

1A

July 25, 2022

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

1. Draft Meeting Minutes

A. June 27, 2022

On a motion by Mr. LaVenture, seconded by Mr. Elder, the Board voted to accept and file the June 27, 2022, meeting minutes. Yea: Elder, Fay, Fowler, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

2. Chair's Business

A. Boundary Street-Scenic Road, hazardous tree removal, correspondence from Chris White

Mr. LaVenture read the July 7, 2022, correspondence from Chris White into the record.

On a motion by Mr. Elder, seconded by Mr. Russ, the board voted to accept and file the correspondence. Yea: Elder, Fay, Fowler, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

3. Approval Not Required

A. Hager Street, Parmenter Road, Boston Post Road

Map 62, Parcel 27 (0 Boston Post Road East), Marlborough MA 01752

- i. Form A
- ii. ANR, Plan of Land Dated: 6/3/22
- iii. Engineering review, Thomas DiPersio, City Engineer

Mr. LaVenture read the July 20, 2022, correspondence from Thomas DiPersio into the record.

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to accept and file the correspondence and endorse the below referenced Approval Not Required, Plan of Land dated June 3, 2022, as Approval Not Required under the Subdivision Control Law. Yea: Elder, Fay, Fowler, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

Applicant: South Coast Advisors, LLC (2 Monroe Parkway, Wareham, MA 02571)

Land Surveyor: **Cliff Rober, Engineering Design Consultants, Inc.**
(32 Turnpike Road, Southborough, MA 01772)

Deed Reference: Middlesex South registry of Deeds

Book: 68980 Page: 591

Book: 68015 Page: 229

Location: Hager Street, Marlborough, MA, Parmenter Road, Framingham, MA,
Boston Post Road E (Marlborough, MA)

(Marlborough) Map: 62 Parcel: 27

(Marlborough) Map: 62 Parcel: 27A

(Framingham) 001-02-7708

(Framingham) 001-03-6067

(Framingham) 001-03-8024

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B. 351 Concord Road, Map 46, Parcel 36, Marlborough MA 01752

- i. Form A
- ii. ANR, Plan of Land Dated: 6/14/22
- iii. Engineering review, Thomas DiPersio, City Engineer
Mr. LaVenture read the July 20, 2022, correspondence from Thomas DiPersio into the record.

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to accept and file the correspondence and endorse the below referenced Plan of Land dated June 14, 2022, as Approval Not Required under the Subdivision Control Law. Yea: Elder, Fay, Fowler, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

Applicant: 351 Concord Road Nominee Trust (351 Concord Road, Marlborough, MA 01752)
Land Surveyor: Robert J. Parente, P.L.S. (328 Desimone Drive, Marlborough, MA 01752)
Deed Reference: Middlesex South registry of Deeds
 Book: 51973 Page: 488
Location: 351 Concord Road, Marlborough, MA 01752
 Map: 46 Parcel: 36

4. Public Hearings (None)

5. Subdivision Progress Reports

A. 342 Sudbury Street Update

Mr. LaVenture read the July 7, 2022, correspondence from Kevin O'Malley into the record.

On a motion by Mr. Elder, seconded by Mr. Russ, the board voted to accept and file the correspondence. Yea: Elder, Fay, Fowler, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

6. Preliminary/Open Space/Limited Development Subdivision

A. Beauchemin Estates, Preliminary Open Space Concept Plan

Map 28, Parcel 18B, 689 Pleasant Street, Marlborough, MA 01752

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

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

Deed Reference: Book: 45210 Page: 560

- i. Final Draft – Certificate of Vote, Open Space Development Special Permit - **VOTE**

Mr. Fay went over Project Findings 7.a, within the special permit to familiarize newer Board members with the objectives and explained how the developer needs to meet a majority of these objectives and went over the developers next step within the submission process, which is to submit the definitive plan.

Dr. Fenby went over the objectives and the Board discussed if the open space development met these objectives:

- 1. Encouraging a less sprawling form of development that would consume excessive open space, cause land erosion, and destroy attractive natural features of the land.
 - The Board determined the open space development is compact and a majority of the subdivision is situated away from the wetlands.
- 2. Allowing for greater flexibility and creativity in the design of residential subdivisions.
 - The Board determined this also falls under the compactness and the developer's willingness to

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- provide barriers between abutting properties.
3. Encouraging the permanent preservation of natural resources and open space.
 - The Board determined this is part of the agreement.
 4. Protecting scenic vistas.
 - The Board determined this objective does not apply to this subdivision.
 5. Allowing for more economical construction and maintenance of streets and utilities.
 - The Board determined the developer met this objective.
 6. Encouraging the production of more affordable and diverse housing types.
 - The Board determined these homes will have a price point flexibility.
 7. Allowing for more economical construction and maintenance of recreational amenities through common ownership.
 - The Board determined this objective does not apply to this subdivision.

The Board reviewed chapter 650-28 of the City of Marlborough Code.

(8) Findings. The Planning Board may grant a special permit only if the Planning Board finds that:

- (a) The development meets the objectives of an open space development listed in Subsection B.
- (b) The development meets the design criteria of an open space development listed in Subsection H(7)(b).
- (c) The development will not have a substantial or undue adverse effect upon adjacent property or the character of the neighborhood.

On a motion by Mr. Fay, seconded by Mr. Elder, the Board voted to approve the special permit, to endorse the draft decision, and to confirm the findings therein. Yea: Elder, Fay, Fowler, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

B. Informal Discussion

547 Stow Road Sketch Plan of Land Open Space Development

Name of Engineer: Vito Colonna, Connorstone Engineering (59 Granite Lane, Chester, NH 03036)

i. Correspondence from Thomas DiPersio, City Engineer

Mr. LaVenture read the July 20, 2022, correspondence from Thomas DiPersio into the record.

On a motion by Mr. Elder, seconded by Mr. LaVenture, the board voted to accept and file the correspondence.

Yea: Elder, Fay, Fowler, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

Vito Colonna, Connorstone Engineering (59 Granite Lane, Chester, NH 03036) spoke on behalf of the applicant, Kendall Homes. Mr. Colonna explained they are looking to do a three Lot open space development with two existing ANR Lots along Stow Road. A conventional plan was created to demonstrate the number of Lots which could be developed, but was not provided for display. Mr. Colonna explained there is a regulation regarding street access which typically requires the road width to be 22-feet, and with this portion of Stow Road being 17-feet wide, Mr. Colonna asked for the Board's opinion on whether or not they should move forward with this open space subdivision.

Dr. Fenby asked for a locus. Mr. Colonna displayed the GIS map of the parcel, and the Board discussed the positioning of the proposed open space 3.4-acre parcel which includes the detention basin. Mr. Colonna went over the option to put an easement around the detention basin.

Mr. Fay asked if the existing trail cuts through Lots 1 or 2. Mr. Colonna explained he walked the site and there is no evidence of this trail being used nor does it appear to exist anymore.

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Mr. Colonna confirmed the sight lines are over 300 feet.

Dr. Fenby asked Mr. Colonna to flag the property so the Board could walk through and assess the traffic patterns.

Dr. Fenby asked for Engineering to comment on the following:

- Is there private ownership of portions of Stow Road?
- Confirmation of Stow Road being repaved.
- Is there extra room in the two ANR Lots along Stow Road to do a taking and widen the road?

The Board decided they would provide feedback to Mr. Colonna at the August 22, 2022, meeting.

7. Definitive Subdivision

A. Colchester Drive, Definitive Subdivision Plan

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

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

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

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

Deed Reference: Book: 9742 Page: 148

i. Request for extension on decision

ii. Revised plans Dated: July 21, 2022

iii. Emerald Acres, Arborist Letter

On a motion by Dr. Fenby, seconded by Mr. Elder, the Board voted to grant the extension for the decision on the definitive subdivision submission for Colchester Drive (0 Stevens Street) to September 12, 2022. Yea: Fay, Elder, Flower, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

Mr. LaVenture read the June 6, 2022, correspondence from Emerald Acres into the record. – See attached.

On a motion by Mr. Fay, second by Mr. Elder, the board voted to accept and file the correspondence. Yea: Elder, Fay, Fowler, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

iv. Engineering review letter from Thomas DiPersio, WSP response to comments

Mr. LaVenture read the summary portion of the May 3, 2022, correspondence from Thomas DiPersio into the record. – See attached.

Jason Lavoie, WSP, (100 Summer Street, 13th Floor, Boston, MA 02110) went over the changes on the plan. The name changed from Colchester Drive to Pettes Drive, which is the next name on the Veterans list. The Plan went from 6 Lots to 5 Lots due to the lot shape rectangle requirement in the zoning by-law. Miscellaneous typos were corrected, and additional details were provided throughout the Plan.

Mr. Russ asked, if the roadway layout change. Mr. Lavoie explained, no, it shifted slightly to the left.

Dr. Fenby and Mr. Fay questioned if these changes represent a major change and if it would require re-opening the public hearing. The Board discussed and agreed they did not feel an additional public hearing would be required but wanted to confirmation from the Legal Department. Dr. Fenby explained most of the changes are engineering details, per the request of Mr. DiPersio in his engineering review letter.

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On a motion by Mr. LaVenture, seconded by Mr. Russ, the Board voted to refer the question “Does the Legal Department disagree with the Board, on the determination that the revised plans are not a substantial deviation and would not require an additional public hearing?” to the Legal Department for response. Yea: Elder, Fay, Fowler, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

The Board discussed the options of waivers that would benefit the City and the developer.

On a motion by Mr. Elder, seconded Mr. Russ, the Board voted to refer the Pettes Drive Definitive Subdivision to Engineering for review. Yea: Elder, Fay, Fowler, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

8. Signs

A. 141 Boston Post Road West (Raising Canes)

- i. Application
- ii. Denial letter, William Paynton, Building Inspector
- iii. Brand book – proposed sign locations
- iv. Correspondence from Michael Brangwynne, Fletcher Tilton

Mr. LaVenture read specific portions of the July 22, 2022, correspondence from Michael Brangwynne into the record. – See attached.

Michael Brangwynne, Fletcher Tilton, (12 Post Office Square, 6th Floor, Boston, MA 02109) and Adam Caracci, Raising Cane’s Chicken Fingers (6800 Bishop Road, Plano, TX 75024) spoke on behalf of this sign variance application. Mr. Caracci went over the history of Raising Canes.

Mr. Brangwynne went over details within the Raising Canes brand book and explained two of the original signs were denied and he explained they changed these two signs to be artistic murals and is looking for the Board’s support in the determination that these murals are not considered flat wall signage. He argued if the Board agrees that the artistic murals are not considered signs their total wall signage would be 128 sq ft.

Mr. Brangwynne went over the “ONE LOVE” canopy sign that was denied by the building department. He argued this canopy sign would been approved if the ONE LOVE language was printed on a traditional awning/canopy. The sign would add 17.5 sq ft to the flat wall signage, keeping it under the 150 sq ft maximum.

Mr. LaVenture asked if any of the images were copy righted, trademarked or legally owned. Mr. Caracci, said the “One Love” is not, but could not confirm the other two murals, but explained he did not believe they were. Mr. Brangwynne argued the murals might have some internal significance to the founders of the restaurant but to the average passerby it doesn’t really have a relation to the business.

The Board members discussed their opinions on the three signs, some members were for, and some were against.

On a motion by Mr. Fay, seconded by Mr. Elder, the Board voted on the approval of the two artistic murals. Yea: Elder, Fay and Russ. Nay: Fowler, LaVenture and Fenby. Motion denied (tie) 3-3.

On a motion by Mr. Fay, seconded by Mr. Elder the Board voted to approve the variance for the ONE LOVE sign due to its reasonable request for the deviation of design. Yea: Elder, Fay, Russ, and Fenby. Nay: Fowler and LaVenture. Motion carried. 4-2.

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Mr. Brangwynne discussed the option to consider the two murals as flat wall signs and request a variance for additional square feet of flat wall signage. The smaller dog sign is approximately 32 sq ft and the large dog sign is 68 sq ft.

Mr. Fay reminded Mr. Caracci to not leave their welcome banner up for an unnecessary period of time.

The Board and the applicant discussed the options of approving one of the two signs totaling roughly 68 sq ft.

On a motion by Mr. Elder, seconded by Mr. Fay, the Board voted on the approval of the total square footage of wall signs to 210 square feet +/- due to the set back and location of the restaurant. Yea: Elder, Fay and Russ. Nay: Fowler, LaVenture and Fenby. Motion denied (tie) 3-3.

Mr. Fay asked for an alternative to the heart dog sign.

On a motion by Mr. Elder, seconded by Mr. Russ, the Board voted to table the consideration of the two signs. Yea: Elder, Fay, Fowler, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

9. Correspondence (None)

10. Unfinished Business

A. Working Group

- i. Correspondence from Donald Rider, a previous City Solicitor for the City of Marlborough
Mr. LaVenture summarized the May 1, 2014, correspondence from Donald Rider. – See attached.
- ii. Correspondence from Jason Grossfield, City Solicitor
Mr. LaVenture summarized the July 5, 2022, correspondence from Jason Grossfield.

Mr. LaVenture updated the Board on discussions the Working Group had. If a Subdivision/Open Space application is not complete the only options are to request the applicant to request an extension, or deny it for its incompleteness. The Board planned to discuss this further with Mr. Grossfield when he attends the August 22, 2022, meeting.

Mr. LaVenture updated the Board on the items the working group will be working through:

1. Checklists
2. Subdivision submission procedure and coversheets
3. Decision making criteria
4. Acceptance procedures
5. Process flowcharts
6. Boiler plates

11. Calendar Updates

- A. Colchester Drive, Definitive Subdivision Plan, 135 days is Sunday July 24, 2022. One day extension granted, vote by **July 25, 2022**, meeting.
- B. Beauchemin Estates, Preliminary Open Space Concept Plan, 90 Days is August 7, 2022, vote on Special Permit by **July 25, 2022**, meeting.

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

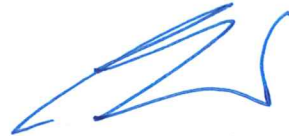
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The Board discussed specifications within the special permit process of an open space development.

Mr. Elder signed the ANR plans for 351 Concord Road and 0 Boston Post Road East.

On a motion by Mr. Fowler, seconded by Mr. Elder, the Board voted to adjourn the meeting. Yea: Elder, Fay, Fowler, LaVenture, Russ, and Fenby. Nay: 0. Motion carried. 6-0.

Respectfully submitted,



George LaVenture/Clerk

/kmm



88 Nason Street
Maynard, MA 01754
(978) 897-0011
1-800-498-8873
mail@emeraldacresinc.com

June 6, 2022

Dear City of Marlborough,

I have visited the site and confirm the following findings:

- All trees greater than eighteen inches have been identified and correspond to the drawings being submitted to the City.
- All trees noted to be removed (REM) in the roadway limit of work correspond to the drawings being submitted to the City.
- Roadway and retention area installations are clearly shown, located and properly titled.
- The boundary area (limit of work) is clearly shown, located and property titled.
- The limit of work will be delineated with required tree protection barriers per the mandated regulations.
- There is no high density housing requiring greater land clearing.
- The tree protection zone includes all trees outside the new roadway and staging limit of work area.
- The tree protection zone is clearly noted on the drawings submitted to the City.

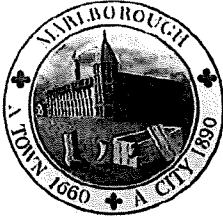
It is my opinion that the proposed new road, staging area and retention areas limit of work provide for the maximum number of significant trees to be left undisturbed.

Immediately prior and after construction commences, a professional will be onsite. The professional shall oversee the installation of the tree protection barrier and any required maintenance or construction at or around the limit of work.

Regards,

Rebecca Mola, MCA #2170

Emerald Acres, Inc.



City of Marlborough
Department of Public Works

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

SEAN M. DIVOLL, P.E.
COMMISSIONER

May 3, 2022

Marlborough Planning Board

RE: Definitive Subdivision Plan
"Colchester Drive", Stevens Street

Chair Fenby and Board Members,

The Engineering Division has conducted a review of the Definitive Subdivision Plans entitled:

"Definitive Plan for Colchester Drive,
Map 44, Lot 148,
Marlborough, Massachusetts"
Dated: March 11, 2022
Applicant: Charles Bourque
Owner: James & Rebecca Chaousis
Prepared by: WSP USA, Jason Lavoie, PE

We have also reviewed supporting documents including "Colchester Drive Subdivision Stormwater & Erosion Control Report" dated March 11, 2022 and "Colchester Drive Subdivision Operation & Maintenance Plan" (undated), by WSP. Our comments on the plans and supporting documents are listed below.

Summary

The existing property consists of a total of approximately 20.1 acres. The property is bisected by a 30 foot wide City of Marlborough sewer taking, dividing it into two parcels. The subject of this subdivision is a 6.1 acre parcel with approximately 233 feet of frontage on Stevens Street. The remaining parcel is approximately 14 acres with a small amount of frontage to the north on Stevens Street. In 2020 the Planning Board endorsed an ANR plan which created two frontage lots from the northern part of the property on Stevens Street. The subdivision would create six building lots on a five-hundred foot roadway, which has been designed as a "Lane" in accordance with the Planning Board Regulations.

General comments

- 1 "Colchester Drive" cannot be used for the proposed street name. The next name from the list of deceased Marlborough veterans is "Pettes Drive".
- 2 The Planning Board signature block should contain seven lines.
- 3 The Lot Shape Rectangles shown within the proposed lots are incorrect and need to be revised. The proposed lot lines will have to be adjusted to accommodate the correct rectangles. This could have a significant impact on the lot layout.

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

CHRISTOPHER S. LAFRENIERE
ASST. COMMISSIONER, UTILITIES

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

- 4 A Tree Preservation and Protection Plan has not been provided, in accordance with 676-22 of the Planning Board Regulations.

Sheet C-001 Lotting Plan

- 5 As noted above the lot shape Rectangles are incorrect.
- 6 Proposed Lot 4 is not labeled.
- 7 Roadway stationing should be provided, showing dimensions to the radius point of the cul-de-sac and the overall length of the road.
- 8 The area of the proposed easements should be provided.
- 9 Proposed easements should be bounded at the angle points.
- 10 The drainage easement on Lot 4 is shown as 20 feet wide. It should be revised to 30 feet wide.
- 11 Proposed "Lot B" should be called "Parcel B", as it is not a buildable lot.
- 12 "Proposed Zoning Easement" shown in the legend is not applicable and should be removed.

Sheet C-002 Grading and Drainage Plan

- 13 Proposed houses and driveways, and lot grading back to the house line, should be shown schematically on each lot.
- 14 The proposed grading does not reflect that the roadway will have curbing. This should be revised and the curbing should be called out with the material indicated.
- 15 The limits of sidewalk disturbance on Stevens Street should be shown. Wheelchair ramps should be shown as well as a crosswalk across the new roadway opening. The wheelchair ramps should be constructed of cement concrete. Wheelchair ramps should be provided at the opening of the cul-de-sac as well.
- 16 The roadway stationing should be shown, with the location of the high point called out.
- 17 The construction material for the 5.5' sidewalk should be indicated.
- 18 Details for the "proposed curb inlet" should be provided. This structure may not be allowed.
- 19 The proposed infiltration basin 1 is designed such that the only outlet is an emergency overflow directed to the Stevens Street sidewalk. A primary overflow structure should be added, that is piped directly into the Stevens Street drainage system.
- 20 The proposed retaining wall types and elevations should be shown. The limits and location of the proposed wall on Lot 1 are not clear. The wall should not be on (future) City property.
- 21 Proposed tree plantings should be shown in accordance with the regulations. Plantings for screening should be shown around the infiltration basins.
- 22 Exposed ledge is shown partially in proposed infiltration basin. Test pits should be conducted in the areas of both basins, to determine the extent and depth of ledge under the bottom of the basins. The data should be added to the plans.

Sheet C-003 Utility Plan & Profile

- 23 There is no gas main shown. Is it proposed?
- 24 The proposed size and type of water main should be indicated.
- 25 A hydrant should be provided at the end of the water main at the cul-de-sac.
- 26 The proposed type of sewer main should be indicated, as well as the length of each proposed segment.
- 27 The proposed type of drainage pipe should be indicated, as well as the length and slope of each proposed segment.
- 28 The proposed water and sewer laterals to each lot should be shown.
- 29 The proposed street lights are shown on the curb line. They should be moved to within the grass strip.
- 30 The proposed underground electric, telephone, and communication lines should be shown.
- 31 Stevens Street shall be milled and paved from curb to curb, for a length that includes all new utility trenches. This should be indicated on the plan with the limits shown.

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

CHRISTOPHER S. LAFRENIERE
ASST. COMMISSIONER, UTILITIES

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

- 32 The proposed drain connection to the existing drain manhole in Stevens Street should be shown on the plan. It should be verified that this connection will be possible, given the locations of the existing pipes connected to that manhole.
- 33 Details for the "proposed curb inlet" should be provided. This structure may not be allowed.
- 34 The water main should be shown in the profile view.
- 35 Ledge conditions, where they are known, should be indicated in the profile view.
- 36 Is the sewer connection in Stevens Street proposed as a "dog house"-style manhole? This should be detailed.
- 37 The proposed "DMH#1-1" is not shown.

Sheet C-004 Erosion Control Plan

- 38 Proposed stockpile area(s) should be shown.
- 39 Temporary sediment basins to be used and maintained during construction should be shown. The areas of the proposed infiltration basins should not be used for temporary sediment basins during construction, or if it is unavoidable, specifications should be provided on the plans to ensure that the native soil at those locations is not made suitable for infiltration upon completion of construction.
- 40 Proposed tree clearing limits should be shown.
- 41 Construction dewatering specifications should be provided.
- 42 Notes regarding construction sequencing as it relates to erosion control and site stability, should be provided.

Sheets C-005-007 Construction Details

- 43 A detail for the proposed "curb inlet" should be provided.
- 44 A detail for flared end section is provided. Are there any on the plans?
- 45 A drainage trench detail should be provided.
- 46 A detail for the dog house sewer manhole should be provided.
- 47 A water service detail should be provided.
- 48 Additional information is needed on the infiltration basin detail, including soil profile specifications, basin side slopes, construction details for
- 49 A detail for the plug at the end of the water main should be provided.
- 50 There are several notes related to contractor permitting, required inspections, etc. that are listed on the Engineering Division checklist that should be added to the plans.

Supporting Documents – Stormwater & Erosion Control Report

- 51 Section 6 "Estimated Construction Phasing" is listed in the table of contents but is not in the report. This section should be provided.
- 52 The "Tables" listed in the table of contents do not appear to be included in the report.
- 53 The Appendices are listed in the table of contents with page numbers. There are no page numbers in the report.
- 54 Proposed conditions runoff calculations – proposed houses and driveways should be included in the curve number calculations. As noted previously they should be shown schematically on the subdivision plans along with the proposed grading. This information should be used for the proposed runoff calculations.
- 55 Proposed conditions runoff calculations – a "sheet flow" length of 50 feet was used on all time of concentration calculations. This should not be a "default" value but should be estimated based on specific conditions. We do not feel that this maximum length is appropriate in all cases, such as for "SA#15", where the slope is 11%. Times of concentration should be revisited for confirmation.

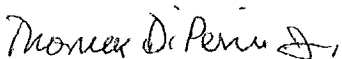
- 56 Proposed Infiltration Basin #2 does not meet the requirement for drawdown within 72 hours. The summary indicates 91.3 hours. The report should certify that the design meets all of the DEP Stormwater Standards.
- 57 Soil test pit data should be provided for each of the infiltration basins, as noted above.

Supporting Documents – Operation & Maintenance Plan

- 58 A section should be provided describing maintenance of the roadway, plantings, and infrastructure by the owner until such time as the roadway is accepted by the City.
- 59 Infiltration basins: add language regarding inspecting after major storms.
- 60 Infiltration basins: add language regarding maintenance of slopes/mowing.
- 61 Sediment forebays: same comments as infiltration basins.
- 62 "Drainage Manholes & Cleanouts": change to "Drainage Manholes"
- 63 "Trench Drains, Catch Basins & Area Drains": change to "Catch Basins & Area Drains"
- 64 "Trench Drains, Catch Basins & Area Drains": indicate that catch basins must have 4' deep sumps with hoods for oil separation, and include language that catch basins should be cleaned by a proper catch basin cleaning device.

Should you have any question regarding the above, please do not hesitate to contact me.

Sincerely,



Thomas DiPersio, Jr., PE, PLS
City Engineer

copy: Sean Divoll, P.E. – DPW Commissioner
Project applicant and engineer



PETTES DRIVE DEFINITIVE PLAN RESPONSE TO COMMENTS

Below is a response to the City of Marlborough Planning Board's comments on the Pettes Drive Definitive plan and supporting documents.

1. The proposed street has been renamed to Pettes Drive.
2. The planning board block has been revised.
3. The lot shape rectangles have been revised.
4. A letter from the Arborist has been attached to this submission.
5. See response #3.
6. Lot 4 has been labeled.
7. Stationing and other elements have been added.
8. Areas have been provided.
9. Bounds have been added.
10. Wide of easement revised.
11. Lot B has been changed to Parcel B.
12. This should have read "Proposed Drainage Easement" and has been changed to such.
13. A conceptual site plan showing all of the requested data has been added to the plan set.
14. Roadway grading has been revised to reflect the curb.
15. Limits of sidewalk disturbance and WCR's have been added.
16. Roadway stationing added.
17. Material has been indicated.
18. Detail for the curb inlet has been added. See detail sheet number C-010.
19. The primary overflow structure has been added.
20. The retaining wall has been removed on Lot 1 and elevations have been added.
21. Tree plantings along road and plantings for screening have been shown.



22. Test pit logs have been added to the plans and detail sheets.
23. There is no gas main proposed.
24. Size and type of water main added.
25. Hydrant has been added.
26. All sewer main data added.
27. All drainage data has been added.
28. Water and sewer laterals have been shown on the conceptual site plan.
29. Proposed street light located have been revised.
30. Underground electric, telephone and communications shown.
31. Limits of milling on Stevens Street has been added.
32. This drainage connection has been shown on the plans.
33. See response #18.
34. Water main has been added to the profile.
35. The proposed street does not intersect with any know ledge outcrops.
36. Yes and the detail has been added.
37. DMH #1-1 has been removed.
38. Stockpile areas have been shown.
39. Temporary sediment basin locations have been shown.
40. Any trees that shall be protected within the limits of work have been indicated.
41. Construction dewatering detail and specs have been added.
42. Construction sequencing has been added. Erosion control barrier details were provided on the Stormwater and Erosion Control Report.
43. See response #18.
44. Flared ends are located at the sediment forebays for the outfall of the roadway drainage.
45. A general utility/ drainage trench detail has been added.
46. Dog house sewer manhole detail has been added.
47. Water service detail has been added.



48. Additional infiltration basin details added. In the Infiltration basin notes there is a note that states the infiltration basin shall extend a minimum of 6" in to the "C" soil horizon.
49. Plug end detail added.
50. Notes have been added.
51. Estimated construction phasing has been added.
52. Table of contents has been revised to reflect what's in the report.
53. Appendices page numbers have been removed.
54. Proposed drainage systems for the roofs have been show on the plan and any driveways that flowed to the street were taken in to account in the proposed runoff calculations. Its listed as "Conceptual Driveway" in the HydroCAD sub-area.
55. The HydroCAD model was reviewed. The time of concentrations were revised to show the change from sheet flow to shallow concentrated flow if there was a grade brake prior to the 50'.
56. Infiltration basin #2 has been revised and now drains in less than 72 hours.
57. Test pit data has been added to the detail sheets.
58. The O&M has been revised to include these sections.
59. Revised.
60. Revised.
61. Revised.
62. Name has been changed.
63. Name has been changed.
64. Revised.

July 22, 2022

VIA EMAIL

Town of Marlborough Planning Board
c/o Katlyn Miller
140 Main Street
Marlborough, MA 01752
kmiller@marlborough-ma.gov

Re: *Raising Cane's Chicken Fingers - Sign Application*
141 Boston Post Road West (Route 20), Marlborough, Massachusetts

Dear Members of the Planning Board:

This letter is to being submitted with the application of Raising Cane's Chicken Fingers ("Raising Cane's") for signage approval pursuant to Chapter 526 of the Code of the City of Marlborough ("Sign Ordinance") for its location at 141 Boston Post Road West (the "Property").

On February 23, 2022, Raising Cane's submitted its Brand Book to the City of Marlborough Building Department for approval of various signage at the Property, including canopy, marquee, flat wall, freestanding, window and menu board signs. On June 10, 2022, Local Building Inspector William Payton issued an Allowable Sign Determination, which is attached hereto at Tab 1. All signs were determined to be allowable as-of-right, with the exception of the proposed flat wall signs and canopy signs.

Raising Cane's has submitted with this appeal (the "Appeal") a revised Brand Book, a copy of which is attached hereto at Tab 2. Raising Cane's has modified the proposed flat wall signs to bring them into compliance with the Sign Ordinance. Raising Cane's seeks a variance from the Sign Ordinance for approval of the proposed canopy signs.

Description of Proposal

Raising Cane's was founded in 1996 by Todd Graves in Baton Rouge, LA. Still family owned and operated, it today operates 545 Restaurants in 25 states and the Middle East. The Restaurant's concept is focused on its One Love, the chicken finger meal. That's all Raising Cane's serves ... boxes of chicken fingers, served with crinkle cut fries, coleslaw, Texas toast, and homemade Cane's sauce.

Fletcher Tilton

FletcherTilton.com

Raising Cane's will be unique to Massachusetts in that it is one of the first national concepts with a single item on its menu to enter the market. Raising Cane's gives back to the local communities it serves in five core areas – education, feeding the hungry, pet welfare, promoting active lifestyles, and developing entrepreneurship.

The Property is located on Boston Post Road (Route 20) to the west of Interstate 495, between Boston Post Road and Northboro Road, with access to both Boston Post Road and Northboro Road. The Property is surrounded by commercial uses, including a number of fast-food retail establishments including MacDonald's, Chick-fil-A, Wendy's and Chipotle.

Under the revised Brand Book, Raising Cane's proposes various signage and artwork as depicted at Tab 2, including four flat wall signs, two artistic images, and lettering above the canopy at the Property with the company's "One Love" slogan.

Modification of Flat Wall Signs

In its original Brand Book, Raising Cane's proposed four (4) flat wall signs depicting the Raising Cane's logo which were labeled as "A", one (1) painted wall sign also depicting the Raising Cane's logo labeled as "D", and one (1) digital print of a dog wearing sunglasses on aluminum substrate labeled as "E". Local Building Inspector William Paynton included all of these signs in his flat wall sign calculation and cited the plans for exceeding the total allowable sign area of 150 square feet. *See* Tab 1, pp. 1-2.

Raising Cane's has modified its Brand Book to replace sign "D" – the painted wall sign depicting the Raising Cane's logo – with a painted artistic mural showing a heart. Raising Cane's seeks confirmation that two proposed artistic images - one showing a painted heart and one showing a digital image of a dog wearing sunglasses – do not meet the definition of "Sign" under the Sign Ordinance and therefore should not be included in total allowable sign area. Under Section 226-2 of the Sign Ordinance, "Sign" is defined as:

Any object, device, display or structure or part thereof which is placed outdoors or which is visible from outdoors, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images.

It is Raising Cane's position that the two images do not fall under this definition, as they are not "used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location..." Rather, the two murals are meant to serve as decorative artwork at the premises.

Excluding these two artistic images will result in a total of four (4) wall signs, each 4' x 8', for a total flat wall sign area of 128 square feet – which is below the total allowable sign area of 150 square feet.

Raising Cane's therefore requests that the Planning Board make a determination that the sign plan for flat wall signs shown in its revised Brand Book is allowable as-of-right.

Canopy Lettering Variance

Raising Cane's proposes the inclusion of "One Love" canopy lettering located on top of the canopy at the property. The proposed canopy letters are 20 inches tall and 10 feet, 3 3/8 inches wide, for a total sign area of approximately 17.5 square feet.

With respect to canopy lettering, the Sign Ordinance provides that, "a sign may be located on any face of a canopy, marquee or awning located on the first-floor level only." Sign Ordinance, § 526-9(B)(2)(a). Canopy lettering is included in the total allowable sign area for flat wall signs. *See* Sign Ordinance, § 526-9(B).

The Planning Board may grant a variance from the provisions of the Sign Ordinance "**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... desirable relief may be granted without substantially derogating from the intent and purpose of this chapter but not otherwise.**" Sign Ordinance, § 526-12(C)(2) (emphasis added).

- 1. The design of the canopy at the Property does not appear to have been contemplated by the Sign Ordinance.*

It is important to note that the "canopy" in question is in fact located on the first-floor level at the Property. Unlike a traditional canopy or awning - which extends out at an angle from the wall to which it is attached – the canopy at the Property is flat and extends straight out from the wall. The Sign Ordinance seems to contemplate an image being depicted on the angled part of the canopy or awning visible to passersby.

Here, based on corporate design specifications the canopy extends straight out, and there is no such angled surface area onto which a canopy sign could be added. The letters have therefore been added to the top of the "canopy". Accordingly, given the design of the canopy in question, Raising Cane's suggests that this is a design which has not been contemplated by the Sign Ordinance, and therefore is an appropriate case for a variance.

- 2. The requested relief may be granted without substantially derogating from the intent and purpose of the Sign Ordinance.*

The proposed lettering may be approved without substantially derogating from the intent and the purpose of the Sign Ordinance. If Raising Caine's had designed its "canopy" with a sloped angle, it could place the same size "One Love" lettering on the canopy as-of-right. The combined sign area of the four wall signs and the canopy lettering is 145.5 square feet – less than the total allowable sign area of 150 square feet at the Property.

For these reasons, Raising Cane's suggest that the allowance of its "One Love" canopy lettering is compliant with the intent of the Sign Ordinance, and the Planning Board should issue the requested variance.

Conclusion

For all of the foregoing reasons, Raising Cane's respectfully requests that the Board grant the relief requested, and issue a determination:

1. that two proposed artistic murals - one showing a heart and one showing a dog wearing sunglasses – do not meet the definition of "Sign" under the Sign Ordinance and therefore should not be included in the total allowable sign area for flat wall signs at the Property; and
2. that the design of the proposed "One Love" lettering on the top of the canopy at the premises is not a case contemplated by the Sign Ordinance, that the lettering may be permitted without substantial derogation of the intent of the Sign Ordinance, and that therefore a variance of the Sign Ordinance is appropriate.

Thank you for your attention to this matter.

Very truly yours,



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PARALEGAL

May 1, 2014

Marlborough Planning Board
Chairwoman Barbara Fenby
140 Main Street
Marlborough, MA 01752

Re: The Process of a Plan's Submission to the Planning Board and Subsequent Notice to the City Clerk

Dear Dr. Fenby:

In supplementation of Legal's letter to the Planning Board ("the Board") dated December 16, 2013, this letter offers further clarification as to 1) the process for a plan's submission to the Board, whether a subdivision plan or an ANR plan; and 2) the subsequent notice to be filed with the City Clerk regarding that submission.

1. Submission Of A Plan To The Board.

Mass. Gen. Laws c. 41, § 81O governs the submission of a subdivision plan. As for submission of ANR plans, a planning board's regulation, if it is consistent with § 81O, "controls the determination of the submission date of an ANR plan."¹

The relevant portion of § 81O provides as follows:

A plan shall be submitted under this section when delivered at a meeting of the board or when sent by registered mail to the planning board. If so mailed, the date of receipt shall be the date of submission of the plan.

Thus, under § 81O, the date of a plan's submission is either 1) the date when it is delivered at a meeting of the Board, or 2) the date when it is received by the Board by registered mail.²

In contrast, for ANR plans under Section II.B.1, and for preliminary plans under Section III.A.1, the Board's Rules and Regulations provide that, "[f]or the purpose of establishing the official submission date, said submission shall be made to the Planning Board at a regularly scheduled meeting of the Planning Board." In other words, there is no opportunity under the

¹ Peters v. Labonte, 2012 WL 273714 (Land Ct. 2012), at * 5 (citing Maini v. Whitney, 7 LCR 263, 264 (1999)(Land Court)).

² " 'Registered mail', when used with reference to the sending of notice or of any article having no intrinsic value shall include certified mail." Mass. Gen. Laws c. 4, § 7, cl. Forty-fourth.

Board's Rules and Regulations for either ANR plans or preliminary plans to be received by the Board by registered mail. As to definitive plans, the Board's Rules and Regulations appear to be silent, so Section III.A.1 for preliminary plans would likely apply by default.³

In order to satisfy the Board's requirement that submission of a plan "shall be made to the Planning Board at a regularly scheduled meeting of the Planning Board," it is not enough if a plan's proponent merely delivers the plan to the Board. Rather, according to Section II.B.1 (for ANR plans) and Section III.A.1 (for preliminary and, by default, definitive plans), the plan's submission is be "made to the Planning Board at a regularly scheduled meeting of the Planning Board" (emphasis added). The word "made" should be interpreted to mean "presented;" thus, under Section II.B.1 and Section III.A.1, "[f]or the purpose of establishing the official submission date, said submission shall be ... [presented] to the Planning Board at a regularly scheduled meeting of the Planning Board." Similar language has been judicially interpreted to distinguish between mere delivery of a plan to the planning board, versus delivery of the plan to the board "at a meeting of the board,"⁴ in other words, submission of a plan should mean that the proponent is to present the plan at a regularly scheduled Board meeting.⁵

Note that this submission-as-presentment requirement can be inadvertently waived by a board. For example, if a board fails to take timely action on a subdivision plan and, believing it to have been constructively granted, thereafter proceeds to make modifications to the plan under § 81W,⁶ the board can be deemed to have waived any objection it otherwise would have had that the proponent had failed to properly submit the plan to the board in the first place.⁷

2. Notice To The City Clerk Of A Plan Having Been Submitted To The Board.

Once a plan has been submitted to the Board, the plan's proponent must file with the City Clerk a notice under Mass. Gen. Laws c. 41, § 81T. " 'By its terms, § 81T distinguishes between the submission of a plan to the planning board [under § 81O⁸] and the delivery of notice of such submission to the town clerk.' "⁹ Under § 81T, the notice shall:

describe the land to which the plan relates sufficiently for identification, and shall state the date when such plan was submitted and the name and address of the owner of such land.

³ The Board may wish to consider conforming its Rules and Regulations to § 81O to explicitly address submission of definitive plans.

⁴ Woodhouse v. Marot, 2008 WL 331107 (Land Ct. 2008), at *5 (emphasis in original)(discussing subdivision plan).

⁵ Peters, 2012 WL 273714, at *6 (discussing ANR plan). The Board may wish to consider amending its Rules and Regulations to clarify that submission of a plan means presenting the plan at a Board meeting.

⁶ Note that § 81W deals only with subdivision plans because only they can be "approved." Therefore, § 81W does not authorize modification, amendment or rescission of ANR plans because they have been "endorsed," not "approved." Cassani v. Planning Board of Hull, 1 Mass. App. Ct. 451, 453-58 (1973).

⁷ Woodhouse, 2008 WL 331107, at *5 (discussing subdivision plan).

⁸ Twenty years ago, the City Clerk's office ceased to play a § 81O role in the submission of a plan to the Board. Statute 1994, c. 169 amended § 81O by removing the words " , care of the city or town clerk" from the end of the first sentence of § 81O quoted on page 1 above.

⁹ Peters, 2012 WL 273714 at *4 (quoting Maini, 7 LCR at 264).

However, § 81T “lacks precision as to the timing of the filing of the notice.”¹⁰ So § 81T has been judicially interpreted as requiring that notice to the City Clerk must be filed “simultaneously with or, at least, very promptly after submission to the [planning] board,”¹¹ but in any event “after submission to the Planning Board, since the required notice must include the date of submission.”¹²

Note that this § 81T filing requirement is crucial in circumstances where a board may have failed to timely act on a plan, otherwise resulting in a constructive grant (for a subdivision plan) or a constructive endorsement (for an ANR plan). Thus, if the plan’s proponent has itself failed to file such a § 81T notice with the city or town clerk, that failure is fatal to the proponent’s claim of the constructive grant or constructive endorsement.¹³ Section 81T’s filing requirement serves the statutory purposes of providing aggrieved persons with “the definitive date from which an appeal is measured,” while at the same time “limiting the period during which an appeal may be taken” and precluding an “indefinite protraction of the appeal process.”¹⁴

Thank you for your attention to this matter.

Very truly yours,

/s/ Donald V. Rider, Jr.
Donald V. Rider, Jr.
City Solicitor

¹⁰ Korkuch v. Planning Board of Eastham, 26 Mass. App. Ct. 307, 308 (1988).

¹¹ Korkuch, 26 Mass. App. Ct. at 309.

¹² Peters, 2012 WL 273714 at * 6 (emphasis in original).

¹³ Korkuch, 26 Mass. App. Ct. at 309 (discussing ANR plan); Peters, 2012 WL 273714 at *4 (discussing ANR plan).

¹⁴ Korkuch, 26 Mass. App. Ct. at 309 (citations omitted).