Housing Projects

Chairperson Fenby opened the hearing. Mr. LaVenture read the public hearing legal notice into the record. Chairperson Fenby provided instructions to those in attendance. The hearing was conducted in the following stages: 1) Presentation 2) Those speaking in favor 3) Those speaking in opposition 4) Comments and questions from the Board Members.

Presentation:

Mayor Arthur Vigeant explained this 90-day moratorium is to give the City time to sort out multiple projects. With Governor Baker passing the Housing Bill the City is waiting to get definitive guidelines from the Department of Housing and Community Development (DHCD). The City is waiting for these guidelines to set up a zone to make sure one of the projects the City has taken in will qualify in that zone, allowing the City to approve the project and get credit for it. Therefore giving the City the points for additional grants and awards. The State is going to be tying

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

in this housing zone to MassWorkGrants and other Grants. This moratorium started the day it was advertised, April 29, 2021. The City currently has 600 units under construction/recently finished. The City has 300 in the pipeline/looking for modifications/have been approved by the City. This 90-day moratorium will not affect single family homes.

Speaking in Favor of the Amendment:

(NONE)

Dr. Fenby declared this portion of the public hearing closed.

Speaking in Opposition to the Amendment:

(NONE)

Dr. Fenby declared this portion of the public hearing closed.

Questions and Comments from the Planning Board:

(NONE)

Dr. Fenby declared this portion of the public hearing closed.

Dr. Fenby declared the public hearing closed.

On a motion by Mr. Fay, seconded by Mr. LaVenture, the Board voted to send a favorable recommendation to the City Council. Yea: Elder Fay, Hodge, LaVenture and Fenby. Nay: 0. Absent during time of vote: Mr. Russ. Motion carried.

B. Proposed Zoning Map Amendment, Section 650-8 – Land at 290 Hudson Street, Map 43, Parcel 38

Chairperson Fenby opened the hearing. Mr. LaVenture read the public hearing legal notice into the record. Chairperson Fenby provided instructions to those in attendance. The hearing was conducted in the following stages: 1) Presentation 2) Those speaking in favor 3) Those speaking in opposition 4) Comments and questions from the Board Members.

Presentation:

City Councilor John Irish (367 West Hill Road, Marlborough, MA 01752)

Councilor Mr. Irish proposed a rezoning of the land at 290 Hudson Street, Map 43, Parcel 38, from LI (Limited Industrial) to A3 (Residential). In 1969 the City changed the zoning to LI and included the parcel at 290 Hudson Street. Prior to 1969 this parcel was in a resident zone, similar to an A2 or A3 zone. Moving the zoning line to remove the only single-family property in that district would significantly improve the situation for the owners at 290 Hudson Street. Currently any improvements on the property would have to go through the Zoning Board of Appeals (ZBA) for relief.

Speaking in Favor of the Amendment:

Thomas McGinley (290 Hudson Street, Marlborough, MA 01752), spoke in favor. Mr. McGinley has been the current resident since 2004. Mr. McGinley said he would like to add an addition to his home.

City Councilor Kathleen Robey (97 Hudson Street, Marlborough, MA 01752), spoke in favor. Councilor Ms. Robey pointed out because the property at 290 Hudson Street is currently zoned LI the owner could go for a permit, but they would have to go to the ZBA because they are considered preexisting nonconforming. They could not do a simple building permit from the building department. Every house on Hudson Street except for 290 Hudson Street is currently zoned as A2 or A3.

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

Shelia MacDonald (290 Hudson Street, Marlborough, MA 01752), spoke in favor. Ms. MacDonald thanked Councilors, Mr. Irish and Ms. Robey for their favorable recommendations and explained they are trying to enhance the value of their property and the community.

Dr. Fenby declared this portion of the public hearing closed.

Speaking in Opposition to the Amendment:

(NONE)

Dr. Fenby declared this portion of the public hearing closed.

Questions and Comments from the Planning Board:

Mr. Hodge asked if the property would remain a single-family home.

Councilor Mr. Irish said yes.

Dr. Fenby declared the public hearing closed.

On a motion by Mr. Fay, seconded by Mr. Elder, the Board voted to send a favorable recommendation to the City Council without further guidance. Yea: Elder Fay, Hodge, LaVenture and Fenby. Nay: 0. Absent during time of vote: Mr. Russ. Motion carried.

2. Chair's Business

B. Discussion regarding the transition to in person Planning Board meetings

The Board discussed their concerns on the size of the room where Planning Board meetings are held, noting especially when the Planning Board has public hearings with potentially large public attendance. Dr. Fenby decided she will explore alternative location options, with the intent to use this alternative location until the end of September.

3. Approval Not Required

A. 285 and 297 Concord Road – Applicant Estate of Paul D May, & Joseph F. and Sandra M. May

Deed Reference: Book 19501 Page: 343

Deed Reference: Book 40720 Page: 293

Deed Reference: Book 30947 Page: 443

Surveyor: Hancock Associates (315 Elm Street, Marlborough, MA 01752)

Mr. LaVenture read the Engineering review letter into record.

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

Open for discussion regarding this endorsement

Mr. Joseph May (297 Concord Rd, Marlborough, MA 01752) explained due to the existing ANR and his father passing Mr. Paul May (285 Concord Rd, Marlborough, MA 01752) it was easiest to convert the 285 Lot into a ½ acre Lot and roll the excess square footage into the proposed parcel 3. He said he plans to deal with the land at a later date and doesn't plan to present anything to the Board in the near future, unless he gets further information on the public way status.

The Board discussed their concerns on the public way status and the wording of a note on the Plan. City Engineer Thomas DiPersio explained to the Board after a discussion with City Solicitor Jason Grossfield they concluded the

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

language “Parcel A is not currently a buildable Lot” is accurate, because the adequacy of Hemmingway Street could change, and someone could improve it.

On a Motion by Mr. Fay seconded by Mr. LaVenture to endorse the plan. Yea: Elder Fay, Hodge, LaVenture, Russ and Fenby. Nay: 0. Motion carried.

5. Subdivision Progress Reports (None)

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

7. Definitive Subdivision Submissions (None)

8. Signs

A. Sign Variance Application 191-237 Boston Post Road West, Marlborough, MA 01752

Representative: Michael Brangwynne, Fletcher Tilton PC (12 Post Office Square, 6th Floor, Boston, MA 02109) – Continued from April 5, 2021

Correspondence from Mr. Brangwynne – Request to continue to July 19, 2021

Mr. LaVenture read the correspondence into the record.

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to acceptable and file and post pone to July 19, 2021. Yea: Elder, Fay, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried.

B. Sign Variance Application 121 Bolton Street, Marlborough, MA 01752

Representative: Brian Falk, Mirick O’Connell (100 Front Street, Worcester, MA 01608)

Mr. LaVenture read the Mirick O’Connell correspondence into the record.

Arthur Bergeron spoke on behalf of this variance, stating there was previously a gas station in this location. He explained they have support from the neighborhood and that there is no size issue, but there is a setback issue due to the residential neighborhood.

Mr. Fay and Mr. LaVenture referenced Codes § 526-13 Electronic message center signs; digital display signs: A.) applicability and B.) Standards, that were written in Code Enforcement Officer Ethan Lippitt’s May 5, 2021 letter addressed to Carolyn A. Parker Consulting regarding the sign permit application.

The Board decided to reach out the Legal for further guidance and Mr. Bergeron requested this matter be continued to the June 21, 2021 Planning Board meeting.

Mr. Fay discussed his concerns regarding the lights being on after the gas station was closed with in a residential neighborhood.

On a motion by Mr. Elder, seconded by Mr. Fay, the Board voted to accept, file all correspondence, and to table to the June 21, 2021 meeting. Yea: Elder, Fay, Hodge, LaVenture, Russ, and Fenby. Nay: 0. Motion carried

9. Correspondence (None)

10. Unfinished Business

A. Working Group Discussion – Planning Board Rules and Regulations Continued

MINUTES
MARLBOROUGH PLANNING BOARD
MARLBOROUGH, MA 01752

Mr. LaVenture thanked the Engineering and Legal Departments for their continued support in our efforts. He explained there would be new language for the Board to review at their next meeting scheduled for June 21, 2021.

Mr. LaVenture provided an update. At the Working Group's last meeting they completed their review of the model subdivision regulations developed by the Pioneer Valley Planning Commission. The Planning Board will see a bit of the proposed language from this at their June 21, 2021 meeting. One of the items will be color coding of some items on definitive plans to help identify them.

Solicitor Mr. Piques has continued his discussions with other municipalities. Last week he reached out to Andy Port, City Planner for the City of Newburyport. He found they conditioned the final release of the last 10% of the surety to be either 3 years, or when the developer is able to get the street accepted by the City Council. In Mr. Port's experience – the developer has always petitioned for acceptance prior to the 3 years in order to get their money back. He also said they use the 53G process / peer review of the development with great frequency and success. The Board will see draft 53G language after the Rules and Regulation update.

Solicitor Mr. Piques heard from Ms. Meredith Harris at MEDC. Ms. Harris indicated Mr. Mark Racicot at MAPC should be available to take on additional projects by this summer. However, we won't receive a proposal from them until sometime next month.

At the Board's last meeting they suggested the September 13 meeting for the board's public presentation and hearing on the Rules and Regulations changes the Working Group proposes.

Mr. LaVenture presented a draft timeline:

- Monday, June 21 - Proposed language to present
- Wednesday, June 23 - Deadline for Legal to provide language on Street Acceptance
- Monday, July 19 - Planning Board meeting with presentation of language for final proposed changes. Our desire here is for the Board to formally refer all proposals to Legal for formal review.
- Tuesday, July 20 - Assuming referral by the Board, the final draft package would be resubmitted to the Mayor, CC, DHs, MEDC/MAPC for their thoughts and deconfliction. Comments/questions/suggestions would be requested by 11 Aug.
- Wednesday, August 11 - The Working Group would be available to answer questions from the above group.
- Monday, August 23 - Planning Board meeting for review of any changes due to input from the above group.
- Monday, September 13 - Public hearing for formal presentation by the Working Group of proposed changes. To simplify presentation, discussion, and voting, we propose voting on approval of proposed changes in sections. The first vote would cover both Article I General Provisions and Article II Definitions. The second would cover Article III Submission and Approval of Plans A676-3-9 ANRs and Preliminary Plans. The third vote would cover A676-10 Definitive Plans. The fourth vote would cover Article IV Design Standards, Article V Required Improvements for an Approved Subdivision, and Article VI Administration. The fifth vote would cover Appendices A-E, G-J, and L the Forms. The sixth vote would cover Appendix F Cross Sections. The seventh and last vote would cover Appendix K Fees. The Board could certainly do fewer votes depending on how the presentation progresses. The Working Group thought multiple votes would allow us to close out change proposals and not need to revisit them should the hearing need to extend beyond the one meeting.

Mr. Fay informed the board he will not be present at the July 19, 2021 Planning Board meeting.

11. Calendar Updates (None)

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

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

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

Respectfully submitted,

/kmm

George LaVenture/Clerk

DRAFT

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

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

LEGAL NOTICE

2021 MAY 25 P 12:01

Public Hearing –Proposed Zoning Amendment to Chapter 650 to add a new Section to create the “Commercial Village Overlay District”.

Notice is hereby given that the Planning Board of the City of Marlborough will hold a **PUBLIC HEARING** on **Monday, June 21, 2021 at 7:00 PM** to amend Chapter 650 to add a new Section to create the “Commercial Village Overlay District.

The materials will be available online at <http://www.marlborough-ma.gov/planning-board> under Public Hearing Notices in addition they are also available in the Office of the City Clerk, City Hall, 140 Main Street, Marlborough, MA 01752, Telephone 508-460-3775.

PLEASE NOTE: Due to the Covid-19 pandemic and State of Emergency in Massachusetts, this hearing may be conducted by remote participation or in person. If this hearing is to be held remotely, instructions on how to participate will be posted on the Marlborough Planning Board agenda which can be found on the Planning Board page at www.marlborough-ma.gov/planning-board.

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING SUBMITTED FOR ITS OWN CONSIDERATION CHANGES IN THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, TO FURTHER AMEND CHAPTER 650, NOW ORDAINS THAT THE ZONING ORDINANCE OF THE CITY OF MARLBOROUGH, AS AMENDED, BE FURTHER AMENDED AS FOLLOWS:

§650 – “COMMERCIAL VILLAGE HOUSING OVERLAY DISTRICT”

A. Purpose and Objectives

The Commercial Village Housing Overlay District (herein, also a “CV Housing Overlay”) allows the application of supplemental land use controls within the boundaries of a certain overlay district, subject to City Council approval (hereinafter any reference to City approval shall be deemed to mean approval by the City Council) as an alternative to land use controls that exist in the underlying zoning district(s). The establishment goals of the CV Housing Overlay are to enhance land use development and encourage desired residential growth patterns for the benefit of the public health, safety and welfare and to allow for the development of higher density housing with potential accessory uses and in close proximity to commercial uses consistent with the stated economic development objectives of the City.

The CV Housing Overlay shall be applicable to the property identified as Map 100, Parcels 24, 25, 26, and 15 (including the private way “Atkinson Drive”) and Map 89, Parcels 80-99 City of Marlborough Assessor’s map dated September 21, 2012 (formerly the property shown on Map 100, Parcels 14 and 15 as shown on City of Marlborough Assessor’s Map in effect on May 2006) and as further described on Exhibit “A” annexed hereto. The CV Housing Overlay shall be superimposed on the other zoning districts existing at the time that any land in any said underlying district is also included in the CV Housing Overlay.

B. Authority of Permit Granting Authority

The City Council shall be the Permit Granting Authority for the Master Plan approval (defined below) and for any Special Permit to be issued in the CV Housing Overlay. In all instances, a development which proceeds under the CV Housing Overlay is subject to Site Plan Approval in accordance with §270-2 of the Marlborough City Code, with the exception that the City Council shall be the Permit Granting Authority for any Special Permit approval in the CV Housing Overlay.

The City Council may elect to vary the dimensional and parking requirements of this Section by Special Permit if, in their opinion, such change shall result in a substantially improved project and will not nullify or substantially derogate from the intent or purpose of this section. This authority continues subsequent to development and occupancy.

Special Permits within the CV Housing Overlay shall be approved by the City Council. Amendments to any Special Permits issued by the City Council shall be per the requirements of this Section (§650-35 et. seq.).

C. Master Plan

The property owner/developer of the CV Housing Overlay shall, prior to, or simultaneously with, the first application for approval of a site plan and/or special permit for the CV Housing Overlay, file the following with the City Council for approval:

- (1) A Master Plan, or preliminary project plan, inclusive of the following:
 - (a) A project narrative describing the proposed development including, without limitation, the number of units, format, restrictions, if any, of the proposed project.
 - (b) A Master Concept Plan ("Master Plan") which shall in a general manner show:
 - (i) The location and areas of proposed development and associated uses;
 - (ii) Proposed open space (usable and natural);
 - (iii) Proposed site access curb cuts off of public ways; and
 - (iv) Proposed building "envelope(s)" where construction is anticipated to occur.
 - (c) The following information for the proposed development:
 - (i) Total land area of each development area (building envelope area);
 - (ii) Total development limitations, if any, of uses in any developable area;
 - (iii) Total maximum development (number of units; square footage/use limitations); and
 - (iv) A report/memorandum discussing site circulation and traffic impacts.

The Master Plan shall be approved by a majority vote of the City Council in order to proceed with the proposed development and, if approved, shall thereafter become the general development plan governing development at the CV Housing Overlay. The Master Plan may be amended from time to time by a majority vote of the City Council by application from the property owner/developer to reflect changing development conditions.

- (2) A Development Agreement in recordable form binding upon the developer/property owner. The Development Agreement shall be approved by a majority vote of the City Council prior to the issuances of the first permit/site plan approval for development within the CV Housing Overlay, which Development Agreement may contain, without limitation:
- (a) Required mitigation (including any traffic demand management initiatives), if any, to address the impacts arising out of the use and occupancy of the proposed project, or if at the time of execution such impacts are not known, the methodology for assessing and addressing such impacts as the development of the CV Housing Overlay progresses.
 - (b) Restrictions on development areas and such other development limitations as may be agreed upon such as, but not limited to, age restrictions and provision for affordable housing units and/or contributions, if any.
 - (c) Proposed phasing of the development of the CV Housing Overlay, if any.
 - (d) Obligations with respect to pedestrian and vehicular interconnectivity within the CV Housing Overlay, if any, to facilitate pedestrian access and circulation efficiencies.
 - (e) The authority of the City Council to retain the necessary professionals to assist in their review of development applications, if needed.

The Development Agreement shall govern the implementation of the Master Plan and development at the CV Housing Overlay.

D. Exclusivity/Control

Except as specifically provided herein, uses and provisions of Article V of Chapter 650 (Zoning) relating to the underlying zoning district not otherwise impacted by this Section (§650-33 et. seq.) shall continue to remain in full force and effect, provided however that the City Council shall be the Special Permit Granting Authority, if applicable. This Section (§650-35 et. seq.) of the Zoning Ordinance exclusively controls the establishment, development, and design of any development undertaken in the CV Housing Overlay and supersedes any other provision of the Zoning Ordinance (except the provisions of the Water Supply Protection District). In the event of any conflict between the provisions of this Section (§650-35 et. seq.) and any other provision of the Zoning Ordinance, the provisions of this Section (§650-35 et. seq.) shall govern and control.

E. Eligible Uses

Except as specifically set forth below, all uses permitted in Residence Districts (RR, A-1, A-2, A-3, RB, RC, and RCR) either as of right or by special permit in accordance with §650-17 of the Zoning Ordinance are permitted in the CV Housing Overlay. If a use requires a Special Permit under §650-17, Table of Use Regulations, such use shall continue to require a special permit under this Section.

- (1) The following additional uses are also permitted BY-RIGHT in the CV Housing Overlay:
 - (a) Multi-family dwelling – up to 120 dwelling units within the entire CV Housing Overlay Zoning if said units are age restricted or age targeted (by design) dwelling units
 - (b) Consumer service and retail establishments accessory and complimentary to the other principal uses at the property
- (2) The following additional uses are also permitted BY-SPECIAL PERMIT in the CV Housing Overlay:
 - (a) Multi-family dwelling within the entire CV Housing Overlay Zoning District including, without limitation, age restricted/ age targeted dwelling units in excess of 120 units
- (3) Single family detached residential use is prohibited in the CV Housing Overlay.

F. Dimensional Requirements

The CV Housing Overlay shall be subject to the dimensional standards in accordance with Article VII of the Marlborough Zoning Ordinance with the following exceptions:

- (1) The CV Housing Overlay may consist of one or more lots. There is no minimum acreage requirement for a lot to be a part of the CV Housing Overlay so long as a CV Housing Overlay district shall be no less than 10 contiguous acres.
- (2) Minimum Lot Frontage measurement shall be no less than twenty (20) feet for any lot wholly located within the boundaries of the CV Housing Overlay.
- (3) Minimum Front Yard measurement shall be no less than twenty (20) feet for any lot wholly located within boundaries of a CV Housing Overlay.
- (4) No less than fifteen (15) feet shall separate the structural side wall of any two or more structures within the CV Housing Overlay, even if on separate lots. No less than fifteen (15) feet shall separate any area behind and or between structures, and fire suppression vehicles shall have clear and adequate access to all structures.
- (5) Maximum building height in CV Housing Overlay shall not exceed 60 feet; a structure located within 50 feet from the property line of a directly abutting parcel in a residentially zoned district shall not exceed 40 feet in height.
- (6) Maximum Lot Coverage shall be calculated on the entire land area of the CV Housing Overlay and not on an individual lot basis, and shall not exceed 65% percent of the total area of the CV Housing Overlay.

G. Parking and Curb Cut Requirements.

Except as otherwise provided in this section, parking and circulation requirements shall conform with the provisions of Section §650-48 and §650-49 of the Zoning Ordinance.

- (1) General - In the CV Housing Overlay adequate off-street parking shall be provided. The City Council and the applicant shall have as a goal for the purposes of defining adequate off-street parking, making the most efficient use of the parking facilities to be provided and minimizing the area of land to be paved for this purpose.
- (2) Parking Locations - Parking may be provided at ground level, underground or in a parking garage. Parking garages can be free standing or as part of buildings dedicated to permitted uses.
- (3) Parking Spaces for Each Dwelling Unit - There shall be a minimum of 1.5 parking spaces for each dwelling unit. Where feasible, sharing of parking shall be encouraged among the various uses in the CV Housing Overlay.
- (4) Granting of Relief from Parking Regulations - The City Council may waive any of the foregoing requirements or the requirements of Section §650-48 if it makes a finding that to do so will enhance the overall design of the CV Housing Overlay.

H. Signage

Except as otherwise provided in this CV Housing Overlay, signage shall conform with the provisions of Chapter 526 of the Marlborough City Code – the Sign Ordinance.

- (1) Granting of Relief from Signage Regulations - The City Council may waive any of the requirements of the Sign Ordinance if it makes a finding that to do so will enhance the overall design of the CV Housing Overlay.

I. Application

An application for a Special Permit for a development in the CV Housing Overlay shall comply with the requirements of §650-59 et. seq. of the Zoning Ordinance. In the matter of a Site Plan Approval, the application shall comply with the requirements of the City Code, Article II, Permits and Approvals, §270-2 et. seq.

The City Council in connection with a Special Permit application shall review such applications with respect to the following design criteria:

- (i) Compliance of sidewalks with Americans with Disabilities Act (ADA) Design Standards;
- (ii) Street façade and exterior walls visible from public ways;
- (iii) Public space;
- (iv) Scale of buildings; and
- (v) External Lighting

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

J. Standards for Roadways and Drainage

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

K. Amendments

After approval, the owner/developer may seek amendments to the approved permits. Minor amendments to a Special Permit may be made with approval by the City Code Enforcement Officer. A major amendment, consisting of any changes not approved as a minor amendment, shall be approved by a majority vote of the City Council at a public hearing. If amendments are referred to the City Council by the Code Enforcement Officer, it shall be a finding of the City Council, not subject to dispute by the applicant, whether a requested amendment is deemed to be a minor or major amendment. In general, a minor modification shall not produce more than an immaterial increase in the scale of a project nor produce more than an immaterial increase in impact on City services, the environment or the neighborhood. If it is determined that revisions to a Special Permit are not minor, per Section 650-59 of the Zoning Ordinance, an application for a amended Special Permit shall be filed, and a public hearing shall be held in the same manner as required for a new application, subject to the fee schedule under Subsection C(3)(f) of Section 650-59.

Exhibit "A"

- A) Lots 1-23 as shown on a plan entitled a Definitive Subdivision Plan "Commonwealth Heights in Marlborough, MA. Endorsed by the City of Marlborough Planning Board on April 9, 2007 and recorded with the Middlesex South Registry of Deeds as Plan 549 of 2007; and
- B) The property on Forrest Avenue shown on the above referenced plan as being owned by "N/F David E. Silva"

Per Order of the City Council
#21-1008293

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



IN CITY COUNCIL

Marlborough, Mass., MAY 10, 2021

ORDERED:

PAGE 1

That the Communication from Attorney Robert Buckley on behalf of Marlborough/Northborough Land Realty Trust re: Proposed Amendment to Zoning Code, Chapter 650 by adding a new section to create the "Commercial Village Overlay District", be and is herewith referred to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE A PUBLIC HEARING FOR MONDAY, JUNE 21, 2021.**

Yea: 11 – Nay: 0

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

§650 – "COMMERCIAL VILLAGE HOUSING OVERLAY DISTRICT"

A. Purpose and Objectives

The Commercial Village Housing Overlay District (herein, also a "CV Housing Overlay") allows the application of supplemental land use controls within the boundaries of a certain overlay district, subject to City Council approval (hereinafter any reference to City approval shall be deemed to mean approval by the City Council) as an alternative to land use controls that exist in the underlying zoning district(s). The establishment goals of the CV Housing Overlay are to enhance land use development and encourage desired residential growth patterns for the benefit of the public health, safety and welfare and to allow for the development of higher density housing with potential accessory uses and in close proximity to commercial uses consistent with the stated economic development objectives of the City.

The CV Housing Overlay shall be applicable to the property identified as Map 100, Parcels 24, 25, 26, and 15 (including the private way "Atkinson Drive") and Map 89, Parcels 80-99 City of Marlborough Assessor's map dated September 21, 2012 (formerly the property shown on Map 100, Parcels 14 and 15 as shown on City of Marlborough Assessor's Map in effect on May 2006) and as further described on Exhibit "A" annexed hereto. The CV Housing Overlay shall be superimposed on the other zoning districts existing at the time that any land in any said underlying district is also included in the CV Housing Overlay.



IN CITY COUNCIL

Marlborough, Mass., MAY 10, 2021

ORDERED:

PAGE 2

B. Authority of Permit Granting Authority

The City Council shall be the Permit Granting Authority for the Master Plan approval (defined below) and for any Special Permit to be issued in the CV Housing Overlay. In all instances, a development which proceeds under the CV Housing Overlay is subject to Site Plan Approval in accordance with §270-2 of the Marlborough City Code, with the exception that the City Council shall be the Permit Granting Authority for any Special Permit approval in the CV Housing Overlay.

The City Council may elect to vary the dimensional and parking requirements of this Section by Special Permit if, in their opinion, such change shall result in a substantially improved project and will not nullify or substantially derogate from the intent or purpose of this section. This authority continues subsequent to development and occupancy.

Special Permits within the CV Housing Overlay shall be approved by the City Council. Amendments to any Special Permits issued by the City Council shall be per the requirements of this Section (§650-35 et. seq.).

C. Master Plan

The property owner/developer of the CV Housing Overlay shall, prior to, or simultaneously with, the first application for approval of a site plan and/or special permit for the CV Housing Overlay, file the following with the City Council for approval:

- (1) A Master Plan, or preliminary project plan, inclusive of the following:
 - (a) A project narrative describing the proposed development including, without limitation, the number of units, format, restrictions, if any, of the proposed project.
 - (b) A Master Concept Plan ("Master Plan") which shall in a general manner show:
 - (i) The location and areas of proposed development and associated uses;
 - (ii) Proposed open space (usable and natural);
 - (iii) Proposed site access curb cuts off of public ways; and
 - (iv) Proposed building "envelope(s)" where construction is anticipated to occur.
 - (c) The following information for the proposed development:
 - (i) Total land area of each development area (building envelope area);
 - (ii) Total development limitations, if any, of uses in any developable area;
 - (iii) Total maximum development (number of units; square footage/use limitations); and
 - (iv) A report/memorandum discussing site circulation and traffic impacts.



IN CITY COUNCIL

Marlborough, Mass., _____ MAY 10, 2021

PAGE 3

ORDERED:

The Master Plan shall be approved by a majority vote of the City Council in order to proceed with the proposed development and, if approved, shall thereafter become the general development plan governing development at the CV Housing Overlay. The Master Plan may be amended from time to time by a majority vote of the City Council by application from the property owner/developer to reflect changing development conditions.

- (2) A Development Agreement in recordable form binding upon the developer/property owner. The Development Agreement shall be approved by a majority vote of the City Council prior to the issuances of the first permit/site plan approval for development within the CV Housing Overlay, which Development Agreement may contain, without limitation:
 - (a) Required mitigation (including any traffic demand management initiatives), if any, to address the impacts arising out of the use and occupancy of the proposed project, or if at the time of execution such impacts are not known, the methodology for assessing and addressing such impacts as the development of the CV Housing Overlay progresses.
 - (b) Restrictions on development areas and such other development limitations as may be agreed upon such as, but not limited to, age restrictions and provision for affordable housing units and/or contributions, if any.
 - (c) Proposed phasing of the development of the CV Housing Overlay, if any.
 - (d) Obligations with respect to pedestrian and vehicular interconnectivity within the CV Housing Overlay, if any, to facilitate pedestrian access and circulation efficiencies.
 - (e) The authority of the City Council to retain the necessary professionals to assist in their review of development applications, if needed.

The Development Agreement shall govern the implementation of the Master Plan and development at the CV Housing Overlay.

D. Exclusivity/Control

Except as specifically provided herein, uses and provisions of Article V of Chapter 650 (Zoning) relating to the underlying zoning district not otherwise impacted by this Section (§650-33 et. seq.) shall continue to remain in full force and effect, provided however that the City Council shall be the Special Permit Granting Authority, if applicable. This Section (§650-35 et. seq.) of the Zoning Ordinance exclusively controls the establishment, development, and design of any development undertaken in the CV Housing Overlay and supersedes any other provision of the Zoning Ordinance (except the provisions of the Water Supply Protection District). In the event of any conflict between the provisions of this Section (§650-35 et. seq.) and any other provision of the Zoning Ordinance, the provisions of this Section (§650-35 et. seq.) shall govern and control.



IN CITY COUNCIL

Marlborough, Mass., _____ MAY 10, 2021

PAGE 4

ORDERED:

E. Eligible Uses

Except as specifically set forth below, all uses permitted in Residence Districts (RR, A-1, A-2, A-3, RB, RC, and RCR) either as of right or by special permit in accordance with §650-17 of the Zoning Ordinance are permitted in the CV Housing Overlay. If a use requires a Special Permit under §650-17, Table of Use Regulations, such use shall continue to require a special permit under this Section.

- (1) The following additional uses are also permitted BY-RIGHT in the CV Housing Overlay:
 - (a) Multi-family dwelling – up to 120 dwelling units within the entire CV Housing Overlay Zoning if said units are age restricted or age targeted (by design) dwelling units
 - (b) Consumer service and retail establishments accessory and complimentary to the other principal uses at the property
- (2) The following additional uses are also permitted BY-SPECIAL PERMIT in the CV Housing Overlay:
 - (a) Multi-family dwelling within the entire CV Housing Overlay Zoning District including, without limitation, age restricted/ age targeted dwelling units in excess of 120 units
- (3) Single family detached residential use is prohibited in the CV Housing Overlay.

F. Dimensional Requirements

The CV Housing Overlay shall be subject to the dimensional standards in accordance with Article VII of the Marlborough Zoning Ordinance with the following exceptions:

- (1) The CV Housing Overlay may consist of one or more lots. There is no minimum acreage requirement for a lot to be a part of the CV Housing Overlay so long as a CV Housing Overlay district shall be no less than 10 contiguous acres.
- (2) Minimum Lot Frontage measurement shall be no less than twenty (20) feet for any lot wholly located within the boundaries of the CV Housing Overlay.
- (3) Minimum Front Yard measurement shall be no less than twenty (20) feet for any lot wholly located within boundaries of a CV Housing Overlay.
- (4) No less than fifteen (15) feet shall separate the structural side wall of any two or more structures within the CV Housing Overlay, even if on separate lots. No less than fifteen (15) feet shall separate any area behind and or between structures, and fire suppression vehicles shall have clear and adequate access to all structures.



IN CITY COUNCIL

Marlborough, Mass., _____ MAY 10, 2021

ORDERED:

PAGE 5

- (5) Maximum building height in CV Housing Overlay shall not exceed 60 feet; a structure located within 50 feet from the property line of a directly abutting parcel in a residentially zoned district shall not exceed 40 feet in height.
- (6) Maximum Lot Coverage shall be calculated on the entire land area of the CV Housing Overlay and not on an individual lot basis, and shall not exceed 65% percent of the total area of the CV Housing Overlay.

G. Parking and Curb Cut Requirements.

Except as otherwise provided in this section, parking and circulation requirements shall conform with the provisions of Section §650-48 and §650-49 of the Zoning Ordinance.

- (1) General - In the CV Housing Overlay adequate off-street parking shall be provided. The City Council and the applicant shall have as a goal for the purposes of defining adequate off-street parking, making the most efficient use of the parking facilities to be provided and minimizing the area of land to be paved for this purpose.
- (2) Parking Locations - Parking may be provided at ground level, underground or in a parking garage. Parking garages can be free standing or as part of buildings dedicated to permitted uses.
- (3) Parking Spaces for Each Dwelling Unit - There shall be a minimum of 1.5 parking spaces for each dwelling unit. Where feasible, sharing of parking shall be encouraged among the various uses in the CV Housing Overlay.
- (4) Granting of Relief from Parking Regulations - The City Council may waive any of the foregoing requirements or the requirements of Section §650-48 if it makes a finding that to do so will enhance the overall design of the CV Housing Overlay.

H. Signage

Except as otherwise provided in this CV Housing Overlay, signage shall conform with the provisions of Chapter 526 of the Marlborough City Code – the Sign Ordinance.

- (1) Granting of Relief from Signage Regulations - The City Council may waive any of the requirements of the Sign Ordinance if it makes a finding that to do so will enhance the overall design of the CV Housing Overlay.



IN CITY COUNCIL

Marlborough, Mass., MAY 10, 2021

ORDERED:

PAGE 6

I. Application

An application for a Special Permit for a development in the CV Housing Overlay shall comply with the requirements of §650-59 et. seq. of the Zoning Ordinance. In the matter of a Site Plan Approval, the application shall comply with the requirements of the City Code, Article II, Permits and Approvals, §270-2 et. seq.

The City Council in connection with a Special Permit application shall review such applications with respect to the following design criteria:

- (i) Compliance of sidewalks with Americans with Disabilities Act (ADA) Design Standards;
- (ii) Street façade and exterior walls visible from public ways;
- (iii) Public space;
- (iv) Scale of buildings; and
- (v) External Lighting

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

J. Standards for Roadways and Drainage

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



IN CITY COUNCIL

Marlborough, Mass., MAY 10, 2021

PAGE 7

ORDERED:

K. Amendments

After approval, the owner/developer may seek amendments to the approved permits. Minor amendments to a Special Permit may be made with approval by the City Code Enforcement Officer. A major amendment, consisting of any changes not approved as a minor amendment, shall be approved by a majority vote of the City Council at a public hearing. If amendments are referred to the City Council by the Code Enforcement Officer, it shall be a finding of the City Council, not subject to dispute by the applicant, whether a requested amendment is deemed to be a minor or major amendment. In general, a minor modification shall not produce more than an immaterial increase in the scale of a project nor produce more than an immaterial increase in impact on City services, the environment or the neighborhood. If it is determined that revisions to a Special Permit are not minor, per Section 650-59 of the Zoning Ordinance, an application for a amended Special Permit shall be filed, and a public hearing shall be held in the same manner as required for a new application, subject to the fee schedule under Subsection C(3)(f) of Section 650-59.

Exhibit "A"

- A) Lots 1-23 as shown on a plan entitled a Definitive Subdivision Plan "Commonwealth Heights in Marlborough, MA. Endorsed by the City of Marlborough Planning Board on April 9, 2007 and recorded with the Middlesex South Registry of Deeds as Plan 549 of 2007; and
- B) The property on Forrest Avenue shown on the above referenced plan as being owned by "N/F David E. Silva"

ADOPTED

ORDER NO. 21-1008293
X 18-1007134B

April 26, 2021

VIA FEDEX AND VIA

EMAIL: kboule@marlborough-ma.gov

President and Members
Marlborough City Council
City Hall 140 Main Street
Marlborough, MA 01752

Re: Petition for Amendment to Zoning Code and Zoning Map

Dear President and Members:

This Firm and the undersigned represent Marlborough/Northborough Land Realty Trust of 200 Summit Drive, Suite 400, Burlington, Massachusetts 01803 (herein after referred to as Petitioner), owner of land shown on the City of Marlborough Assessor's Map 100, Parcels 24, 25, 26 and 15 (including the private way "Atkinson Way"); and Map 89, Parcels 80-99 (the "Land").

Our client hereby petitions the City Council to amend the Zoning Code and Zoning Map of the City of Marlborough Chapter 650 by adding to Article VI Section 650-35 COMMERCIAL VILLAGE OVERLAY DISTRICT (the "CVOD") in accordance with Exhibit "A" attached hereto.

The enclosed ordinance provides for an age-targeted project that would allow for multi-family residential units with the option to provide supporting accessory mixed-use service components. Unlike the current underlying single-family zoning, the CVOD provides the opportunity for a more generous buffer to the existing neighborhood, improved diversity of housing choice within the City and is more consistent with the City's recent housing studies. Traffic associated with the CVOD would be limited and the impact on the infrastructure of the City including the school system would be minimal given the age targeted nature of any project. We look forward to working cooperatively with the City on the attached ordinance with an objective of enacting a responsive, practical, and creative planning option.

The Land area proposed to be included in the CVOD is currently zoned for single-family housing and a subdivision has been approved by the City, but not yet constructed. The Land is located on the corner of Ames and Forest streets in the southwest quadrant of the City adjacent to Central Steel and across from the Marlborough Technology Park and Avalon apartments. With adoption of the CVOD, the Land provides the opportunity to allow for a transition from the industrially and more densely developed uses to the neighborhood to the northwest.

We are also aware of the recent initiative of the Governor and Legislature in enacting the "Housing Choice Act" Chapter 358 of 2020. Pursuant to this legislation, municipalities are encouraged (and required if an MBTA community) to designate certain areas of the municipality for "as of right" multi-family residential housing to be eligible for certain State discretionary funding. The public policy underlying this initiative is to enhance the supply of adequate affordable housing throughout the Commonwealth. Municipalities that are proactive in developing such districts and housing will be entitled to consideration of certain state discretionary funds for various economic development, transportation, and infrastructure projects. Therefore, we submit it is beneficial to the fiscal interest of the City to consider such opportunities.

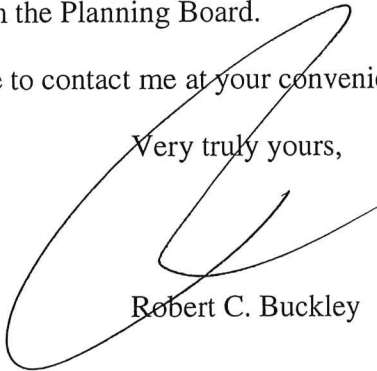
We also believe that the proposed CVOD ordinance could provide a basis for the City, working with the Petitioner, to satisfy the policy objectives embodied in the Housing Choice Act. The location of this proposed project and proposed uses are compatible with surrounding developments and other initiatives that have been undertaken in recent years. The Petitioner is desirous of working with the City to review and adjust this zoning proposal to be responsive to the objectives of both the Petitioner and the City and advance the policy objectives of the Housing Choice Act. This effort would be an example of a public/private partnership in the execution of legislative policy that could support the City in obtaining infrastructure funding which is likely to be available at the Federal and State level in the coming months.

We have annexed hereto for informational purposes: (i) a plan showing the currently approved residential subdivision; and (ii) conceptual plans and renderings showing proposed design and massing and view perspectives from abutting residential properties.

We respectfully request that a public hearing be scheduled on the Petition as provided for in Massachusetts General Laws Chapter 40A Section 5 and give written notice as provided therein to the Planning Board to permit a recommendation from the Planning Board.

If you have any questions, please feel free to contact me at your convenience.

Very truly yours,



Robert C. Buckley

RCB:mw

Enclosure: Proposed Zoning Ordinance Change
Plans/Renderings

Cc: Steven W. Kerrigan, City Clerk
Scott Weiss, The Gutierrez Company

25560/26
2720052.2

Exhibit "A"

ARTICLE VI

§650-35 - COMMERCIAL VILLAGE HOUSING OVERLAY DISTRICT

A. Purpose and Objectives

The Commercial Village Housing Overlay District (herein, also a "CV Housing Overlay") allows the application of supplemental land use controls within the boundaries of a certain overlay district, subject to City Council approval (hereinafter any reference to City approval shall be deemed to mean approval by the City Council) as an alternative to land use controls that exist in the underlying zoning district(s). The establishment goals of the CV Housing Overlay are to enhance land use development and encourage desired residential growth patterns for the benefit of the public health, safety and welfare and to allow for the development of higher density housing with potential accessory uses and in close proximity to commercial uses consistent with the stated economic development objectives of the City.

The CV Housing Overlay shall be applicable to the property identified as Map 100, Parcels 24, 25, 26, and 15 (including the private way "Atkinson Drive") and Map 89, Parcels 80-99 City of Marlborough Assessor's map dated September 21, 2012 (formerly the property shown on Map 100, Parcels 14 and 15 as shown on City of Marlborough Assessor's Map in effect on May 2006) and as further described on Exhibit "A" annexed hereto. The CV Housing Overlay shall be superimposed on the other zoning districts existing at the time that any land in any said underlying district is also included in the CV Housing Overlay.

B. Authority of Permit Granting Authority

The City Council shall be the Permit Granting Authority for the Master Plan approval (defined below) and for any Special Permit to be issued in the CV Housing Overlay. In all instances, a development which proceeds under the CV Housing Overlay is subject to Site Plan Approval in accordance with §270-2 of the Marlborough City Code, with the exception that the City Council shall be the Permit Granting Authority for any Special Permit approval in the CV Housing Overlay.

The City Council may elect to vary the dimensional and parking requirements of this Section by Special Permit if, in their opinion, such change shall result in a substantially improved project and will not nullify or substantially derogate from the intent or purpose of this section. This authority continues subsequent to development and occupancy.

Special Permits within the CV Housing Overlay shall be approved by the City Council. Amendments to any Special Permits issued by the City Council shall be per the requirements of this Section (§650-35 et. seq.).

C. Master Plan

The property owner/developer of the CV Housing Overlay shall, prior to, or simultaneously with, the first application for approval of a site plan and/or special permit for the CV Housing Overlay, file the following with the City Council for approval:

- (1) A Master Plan, or preliminary project plan, inclusive of the following:
 - (a) A project narrative describing the proposed development including, without limitation, the number of units, format, restrictions, if any, of the proposed project.
 - (b) A Master Concept Plan (“Master Plan”) which shall in a general manner show:
 - (i) The location and areas of proposed development and associated uses;
 - (ii) Proposed open space (usable and natural);
 - (iii) Proposed site access curb cuts off of public ways; and
 - (iv) Proposed building “envelope(s)” where construction is anticipated to occur.
 - (c) The following information for the proposed development:
 - (i) Total land area of each development area (building envelope area);
 - (ii) Total development limitations, if any, of uses in any developable area;
 - (iii) Total maximum development (number of units; square footage/use limitations); and
 - (iv) A report/memorandum discussing site circulation and traffic impacts.

The Master Plan shall be approved by a majority vote of the City Council in order to proceed with the proposed development and, if approved, shall thereafter become the general development plan governing development at the CV Housing Overlay. The Master Plan may be amended from time to time by a majority vote of the City Council by application from the property owner/developer to reflect changing development conditions.

- (2) A Development Agreement in recordable form binding upon the developer/property owner. The Development Agreement shall be approved by a majority vote of the City Council prior to the issuances of the first permit/site plan

approval for development within the CV Housing Overlay, which Development Agreement may contain, without limitation:

- (a) Required mitigation (including any traffic demand management initiatives), if any, to address the impacts arising out of the use and occupancy of the proposed project, or if at the time of execution such impacts are not known, the methodology for assessing and addressing such impacts as the development of the CV Housing Overlay progresses.
- (b) Restrictions on development areas and such other development limitations as may be agreed upon such as, but not limited to, age restrictions and provision for affordable housing units and/or contributions, if any.
- (c) Proposed phasing of the development of the CV Housing Overlay, if any.
- (d) Obligations with respect to pedestrian and vehicular interconnectivity within the CV Housing Overlay, if any, to facilitate pedestrian access and circulation efficiencies.
- (e) The authority of the City Council to retain the necessary professionals to assist in their review of development applications, if needed.

The Development Agreement shall govern the implementation of the Master Plan and development at the CV Housing Overlay.

D. Exclusivity/Control

Except as specifically provided herein, uses and provisions of Article V of Chapter 650 (Zoning) relating to the underlying zoning district not otherwise impacted by this Section (§650-33 et. seq.) shall continue to remain in full force and effect, provided however that the City Council shall be the Special Permit Granting Authority, if applicable. This Section (§650-35 et. seq.) of the Zoning Ordinance exclusively controls the establishment, development, and design of any development undertaken in the CV Housing Overlay and supersedes any other provision of the Zoning Ordinance (except the provisions of the Water Supply Protection District). In the event of any conflict between the provisions of this Section (§650-35 et. seq.) and any other provision of the Zoning Ordinance, the provisions of this Section (§650-35 et. seq.) shall govern and control.

E. Eligible Uses

Except as specifically set forth below, all uses permitted in Residence Districts (RR, A-1, A-2, A-3, RB, RC, and RCR) either as of right or by special permit in accordance with §650-17 of the Zoning Ordinance are permitted in the CV Housing Overlay. If a use requires a Special Permit under §650-17, Table of Use Regulations, such use shall continue to require a special permit under this Section.

- (1) The following additional uses are also permitted BY-RIGHT in the CV Housing Overlay:

- (a) Multi-family dwelling – up to 120 dwelling units within the entire CV Housing Overlay Zoning if said units are age restricted or age targeted (by design) dwelling units
- (b) Consumer service and retail establishments accessory and complimentary to the other principal uses at the property
- (2) The following additional uses are also permitted BY-SPECIAL PERMIT in the CV Housing Overlay:
 - (a) Multi-family dwelling within the entire CV Housing Overlay Zoning District including, without limitation, age restricted/ age targeted dwelling units in excess of 120 units
- (3) Single family detached residential use is prohibited in the CV Housing Overlay.

F. Dimensional Requirements

The CV Housing Overlay shall be subject to the dimensional standards in accordance with Article VII of the Marlborough Zoning Ordinance with the following exceptions:

- (1) The CV Housing Overlay may consist of one or more lots. There is no minimum acreage requirement for a lot to be a part of the CV Housing Overlay so long as a CV Housing Overlay district shall be no less than 10 contiguous acres.
- (2) Minimum Lot Frontage measurement shall be no less than twenty (20) feet for any lot wholly located within the boundaries of the CV Housing Overlay.
- (3) Minimum Front Yard measurement shall be no less than twenty (20) feet for any lot wholly located within boundaries of a CV Housing Overlay.
- (4) No less than fifteen (15) feet shall separate the structural side wall of any two or more structures within the CV Housing Overlay, even if on separate lots. No less than fifteen (15) feet shall separate any area behind and or between structures, and fire suppression vehicles shall have clear and adequate access to all structures.
- (5) Maximum building height in CV Housing Overlay shall not exceed 60 feet; a structure located within 50 feet from the property line of a directly abutting parcel in a residentially zoned district shall not exceed 40 feet in height.
- (6) Maximum Lot Coverage shall be calculated on the entire land area of the CV Housing Overlay and not on an individual lot basis, and shall not exceed 65% percent of the total area of the CV Housing Overlay.

G. Parking and Curb Cut Requirements.

Except as otherwise provided in this section, parking and circulation requirements shall conform with the provisions of Section §650-48 and §650-49 of the Zoning Ordinance.

- (1) General - In the CV Housing Overlay adequate off-street parking shall be provided. The City Council and the applicant shall have as a goal for the purposes of defining adequate off-street parking, making the most efficient use of the parking facilities to be provided and minimizing the area of land to be paved for this purpose.
- (2) Parking Locations - Parking may be provided at ground level, underground or in a parking garage. Parking garages can be free standing or as part of buildings dedicated to permitted uses.
- (3) Parking Spaces for Each Dwelling Unit - There shall be a minimum of 1.5 parking spaces for each dwelling unit. Where feasible, sharing of parking shall be encouraged among the various uses in the CV Housing Overlay.
- (4) Granting of Relief from Parking Regulations - The City Council may waive any of the foregoing requirements or the requirements of Section §650-48 if it makes a finding that to do so will enhance the overall design of the CV Housing Overlay.

H. Signage

Except as otherwise provided in this CV Housing Overlay, signage shall conform with the provisions of Chapter 526 of the Marlborough City Code – the Sign Ordinance.

- (1) Granting of Relief from Signage Regulations - The City Council may waive any of the requirements of the Sign Ordinance if it makes a finding that to do so will enhance the overall design of the CV Housing Overlay.

I. Application

An application for a Special Permit for a development in the CV Housing Overlay shall comply with the requirements of §650-59 et. seq. of the Zoning Ordinance. In the matter of a Site Plan Approval, the application shall comply with the requirements of the City Code, Article II, Permits and Approvals, §270-2 et. seq.

The City Council in connection with a Special Permit application shall review such applications with respect to the following design criteria:

- (i) Compliance of sidewalks with Americans with Disabilities Act (ADA) Design Standards;
- (ii) Street façade and exterior walls visible from public ways;
- (iii) Public space;

- (iv) Scale of buildings; and
- (v) External Lighting

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

J. Standards for Roadways and Drainage

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

K. Amendments

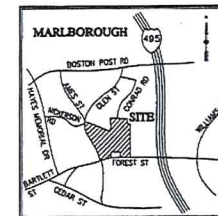
After approval, the owner/developer may seek amendments to the approved permits. Minor amendments to a Special Permit may be made with approval by the City Code Enforcement Officer. A major amendment, consisting of any changes not approved as a minor amendment, shall be approved by a majority vote of the City Council at a public hearing. If amendments are referred to the City Council by the Code Enforcement Officer, it shall be a finding of the City Council, not subject to dispute by the applicant, whether a requested amendment is deemed to be a minor or major amendment. In general, a minor modification shall not produce more than an immaterial increase in the scale of a project nor produce more than an immaterial increase in impact on City services, the environment or the neighborhood. If it is determined that revisions to a Special Permit are not minor, per Section 650-59 of the Zoning Ordinance, an application for a amended Special Permit shall be filed, and a public hearing shall be held in the same manner as required for a new application, subject to the fee schedule under Subsection C(3)(f) of Section 650-59.

Exhibit "A"

- A) Lots 1-23 as shown on a plan entitled a Definitive Subdivision Plan
"Commonwealth Heights in Marlborough, MA. Endorsed by the City of
Marlborough Planning Board on April 9, 2007 and recorded with the Middlesex
South Registry of Deeds as Plan 549 of 2007; and
- B) The property on Forrest Avenue shown on the above referenced plan as being
owned by "N/F David E. Silva"

RCB:mw
25560/26

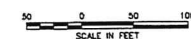
2190920.8

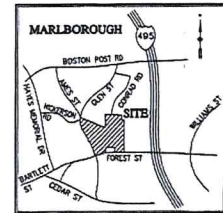


View Location



Conceptual Site Plan
Marlborough, Ma.
 Ames/Forest Street Date: 12/22/20

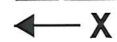




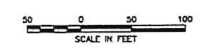
LOCUS MAP
(NOT TO SCALE)



View Location



Conceptual Site Plan
Marlborough, Ma.
 Ames/Forest Street Date: 3/6/19



DRAFT
LOW-RES PROC





Commonwealth Heights Comparative Massing Views

February 24, 2021

SINGLE FAMILY SUBDIVISION

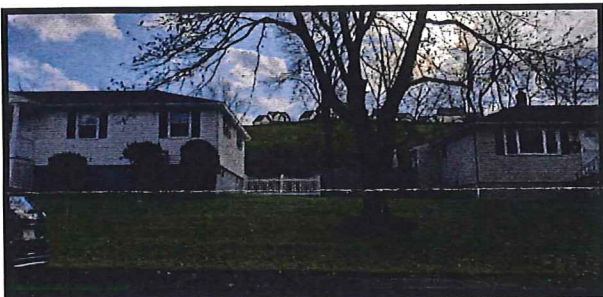
View A:



View B:



View C:



CONDO BUILDING

View A:



View B:



View C:





City of Marlborough

Legal Department

140 MAIN STREET

MARLBOROUGH, MASSACHUSETTS 01752

TEL (508) 460-3771 FAX (508) 460-3698 TDD (508) 460-3610

LEGAL@MARLBOROUGH-MA.GOV

JASON D. GROSSFIELD
CITY SOLICITOR

JASON M. PIQUES
ASSISTANT CITY SOLICITOR

HEATHER H. GUTIERREZ
PARALEGAL

June 17, 2021

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

Re: Application for Sign Variance One Energy Inc, 121 Bolton Street, Marlborough

Dear Dr. Fenby and Members of the Planning Board:

You have requested a legal opinion whether the Board may grant a variance to authorize placement of an Electronic Message Center / Digital Display Sign (“EMC Sign”) in connection with the above referenced application. In my opinion, the Board must determine if the applicant meets the specific standards for a variance as set forth in City Ord. 526-12(C)(2), given the Sign Ordinance’s prohibition on the proposed sign in a residential zoning district.

Under City’s Sign Ordinance, the Planning Board may vary¹ the provisions of this chapter only upon finding that:

1. That the matter is a “specific case which appear to it not to have been contemplated by [the Sign Code]” or “wherein its enforcement would involve practical difficulties”; AND
2. That “desirable relief may be granted without substantially derogating from the intent and purposes of the of [the Sign Code] but not otherwise.”

Here, City Ord. §526-13(A)(2) “permit[s] digital display signs and electronic message center signs in all zoning districts except for ... Residence B (RB) District..., in which districts such signs² are strictly prohibited.” (emphasis added). Further, in my opinion, the ordinance’s required setback *from* residential zones³, should be read in conjunction with the general prohibition on EMC signs *in* residential zones, when evaluating the intent and purpose of the Sign Ordinance.

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

¹ See: §526-12(C)(2)

² Limited exemptions would include §526-13(E), authorizing one gas station multi-product LED price pump topper on the top of each pump, and one gas station video graphics array color screen to be installed on each pump.

³ See: §526-13(B)(12)

Respectfully,

/s/ Jay Piques

Jay Piques

Assistant City Solicitor

cc: Jason Grossfield, City Solicitor

MIRICK O'CONNELL

A T T O R N E Y S A T L A W

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

May 28, 2021

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

Re: 121 Bolton Street Sunoco Station; Application for a Sign Variance

Dear Dr. Fenby and Board Members:

On behalf of my client One Energy, Inc., enclosed please find an application for a Sign Variance for the Sunoco station at 121 Bolton Street. As set forth the enclosed denial letter, the applicant seeks variances from the restriction on electronic message center (EMC) signs in the RB Zoning District and the 200-foot buffer for EMC signs from residential zones.

This site received a Section 6 finding special permit from the City Council in 2019, authorizing the modification of a preexisting nonconforming gas station use to accommodate gas station renovations, a new convenience store, and – most importantly – the environmental cleanup of the site. There has been an auto repair and/or gas station use at this site for decades, predating the Zoning Ordinance.

The applicant seeks to install a fairly typical gas station pylon sign with an EMC display for prices, as shown in the enclosed application. Strict enforcement of the Sign Ordinance restrictions in this case would present a significant hardship and practical difficulties for the applicant, as this would be among the only gas stations in the City without a similar sign. Granting this variance would not substantially derogate from the intent and purpose of the Sign Ordinance as the surrounding neighborhood is used to having a business at this location, and neighbors expressed support for this new business during the City Council's special permit process in 2019. In addition, this area of Bolton Street is home to several business, so a new, updated sign at this location would not be out of place.

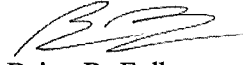
Following the grant of a sign variance by this Board, the applicant will require a Sign Ordinance special permit from the City Council for the EMC sign.

MIRICK O'CONNELL

Marlborough Planning Board
May 28, 2020
Page 2

Thank you for your time and attention to this matter.

Very truly yours,

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

Brian R. Falk

BRF/

Encl.

cc: Client



CITY OF MARLBOROUGH
APPLICATION FOR SIGN APPEAL TO PLANNING BOARD

INSTRUCTIONS: Use this form if your sign permit application has been denied by the Building Inspector and your denial letter indicates your right to appeal to the City of Marlborough Planning Board. This application must be filed with the Planning Board within 30 days of the date of the decision of the of the Building Inspector. (See Number 7 below.) Applicant must attach a copy of the Building Inspector's decision letter (usually a denial of a sign permit.) This application form must be signed by the applicant or their authorized agent (and the property owner if the owner is not the applicant.) Send the completed form along with the \$25.00 filing fee to the Planning Board administrative offices at 135 Neil St. 2nd Floor, Marlborough, MA 01752. The Planning Board Administrator will sign this form and schedule an appeal hearing date at a future scheduled meeting of the Planning Board.

1. **Location of Proposed Sign: Street Address:** 121 Bolton Street
What other signs exist on the property: (Type, Size, Location) Wall signs; directional signs; pump signs.
2. **Name of business or activity applying for sign:** One Energy, Inc. (Sunoco Station)
3. **Applicant:** One Energy, Inc.
Applicant Address: 420 Lakeside Drive, Marlborough, MA 01752
Applicant Contact Info: (name, email and phone) (Atty. Brian R. Falk, bfalk@mirickoconnell.com - 508-929-1678)
4. **Building Owner:** One Energy, Inc.
Owner Address: 420 Lakeside Drive, Marlborough, MA 01752
Owner Contact Info: (name, email and phone) (Atty. Brian R. Falk, bfalk@mirickoconnell.com - 508-929-1678)
5. **Applicant is** ☒ **Building Owner** ☐ **Tenant** ☐ **Other** _____
6. **Date of Building Inspector's decision from which appeal is taken:** May 3, 2021
(Attach copy of denial of sign permit.)
7. **Section of the Sign Ordinance from which appeal is requested:** Chapter 650, Section(s)
Section heading(s): Section 562-13 (See enclosed Denial Letter)
8. **Description of Sign:** Pylon - Length: 11' - 7 1/4" Width: 5' - 1 1/4" Height (Free Standing): 17' - 0" Area: 59.2 SF
9. **Give a brief outline why permit was refused and the purpose of the sign:** _____
See enclosed Cover Letter

Other pertinent information may be submitted with this application or requested by the Planning Board.
I hereby request a hearing before the Planning Board with reference to the above noted application:

Signed: _____ **Date:** 5/28/2021 **Owner:** One Energy, Inc.
Applicant

Received: \$25 application fee - Check payable to City of Marlborough **Initials of Board agent** _____
Scheduled Hearing Date: _____ **Date of payment** 5/28/21 #2292

NEW SIGNS MAY NOT BE ERECTED UNTIL APPEAL HAS BEEN GRANTED AND PERMIT IS ISSUED

Variance Decision: ☐ **Approved** ☐ **Denied**
(attached)



CITY OF MARLBOROUGH
APPLICATION FOR SIGN APPEAL TO PLANNING BOARD

PLANNING BOARD SIGN VARIANCE DECISION:

Applicant: One Energy, Inc.

At its regular meeting of the Planning Board on _____, on a motion by _____, seconded by _____, the Board voted the following:

☐

Appeal Granted.

The Board determined that this specific case appeared not to have been contemplated by the ordinance, that enforcement would involve practical difficulties, and to grant relief would not substantially derogate from the intent and purpose of this ordinance.

Special Conditions of Variance (If any):

The applicant must apply to the Building Inspector for a new sign permit in accordance with the decision of the Planning Board. Attach this decision to the new application.

☐

Appeal Denied.

Appeal was denied. The Board determined that the circumstances of this specific case appeared to have been contemplated by the ordinance, that enforcement would not involve unusual practical difficulties, and that to grant relief would substantially derogate from the intent and purpose of this ordinance.

Motion Carried.

Barbara L. Fenby, Chair
Marlborough Planning Board

Date

City of Marlborough
Commonwealth of Massachusetts



Ethan Lippitt
Code Enforcement Officer
140 Main Street
Marlborough, MA 01752
Phone: (508) 460-3776 XT 30201
Fax: (508) 460-3736
Email: elippitt@marlborough-ma.gov
pwilderman@marlborough-ma.gov

5/3/2021

Carolyn A. Parker Consulting
3 Lorian Avenue
Worcester MA
01506

RE: Sign Permit Application BP-2021-000587,

To whom it may concern,

On 4/28/2021 sign permits were applied for regarding the installation of an EMC sign upon the property at 121 Bolton Street. Signs upon that property must meet the two criteria related to all EMC signs.

- The first is that all EMC signs installed within Marlborough must comply with 526-13 (B) (12).
- The second is that a special permit is required per 526-13 (A) (2) in that a special permit is required and that the installation of an EMC within the RB zone is not allowed.

Both code sections have been included in this letter for your convenience.

§ 526-13 Electronic message center signs; digital display signs.

[Added 8-25-2014 by Ord. No. 14-1005880B]

A. Applicability.

(2) The regulations in § 526-13 permit digital display signs and electronic message center (EMC) signs in all zoning districts except for Rural Residence (RR) Districts, Residence (A-1) Districts, Residence (A-2) Districts, Residence (A-3) Districts, Residence B (RB) Districts, Residence C (RC) Districts, Retirement Community Residence (RCR) Districts, and the Downtown Business District outlined in § 526-9L, in which districts such signs are strictly prohibited. Digital display signs and EMC signs shall be permitted with the approval of the Building Commissioner, shall be subject to all other provisions governing signs in Chapter 526, the City's Sign Ordinance, and shall require a special permit.

[Amended 10-6-2014 by Ord. No. 14-1005921A]

§ 526-13 Electronic message center signs; digital display signs.

[Added 8-25-2014 by Ord. No. 14-1005880B]

B. Standards. EMC signs and digital display signs shall be allowed by special permit, but only pursuant to the following standards:

(12) Setbacks from residential zoned areas. The sign must be set back a minimum distance of 200 feet from the nearest point of any abutting residentially zoned district. If, because of the shape, size and/or proximity of a commercial lot to a residentially zoned district it is not possible to place the sign more than 200 feet from the nearest point of an abutting residentially zoned district, then the

Planning Board may grant a variance for closer placement, provided that when located within 200 feet of a residentially zoned district, all digital display portions of the sign shall be oriented so that no portion of the sign is visible from an existing primary residential structure in that district.

The Planning Board Appeal has been included for your convenience

§ 526-12 Administration and penalties.

C. Rights to appeal.

(1) Any applicant for a permit, any person who has been ordered by the Building Commissioner to incur expense in connection with a sign and any person dissatisfied with any refusal, order or decision of the Building Commissioner may appeal to the Planning Board within 30 days from the date of such refusal, order or decision. The fee for the filing of said appeal shall be \$25, payable to the City of Marlborough upon the filing of said appeal. After written notice given to such parties as the Planning Board shall order, the Planning Board shall address the appeal at a regularly scheduled meeting of the Board. Applying the standards described in Subsection C(2) below, where applicable, and interpreting this chapter, the Planning Board shall affirm, annul or modify such refusal, order or decision within 45 days after hearing the appeal. The action of the Building Commissioner may be annulled or modified only by a two-thirds vote of the Planning Board. If the action of the Building Commissioner is modified or annulled, the Building Commissioner shall issue a permit or order in accordance with the decision of the Planning Board.

[Amended 10-6-2014 by Ord. No. 14-1005921A]

(2) Variances. The Planning Board may vary the provisions of this chapter in specific cases which appear to it not to have been contemplated by this chapter, and in cases wherein its enforcement would involve practical difficulties if, in each instance, desirable relief may be granted without substantially derogating from the intent and purpose of this chapter but not otherwise. Any decision to vary the provisions of this chapter shall be by 2/3 majority and shall specify any variance allowed and the reason therefor. Each decision of the Planning Board shall be filed in the office of the City Clerk within 30 days after the decision and a copy of the decision shall be sent by mail or delivered to the appellant and any other person appearing at the hearing and so requesting in writing. Failure to file such a decision within 30 days after the hearing shall not be deemed to be approval of any variance sought. No variances shall be allowed by the Planning Board from the date on which this sentence becomes effective until July 1, 2007.

[Amended 10-30-2006 by Ord. No. 06100-1323A]

(3) Conditions and safeguards. The Planning Board shall set forth appropriate conditions and safeguards whenever in its opinion they are desirable.

The Special Permit Application can be found on the City's website.
<https://www.marlborough-ma.gov/city-clerk/pages/city-council-applications>

Code Enforcement Officer Ethan Lippitt

CC  File
 Planning Board Secretary
 City Council
 Commissioner Htway



City of Marlborough
BUILDING DEPARTMENT

140 Main Street
Marlborough, Massachusetts 01752

PYLON
SIGN

Date: 4/13/21

Permit No. _____

Address/Location of Sign 121 BOLTON STREET

Name of Business SUNOCO

Name of Owner of Business ONE ENERGY, INC Telephone (508) 460-1010

Type of Sign: (check off which applies)

____ Flat Wall ☒ Free Standing ____ Awning ____ Banner ____ Projecting

Does this site have a Special Permit ☒ YES ____ NO 19-1007780B

Is this a replacement of a same size existing sign(s) ____ YES ☒ NO

Dimensions Sign: PYLON

Length 11'-7 1/4" Width 5'-1 1/4" Height (Free Standing) 17'-0" Area 59.2 SF

Location of Sign on Bld. North ____ South ____ East ____ West ____

Dimensions Façade:

Length ____ Width ____ Area ____

Carolyn A Parker - AGENT 774-239-2781
Signature of Responsible Party capconsulting@verizon.net Telephone

Installer Company READY IMAGING, INC. Telephone 860-649-2755

awhiting@readyimaging.com
Email

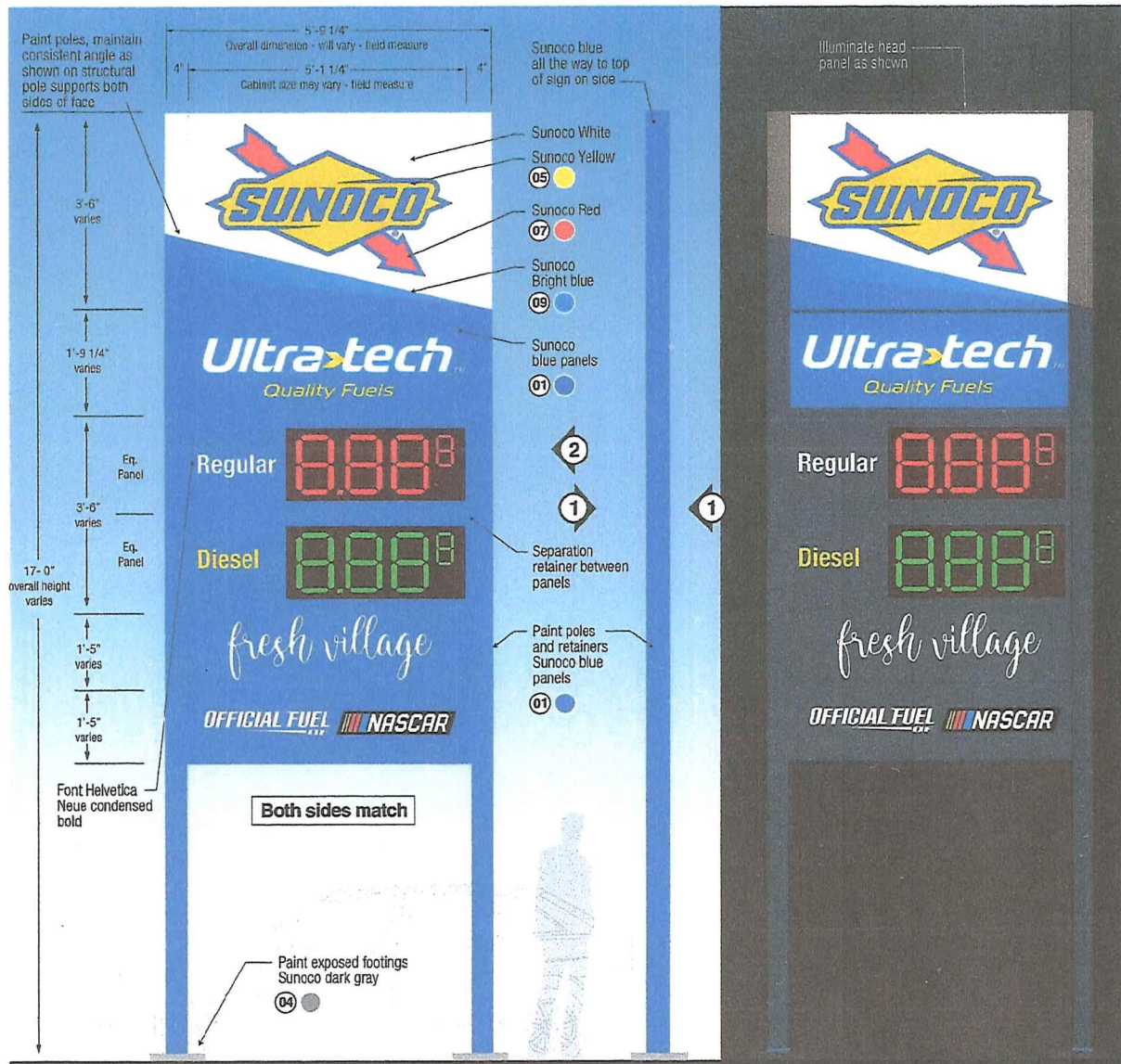
I hereby declare that I have the authority to request this permit and that the statements and information provided are true and accurate to the best of my knowledge and belief as well as to conform to the City's current Sign Ordinance and MA State Building Code, signed under the pains and penalties of perjury.

Carolyn A Parker
Signature

4/13/21
Date

Cost of Sign(s) \$21,000.00

Permit Fee \$ _____



Field verify all existing dimensions on existing signs

Fabrication and installation companies are responsible for following approved image guidelines and standards represented in these retail visual standards. Suppliers / installation companies are responsible to field measure and verify all site conditions prior to fabrication and installation. Prior to fabrication shop and construction documents are to be checked for accuracy, tolerances, registration and construction methods that meet approved design intent and quality standards. These visual standards drawings are design intent only, and are not for construction. Approved suppliers are responsible for shop drawings, construction documentation, structural engineering documents to build these image components. Upon completion of these drawings suppliers are to have them approved by Sunoco retail visual team. Sunoco retail visual team to verify that the approved design intent is met prior to fabrication and installation. All image components must meet government, state and local requirements. All required permits and necessary state and city approvals are needed prior to fabrication and installation.			
retail visual standards			
Project:	Sunoco - Bolton St. MA		
Drawing Title:	Existing MID		
Scale:	See Dwg	Date:	March 24, 2021
Number:			
			SUMI.0110

121 BOLTON STREET
 MARLBOROUGH, MA

- [1] Groundwater and surface water. Impact upon groundwater and surface water quality and level, including estimated phosphate and nitrate loading on groundwater and surface water from septic tanks, lawn fertilizer and other activities within the development;
 - [2] Wildlife and botanical features. Material effects upon important wildlife habitats, and outstanding botanical features, including wildlife corridors, and relationships to and through adjacent properties;
 - [3] Soil and vegetation. Capability of soils, vegetative cover and proposed erosion control efforts to support proposed development without danger of erosion, silting or other instability;
 - [4] Public water supply and sewerage. Impact upon City water supply and sewerage systems as existing or proposed to be improved by the developer;
 - [5] Streets and traffic. Ability of streets providing access to the subdivision to safely provide such access, including measurement of sight distance at each intersection with proposed streets, impact of development traffic on the traffic level of service, gap acceptance analysis, and analysis of hazards owing to the limited sight distances, alignment or other characteristics of access roads; and
 - [6] Recreation, open space and scenic values. Difference in potential recreation for residents of the site and general public. Impact upon open space preservation and values, including trail connections and scenic views from outside and inside the site and across the site.
- (e) Decision. The Planning Board shall determine and indicate to the applicant which layout is preferred during the preliminary plan process or, alternatively, the Board may defer its determination until the definitive plan process when further information may be submitted or required.
- C. Approval. The Planning Board, preferably with the advice of the Board of Health, may give such preliminary plan approval, with or without modification or suggestion. Such approval does not constitute approval of the subdivision but facilitates the procedures for preparing and securing final approval of the definitive plan. One copy of the preliminary plan will be returned to the subdivider.

§ A676-10 Definitive plan.

- A. General. Any person who submits a definitive plan of a subdivision to the Planning Board for approval shall file with the Board the following:
- (1) An original drawing of the definitive plan, ~~and twelve~~ eight copies thereof, dark line on white background. The original drawing will be returned after approval or disapproval.
 - (2) A properly executed application Form C (see Appendix C) and Petition for Approval of Final Plan, Form D (see Appendix D), along with all applicable fees (see Appendix K), including the name of the record owner of the land and the time within which the subdivider or applicant agrees to complete the ways and install the public utilities in the subdivision, and approval of all plans shall be upon the condition that all ways shown thereon and public utilities required by the Board shall be completed and installed within the time so specified. The Board may decline to approve any plan unless the applicant agrees to complete the ways shown thereon and install the public utilities aforesaid within two years of the date of approval of his definitive plan. If the ways in any subdivision are not completed and the utilities aforesaid are not installed within the time so

agreed to by the applicant or so required by the Board, no such way shall thereafter be laid out, constructed, completed or opened for public use unless and until an extension request of the approval of the Definitive Subdivision Plan ~~a new application~~ is filed with and approved by the Board. Any surety securing the completion of the subdivision must be extended to run concurrently with the extension of the Definitive Subdivision Plan approval. Ways not completed or portions thereof when the approval of the Definitive Subdivision Plan has expired ~~within two years from the date of approval by the Board~~ shall thereafter be completed in accordance with the then-in-force construction standards of the Planning Board and the Department of Public Works of the City of Marlborough.

- (3) For the purpose of establishing the official submission date, said submission date shall be the date the plan was presented to the Planning Board at a regularly scheduled meeting of the Planning Board. ~~(Reserved)~~
- (4) Comparative impact analysis. Submit all information required under §-A676-10B(11) if a preliminary plan has not been filed. The applicant is encouraged to prepare and submit a preliminary plan including the comparative impact analysis during the preliminary plan process instead of the definitive plan process. If the analysis was submitted at the preliminary plan stage, the Planning Board may require the applicant, or the applicant may submit on his own initiative, further information on said analysis which is necessary for purposes of reaching a determination as to the impact of the proposal and the selection of the preferred alternative layout by the Planning Board.

B. Contents.

- (1) The definitive plan shall be prepared by a professional engineer and a professional ~~and/or~~ land surveyor registered in Massachusetts and shall be clearly and legibly drawn in black ~~India~~ ink ~~upon tracing cloth or~~ single matte three mil. mylar. The plan shall be at a scale of one inch equals 40 feet, or such other scale as the Planning Board may accept to show details clearly and adequately, and shall include plans and profiles of each individual street at a scale of one inch equals 40 feet horizontal and one inch equals four feet vertical. All elevations shall refer to the U.S. Coast and Geodetic ~~USGS~~ NAVD-1988 ~~1929~~ Datum. Sheet sizes shall be 24 inches by 36 inches including a one-inch border. There shall be an index sheet at a scale of one-inch equals 100 feet, showing the entire subdivision and adjacent streets and dimensions of the lots and streets and lot numbers.

At least one of the 24"x36" prints shall have the significant features illustrated according to the following color scheme, and shall be used for presentation purposes:

Feature	Identifying Color	Line type
Roads	Dark Gray	Solid
Streams and water bodies	Blue	Solid
Wetlands	Green	Solid
100-year floodplains	Orange	Solid
Dedicated open space and recreation areas	Light Green	Dashed
Pedestrian and bicycle paths	Brown	Solid
Subdivision and lot boundaries	Black	Solid
Utility Easements	Dark Grey	Dashed
Landscape Easements	Brown	Dashed

- (2) The definitive plan shall contain the following information:
- (a) A title stating the date, scale, bench mark, North point, name and address of the record owner of the land, name and address of petitioner and of surveyor, name of proposed subdivision of land, if any, names of proposed streets and zoning classification and zoning district lines, if any, within the locus of the plan.
 - (b) Location and ownership of abutting property as it appears in the most recent tax list.
 - (c) Land abutting any limited access or controlled access highways shall show the words, "No Access," wherever applicable.
 - (d) Major features of the land, such as existing waterways, natural drainage courses, walls, fences, buildings, large trees – 12 inches in diameter or greater @DBH, wooded areas, outcroppings and ditches, that exist on or near the site at the time of survey, and the limits of any resource areas as defined under MGL c. 131, §§ 40 and 40A, as determined by a professional wetland consultant~~botanist~~.
 - (e) Lines of existing and proposed streets, ways, lots, easements and public or common areas within the subdivision. The proposed names of proposed streets shall be shown in pencil until they have been approved by the City Engineer.
 - (f) Sufficient data to determine the location, direction and length of every street and way line, lot line and boundary line, and to establish these lines on the ground. This shall include the lengths and bearings of plan and boundary lines of all subdivision lot lines, including lot frontage on the streets, or the boundary lines of all streets and easements, and the length, radii, agents and control angles of all curves in lot lines and street lines. All angle points or intersections of tangents along the street lines shall be shown. Areas of lots with lot numbers and areas of adjoining land of applicant not included in the subdivision will be shown.
 - (g) Location of all permanent monuments properly identified as to whether existing or proposed.
 - (h) Location, names and present widths of streets or private ways bounding, approaching or within reasonable proximity of the subdivision, showing both roadway widths and rights-of-way widths.
 - (i) Indication of all easements, covenants or restrictions applying to the land and their purposes, whether or not within the subdivision.
 - (j) If the property that comprises the subdivision or any part or boundary thereof has been examined, approved and confirmed by the Massachusetts Land Court, such information shall be noted on the plan with case numbers and other pertinent references to Land Court Procedure, and the same requirement shall apply to any adjoining parcels of land.
 - (k) Suitable space to record the action of the Planning Board and the signatures of the members of the Planning Board (or officially authorized person).
 - (l) Existing profiles on the exterior lines drawn in fine black line, dotted for left and dashed for right side, and proposed profile of the center line drawn in fine black solid line of proposed streets at a horizontal scale of one inch equals 40 feet and vertical scale of one inch equals four feet or such

scale acceptable to the Planning Board. At least two benchmarks are to be shown on plans and profiles, and grade elevations at every fifty-foot station, except in vertical curves, which shall be at every twenty-five-foot station. All existing and proposed intersections shall be shown with all proposed grade elevations calculated. Elevations shall refer to [U.S. Coast and Geodetic NGVD NAVD 1988 datum-Datum](#) only. Gradient shall be shown by figures expressed in percent.

- (m) Size and location of existing and proposed water supply (mains and their appurtenances); size and location of all underground conduit and appurtenances; hydrants, sewer pipes and their appurtenances and/or sewage disposal systems; streetlight locations; storm drains and their appurtenances, and easements pertinent thereto and dimensions of gutters, including data on springs and percolation tests made, and method of carrying water to nearest watercourse or easements for drainage as needed, whether or not within the subdivision. If surface water drains will discharge onto adjacent existing streets or onto adjacent properties not owned by the petitioner or subdivider, the latter shall clearly indicate what course the discharge will take and shall present to the Board evidence from the Commissioner of Public Works or the owner of adjacent property that such discharge is permitted by public or private ownership of adjacent street or property.
- (n) Hydraulic and hydrologic calculations shall be prepared by a registered professional engineer in accordance with the requirements of the City Engineer.

[A Stormwater Management Design Report showing that measures to mitigate stormwater impacts of the proposed subdivision have been designed, and that such measures meet the requirements set forth in the Stormwater Management Standards promulgated by the DEP under the Clean Water Act, M.G.L. c. 21, Sections 26-53 and its accompanying regulations 314 CMR 9.0 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters within the Commonwealth; and 310 CMR 10.0 Wetlands Protection Act Regulations.](#)

[An approved Stormwater Management Design Report shall be used to create a Stormwater Management Plan.](#)

- (o) ~~Location and species of proposed trees and trees to be retained with trunks over four inches in diameter, measured 12 inches above the finished ground level, located within 20 feet of the street right of way line of existing or proposed streets~~[All trees over 12 inches DBH within the subdivision shall be evaluated for health and structural integrity by a Certified Arborist hired by the Applicant and approved by the Planning Board.](#)

[A report, prepared by the Certified Arborist, shall be utilized by the design engineer to minimize the number of such trees that would be removed in order to facilitate the design of the subdivision. The report shall be presented to the Planning Board when the Definitive Subdivision Plan is presented to the Planning Board.](#)

[This information shall be used to create a Tree Preservation and Protection Plan.](#)

- (p) Cross sections typical of each street or roadway to be constructed.
- (q) Location of proposed sidewalks.

- (r) In tabular form, as follows, for each sheet of the subdivision plans, as submitted:
- [1] The area which is being subdivided on each sheet.
- [2] The total area of lots included on each sheet.
- [3] The area dedicated for street purposes, drainage, sewer or utility easements on each sheet.
- [4] The areas reserved for parks, schools, etc. on each sheet.

SUBDIVISION NAME: _____

SHEET NO. _____

(1) Total area of original tract shown on this plan equals _____.

(a) Area in lots Nos. 1, 2, 3, etc. equals _____.

(b) Area in streets A-B-C equals _____.

(c) Area in easements equals _____.

(d) Area reserved for parks, schools, etc. equals _____.

Total area of subdivision equals _____.

[Should equal (1) above.]

(2) Streets:

A Street Station ____ to station ____ equals _____.

B Street Station ____ to station ____ equals _____.

C Street Station ____ to station ____ equals _____.

Total area of streets equals _____.

[Should equal (1)(b) above.]

(3) Easements:

Sewer Station ____ to station ____ equals _____.

Drainage Station ____ to station ____ equals _____.

Utility Station ____ to station ____ equals _____.

Total area of easements equals _____.

[Should equal (1)(c) above.]

(4) Other Areas:

Park area (locate) _____ equals _____.

School area (locate) _____ equals _____.

Other (define and locate) _____ equals _____.

Total remaining area equals _____.

[Should equal (1)(d) above.]

- (s) An Erosion Control Plan showing that construction erosion and sediment controls have been designed to ensure that no off-site impacts to abutting properties or wetland resource areas will result during construction of the project, and that such controls have been designed to the satisfaction of the City Engineer and, if applicable, the NPDES General Permit for Storm Water Discharges from Construction Activities and/or the Wetlands Protection Act.
- (3) A grading plan with a maximum contour interval of two-feet~~two-foot contour intervals~~ depicting existing and proposed topographic conditions for the entire subdivision, including on- and off-site easements. Elevations on this plan shall refer to U.S. Coast and Geodetic NGVDNAVD 1988 Datum. The City shall not accept any design or layouts unless based on an actual on-the-ground survey.
- (4) A written maintenance plan for the subdivision right-of-ways, easements and roads for the time prior to acceptance by the City. The maintenance plan should include provision for the maintenance of road pavement, sidewalks, water and sanitary sewer, stormwater management, soil settling problems, street sweeping, snowplowing and clearing of snow from sidewalks and shared use paths, maintaining vegetative stabilization of all right-of-ways and easements, erosion controls, fall leaf clean up, catch basin cleaning and drainage system cleaning, watering and maintenance of street trees and other provisions as determined to be necessary by the Planning Board.
- C. Review by Board of Health as to suitability of the land. At the time of filing of the definitive plan, the subdivider shall also file with the Board of Health two ~~copies~~contact prints of the definitive plan, dark line on white background. The Board of Health shall, within 45 days after filing of the plan, report to the Planning Board in writing approval or disapproval of said plan. If the Board of Health disapproves said plan, it shall make specific findings as to which, if any, of the lots shown on such plan cannot be used for building sites without injury to the public health, and include such specific findings and the reasons therefor in such report, and where possible shall make recommendations for the adjustment thereof. Every lot shall be provided with a sewerage system or sewer connection satisfactory to the Board of Health and/or the Commissioner of Public Works.
- D. Review by other City officials.
- (1) The Clerk of the Planning Board will transmit copies of the definitive plan to City officials other than the Board of Health as follows:
- (2) One copy each to the City Solicitor for review of easement and agreements, the Commissioner of Public Works, the City Engineer, the Fire-Chief, Conservation Officer, the Postmaster, Historical Commissoon-Chair, and other city departments or agencies that the Planning Board deems necessary~~the City Planner, the Fire Chief and the Conservation Officer.~~
- (3) Before the definitive plan is approved, the Planning Board will obtain written statements from the above officials that the proposed improvements are laid out to their satisfaction in the following

respects (or, if 35 days have elapsed since transmittal of the definitive plan by the Clerk of the Planning Board to the officials without such written approval, approval will be assumed):

- (a) The City Engineer as to street names and the City Solicitor as to the form of easements, covenants and performance guarantees.
- (b) The Commissioner of Public Works as to the design of the street system, location of easements, monuments and drainage system.
- (c) The Commissioner of Public Works as to the design of the water system and, if applicable, the sewage system.
- (d) ~~(Reserved)~~ [The Postmaster as to the location of the mailboxes.](#)
- (e) [The Historical Commission as to Historic Cultural Assets, Sites, and Structures.](#)

E. Soil survey. Where appropriate, the Planning Board may require soil surveys to establish the suitability of the land for the proposed storm and sanitary drainage installations.

F. Public hearing.

- (1) Before taking any action to approve, modify and approve, or disapprove a definitive plan, the Planning Board shall hold a hearing at which parties in interest shall have an opportunity to be heard, in person or by agent or attorney. Notice of the time and place of such hearing and the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the City once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing, or if there is no such newspaper in such City, then by posting such notice in a conspicuous place in the City Hall for a period of not less than 14 days before the day of such hearing. Notice shall also be provided to property owners within 500 feet of the subdivision.
- (2) The procedure that the Planning Board will follow with regards to approval, disapproval or modification of the final plan submitted by the petitioner will be that as set forth in MGL c. 41, § 81U, as amended. In summary, the Board, after receiving the final plan and profiles, will review the same to determine whether they are in compliance with its adopted rules and regulations, zoning ordinances, general ordinances, departmental regulations of the Commissioner of Public Works and the Board of Health, and other laws pertaining thereto.
- (3) Before final approval of the plan, the subdivider or petitioner shall comply with all reasonable regulations and rules of the Commissioner of Public Works and the Board of Health. Specific reference is made to the specifications for septic tanks which shall conform with the rules and regulations of the Board of Health.
- (4) Before final approval of the plan, the subdivider or petitioner shall see to it that lots in a definitive or final plan be in conformity with the existing zoning ordinances, and failure of the lots to so comply will be adequate grounds for disapproval of the final or definitive plan. See MGL c. 41, § 81Q, and amendments thereto. The Board may, as a condition of granting a permit under §-81Y, impose reasonable requirements designed to promote the health, convenience, safety and general welfare of the community and to benefit the City. In such event, the Board shall endorse such conditions on the plan to which they relate, or set forth a separate instrument attached thereto to

which reference is made on such plan and which shall, for the purpose of the Subdivision Control Law, be deemed to be a part of the plan.

- (5) Before final approval of a definitive plan of subdivision, the subdivider shall submit a municipal lien certificate, indicating that all taxes, assessments and charges have been paid in full.

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

- (1) Approval with bonds or surety. The subdivider shall either file a proper bond or a deposit of money or negotiable securities in an amount determined by the Planning Board to be sufficient to cover the cost of all or any part of the improvements specified in Article V not covered by a covenant under Subsection G(2) hereof. Such bond or security, if filed or deposited, shall be approved as to form and manner of execution by the City Solicitor and as to sureties by the City Treasurer and shall be contingent on the completion of such improvements within two years of the date of the bond. Once the bond or surety is in place, the lots for which legal frontage has been provided for may be released from the Covenant by the Planning Board upon request of the subdivider and building permits may be issued by Inspectional Services.

- (2) Approval with covenant.

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

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

- (c) The developer may request a release of conditions for lots where the required improvements have been completed for that section of roadway beginning at any intersection with a City road and abutting lots up through the last lot to be released. Lots may only be released if they abut roadway the Planning Board deems functionally completed. In the absence of financial performance guarantees, adequate covenants will be held to ensure completion of the project, including record plans, street acceptance plans, site inspections, and legal work. In addition, a covenant on one lot which can be built on will be held until either a) the City has accepted all of the Definitive Plan's roadways as City streets, or b) said covenant has been exchanged in lieu of the cash value (as determined by the Planning Board) of the lot. Covenant shall be inscribed on the Definitive Plan or in a separate document referred to on the Plan and delivered to the Planning Board.

H. Adjustment of bond or surety. If the value of the work having been completed for construction of the subdivision is equal to or greater than 10% of the surety being held to complete the subdivision, the Developer may request that the~~The~~ penal sum of any such bond or the amount of any deposit held under Subsection G(1) above may from time to time be reduced by the Planning Board and the obligations of the parties thereto released by said Board in whole or in part to a minimum of 10% of the total costs to complete the required improvements specified in

Article V. This minimum remaining 10% of bond or deposit shall be held by the City for one year after completion of construction and installation of services or until the streets are accepted by the City, whichever comes first. See Appendix K and Form H for fee structure and application form.

Similarly, the penal sum of any such bond or the amount of any deposit held under Subsection G(41) above may be increased by the Planning Board.

Any reduction ~~of~~ or increase hereunder shall be authorized pursuant to a recalculation to be done by the DPW's Engineering Division, of the amount then remaining in the applicable bond or deposit, said recalculation to be done on an annual basis for the costs of the work within a subdivision remaining to be completed. Said costs shall be the costs necessary to complete the required improvements as determined by the ~~DPE's~~ DPW - Engineering Division at the time of each such recalculation.

Should the Planning Board determine that the surety amount being held to complete the subdivision should change, the Planning Board shall notify the City Treasurer and the Developer of their decision. The Planning Board shall notify the surety of the Planning Board's actions and request an acknowledgement of the change in the amount of surety, if applicable.

~~(amended 5-1-15)~~

- H^{1/4} Deeding of developer's legal interests to City. Immediately upon providing a bond or other security to construct an approved definitive subdivision plan, the developer shall deed to the City the subdivision road(s) as well as all municipal utility easements, if any. If any modifications to the approved definitive subdivision plan result in a re-location of any municipal utility, the developer shall, immediately upon installation of the re-located municipal utility, deed to the ~~City~~ City the easement corresponding to the re-located municipal utility. The developer is also required to provide the City with a certificate of liability insurance, naming the City as an additional insured relative to the subdivision road(s) as well as all municipal utility easements, if any, to be deeded to the City. ~~(amended 5-1-15)~~
- H^{1/2}. Required remedial action after lapse of time. If more than two years has elapsed from the time that the developer has installed the base course of the subdivision road pavement to the time that the developer has ~~scheduled to pave~~ installed the top course., the planning Board may require that the developer take such remedial action as may be recommended to the Board by the DPW's Engineering Division, including but not limited to patching and crack sealing the pavement, or in more acute situations, reclaiming ~~and~~ the reconstructing the subdivision road. The cost of any such remedial action would be added to the annual recalculation, to be done by the DPW's Engineering Division pursuant to §A676- 10.0. If a developer fails to take remedial action required by the Board, the Board is authorized to rescind or modify the definitive subdivision approval. ~~(amended 5-1-15)~~
- I. Release of performance guarantee upon completion of construction.
- (1) Upon the completion of all improvements required under Article V, security for the performance of which was given by bond, deposit or covenant, or upon the performance of any covenant with respect to any lot, the applicant may send by registered mail, two copies to the City Clerk and one copy each to the DPW Commissioner, the City Engineer, the Board of Health, and the City Solicitor, a written statement in duplicate that the said construction ~~or~~ and installation of services in connection with which such bond, deposit or covenant has been given has been completed in

accordance with the requirements contained under Article V., ~~such~~ Such statement ~~to must~~ contain the address of the applicant, ~~and~~ The City Clerk shall forthwith furnish a copy of said statement to the Planning Board.

Within 15 days of receipt of such statement, the following shall respond regarding compliance with the Board's Subdivision Rules and Regulations in place at the time the Board approved the definitive subdivision plan and may also recommend the termination of the Maintenance Period:

- (a) The Commissioner of Public Works shall respond as to the construction of all ways, the installation of water, sewer, drainage utilities, and sidewalks, installation of monuments, street signs, lights, gutters, and curbs, required grading and lot drainage, and planting and whether the condition of the subdivision road(s) and subdivision infrastructure are acceptable.
- (b) The City Engineer shall respond as to the construction of the Stormwater Management facilities.
- (c) The Board of Health shall respond as to the installation of sewage disposal facilities, if applicable.
- (d) The City Solicitor shall respond as to receipt of executed deeds for the roadway layout and municipal easements and as to the Developer's Certificate of Title.

(2) After receiving favorable written statements of compliance from the DPW Commissioner, the City Engineer, the Board of Health and the City Solicitor, and, if the Planning Board determines that said construction and installation of services has been satisfactorily completed and the Maintenance Period may be terminated, it shall notify the:

- (a) Developer that they should petition the City Council for Acceptance of the streets and the associated municipal easements.
- (b) City Council, when requested, regarding its recommendation for Acceptance of the subdivision streets and the associated municipal easements including in such recommendation the expiration date of the developer's responsibility for maintenance of said way or portion thereof and that said way should be laid out as a public way with its maintenance the responsibility of the City.
- (c) City Treasurer, Surety, the Developer, and the City Clerk~~If the Planning Board determines that said construction or installation has been completed, it shall notify the City Treasurer in writing that it releases the interest of the City in such bond or deposit and that such bond or deposit shall be returned to the person or persons who furnished the same, or in the case of covenant, it shall issue a written release of the covenant suitable for recording.~~

~~However, 10% of the total costs to complete the required improvements specified in Article V shall be held by the City for one year after completion of construction or until the streets are accepted by the City, whichever comes first. The total costs shall be those costs necessary to complete the required improvements at the time release is applied for.~~

- ~~(2) — Release of performance guarantee. The Planning Board shall request the Commissioner of Public Works, approximately 60 days before the expiration of the year, to make an inspection of said street or way or portion thereof to determine whether or not defects have developed therein, and to make his recommendation to the Board as to whether or not it should recommend same to the~~

City Council for the laying out of said street or way or portion thereof as a public way. Such recommendation may be in the affirmative if the Commissioner has determined that:

- a) ~~the subdivision road(s) and subdivision infrastructure were built in full compliance with the Board's Subdivision Rules and Regulations in place at the time the Board approved the definitive subdivision plan; and~~
- b) ~~the condition of the subdivision road(s) and subdivision infrastructure was acceptable at the end of the one year maintenance period.~~

~~If the recommendation is in the affirmative, the Board shall so recommend to the City Council forthwith, including in such recommendation, notification that the year for which the developer is responsible for the maintenance of said way or portion thereof will expire on a certain date and said way should be laid out as a public way and the maintenance of same to become the responsibility of the City. (amended 5-1-15)~~

- (3) ~~Upon the expiration of the year for which the developer is responsible for maintenance of said way, and said developer has complied with all the requirements of the Planning Board Rules and Regulations in accordance with an inspection report of said way from the Commissioner of Public Works, and the Board has recommended to the City Council that said way should be laid out as a public way, any monies held by said Board for the maintenance of said way shall be returned forthwith to the developer.~~
- (4) ~~Prior to releasing the City's interest in a performance bond or deposit or covenant, the Planning Board shall receive from the applicant the following written statements of approval or 15 days shall elapse after the request for said approval without action:~~
 - (a) ~~From the Commissioner of Public Works as to construction of all ways and sidewalks, installation of monuments, street signs, lights, gutters, and curbs, required grading and drainage, and planting and seeding.~~
 - (b) ~~From the Board of Health as to the installation of sewage disposal facilities, if applicable, and adequate lot drainage.~~
 - (c) ~~From the Commissioner of Public Works as to construction and installation of water and sewer facilities.~~
- (53) If the Planning Board determines that said construction ~~or~~ and installation of services has not been completed, or does not receive the above written statements of approval compliance recommending approval, or the deeds for all land and easements required have not been given to the City, it shall specify to the applicant, in writing, by registered mail, the details wherein said construction and installation fail to comply with requirements contained ~~under Article V~~ within these Rules and Regulations.

The applicant shall have 30 days after receipt of such notice to correct all problems mentioned in the above. Failure of the applicant to finish all the necessary work within said 30 days shall cause the Planning Board to draw upon the bond or deposit of money to complete the work or make necessary repairs.

(4) In the event~~Upon failure of~~ the Planning Board does not make a determination regarding the status of construction and installation of service to act on such application within 45 days after the receipt of the application by the City Clerk of the applicant's written statement, all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned and any such covenant shall become void. In the event that said forty-five-day period expires without such specification or without the release and return of the deposit or release of the covenant as aforesaid, the City Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

(5) Notwithstanding anything above, in no instance shall bonding or covenants be released for the final road course and sidewalks until said work has withstood one full winter season. Partial or final release for this work may be requested of the Planning Board no sooner than April 1st of the calendar year subsequent to completion of way and walks.

J. Certificate of approval. The action of the Planning Board in respect to such plan shall be by vote, copies of which shall be certified and filed with the City Clerk and sent by delivery or registered mail to the applicant. If the Planning Board modifies or disapproves such plan, it shall state in its vote the reasons for its action and shall rescind such disapproval when the plan has been amended to conform to the rules, regulations and recommendations of the Planning Board. Final approval, if granted, shall be subject to the construction specifications contained herein and shall be endorsed on the original drawing of the definitive plan by the signatures of a majority of the Planning Board (or by the signature of the person officially authorized by the Planning Board) but not until the statutory twenty-day appeal period has elapsed following the filing of the certificate of the action of the Planning Board with the City Clerk and said Clerk has notified the Planning Board that no appeal has been filed. After the definitive plan has been approved and endorsed, the Planning Board shall return the original to the applicant.

(1) The Planning Board may agree to an extension of the minimum time normally required for action following submission of a definitive plan and action thereon, upon the written request of the applicant.

(2) Approval of the definitive plan does not constitute the laying out or acceptance by the City of street(s) within a subdivision.

K. Decision. After the public hearing, the Board in due course will approve, modify and approve, or disapprove the definitive subdivision plan submitted. Criteria for action by the Board shall be the following:

(1) Completeness and technical adequacy of all submissions;

(2) Determination that development at this location does not entail unwarranted hazard to safety, health and convenience of future residents of the development or of others because of possible natural disasters, traffic hazard, or other environmental degradation;

(3) Conformity with the requirements of Article IV;

(4) Determination and selection of preferred plan, based upon alternatives presented in the comprehensive impact analysis (where submitted), that the subdivision will not cause substantial and irreversible damage to the environment, which damage could be avoided or ameliorated through an alternative development plan; that all adverse impacts upon water, sewer and street