

# CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: City Council Urban Affairs Committee

Date: Thursday, November 30, 2023

Time: 7:30 PM

Location: City Council Chamber, 2<sup>nd</sup> Floor, City Hall, 140 Main Street

Agenda Items to be addressed:

RECEIVED  
CITY CLERK'S OFFICE  
CITY OF MARLBOROUGH

2023 NOV 22 AM 11:34

This meeting will be held in the City Council Chamber. Public attendance is permitted. The meeting will be televised on WMCT-TV (Comcast Channel 8 or Verizon/Fios Channel 34) or you can view the meeting using the link under the Meeting Videos tab on the city's website, homepage ([www.marlborough-ma.gov](http://www.marlborough-ma.gov)).

09-11-23 – Order No. 23-1008964: Proposed Zoning Amendment to Chapter 650 “Zoning” to amend §22 “Retirement Community Overlay Districts” to include Map 39, Parcels 5 and 26B located on Robin Hill Street currently located in the LI District to accommodate an over 55 community combining both townhouse and multifamily components for a new condominium ownership neighborhood.

-REFER TO URBAN AFFAIRS

PUBLIC HEARING: OCTOBER 23, 2023

08-21-23 – Order No. 23-1008951: Proposed Zoning Amendment to Chapter 650 “Zoning” of the Code to add a new section to create the “Red Spring Road Overlay District” (RSR).

-REFER TO URBAN AFFAIRS

PUBLIC HEARING: OCTOBER 23, 2023

07-24-23 – Order No. 23-1008941: Proposed Amendment to City Code, Chapter 650 “Zoning” by adding a new section to create the “Sasseville Way Residential Overlay District”.

-REFER TO URBAN AFFAIRS

PUBLIC HEARING: SEPTEMBER 11, 2023

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

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

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

**ORDER NO. 23-1008964**

**PROPOSED ZONING AMENDMENT  
RETIREMENT COMMUNITY OVERLAY  
DISTRICT**

ORDER NO. 23-1008951

PROPOSED ZONING  
AMENDMENT

RETIREMENT COMMUNITY  
OVERLAY DISTRICTS

ORIGINAL SUBMISSION

6



# IN CITY COUNCIL

Marlborough, Mass., SEPTEMBER 11, 2023

PAGE 1

## ORDERED:

That the Communication from Attorney Brian Falk on behalf of New England LLC, re: Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 "Retirement Community Overlay Districts" to include Map 39, Parcels 5 and 26B located on Robin Hill Street currently located in the LI District to accommodate an over 55 community combining both townhouse and multifamily components for a new condominium ownership neighborhood, be and is herewith referred to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE A PUBLIC HEARING FOR MONDAY, OCTOBER 23, 2023.**

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING RECEIVED FOR ITS 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:

1. By amending the Zoning Map established by Section 650-8, "Boundaries Established; Zoning Map", by superimposing the Retirement Community Overlay District, RCO-D/T and RCO-MF, over Assessors Map 39, Parcels 5 and 26B; and
2. By amending certain provisions of Section 650-22, "Retirement Community Overlay Districts", as follows (new text underlined, deleted text in ~~strikethrough~~):

### § 650-22. Retirement Community Overlay Districts.

- A. Purpose. The purpose of the Retirement Community Overlay District shall be to advance the public health, safety and welfare by providing for the development of retirement communities that provide housing choices for persons aged 55 or over on sites which are otherwise zoned for other purposes but which, because of the size of the parcel being developed and its proximity to other residential neighborhoods and/or residential amenities and supportive services, will provide an appropriate environment for a retirement community.  
[Amended 4-8-2019 by Ord. No. 18/19-1007452G]
- B. Location. For the purposes of this section, a Retirement Community Overlay District shall be considered superimposed on the other districts existing at the time that any land in any said underlying district is also included in the Retirement Community Overlay District. The rezoning of any or all of the land included in the Retirement Community Overlay District from one underlying zoning classification to another shall not affect its inclusion in the Retirement Community Overlay District, unless said land is specifically removed from the said Retirement Community Overlay District.



## IN CITY COUNCIL

Marlborough, Mass., SEPTEMBER 11, 2023

PAGE 2

### ORDERED:

C. Permitted uses. All permitted uses must comply with the appropriate provisions of Article V and Article VII, except as otherwise specified herein **or as otherwise approved by the City Council as part of the Special Permit process.** In addition to those uses which are allowed, either as of right or by special permit, in the underlying district of any land which has been included in the Retirement Community Overlay District, the City Council may, by special permit in accordance with § 650-59, permit a retirement community-detached and townhomes ~~or~~ **and** a retirement community-multifamily, as defined in § 650-5 **except as otherwise set forth herein,** consistent with the following provisions: [Amended 3-10-2003 by Ord. No. 03-9944B; 4-25-2011 by Ord. No. 11-1002806-1A; 4-8-2019 by Ord. No. 18/19-1007452G]

- (1) Retirement community - detached and townhomes (RCO-D/T).
  - (a) No building in an RCO-D/T community shall be more than 2 1/2 stories in height.
  - (b) Each building in an RCO-D/T community shall face either upon an existing street or upon a public or private way constructed within said RCO-D/T community and shall have a minimum front yard of no less than 20 feet from the edge of the paved way to the closest point of the structure and a side yard of not less than 10 feet from the edge of the paved way to the closest point of the structure. Each building, whether principal or accessory, shall be at least 10 feet distant from any other building by airline distance between the nearest points of the buildings.
  - (c) No dwelling in an RCO-D/T community shall contain less than 1,000 square feet of living area or more than 2,400 square feet of living area.
  - (d) All dwelling units in an RCO-D/T community shall be detached from the others or attached only along side walls in the so-called "townhouse" style.
  - (e) The lot or lots on which an RCO-D/T community is located shall contain, on a consolidated basis, at least 7,000 square feet per housing unit.
  - (f) No part of any principal building in an RCO-D/T community shall be less than 25 feet from any exterior lot line or less than 50 feet from the side of any public way.
  - (g) Each dwelling unit in an RCO-D/T community shall have its own attached yard area.



## IN CITY COUNCIL

Marlborough, Mass., SEPTEMBER 11, 2023

PAGE 3

### ORDERED:

- (h) Required off-street parking for each dwelling unit in an RCO-D/T community shall be adjacent thereto. Each unit shall be required to provide at least one parking space inside a garage and an additional space in front of a garage, said garage to be attached to said unit. The City Council may, as a condition of its special permit, require additional off-street parking areas to be used in common by dwelling unit owners and their invitees. In addition, the City Council may, as a condition of the special permit, require the adoption of legally enforceable condominium bylaws or other similar regulations to limit or prohibit the presence in an RCO-D/T community, either entirely or except in designated locations, of boats, boat trailers, campers, or other recreational vehicles.
- (i) Maximum combined lot coverage in an RCO-D/T community shall not exceed 40% of the total lot size.
- (j) Each lot or contiguous lots upon which an RCO-D/T community is located shall have total frontage on an existing public way of at least 250 feet. Each lot or combination of lots shall have a total size of not less than 10 acres. The underlying zoning district for all said land shall be either Industrial or Limited Industrial.
- (k) The City Council may, as a permit condition, require that all proposed condominium bylaws or similar binding RCO-D/T community regulations which may be relevant to the issuance of the permit, including but not limited to bylaw provisions prohibiting the presence of children residing in an RCO-D/T community and limiting or prohibiting the presence in a RCO-D/T community of boats, boat trailers, or recreational vehicles, be made a part of the special permit and that any change to or failure to enforce said provisions shall be a violation of said special permit.
- (l) The City Council may, as a permit condition, require that a proposed RCO-D/T community be constructed entirely on one lot, and that, from and after the date of the issuance of the building permit for said community or any portion thereof, no subdivision of said lot shall be allowed without the express approval of the City Council; provided, however, that the recording of a condominium master deed and the conveyance of condominium units within the area covered by said deed shall be allowed.
- (m) No unit in an RCO-D/T community shall have more than three bedrooms.



## IN CITY COUNCIL

Marlborough, Mass., SEPTEMBER 11, 2023

PAGE 4

### ORDERED:

- (n) If an RCO/DT community is proposed which contains at least 30 acres of land, the following provisions shall supersede those found elsewhere in § 650-22:
- [1] The lot or lots on which an RCO/DT community is located shall contain at least 5,000 square feet per unit in the RCO/DT community;
  - [2] Maximum lot coverage in the RCO/DT community shall not exceed 50% of the total lot size, excluding from the lot size any land which, prior to development of the site as a RCO/DT community, would be defined as a "resource area," as that term is defined in MGL c. 131, § 40.
  - [3] Each lot or contiguous set of lots upon which a RCO/DT community is located shall have total frontage on an existing public way, or on a private way laid out by the City Council pursuant to MGL c. 82, § 21, of at least 250 feet; provided, however, that said frontage need not be continuous.
- (2) Retirement Community - Multifamily (RCO-MF).
- (a) The total area of the tract of contiguous parcels to be developed as an RCO-MF shall not be less than 10 acres. The underlying zoning district for all said land shall be either Industrial or Limited Industrial and be located: **(i)** within the area that lies within the perimeter of the following roadways: commencing at the Fitchburg Street intersection at the Route 85/290 Connector Road; then west along the Route 85/290 Connector Road to the intersection of Route 495; then south along Route 495 to where it passes over the intersection with Berlin Road; then southeasterly along Berlin Road to the intersection with West Hill Road; then easterly along West Hill Road to the intersection with Pleasant Street; then north along Pleasant Street to the intersection with Fitchburg Street; then north along Fitchburg Street to the intersection with the Route 85/290 Connector Road, all of said land being in reasonable proximity to the UMass Memorial Marlborough Hospital and the interstate highway intersection of Route 495 and Route 290; **or (ii) within an area designated by the City Council through an amendment to the Zoning Map.**
  - (b) An RCO-MF may contain one- and two-bedroom units and studio units for independent living persons, and may include services and amenities for its residents, including but not limited to, dining facilities, in-unit kitchens, common rooms, activity rooms, exercise rooms, theater, chapel, library, pharmacy/gift shop/convenience store, beauty salon, barbershop, personal banking services, offices and accessory uses or structures, concierge and valet services, third-party vendor services, and recreation facilities.



## IN CITY COUNCIL

Marlborough, Mass., SEPTEMBER 11, 2023

PAGE 5

### ORDERED:

- (c) No building in an RCO-MF shall be more than ~~three~~ **four** stories in height. **Subsurface parking levels shall not be considered a story, and there shall be no limitation on building height beyond the maximum of four stories.**
- (d) The total number of **multifamily** dwelling units in an RCO-MF shall be limited to 12 units per acre, **which may be located in multiple multifamily buildings within an RCO-MF and on a single parcel.**
- (e) No part of any principal building in an RCO-MF shall be less than 50 feet from any exterior lot line or less than 100 feet from any **municipal** public way.
- (f) Maximum combined lot coverage in an RCO-MF, including any permitted accessory structures, shall not exceed 40% of the tract or contiguous parcels.
- (g) The tract or contiguous parcels upon which an RCO-MF is located shall have a minimum total frontage on an existing public or private way of at least 200 feet.
- (h) The City Council may, as a permit condition, require that all proposed condominium bylaws or similar binding RCO-MF regulations which may be relevant to the issuance of the permit, including but not limited to bylaw provisions prohibiting the presence of children residing in a retirement community and limiting or prohibiting the presence in a retirement community of boats, boat trailers, or recreational vehicles, be made a part of the special permit and that any change to or failure to enforce said provisions shall be a violation of said special permit.
- (i) The City Council may, as a permit condition, require that a proposed RCO-MF be constructed entirely on one tract and that, from and after the date of the issuance of the building permit for said community no subdivision of said tract shall be allowed without the express approval of the City Council; provided, however, that the recording of a condominium master deed and the conveyance of condominium units within the area covered by said deed shall be allowed.
- (j) A minimum of 1.0 parking space per dwelling unit shall be provided in an RCO-MF. Attached and detached garages shall count toward this parking requirement.
- (k) No dwelling unit in **a multifamily building with three or more stories in** an RCO-MF shall contain less than 500 square feet of living area or more than ~~1,300~~ **1,600** square feet of living area.





## IN CITY COUNCIL

Marlborough, Mass., SEPTEMBER 11, 2023

PAGE 6

### ORDERED:

- (l) No building in an RCO-MF need be located or placed further from the exterior line of any street or public way than the average distance from such street or way line of the dwellings or other principal buildings located on the lots adjacent thereto on either side. In determining such average, a vacant side lot having a frontage of 50 feet or more shall be considered as though occupied by a building having the required setback, and a lot separated from the lot in question only by a vacant lot having a frontage of less than 50 feet shall be deemed an adjacent lot. The point of measurement of the average distance shall be from the closest point of the principal building to the street or public way regardless of parcel ownership.
  - (m) In an RCO-MF, there shall be provided with each multifamily building a landscaped area equal to the greatest single floor area of the building, provided that such landscaped area may include undisturbed natural areas, such as
  - (n) vegetated areas, woodlands, wetlands and floodplain areas.
- (3) **Retirement Community – Combined RCO-D/T and RCO-MF.**
- (a) **The City Council may, by special permit, authorize a retirement community development with combined RCO-D/T and RCO-MF components on a single parcel or more than one contiguous parcel.**
  - (b) **The City Council may, by special permit, elect to vary the dimensional, parking, design, open space, and landscaping requirements applicable to a combined RCO-D/T and RCO-MF retirement community development upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of this section (§650-22 et seq.). This authority continues subsequent to occupancy.**

ADOPTED

ORDER NO. 23-1008964

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

September 7, 2023

**BY HAND DELIVERY**

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

Re: Proposed Zoning Amendment: Retirement Community Overlay District

Dear Councilor Ossing:

I represent Pulte Homes of New England LLC, the prospective buyer of approximately 28 acres of land off of Robin Hill Street in Marlborough, shown on Assessors Map 39 as Parcels 5 and 26B, located in the Limited Industrial Zoning District.

As noted in the enclosed letter of authorization, the owner of this land requests, in accordance with M.G.L. c. 40A, Sec. 5, that the City Council consider amending the Marlborough Zoning Map so that the Retirement Community Overlay District is superimposed over this land, and consider amending the Retirement Community Overlay District to accommodate an over 55 community combining both townhouse and multifamily components, for a new condominium ownership neighborhood.

Pulte is excited about the opportunity to bring a unique over 55 community to Marlborough on land that, while zoned Limited Industrial, would be better utilized as a low-impact residential neighborhood. This new neighborhood would provide opportunities for residents to downsize in Marlborough yet continue to be homeowners, enjoying convenient access to Donald Lynch Boulevard, Route 290, and Route 495.

If this zoning amendment is approved by the City Council, Pulte would then seek a special permit from the City Council to authorize the use and site plan approval from the Site Plan Review Committee to address site design details.

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

**MIRICK O'CONNELL**

Marlborough City Council  
September 7, 2023  
Page 2

“an amendment to a zoning ordinance ... to allow by special permit: (a) multi-family housing ... in an eligible location; (b) an increase in the permissible density of population or intensity of a particular use in a proposed multi-family ... development pursuant to section 9;”

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

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

The proposed zoning amendment would allow, by special permit, multifamily housing on land close to Donald Lynch Boulevard, which is an area of concentrated development, and located in close proximity to Route 290 and Route 495. Further, the proposed zoning amendment would allow, by special permit, an increase in the permissible density of population or intensity of multifamily uses in the Retirement Community Overlay District. Therefore, we believe the zoning amendment qualifies for a reduced quantum of vote under M.G.L. c. 40A, Sec. 5.

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

Thank you for your time and attention to this matter.

Sincerely,



Brian R. Falk

BRF/

Encl.

cc: Client

August 28, 2023

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

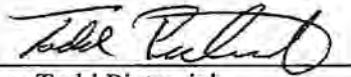
RE: Robin Hill Street Project

Dear Councilor Ossing:

Please be advised that the undersigned is the owner of parcels located off of Robin Hill Street in Marlborough, shown on Assessors Map 39 as Parcels 5 and 26B. The undersigned hereby authorizes Mirick O'Connell, on behalf of Pulte Homes of New England LLC, to submit to the City of Marlborough proposed zoning amendments and any land use applications necessary for Pulte Homes of New England LLC to seek approval for a retirement community at the property.

Thank you for your time and attention to this matter.

Denali Belle LLC

By:   
Name: Todd Pietrasiak  
Title: Manager



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

### ORDERED:

That the PUBLIC HEARING on the Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 "Retirement Community Overlay Districts" to include Map 39, Parcels 5 and 26B located on Robin Hill Street currently located in the LI District to accommodate an over 55 community combining both townhouse and multifamily components for a new condominium ownership neighborhood, Order No. 23-1008964, all were heard who wish to be heard, hearing closed at 9:29 PM.

**Councilors Present: Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Ossing, Perlman & Robey.**

PUBLIC SPEAKING IN FAVOR

### **TRANSCRIPT NOT COMPLETE**

That ends the entire Public Hearing. This is currently in the Urban Affairs Committee.

ADOPTED

ORDER NO. 23-1008964B



## IN CITY COUNCIL

---

Marlborough, Mass., NOVEMBER 13, 2023

### ORDERED:

That the Communication from resident, re: Opposition to the Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 "Retirement Community Overlay Districts", be and is herewith accepted and placed on **FILE**.

ADOPTED

ORDER NO. 23-1008964B

**Steven Kerrigan**

RECEIVED  
CITY CLERK'S OFFICE  
CITY OF MARLBOROUGH

11

**From:** Steven Peck  
**Sent:** Thursday, November 2, 2023 3:39 PM  
**To:** City Clerk; Christian Dumais; Teona Brown; Kathleen Robey; Samantha Perlman; Mark Oram; Laura Wagner; John Irish; Mike Ossing; David Doucette; Don Landers; Sean Navin  
**Subject:** Most recent median home sales in Middlesex County

2023 NOV -6 AM 8: 12

At a recent council meeting, a member of the public made a comment and stated the price of homes in Marlborough. The comment was meant to compare to the suggested pricing of the new housing being proposed off of Robin Hill Rd. This article in USA Today has markedly different pricing for our area.

This is from the USA TODAY Network (Oct 27, 2023):

Newly released data for July shows that potential buyers and sellers in Middlesex County saw houses sell for lower than the previous month's median sale price of \$775,000.

The median home sold for \$764,900, an analysis of data from Realtor.com shows. That means July, the most recent month for which figures are available, was down 1.3% from June.

While pricing is a factor for the developers of this project, it is not a factor for me. I feel that development in the section of Robin Hill Rd between the school and the power lines is going to present almost insurmountable issues relating to the quality of life in that area. These issues are the short term construction issues and the long term traffic volume issues.

This is the second time I have listened to a developer suggest that the size and nature of the project is being driven by financial issues. I think financial issues are valid reasons for a developer to choose a particular plan, the developer's finances are NOT a valid reason for the City of Marlborough to accept those plans.

I am asking that the Council not entertain any changes to the zoning in the Robin Hill Rd area at this time.

Respectfully,  
Steven Peck  
64 Victoria Ln  
Marlborough, MA



# IN CITY COUNCIL

---

Marlborough, Mass., NOVEMBER 27, 2023

## ORDERED:

That the Communication from property owner, re: Opposition to the Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 "Retirement Community Overlay Districts", be and is herewith accepted and placed on **FILE**.

ADOPTED

ORDER NO. 23-1008964C



**LURIE FRIEDMAN LLP**

ONE MCKINLEY SQUARE  
BOSTON, MA 02109

RECEIVED  
CITY CLERK'S OFFICE  
CITY OF MARLBOROUGH

2023 NOV 17 PM 3: 27

HARLEY C. RACER

617-367-1970  
hracer@luriefriedman.com

November 17, 2023

By Email and U.S. Mail

Jason D. Grossfield  
City Solicitor  
City of Marlborough  
City Hall, 4th Floor

Sean N. Fay, Chair  
Marlborough Planning Board  
135 Neil Street  
2nd Floor  
Marlborough, MA 01752

Michael H. Ossing, President  
Marlborough City Council  
140 Main Street  
2nd Floor  
Marlborough, MA 01752

Re: Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 "Retirement Community Overlay Districts" and the Public Hearing on November 27, 2023

Dear Mr. Grossfield, Mr. Fay and Mr. Ossing:

This firm represents Hillside School ("Hillside") at 404 Robin Hill St., Marlborough in relation to the Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 "Retirement Community Overlay Districts" to include Map 39, Parcels 5 and 26B on Robin Hill Street ("Zoning Amendment"). I write following the Planning Board's Public Hearing on the Zoning Amendment held on November 13, 2023 and in advance of the continuation of that hearing scheduled for November 27, 2023. It is my understanding that the Planning Board has asked for the City Solicitor to address the issue raised in my letter dated November 8, 2023. This letter addresses only the legal issues and not the other problems with the Zoning Amendment outlined in my November 8, 2023 letter.

As discussed at the November 13 hearing and further explained below, the Zoning Amendment was not properly initiated and any action on it would be a nullity under the state statute and Marlborough Ordinance because: (1) the proponent, Pulte Homes of New England LLC ("Pulte") is a prospective buyer and not an individual landowner to be affected by the

## LURIE FRIEDMAN LLP

Jason D. Grossfield  
Sean N. Fay  
Michael H. Ossing  
November 17, 2023  
Page 2

Zoning Amendment; (2) neither Pulte Homes nor the current landowner, Denali Belle, LLC are individuals for purposes of the state statute and Marlborough Ordinance; and (3) the Zoning Amendment would affect districts throughout the City of Marlborough other than the district of the proposed project. For these reasons, the Zoning Amendment must be withdrawn and not considered.

Should the Planning Board move forward with consideration, due to the legal defects and the issues that were raised by members of the public at the November 13 hearing, the Planning Board should give the Zoning Amendment a “**Negative Recommendation**”.

**1. The Zoning Amendment was initiated in violation of state and local law by Pulte, a non-landowner and mere prospective buyer of the parcels to be affected and must be withdrawn.**

As set forth in my letter dated November 8, 2023, the Zoning Amendment is legally defective because it was initiated by a non-landowner, Pulte, the prospective buyer of the parcels targeted for inclusion in the Retirement Overlay District. It is beyond dispute that Pulte is the sole proponent of the Zoning Amendment. Massachusetts General Law c. 40A, §5 and Marlborough Ordinance § 650-60 (both attached here as **Exhibit A**) are clear that a zoning amendment may **only** be initiated by “an individual owning land” to be affected by the amendment, ten registered voters in the City or the Planning Board.

Because Pulte is not the landowner, it is a violation of M.G.L. c. 40A, §5 and Marlborough Ordinance § 650-60 for the Planning Board and the City Council to even consider the Zoning Amendment, much less act upon it. Indeed, any action on the Zoning Amendment would be invalid. See Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 101 Mass. App. Ct. 1108 (2022) (because the proponent “did not own land in the affected area, he was not authorized to initiate the zoning amendment as an individual” and the amendment was invalid) (attached as **Exhibit B**).

**2. The Zoning Amendment was initiated in violation of state and local law because neither Pulte Homes nor the current landowner, Denali Belle, LLC is an “individual” for purposes of the state statute and Marlborough Ordinance and must be withdrawn.**

Even if the current landowner, Denali Belle, LLC, had initiated the Zoning Amendment – which is not the case – because Denali Belle is an LLC, it is not an “individual” and it would still run afoul of M.G.L. c. 40A, §5 and Marlborough Ordinance § 650-60. The Zoning Amendment statute is strictly construed and enforced. Indeed, “the legislature mandated a rule of strict compliance by the plain language, [Zoning] ordinances or by-laws may be adopted ... but only in the manner ... provided”. Bellingham, 101 Mass. App. Ct. 1108 (quoting Canton v. Bruno, 361 Mass. 598, 603 (1972)) (emphasis in original). See also <https://www.mbmlc.com/zoning->

## LURIE FRIEDMAN LLP

Jason D. Grossfield  
Sean N. Fay  
Michael H. Ossing  
November 17, 2023  
Page 3

[storage-massachusetts.html](#) (“The lesson to be learned from the Bellingham matter is that, when seeking to amend a municipality’s zoning ordinances or bylaws, one must be sure that the requirements of G.L. c. 40A § 5, first para. are strictly adhered to.”).

Accordingly, because an LLC is not an “individual”, Denali Belle, LLC cannot legally initiate a zoning change. See, e.g., Phone Recovery Services, LLC v. Verizon of New England, Inc., 480 Mass. 224 (2018) (interpreting the Legislature’s use of the word “individual” in the False Claims Statute to mean a “natural person”). In Phone Recovery, the SJC considered the word “individual” as compared to “person” and categorically determined that an LLC is not an “individual”. The Zoning Enabling Act also uses both “individual” and “person” separately, distinctly and advisedly. Under the c. 40A, §5 only “individuals owning land” can initiate zoning changes but under §17 “any person aggrieved” can appeal an action of the board or appeals or special permit granting body. See also Harvard Square Def. Fund, Inc. v. Plan. Bd. of Cambridge, 27 Mass. App. Ct. 491, 491–93 (1989). In Harvard Square, the Appeals Court distinguished between individuals and corporate property owners for standing purposes under §17, reading “individuals and corporate property owners” as two classes within the broader term “person”.

This makes sense as a matter of public policy. The Zoning Amendment, as well any other zoning changes, can only be initiated by those classes of persons specifically authorized by the Legislature in c. 40A, § 5 and the Ordinance, namely individuals owning affected land, ten registered voters or the Planning Board because the purpose of this provision is “to ensure that any amendment proposed by registered voters has a modicum of support before it can be placed before a planning board.” Bellingham, supra (emphasis in original). It is not a heavy lift to first acquire the support of ten registered voters – if the proposed changes are truly a benefit to and supported by citizens of the City.

The fact that past rezoning applications may have used similar authorization letters for a putative purchaser to pursue rezoning in advance of acquiring title is irrelevant. Where, here, neither the owner nor the purchaser is an “individual owning land in the affected area”, the instant petition is not allowed by statute or Marlborough Ordinance.

### **3. The Zoning Amendment is invalid because it would affect districts throughout the City of Marlborough other than the district of the proposed project and must be withdrawn.**

Furthermore, even if Denali Belle, LLC were an “individual” and initiated the Zoning Amendment, the Zoning Amendment would still be in violation of M.G.L. c. 40A, §5 because it proposes changes that affect the entire city and to districts other than the district where the proponent owns land. The opinion attached as Exhibit C from the Cambridge City Solicitor to Cambridge City Manager, dated October 16, 2023, on a city-wide proposed zoning change is instructive here. In Cambridge, the individual property owner filed a petition that would

**LURIE FRIEDMAN LLP**

Jason D. Grossfield  
Sean N. Fay  
Michael H. Ossing  
November 17, 2023  
Page 4

similarly affect multiple zoning districts and was city-wide in scope.<sup>1</sup> Relying on Bellingham, the Cambridge City Solicitor advised that “pursuant to G.L. c. 40A, §5, an individual property owner cannot initiate a zoning amendment that would affect a zoning district in which the individual property owner has no property interest . . . In the future, the City Council can accept resident initiated zoning petitions from an individual property owner owning land in the district that would be affected by the proposed zoning change, or by ten registered voters in the City.”

Due to the legal defects detailed above, the Planning Board and the City Council should withdraw the Zoning Amendment and not consider it any further. Any action on the Zoning Amendment would be in violation of c. 40A, §5 and would be an unnecessary use of City, proponent and opponent resources.

Please circulate this letter amongst all members of the Planning Board and the City Council in advance of the hearing scheduled for November 27, 2023.

Very truly yours,

/s/Harley C. Racer  
Harley C. Racer

Encl.

cc: Edward Chase  
Brian Falk, Esq.

---

<sup>1</sup> In the Cambridge matter, the individual landowner was the trustee of a trust owning the land. Whether a trustee is an “individual” for purposes of the c. 40A, §5 was not raised in Cambridge and, at any rate, this Board and the Marlborough City Solicitor need not reach the issue of whether a trustee is an individual because here it is clear as a matter of law that an LLC is not an individual.

# Exhibit A

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title VII. Cities, Towns and Districts (Ch. 39-49a)

Chapter 40A. Zoning (Refs & Annos)

M.G.L.A. 40A § 5

§ 5. Adoption or change of zoning ordinances or by-laws; procedure

Effective: May 30, 2023

Currentness

Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.

<[ Second paragraph effective until May 30, 2023. For text effective May 30, 2023, see below.]>

No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the department of housing and community development, the regional planning agency, if any, and to the planning board of each abutting city and town. The department of housing and community development, the regional planning agency, the planning boards of all abutting cities and towns and nonresident property owners who may not have received notice by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

<[ Second paragraph as amended by 2023, 7, Sec. 154 effective May 30, 2023. See 2023, 7, Sec. 298. For text effective until May 30, 2023, see above.]>

No zoning ordinance or by-law or amendment thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed zoning ordinance or by-law is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed zoning ordinance or by-law is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing. Notice of said hearing shall also be sent by mail, postage prepaid to the executive office of housing and livable communities, the regional planning agency, if any, and to the planning board of each abutting city and town. The executive office of housing and livable communities, the regional planning agency, the planning boards of all abutting cities and towns and nonresident property owners who may not have received notice by mail as specified in this section may grant a waiver of notice or submit an affidavit of actual notice to the city or town clerk prior to town meeting or city council action on a proposed zoning ordinance, by-law or change thereto. Zoning ordinances or by-laws may provide that a separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners, stating that notice of such hearings under this chapter shall be sent by mail, postage prepaid, to any such owner who files an annual request for such notice with the city or town clerk no later than January first, and pays a reasonable fee established by such ordinance or by-law. In cases involving boundary, density or use changes within a district, notice shall be sent to any such nonresident property owner who has filed such a request with the city or town clerk and whose property lies in the district where the change is sought. No defect in the form of any notice under this chapter shall invalidate any zoning ordinances or by-laws unless such defect is found to be misleading.

Prior to the adoption of any zoning ordinance or by-law or amendment thereto which seeks to further regulate matters established by [section forty of chapter one hundred and thirty-one](#) or regulations authorized thereunder relative to agricultural and aquacultural practices, the city or town clerk shall, no later than seven days prior to the city council's or town meeting's public hearing relative to the adoption of said new or amended zoning ordinances or by-laws, give notice of the said proposed zoning ordinances or by-laws to the farmland advisory board established pursuant to [section forty of chapter one hundred and thirty-one](#).

No vote to adopt any such proposed ordinance or by-law or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the town meeting or city council, or twenty-one days after said hearing has elapsed without submission of such report. After such notice, hearing and report, or after twenty-one days shall have elapsed after such hearing without submission of such report, a city council or town meeting may adopt, reject, or amend and adopt any such proposed ordinance or by-law. If a city council fails to vote to adopt any proposed ordinance within ninety days after the city council hearing or if a town meeting fails to vote to adopt any proposed by-law within six months after the planning board hearing, no action shall be taken thereon until after a subsequent public hearing is held with notice and report as provided.

Except as provided herein, no zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are 2 branches, or by a two-thirds vote of a town meeting; provided, however, that the following shall be adopted by a vote of a simple majority of all members of the town council or of the city council where there is a commission form of government or a single branch or of each branch where there are 2 branches or by a vote of a simple majority of town meeting:

(1) an amendment to a zoning ordinance or by-law to allow any of the following as of right: (a) multifamily housing or mixed-use development in an eligible location; (b) accessory dwelling units, whether within the principal dwelling or a detached structure on the same lot; or (c) open-space residential development;

(2) an amendment to a zoning ordinance or by-law to allow by special permit: (a) multi-family housing or mixed-use development in an eligible location; (b) an increase in the permissible density of population or intensity of a particular use in a proposed multi-family or mixed use development pursuant to section 9; (c) accessory dwelling units in a detached structure on the same lot; or (d) a diminution in the amount of parking required for residential or mixed-use development pursuant to section 9;

(3) zoning ordinances or by-laws or amendments thereto that: (a) provide for TDR zoning or natural resource protection zoning in instances where the adoption of such zoning promotes concentration of development in areas that the municipality deems most appropriate for such development, but will not result in a diminution in the maximum number of housing units that could be developed within the municipality; or (b) modify regulations concerning the bulk and height of structures, yard sizes, lot area, setbacks, open space, parking and building coverage requirements to allow for additional housing units beyond what would otherwise be permitted under the existing zoning ordinance or by-law; and

(4) the adoption of a smart growth zoning district or starter home zoning district in accordance with section 3 of chapter 40R.

Any amendment that requires a simple majority vote shall not be combined with an amendment that requires a two-thirds majority vote.

If, in a city or town with a council of fewer than 25 members, there is filed with the clerk prior to final action by the council a written protest against a zoning change under this section, stating the reasons duly signed by owners of 50 per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending 300 feet therefrom, no change of any such ordinance shall be adopted except by a two-thirds vote of all members.

No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

When zoning by-laws or amendments thereto are submitted to the attorney general for approval as required by section thirty-two of chapter forty, he shall also be furnished with a statement which may be prepared by the planning board explaining the by-laws or amendments proposed, which statement may be accompanied by explanatory maps or plans.

The effective date of the adoption or amendment of any zoning ordinance or by-law shall be the date on which such adoption or amendment was voted upon by a city council or town meeting; if in towns, publication in a town bulletin or pamphlet and posting is subsequently made or publication in a newspaper pursuant to section thirty-two of chapter forty. If, in a town, said by-law is subsequently disapproved, in whole or in part, by the attorney general, the previous zoning by-law, to the extent that such previous zoning by-law was changed by the disapproved by-law or portion thereof, shall be deemed to have been in effect from the date of such vote. In a municipality which is not required to submit zoning ordinances to the attorney general for approval pursuant to section thirty-two of chapter forty, the effective date of such ordinance or amendment shall be the date passed by the city council and signed by the mayor or, as otherwise provided by ordinance or charter; provided, however, that such ordinance or amendment shall subsequently be forwarded by the city clerk to the office of the attorney general.

A true copy of the zoning ordinance or by-law with any amendments thereto shall be kept on file available for inspection in the office of the clerk of such city or town.

No claim of invalidity of any zoning ordinance or by-law arising out of any possible defect in the procedure of adoption or amendment shall be made in any legal proceedings and no state, regional, county or municipal officer shall refuse, deny or revoke any permit, approval or certificate because of any such claim of invalidity unless legal action is commenced within the time period specified in sections thirty-two and thirty-two A of chapter forty and notice specifying the court, parties, invalidity



**§ 5. Adoption or change of zoning ordinances or by-laws; procedure, MA ST 40A § 5**

---

claimed, and date of filing is filed together with a copy of the petition with the town or city clerk within seven days after commencement of the action.

**Credits**

Added by St.1975, c. 808, § 3. Amended by St.1977, c. 829, §§ 3B, 3C; St.1984, c. 189, § 47; St.1987, c. 685, § 3; St.1991, c. 515, §§ 1, 2; St.1996, c. 258, § 16; St.1998, c. 161, § 255; St.2008, c. 451, § 45, eff. June 30, 2009; St.2020, c. 358, § 19, eff. Jan. 14, 2021; St.2023, c. 7, § 154, eff. [May 30, 2023](#).

**Notes of Decisions (132)**

M.G.L.A. 40A § 5, MA ST 40A § 5

Current through Chapter 25 of the 2023 1st Annual Session. Some sections may be more current, see credits for details.

---

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

**§ 650-60. Amendments.**

This chapter may be amended from time to time at a City Council meeting. An amendment may be initiated by the submission to the City Council of a proposed change by the City Council, the Board of Appeals, an individual owning land in the City to be affected by the amendment, 10 registered voters in the City, the Planning Board and the Metropolitan Area Planning Council. Within 14 days of the receipt of a proposed change, the City Council shall submit it to the Planning Board. A public hearing shall be held by the Planning Board within 65 days after the proposed change is submitted to the Board.

## **Exhibit B**

101 Mass.App.Ct. 1108  
Unpublished Disposition

NOTICE: THIS IS AN UNPUBLISHED OPINION.  
NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).  
Appeals Court of Massachusetts.

BELLINGHAM MASSACHUSETTS  
SELF STORAGE, LLC, & others<sup>1</sup>  
v.  
TOWN OF BELLINGHAM & others.<sup>2</sup>

21-P-870

Entered: June 9, 2022.

By the Court (Kinder, Sacks & D'Angelo, JJ.)<sup>3</sup>

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

\*1 Defendant town of Bellingham (town) appeals from a Land Court judgment declaring, on cross motions for summary judgment, the town's 2019 zoning bylaw and zoning map amendment (collectively, zoning amendment) invalid because they were improperly adopted pursuant to G. L. c. 40A, § 5. Because the amendment was initiated by a town resident who was not statutorily authorized to initiate it, the zoning amendment was invalid. We therefore affirm.<sup>4</sup>

Background. We summarize the undisputed material facts. The town has adopted zoning bylaws dividing it into various districts. Two such districts are the suburban and industrial

districts. The plaintiff and interveners own property in the affected area, which had been in an industrial district prior to the zoning amendment.

In January 2019 the defendant, Arturo G. Paturzo, a resident of Bellingham, filed a petition to rezone the parcels owned by the plaintiff and interveners from industrial to suburban and to amend the town's zoning map to reflect the change. Paturzo did not own any of the parcels identified in the zoning amendment that would be affected by the proposed change. The town's planning department coordinator contacted Paturzo and advised him of the requisite steps needed prior to the public hearing. Paturzo submitted a signed statement identifying himself as the proponent of the amendment and confirming that he would comply with all the requirements and pay for all the associated costs.

On April 25, 2019, the planning board held a public meeting to discuss the proposed zoning amendment and unanimously voted to recommend it at the upcoming annual town meeting. There was no opposition to the zoning amendment and no owner of any of the affected properties spoke at, or even attended, the hearing. On May 22, 2019, at the annual town meeting, the town approved the zoning amendment.<sup>5</sup>

Discussion. Summary judgment is appropriate where there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. See Community Nat'l Bank v. Dawes, 369 Mass. 550, 553 (1976). "We review a decision to grant summary judgment de novo." Boazova v. Safety Ins. Co., 462 Mass. 346, 350 (2012). On cross motions for summary judgment, we view "the evidence ... in the light most favorable to the party against whom judgment is to enter" (quotation omitted). Eaton v. Federal Nat'l Mtge. Ass'n, 93 Mass. App. Ct. 216, 218 (2018).

\*2 This case presents a question of statutory interpretation, which we likewise review de novo. Water Dep't of Fairhaven v. Department of Env'tl. Protection, 455 Mass. 740, 744 (2010). "Where the words are 'plain and unambiguous' in their meaning, we view them as 'conclusive as to legislative intent.'" Id., quoting Sterilite Corp. v. Continental Cas. Co., 397 Mass. 837, 839 (1986).

General Laws c. 40A, § 5, sets forth the statutory process by which the town may adopt or amend its zoning bylaw and zoning map and provides, in relevant part, as follows (emphasis added):

“Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the ... board of selectmen of a proposed zoning ordinance or by-law by a ... board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter.”

“[T]he legislature mandated a rule of strict compliance by the plain language, [Zoning] ordinances or by-laws may be adopted ... but only in the manner ... provided” (quotation omitted). *Canton v. Bruno*, 361 Mass. 598, 603 (1972). In interpreting similar language in a statutory predecessor to G. L. c. 40A, § 5, the Supreme Judicial Court recognized that “a court will consider ‘whether an asserted minor noncompliance in fact is significantly inconsistent with, or prejudicial to, the apparent legislative objectives of the prescribed procedures [for adopting zoning by-laws].’ ” *Id.* at 604, quoting *Hallenborg v. Town Clerk of Billerica*, 360 Mass. 513, 517 (1971).

But just as in *Canton*, where the court could not say “that there was no important legislative purpose in the statutory provision concerning the manner of selecting a special zoning board,” *Canton*, 361 Mass. at 604, here we cannot reasonably say there is no important legislative purpose served by the statutory language governing the manner in which zoning amendments can be initiated. By incorporating the requirements of G. L. c. 39, § 10, G. L. c. 40A, § 5, effectively requires, in most instances, ten registered voters

to initiate an amendment. The purpose of this provision may be to ensure that any amendment proposed by registered voters has a modicum of support before it can be placed before a planning board. Cf. *Libertarian Ass'n of Mass. v. Secretary of the Commonwealth*, 462 Mass. 538, 556 (2012) (requirement that candidates for office file nomination papers signed by specified number of registered voters ensures that such candidates have “some modicum of support” before their names may be printed on ballot [quotation omitted]). In any event, permitting a single citizen with no property interest in the affected district to initiate a zoning amendment would be contrary to the clear language of the statute. Cf. *Capezzuto v. State Ballot Law Comm'n*, 407 Mass. 949, 954-956 (1990) (where only nine valid signatures appeared on petition for proposed state law, rather than required ten, proposal could not proceed); *Putnam v. Bessom*, 291 Mass. 217, 220 (1935) (petition with fewer than requisite 200 signatures of registered voters could not be basis for calling town meeting).<sup>6</sup>

\*3 *General Laws c. 40A, § 5*, is explicit regarding who may initiate a zoning amendment. Here, although the planning board expressed support for the zoning amendment, the amendment was initiated by Paturzo.<sup>7</sup> Because Paturzo did not own land in the affected area, he was not authorized to initiate the zoning amendment as an individual. Accordingly, we discern no error in the judge's decision.

Judgment affirmed.

#### All Citations

101 Mass.App.Ct. 1108, 190 N.E.3d 1089 (Table), 2022 WL 2069244

#### Footnotes

- 1 Interveners Paul D. Doherty, as trustee of D&D Realty Trust, and J. Day Enterprises, LLC.
- 2 Arturo G. Paturzo. The plaintiff also identified Shirley A. French, as trustee of Gray Wall Realty Trust; Maple Tree Properties, LLC; and Bernon Land Trust, LLC, as “parties-in-interest.” Neither Paturzo nor the “parties-in-interest” participated in this appeal.
- 3 The panelists are listed in order of seniority.
- 4 Neither the town, interveners, nor other parties in interest appealed from so much of the judgment as declared that the zoning amendment was not invalid because of any failure of notice pursuant to the statute or the town's procedural rules. Accordingly, we express no view upon those questions.
- 5 In their briefing the appellees reference a subsequent town meeting held on November 17, 2021, attach documents related to that meeting, and argue that we should take judicial notice as support for their arguments. The town moved to

strike those portions of the appellees' brief and addendum. Because we are "limited to what is contained in the record of proceedings below," [Police Comm'r of Boston v. Robinson](#), 47 Mass. App. Ct. 767, 770 (1999), we allow the town's motion and decline to consider any reference or materials related to the 2021 Fall Special Town Meeting in reaching our decision.

- 6 The town's reliance on [Hickey v. Zoning Bd. of Appeals of Dennis](#), 93 Mass. App. Ct. 390 (2018), is misplaced. That decision announced no general principle that strict compliance with zoning laws is not required. Its recognition that actual notice may sometimes suffice even where formal notice has not been given in no way suggests that a single registered voter may exercise the power that G. L. c. 40A, § 5, reserves for ten such voters.
- 7 The uncontested record shows that Paturzo prepared and delivered the petition for rezoning to the town; that the planning board contacted Paturzo to advise him of the steps he needed to take in preparation for the public hearing related to the amendment; and that the planning board identified Paturzo as the amendment's "petitioner" on the town meeting warrant, and again on the form provided to the Attorney General's office in connection with a statutorily required request for approval of the amendment.

# **Exhibit C**

Megan B. Bayer  
Acting City Solicitor

Elliott J. Veloso  
First Assistant City Solicitor



Assistant City Solicitors  
Paul S. Kawai  
Sean M. McKendry  
Diane O. Pires  
Kate M. Kleimola  
Sydney M. Wright  
Evan C. Bjorklund  
Franziskus Lepionka  
Andrea Carillo-Rhoads

Public Records Access Officer  
Seah Levy

## CITY OF CAMBRIDGE

Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

October 16, 2023

Yi-An Huang  
City Manager  
Cambridge City Hall  
795 Massachusetts Avenue  
Cambridge, MA 02139

***Re: Response to Awaiting Report No. 23-23 re: legal opinion which clarifies the state law on zoning petition signature requirements to ensure clarity and lawful deliberation in the future***

Dear Mr. Huang:

I am writing in response to Awaiting Report No. 23-23 which requests a legal opinion which clarifies the state law on petition signature requirements to ensure clarity and lawful deliberation in the future (the "Council Order"). This Council Order arose out of a resident zoning petition filed by Douglas Brown, a property owner, on January 4, 2023 (the "Brown Petition"). The Brown Petition was filed by an individual property owner but was citywide in scope, and would have affected multiple zoning districts and almost every residential parcel in the City. On February 13, 2023, the Law Department issued an opinion to the Council that stated that:

"[i]t appears that Mr. Brown is a trustee for a trust that owns 35 Standish Street, which is in a Residence B Zoning District. However, the amendments are not limited to affecting Mr. Brown's property or the district in which his property is located. A single citizen cannot initiate a zoning amendment that would affect a zoning district in which the single citizen has no property interest. Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 101 Mass. App. Ct. 1108 (2022) (unreported). Accordingly, the Brown Petition cannot be initiated by an individual landowner. It may be permissible as a zoning petition filed by ten registered voters, but that was not the case here."

Therefore, the Law Department opined that the City Council should rescind the vote to refer that petition to the Planning Board and Ordinance Committee because the vote was defective as a matter of law.



The Council Order states that “[d]iscussion in the City Council over the [February 13, 2023] legal opinion resulted in confusion about the legal right of a single individual property owner to file zoning petitions which may come up for future petitions” and therefore requested this opinion. Specifically, the Council Order requests clarification concerning the applicability of Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 101 Mass.App.Ct. 1108 (2022) to the facts presented by the filing of the Brown Petition. The Council Order also cites to and links to Land Court decision, which is a 1992 case from the Town of Shrewsbury, Davolio v. Town of Shrewsbury, 1992 WL 12151913 (Land Ct. 1992). The Council Order states that case “appears to confirm and affirm the right of a single individual property owner affected by the decision to file a zoning petition.”

As discussed below, our opinion that an individual landowner cannot initiate a zoning amendment that would affect a zoning district in which the individual landowner has no property interest has not changed and is in keeping with state law. The law allows an individual landowner the ability to initiate a zoning petition that would affect that landowner’s property, but requires ten registered voters to initiate the process to make zoning changes to other zoning districts or other specific properties. The intent is that an individual landowner can have a role in shaping the zoning that applies to their property, but there needs to be the support of at least ten community members to initiate changes to the zoning applicable elsewhere in the city. The cases cited in the Council Order either support this standard or are distinguishable.

As stated in the February 13, 2023 Council Order response, Mr. Brown is a trustee for a trust that owns a property located in a Residence B Zoning District. The proposed Brown Petition would have affected all Residence A-1, A-2 and B Districts. As such, the proposed Brown Petition was not limited to the Residence B Zoning District. In Bellingham, the Appeals Court found that the zoning petition at issue in the case was not proper because the petitioner did not own any of the parcels included in the zoning amendment.<sup>1</sup> The Bellingham case holds that “permitting a single citizen with no property interest in the affected district to initiate a zoning amendment would be contrary to the clear language of the statute.” Thus, while Mr. Brown may be able to bring a zoning petition that affects only the Residence B Zoning District, he cannot bring a petition that would also affect Residence A-1 and A-2 Zoning Districts. The Brown Petition was therefore invalid under state law.

Likewise, the Davolio case is distinguishable from the Brown Petition because the petitioner in Davolio owned property in the zoning district that was the subject of the rezoning. In

---

<sup>1</sup> The Council Order cites to Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham by linking to the Land Court decision in that case (Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 2021 WL 2994398, 20 MISC 000115 (Land Ct. 2021)). However, the Land Court decision cited was appealed to the Appeals Court. Where a case has been appealed, and an appellate level decision has been issued, the appellate level decision is controlling in the case. While a court can look at a trial court decision as persuasive authority, it is not precedent. Notwithstanding, the Land Court decision in the Bellingham case (Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham, 2021 WL 2994398, 20 MISC 000115 (Land Ct. 2021)) found that “as a matter of law, strict compliance with G.L. c. 40A, §5, first para., is required, that strict compliance did not occur here [because the petitioner did not own land in the districts that would be affected by the proposed change], and that the failure to comply was ‘significantly inconsistent with, or prejudicial to, the apparent legislative objectives of the prescribed procedures.’” Therefore, the Land Court decision also found that there was a requirement that a petitioner own land in the affected district.

the Davolio case, the defendants Spag's Supply Inc. and C.J. & S., Inc., the real estate holding company for Spag's, owned a number or parcels in the Town of Shrewsbury. By virtue of several town meeting votes, the defendants acquired from the town an additional parcel in the town's commercial-business zoning district, rezoned another parcel to be in the commercial-business zoning district, and altered the provisions of what was allowed in the commercial-business zoning district. The Land Court found that the defendants "are affected by Article 11 and apparently also by Article 12 [the two town meeting warrant articles that sought to alter the provisions of what was allowed in the commercial-business zoning district], although its relation to the Spag's proposal was not made clear." Accordingly, the Land Court found that the defendants owned land to be affected by the zoning change, although the Land Court did not specify if that was by virtue of Spag's Supply Inc. and C.J. & S., Inc. acquiring the parcel in the commercial-business zoning district from the town, rezoning another parcel that it owned to be in the commercial-business zoning district, or by owning other property that was in the commercial-business zoning district. In any event, the Land Court found that Spag's Supply Inc. and C.J. & S., Inc. had an ownership interest in a property in the commercial-business district and therefore could properly file a zoning petition to amend the commercial-business district.

The two cases cited above stand for the proposition that, pursuant to G.L. c. 40A, §5, an individual property owner cannot initiate a zoning amendment that would affect a zoning district in which the individual property owner has no property interest. As such, the Brown Petition was not permissible because it affected Residence A-1, A-2 and B zoning districts, and Mr. Brown is only an owner of land in a Residence B Zoning District. In the future, the City Council can accept resident initiated zoning petitions from an individual property owner owning land in the district that would be affected by the proposed zoning change, or by ten registered voters in the City. A citywide petition affecting multiple zoning districts would require ten registered voters to submit the petition, unless an individual property owner owned property in all affected districts.

Very truly yours,



Megan B. Bayer  
Acting City Solicitor

November 8, 2023

By Email and U.S. Mail

Sean N. Fay, Chair  
Marlborough Planning Board  
135 Neil Street  
2nd Floor  
Marlborough, MA 01752

Michael H. Ossing, President  
Marlborough City Council  
140 Main Street  
2nd Floor  
Marlborough, MA 01752

Re: Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22  
"Retirement Community Overlay Districts" and the Public Hearing on  
November 13, 2023

Dear Mr. Fay and Mr. Ossing:

This firm represents Hillside School ("Hillside") at 404 Robin Hill St., Marlborough in relation to the Proposed Zoning Amendment to Chapter 650 "Zoning" to amend §22 "Retirement Community Overlay Districts" to include Map 39, Parcels 5 and 26B on Robin Hill Street ("Zoning Amendment"). We write to express our serious concerns with the Zoning Amendment and to bring to the attention of the Planning Board and the City Council procedural defects which would render it a nullity as well as the citywide implications that this major rewrite of Marlborough's Ordinances would have. The Planning Board and the City Council must remove the Zoning Amendment from their respective agendas unless and until the legal defect – initiation by a nonlandowning corporate entity – is cured. Short of that, any public hearing on the Zoning Amendment must be continued in order for the citizens of Marlborough and all relevant Boards, Committees and Departments to review the major changes to the City's laws being requested and to determine if these changes are in the best interests of the City of Marlborough and its citizens.

- The Zoning Amendment is legally defective because it was initiated by a non-landowner corporate entity in violation of state and local law.**

The Zoning Amendment is legally defective because it was initiated by non-landowner, Pulte Homes of New England LLC ("Pulte"), the prospective buyer of the parcels targeted for

## LURIE FRIEDMAN LLP

Sean N. Fay  
Michael H. Ossing  
November 8, 2023  
Page 2

the Retirement Overlay District. See Brian Falk letter dated September 7, 2023, attached as **Exhibit 1**. Mr. Falk states that he represents Pulte, the prospective buyer, not the landowner. The governing statute is clear:

**Zoning ordinances or by-laws may be adopted and from time to time changed by amendment**, addition or repeal, **but only in the manner hereinafter provided**. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, a board of selectmen, a board of appeals, **by an individual owning land to be affected by change or adoption**, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter.

M.G.L. c. 40A, §5 (emphasis added). Marlborough Ordinance § 650-60 tracks the statute: “This chapter may be amended from time to time at a City Council meeting. **An amendment may be initiated by the submission to the City Council** of a proposed change by . . . **an individual owning land in the City to be affected by the amendment**, 10 registered voters in the City, the Planning Board and the Metropolitan Area Planning Council.” (emphasis added).

Pulte does not own the land in the City to be affected. Mr. Falk’s Letter references a “letter of authorization” to claim that “the owner of this land requests” the Zoning Amendment. However, the letter of authorization does not authorize Mr. Falk to request the Zoning Amendment on behalf of the landowner. Rather, the landowner, Denali Belle, LLC, “authorizes Mirick O’Connell, **on behalf of Pulte Homes of New England, LLC**, to submit” the Zoning Amendment, not on behalf of the current landowner. See Letter of Authorization, attached as **Exhibit 2** (emphasis added).

If there were any doubt as to who the proponent is, that doubt was removed at the City Council’s hearing on October 23, 2023 where Mr. Falk stated that he was appearing “on behalf of Pulte Homes of New England” and then in response to a question from a Councilor on potential uses of the site, Mr. Falk repeated that he is “representing Pulte, a potential buyer of this site” and he “can’t speak to the current owner and what other options they may have” but that “the property is certainly for sale”. See video of October 23, 2023 City Council hearing, at timestamps 0:11:04 and 1:15:50, <https://play.champds.com/marlboroughma/event/690>. Pulte Vice-President, Mark Mastroianni, then made clear that the Pulte’s acquisition is conditional, saying that if Pulte cannot build this proposed project, the seller may take other options, and “it wouldn’t be Pulte Homes developing”. Id. at timestamp 1:25:30

Because Pulte is not the landowner, it is a violation of M.G.L. c. 40A, §5 and Marlborough Ordinance § 650-60 for the Planning Board and the City Council to even consider the Zoning Amendment, much less act upon it. Indeed, any action on the Zoning Amendment would be invalid. See **Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham**, 101

## LURIE FRIEDMAN LLP

Sean N. Fay  
Michael H. Ossing  
November 8, 2023  
Page 3

Mass. App. Ct. 1108 (2022) (because the proponent “did not own land in the affected area, he was not authorized to initiate the zoning amendment as an individual” and the amendment was invalid). Moreover, because the current landowner is not an “individual” but a corporate entity, Denali Belle, LLC, this Zoning Amendment could only be initiated through the provision in the statute and the Ordinance which provides that ten registered voters of Marlborough can initiate such a change, because the purpose of this provision is “to ensure that any amendment proposed by registered voters has a modicum of support before it can be placed before a planning board.” Id. (emphasis in original).

Accordingly, the Zoning Amendment is not properly before the Planning Board or the City Council and must be removed from the November 13, 2023 Agenda.

**2. The Zoning Amendment is a complete re-write of Marlborough’s Ordinance by a developer, not based on any study, survey or City need.**

If the Planning Board and/or the City Council make the ill-advised decision to consider the Zoning Amendment despite the fatal legal defects, it must continue any hearing and delay any action on the Zoning Amendment to provide time for the citizens of Marlborough and the various City Boards, Committees and Departments to review, digest and comment on the major changes proposed.

The Zoning Amendment’s changes would have long-lasting and far-reaching implications for the entire City. To be clear, Pulte is not simply requesting a special permit or a variance or approval for a project. Pulte is asking the City for an entire revision of the City’s laws. The Zoning Amendment would cause drastic changes to the number, size, scope and location of retirement communities throughout Marlborough. These changes would apply to the entire City, not just to Robin Hill Street. Just some of the proposed changes if the Zoning Amendment passed are as follows:

- Retirement Community developments could be large scale combinations – a mix of townhouses, multifamily apartments and various amenities – throughout the entire City. Currently, the only permissible new retirement community developments that can be added to the Zoning Map are townhouse neighborhoods.
- Multifamily developments and mixed detached/multifamily developments could be located in any Limited Industrial (“LI”) District or Industrial (“I”) District whereas now the only location for a multifamily development is the one already existing near the Fitchburg Street intersection with Route 85/290 Connector Road. This would allow massive developments – mini-cities – including multiple four-story apartment buildings, dozens of town homes, four story clubhouses any number of amenities, which could include a pharmacy, chapel, theater, library,

## LURIE FRIEDMAN LLP

Sean N. Fay  
Michael H. Ossing  
November 8, 2023  
Page 4

gift shop, convenience store, beauty salon, barbershop, banking services, offices, third-party vendor services and recreation facilities in any LI or I district in the City. See **Exhibit 3** comparing the current permissible location of a Retirement Community Overlay – Multifamily to the area that would be permissible under the Zoning Amendment.

- Multifamily developments and mixed detached/multifamily developments could be constructed within 100 feet of any non-municipal road, i.e. interstates and state highways. Currently, multifamily developments are prohibited within 100 feet of all public roads.
- Multifamily buildings could be four stories high with no limit on total building height. Currently, the multifamily buildings are limited to three stories and subject to other height limitations.
- It would also increase the number of units per acre permissible in a retirement community and increase the total area per multifamily unit in a retirement community.
- It would improperly empower the City Council to make changes to the Zoning Map Overlay, add any conditions and allow any variances for retirement community development – all powers that the City Council does not currently hold.

These significant changes should not be considered when not initiated by the proper bodies and in response to actual City need. There has been no study, no survey and no expert report by any City body or agent to suggest that these changes are in any way warranted, desirable, necessary or even beneficial to the City and its citizens. In fact, it is clear that these changes would be bad for the City. The City's laws cannot be written ad-hoc by national developers for their own pet project and for their own benefit with no consideration for the effect on the City.<sup>1</sup>

### **3. The Zoning Amendment is bad for the Robin Hill Street Community.**

The Zoning Amendment would clear more than 28 acres of currently undeveloped wooded land to be converted to a massive complex of over 60 buildings, including a clubhouse

---

<sup>1</sup> While the effect would be widespread, the open recognition that the singular objective of the Zoning Amendment is to benefit Pulte, the potential buyer, confirms that this is illegal "spot zoning". Spot zoning occurs "where one lot or a small area has been singled out for treatment less onerous than that imposed upon nearby, indistinguishable properties." *W.R. Grace & Co.-Conn. v. City Council of Cambridge*, 56 Mass. App. Ct. 559, 569 (Mass. App. Ct. 2002) ("It is unlawful to invoke the zoning power solely to confer an economic benefit (or impose an economic detriment) upon the owner of a comparatively small area within a zoning district when the remaining parcels of that district are treated differently").

## LURIE FRIEDMAN LLP

Sean N. Fay  
Michael H. Ossing  
November 8, 2023  
Page 5

and an unknown number of amenities, wedged between the narrow road of Robin Hill Street and I-290 – a development which is not permissible under the current zoning ordinances.

This would have a significant impact on the community and would be, in effect, a mini-city on Robin Hill St., including multiple four story apartment buildings, dozens of town homes, a four story clubhouse any number of amenities, which could include a pharmacy, chapel, theater, library, gift shop, convenience store, beauty salon, barbershop, banking services, offices, third-party vendor services and recreation facilities. This would be a major increase in congestion, development and traffic on this small street, a significant loss of trees and open space and is completely out of character with the current area. Hillside School and surrounding neighbors are strongly opposed to this drastic change, which is out of character for the area.

There has been no traffic or safety study to determine if the narrow Robin Hill Street could even support such a massive development. The Planning Board and City Council should not permit such a drastic change in this area before it has conducted careful review and study of its impact.

#### **4. Wetland impacts of the Zoning Amendment should be understood and considered first.**

At the City Council's hearing on October 23, 2023, Pulte conceded that the development plans presented were in the early stages and that any potential development would change for a variety of reasons, including, notably the presence of wetland resources on site. The wetland resources on the site have not been fully identified or analyzed but a preliminary review of MassGIS data identifies wetland resources on several areas of the parcel, including in an area currently designed for an access road to the easternmost part of the development.

Additionally, the development is designed for an area near and in the vicinity of the Millham Reservoir and the North Branch Brook – areas owned by the City for drinking water purposes. In fact, immediately across the street and on the south side of Robin Hill Road are signs noting that this land is owned and managed by the City for water protection purposes.

The proposed project would remove acres of forest and replace it with as yet an undetermined amount of impervious surface – a major contributor to stormwater pollution and across the street from lands set aside for water resource protection.

Before proceeding with such a dramatic change, particularly since Pulte's acquisition of the site is contingent on its plans, there should be an opportunity to consider the possible impacts of this project, and especially in light of important community goals, including watershed protection.

## LURIE FRIEDMAN LLP

Sean N. Fay  
Michael H. Ossing  
November 8, 2023  
Page 6

### 5. **The Zoning Amendment would need a two-thirds majority at City Council to pass.**

Finally, Mr. Falk claims that this Zoning Amendment would require only a simple majority to pass City Council rather than a two-thirds majority. See Ex. 1. This is incorrect. Pursuant to M.G.L. c. 40A, §5, all zoning amendments require a two-thirds vote with limited exceptions. Mr. Falk relies on exception subsection (2)(a) that provides allows a simple majority for “an amendment to a zoning ordinance or by-law to allow by special permit: (a) multi-family housing or mixed-use development in an eligible location”. First of all, the Zoning Amendment would do more than amend the ordinance to allow a special permit for multi-family uses, i.e. changing the Zoning Map to add two parcels to the Retirement Community Overlay District, empower the City Council to make further changes to the Overlay District Zoning Map, and change the size and number of units permissible in the Retirement Community developments.

But the assertion that the simple majority exception is effective because the subject parcels on Robin Hill Street are in an “eligible location” is misleading. “Eligible location” is defined in M.G.L. c. 40A, § 1A as:

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

The parcels are not in an area of concentrated development nor do they meet any of the other criteria. The area is bounded by I-290 to the north - without any access to I-290; to the west by Hillside School’s large undeveloped, wooded property; to the south by the narrow Robin Hill Street and to the west by a river. It stretches to credulity to suggest that it is “close to Donald Lynch Boulevard” and developments near it. Furthermore, the Zoning Amendment, as discussed, is not limited to the parcels at Robin Hill Street, but would be citywide. The entire City is certainly not an “eligible location”. Accordingly, if the City Council ever votes on the Zoning Amendment, it would require a two-thirds vote. If there is any uncertainty the Planning Board and/or City Council should request an advisory opinion on whether the citywide Zoning Amendment qualifies as an eligible location from the Office of Economic Development at <https://www.mass.gov/forms/request-an-advisory-opinion-on-ch40a-eligible-locations>.

Please circulate this letter amongst all members of the Planning Board and the City Council in advance of the hearing scheduled for October 23, 2023. Please also confirm that Zoning Amendment will be removed from the Agenda by close of business October 23, 2023. If the matter is not pulled before the Planning Board hearing, I intend to appear at the hearing alongside my client to speak in opposition to the Zoning Amendment.



**LURIE FRIEDMAN LLP**

Sean N. Fay  
Michael H. Ossing  
November 8, 2023  
Page 7

Very truly yours,

/s/Harley C. Racer  
Harley C. Racer

cc: Jason Grossfield, Esq., City Solicitor  
Jeremy McManus, Asst. City Solicitor  
Traffic Commission  
Conservation Commission

**EXHIBIT 1**

**MIRICK O'CONNELL** RECEIVED  
CITY CLERK'S OFFICE  
CITY OF MARLBOROUGH  
ATTORNEYS AT LAW 2023 SEP -7 AM 11:21

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

September 7, 2023

**BY HAND DELIVERY**

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

Re: Proposed Zoning Amendment: Retirement Community Overlay District

Dear Councilor Ossing:

I represent Pulte Homes of New England LLC, the prospective buyer of approximately 28 acres of land off of Robin Hill Street in Marlborough, shown on Assessors Map 39 as Parcels 5 and 26B, located in the Limited Industrial Zoning District.

As noted in the enclosed letter of authorization, the owner of this land requests, in accordance with M.G.L. c. 40A, Sec. 5, that the City Council consider amending the Marlborough Zoning Map so that the Retirement Community Overlay District is superimposed over this land, and consider amending the Retirement Community Overlay District to accommodate an over 55 community combining both townhouse and multifamily components, for a new condominium ownership neighborhood.

Pulte is excited about the opportunity to bring a unique over 55 community to Marlborough on land that, while zoned Limited Industrial, would be better utilized as a low-impact residential neighborhood. This new neighborhood would provide opportunities for residents to downsize in Marlborough yet continue to be homeowners, enjoying convenient access to Donald Lynch Boulevard, Route 290, and Route 495.

If this zoning amendment is approved by the City Council, Pulte would then seek a special permit from the City Council to authorize the use and site plan approval from the Site Plan Review Committee to address site design details.

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

(Client Matter 20298/00001/A8441702.DOCX)

**MIRICK O'CONNELL**

Marlborough City Council

September 7, 2023

Page 2

“an amendment to a zoning ordinance ... to allow by special permit: (a) multi-family housing ... in an eligible location; (b) an increase in the permissible density of population or intensity of a particular use in a proposed multi-family ... development pursuant to section 9;”

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

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

The proposed zoning amendment would allow, by special permit, multifamily housing on land close to Donald Lynch Boulevard, which is an area of concentrated development, and located in close proximity to Route 290 and Route 495. Further, the proposed zoning amendment would allow, by special permit, an increase in the permissible density of population or intensity of multifamily uses in the Retirement Community Overlay District. Therefore, we believe the zoning amendment qualifies for a reduced quantum of vote under M.G.L. c. 40A, Sec. 5.

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

Thank you for your time and attention to this matter.

Sincerely,



Brian R. Falk

BRF/

Encl.

cc: Client

**EXHIBIT 2**

August 28, 2023

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

RE: Robin Hill Street Project

Dear Councilor Ossing:

Please be advised that the undersigned is the owner of parcels located off of Robin Hill Street in Marlborough, shown on Assessors Map 39 as Parcels 5 and 26B. The undersigned hereby authorizes Mirick O'Connell, on behalf of Pulte Homes of New England LLC, to submit to the City of Marlborough proposed zoning amendments and any land use applications necessary for Pulte Homes of New England LLC to seek approval for a retirement community at the property.

Thank you for your time and attention to this matter.

Denali Belle LLC

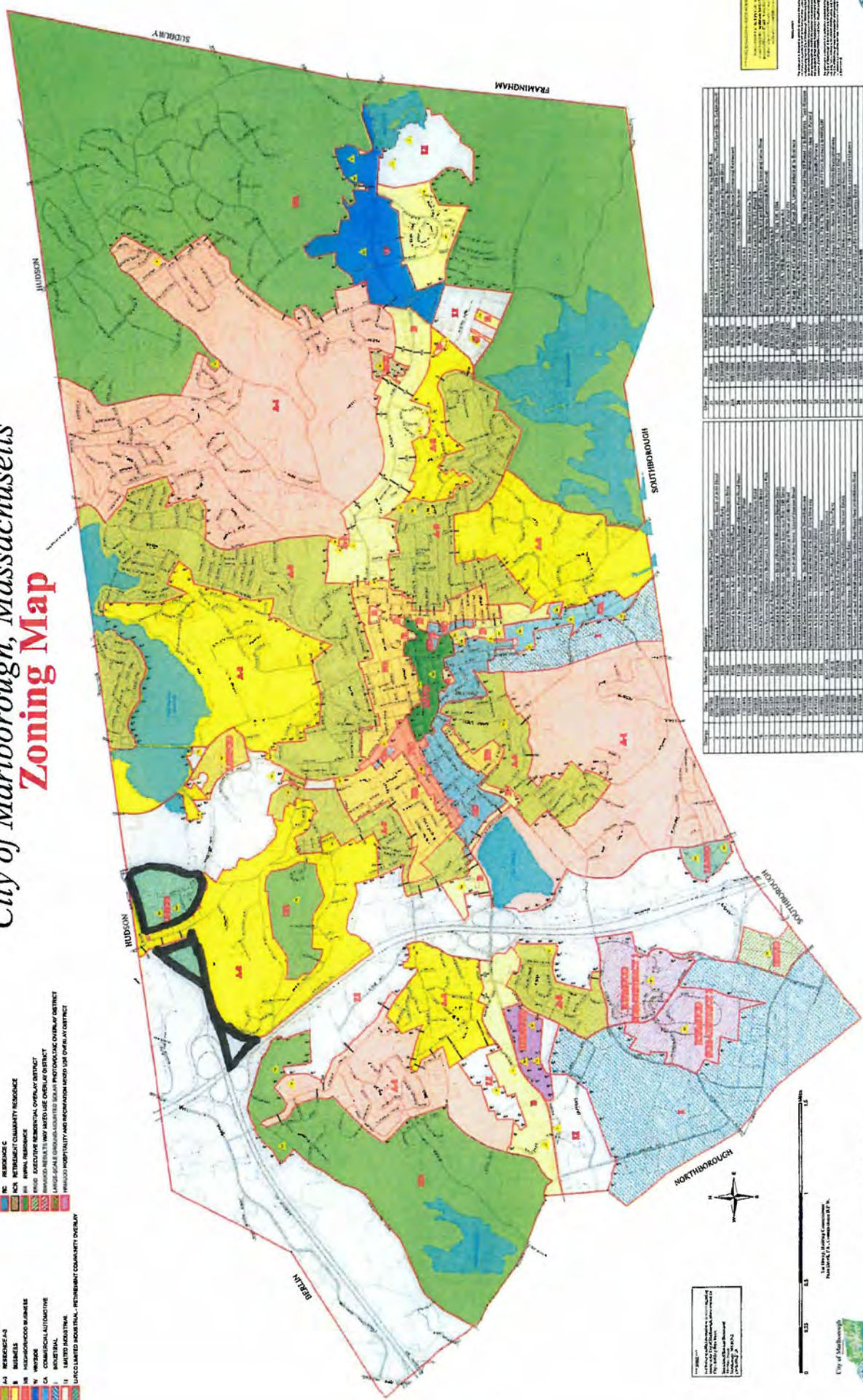
By:   
Name: Todd Pietrasiak  
Title: Manager

**EXHIBIT 3**

# Current RLO-MF

## City of Marlborough, Massachusetts Zoning Map

- A1 RESIDENCE A1
- A2 RESIDENCE A2
- A3 RESIDENCE A3
- B BUSINESS
- M MEDIUM DENSITY RESIDENCE
- W WOODS
- LA LIMITED INDUSTRIAL
- LI LIMITED INDUSTRIAL - RETIREMENT COMMUNITY OVERLAY
- LM MARLBOROUGH VILLAGE DISTRICT
- MR RESIDENCE B
- NC NEIGHBORHOOD COMMUNITY RESIDENCE
- PC PROFESSIONAL COMMUNITY RESIDENCE
- RD RESIDENTIAL DEVELOPMENT
- RI RESIDENTIAL INDUSTRIAL
- RI-2 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-3 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-4 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-5 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-6 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-7 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-8 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-9 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-10 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-11 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-12 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-13 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-14 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-15 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-16 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-17 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-18 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-19 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-20 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-21 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-22 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-23 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-24 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-25 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-26 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-27 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-28 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-29 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-30 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-31 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-32 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-33 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-34 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-35 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-36 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-37 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-38 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-39 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-40 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-41 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-42 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-43 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-44 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-45 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-46 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-47 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-48 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-49 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-50 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-51 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-52 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-53 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-54 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-55 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-56 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-57 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-58 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-59 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-60 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-61 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-62 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-63 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-64 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-65 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-66 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-67 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-68 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-69 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-70 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-71 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-72 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-73 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-74 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-75 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-76 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-77 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-78 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-79 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-80 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-81 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-82 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-83 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-84 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-85 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-86 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-87 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-88 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-89 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-90 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-91 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-92 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-93 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-94 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-95 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-96 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-97 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-98 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-99 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT
- RI-100 RESIDENTIAL INDUSTRIAL - OVERLAY DISTRICT



Parcel ID	Zoning District	Area (Acres)	Notes
0100000001	A1	0.1	
0100000002	A1	0.1	
0100000003	A1	0.1	
0100000004	A1	0.1	
0100000005	A1	0.1	
0100000006	A1	0.1	
0100000007	A1	0.1	
0100000008	A1	0.1	
0100000009	A1	0.1	
0100000010	A1	0.1	
0100000011	A1	0.1	
0100000012	A1	0.1	
0100000013	A1	0.1	
0100000014	A1	0.1	
0100000015	A1	0.1	
0100000016	A1	0.1	
0100000017	A1	0.1	
0100000018	A1	0.1	
0100000019	A1	0.1	
0100000020	A1	0.1	
0100000021	A1	0.1	
0100000022	A1	0.1	
0100000023	A1	0.1	
0100000024	A1	0.1	
0100000025	A1	0.1	
0100000026	A1	0.1	
0100000027	A1	0.1	
0100000028	A1	0.1	
0100000029	A1	0.1	
0100000030	A1	0.1	
0100000031	A1	0.1	
0100000032	A1	0.1	
0100000033	A1	0.1	
0100000034	A1	0.1	
0100000035	A1	0.1	
0100000036	A1	0.1	
0100000037	A1	0.1	
0100000038	A1	0.1	
0100000039	A1	0.1	
0100000040	A1	0.1	
0100000041	A1	0.1	
0100000042	A1	0.1	
0100000043	A1	0.1	
0100000044	A1	0.1	
0100000045	A1	0.1	
0100000046	A1	0.1	
0100000047	A1	0.1	
0100000048	A1	0.1	
0100000049	A1	0.1	
0100000050	A1	0.1	
0100000051	A1	0.1	
0100000052	A1	0.1	
0100000053	A1	0.1	
0100000054	A1	0.1	
0100000055	A1	0.1	
0100000056	A1	0.1	
0100000057	A1	0.1	
0100000058	A1	0.1	
0100000059	A1	0.1	
0100000060	A1	0.1	
0100000061	A1	0.1	
0100000062	A1	0.1	
0100000063	A1	0.1	
0100000064	A1	0.1	
0100000065	A1	0.1	
0100000066	A1	0.1	
0100000067	A1	0.1	
0100000068	A1	0.1	
0100000069	A1	0.1	
0100000070	A1	0.1	
0100000071	A1	0.1	
0100000072	A1	0.1	
0100000073	A1	0.1	
0100000074	A1	0.1	
0100000075	A1	0.1	
0100000076	A1	0.1	
0100000077	A1	0.1	
0100000078	A1	0.1	
0100000079	A1	0.1	
0100000080	A1	0.1	
0100000081	A1	0.1	
0100000082	A1	0.1	
0100000083	A1	0.1	
0100000084	A1	0.1	
0100000085	A1	0.1	
0100000086	A1	0.1	
0100000087	A1	0.1	
0100000088	A1	0.1	
0100000089	A1	0.1	
0100000090	A1	0.1	
0100000091	A1	0.1	
0100000092	A1	0.1	
0100000093	A1	0.1	
0100000094	A1	0.1	
0100000095	A1	0.1	
0100000096	A1	0.1	
0100000097	A1	0.1	
0100000098	A1	0.1	
0100000099	A1	0.1	
0100000100	A1	0.1	

City of Marlborough  
 GIS  
 100 Courthouse Street, 01503  
 508-253-3000  
 www.marlb.org

Scale: 0 0.5 1.0 Miles

North Arrow

100 Marlborough Center  
 North Street, P.O. Box 10000  
 Marlborough, MA 01503

Albert *[Signature]*  
 Mayor

100 Courthouse Street, 01503

City of Marlborough  
 Planning & Zoning Department  
 100 Courthouse Street, 01503  
 508-253-3000  
 www.marlb.org

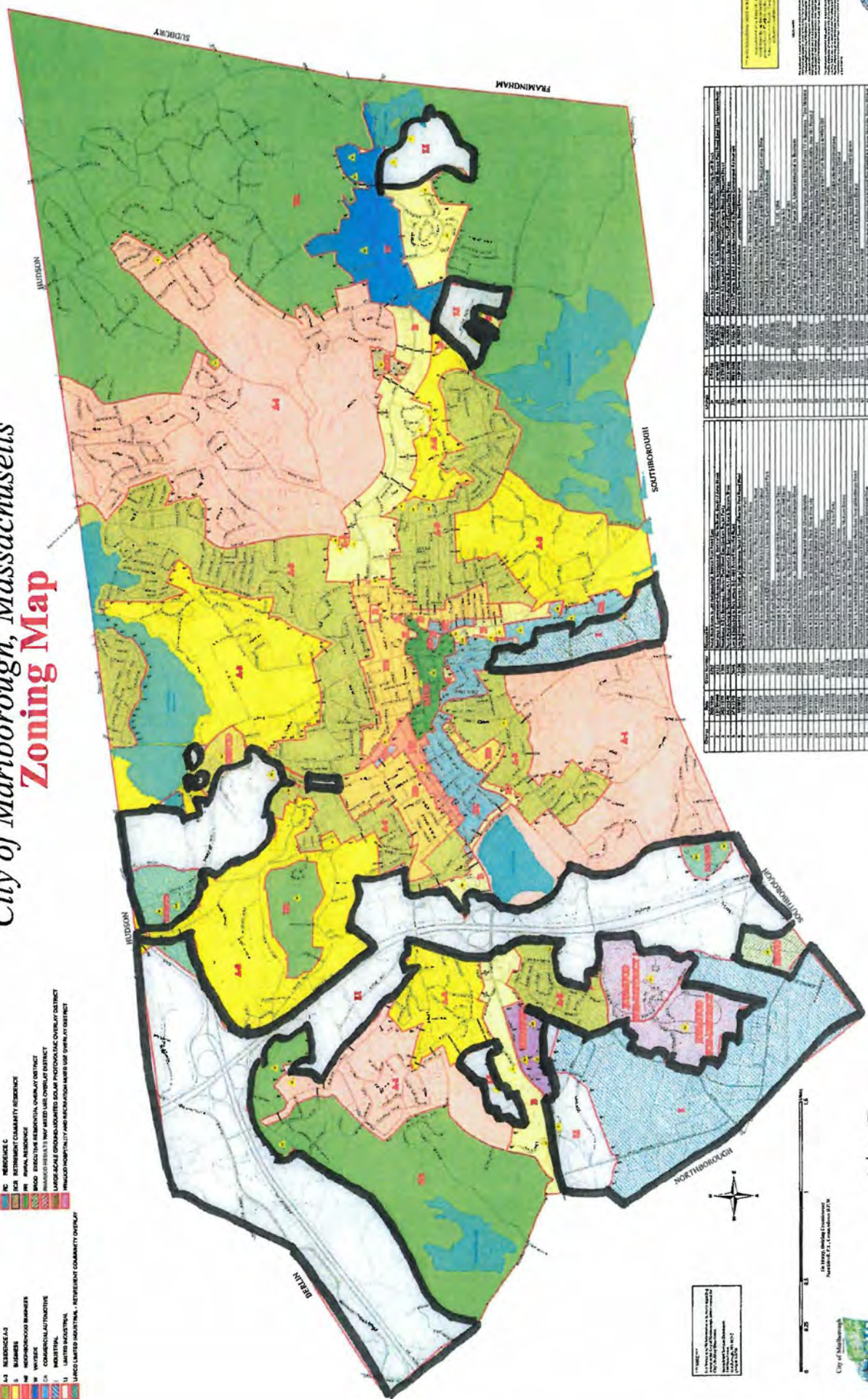
100 Courthouse Street, 01503



# Zoning Amendment RLO-MF

## City of Marlborough, Massachusetts Zoning Map

- 1-1 RESIDENCE A-1
- 1-2 RESIDENCE A-2
- 1-3 RESIDENCE A-3
- 1-4 RESIDENCE B
- 1-5 RESIDENCE C
- 1-6 RESIDENCE D
- 1-7 RESIDENCE E
- 1-8 RESIDENCE F
- 1-9 RESIDENCE G
- 1-10 RESIDENCE H
- 1-11 RESIDENCE I
- 1-12 RESIDENCE J
- 1-13 RESIDENCE K
- 1-14 RESIDENCE L
- 1-15 RESIDENCE M
- 1-16 RESIDENCE N
- 1-17 RESIDENCE O
- 1-18 RESIDENCE P
- 1-19 RESIDENCE Q
- 1-20 RESIDENCE R
- 1-21 RESIDENCE S
- 1-22 RESIDENCE T
- 1-23 RESIDENCE U
- 1-24 RESIDENCE V
- 1-25 RESIDENCE W
- 1-26 RESIDENCE X
- 1-27 RESIDENCE Y
- 1-28 RESIDENCE Z
- 1-29 RESIDENCE AA
- 1-30 RESIDENCE AB
- 1-31 RESIDENCE AC
- 1-32 RESIDENCE AD
- 1-33 RESIDENCE AE
- 1-34 RESIDENCE AF
- 1-35 RESIDENCE AG
- 1-36 RESIDENCE AH
- 1-37 RESIDENCE AI
- 1-38 RESIDENCE AJ
- 1-39 RESIDENCE AK
- 1-40 RESIDENCE AL
- 1-41 RESIDENCE AM
- 1-42 RESIDENCE AN
- 1-43 RESIDENCE AO
- 1-44 RESIDENCE AP
- 1-45 RESIDENCE AQ
- 1-46 RESIDENCE AR
- 1-47 RESIDENCE AS
- 1-48 RESIDENCE AT
- 1-49 RESIDENCE AU
- 1-50 RESIDENCE AV
- 1-51 RESIDENCE AW
- 1-52 RESIDENCE AX
- 1-53 RESIDENCE AY
- 1-54 RESIDENCE AZ
- 1-55 RESIDENCE BA
- 1-56 RESIDENCE BB
- 1-57 RESIDENCE BC
- 1-58 RESIDENCE BD
- 1-59 RESIDENCE BE
- 1-60 RESIDENCE BF
- 1-61 RESIDENCE BG
- 1-62 RESIDENCE BH
- 1-63 RESIDENCE BI
- 1-64 RESIDENCE BJ
- 1-65 RESIDENCE BK
- 1-66 RESIDENCE BL
- 1-67 RESIDENCE BM
- 1-68 RESIDENCE BN
- 1-69 RESIDENCE BO
- 1-70 RESIDENCE BP
- 1-71 RESIDENCE BQ
- 1-72 RESIDENCE BR
- 1-73 RESIDENCE BS
- 1-74 RESIDENCE BT
- 1-75 RESIDENCE BU
- 1-76 RESIDENCE BV
- 1-77 RESIDENCE BV
- 1-78 RESIDENCE BV
- 1-79 RESIDENCE BV
- 1-80 RESIDENCE BV
- 1-81 RESIDENCE BV
- 1-82 RESIDENCE BV
- 1-83 RESIDENCE BV
- 1-84 RESIDENCE BV
- 1-85 RESIDENCE BV
- 1-86 RESIDENCE BV
- 1-87 RESIDENCE BV
- 1-88 RESIDENCE BV
- 1-89 RESIDENCE BV
- 1-90 RESIDENCE BV
- 1-91 RESIDENCE BV
- 1-92 RESIDENCE BV
- 1-93 RESIDENCE BV
- 1-94 RESIDENCE BV
- 1-95 RESIDENCE BV
- 1-96 RESIDENCE BV
- 1-97 RESIDENCE BV
- 1-98 RESIDENCE BV
- 1-99 RESIDENCE BV
- 1-100 RESIDENCE BV



Code	Description	Notes
1-1	RESIDENCE A-1	
1-2	RESIDENCE A-2	
1-3	RESIDENCE A-3	
1-4	RESIDENCE B	
1-5	RESIDENCE C	
1-6	RESIDENCE D	
1-7	RESIDENCE E	
1-8	RESIDENCE F	
1-9	RESIDENCE G	
1-10	RESIDENCE H	
1-11	RESIDENCE I	
1-12	RESIDENCE J	
1-13	RESIDENCE K	
1-14	RESIDENCE L	
1-15	RESIDENCE M	
1-16	RESIDENCE N	
1-17	RESIDENCE O	
1-18	RESIDENCE P	
1-19	RESIDENCE Q	
1-20	RESIDENCE R	
1-21	RESIDENCE S	
1-22	RESIDENCE T	
1-23	RESIDENCE U	
1-24	RESIDENCE V	
1-25	RESIDENCE W	
1-26	RESIDENCE X	
1-27	RESIDENCE Y	
1-28	RESIDENCE Z	
1-29	RESIDENCE AA	
1-30	RESIDENCE AB	
1-31	RESIDENCE AC	
1-32	RESIDENCE AD	
1-33	RESIDENCE AE	
1-34	RESIDENCE AF	
1-35	RESIDENCE AG	
1-36	RESIDENCE AH	
1-37	RESIDENCE AI	
1-38	RESIDENCE AJ	
1-39	RESIDENCE AK	
1-40	RESIDENCE AL	
1-41	RESIDENCE AM	
1-42	RESIDENCE AN	
1-43	RESIDENCE AO	
1-44	RESIDENCE AP	
1-45	RESIDENCE AQ	
1-46	RESIDENCE AR	
1-47	RESIDENCE AS	
1-48	RESIDENCE AT	
1-49	RESIDENCE AU	
1-50	RESIDENCE AV	
1-51	RESIDENCE AV	
1-52	RESIDENCE AV	
1-53	RESIDENCE AV	
1-54	RESIDENCE AV	
1-55	RESIDENCE AV	
1-56	RESIDENCE AV	
1-57	RESIDENCE AV	
1-58	RESIDENCE AV	
1-59	RESIDENCE AV	
1-60	RESIDENCE AV	
1-61	RESIDENCE AV	
1-62	RESIDENCE AV	
1-63	RESIDENCE AV	
1-64	RESIDENCE AV	
1-65	RESIDENCE AV	
1-66	RESIDENCE AV	
1-67	RESIDENCE AV	
1-68	RESIDENCE AV	
1-69	RESIDENCE AV	
1-70	RESIDENCE AV	
1-71	RESIDENCE AV	
1-72	RESIDENCE AV	
1-73	RESIDENCE AV	
1-74	RESIDENCE AV	
1-75	RESIDENCE AV	
1-76	RESIDENCE AV	
1-77	RESIDENCE AV	
1-78	RESIDENCE AV	
1-79	RESIDENCE AV	
1-80	RESIDENCE AV	
1-81	RESIDENCE AV	
1-82	RESIDENCE AV	
1-83	RESIDENCE AV	
1-84	RESIDENCE AV	
1-85	RESIDENCE AV	
1-86	RESIDENCE AV	
1-87	RESIDENCE AV	
1-88	RESIDENCE AV	
1-89	RESIDENCE AV	
1-90	RESIDENCE AV	
1-91	RESIDENCE AV	
1-92	RESIDENCE AV	
1-93	RESIDENCE AV	
1-94	RESIDENCE AV	
1-95	RESIDENCE AV	
1-96	RESIDENCE AV	
1-97	RESIDENCE AV	
1-98	RESIDENCE AV	
1-99	RESIDENCE AV	
1-100	RESIDENCE AV	

City of Marlborough  
 GIS  
 Map Current as of September 1, 2013  
 Mayor: [Signature]  
 Board of Selectmen: [Signature]  
 Planning Board: [Signature]  
 Zoning Board of Appeals: [Signature]  
 Board of Health: [Signature]  
 Board of Police: [Signature]  
 Board of Fire: [Signature]  
 Board of Public Works: [Signature]  
 Board of Education: [Signature]  
 Board of Library: [Signature]  
 Board of Parks and Recreation: [Signature]  
 Board of Senior Citizens: [Signature]  
 Board of Veterans Affairs: [Signature]  
 Board of Economic Development: [Signature]  
 Board of Community Development: [Signature]  
 Board of Cultural Affairs: [Signature]  
 Board of Historical Affairs: [Signature]  
 Board of Information Technology: [Signature]  
 Board of Intergovernmental Affairs: [Signature]  
 Board of Legal Affairs: [Signature]  
 Board of Management: [Signature]  
 Board of Municipal Administration: [Signature]  
 Board of Public Safety: [Signature]  
 Board of Public Utilities: [Signature]  
 Board of Transportation: [Signature]  
 Board of Urban Affairs: [Signature]  
 Board of Water and Sewer: [Signature]  
 Board of Zoning: [Signature]

**ORDER NO. 23-1008951**

**PROPOSED ZONING  
AMENDMENT**

**RETIREMENT COMMUNITY  
OVERLAY DISTRICTS**

**LEGAL OPINION FROM  
SOLICITOR GROSSFIELD**



# City of Marlborough

## Legal Department

140 MAIN STREET  
MARLBOROUGH, MASSACHUSETTS 01752  
TEL (508) 460-3771 FAX (508) 460-3698 TDD (508) 460-3610  
LEGAL@MARLBOROUGH-MA.GOV

JASON D. GROSSFIELD  
CITY SOLICITOR

JEREMY P. MCMANUS  
ASSISTANT CITY SOLICITOR

BEATRIZ R. ALVES  
PARALEGAL

November 21, 2023

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

Re: Proposed Zoning Amendment re: "Retirement Community Overlay Districts" (Order No. 23-1008964)

Dear Chair Fay and Honorable Planning Board Members:

You have requested a legal opinion as to whether the initiation of the above-referenced proposal to amend the zoning ordinance complies with the requirements in MGL c. 40A, s. 5, in connection with correspondence received by the Planning Board during a public hearing on this item. The question includes two aspects: (1) whether a petitioner who is an "individual owning land to be affected by change or adoption" may be a non-natural person; and (2) whether the petition was initiated by an owner of land to be affected by the zoning change. In my opinion, the answer is "yes" to both questions, and the initiation of the zoning amendment complies with the applicable requirements of section 5.

Zoning ordinances may be changed by amendment in the manner provided in MGL c. 40A, s. 5. *Also See* Marlborough Zoning Ord. 650-60. Under section 5, a change of zoning ordinances "may be initiated by the submission to the city council...of a proposed zoning ordinance...by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter."<sup>1</sup>

There are limited Massachusetts court decisions on the specific procedural question regarding who may initiate a zoning change for purposes of section 5, and I do not find a decision directly interpreting whether "an individual owning land"<sup>2</sup> must be a natural person (as

<sup>1</sup> There are no other methods set by city charter.

<sup>2</sup> The term "individual" or phrase "individual owning land" are not defined in MGL c. 40A. When a statute does not define its words, a court will give them their usual and accepted meanings, as long as these meanings are consistent with the statutory purpose, derived from sources such as legislative history, statutory scheme, and other legal contexts and dictionaries. *Williams v. Bd. of Appeals of Norwell*, 490 Mass. 684, 690 (2022). Dictionary definitions for "individual" include, "1. Existing as an indivisible entity. 2. Of, relating to, or involving a single person or thing, as opposed to a group." *Black's Law Dictionary* (9th Ed., 2009), and

opposed to any other landowner such as a trust, corporation, partnership, etc.). However, court rulings reference zoning changes proposed by corporate entities. See Van Renselaar v. City of Springfield, 58 Mass. App. Ct. 104, 105 (2003)(parcel rezoning specifically sought by corporation owning land); Davolio v. Town of Shrewsbury, Misc. Case No. 171842 at 2-6, 8 (Land Ct. 1992)(zoning amendments initiated by a corporation owning land); Franson v. City of Woburn, Misc. Case No. 15000384 (Land Ct. 2016)(petitioners were individual landowner and corporation that is prospective buyer of land)<sup>3</sup>. In my opinion, these examples are instructive that “an individual owning land” who petitions for a zoning amendment is not likely to be limited to only a natural person who owns land.

In this case, the initial submittal letter to the City Council dated September 7, 2023 states that the “owner of this land requests...that the City Council consider amending” the zoning map and text of an overlay district. The submittal includes an authorization signed by the apparent landowner that would be affected by the proposed amendments to include the owner’s property in an overlay district and amend the text of the same overlay district. Accordingly, in my opinion, the petition is presented by both the individual owner of land that would be affected by the zoning change and the prospective purchaser.

Please contact me if you have any questions or concerns.

Respectfully,



Jason D. Grossfield  
City Solicitor

---

“(1)(a) a particular being or thing as distinguished from a class, species, or collection: such as (1) a single human being as contrasted with a social group or institution, (2) a single organism as distinguished from a group; (b) a particular person; (2) an indivisible entity; (3) the reference of a name or variable of the lowest logical type in a calculus. Merriam Webster Online at <https://www.merriam-webster.com/dictionary/individual> (2023).

<sup>3</sup> *Contrast Bellingham Massachusetts Self Storage, LLC v. Town of Bellingham*, 101 Mass. App. Ct. 1108 (2022)(invalidating zoning amendment by petitioner who did not own any of the parcels identified in the zoning amendment that would be affected).

**ORDER NO. 23-1008951**

**PROPOSED ZONING AMENDMENT  
RED SPRING ROAD OVERLAY  
DISTRICT**

ORDER NO. 23-1008951

PROPOSED ZONING  
AMENDMENT

RED SPRING ROAD OVERLAY  
DISTRICT

REVISED SUBMISSION

11/9/2023

---

# MIRICK O'CONNELL

---

ATTORNEYS AT LAW

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

November 9, 2023

**BY EMAIL**

Sean Fay, Chair  
Marlborough Planning Board  
City Hall  
Marlborough, MA 01752

Re: Proposed Revisions to Red Spring Road Overlay District

Dear Mr. Fay:

Following public hearings and resident comments on the proposed Red Spring Road Overlay District, I have discussed possible revisions to the zoning amendment with my client, the Red Spring Road Homeowners Association, Inc.

The goal of the proposed Overlay District is to render the 29 existing principal structures along Red Spring Road conforming with the Marlborough Zoning Ordinance, thereby minimizing the need for special permits when residents make improvements to their properties. To accomplish that goal and to address concerns from neighbors that the Overlay District would lead to development along the Fort Meadow Reservoir, we offer the enclosed revisions to the proposed Red Spring Road Overlay District.

Below is a summary of the proposed revisions:

- **Location of Overlay District:**

Revisions to proposed Section 650-50.B and Exhibit A provide that the Overlay District would exclude an area of approximately 10 acres, which is currently held as condominium common area. This area would remain subject to the underlying A-2 Zoning District and not the modified dimensional requirements of the Overlay District.

- **Cap on Exclusive Use Areas:**

Revisions to proposed Section 650-50.E caps the total number of exclusive use areas in the Overlay District at the existing number of 29. This change restricts

{Client Matter 33621/00001/A8518923.DOCX}

---

MIRICK, O'CONNELL, DEMALLIE & LOUGEE, LLP

WORCESTER | WESTBOROUGH | BOSTON

www.mirickoconnell.com

**MIRICK O'CONNELL**

Marlborough Planning Board

November 9, 2023

Page 2

the number of principal structures along the lake and limits the area that would be subject to the Overlay District's modified dimensional controls.

While there are no plans to do so, any new building lots formed within the Overlay District would be subject to the underlying A-2 Zoning District.

- **Setback from the Lake:**

Revisions to proposed Section 650-50.E.3 provide that setbacks along Fort Meadow Reservoir are subject to the Floodplain and Wetland Protection District, Section 650-23. That was always intended, but the additional language clarifies the point.

We believe these changes address concerns raised by neighbors at the public hearings while still allowing Red Spring Road owners to carry out improvements to their properties without disproportionate permitting.

Thank you for your ongoing attention to this matter.

Sincerely,



Brian R. Falk

BRF/

cc: Marlborough City Council  
Client



**ORDERED:**

Be it ordained by the City Council of the City of Marlborough that the Code of the City of Marlborough, as amended, be further amended by adding a new §650-50, Red Spring Road Overlay District, as follows:

§650-50 – RED SPRING ROAD OVERLAY DISTRICT

- A. Purpose and Objectives. The Red Spring Road Overlay District (“RSR”) allows the application of supplemental land use controls within the boundaries of a certain overlay district as an alternative to land use controls that exist in the underlying districts. The establishment goals of the RSR are to encourage improvements to existing structures and regulate modifications to a unique lakeside residential community.
- B. Location of RSR; Underlying Zoning.
1. For the purposes of this Section (§650-50 et. seq.), the RSR is located on the southerly side of Fort Meadow Reservoir along Red Spring Road between Reservoir Street and Cullinane Drive containing approximately 50-40 acres as indicated on the City Zoning Map and more particularly described in Exhibit “A” annexed hereto and incorporated by reference herein.
  2. Except as specifically provided herein, the provisions of the Zoning Ordinance relating to the underlying zoning districts not otherwise impacted by this Section (§650-50 et. seq.) shall continue to remain in full force and effect. In the event of any conflict between the provisions of this Section (§650-50 et. seq.) and any other provision of the Zoning Ordinance, the provisions of this Section (§650-50 et. seq.) shall govern and control.
- C. Authority of Permit Granting Authority.
1. The City Council shall be the special permit granting authority in the RSR.
  2. At the request of an applicant, the City Council may elect to vary the dimensional, parking, design, and landscaping requirements applicable to a use or structure by special permit upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of this Section (§650-50 et. seq.).
- D. Use Regulations.
1. The following uses are permitted as of right in the RSR:
    - a. Single-family dwellings.
    - b. Up to one (1) boat club.

- c. Uses allowed as of right in the underlying zoning district, as set forth in the Table of Use Regulations.
  - d. Accessory buildings and accessory uses.
2. Uses allowed by special permit in the underlying zoning district may be allowed by special permit in the RSR.
  3. All uses not specified in ~~Subsection Section 650-50.D.1~~ and ~~Subsection Section 650-50.D.2~~ above shall be deemed prohibited in the RSR.

E. Dimensional Regulations for Lots in a Condominium Form of Ownership.

1. Within the RSR, multiple principal and accessory buildings and uses may be located on the same lot under a condominium form of ownership, provided that: (i) each principal building shall be located within an exclusive use area of at least 8,000 square feet, (ii) there shall be no yard setbacks or landscaped strips required as to exclusive use areas or minimum distances between structures, (iii) any building permit application for a new structure or expansion of an existing structure shall be accompanied by evidence that such work is authorized by the governing condominium organization, and (iv) the maximum number of exclusive use areas in the RSR shall be 29.

2. Notwithstanding any provisions of the Zoning Ordinance to the contrary, ~~development~~ a lot under a condominium form of ownership in the RSR shall be subject to the following dimensional ~~standards~~ requirements:

- a. Minimum Lot Area: 18,000 square feet.
- b. Minimum Lot Frontage: none.
- c. Minimum Front, Side, and Rear Yards: none (See Section 650-50.E.23).
- d. Maximum Building Height: 2 ½ stories.
- e. Maximum Lot Coverage: 30%, over the entire RSR.
- f. Maximum Gross Floor Area of a Single-Family Dwelling: 3,000 square feet.

3. With the exception of structures erected prior to July 1, 2023, all structures on a lot under a condominium form of ownership in the RSR shall be set back a minimum of 15 feet from the RSR district boundary line, excluding the boundary line adjacent to the Fort Meadow Reservoir, subject to Section 650-23 of the Zoning Ordinance.

~~3. Within the RSR, multiple principal and accessory buildings and uses may be located on the same lot under a condominium form of ownership with each principal building located within an exclusive use area of at least 8,000 square feet, and there shall be no yard setbacks or landscaped strips required as to exclusive use areas or minimum~~

~~distances between structures, provided that any building permit application for a new structure or expansion of an existing structure shall be accompanied by evidence that such work is authorized by the governing condominium organization.~~

~~F.4. Parking Requirements.~~ Parking for single-family dwellings and boat clubs on a lot under a condominium form of ownership in the RSR shall be provided as feasible. Parking for other uses within the RSR shall conform with the provisions of §650-48.A of the Zoning Ordinance.

~~G.5. Driveways and Roadways.~~ ~~Driveways and~~ roadways ~~located within~~ servicing a lot under a condominium form of ownership in the RSR shall be maintained to provide safe access and egress for vehicular and pedestrian traffic and emergency services, but shall not be subject to the design standards set forth in §650-49 of the Zoning Ordinance or subdivision standards.

~~F. Dimensional Regulations for Other Lots.~~ ~~Lots not under a condominium form of ownership in the RSR shall be subject to the dimensional requirements of the underlying zoning district.~~

#### **EXHIBIT A**

The Red Spring Road Overlay District shall ~~include the following parcels of land (herein identified by the Assessors' Map and Parcel Number):~~ consist of

- Assessors Map 30, Parcel 10, with the exception of a portion of said parcel with an area of approximately 10 acres, as shown on the plan entitled "Plan of Land to be Excluded from 'The Red Spring Road Overlay District' " dated November 8, 2023.

FORT MEADOW RESERVOIR

NOTE: UNIT OWNERS SHOWN WITHIN THE RED SPRING ROAD OVERLAY DISTRICT HAVE EXCLUSIVE USE RIGHTS IN THE AREAS DEPICTED BUT THEY DO NOT OWN THE LAND.

GAUCHER CIRCLE

LIMIT OF 10 AC EXCLUDED FROM THE RED SPRING RD OVERLAY ZONING DISTRICT

LIMIT OF 10 AC EXCLUDED FROM THE RED SPRING RD OVERLAY ZONING DISTRICT

LIMIT OF 10 AC EXCLUDED FROM THE RED SPRING RD OVERLAY ZONING DISTRICT

CITY OF MARLBORO SEWER EASEMENT

10 + ACRES EXCLUDED FROM PROPOSED OVERLAY ZONING DISTRICT

LIMIT OF 10 AC EXCLUDED FROM THE RED SPRING RD OVERLAY ZONING DISTRICT

LIMIT OF 10 AC EXCLUDED FROM THE RED SPRING RD OVERLAY ZONING DISTRICT

LIMIT OF 10 AC EXCLUDED FROM THE RED SPRING RD OVERLAY ZONING DISTRICT

N/F HART N/F BAKER N/F BAKER

N/F FRICAULT N/F BERCINGS

N/F DOLAN N/F ORAM N/F PERRY

N/F GUARINO N/F HANLON

N/F EDWARDS N/F COLLINS N/F FLEMING

UPLAND ROAD

OAK ROAD

# EXHIBIT A

PLAN OF LAND TO BE EXCLUDED FROM THE "RED SPRING ROAD OVERLAY DISTRICT" IN MARLBOROUGH, MASSACHUSETTS

OWNED BY: RED SPRING ROAD HOMEOWNERS ASSOC.  
ASSESSORS MAP 30 PARCEL 10  
PREPARED BY: ROBERT J. PARENTE, P.L.S.  
DATE: NOV. 6, 2023 SCALE: 1"=120'



ORDER NO. 23-1008951

PROPOSED ZONING  
AMENDMENT

RED SPRING ROAD OVERLAY  
DISTRICT

ORIGINAL SUBMISSION



# IN CITY COUNCIL

Marlborough, Mass., AUGUST 21, 2023

PAGE 1

**ORDERED:**

That the Communication from Attorney Brian Falk on behalf of the Red Spring Road Homeowners Association, Inc., re: Proposed Zoning Amendment to Chapter 650 "Zoning" of the Code to add a new section to create the "Red Spring Road Overlay District" (RSR), be and is herewith referred to **URBAN AFFAIRS COMMITTEE, PLANNING BOARD, AND ADVERTISE A PUBLIC HEARING FOR MONDAY, OCTOBER 2, 2023.**

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING RECEIVED FOR ITS 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 BY AMENDING AND ADDING THERETO AS FOLLOWS:

## **§650-50 – RED SPRING ROAD OVERLAY DISTRICT**

### Purpose and Objectives.

The Red Spring Road Overlay District ("RSR") allows the application of supplemental land use controls within the boundaries of a certain overlay district as an alternative to land use controls that exist in the underlying districts. The establishment goals of the RSR are to encourage improvements to existing structures and regulate modifications to a unique lakeside residential community.

### Location of RSR; Underlying Zoning.

For the purposes of this Section (§650-50 et. seq.), the RSR is located on the southerly side of Fort Meadow Reservoir along Red Spring Road between Reservoir Street and Cullinane Drive containing approximately 50 acres as indicated on the City Zoning Map and more particularly described in Exhibit "A" annexed hereto and incorporated by reference herein.

Except as specifically provided herein, the provisions of the Zoning Ordinance relating to the underlying zoning districts not otherwise impacted by this Section (§650-50 et. seq.) shall continue to remain in full force and effect. In the event of any conflict between the provisions of this Section (§650-50 et. seq.) and any other provision of the Zoning Ordinance, the provisions of this Section (§650-50 et. seq.) shall govern and control.

### Authority of Permit Granting Authority.

The City Council shall be the special permit granting authority in the RSR.



# IN CITY COUNCIL

Marlborough, Mass., AUGUST 21, 2023

PAGE 2

## ORDERED:

At the request of an applicant, the City Council may elect to vary the dimensional, parking, design, and landscaping requirements applicable to a use or structure by special permit upon finding that such change shall result in an improved design and will not nullify or substantially derogate from the intent or purpose of this Section (§650-50 et. seq.).

### Use Regulations.

The following uses are permitted as of right in the RSR:

- Single-family dwellings.
- Up to one (1) boat club.
- Uses allowed as of right in the underlying zoning district, as set forth in the Table of Use Regulations.
- Accessory buildings and accessory uses.
- Uses allowed by special permit in the underlying zoning district may be allowed by special permit in the RSR.
- All uses not specified in Subsection D.1 and Subsection D.2 above shall be deemed prohibited in the RSR.

### Dimensional Regulations.

Notwithstanding any provisions of the Zoning Ordinance to the contrary, development in the RSR shall be subject to the following dimensional standards:

- Minimum Lot Area: 18,000 square feet.
- Minimum Lot Frontage: none.
- Minimum Front, Side, and Rear Yards: none (See Section 650-50.E.2).
- Maximum Building Height: 2 ½ stories.
- Maximum Lot Coverage: 30%, over the entire RSR.
- Maximum Gross Floor Area of a Single-Family Dwelling: 3,000 square feet.

With the exception of structures erected prior to July 1, 2023, all structures shall be set back a minimum of 15 feet from the RSR district boundary line, excluding the boundary line adjacent to the Fort Meadow Reservoir.

Within the RSR, multiple principal and accessory buildings and uses may be located on the same lot under a condominium form of ownership with each principal building located within an exclusive use area of at least 8,000 square feet, and there shall be no yard setbacks or landscaped strips required as to exclusive use areas or minimum distances between structures, provided that any building permit application for a new structure or expansion of an existing structure shall be accompanied by evidence that such work is authorized by the governing condominium organization.



# IN CITY COUNCIL

---

Marlborough, Mass., AUGUST 21, 2023

PAGE 3

ORDERED:

Parking Requirements.

Parking for single-family dwellings and boat clubs shall be provided as feasible. Parking for other uses within the RSR shall conform with the provisions of §650-48.A of the Zoning Ordinance.

Driveways and Roadways.

Driveways and roadways located within the RSR shall be maintained to provide safe access and egress for vehicular and pedestrian traffic and emergency services but shall not be subject to the design standards set forth in §650-49 of the Zoning Ordinance or subdivision standards.

**EXHIBIT A**

The Red Spring Road Overlay District shall include the following parcels of land (herein identified by the Assessors' Map and Parcel Number):

- Assessors Map 30, Parcel 10

ADOPTED

ORDER NO. 23-1008951



---

# MIRICK O'CONNELL

---

ATTORNEYS AT LAW

RECEIVED  
CITY CLERK'S OFFICE  
CITY OF MARLBOROUGH

2023 AUG 17 AM 9:40

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

13  
- URBAN AFFAIRS  
- Planning Board  
- P/A 10-2-23  
- ADVERTISE

August 16, 2023

**BY HAND DELIVERY**

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

Re: Proposed Zoning Amendment:  
Red Spring Road Overlay District

Dear Councilor Ossing:

I represent the Red Spring Road Homeowners Association, Inc. governing body of the Red Spring Shores Condominium, whose residents are unit owners of 50 acres of land located on the southerly side of Fort Meadow Reservoir between Reservoir Street and Cullinane Drive, Assessors Map 30, Parcel 10. On behalf of the owners, and in accordance with M.G.L. c. 40A, Sec. 5, I respectfully request that the City Council consider amending the Zoning Ordinance as specified in the attached Proposed Order, to create a new Red Spring Road Overlay District over the property.

This unique neighborhood consists of 28 single family homes, one boat club, and various accessory structures, all on a single lot. The property was developed through ground leases over several decades. Last year, the tenants purchased the property and created a condominium association. Because the homes are preexisting nonconforming, the types of simple improvements and accessory structures allowed under the Zoning Ordinance by right in other neighborhoods require Section 6 finding special permits from the ZBA or City Council in this neighborhood.

The goals of this ordinance are as follows: (i) render the lot and all existing structures conforming with the Zoning Ordinance; (ii) allow simple changes (additions, reconstructions, accessory structures, etc.) to existing homes by right; and (iii) establish reasonable parameters for changes to the lot consistent with the underlying A-2 zoning. Any modified or new structures in the district would require the approval of the condominium association. While a resident could seek a building permit for an addition or detached garage, they must first present the City with evidence that the condominium association has approved the project. In addition, the overall property cannot exceed 30% lot coverage or contain homes with a floor area in excess of 3,000 square feet.

**MIRICK O'CONNELL**

Marlborough City Council

August 16, 2023

Page 2

We believe this amendment will clarify and simplify the zoning requirements applicable to this lakeside community, and encourage residents to upgrade and add value to their properties.

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

Thank you for your time and attention to this matter.

Sincerely,



Brian R. Falk

BRF/

Encl.

cc: Client



# IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

**ORDERED:**

PAGE 1

That the CONTINUED PUBLIC HEARING on the Proposed Zoning Amendment to Chapter 650 "Zoning" of the Code to add a new section to create the "Red Spring Road Overlay District" (RSR), Order No. 23-1008964B, all were heard who wish to be heard, hearing closed at 10:37 PM.

- a) Petition from various Marlborough and Hudson residents in support of the Proposed Zoning Amendment to Chapter 650 "Zoning" to add a new section to create the "Red Spring Road Overlay District (RSROD), Order No. 23-1008951A.

**Councilors Present: Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Ossing, Perlman & Robey.**

**Councilor Oram Recused.**

## PUBLIC SPEAKING IN FAVOR

Speaking in favor was Brian Falk, Mirick O'Connell, 100 Front Street, Worcester, representing the Red Spring Road Homeowner's Association. Several of their board of trustees' members were in attendance as well as their residents. The Association petitioned the Council for a new overlay district on behalf of the condominium unit owners on Red Spring Road. The overlay district would cover the entire fifty-acre parcel along the southern shore of Fort Meadow reservoir.

A picture was displayed showing the fifty-acre parcel that would consist of the entirety of the overlay district. It is a unique neighborhood consisting of twenty-eight single family homes, a club, and various accessory structures all built on a single lot. The lot and all these structures are pre-existing, nonconforming under the Marlborough zoning ordinance. This presents challenges for these homeowners in making the types of ordinary repairs and changes to their structures that other single-family homeowners enjoy in the city.

The purpose of the overlay district is to preserve this neighborhood and allow homeowners to make simple improvements to their homes as of right without the need for a special permit. The property was developed through ground leases over several decades when the entire property was owned by the Morse family.

A photograph showed a view from the southern shore of Fort Meadow which is the property under discussion. The next photograph was a view looking southwest. Much of the property is heavily forested. The next view was of the shoreline showing the types of homes that are along the shoreline of the property. The following view was an aerial view of the entire lake, their lot is the less densely developed portion along the southern shore.



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

PAGE 2

### ORDERED:

The previous year when the Morse family had put the property up for sale, the tenants at the time got together, purchased the property, and created a condominium association. This was the only way for the twenty-nine owners to buy the land and own the land underneath their lakeside homes that many have shared with their families for several decades. Neighbors were happy to buy the property rather than seeing the land sold to a developer. The condominium approach also helps to preserve the property as there are twenty-nine owners governed by a condominium association which makes changes to the status quo difficult.

The property's history left the owners in a bind regarding the Marlborough zoning ordinance because the homes are all pre-existing, nonconforming. The types of simple improvements and accessory structures that are allowed in the zoning ordinance by right in other neighborhoods require a special permit in this neighborhood. The Building Commissioner looked to the homeowner's association to address the zoning issues and they came up with this overlay district. Other options that were considered was a traditional subdivision but that would be difficult for this location as most of the homes would not fit on a traditional A2 lot, they were not built that way, they were not designed that way, and they would not fit on that type of a traditional lot. For a subdivision, Red Spring Road would need to be upgraded significantly to meet city standards and would add significant impervious areas. So, to do a traditional subdivision, they would first be looking at a very long list of variances from the ZBA (Zoning Board of Appeals) which in Marlborough are very difficult to obtain and probably an even longer list of subdivision waivers from the Planning Board just to turn this into a traditional subdivision. They did not think that made sense and it was going to be expensive and most likely not viable legally so another option would be special permits for every small change to any of these homes and that would be time consuming and expensive. So, they feel the overlay district addresses these concerns and makes these homes conforming.

The next display was a map of the property lines in the area. Because their lot is big at fifty acres, the abutters list for this property has one-hundred-nineteen separate property owners plus the twenty-nine on Red Spring Road, so all one-hundred-forty-eight of those owners would get a certified mailing of a public hearing for something as simple as an addition or deck that no one could see other than the homes directly next to those other homes. A certified mail for that type of hearing would be over \$1,100, a certified mailing to all those property owners and that is on top of application fees, plans, and sometimes attorney's fees which does not seem like a good use of time or money for those types of improvements and the overlay district would address that issue.



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

**ORDERED:**

PAGE 3

Mr. Falk displayed a map of the zoning districts. They are in the A2 district, A3 is across the lake and to the east allows for greater density and in those areas, it can be seen they have been developed with significant density. A view was shown along Lakeshore Drive, on the other side of the lake, there is much denser development in A3 and that is not what they are looking to do with their property. They are planning to leave this lower density neighborhood alone; their owners have exclusive use areas that cover nearly the entire shoreline of the fifty-acre parcel. There are three small areas of common land along the shore which are not developable because they are either too small or they are wetlands present. So, adding any homes along this shoreline, because this is a condominium, would require all twenty-nine condominium owners to agree. In Mr. Falk's opinion, that would be highly unlikely to occur given that would reduce the lawn areas of the exclusive use areas of these homes and their valuable shoreline.

The overlay district essentially takes what works in the A2 district and modifies what does not work. They will still have significant restrictions in the overlay district as lot coverage is capped at thirty percent and they are currently at five percent with no plans to change. Any new lot would require an area of 18,000 square feet and that is larger than nearly all the nearby lots in this area in the A3 district and across the lake. The A2 use restrictions would remain in place. In A2, very few commercial uses are permitted. Multifamily apartment buildings are prohibited, and two-family buildings are prohibited as well. Any change in those restrictions would require a zoning amendment and hearing just like this one before the City Council and they have no plans to do that. Essentially the use restrictions in their overlay district mirror those of the underlying A2. The changes they make are two-dimensional controls that render the homes and the lot conforming to zoning.

Single family homes in the overlay district would have a 3,000 square foot floor area cap so there would not be massive homes along the lake even if someone were to do a reconstruction. Any change because this is a condominium homeowners association however simple requires the approval of the condominium association, so anyone must go to their twenty-eight other neighbors and their governing body to apply and ask for the change before it even gets to the building department.

Mr. Falk introduced the president of their condominium association, Bob Durand, who would provide some information about the associations approach to the overlay district.



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

ORDERED:

PAGE 4

Mr. Durand stated like many present, he has served the city of Marlborough for many years both as representative and secretary of environmental affairs. Mr. Durand has a reputation as being an environmental advocate here in Massachusetts. He thinks most of those present know he got that reputation because he grew up in the summers on Fort Meadow enjoying the lake, enjoying the wilderness that existed there then and it exists there now today. So, he takes offense when people start challenging their intent. The people who live there are from generational families for the most part. Mr. Durand takes offense when people start rumors that are just not true and he quoted Mark Twain, "It isn't what you don't know that gets you in trouble, it's what you know for sure that isn't so." Mr. Durand explained there are some people who are just misinforming their neighbors, misinforming the public on the lake and he wanted to address that up front. They had twenty-nine separate home and cottage owners who have owned their homes on Red Spring Road for many years and in some cases generations. While they own the home and garages, they leased the land from the Morse family who owned the fifty acres for almost 100 years. In June 2021, the Morse family put the land up for sale. There were many interested parties and the land could have been sold to developers for a subdivision or condominiums which could have been built on that property. They met as neighbors and immediately banded together and luckily the Morse family accepted their offer to buy the fifty acres. They represent, their homes represent, about five percent of that land mass of the fifty acres, that is ninety-five percent undeveloped land unlike the other side of the lake. The tree canopy represents about twenty-two percent of the lakes watershed that keeps Fort Meadow cool and provides a sponge for stormwater runoff from the high school, the elementary school, and some of the subdivisions behind them.

Mr. Durand wanted to address the condominium association, the only way for them to accommodate twenty-nine different homes as stated by Attorney Falk on all different sized lots and setbacks from neighbors and the road was to form a condominium association as it gives them exclusive use of their yards without trying to make all the lots conform. An impossible task since their homes already existed on the fifty acres which they now all own and have a 1/29<sup>th</sup> share of. There has been misrepresentation that they needed city permits to form a condominium association and that is simply not true. Condominiums are a form of ownership and not a zoning issue, governed by state statute. They filed the necessary paperwork with the Secretary of State and their deed with the Registry of Deeds so now it is determined to be, The Red Spring Shores Condominium Association, no permits needed from the city.



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

PAGE 5

### ORDERED:

There are many downsides to becoming a condominium association, many probably wished they had gone the subdivision route, but they could not do that. Condominiums are typically worth less than single family homes on own lots. Owners do not have as much control of what happens in the yard or common areas, that is determined by the rules and regulations of the condominium association and governed by the Board of Directors. They have had some building going on down there, they have had additions, the man from the corner office is building a house right now, a modest home at less than 2,200 square feet. Owners are financially responsible for all maintenance, road repairs, culvert repairs, plowing, sanding, tree removal, and the lights and must pay an annual maintenance fee on top of taxes. Mr. Durand did not think his neighbors on the other side of the lake would want to pay an additional \$6,000 a year in condominium fees on top of their taxes. He assured everyone they wish they all owned their own lots, but this condominium association fits the people who are there because they believe in the rural nature of Red Spring Road. Taxation and assessments of Red Spring Road properties has also come up and it appears that some of their neighbors like looking at other's assessments and has become a hobby for some. According to Mr. Durand, the last time their side of the lake was assessed, they were all on leased property with many of them having crawl spaces, dirt cellars, or partial basements. These cottages or homes were built in the 1930's or 1940's and some still do not have insulation and are seasonal which is six. Hardly a fair comparison with the homes with all the amenities on the other side of the lake. This past summer, the city assessor came and reassessed their properties. Since they have become a condominium association, they were assured their property valuation would be going up substantially which they expected. Neither the condominium issue, or the taxation or assessment issue is before the City Council despite what some have been saying. In fact, the only issue is the overlay district. It was the City of Marlborough's Building Inspector and City Solicitor working with their attorney who recommended they fix the underlying issue of being a pre-existing, nonconforming use. Pre-existing because they existed before the City of Marlborough's zoning even existed and nonconforming because they do not meet the current A2 zoning requirements that are in the underlying district. The building inspector, the city solicitor, and their attorney from Mirick O'Connell came up with the overlay district to allow them to conform and going forward the zoning requirements could be met. All future building of sheds, patios, decks, additions, and garages would go to the building department for permits. According to their attorney, the overlay would provide more control than currently exists now. They have been doing additions, they have been doing decks, they have been doing tear downs and building new structures. If their overlay does not pass, they can still build, it is just a little more cumbersome.



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

**ORDERED:**

PAGE 6

Mr. Durand discussed the ten acres or phase two. There have been many rumors about the ten acres, they are going to build condominiums, they are going to build an amusement park, but it is straightforward. They went to Main Street bank to fund the sewer force main they installed which tied in fifteen failing title five failing septic systems into the city's sewer system. They wanted collateral for the loan hence phase two or the ten acres. They have been approached by abutters and developers to sell some or all the ten acres so the easy thing over the last couple of years would have been for them to sell to a developer and recoup their losses on the sewer force main and they have not done that, why? They have been approached by abutters and developers, but they have no interest. As the twenty-nine owners collectively, they would like to sell it to the city for open space and hope the City Council would support that effort sometime in the future. Mr. Durand did some research and if the City of Marlborough had the Community Preservation Act, it would generate between one to three million dollars a year that means over the last twenty years, the city lost twenty million dollars by not having the CPA like every other city and town that surrounds the city. They can do this, and they are willing to wait, they are willing to wait to preserve that open space or maybe their neighbors want them to sell it to a developer.

They all care about Fort Meadow; many have been there for decades and like those present that evening, they want to protect the lake for future generations like he does.

Signed by the Red Spring Road Homeowners Association, all are present that evening. Steve Vigeant, Scott Ferrecchia, Stefanie Ferrecchia, and Peter Mongeau and over forty residents from Red Spring Road. They sent the Council a petition that week with 229 names from across the city including their state senator, some candidates running for Council. Mr. Durand mentioned that both potential councilors for Ward Six, Brennan and Fuccillo, have come out in favor of their overlay district as well as many of the sitting councilors. They hope everyone appreciates what they are trying to accomplish, to protect this land, not add any more school children to the school system or bring any more traffic to Bolton Street. They just want to do what they have always done and live in peace with their neighbors across the lake.

Mr. Durand thanked everyone, and Mr. Falk indicated that concluded their presentation and they were available for questions.

Barbara Allen, 124 Second Road, is a part of the Fort Meadow Association and has lived there since 1989. When she originally heard about the overlay, she was opposed because she heard the rumors about condominiums on the ten acres as well as other rumors, so she signed a petition against the overlay. But she went to the Planning Board meeting and saw the presentation, spoke to people on Red Spring Road, Lakeshore Drive, and other neighbors, listened to the facts both in favor and opposed, and decided she is in favor and believes it is good for Red Spring Road, Fort Meadow, and the City of Marlborough. She thinks they have done their due diligence in looking at alternatives and this is the best alternative. It will be good in terms of preservation, and they are doing the best they can with the situation as it is, so she is in favor. Her husband asked her to put him on the record as David L. Allen in favor of it as well, so they are both in favor of the overlay.





## IN CITY COUNCIL

---

Marlborough, Mass., OCTOBER 23, 2023

PAGE 7

### ORDERED:

Gary Cato, 33 Red Spring Road, was in favor of the proposal. For example, for him to build a deck, he would have to come before the City Council to receive approval which sounds ridiculous when considered however this Overlay District would allow him to go into the Building Department, present his plans and have the Building Commissioner approve it or make amendments to it and then he can go home and build his deck. That is what everyone else in the city does, so all they are asking to do is be treated like anyone else walking into the Building Department. It is a good policy, and it makes good sense. He is a newcomer that has only been there for twenty years but there are some residents who have been there for thirty or fifty years and all they are asking is they be allowed to continue to keep that property in its same state, they are not looking to build anything on that property. They want to live there as they have and as he has for the past twenty years of quiet enjoyment.

Stephen Brule, 23 Red Spring Road, was in favor of the overlay and he is one of the long-term families who have been there since 1975. He wished to thank the Morris family for allowing the residents to buy this property and keep it the way it is.

Pamela Morse, 59 Red Spring Road, stated her family has lived there for a generation and she is absolutely in favor of the overlay.

Steve Vigeant, 51 Red Spring Road, has been there for about thirty-five years and not much has changed which is what they like and his obviously in favor of it. He stated he is the one to blame for the ten acres as he is the one who went to the bank and there are no other plans for that as there is no piece that is ten acres, it is just part of the fifty acres and that is what they intend to do with it. He was in favor.

Peter Mongeau, 19 Red Spring Road, spoke in favor of the Overlay District. They have been very good stewards of this land and he has lived there for over forty years and had his family there. All they are looking for is to be treated the same as everyone else in the city. This is a simple thing that was initiated by the city government for them to get this in place so they can rectify their situation.

Paula Grace O'Connell, 43 Lakeshore Drive, lives across the way and knows many of the homeowners on Red Spring Road and she trusts them when they say they are going to preserve the land. She is in favor of the overlay.



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

ORDERED:

PAGE 8

Alex Ferrecchia, 27 Red Spring Road, was born and raised on Fort Meadow Lake on the opposite side by memorial beach. He spent much of his high school and college years at friend's homes on Red Spring Road. About five years ago, he was fortunate enough to get his own place there but unfortunately it is a 900 square foot cottage. Mr. Ferrecchia has always said Red Spring Road is probably the only place in Marlborough that he could see himself long-term as his forever home. The small space is not going to work forever and he hopes in phases to make it his forever home but every time he wants to put on a deck, add bedrooms, or build a garage he does not want to go through the burden of the special permit process, for the city to have to go through the burden of it, and all the abutters, it would just make everything a lot more complicated for everyone and that is why he is in favor of the overlay.

Neal Vigeant, 53 Red Spring Road, is a lifelong resident and he has lived on Red Spring Road for thirty-one years as that is where he was born and raised. He wished to clarify they are before the City Council because the Building Commissioner asked them to go through the process not because they are trying to get away with building condominiums in their backyards. He found it disheartening to hear that misinformation and lies were spoken to people to solicit signatures on a petition against them. Numerous people have come forward on how they signed a petition based on false information and now that they have been told the truth, they stated how they would not have signed it and he wondered how many others are out there. They do not want their side of the lake to ever look like Lakeshore Drive. He believes that in his two-acre exclusive use area, he has more trees than half of Lakeshore Drive and he wants to keep it that way.

Heather Short, 29 Red Spring Road and 96 West Main Street, stated her husband's family has owned this house for almost forty years and they are one of those cottages with the dirt basement and no heating or insulation so it would be nice to make the improvements to their property whether it is putting on a deck, or a shed, or whatever but the same as everyone else around them. She is in favor.

Dan Durand, 37 Red Spring Road, has been there probably fifty-five to sixty years and he just bought his parents place that his dad bought back in the early 1960's. He mentioned there are still active blueberry bushes across the street as an example of how reserved the area is, and they hope to keep it that way. He is in favor.

Bob Kays, 172 Shawmut Avenue, is in favor of the overlay district and he also spends a lot of time at 49 Red Spring Road.

Stefanie Ferrecchia, 172 Shawmut Avenue, stated her family has owned 49 Red Spring Road for thirty plus years and now that they own the land under their property, they can improve it.

RJ Hause, 35 Red Spring Road, and his wife Michelle are both in favor. He did not think they were going to do any additions, but he knows a lot of his neighbors could use some more space, so he is in favor. Michelle Hause stated she was also in favor.



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

ORDERED:

PAGE 9

Pat Sullivan, 55 Red Spring Road, has owned his home for twenty-three years and it is his favorite place, he loves it down there, and hopes it never changes. He was in favor.

Mark Evangelous, 108 Kelber Drive, appeared on behalf of his wife Vicki and Jane Peters (13 Red Spring Road) who has lived there for forty-three years. This is a good project, it is good for the city, they are preserving this land. If the residents did not buy this land, who knows what could have been built there. Mr. Evangelous is in favor and in support and he hopes the Council will be too.

Mark Oram, 108 Upland Road, Marlborough, will not be acting on this in his official capacity as a City Councilor. He has no financial interest in this matter, but he wanted to speak on behalf of his neighbors as he is a direct abutter. He has been an environmental professional for most of his career and this protection of the watershed is ultimately the most important asset of this proposal. It will allow Fort Meadow to be protected from any stormwater runoff if it is natural and kept natural. It will also support the residents, not just the residents who live on Fort Meadow but also the residents who enjoy the public boat ramp as well as Memorial Beach which is another great asset in Marlborough. He asked the Council to support this proposal.

### QUESTIONS FROM THE PUBLIC

The City Clerk stated an official petition was received from various Marlborough and Hudson residents in support of the proposed zoning amendment to Chapter 650. President Ossing noted they will be added to the Public Speaking in Favor of the Public Hearing.

[NAME – 2:02:53], Lakeshore Drive, asked if during phase two, the ten acres of the development land is sold to the City of Marlborough for open space in the future, is that open space open to the general public. Mr. Falk acknowledged it was a good question and it would depend upon how the land is conveyed to the city either by a conservation restriction or a fee interest in the property. It would be a discussion between the city and the condominium association.

Ms. [NAME] then asked on top of that if it was open to the public like the Grove Area is at the lake, is the city responsible for lighting, paving, and maintaining Red Spring Road at that point? Mr. Falk did not have the answer to that question, but he noted that the ten acres under discussion is a common area, it is not a separate parcel, but it is part of the fifty acres. It does not have frontage on the lake, it is on the other side of Red Spring Road. It is between Red Spring Road and neighbors to the southwest. Ms. [NAME] confirmed it was not on the water at all which Mr. Falk confirmed and stated there is some common area on the water, but it is not contiguous with the ten acres. Ms. [NAME] again confirmed with Mr. Falk that the ten acres is not waterfront.



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

ORDERED:

PAGE 10

Paul Goldman, 137 Second Road, asked what this means with regards to the overlay specifically to the number of additional units that could be placed on the fifty acres because from his understanding of the current layout, it is one continuous lot so you can only have one unit but there are twenty-nine units that are already pre-existing, grandfathered. In his interpretation, as soon as this overlay goes into effect, a unit can be placed on every 18,000 square feet which is roughly 0.4 acres so that would give about two homes or two units per acre which is about 100 units if it was dense packed and that is about twenty percent not covered because of wetlands, waterways, and private ways. What Mr. Goldman sees as a result of this overlay, if he understands it correctly, is by accepting it, they are effectively allowing up to 100 units, an additional seventy-one. Mr. Goldman had no problem with putting additional properties on there, but his concern is with the elimination of the dimensional regulation such as the 120-foot linear footage along a road, which is not specified, his concern is that they can now put in units in a way that is inconsistent with regular A2 zoning. Mr. Goldman asked if that was all true what he said and if this overlay can be amended to have a cap on the minimum number of units such that it would comply with A2 zoning as if it were a subdivision. Mr. Falk will take a lot of that under advisement and attempt to answer others. The density remains the same with 18,000 square foot lots and thirty percent maximum lot coverage which is the density in the A2 district and that is the density they would have here. The additional wrinkle here is the fact that the vast majority of the fifty acre parcel is divided up into exclusive use areas for the individual owners and in order for any of that land, which is the majority of the property, and for that land to be modified for additional homes would require the consent of all twenty-nine unit owners and so while it is technically possible it is more unlikely now that it is a condominium form of ownership the way it is has been drawn than it would ever be the case. The existing A2 zoning, the dimensional requirements are the same in terms of density. Mr. Falk addressed the change in other dimensional requirements such as frontage and setbacks and the purpose of doing that was surgical as he could be to make changes to it when drafting the overlay district to make changes to the A2 zoning only as necessary to render both the parcel and the structures conforming. The parcels got fifty acres and it has almost no frontage at all and so the entire parcel is pre-existing, nonconforming so even if they did away with internal setbacks which they have done here, if they do not do anything about frontage, the parcel is still nonconforming and they would still have to go through the special permit process so the changes to the A2 district that are in the overlay district are only there for the purpose of making the existing structures and the existing parcel conforming.

Mr. Goldman asked if he was correct in that it does not allow more units to be put on that property which is not the case right now. Mr. Falk responded that he did not believe it does because the density is still the same, the A2 density is still there. Mr. Falk asked what could be done with that parcel had the condominium association not been formed and the owners bought it and it was sent for development, it could have been developed under A2 zoning anyway. In Mr. Falk's opinion, it is harder at this point to do any additional development on that property now because it is divided into exclusive use areas where these twenty-nine-unit owners have to say something if that exclusive use area is going to change.



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

ORDERED:

PAGE 11

Mr. Goldman gave an example if you have these ten acres that is undeveloped and what it sounds like to him is if this goes through and you do the math on ten times two, you can put twenty units in there to increase the size of the condominium structure if they wanted to as it is up to them and to him that sounds feasible if that was a decision they wanted to make. Mr. Falk explained the ten acres Mr. Goldman is talking about could be developed as a subdivision but they would have to go through the Planning Board subdivision approval process in order to do that and it would have to be built out in a way which they currently do not have to the Planning Board standards or seek waivers. In Mr. Falk's opinion, it is no easier now than it would have been the case had they not done the overlay district nor the condominium with the condominium form of ownership as it is much harder to do much at all. President Ossing acknowledged Mr. Goldman's question is good one and it would give the Council something to think about and he was sure Chair Robey has an understanding to look for the unintended consequences of the overlay.

Mr. Goldman had personally worked with the people of Red Spring Road, and he is thankful they have purchased this land and it was not going to a developer. He wished these people could be around forever because he does believe in their conservation mantra, but he is thinking ten years down the road and that property becomes more valuable. Now they are given the ability because of changing the lot being one lot now, it can conform and take on many more units and it is given that opportunity. He realizes there are twenty-nine people that must decide but ten or twenty years from now, they are talking about big money, and he is not sure what that means so that is his concern. If it could be developed just like A2 zoning, that would be great and that is where he thinks a cap might be something to consider.

Paul Kaczmarczyk, 79 Second Road, lives on the other side of the lake and several weeks ago they all came together voicing their concern about another development on the lake. He and his wife bought their property ten years ago, and he considers them lucky as they probably could not buy it now. He loves the fact that they have all come together and they care about this problem, this whole area, it is beautiful. Who would think as it is such a random spot off Route 495, but it also has a bullseye on it as the property by Boston Scientific is desirable. Mr. Kaczmarczyk is not there to make it difficult for someone to put up a shed or a deck but earlier in the year in June at the Fort Meadow Association meeting, Mr. Durand and several other gentlemen came to their meeting to talk about this situation and it was at that meeting that Mr. Durand himself mentioned putting up the ten acres which is being utilized as a collateral for the loan as green space but since then Mr. Durand himself has made comments that they could sell it to a developer and he repeated that again in front of everyone. Mr. Kaczmarczyk stated that is where the concern lies as here it is four months after the meeting at the Fort Meadow Association clubhouse and he would like to know if there is any formal activity in writing to the Marlborough Conservation Commission or any other conservation group stating their position to sell of the ten acres as green space. Mr. Falk responded that he was reminded by Mr. Durand that the ten acres is going to be included on the city's Open Space Master Plan which means targeting areas that would be good for open space acquisition.



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

ORDERED:

PAGE 12

Beyond that, every meeting and every hearing that Mr. Falk has attended and listened to, they have been saying repeatedly that it is their plan and once this goes through, it will be in the city's court in terms of doing that but that is their intention. Mr. Kaczmarczyk replied that they are not concerned with their plan for a year or two out but what will happen in five or ten or plus years.

Pete Sharon, 95 Lakeshore Drive, has been there for about sixty-five or seventy years and loves the lake just like everyone that spoke, and he thanked Mr. Durand for the acknowledgement. He would support everything that was said that evening however his issue with it is what can happen in the future, five, ten, fifteen years from now. He may not be here, and his kids might be here but what can happen, and they want to get this straightened out. One of the big questions, with all the communication that has been done and it has been mentioned there are no plans for development and they support this one hundred percent, every one of them across the lake. Also, they only have 5,000 square foot lots, they do not have the 50,000 square feet so they do have a nice value there. With no plans for development, it brings up the question, why is the overlay district needed? They are talking about additions, decks, an addition for an extra room, or rip down a house, Mr. Sharon has been building on that lake for years, on the beach by the way, and he has had to pull special permits for everything, so they are no different than other residents. Special permits must be pulled when your property is nonconforming, and they will still be nonconforming when they do all of this as there are five or six lots that are not thirty feet away from the water and conservation overrules everything. They will never get the site completely nonconforming as stated in their documents. So, they will never be conforming just like the other side of the lake, they will never be conforming either, sixty-five to seventy percent of the homes on Lakeshore Drive are nonconforming, grandfathered in. He knows the zoning, he has done it, he has been over there, and they are all nonconforming. He feels for them but if they must go for special permits, why should they not have to do the same? Why should they be able to go to their own committee to get approval and then go to the Building Commissioner, they must go with a set of plans, and he does not always come with problems. Part of the solution is they have a beautiful set of as-builts which they have not shown from McCleary Engineering which have all their exclusive use areas beautifully drawn out with all the border and everything they would need for site division. Yes, some of the lots are nonconforming but it would give conservation and the building inspector a tool in order to measure for their side lots, why should they have zero setbacks, they have acre lots. President Ossing interrupted Mr. Sharon to let him know that his three minutes were up and asked if he had his concerns written up? Mr. Sharon stated that some of his comments were adlibbed, so they were not all written down. Mr. Sharon concluded by saying they get him riled up a little bit and he has been friends with Mr. Durand for a long time and there is no need to lose a friendship. He supports everything they want to do such as no buildings or no additional condominiums but there is not a document that states that intent. Their document allows them to do the opposite and that is his biggest point. He will provide his documents for the minutes.



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

PAGE 13

### ORDERED:

Paul Goldman, 137 Second Road, had a question regarding special permits. He does not want that for every little thing, the homeowner must appear in front of the City Council, and he gets that, but he has a few thoughts about it. It seems to him that the residents probably have a good idea for any improvements they would want to make in the next year or two and is there a way as a condominium association where they could consolidate their renovation requests and submit them on a yearly basis and present it as one special permit to send it out to the neighbors, it reduces costs and gets the job done. Mr. Goldman was also not sure how many special permits are they talking about that they are creating a whole overlay, are they talking about ten, fifteen, he does not have a sense of the magnitude of the problem they are trying to solve with the overlay. If it is special permits and if they can combine them, it might be a good way to continually improve the system and he does not know how that works as he is not a special permit expert, but he would like their thoughts on these subjects. In Mr. Falk's opinion, virtually anything done to any of these structures would require a special permit because there are multiple single-family homes on one lot which violates the zoning ordinance and no matter what, that is not permissible in the A2 district. So, every single one of these structures are pre-existing, nonconforming on this lot and changes to those structures would require what is called a Section 6 Finding Special Permit for Pre-existing, Nonconforming Structure to be Modified. Other lots and other undersized parcels like in the neighborhood across the way but anywhere in the city in his opinion, there is more you could do without a Section 6 Finding Special Permit within the envelope of a building even adding on as long as new violations are not added to the structure. If an addition can be done within the existing setback even if the property is pre-existing, nonconforming, a special permit is not usually necessary, but he does not think that would work here because every single structure is pre-existing, nonconforming because of the parcel and the way it is built out. So that is the concern is there is not much those homeowners can do that does not require a Section 6 Finding Special Permit because of the lot size. They are triggering notice to one-hundred-forty-eight individual owners for every little thing, and they do not think even if they could be consolidated and apply for one special permit every year to look at all the different changes, Mr. Falk supposes you could but it seems like a waste of a lot of people's time and money to do that for changes that virtually nobody else will see anywhere in the city.

Mr. Goldman asked if someone were to change their house but stay on the same footprint as the house that is being built right now, he confirmed they do not need a special permit. Mr. Falk believed if it is the exact footprint then that is correct. The issue is a lot of these structures are quite small because they were developed as cabins and now that people actually own the land underneath their homes, they are looking to make changes to improve them to make them last longer and that is where they are running into this problem where virtually anything that most people would do with those homes requires a special permit notifying one-hundred-forty-eight other people and having a hearing like this. Mr. Goldman asked if Mr. Falk had a sense of how many special permits they were talking about? Mr. Falk had no idea as it depends on what the structure owners wanted to do as it is twenty-nine sets of decisions in terms of what they want to do with their property over the years.



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

ORDERED:

PAGE 14

Pete Sharon, 95 Lakeshore Drive, spoke with regards to special permits has spoken with the building inspector and conservation and their biggest complaint is they have no boundaries or barriers to go by for any measurements. There is a beautiful site plan, and it has all the lot lines they have agreed upon. Mr. Sharon asked if they had spoken to the building inspector or conversation because they need some boundaries to go by, there are measurements. According to Mr. Sharon, they are never going to get around the requirement of building thirty feet from the lake and it is not mentioned in any of their documents, the thirty-foot setback from the lake. Mr. Falk stated they are not attempting to avoid that with the zoning amendment. Mr. Falk provided copies of the plan Mr. Sharon is referencing to the Building Commissioner and the Conservation Officer. They have access to that plan; Mr. Falk sent them a copy by email, so they have an electronic form showing all the exclusive use areas. That plan is also recorded with the Registry of Deeds so anyone can download it whenever they want. Mr. Sharon confirmed it was the one from McCleary with Mr. Falk. Mr. Sharon asked if those plans were being used for current building permits. Mr. Falk stated there are no building permits being issued now. Mr. Sharon disagreed as there is a house currently being built and there is a permit out for that work. Mr. Falk stated the Building Commissioner has told them, he is not issuing any new permits until this zoning issue is resolved one way or another. Mr. Sharon noted there is a house being built there, six months ago an addition was added to a property, so construction is occurring without these special permits Mr. Falk keeps referencing. Mr. Sharon stated this is a big blown-up thing that is not as big as it is made out to be and that is his point. Mr. Sharon thought there was a way around it without putting an overlay on fifty acres of land.

### PUBLIC SPEAKING IN OPPOSITION

Paul Goldman, 137 Second Road, wished to emphasize that he thought they were lucky to have all the owners of the homes of Red Spring Road to be the ones that purchased this land. He has worked with them on many environmental issues in the past and he looks forward to doing it in the future. Mr. Goldman has a letter he would like to provide to the City Council. Mr. Goldman has asked his questions and his main concern, not that this proposal is evil or anything, he just wants to guarantee that there is a building cap on this overlay, to ensure that it is no different than if it were an A2 zoned property. Mr. Goldman believes they have every right to add buildings to it, he just does not want it to be densely packed as a result of the reduction in what he understands as the dimensional regulation. Those are a summary of the concerns in his letter, and he did appreciate the answers he received but he believes this a very important point to be considered before this overlay is approved otherwise, he is thankful they are going to keep it as pristine as it has been kept.





## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

**ORDERED:**

PAGE 15

Lindsay Kaeding, 760 Pleasant Street, lives in Marlborough and she grew up on Lakeshore Drive. She opposes the overlay. She agreed with everything everyone said but she thinks there is something missing from what is out there and there is some wording that needs to be added. She would like to add that she was disheartened by the fact that people asking questions and trying to get the answers and do something good is being called misinformation. It is upsetting to her because people just want to understand what is going on and she thought that is their right to do. Pete Sharon, 95 Lakeshore Drive, used the same letter he has been using which was signed off by around 140 – 150 people. Mr. Sharon read the letter which was only a few paragraphs.

“We oppose the proposed Red Spring Road Overlay District because it doesn’t show benefit to the city or lake area residents. The Red Spring Road Overlay District request appears to be a blank check for development by eliminated boundary conditions that pertain to A2 zoning.

While the request suggests that dealing with pre-existing, nonconforming homes is the reason for granting the overlay, the fact is many lake residents have dealt with these same situations without eliminated dimensional zoning standards as indicated in the §650-50 Red Spring Road Overlay District request. No plans or discussions have been heard on the potential impact of the overlay of the lake area or phase two which is the ten acres parcel adjacent. \*

Lastly, based on the current assessed records and this goes back to 2023, that is what they have and what they have available, it appears there is no equity in the condo property tax structure with the residents on or around the lake. Although we all share the same lake frontage and a lot less of it in some areas.

The undersigned on this document.”

\*Footnote: Today we did hear a little bit. This was the first time, again these documents have been out since the Planning Board and previous meetings, so a little was heard on it.

He will provide it to the City Council Secretary.

Mr. Sharon emphasized they do support everything they want to do; they just do not think there is a reason for an overlay of fifty acres for a “lousy little” building permit issue. If they cannot work out that issue as a city with a one-hundred-eighty-one-million-dollar budget without creating an overlay, they have a sad situation. They do support those residents adding on, doing building construction, whatever they need to do over there but they do not believe it requires any kind of overlay for fifty acres.

### QUESTIONS FROM CITY COUNCIL

Councilor Wagner asked how many abutters need to be notified for a special permit hearing. Mr. Falk replied that the 400-foot abutters list by his count is 119 owners beyond the 29-unit owners who would also get notice, so 148 in total.



## IN CITY COUNCIL

Marlborough, Mass., OCTOBER 23, 2023

PAGE 16

### ORDERED:

Councilor Perlman stated it makes a lot of sense here not to have to notify all the abutters, certainly the open space preservation it should be something the city does, and she asked in the future iterations of this in Urban Affairs what additional information will be provided to the Council to tease this out further. Mr. Falk replied the city has a copy of the map that has been referred to which shows all the exclusive use areas, it can certainly be brought in for Urban Affairs. Beyond that, they are open to requests for information but that is the main data point that people might want to see.

Councilor Perlman thought it might be helpful to have maybe a more zoomed in version of this area given the maps. She thought it was helpful, because until many years ago she did not even know Red Spring Road existed because it is sort of a hidden gem so certainly having some more specifics about the area, she thought would help the Council better assess this project.

Councilor Robey had a couple of clarifying questions on the draft:

On page two, under the use regulations, the very last notation is, "All uses not specified in Subsection D.1 and Subsection D.2 above shall be deemed prohibited." Councilor Robey did not see any subsections and she asked if they were quoting from the code, and these are parts of that, or should there be a subsection listed? Mr. Falk responded it was intended to reference subsections within that existing article so he can include clearer verbiage and would certainly be happy to do that, but he was intending to reference the notes above and not anywhere else in the ordinance in that section.

In the dimensional regulations, there is a minimum lot area of 18,000 square feet but within the SRS each principal building located within an exclusive use area of at least 8,000 square feet and what is the difference between an exclusive use area that is 8,000 and the minimum lot area of 18,000? Mr. Falk replied that he minimum lot area would be a separate building lot under the zoning which in the A2, that is the minimum size 18,000 square feet. The 8,000 square foot exclusive use area, that is the smallest exclusive use area they have in this condominium association. The purpose was to give some clarity in terms of if they were going to allow multiple single families on one parcel, can they be anywhere, what are the requirements? They decided they must be on an exclusive use area, one for themselves and they decided the minimum size which happened to be the smallest. Many of the exclusive use areas in this condominium association are much larger than that but that happens to be the smallest and so that is the one they used to show that it the minimum size exclusive use area. An exclusive use area would not be a zoning lot, it is not intended to be, it is just an area where that unit owner has a yard, and they can do what they want within the requirements of the condominiums associations rules.

Councilor Robey questioned if they aren't really asking the Council to ignore the fact that there is a minimum lot area if there are no lot lines and there are no setbacks. Mr. Falk stated within the portion that would be subject to a homeowner's association or condominium, yes.



## IN CITY COUNCIL

---

Marlborough, Mass., OCTOBER 23, 2023

PAGE 17

### ORDERED:

Councilor Robey referenced how much they can build, and it is specified they have the thirty percent lot coverage so they, the Council, would need to know what the current lot coverage is to know how much more they can build out. She requested they provide that information. Mr. Falk stated it was approximately five percent at this time.

Councilor Robey did not know what the Planning Board did that evening, if they were going to hold over their decision until their next meeting but once the City Council hears from the Planning Board, this will be brought to committee for discussion.

That ends the entire Public Hearing. This is currently in the Urban Affairs Committee.

ADOPTED

ORDER NO. 23-1008951B



## IN CITY COUNCIL

---

Marlborough, Mass., NOVEMBER 27, 2023

### ORDERED:

That the Communication from the Planning Board, re: Favorable Recommendation on the Proposed Amendment to City Code Chapter 650 "Zoning" to add a new section to create the "Red Spring Road Overlay District" (RSROD), Order No. 23-1008951, be and is herewith accepted and placed on **FILE**.

**Councilor Oram Recused.**

ADOPTED

ORDER NO. 23-1008951C

Sean N. Fay, Chair  
 Barbara L. Fenby  
 James Fortin  
 Patrick Hughes  
 Dillon LaForce  
 George LaVenture  
 Christopher Russ



*City of Marlborough*  
 RECEIVED  
 CLERK'S OFFICE  
 CITY OF MARLBOROUGH  
 NOV 21 PM 3:15  
*Planning Board*

**Katlyn LeBold, Administrator**  
 (508) 624-6910 x33200  
[klebold@marlborough-ma.gov](mailto:klebold@marlborough-ma.gov)

November 14, 2023

Council President Michael Ossing  
 Marlborough City Council  
 140 Main St.  
 Marlborough, MA 01752

RE: Council Order 23-1008951 Proposed Zoning Amendment to Chapter 650, to add a new section to create the Red Spring Road Overlay District (RSROD)

Honorable President Ossing and Councilors:

At its regularly scheduled meeting on 11/13/2023, the Board took the following action regarding the above-referenced Council Order:

On a motion by Mr. Russ, seconded by Dr. Fenby, the Board voted to send a favorable recommendation to the City Council on the above referenced Proposed Zoning Amendment. Yea: Fay, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried. 6-0. Abstained: Fenby

The Board provided the following reasons in reaching its recommendation:

- The developer established that the proposed Zoning Amendment is consistent with the character of the existing neighborhood and that the Zoning Amendment would allow homeowners to better maintain the existing neighborhood;
- In the Planning Board's opinion, approval of the Zoning Amendment would not be overly burdensome to the neighbors.

If the City Council sees fit to approve the Zoning Amendment, the Planning Board suggests the following:

- Add language to define lot frontage:
  - For lots created prior to (date TBD) required lot frontage is equal to 51.42' (the existing frontage, or round up to 52.0'), instead of zero;
  - For lots created on or after (date TBD) required lot frontage is equal to 120.0', instead of zero.
- Add language to define lot setback:
  - For lots created prior to (date TBD) all structures to be set back min. 15.0' from the RSR district boundary line;
  - For new structures on lots created prior to (Date TBD) all structures to be setback min 30' from the RSR district boundary line
- Add language requiring any new lots created after (Date TBD) to conform with the of the current A2 zoning;
- Remove language allowing the boat club use, keeping the current boat club as "pre-existing, non-conforming";
- Add language limiting the number of structures within each exclusive use area to one single family house, one garage (non-habitable) and one shed (non-habitable) and specifically exclude bunk houses;

- Add language limiting the number of dwelling units to 29 for the entire parcel, consistent with the stated opposition to further development around the reservoir by the residents of Red Spring Road during the Sasseville Road public hearing;
- Secure an agreement giving the City the right of first refusal for the 10-acre undeveloped parcel for conservation purposes.

Sincerely,

A handwritten signature in black ink, appearing to be 'Sean N. Fay', with a circular mark containing the initials 'KL' to its right.

Sean N. Fay  
Chairperson

cc: City Clerk  
Brian Falk, Mirick, O'Connell, DeMallie & Lougee, LLP

**ORDER NO. 23-1008941**

**PROPOSED ZONING AMENDMENT  
SASSEVILLE WAY RESIDENTIAL  
OVERLAY DISTRICT**

**INFORMATION FROM  
CITY SOLICITOR  
JASON GROSSFIELD**



## Steven Kerrigan

---

**From:** Jason Grossfield  
**Sent:** Wednesday, November 29, 2023 12:12 PM  
**Cc:** City Council; Steven Kerrigan  
**Subject:** Order No. 23-1008941 (Proposed Zoning Amendments re: Sasseville Way Residential Overlay District)  
**Attachments:** Marlborough City Council Order for Proposed Amendment - Red-Line Compare 11-29 to 11-7-23 edition.pdf; Exhibit A to Proposed Amendment - 11-29-23.pdf; Marlborough City Council Order for Proposed Amendment to Zoning - 11-29-23.docx

Dear Honorable Councilors: In connection with the above-referenced order, enclosed please find an updated draft of the zoning ordinance amendments in advance of tomorrow's Committee on Urban Affairs & Housing meeting.

As requested, the petitioners and I worked to incorporate the changes discussed at the November 15, 2023 committee meeting. For reference, the pdf version is a red-line showing changes incorporated in this new draft compared to the version submitted by the petitioners on 11/7/23 and reviewed at the November 15, 2023 committee meeting.

I understand consideration of certain policy decisions remain open (i.e., residential buffer at subsection F(3)(ii)).

With regard to the affordable housing requirement at subsection E, this draft applies the requirements of Section 650-26 to the overlay district. If the committee seeks to incorporate a requirement different from what section 650-26 requires (in its current form or if s. 650-26 is modified in the future), edits can be made to specify in the subsection.

Please feel free to contact me with any questions.

Thank you,  
-Jason

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

This e-mail message is generated from the City of Marlborough Legal Department. It may contain information that is privileged as an attorney-client communication or as attorney work-product, or that is otherwise confidential. The information is intended to be disclosed solely to, and received solely by, the intended recipient, and delivery of this message to any person other than the intended recipient shall not compromise or waive such privilege or confidentiality. If you are not the intended recipient, please be advised that any distribution, disclosure, printing, copying, storage, modification or use of the contents of this e-mail, or the taking of any action in reliance thereon, is prohibited. If you have received this e-mail in error, please notify the sender by return e-mail and delete it from your computer system. Thank you for your cooperation.

IN CITY COUNCIL

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 1

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING RECEIVED FOR ITS 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 BY AMENDING AND ADDING THERETO AS FOLLOWS:

I. Chapter 650, Article VI, entitled "Special Districts, Overlays and Special Requirements" is hereby amended ~~to add~~ by inserting a new Section 650-39A, ~~or such other numbering as deemed appropriate and adopted by the City of Marlborough,~~ entitled "Sasseville Way Residential Overlay District", which shall read as follows:

§ 650-39A. "Sasseville Way Residential Overlay District"

A. Purpose and objectives.

(1) The purpose of the Sasseville Way Residential Overlay District (herein, also the SWR Overlay District) shall be to encourage and enhance land development and desired growth patterns for the advancement of the public health, safety and welfare by providing for the development of mixed use ~~multi-family~~multifamily housing developments on sites which are otherwise zoned for other purposes but which, because of the size of the parcel being developed and its proximity to other residential neighborhoods, recreational, environmental and/or residential amenities, will provide an appropriate environment for a mixed use ~~multi-family~~multifamily housing development consistent with the stated economic development and environmental stewardship objectives of the City.

(2) For purposes of this zoning district, a mixed-use development shall include a mix of ~~multi-family~~multifamily residential uses and any eligible use set forth in Subsection D, which may be commingled into a single structure or multiple structures with other eligible uses on the same property. Within the SWR Overlay District, one (1) mixed-use development shall be permitted, which shall require a special permit and site plan review. Proponents are encouraged, where practical, to allow undeveloped land within the SWR Overlay District and outside of proposed construction and disturbed areas to remain in its natural state. Accordingly, mixed-use developments shall benefit the public health, safety and welfare, through the sharing of parking lots and driveway curb cuts, to minimize the amount of impervious paved parking area and driveway curb cuts, reduce automobile trips and traffic congestion, improve walkability within the property, and thereby improve air quality.

## IN CITY COUNCIL

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 2

(3) For purposes of this ~~section~~Section 650-39A, the SWR Overlay District shall be superimposed on the other districts existing at the time that any land in said underlying district is also included in the SWR Overlay District. The SWR Overlay District is located adjacent to Sasseville Way as indicated on the City Zoning Map existing at the passage of this Ordinance, which properties include the following parcel of land (herein identified by the Assessors' Map and Parcel Number): 29-23.

B. Authority of permit granting authority.

~~\_\_\_\_\_ (1) The City Council shall be the permit granting authority for special permit and site plan approval in the SWR Overlay District.~~ (1) In all instances, (i) a development which proceeds under the SWR Overlay District is subject to administrative site plan approval in accordance with § 270-2 of the Marlborough City Code, and (ii) an application for a special permit for a use in the SWR Overlay District shall comply with the requirements of § 650-59 of the Zoning Ordinance, with the exception that the City Council shall be the permit granting authority for special permit ~~and site plan approval in the SWR Overlay District,~~ and the voting threshold shall be a simple majority, determined in accordance with Massachusetts General Laws c. 40A, § 9.

(2) ~~The City Council~~A special permit may ~~elect to~~ waive or modify any of the dimensional and parking requirements set forth in this section ~~during Site Plan Review if it makes upon~~ a finding that to do so will enhance the overall design of the SWR Overlay District. ~~This authority continues subsequent to occupancy of any structure within the SWR Overlay District.~~

C. Exclusivity/control. This section (§ 650-39A) of the Zoning Ordinance exclusively controls any mixed use development in the SWR Overlay District and supersedes any other provision of the Zoning Ordinance with respect to all matters described in this section. In the event of any conflict between the provisions of this section (§ 650-39A) and any other provision of the Zoning Ordinance, the provisions of this section (§ 650-39A) shall govern and control.

D. Eligible uses. Except as specifically set forth to the contrary below, all uses permitted in the Residential A-2 and Limited Industrial Districts, either as of right or by special permit in accordance with § 650-17 of the Zoning Ordinance, are permitted to the same extent in the SWR Overlay District.

(1) The following uses are permitted by special permit in the SWR Overlay District:

(a) Multifamily dwelling as part of a mixed-use development, provided that the total number of dwelling units in the SWR Overlay District shall not exceed 286.

## IN CITY COUNCIL

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 3

(b) Car parking lots, garages accessory to any principal uses at the property: a structure or a group of structures that facilitate the parking of vehicles at ground level, above or below grade and shall include area for the parking of vehicles at, above and/or below grade under a building or otherwise integrated into another structure.

(c) Any "business use" as categorized under §650-17 of the Zoning Ordinance, provided that said facilities are, in the aggregate, less than 8,000 square feet of floor area and that such business use is limited to the following:

(i) Consumer service establishments complementary to the other principal uses at the property; and

(ii) One restaurant serving food indoors and/or outdoors, or cafe/café with or without table service (including outside seating and service), or brew pub.

~~(iii) Health, sports and fitness clubs (indoor and/or outdoor) and related facilities. For the avoidance of doubt, any outdoor areas shall not be subject to said floor area restrictions.~~

(d) Health, sports and fitness clubs (indoor and/or outdoor) and related facilities for residents and guests of residents as accessory to athe multifamily dwelling use, provided that said facilities if enclosed in a building(s) are less than 8,000 square feet of floor area. For the avoidance of doubt, any outdoor areas shall not be subject to said floor area restrictions.

(e) Accessory solar and other alternative energy installations, including but not limited to solar photovoltaic systems, rooftop systems and solar parking canopies, and accessory telecommunications facilities and wireless communications facilities subject to §650-25 of the Zoning Ordinance.

~~(f)-(2) The foregoing subsections notwithstanding, the uses set forth as follows are expressly prohibited in the SWR Overlay District: Any "Industrial Uses", as categorized under § 650-17 of the Zoning Ordinance, which are permitted by underlying zoning and located within 200 feet shall not be allowed in the SWR Overlay District after the granting of a residential structure.~~

~~(2) Once building permit for a development in the SWR Overlay District receives site plan approval:~~

## IN CITY COUNCIL

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 4

~~(a) An individual as-of-right use may be changed without further site plan approval, unless such change otherwise requires Site Plan Approval under § 270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection L; and~~

~~(b) An individual use already granted that has received a special permit may be changed upon the grant of a new or modified special permit, as appropriate, for that changed use, and will be subject to Site Plan Approval; provided, however, that if the change is to an as-of-right use in the SWR Overlay District, no further Site Plan Approval is required unless such change otherwise requires Site Plan Approval under § 270-2 of the Marlborough City Code or a modification to a Site Plan Approval under Subsection L under this section (§ 650-39A).~~

E. Affordable Housing. ~~All site plan review approvals~~ Notwithstanding anything to the contrary in § 650-26 of the Zoning Ordinance, all special permits granted to applicants to construct ~~multi-family~~ multifamily dwellings (including a mixed-use development containing a multifamily dwelling use) shall be subject to the provisions of § 650-26 of the Zoning Ordinance; ~~provided, however, the percentage of dwelling units to be constructed for homeownership or rental purposes to be made available at affordable prices to home buyers or renters shall be 12% with respect to developments of 20 or more units.~~

F. Dimensional requirements. The SWR Overlay District shall be subject to the dimensional standards in accordance with Article VII of the Zoning Ordinance with the following exceptions:

(1) The SWR Overlay District shall consist of one or more lots. The minimum acreage requirement for contiguous parcels/lots to be developed as a SWR Overlay District is twenty ~~(20-three (23))~~ acres.

(2) Minimum lot frontage measurement shall be no less than 200 feet for any lot wholly located within the boundaries of the SWR Overlay District.

(3) Minimum side and rear yard measurement shall be no less than 50 feet and minimum front yard measurement shall be no less than 50 feet for any lot wholly located within boundaries of a SWR Overlay District, except that ~~for any business use the minimum front yard measurement shall be no less than 25 feet~~ (i) for any business use the minimum front yard measurement shall be no less than 25 feet; (ii) no portion of any multifamily building shall be located less than 150 feet from any portion of a single family dwelling located outside the SWR Overlay District existing as of the effective date of this Section 650-39A measured in a straight line from any point of a multifamily building within the SWR Overlay District to any point of a single family dwelling outside of the SWR Overlay District existing as of the effective date of this Section (without regard to any subsequent relocation or demolition of such dwelling); and (iii) there shall be no disturbance of land within the "riverfront area" as defined in M.G.L. c. 131, §40 in effect

## IN CITY COUNCIL

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 5

as of the effective date of this Section 650-39A and shown in an Abbreviated Notice of Resource Area Delineation approved by the Marlborough Conservation Commission and which has not lapsed.

(4) Maximum building height in SWR Overlay District shall not exceed 70 feet, provided that:

(a) For the purposes of measuring height in SWR Overlay District, the “front” of each building shall be measured on the side facing Sasseville Way;

(b) No non-residential structure or building shall be more than 2 stories or 45 feet in height; and

(c) For the avoidance of doubt, height shall be measured to the average height between plate and ridge of a gable, hip or gambrel roof.

(5) Maximum combined lot coverage, including any permitted accessory structures, shall not exceed 45% of the ~~tract or contiguous parcels~~ area of the entire SWR Overlay District.

(6) The total number of dwelling units within the SWR Overlay District shall be limited to 13 units per acre of ~~gross land area~~ the area of the entire SWR Overlay District.

(7) The SWR Overlay District may contain studio, one (1), two (2) and three (3) bedroom units, provided that the number of three (3) bedroom units shall not exceed ten (10).

(8) Notwithstanding anything contained herein to the contrary, there shall be no yard or setback requirements, or planting strips required, as to internal lot lines within the SWR Overlay District.

G. Parking and curb cut requirements. Except as otherwise provided in this ~~section~~ Section 650-39A, parking and circulation requirements shall conform to the provisions of §§ 650-48 and 650-49 of the Zoning Ordinance.

(1) General. In the SWR Overlay District, 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. In implementing this goal the City Council shall consider complementary or shared use of parking areas by activities having different peak demand times, and the applicant shall locate adjacent uses in such a manner as will facilitate the complementary use of such parking areas. Implementation of such complementary use of parking areas may result in permitted reductions in the parking requirements.

## IN CITY COUNCIL

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 6

(2) Parking locations. Parking may be provided at ground level, underground or in a parking garage. Parking garages can be freestanding or as part of buildings dedicated to other permitted uses.

(3) Parking spaces per dwelling unit. There shall be a minimum parking ratio of 1.5 parking spaces per dwelling unit.

(4) Granting of relief from parking and driveway regulations. The City Council may waive any of the foregoing requirements or the requirements of § 650-48 and § 650-49 ~~during Site Plan Review~~ in a special permit if it makes a finding that to do so will enhance the overall design of the SWR Overlay District.

H. Landscaping and screening requirements. The SWR Overlay District shall be subject to the landscaping and screening standards in accordance with § 650-47 with the following exceptions:

(1) In the SWR Overlay District, there shall be provided with each multifamily building a landscaped area equal to the greatest single floor area of the building, provided that such landscaped area may include undisturbed natural areas such as vegetated areas, woodlands, wetlands and ~~floodplain~~ floodplain areas.

(2) The City Council may waive any of the requirements of § 650-47 ~~during Site Plan Review~~ during Site Plan Review in a special permit if it makes a finding that to do so will enhance the overall design of the SWR Overlay District.

I. Signage.

(1) Except as otherwise provided in this ~~section~~ Section 650-39A, signage shall conform to the provisions of Chapter 526 of the Marlborough City Code, the Sign Ordinance.

(2) The City Council may waive any of the requirements of the Sign Ordinance ~~during Site Plan Review~~ in a special permit if it makes a finding that to do so will enhance the overall design of the SWR Overlay District.

J. Stormwater Management System. A development shall have a stormwater management system designed in accordance with the Rules and Regulations for the Subdivision of Land in the City, the Department of Environmental Protection's Storm Water Management Guidelines, and the City's Stormwater Ordinance, Chapter 271 of the Marlborough City Code.

K. Application.

## IN CITY COUNCIL

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 7

(1) An application for a special permit in the SWR Overlay District 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, Chapter 270, Article II, Permits and Approvals, § 270-2 *et seq.*

(2) ~~The City Council in connection with a~~ Applications for special permit and/or site plan ~~application shall~~ review such applications shall be reviewed with respect to the following design criteria:

- (a) Compliance of sidewalks with Americans with Disabilities Act (ADA) design standards;
- (b) Street facade and exterior walls visible from public ways;
- (c) Public space;
- (d) Scale of buildings; and
- (e) External lighting.

~~(3)~~ (3) An applicant for a special permit shall prepare and complete a balloon test to visually simulate the height of buildings.

(4) 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 and/or the departments engaging in site plan review to present the proposed architectural design and shall consider the comments and input from ~~the City Council, such bodies.~~ A final building elevation shall be submitted prior to the close of the public hearing/meeting on a special permit.

L. Amendments. After approval, an owner/developer may seek amendments to the approved permits. ~~Minor amendments~~ Major modifications to a special permit ~~and major or minor amendments to a site plan approval~~ may be ~~made~~ granted by a ~~majority~~ vote of the City Council ~~and minor modifications to a special permit may be granted by the Building Commissioner.~~ It shall be a finding of the City Council, not subject to dispute by the applicant, whether a requested amendment to a special permit is deemed to be a major amendment or a minor one. Major or minor modifications to a site plan shall be subject to the provisions of § 270-2 of the Marlborough City Code. In general, a minor amendment to a special permit or minor modification to a site plan shall not produce more than a material increase in the scale of a project nor produce more than a material 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 § 650-59 of the Zoning Ordinance, an application for a revised special permit shall be filed, and a public hearing shall be held in





**IN CITY COUNCIL**

**ORDERED**

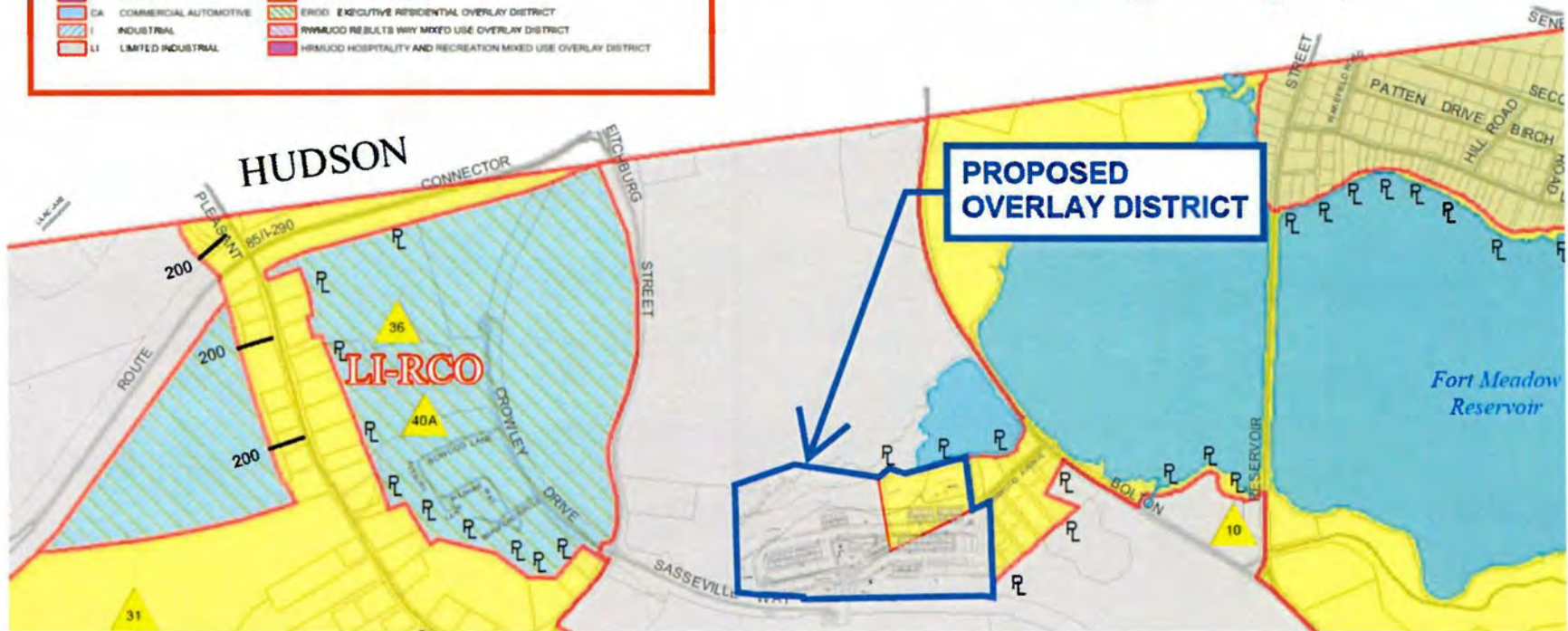
**Marlborough, Mass., \_\_\_\_\_**  
**PAGE 9**

**EXHIBIT "A" - MAP**

# PROPOSED OVERLAY DISTRICT

A-1 RESIDENCE A-1	LI-RCO LIMITED INDUSTRIAL - RETIREMENT COMMUNITY OVERLAY
A-2 RESIDENCE A-2	MV MARLBOROUGH VILLAGE DISTRICT
A-3 RESIDENCE A-3	RB RESIDENCE B
B BUSINESS	RC RESIDENCE C
NB NEIGHBORHOOD BUSINESS	RCR RETIREMENT COMMUNITY RESIDENCE
W WAYSIDE	RR RURAL RESIDENCE
CA COMMERCIAL AUTOMOTIVE	EROD EXECUTIVE RESIDENTIAL OVERLAY DISTRICT
I INDUSTRIAL	RYMUD RYMAZON HILLS WAY MIXED USE OVERLAY DISTRICT
LI LIMITED INDUSTRIAL	HHRMUD HOSPITALITY AND RECREATION MIXED USE OVERLAY DISTRICT

## City of Marlborough, Massachusetts Zoning Map



## IN CITY COUNCIL

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 1

THAT, PURSUANT TO § 5 OF CHAPTER 40A OF THE GENERAL LAWS, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH, HAVING RECEIVED FOR ITS 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 BY AMENDING AND ADDING THERETO AS FOLLOWS:

- I. Chapter 650, Article VI, entitled "Special Districts, Overlays and Special Requirements" is hereby amended by **inserting** a new Section 650-39A, entitled "Sasseville Way Residential Overlay District", which shall read as follows:

**§ 650-39A. "Sasseville Way Residential Overlay District"**

A. Purpose and objectives.

(1) The purpose of the Sasseville Way Residential Overlay District (herein, also the SWR Overlay District) shall be to encourage and enhance land development and desired growth patterns for the advancement of the public health, safety and welfare by providing for the development of mixed use multifamily housing developments on sites which are otherwise zoned for other purposes but which, because of the size of the parcel being developed and its proximity to other residential neighborhoods, recreational, environmental and/or residential amenities, will provide an appropriate environment for a mixed use multifamily housing development consistent with the stated economic development and environmental stewardship objectives of the City.

(2) For purposes of this zoning district, a mixed-use development shall include a mix of multifamily residential uses and any eligible use set forth in Subsection D, which may be commingled into a single structure or multiple structures with other eligible uses on the same property. Within the SWR Overlay District, one (1) mixed-use development shall be permitted, which shall require a special permit and site plan review. Proponents are encouraged, where practical, to allow undeveloped land within the SWR Overlay District and outside of proposed construction and disturbed areas to remain in its natural state. Accordingly, mixed-use developments shall benefit the public health, safety and welfare, through the sharing of parking lots and driveway curb cuts, to minimize the amount of impervious paved parking area and driveway curb cuts, reduce automobile trips and traffic congestion, improve walkability within the property, and thereby improve air quality.

(3) For purposes of this Section 650-39A, the SWR Overlay District shall be superimposed on the other districts existing at the time that any land in said underlying district is also included in the SWR Overlay District. The SWR Overlay District is located adjacent to Sasseville Way as indicated on the City Zoning Map existing at the passage of

## IN CITY COUNCIL

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 2

this Ordinance, which properties include the following parcel of land (herein identified by the Assessors' Map and Parcel Number): 29-23.

B. Authority of permit granting authority.

(1) In all instances, (i) a development which proceeds under the SWR Overlay District is subject to administrative site plan approval in accordance with § 270-2 of the Marlborough City Code, and (ii) an application for a special permit for a use in the SWR Overlay District shall comply with the requirements of § 650-59 of the Zoning Ordinance, with the exception that the City Council shall be the permit granting authority for special permit, and the voting threshold shall be determined in accordance with Massachusetts General Laws c. 40A, § 9.

(2) A special permit may waive or modify any of the dimensional and parking requirements set forth in this section upon a finding that to do so will enhance the overall design of the SWR Overlay District.

C. Exclusivity/control. This section (§ 650-39A) of the Zoning Ordinance exclusively controls any mixed use development in the SWR Overlay District and supersedes any other provision of the Zoning Ordinance with respect to all matters described in this section. In the event of any conflict between the provisions of this section (§ 650-39A) and any other provision of the Zoning Ordinance, the provisions of this section (§ 650-39A) shall govern and control.

D. Eligible uses. Except as specifically set forth to the contrary below, all uses permitted in the Residential A-2 and Limited Industrial Districts, either as of right or by special permit in accordance with § 650-17 of the Zoning Ordinance, are permitted to the same extent in the SWR Overlay District.

(1) The following uses are permitted by special permit in the SWR Overlay District:

(a) Multifamily dwelling as part of a mixed-use development, provided that the total number of dwelling units in the SWR Overlay District shall not exceed 286.

(b) Car parking lots, garages accessory to any principal uses at the property: a structure or a group of structures that facilitate the parking of vehicles at ground level, above or below grade and shall include area for the parking of vehicles at, above and/or below grade under a building or otherwise integrated into another structure.

(c) Any "business use" as categorized under §650-17 of the Zoning Ordinance, provided that said facilities are, in the aggregate, less than 8,000

## IN CITY COUNCIL

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 3

square feet of floor area and that such business use is limited to the following:

(i) Consumer service establishments complementary to the other principal uses at the property; and

(ii) One restaurant serving food indoors and/or outdoors, or café with or without table service (including outside seating and service), or brew pub.

(d) Health, sports and fitness clubs (indoor and/or outdoor) and related facilities for residents and guests of residents as accessory to the multifamily dwelling use, provided that said facilities if enclosed in a building(s) are less than 8,000 square feet of floor area. For the avoidance of doubt, any outdoor areas shall not be subject to said floor area restrictions.

(e) Accessory solar and other alternative energy installations, including but not limited to solar photovoltaic systems, rooftop systems and solar parking canopies, and accessory telecommunications facilities and wireless communications facilities subject to §650-25 of the Zoning Ordinance.

(2) The foregoing subsections notwithstanding, the uses set forth as follows are expressly prohibited in the SWR Overlay District: Any "Industrial Uses", as categorized under § 650-17 of the Zoning Ordinance, which are permitted by underlying zoning shall not be allowed in the SWR Overlay District after the granting of a building permit for a development that has received a special permit under this section (§ 650-39A).

E. Affordable Housing. Notwithstanding anything to the contrary in § 650-26 of the Zoning Ordinance, all special permits granted to applicants to construct multifamily dwellings (including a mixed-use development containing a multifamily dwelling use) shall be subject to the provisions of § 650-26 of the Zoning Ordinance.

F. Dimensional requirements. The SWR Overlay District shall be subject to the dimensional standards in accordance with Article VII of the Zoning Ordinance with the following exceptions:

(1) The SWR Overlay District shall consist of one or more lots. The minimum acreage requirement for contiguous parcels/lots to be developed as a SWR Overlay District is twenty-three (23) acres.

(2) Minimum lot frontage measurement shall be no less than 200 feet for any lot wholly located within the boundaries of the SWR Overlay District.

## IN CITY COUNCIL

---

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 4

(3) Minimum side and rear yard measurement shall be no less than 50 feet and minimum front yard measurement shall be no less than 50 feet for any lot wholly located within boundaries of a SWR Overlay District, except that (i) for any business use the minimum front yard measurement shall be no less than 25 feet; (ii) no portion of any multifamily building shall be located less than 150 feet from any portion of a single family dwelling located outside the SWR Overlay District existing as of the effective date of this Section 650-39A measured in a straight line from any point of a multifamily building within the SWR Overlay District to any point of a single family dwelling outside of the SWR Overlay District existing as of the effective date of this Section (without regard to any subsequent relocation or demolition of such dwelling); and (iii) there shall be no disturbance of land within the "riverfront area" as defined in M.G.L. c. 131, §40 in effect as of the effective date of this Section 650-39A and shown in an Abbreviated Notice of Resource Area Delineation approved by the Marlborough Conservation Commission and which has not lapsed.

(4) Maximum building height in SWR Overlay District shall not exceed 70 feet, provided that:

(a) For the purposes of measuring height in SWR Overlay District, the "front" of each building shall be measured on the side facing Sasseville Way;

(b) No non-residential structure or building shall be more than 2 stories or 45 feet in height; and

(c) For the avoidance of doubt, height shall be measured to the average height between plate and ridge of a gable, hip or gambrel roof.

(5) Maximum combined lot coverage, including any permitted accessory structures, shall not exceed 45% of the area of the entire SWR Overlay District.

(6) The total number of dwelling units within the SWR Overlay District shall be limited to 13 units per acre of the area of the entire SWR Overlay District.

(7) The SWR Overlay District may contain studio, one (1), two (2) and three (3) bedroom units, provided that the number of three (3) bedroom units shall not exceed ten (10).

(8) Notwithstanding anything contained herein to the contrary, there shall be no yard or setback requirements, or planting strips required, as to internal lot lines within the SWR Overlay District.

G. Parking and curb cut requirements. Except as otherwise provided in this Section 650-39A, parking and circulation requirements shall conform to the provisions of §§ 650-48 and 650-49 of the Zoning Ordinance.

## IN CITY COUNCIL

---

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 5

(1) General. In the SWR Overlay District, 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. In implementing this goal the City Council shall consider complementary or shared use of parking areas by activities having different peak demand times, and the applicant shall locate adjacent uses in such a manner as will facilitate the complementary use of such parking areas. Implementation of such complementary use of parking areas may result in permitted reductions in the parking requirements.

(2) Parking locations. Parking may be provided at ground level, underground or in a parking garage. Parking garages can be freestanding or as part of buildings dedicated to other permitted uses.

(3) Parking spaces per dwelling unit. There shall be a minimum parking ratio of 1.5 parking spaces per dwelling unit.

(4) Granting of relief from parking and driveway regulations. The City Council may waive any of the foregoing requirements or the requirements of § 650-48 and § 650-49 in a special permit if it makes a finding that to do so will enhance the overall design of the SWR Overlay District.

H. Landscaping and screening requirements. The SWR Overlay District shall be subject to the landscaping and screening standards in accordance with § 650-47 with the following exceptions:

(1) In the SWR Overlay District, there shall be provided with each multifamily building a landscaped area equal to the greatest single floor area of the building, provided that such landscaped area may include undisturbed natural areas such as vegetated areas, woodlands, wetlands and floodplain areas.

(2) The City Council may waive any of the requirements of § 650-47 in a special permit if it makes a finding that to do so will enhance the overall design of the SWR Overlay District.

I. Signage.

(1) Except as otherwise provided in this Section 650-39A, signage shall conform to the provisions of Chapter 526 of the Marlborough City Code, the Sign Ordinance.

(2) The City Council may waive any of the requirements of the Sign Ordinance in a special permit if it makes a finding that to do so will enhance the overall design of the SWR Overlay District.



## IN CITY COUNCIL

---

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 6

J. Stormwater Management System. A development shall have a stormwater management system designed in accordance with the Rules and Regulations for the Subdivision of Land in the City, the Department of Environmental Protection's Storm Water Management Guidelines, and the City's Stormwater Ordinance, Chapter 271 of the Marlborough City Code.

K. Application.

(1) An application for a special permit in the SWR Overlay District 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, Chapter 270, Article II, Permits and Approvals, § 270-2 *et seq.*

(2) Applications for special permit and site plan review shall be reviewed with respect to the following design criteria:

(a) Compliance of sidewalks with Americans with Disabilities Act (ADA) design standards;

(b) Street facade and exterior walls visible from public ways;

(c) Public space;

(d) Scale of buildings; and

(e) External lighting.

(3) An applicant for a special permit shall prepare and complete a balloon test to visually simulate the height of buildings.

(4) 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 and/or the departments engaging in site plan review to present the proposed architectural design and shall consider the comments and input from such bodies. A final building elevation shall be submitted prior to the close of the public hearing/meeting on a special permit.

L. Amendments. After approval, an owner/developer may seek amendments to the approved permits. Major modifications to a special permit may be granted by a vote of the City Council, and minor modifications to a special permit may be granted by the Building Commissioner. It shall be a finding of the City Council, not subject to dispute by the applicant, whether a requested amendment to a special permit is deemed to be a major amendment or a minor one. Major or minor modifications to a site plan shall be subject to the provisions of § 270-2 of the Marlborough City Code. In general, a minor amendment to a special permit or minor modification to a site plan shall not produce more than a

## IN CITY COUNCIL

---

ORDERED

Marlborough, Mass., \_\_\_\_\_

PAGE 7

- material increase in the scale of a project nor produce more than a material 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 § 650-59 of the Zoning Ordinance, an application for a revised 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 § 650-59.
- II. The Zoning Map described in § 650-8 is **amended** as shown on the accompanying Map (Exhibit "A"). The newly established "Sasseville Way Residential Overlay District" shall include all or portions of the properties shown on the Map existing at the passage of this Ordinance, which properties include the following parcel of land (herein identified by the Assessors' Map and Parcel Number): 29-23.
- III. The City Clerk is authorized to assign other numbering for the new section 650-39A as deemed appropriate for sequential ordering in the Zoning Ordinance.
- IV. The effective date of these amendments shall be the date of their passage.

ADOPTED  
In City Council  
Order No. 23-

Adopted

Approved by Mayor  
Arthur G. Vigeant  
Date:

A TRUE COPY  
ATTEST:

**IN CITY COUNCIL**

---

**ORDERED**

**Marlborough, Mass.,** \_\_\_\_\_

**PAGE 8**

**EXHIBIT "A" - MAP**



## IN CITY COUNCIL

---

Marlborough, Mass., NOVEMBER 27, 2023

### ORDERED:

That the Communication from the Planning Board, re: Neutral Recommendation on the Proposed Amendment to City Code, Chapter 650 "Zoning" by adding a new section to create the "Sasseville Way Residential Overlay District" (SWROD), Order No. 23-1008941, be and is herewith accepted and placed on **FILE**.

ADOPTED

ORDER NO. 23-1008941C



# City of Marlborough Planning Board

## PLANNING BOARD

Sean N. Fay, Chair  
Barbara L. Fenby  
James Fortin  
Patrick Hughes  
Dillon LaForce  
George LaVenture  
Christopher Russ

Katlyn LeBold, Administrator  
(508) 624-6910 x33200  
[klebold@marlborough-ma.gov](mailto:klebold@marlborough-ma.gov)

November 14, 2023

Council President Michael Ossing  
Marlborough City Council  
140 Main St.  
Marlborough, MA 01752

RE: Council Order 23-1008941 Proposed Zoning Amendment to Chapter 650, to add a new section 39A to create the Sasseville Way Residential Overlay District (SWROD)

Honorable President Ossing and Councilors:

At its regularly scheduled meeting on 11/13/2023, the Board took the following action regarding the above-referenced Council Order:

On a motion by Mr. Russ, seconded by Dr. Fenby, the Board voted to send a neutral recommendation to the City Council on the above referenced Proposed Zoning Amendment. Yea: Fay, Fenby, Fortin, Hughes, LaForce, LaVenture, and Russ. Nay: 0. Motion carried, 7-0.

The Board provided the following reasons in reaching its recommendation:

- The developer established that the proposed Zoning Amendment is more consistent with the character of surrounding neighborhood than the existing limited industrial zoning;
- In the Planning Board's opinion, the developer established the proposed Zoning Amendment would impact the Blaiswood Avenue neighborhood and the Assabet River Rail Trail users less than a commercial development, but argued the proposed development could negatively impact its abutters (height of buildings in close proximity to a single-family neighborhood and potential impacts to Fort Meadow Reservoir);
- The developer did not establish the proposed Zoning Amendment would provide the City with a type of housing that is not already available in the City, however it would benefit the City by preventing a commercial development, which could severely impact a sensitive environmental area. The proposed Zoning Amendment would give the City an additional opportunity to reduce the overall impact through the special permit process.

If the City Council sees fit to approve the Zoning Amendment, the Planning Board suggests the following items be considered:

- Implement additional safety protocols for the Assabet River Rail Trail crossing;
- Review the Blaiswood Avenue neighborhood impact;
- Review the Fort Meadow Reservoir impact;
- Conduct building height studies in relationship to adjacent neighborhoods;
- Explore options to reduce impervious surface;
- Increase the number of affordable housing units or consider reducing the cost of the affordable housing units;
- Consider making the runoff temperature and sediment monitoring data public record;
- Further defining the language within the proposed zoning amendment and addressing the Board's comments.

Sincerely,



Sean N. Fay  
Chairperson

cc: City Clerk  
Day Pitney, LLP