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CITY OF MARLBOROUGH
City Council Agenda

Monday, March 13, 2023
8:00 PM

This meeting of the City Council will be held in City Council Chambers, City Hall, 140 Main Street. **PUBLIC ATTENDANCE IS PERMITTED.** This 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 website (www.marlborough-ma.gov).

1. Minutes, City Council Meeting, February 27, 2023.
2. Communication from the Mayor, re: Transfer Request in the amount of \$700,000.00 which moves funds from Undesignated Fund (Free Cash) to Fringes to cover the cost of a 1% non-pensionable stipend for all city employees.
3. Communication from City Solicitor Jason Grossfield, re: Proposed Amendments to Chapter 650 "Zoning", relative to certain provisions concerning mixed-use and affordable housing, in proper legal form, Order No. 22/23-1008721.
4. Notice from MA Department of Agricultural Resources re: Yearly Operational Plan and Vegetation Management Plan.
(Documents are available in the City Clerk's Office for viewing).
5. Minutes of Boards, Commissions and Committees:
 - a) School Committee, January 24, 2023 & February 14, 2023.
 - b) Commission on Disabilities, November 7, 2022.
 - c) Conservation Commission, February 16, 2023.
 - d) Historical Commission, January 19, 2023.
 - e) Zoning Board of Appeals, February 9, 2023.
6. CLAIMS:
 - a) Rachael Conboy, 13 Bergeron Road, pothole or other road defect.

REPORTS OF COMMITTEES:

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.

UNFINISHED BUSINESS:

From Urban Affairs Committee

7. **Order No. 23-1008816 Request for approval of a flat wall sign by Harry's Construction, 561 Boston Post Road east within the Wayside zoning district.**

Recommendation of the Urban Affairs Committee is to APPROVE.

Councilor Doucette moved to approve the sign permit for Harry's Construction pending final issuance of an occupancy permit; motion received a second and the vote carried 5-0.

From City Council

8. **Order No. 23-1008823 Change of Public Hearing Date on the Application for a Special Permit from Attorney Sem Aykanian, on behalf of SUCIU LLC, d/b/a Exela Storage, to add additional storage units to a nonconforming storage facility to be located at 846 Boston Post Road East within the Wayside District, Order No. 23-1008823.**

Councilors-at-Large

Mark A. Oram
Michael H. Ossing
Samantha Perlman
Kathleen D. Robey



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Ward Councilors

Ward 1 – Laura J. Wagner
Ward 2 – David Doucette
Ward 3 – J. Christian Dumais
Ward 4 – Teona C. Brown
Ward 5 – John J. Irish
Ward 6 – Sean A. Navin
Ward 7 – Donald R. Landers, Sr.

Council President

Michael H. Ossing

Council Vice-President

Kathleen D. Robey

**CITY OF MARLBOROUGH
CITY COUNCIL
MEETING MINUTES
MONDAY, FEBRUARY 27, 2023**

The regular meeting of the City Council was held on Monday, February 27, 2023, at 8:00 PM in City Council Chambers, City Hall. City Councilors Present: Ossing, Wagner, Doucette, Dumais, Brown, Irish, Navin, Landers, Oram, Perlman & Robey. Meeting adjourned at 8:33 PM.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of the City Council meeting, FEBRUARY 13, 2023, **FILE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from City Solicitor Jason Grossfield, re: Application for a Special Permit from Marquel Frink and Divino Oliveira on behalf of All Fur Love, to operate a dog grooming business to be located at 75 Lincoln Street, in proper legal form, Order No. 22/23-1008723, **MOVED TO ITEM 22 & FILE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from City Solicitor Jason Grossfield, re: Application for a Special Permit from Attorney Brian Falk, on behalf of Octo48, LLC d/b/a Action Precision Machining to convert a preexisting nonconforming warehouse use to a machine shop to be located at 269 Mechanic Street, in proper legal form, Order No. 22/23-1008741, **MOVED TO ITEM 23 & FILE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That the Communication from City Solicitor Jason Grossfield, re: Application for a Special Permit from Attorney Terrence Morris, on behalf of 272 Lincoln LLC, to build a 12-unit multi-family dwelling with accessory parking to be located at 272 Lincoln Street, in proper legal form, Order No. 22/23-1008709, **MOVED TO ITEM 24 & FILE**; adopted.

Council Dumais Recused.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That there being no objection thereto set **MONDAY MARCH 27, 2023**, as the **DATE FOR PUBLIC HEARING**, on Application for a Special Permit from Attorney Sem Aykanian, on behalf of SUCIU LLC, d/b/a Exela Storage, to add additional storage units to a nonconforming storage facility to be located at 846 Boston Post Road East within the Wayside District, referred to the **URBAN AFFAIRS COMMITTEE & ADVERTISE**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED: That there being no objection thereto set **MONDAY MARCH 27, 2023**, as the **DATE FOR PUBLIC HEARING**, on Application for a Special Permit from Connorstone Engineering, on behalf of Trombetta Family Limited Partnership, to allow the use of an existing Contractor/Landscape Contractor Yard within the LI district to be located at 655 Farm Road, referred to the **URBAN AFFAIRS COMMITTEE & ADVERTISE**; adopted.

Motion by Councilor Doucette, seconded by the Chair to adopt the following:

ORDERED: That the Minutes of following Boards, Commissions and Committees, **FILE**; adopted.

- a) Conservation Commission, January 12, 2023.
- b) Historical Commission, December 15, 2022.
- c) Planning Board, December 5, 2022, December 19, 2022 & January 9, 2023.

Motion by Councilor Perlman, seconded by the Chair to adopt the following:

ORDERED: That the following CLAIMS, referred to the **LEGAL DEPARTMENT**; adopted.

- a) Clarisse Sugar, 127 Worcester Road, Westminster, pothole or other road defect.
- b) Lorraine Watson, 80 Elm Street, #7, pothole or other road defect.

Reports of Committees:

Councilor Robey reported the following out of the Urban Affairs Committee:

**City Council Urban Affairs Committee
Thursday, February 23, 2023
Minutes and Report**

This meeting convened at 6:30 PM in the City Council Chamber and was open to the public. The meeting was televised on WMCT-TV (Comcast Channel 8 or Verizon/Fios Channel 34) and available for viewing using the link under the Meeting Videos tab on the city's website, home page (www.marlborough-ma.gov).

Urban Affairs & Housing Committee voting members present: Chairman Katie Robey, Councilor Doucette, Councilor Landers, Councilor Navin, and Councilor Wagner.

Other Councilors present: Irish and Ossing.

Others Present: City Solicitor Grossfield.

Order No. 23-1008816 Request for approval of a flat wall sign by Harry's Construction, 561 Boston Post Road east within the Wayside zoning district.

The Chair began by stating because this is a sign in Wayside District and the council is approving body, she wanted to be sure the owner had a business license in the city and was aware the site couldn't be used as a contractor's storage yard or have company vehicles parked overnight. After discussion with the building department, the chair is comfortable approving the sign permit pending final issuance of an occupancy permit.

Councilor Doucette moved to approve the sign permit for Harry's Construction pending final issuance of an occupancy permit; motion received a second and the vote carried 5-0.

Reports of Committee Continued:

Order No. 22-1008721 Communication from Solicitor Grossfield on behalf of Councilor Robey re: proposed amendments to Ch.650 Zoning relative to certain provisions concerning mixed use and affordable housing.

The Chair read the letter from the Planning Board after its December 19, 2022, public hearing where a recommendation to send a favorable recommendation carried 7-0. The board did recommend that 1) affordability be defined within the zoning amendment, 2) the possibility its passage may cause impediments to site developers be considered, and 3) the council consider changes may occur when new zoning for MBTA requirements is provided.

The chair also stated that this is under a time clock and that 90 days from the council public hearing is Monday, March 20 so this has to be taken up by our meeting on March 13th. The chair and President Ossing had met with the mayor on this and gotten some information and the chair had researched for information but did not want this to die in committee. Her goal with the amendments was to remove the buyout developers could use instead of providing affordable units, make housing built under site plan approval also require affordable housing, and to offer affordable housing to a range of incomes. She had asked the secretary to email councilors some information from the City of Waltham.

Discussion began on II §650-26 Affordable housing. After much discussion, it was agreed to:

- A. (1) amend the recommended language which was to strike “of 20 or more units” and replace with “of 8 or more units.”
- A. (1) (a) Number of affordable units. To strike everything in this including provision of payment in lieu of building and replacing it with language taken from Waltham’s Affordable Housing Provisions 9.142. this provision would be tweaked by Solicitor Grossfield but would require housing units of 8 or more to have 15% of total units sold or leased to families meeting specified guidelines and for any development with more than 18 units, to have 20% sold or leased to families meeting guidelines. Additional language would clarify that the units would be targeted for households earning less than 80% of the area median income as set by the US Department of Housing and Urban Development (HUD) within the Standard Metropolitan Statistical Area that includes Marlborough and that at least 1/3 of the units sold or leased would be to households earning less than 50% of the median income set by HUD.
- Strike A. (1) (f) in its entirety as language from Waltham would also include provisions for the units to have the affordable housing restriction run with the land in perpetuity.
- A. (3) Strike the suggested revision to the section until we can get clarification on retirement communities with affordable housing counting toward the city’s affordable unit count.

With the committee having no further questions or changes to the document, it was agreed to have Solicitor Grossfield work on a new draft incorporating these changes to the document, keeping this in committee and adding this to the upcoming March 6th Urban Affairs committee for final discussion and vote with it then on Council’s agenda for March 13th.

Councilor Doucette moved to adjourn; it was seconded and carried 5-0. The meeting was adjourned at 8:17 PM.

ORDERED: That the Transfer Request in the amount of \$100,000.00 which moves funds from PEG Funds to Marlborough Cable Trust to fund the balance of WMCT-TV FY 2023 budget, **APPROVED;** adopted.

Councilor Ossing filed a Disclosure of Appearance of Conflict of Interest for the record.

CITY OF MARLBOROUGH									
BUDGET TRANSFERS -									
DEPT:		Mayor				FISCAL YEAR:		2023	
FROM ACCOUNT:					TO ACCOUNT:				
Available									Available
Balance	Amount	Org Code	Object	Account Description:	Amount	Org Code	Object	Account Description:	Balance
\$498,899.73	\$100,000.00	27000099	47750	Receipts Reserved-PEG Funds	\$100,000.00	89000	25581	Marlboro Cable Trust	\$0.00
Reason:		To fund the balance of WMCTS FY23 Budget							
\$100,000.00	Total				\$100,000.00	Total			

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED That the sum of \$500,000.00 (five hundred thousand dollars) be and is hereby appropriated for sewer construction and/or reconstruction.

That to meet said appropriations, the Finance Director/Treasurer, with the approval of the Mayor, is hereby authorized to borrow the sum of \$500,000.00 under and pursuant to the provisions of Chapter 44, Section 8(14) of the Massachusetts General Laws, as amended and supplemented, or any other enabling authority, and to issue bonds or notes of the City of Marlborough (the "City") therefor; that the Mayor is authorized to contract for and expend any grants, aid, or gifts available for this project; and that the Mayor is authorized to take any other action necessary or convenient to carry out this project.

Any premium received by the City upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the Massachusetts General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

APPROVED; adopted.

Yea: 11 – Nay: 0

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

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED That the sum of \$1,000,000.00 (one million dollars) be and is hereby appropriated for water main construction and/or reconstructing.

That to meet said appropriations, the Finance Director/Treasurer, with the approval of the Mayor, is hereby authorized to borrow the sum of \$1,000,000.00 under and pursuant to the provisions of Chapter 44, Section 8(5) of the Massachusetts General Laws, as amended and supplemented, or any other enabling authority, and to issue bonds or notes of the City of Marlborough (the "City") therefor; that the Mayor is authorized to contract for and expend any grants, aid, or gifts available for this project; and that the Mayor is authorized to take any other action necessary or convenient to carry out this project.

Any premium received by the City upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the Massachusetts General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

APPROVED; adopted.

Yea: 11 – Nay: 0

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

Motion by Councilor Irish, seconded by the Chair to adopt the following:

ORDERED That the sum of \$8,770,000.00 (eight million seven hundred seventy thousand dollars) be and is hereby appropriated for street and infrastructure construction, reconstruction and/or rehabilitation.

That to meet said appropriations, the Finance Director/Treasurer, with the approval of the Mayor, is hereby authorized to borrow the sum of \$8,770,000.00 under and pursuant to the provisions of Chapter 44, Section 7(1) of the Massachusetts General Laws, as amended and supplemented, or any other enabling authority, and to issue bonds or notes of the City of Marlborough (the "City") therefor; that the Mayor is authorized to contract for and expend any grants, aid, or gifts available for this project; and that the Mayor is authorized to take any other action necessary or convenient to carry out this project.

Any premium received by the City upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with Chapter 44, Section 20 of the General Laws, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

APPROVED; adopted.

Yea: 11 – Nay: 0

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

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED That the Reappointment of Rene Perdicaro to the Community Development Authority for a term to expire March 9, 2024, **APPROVED;** adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED That the Appointment of Joseph Delano to the Board of Registrars of Voters for a 3-year term to expire on April 1, 2024, **APPROVED**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED That the Appointment of Elizabeth Jalonski to the Board of Registrar of Voters for a 2-year term to expire on April 1, 2025, **APPROVED**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED That the Reappointment of Fred Haas to the Library Board of Trustees for a 3-year term to expire January 7, 2025, **APPROVED**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED That the Reappointment of Samantha Khosla to the Library Board of Trustees for a 3-year term to expire April 2, 2024, **APPROVED**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED That the Appointment of Dillon LaForce to the Planning Board for a 5-year term to expire February 1, 2027, **APPROVED**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED That the Appointment of John Harmon as Human Resources Director for term to expire 3 years from date of Council confirmation, **APPROVED**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED That the Appointment of Richard Tomanek to the Board of Health for 3-year term to expire on February 5, 2024, **APPROVED**; adopted.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED That the Appointment of James Fortin to the Planning Board, for a 5-year term to expire on February 1, 2027, **APPROVED**; adopted.

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED:

**IN CITY COUNCIL
DECISION ON A SPECIAL PERMIT
ALL FUR LOVE
ORDER NO. 22/23-1008723D**

The City Council of the City of Marlborough hereby **DENIES** the Application for a Special Permit to Divino Oliveira and Marquel Frink (collectively, the "Applicant") for a dog grooming business at 75 Lincoln Street, Marlborough, as provided in this Decision.

FINDINGS OF FACT

1. The Applicant, Divino Oliveira and Marquel Frink, are individuals with an address of 126 Main Street, Medway, MA 02053.
2. The Applicant is the prospective owner of the property located at 75 Lincoln Street, Marlborough, Massachusetts, being shown as Parcel 249A of Assessor Map 57 (the "Site").
3. In accordance with unspecified sections of the Zoning Ordinance of the City of Marlborough (the "Zoning Ordinance"), the Applicant proposes to change the current use at the Site to establish a new use, dog grooming business (the "Use").
4. The Site is located in the Residence B Zoning District ("RB").
5. The Site has an area of 10,714 SF +/- according to the application.
6. The Applicant filed with City Clerk of the City of Marlborough an Application for a Special Permit ("Application") for the Use.
7. In connection with the Application, the Applicant submitted a certified list of abutters, and filing fees.
8. The Application was certified by the Building Commissioner of the City of Marlborough, acting on behalf of the City Planner for the City of Marlborough, as having complied with the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
9. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.
10. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, opened a public hearing on the Application on Monday, December 5, 2022. The public hearing was held at the Marlborough City Hall, 140 Main Street. The hearing was closed on December 5, 2022.
11. The Applicant presented testimony at the public hearing detailing the Use, describing its impact upon municipal services, parking/traffic, and the neighborhood.
12. At the public hearing, one member of the public spoke in opposition to the Use.

13. The City Council's Urban Affairs Committee reviewed the Application. At its meeting on January 24, 2023, the Committee voted 5-0 to recommend denial of the special permit.
14. On February 13, 2023, the City Council referred the Urban Affairs Committee's recommendation to deny the special permit to the Legal Department to be placed in proper legal form.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING
FINDINGS AND TAKES THE FOLLOWING ACTIONS**

- A. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby **DENIES** the Applicant a Special Permit for a dog grooming business. The basis for the denial are the following reasons and findings:
 1. The Use is not permitted in the RB zoning district, and a special permit cannot authorize the Use under City Zoning Ordinance 650-16, 650-17. The Use is a change in use that must itself comply with current zoning.
 2. Under City Zoning Ordinance 650-12(b), the City Council considered whether this Application seeks to change a pre-existing non-conforming use to a new use, and if so, whether the Use would not be substantially more detrimental to the neighborhood than the existing use of the Site.
 3. The City Council finds that the Applicant did not establish whether there is a legal, pre-existing non-conforming use currently on the Site, which would allow for an application under Section 650-12(b) of the Zoning Ordinance. While the Application references an existing "mixed-use", it is not established whether any such mixed-use was lawfully established, and even if it was, that it had not been abandoned or not used for a period of two years or more.
 4. Subject to the above paragraphs 2 and 3, the City Council considered the impacts of the change in use for purposes of Section 650-12(b), and finds that the Use will be substantially more detrimental than the most recent use of the Site for the following reasons:
 - a. The Use proposes to establish a new commercial use of the Site as a dog grooming business. The Site is located in the RB zoning district, which is a residential zoning district that prohibits business uses with very limited exceptions. Dog grooming is not a use explicitly listed in the Zoning Ordinance's Table of Uses, Ordinance 650-17. Even if the Use arguably falls within another use category such as "consumer service establishments" or as part of a "mixed-use development", these types of uses are also prohibited in the RB zoning district.
 - b. Utilizing the Site for a type of business that has a significant number of customers on Site daily would result in a significant increase in the number of vehicles entering and exiting the Site from the most recent use of the Site for upholstery where customers did not regularly frequent the Site.
 - c. Lincoln Street already is a heavily traveled road, and the Use would add additional traffic entering/exiting the Site when compared to the most recent uses.

- d. The Use poses new detrimental impacts to the neighborhood in the form of noise from customers and dogs utilizing the parking lot on the Site, and odor due to any dog waste within the exterior of the Site. Adjacent uses to the Site are residential.

Each of the above stated reasons, individually, provides sufficient grounds for the denial of the special permit, and collectively, provides sufficient grounds for such denial.

- B. Incorporation of Submissions. All minutes, reports, documents, recordings, and submittals before, or made by, the City Council and/or the City Council's Urban Affairs Committee, are incorporated into this decision.

Yea: 11 – Nay: 0

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

Motion by Councilor Robey, seconded by the Chair to adopt the following:

Motion by Councilor Robey, seconded by the Chair to amend condition number 4 by adding the following sentence at the end of the paragraph "The overnight parking of commercial vehicles (including trucks and trailers) on the Site is prohibited, except for commercial vehicles owned or used by the Applicant as part of the Use. Any currently parked commercial vehicles on the site shall be removed from the site prior to commencing Use operations." – Amendment **CARRIED**.

ORDERED:

**IN CITY COUNCIL
DECISION ON A SPECIAL PERMIT
OCTO48, LLC
ORDER NO. 22/23-1008741C**

The City Council of the City of Marlborough hereby **GRANTS** the Application for a Special Permit to Octo48, LLC (the "Applicant") for a manufacturing use (precision instruments, tool and die) at 269 Mechanic Street, as provided in this Decision and subject to the following Findings of Fact and Conditions.

FINDINGS OF FACT

1. The Applicant, Octo48, LLC, is a Massachusetts limited liability company with an address of 269 Mechanic Street, Marlborough, MA 01752.
2. The Applicant is the owner of the property located at 269 Mechanic Street, Marlborough, Massachusetts, being shown as Parcel 125 on Assessors Map 56 (the "Site").
3. In accordance with Article IV, Section 650-12.B, of the Zoning Ordinance of the City of Marlborough (the "Zoning Ordinance"), the Applicant proposes a change of the preexisting nonconforming warehouse use at the Site to a manufacturing use (precision instruments, tool and die) (the "Use"). As shown on the Plans referenced in paragraph 5 below, the Use consists of a commercial building to contain the manufacturing operation, loading areas, accessory parking, and landscaped areas.
4. The Applicant, by and through its counsel, filed with City Clerk of the City of Marlborough an Application for a Special Permit ("Application") for the Use.

5. In connection with the Application, the Applicant submitted a certified list of abutters, filing fees, a site plan entitled "Plan of Land, 269 Mechanic Street, Marlborough, Massachusetts" by Chappell Engineering Associates, LLC, dated September 7, 2022, in accordance with the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit (the "Plans").
6. The Application was certified as complete by the Building Commissioner of the City of Marlborough, acting on behalf of the City Planner for the City of Marlborough, in accordance with the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
7. The Site has an area of 32,814 square feet +/- as shown on the Plans.
8. The Site has hosted various manufacturing and warehouse uses since the early 1900s.
9. The Site was rezoned from Limited Industrial to Residence B in 2019. Following this Zoning Map amendment, the Site became preexisting nonconforming with respect to use, various dimensional controls, and parking.
10. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application and the City Clerk for the City of Marlborough caused notice of the same to advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.
11. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, opened a public hearing on the Application on Monday, December 19, 2022. The public hearing was held at the Marlborough City Hall, 140 Main Street. The hearing was closed on December 19, 2022.
12. The Applicant, through its representatives, presented testimony at the public hearing detailing the Use, describing its impact upon municipal services, the neighborhood, and traffic.
13. As part of the public hearing, three residential abutters to the Site submitted letters in support of the Use. A letter with questions about the Use was submitted by a residential neighbor, whose opposition to the Use was noted at the public hearing.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING
FINDINGS AND TAKES THE FOLLOWING ACTIONS**

- A. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.
- B. The City Council finds that the proposed change to a manufacturing use (precision instruments, tool and die) would not be substantially more detrimental to the neighborhood than the existing warehouse use of the Site.
- C. The City Council finds that the preexisting nonconforming warehouse use of the Site has not been abandoned or not used for a period of two years or more.
- D. The City Council finds that the proposed Use is not enlarged to more than 25% of the floor and ground area of the preexisting nonconforming warehouse use, as no changes are proposed to the exterior of the building or the Site.

- E. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby **GRANTS** the Applicant a Special Permit to change the preexisting nonconforming warehouse use at the Site to a manufacturing use (precision instruments, tool and die) as shown on the Plans filed, **SUBJECT TO THE FOLLOWING CONDITIONS**, which conditions shall be binding on the Applicant, its successors and/or assigns:
1. Construction in Accordance with Applicable Laws. Construction at the Site is to be in accordance with all applicable building codes and zoning regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts.
 2. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review by the Site Plan Review Committee, in accordance with the City of Marlborough Site Plan Review Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications, or amendments, as required during the process of Site Plan Review, shall be further conditions attached to the building permit, and no occupancy permit shall be issued until the Applicant has complied with all conditions. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plans submitted, reviewed and approved by the City Council as the Special Permit Granting Authority. Site Plan Review shall consider among other things the adequacy of the Site's existing driveway for the Use, options to improve drainage behind the building in the vicinity of the rail trail, options for visual improvements along the rail trail, including plantings, and options to improve screening for abutting properties.
 3. Incorporation of Submissions. All plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of the Application, and as amended or revised during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
 4. Operations. All manufacturing activities shall take place indoors. All loading and unloading shall take place within the Site and not on Mechanic Street. No deliveries of materials or equipment to the Site, and no shipments from the Site, shall be permitted on Saturday or Sunday. The maximum hours for manufacturing activities (excluding administrative and maintenance operations, and employees arriving and leaving before and after shifts) shall be Monday through Saturday from 7:00 AM to 6:00 PM. The overnight parking of commercial vehicles (including trucks and trailers) on the Site is prohibited, except for commercial vehicles owned or used by the Applicant as part of the Use. Any currently parked commercial vehicles on the site shall be removed from the site prior to commencing Use operations.
 5. Lighting. Exterior lighting at the Site shall be downward facing and shielded to minimize impacts on neighboring properties. Exterior lighting at the Site shall be shut off outside of operating hours, except for lighting necessary for security and emergency access.
 6. Signs. Signage at the Site shall comply with the City's Sign Ordinance, with any free-standing sign at the Site's driveway entrance being substantially the same as the sign shown in the photo.
 7. Noise and Air Quality. The Applicant shall comply with the City's Noise Ordinance and shall comply with all state and federal requirements governing air quality and emissions.

8. Recording of Decision. In accordance with the provisions of Massachusetts General Laws, Chapter 40A, Section 11, the Applicant, its successors and/or assigns, at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Commissioner for a building permit. Upon recording, the Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office, the Building Department, and the City Solicitor's office.

Yea: 11 – Nay: 0

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

Motion by Councilor Robey, seconded by the Chair to adopt the following:

ORDERED

**IN CITY COUNCIL
DECISION ON A SPECIAL PERMIT
272 LINCOLN LLC
ORDER NO. 22/23-1008709D**

The City Council of the City of Marlborough hereby **GRANTS** the Application for a Special Permit to 272 Lincoln LLC (the "Applicant") for a 12-unit multifamily dwelling at 272 Lincoln Street, in the Neighborhood Business Zoning District, as provided in this Decision and subject to the following Findings of Fact and Conditions.

FINDINGS OF FACT

1. The Applicant, 272 Lincoln LLC, is a Massachusetts limited liability company with an address of 11 Placid Road, Newton, MA 02459.
2. The Applicant is the owner of the property located at 272 Lincoln Street, Marlborough, Massachusetts, being shown as Parcel 523 and 523A on Assessors Map 69 (the "Site").
3. In accordance with Article V, Section 650-17, and Section 650-18.A(4), of the Zoning Ordinance of the City of Marlborough (the "Zoning Ordinance"), the Applicant proposes a 12-unit multifamily dwelling at the Site (the "Use"). As shown on the Plans referenced in paragraph 5 below, the Use consists of a single building with 12 two-bedroom units, 24 accessory parking spaces (18 garaged and 6 open-air), a pocket park and other landscaped areas.
4. The Applicant, by and through its counsel, filed with the City Clerk of the City of Marlborough an Application for a Special Permit ("Application") for the Use.
5. In connection with the Application, the Applicant submitted a certified list of abutters, filing fees, a civil plan set entitled "Proposed Multifamily Development – 272 Lincoln Street" with the last revision date of February 2, 2023, consisting of a Cover Sheet, Existing Conditions Plan, Site Layout Plan, Grading & Drainage Utility Plan, and Construction Detail Sheets and an architectural plan set entitled, "Proposed Multifamily Development for 272 Lincoln Street, Marlborough, MA" dated September 12, 2022", consisting of a Locus Map, Street Views, Parking Level Plan, Floor Plans and Building Elevations, Renderings and Perspectives, with the last revision date of February 9, 2023, (collectively the "Plans").

6. The Application was certified as complete by the Building Commissioner of the City of Marlborough, acting on behalf of the City Planner for the City of Marlborough, in accordance with the Rules and Regulations promulgated by the City Council for the issuance of a Special Permit.
7. The Site, which is near the Assabet River Rail Trail, has an area of 18,409 square feet +/- as shown on the Plans.
8. The Site is located in the Neighborhood Business (NB) Zoning District.
9. Pursuant to the Rules and Regulations of the City Council for the City of Marlborough and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing on the Application and the City Clerk for the City of Marlborough caused notice of the same to be advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.
10. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, opened a public hearing on the Application on Monday, November 21, 2022. The public hearing was held at the Marlborough City Hall, 140 Main Street. The hearing was closed on that same date.
11. The Applicant, through its representatives, presented testimony at the public hearing detailing the Use, describing its impact upon municipal services, the neighborhood, and traffic.
12. At the public hearing, two members of the public spoke in favor of the Use and two members of the public spoke in opposition to the Use.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING
FINDINGS AND TAKES THE FOLLOWING ACTIONS**

- A. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.
- B. The City Council finds that the proposed Use of the Site is an appropriate use and in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough when subject to the appropriate terms and conditions as provided herein. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.
- C. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby **GRANTS** the Applicant a Special Permit for a multifamily dwelling at the Site, as shown on the Plans filed, **SUBJECT TO THE FOLLOWING CONDITIONS**, which conditions shall be binding on the Applicant, its successors and/or assigns:
 1. Construction in Accordance with Applicable Laws. Construction of all structures on the Site is to be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts and shall be built according to the Plans as may be amended during Site Plan Review.
 2. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review by the Site Plan Review Committee, in accordance with the City of Marlborough Site Plan Review Ordinance prior to the issuance of the building permit. Any additional changes, alterations, modifications, or amendments, as required during

the process of Site Plan Review, shall be further conditions attached to the building permit, and no occupancy permit shall be issued until the Applicant has complied with all conditions. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plans submitted, reviewed, and approved by the City Council as the Special Permit Granting Authority.

3. Modification of Plans. Notwithstanding conditions #1 and #2 above, the City Council or the Site Plan Review Committee may approve engineering changes to the Plans', so long as said changes do not change the Use as approved herein, or materially increase the impervious area of the Use, reduce the green area, alter traffic flow, or increase the size of the building, all as shown on the Plans.
4. Incorporation of Submissions. All plans, photo renderings, site evaluations, briefs and other documentation provided by the Applicant as part of the Application, and as amended or revised during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee, are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
5. Storm Water and Erosion Control Management. The Applicant, its successors and/or assigns, shall ensure that its site superintendent during construction of the project is competent in stormwater and erosion control management. This individual(s)' credentials shall be acceptable to the Engineering Division of the City's Department of Public Works and the City's Conservation Commission. This individual(s) shall be responsible for checking the Site before, during, and after storm events including weekends and evenings when storms are predicted. This individual(s) shall ensure that no untreated stormwater leaves the Site consistent with the State's and the City's stormwater regulations. This individual(s) shall ensure compliance with the approved sequence of construction plan and the approved erosion control plan. The Applicant, its successors and/or assigns, shall grant this individual(s) complete authority of the Site as it relates to stormwater and erosion controls.
6. Lighting. Exterior lighting at the Site shall be downward facing and shielded to minimize impacts on neighboring properties.
7. Screening for Abutters. The Applicant shall install solid fencing, and/or appropriate vegetated landscaping along the eastern side lot line of the site to screen areas of the Site used for parking and driveways from adjacent properties and shall maintain the fencing in good repair. The fencing shall comply with the requirements of all applicable City Ordinances.
8. Crosswalk Painting. Prior to the issuance of an occupancy permit for the Use, the Applicant shall repaint the crosswalks of the Assabet River Rail Trail on Lincoln Street and Cashman Street in a manner approved by the City Engineer.
9. Cashman Street Improvements. Prior to issuance of an occupancy permit for the Use, the sidewalk shall be designed and constructed by the Applicant in a manner that the travelled way of Cashman Street shall be widened by the Applicant to the maximum extent possible along the Site frontage while incorporating the sidewalk. Final details shall be approved by the City Engineer.
10. Billboard Signage. During demolition of the existing building on the Site and prior to the issuance of a building permit for the Use, the Applicant, at its expense, shall remove the existing billboard sign (including all components of the sign and all structures supporting or capable of supporting the sign) on the Site. No replacement or new billboard sign shall be allowed on the Site at any time.

11. Recording of Decision. In accordance with the provisions of Massachusetts General Laws, Chapter 40A, Section 11, the Applicant, its successors and/or assigns, at its expense shall record this Special Permit in the Middlesex South Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, and before the Applicant has applied to the Building Commissioner for a building permit. Upon recording, the Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office, the Building Department, and the City Solicitor's office.

Yea: 10 – Nay: 0 – Abstain: 1

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

Abstain: Dumais.

Motion by Councilor Dumais, seconded by the Chair to adopt the following:

ORDERED There being no further business, the regular meeting of the City Council is herewith adjourned at 8:33 PM; adopted.



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH
2023 MAR -9 AM 10:55

City of Marlborough
Office of the Mayor

Arthur G. Vigeant
MAYOR

Patricia M. Bernard
CHIEF OF STAFF

140 Main Street
Marlborough, Massachusetts 01752
508.460.3770 Fax 508.460.3698 TDD 508.460.3610
www.marlborough-ma.gov

Candace McGrath
EXECUTIVE ADMINISTRATOR

March 9, 2023

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

Re: Transfer request from Free Cash for employee stipend

Honorable Council President Ossing and Councilors:

I am requesting a transfer in the amount of \$700,000.00 from Free Cash to cover a one percent non-pensionable stipend (calculated on current base) for all full-time and part-time school and city employees who were employed by March 1, 2023, and actively employed on April 21, 2023.

As I reflect on the last year, it has been a challenge for employees who are feeling the burden of extra work while department heads are attempting to fill positions quickly in a highly competitive municipal jobs market. Our employees' dedication and effort put forth is greatly appreciated, and this stipend is intended to help offset the rising inflation that we all struggle with.

The payroll department will require the Memorandum of Agreements with all unions signed by April 15th and checks will be distributed on April 27th.

All City and school employees will be getting a pensionable 2% cost of living increase effective July 1st that is included in current collective bargaining agreements. We are committed to ensuring that our staff have the support and resources they need to thrive in their roles and build a fulfilling career with the City of Marlborough.

Please let me know if you have any questions.

Sincerely,


Arthur G. Vigeant
Mayor

Enclosure

CITY OF MARLBOROUGH
BUDGET TRANSFERS --

DEPT: Mayor

FISCAL YEAR: 2023

FROM ACCOUNT:

TO ACCOUNT:

Available
Balance

Amount

Org Code

Object

Account Description:

Amount

Org Code

Object

Account Description:

Available
Balance

\$5,906,264.80

\$700,000.00

10000

35900

Undesignated Fund

\$700,000.00

11990006

51500

Fringes

\$0.00

Reason:

To fund 1% non pensionable stipend

Reason:

Reason:

Reason:

\$700,000.00

Total

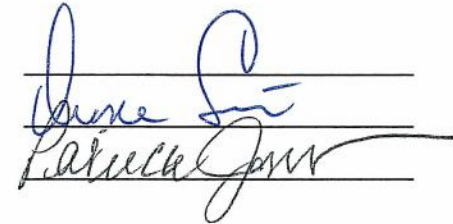
\$700,000.00

Total

Department Head signature:

Auditor signature:

Finance Director signature:





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

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

JASON D. GROSSFIELD
CITY SOLICITOR

2023 MAR -9 AM 10: 23

JEREMY P. MCMANUS
ASSISTANT CITY SOLICITOR

BEATRIZ R. ALVES
PARALEGAL

March 9, 2023

Michael H. Ossing, President
Marlborough City Council
City Hall
140 Main Street
Marlborough, MA 01752

Re: Order No. 22-1008721 - Proposed Zoning Ordinance Amendments re: Mixed Use; Affordable Housing

Dear Honorable President Ossing and Councilors:

In connection with the above-referenced item, enclosed please find the proposed zoning ordinance amendments relative to certain provisions concerning mixed-use and affordable housing, as recommended by the Urban Affairs Committee at its March 6, 2023 meeting.

I have reviewed the proposed amendments and they are in proper legal form. Please contact me if you have any questions or concerns.

Respectfully,

Jason D. Grossfield
City Solicitor

Enclosure

cc: Arthur G. Vigeant, Mayor
Tin Htway, Building Commissioner

ORDERED:

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

I. By amending Chapter 650 (Zoning), Section 650-5 (Definitions; word usage), Subsection B, "Mixed Use" definition, to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

MIXED USE

(1) A combination of permitted (Y) or special permit (SP) residential/business uses as listed in § 650-17, Table of Use Regulations, for a particular zoning district, located on the same lot and arranged vertically in multiple stories of a structure or horizontally adjacent to one another in one or more buildings.

(2) ~~The To achieve a mix of residential to business uses, such as retail or restaurant, uses shall be that is~~ balanced and compatible, ~~and shall contribute to a vibrant downtown atmosphere, including a combination of ground floor street front uses, such as retail or restaurant.~~

~~(3) Ground floors of buildings fronting streets or public accessways shall be reserved for~~ restricted to nonresidential uses, except as specified below;

Dwelling units shall be allowed on ground floors of a buildings ~~if~~:

~~(a) The building that~~ is set behind ~~another a mixed-use~~ building that has businesses ~~commercial~~ uses on the ground floor and residential on other floors so long as the building set behind does not face a public way; or ~~(b) The residential portion of the ground floor of a building is set behind street front nonresidential uses within the same building.~~

II. By amending Chapter 650 (Zoning), Section 650-26 (Affordable Housing), to read as follows: (new text shown as underlined, deleted text shown as ~~strikethrough~~):

§ 650-26. Affordable housing.

A. This section 650-26 shall apply to all developments that result in or contain eight (8) or more dwelling units, in all zoning districts, for the following types of uses: multifamily dwelling(s) or mixed-use development containing multifamily dwelling(s). This section shall apply as set forth above unless an exception is otherwise stated in this section 650-26. Compliance with this section shall be made a condition of any special permit or site plan approval that is required for

~~the development. All special permits granted to applicants to construct multifamily dwellings thereby increasing the number or density of residential dwellings to a number or level greater than that allowable as a matter of right under the zoning classification for the subject parcel shall require the following.~~

(1) Developments of ~~20~~8 or more units.

(a) Number of on-site affordable units. ~~The~~A development subject to this Section 650-26 shall~~i) provide that at least 15% of the dwelling units to be constructed for homeownership or rental purposes will be made available at affordable prices to home buyers or renters. If a development results in or contains twenty (20) or more dwelling units, then at least 20% of the dwelling units shall be made available at affordable prices, rather than 15%, or ii) if authorized by a majority of the City Council, provide a sum not less than \$50,000 per affordable dwelling unit that would have been required in Item i) above to be deposited as directed by the City Council into the fund for economic development created by Chapter 126 of the Acts of 2011 or into another fund designated by the City Council. If when applying the specified percentage to the total number of units to determine the required number of affordable units, the resulting number of affordable units includes a fraction of a unit, this fraction, if equal to or over one-half, shall be rounded up to the next whole number.~~

(b) Local preference. The development plan shall provide that all legally permissible efforts shall be made to provide 70% of the affordable dwelling units to eligible residents of the City of Marlborough.

(c) Distribution of affordable units. Dwelling units to be sold or rented at affordable prices shall be integrated into the overall development to prevent physical segregation of such units.

(d) Appearance. The exterior of the affordable units shall be designed to be compatible with and as nearly indistinguishable from the market rate units as possible.

(e) Minimum and maximum floor areas. Affordable housing units shall have a gross floor area not less than the minimum required by the State Department of Housing and Community Development under the regulations created under the authority of MGL Chapter 40B.

(f) Period of affordability. Limitations and safeguards shall be imposed to ensure the continued availability of the designated affordable units ~~for a minimum of 99 years or in~~ perpetuity. Such limitations and safeguards may be in the form of deed restrictions, resale monitoring, requirements for income verification of purchasers and/or tenants, rent level controls and the like.

(g) Limitation on change in affordability. In no event shall any change in affordability occur if the minimum percentage of affordable units required in the entire City under MGL Chapter 40B has either not been met at that time or such change in affordability would cause the City to fall below that percentage.

(h) Staging of affordable and market-rate units. No more than 50% of the building permits for the market-rate units shall be issued until construction has commenced on 30% of the affordable units. No more than 50% of the occupancy permits for the market-rate units shall be issued until 30% of the occupancy permits for the affordable units have been issued. The City Council may modify this provision for developments under 50 units.

~~(i) Alternate site. The City Council may allow the developer to build some or all of the affordable housing required by Subsection A(1)(a) on an alternate site within the City, provided that the City Council determines that this is in the best interest of the City and orders that this specific condition be attached to the special permit. The location of the alternate site shall either be specified at the time of approval for the special permit or selected within six months of said application and shall then be subject to approval by the Housing Partnership Committee or its successor, by the City Council if otherwise required by this Zoning Ordinance and by any other proper authority as may be required by law. The development of the alternate site shall comply with Subsection A(1)(b), (e), (f), (g), (h) and (j) of this section, and the staging of development on the alternate site shall be governed by Subsection A(1)(h) applied to all units on both the main and alternate sites.~~

(j) Guaranty of performance. No certificate of occupancy shall be issued for any unit within a development subject to this section until all actions necessary to preserve the affordability of the affordable units in compliance with this section and include the affordable units on the subsidized housing inventory, including without limitation, a deed restriction, regulatory agreement and declaration of restrictive covenants, and/or any other restrictive instrument necessary, and all other required documentation, have been executed and registered or recorded by the developer, in a form satisfactory to the City Solicitor. The City Council shall require security in a form satisfactory to the City Council and City Solicitor to guarantee performance, including preservation of affordability, under this subsection, and no building permit shall be issued until and unless said security has been provided.

~~(2) Developments of 19 or fewer units. All provisions of Subsection A(1) above applicable to 20 or more units may also be applied to developments of 19 or fewer units as the City Council finds practical.~~

~~(3) The provisions of this section shall not apply to a special permit for an existing retirement community or the expansion of an existing retirement community as governed by §§ 650-21 and 650-22. This subsection will be effective pursuant to the applicable provisions of Chapter 40A of the General Laws.~~

~~(4) The provisions of this section shall not apply to projects which are granted special permits within the Marlborough Village District.~~

III. By amending Chapter 650 (Zoning), Section 650-37 (Special Provisions Applicable to the Wayside Zoning District), Subsection H(4)(a), entitled "Mixed Uses", by inserting the following sentence at the end of the existing subsection: Floor usage in a mixed-use development shall conform to subsection (2) of the definition of "Mixed Use" set forth in Section 650-5(B).

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

ADOPTED
In City Council
Order No. 23-

Adopted

Approved by Mayor
Arthur G. Vigeant
Date:

A TRUE COPY
ATTEST:

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources
225 Turnpike Road, 3rd Floor, Southborough, MA 01772
www.mass.gov/agr



Maura Healey
GOVERNOR

Kimberley Driscoll
LIEUTENANT
GOVERNOR

Rebecca Tepper
SECRETARY

John Lebeaux
COMMISSIONER

NOTICE

Pursuant to the provisions of the **Rights of Way Management Regulations, 333 CMR 11:00**, In order to apply herbicides to control vegetation along rights of way, a 5-year Vegetation Management Plan (VMP) and a Yearly Operational Plan (YOP) must be approved by the Massachusetts Department of Agricultural Resources (MDAR). Therefore, notice of receipt of a YOP and procedures for public review is hereby given as required by Section 11.06 (3).

A Yearly Operational Plan (YOP) has been submitted for: The City of Marlborough.

This plan has been prepared by and submitted to the Department by: Mr. Christopher White, General Foreman Forestry, Parks, & Cemetery

Areas identified in the YOP as locations where treatment of Rights of Way with herbicides will be carried out in calendar year 2023 are: Streets and Roads in the City of Marlborough.

The applicant has described in the YOP the Rights of Way scheduled for treatment.

Public Review

MDAR in particular seeks the verification of sensitive area locations reported in the Yearly Operational Plan (YOP). The Department itself has a limited ability to survey the geography, land use, and the water supplies in all the communities through which the rights of way are located. Municipalities, however, have most of this information readily available, and the particular knowledge with which to better certify the sensitive areas in their communities. Therefore, MDAR requests, and urges, the assistance of the "affected" municipality in reviewing the completeness and accuracy of the maps contained in the submitted document. MDAR has established the following procedures for this review.

Yearly Operational Plans (YOP) and a copy of this notice will be sent by the applicant to the Conservation Commission, Board of Health (or designated health agent), and to the head of government (Mayor, City Manager, Chair of the Board of Selectmen) of the municipality where herbicides are to be applied along the rights of way during the calendar year 2023. Municipal agencies and officials will have forty-five (45) days following receipt of the YOP to review the maps contained in the document that indicate the location of "sensitive areas not readily identifiable in the field" for inaccuracies and omissions. "Sensitive areas" will be defined as in Section 11.02 a-f.

YOP can be view at: <https://www.mass.gov/service-details/rights-of-way-vegetation-management-vmpps-yops-and-notices>

Municipal agencies and officials are requested to forward the YOP to other appropriate official(s) in their municipality qualified to certify the accuracy of sensitive area locations as indicated on the maps. The maps should be "corrected" and returned to the applicant, also a copy of the maps with these corrections indicated should be sent to MDAR to the address listed below, within the forty-five day review period. If the city or town needs more time to

carry out this review, it should send a written request for an extension to MDAR and cite why there is a "good cause" for requesting additional time.

All corrections will be required to be made by the applicant, and corrected maps sent back to the city/town before the YOP can be considered "approved" by MDAR for vegetation maintenance in that municipality. Any dispute on the part of the applicant regarding corrections made by municipal authorities should be indicated in writing to MDAR and to the city/town, which requested the disputed changes within (15) fifteen days of receipt of the request. MDAR will decide whether or not YOP should be approved with or without the requested changes. MDAR will consider the "final approval" of a YOP individually for the municipality.

The final (21) twenty-one days of the public review period can serve concurrently to provide public notification as required by section 11.07 of the Rights-of-Way Management regulations, if the applicant has an approved VMP and if all the requisite city/town offices which have received copies of the YOP have completed their review and corrections have been duly made by the applicant and approved by the Department.

A failure by the city/town to respond to the applicant's submission of the YOP within the forty-five day public review period will be considered by MDAR to indicate agreement by municipal officials with the sensitive area demarcations as provided by the applicant in their YOP.

Any questions or comments on the information provided in this Notice and the procedures established for the municipal review as outlined above, should be addressed to:

Clayton Edwards
Right of Way Program
Massachusetts Department of Agricultural Resources
Pesticide Bureau
225 Turnpike Road, 3rd Floor
Southborough, MA 01772

Any additional questions or comments on any information provided as part of the proposed YOP should be addressed in writing to:

Mr. Christopher White
City of Marlborough
Department of Public Works
Forestry, Parks, & Cemetery
131 Neil Street
Marlborough, Massachusetts 01752

A copy should be sent to the Rights-of-Way program at the above address.

COMMENT PERIOD ENDS AT THE CLOSE OF BUSINESS (5pm), Monday, April 10, 2023



RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2023 FEB 24 AM 9:42

Marlborough Public Schools

*School Committee
District Education Center
25 Union Street, Marlborough, MA 01752
(508) 460-3509*

Call to Order

January 24, 2023

1. Michelle Bodin-Hettinger called the regular meeting of the Marlborough School Committee to order at 7:33 p.m. at 17 Washington Street, Marlborough, MA. Members present included Daniel Caruso, Earl Geary, Katherine Hennessy, and Denise Ryan. Also present were Superintendent Mary Murphy, Assistant Superintendent of Teaching and Learning, Robert Skaza, Assistant Superintendent of Student Services and Equity, Jody O'Brien, and Director of Finance and Operations, Douglas Dias. Additionally, MEA Representative Brendan St. George and Student Advisory Representative Jessica Rosenzweig were present.

This meeting is being recorded by local cable, WMCT-TV, and is available for review.

2. **Pledge of Allegiance:** Michelle Bodin-Hettinger led the Pledge of Allegiance.
3. **Presentation:** None.
4. **Committee Discussion/Directives:** None.
5. **Communications:** None.
6. **Superintendent's Report:**
Superintendent Murphy introduced Dr. Riley to give presentations on the graduating class and course options for students.
Dr. Riley updated the committee on the mid-year status of the Class of 2023. He also spoke about the early college and advanced placement options at MHS. The PowerPoint presentations are attached to this agenda item.
Superintendent Murphy attached the MHS Decennial Report to her report. She shared that the New England Association of School and Colleges is continuing its accreditation of Marlborough High School.

www.mps-edu.org



Marlborough Public Schools

School Committee
 District Education Center
 25 Union Street, Marlborough, MA 01752
 (508) 460-3509

Mr. Rosenthal shared that senior Jackson Clemmons earned the top score in the 2023 All State music auditions for the tuba. He will perform in Symphony Hall in Boston on Saturday, March 4th, 2023.

Jackson Clemons highlighted his experience in the MPS music program and thanked those who supported him throughout his experience.

Motion made by Mrs. Hennessy, seconded by Michelle Bodin-Hettinger to suspend the rules and move up agenda item 9A.

Motion passed 5-0-0.

9A. MHS Business Professionals of America State Leadership Conference

Mrs. Haley requested that the committee allow seven students and two chaperones to attend the Business Professionals of America State Leadership Conference in Norwood, MA in June 2023.

Motion made by Mrs. Hennessy, seconded by Michelle Bodin-Hettinger to approve this request.

Motion passed 5-0-0.

Agenda item #6 resumes.

Superintendent Murphy asked the School Committee if they would like to continue or begin participating in any of the 'joint committees': Joint Evaluation, Student Wellness Advisory Committee, Professional Development, and Anti-Bias/Anti-Racism.

A. Director of Finance & Operations Report

Mr. Dias, the Director of Finance and Operations, reported that the Facilities Department is working on improvements in the Whitcomb cafeteria to make it run more efficiently.

Mr. Dias shared that the Facilities Department also replaced all water bubblers with electric water fillers at Whitcomb, and they are going to start this project at MHS over February vacation. He thanked Commissioner Sean Divoll and Facilities Foreman Dan Jackson.

www.mps-edu.org



Marlborough Public Schools

School Committee
 District Education Center
 25 Union Street, Marlborough, MA 01752
 (508) 460-3509

Mr. Dias requested the permission to post a .5 FTE clerical support position before final approval during the FY24 budget process. This position would provide additional support to the Registration and Parent Outreach Center (RPOC). He shared that existing FY23 kindergarten registration stipend funds could be repurposed to support this need as early as this spring.

B. Assistant Superintendent of Student Services & Equity

Mrs. O'Brien, the Assistant Superintendent of Student Services and Equity, presented on the mental health needs of students in the district. She emphasized the need for a district level administrator with expertise in mental health to oversee Social-Emotional Learning (SEL) across the district. Her PowerPoint presentation is attached to this agenda item.

7. Acceptance of Minutes:

A. Minutes of the January 10, 2023 School Committee Meeting

Motion made by Mrs. Ryan, seconded by Michelle Bodin-Hettinger to approve the minutes.

Motion passed 5-0-0.

8. Public Participation: None.

It should be noted that members of the public may provide comment via email before the meeting to superintendent@mps-edu.org. Public participation is a time for your comments to be heard by the committee; it is not a question-and-answer session.

9. Action Items/Reports

A. MHS Business Professionals of America State Leadership Conference

This agenda item was voted on earlier in the meeting during a suspension of the rules.

www.mps-edu.org



Marlborough Public Schools

School Committee
 District Education Center
 25 Union Street, Marlborough, MA 01752
 (508) 460-3509

B. FY23 Operating Budget Transfers

Mr. Dias outlined various budget transfers in the attached document.

Motion made by Mrs. Hennessy, seconded by Michelle Bodin-Hettinger to approve these transfers.

Motion passed 5-0-0.

C. Acceptance of Donations and Gifts

MSP Digital Marketing. MPS received \$900.00 from MSP Digital Marketing.

Motion made by Mrs. Ryan, seconded by Michelle Bodin-Hettinger to approve this donation.

Motion passed 5-0-0.

Donor's Choose. Ms. Horowitz's class at Goodnow Brothers Elementary School received \$995.80.

Motion made by Mrs. Ryan, seconded by Michelle Bodin-Hettinger to approve this donation.

Motion passed 5-0-0.

Holiday Dreams Foundation. Holiday Dreams Foundation donated \$500.00 to MPS middle and high school students.

Motion made by Mrs. Ryan, seconded by Michelle Bodin-Hettinger to approve this donation.

Motion passed 5-0-0.

Blackbaud Giving Fund – Boston Scientific. Kane School received \$60.00 from Blackbaud Giving Fund.

Motion made by Mrs. Ryan, seconded by Michelle Bodin-Hettinger to approve this donation.

Motion passed 5-0-0.

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10. Reports of School Committee Sub-Committees: None.

11. Members' Forum:

Mrs. Bodin-Hettinger shared that Mrs. Matthews has reviewed the warrant and asked Mrs. Bodin-Hettinger to sign it on her behalf.

Mrs. Hennessy shared that she has a board meeting with the MIAA and MIAC tomorrow.

12. Adjournment:

Motion made by Mrs. Hennessy, seconded by Michelle Bodin-Hettinger to adjourn at 9:17 p.m.

Motion passed 5-0-0.

Respectfully submitted,

Heidi Matthews
 Secretary, Marlborough School Committee

HM/jm

Approved February 14, 2023

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2023 MAR -1 AM 9:53

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Call to Order

February 14, 2023

1. Chairman Vigeant called the regular meeting of the Marlborough School Committee to order at 7:30 p.m. at 17 Washington Street, Marlborough, MA. Members present included Michelle Bodin-Hettinger, Daniel Caruso, Katherine Hennessy, Heidi Matthews, and Denise Ryan. Also present were Superintendent Mary Murphy, Assistant Superintendent of Teaching and Learning, Robert Skaza, Assistant Superintendent of Student Services and Equity, Jody O'Brien, and Director of Finance and Operations, Douglas Dias. Additionally, MEA Representative Eileen Barry and Student Advisory Representative Jessica Rosenzweig were present.

This meeting is being recorded by local cable, WMCT-TV, and is available for review.

2. **Pledge of Allegiance:** Chairman Vigeant led the Pledge of Allegiance.

3. Presentation:

A. MHS Student Advisory Committee

The senior class representative, Rachel Scooler, presented on the benefits of academic field trips. Rachel spoke about the advanced Latin trip to Harvard on January 27th that she went on, and she shared testimonials from her classmates that were in attendance. The junior class representative, Risha Khanderia, is advocating for Special Olympics in DC, so she was not present.

The sophomore class representative, Sarah Garner, described MyCAP (i.e., My Career and Academic Plan) and college planning. She explained how the MyCAP survey responses from students help educators and counselors plan college/career lessons and programming.

The freshman class representative, Atul Modur, discussed the MHS Robotics program. He explained the logistics of the competitions that members participate in.

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4. Committee Discussion/Directives: None.

5. Communications: None.

6. Superintendent's Report:

Superintendent Murphy shared that the district-wide leadership team met on January 31st to update the current Strategy for Improvement.

Superintendent Murphy attached a mid-cycle goals update to her report. She added an additional action to engage parents via open discussion meetings with herself and members of her leadership team on March 7th and 30th. Translators will be available for this event.

The Superintendent provided the committee with the FY24 Budget Book. There will be a Budget Hearing on March 1st at 6:00pm.

Superintendent Murphy updated the committee on the Whitcomb School Interim Principal. Principal House has extended her leave to the end of April, and Mr. Lacina will have surgery soon. After February vacation, Whitcomb School Vice Principal, Christina Dolan, will take on the role of Whitcomb School Interim Principal. Todd Turcotte will move to Whitcomb full-time to support the school leadership team as well. Richer School's Interim Principal, Lisa Richards, has officially taken the role of Principal at this school.

A. Assistant Superintendent of Teaching & Learning Report

Dr. Skaza, the Assistant Superintendent of Teaching and Learning, provided an update on the grades k-5 literacy program, IntoReading. This program is the revamped version of the Houghton Mifflin Harcourt (HMH) literacy program that the district is shifting to. The IntoReading program is being piloted with grades 6-8 as well, along with IntoLiterature and Bedford, Freeman, and Worth being piloted in grades 9-10. In the spring, administrators will compile feedback from pilot students and teachers to report this information to Superintendent Murphy along with recommendations.

Dr. Skaza shared that the planning for MCAS testing for grades 3-8 has commenced. The draft elementary MCAS calendar is attached to his report.

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7. Acceptance of Minutes:

A. Minutes of the January 24, 2023 School Committee Meeting

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to approve these minutes.

Motion passed 6-0-0.

8. Public Participation: None.

It should be noted that members of the public may provide comment via email before the meeting to superintendent@mps-edu.org. Public participation is a time for your comments to be heard by the committee; it is not a question-and-answer session.

9. Action Items/Reports

A. MHS Robotics Overnight Trip to Championship

Joanne Mahoney, the MHS Robotics advisor, requested for one student (Atul Modur) and two staff members to travel to the 2023 CREATE U.S. Robotics Championship in Council Bluffs, Iowa from March 23rd to March 26th. The summary of the event, the itinerary, and the list of attendees is attached to this agenda item.

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to approve this request.

Motion passed 6-0-0.

B. Voices ReChaired Out of State Field Trip

Caleb Whelden, the Voices ReChaired advisor, requested for 18 MHS members to attend an out of state field trip in NYC to perform with a professional touring group: Backtrack. The trip will also include a backstage tour of Carnegie Hall and attending a Broadway musical. 85% of the funds have been raised and hotel room reservations have been made, but are able to be cancelled, as well.

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to approve this request.

Motion passed 6-0-0.

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C. Acceptance of Donations and Gifts

Marlborough Junior Woman's Club. MPS received \$250.00 from the Marlborough Junior Woman's Club. Mrs. Ryan and Mrs. Hennessy abstained from voting.

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to approve this donation.

Motion passed 4-0-2.

Hannaford Helps Schools. Kane Elementary School received \$201.00 from Hannaford Helps Schools.

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to approve this donation.

Motion passed 6-0-0.

Staples Marlborough. MPS received \$530.00 from Staples Marlborough.

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to approve this donation.

Motion passed 6-0-0.

Commonwealth of Massachusetts. MHS received \$2,500.00 from the Commonwealth of Massachusetts.

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to approve this donation.

Motion passed 6-0-0.

10. Reports of School Committee Sub-Committees:

The Policy sub-committee met two weeks ago; a policy will move forward at upcoming meetings. There has not yet been a new date set for another sub-committee meeting.

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11. Members' Forum:

Mrs. Hennessy shared MIAA updates regarding the MIAC, which handles waiver approvals.

Mrs. Matthews has reviewed the warrant and signed it.

12. Adjournment:

Motion made by Mrs. Matthews, seconded by Chairman Vigeant to adjourn at 8:11 p.m.

Motion passed 6-0-0.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Heidi Matthews', with a long horizontal flourish extending to the right.

Heidi Matthews
Secretary, Marlborough School Committee

HM/jm

Approved February 28, 2023

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2023 FEB 27 AM 11:42

MARLBOROUGH COMMISSION ON DISABILITIES
MINUTES FOR MEETING NOVEMBER 7, 2022
MAYOR'S CONFERENCE ROOM 4TH FLOOR
CITY HALL

ATTENDEES: DEBRA MCMANUS, BARBARA ALLEN,
JOHN USINAS, WAYNE STANLEY, LINDSAY JAWOREK.

MEETING CALLED TO ORDER AT 4:05PM

MINUTES: MOTION TO APPROVE BY JOHN USINAS.
SECONDED BY WAYNE STANLEY. APPROVED 5-0.

TREASURER'S REPORT: \$5,352.24. MOTION BY
BARBARA ALLEN. SECONDED BY JOHN USINAS. 5-0
APPROVED TO ACCEPT THE REPORT.

OLD BUSINESS:

- BARBARA ALLEN GAVE UPDATE ON SUPPORTED LEGISLATION. WILL HAVE TO SEE IF THEY GET REFILED FOR NEXT SESSION AFTER ELECTION.
- PER JOHN USINAS, SIGNAL ON GRANGER BLVD CORRECTED.
- PER JOHN USINAS, SECTION OF SIDEWALK ON FLORENCE STREET HAS BEEN REPAIRED.
- PER DEBRA MCMANUS, CROSSWALK SIGNAL ON HOSMER STREET HAS BEEN REPAIRED.

- PER DEBRA MCMANUS, HOME DEPOT HAS RESOLVED HANDICAPPED PARKING COMPLAINT.
- MOTORIZED WHEELCHAIR (CHILD SIZED) IS STILL AVAILABLE FOR DONATION.
- NO NEW DEVELOPMENT ON ELDER HOUSING COMPLIANCE ISSUES FOR ACCESSIBILITY.

NEW BUSINESS:

- COMPLAINTS HAVE BEEN MADE FOR OUT-OF-SERVICE ELEVATOR AT NEW ENGLAND SPORTS CENTER. THERE IS ONLY ONE ELEVATOR TO SERVICE PATRONS. IT HAS BEEN OUT OF SERVICE FOR AT LEAST SIX TO SEVEN MONTHS. CINDY JAROWEK AGREED TO FOLLOW-UP WITH THE CENTER.
- WAYNE STANLEY BROUGHT UP CONCERNS ABOUT ILLEGAL PARKING ON SIDEWALKS BY CARS.
- WE DISCUSSED NEXT MEETING TO COMBINE WITH HOLIDAY PARTY. WE WILL EXPLORE GETTING FOOD EARLY FROM VIN BIN AND BRING TO OUR MEETING. MOTION MADE BY JOHN

USINAS. SECONDED BY BARBARA ALLEN.
MOTION PASSED 5-0.

MOTION TO ADJOURN: MOTION BY BARBARA
ALLEN AND SECONDED BY JOHN USINAS. ACCEPTED
5-0

ADJOURNED AT 4:40PM.

**NEXT MEETING MONDAY, DECEMBER 5, 2022 AT
4:00PM, CITY HALL IN THE MAYOR'S CONFERENCE
ROOM ON THE 4TH FLOOR.**

**RESPECTFULLY SUBMITTED,
BARBARA ALLEN, SECRETARY**

Approved on March 2, 2023

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2023 MAR -6 PM 2:53

Conservation Commission
Minutes
February 16, 2023 - 7:00 PM
140 Main St. – Marlborough City Hall – 3rd Floor (Memorial Hall)

Present: Edward Clancy-Chairman, Allan White, David Williams, William Dunbar, Dennis Demers, John Skarin, and Karin Paquin.

Absent: None

The hearing was recorded using Microsoft Teams. Priscilla Ryder-Conservation officer was not available.

Approval of Minutes: The minutes of Feb. 2, 2022, were reviewed and on a motion by Mr. White second by Mr. Clancy, the Commission voted unanimously to approved 7-0.

Public hearings:

Notice of Intent

Red Spring Rd. House #;12, 13, 35, 37, 41, 47. – Red Spring Road Homeowners Association

Chairman Clancy noted that DEP# has been received and there are no comments. Therefore, the Commission closed the public hearing. The Commission reviewed the Order of Conditions and discussed tree replacement. On a motion by Mr. Skarin second by Mr. Clancy to approve the Draft Order of Conditions as written, the Commission voted unanimously 7-0 to approve.

Notice of Intent

335 South St.- Mass Electric Company

Chairman Clancy noted that the DEP # has been received and some comments from the applicant as well. He reviewed the notes provided to him about stumps and as-built plans. There being no further questions or discussion the hearing was closed. The Commission reviewed the Draft Order of Conditions and made some changes to several conditions based on the notes provided. On a motion by Mr. White, seconded by Mr. Clancy to a approve the Draft Order of Conditions as amended. The Commission voted unanimously 7-0 to approve.

Notice of Intent (Continued to March 2, 2023)

846-850 Boston Post Rd. East - Excelsa Movers.

At the applicants request prior to the meeting this hearing was continued to March 2, 2023.

Discussion:

- Marlborough Fish and Game – Mr. Clancy noted that the ponds at the Fish and Game had been drained, per several phone calls to the office. He did inspect the ponds and they are drained through an underdrain. Mr. Demers noted that the underdrain does exist, he noted that this does need to be reviewed by the Commission. He has asked Ms. Ryder to investigate. And report back to the Commission as to what has occurred.
- The Grove – Mr. Clancy noted that the mayor has asked that the granite blocks at The Grove should be replace with concrete stairs. The permit is still open for this work, therefore the

Commission agreed that this could be replaced. Mr. Demers suggested precast stairs would be easier to install, that is his suggestion for replacement stairs with a 4' or wider tread. Work needs to be done next week since the water will be raised on March 1st. The Commission noted that the permit is still open so it is covered by the existing permit, as long as they are careful with excavating and pouring concrete this, can be done.

- Red Spring Rd. Culverts - The Red Spring Rd. culvert replacements will begin next week, weather permitting. Mr. Clancy and Mr. Dunbar noted they have been down to check the roadway this week.

The remainder of the items – listed below- on the agenda were continued to the next meeting on March 2, 2023 as input from Ms. Ryder is needed and she was not present.

Violation:

- 47 Red Spring Rd. – Discuss clearing and dumped stones with Mike White – Red Spring Rd. Buffer zone planting protocol.

Emergency Certificate:

- Beebe Pond beaver dam removal – Officer of Dam Safety – issued 2/11/2022 – ratify.

Discussion:

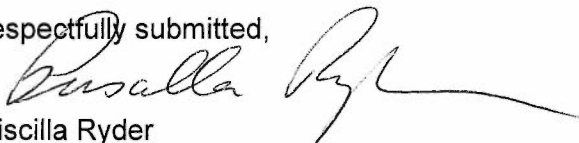
- Open Space Development Definitive Subdivision Plan – Beauchemin Estates – 689 Pleasant St. – Comments to Planning Board before March 13th. (To be shown at the meeting)
- Letter from Lori McDonald-Conoco Engineering & Scientists RE: Notice of the Installation of a New Utility Pole #44-50 at 335 South St. dated: Feb. 7, 2023.
- Flood Plain and Wetlands Protection District – Article VI Ch. 650-23-23 Zoning-Special Districts Overlays & Special Requirements – Review and comment for Climate Change Ordinance updates.
- 541 Pleasant St. – wetland violation – progress report due.
- Set site visit date for 21 Blaiswood Ave.

Next Conservation Commission meetings: March 2nd & 16th, 2023

Adjournment - There being no further business the meeting was adjourned at 7:30 PM.

Respectfully submitted,

Priscilla Ryder
 Conservation Officer



Marlborough Historical Commission Meeting Minutes

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2023 MAR -6 AM 8:08

January 19, 2023

Location: City Hall 140 Main Street Council Committee Meeting Room

Board Attendees: Brendan Downey, Stephanie Ferrecchia, Adrian Gilbert, & Kathleen Newton

Other Attendees: None

Absent: Pamela Wilderman & Sarah Hough

Meeting called to order 7:00 PM

1. A motion was put forth and seconded to approve the December minutes. The Commission voted as follows:

Downey AYE

Gilbert AYE

Ferrecchia AYE

Newton AYE

The motion passed.

2. Current business.

a. Defining and supporting projects that have historical elements.

i. Review of additional materials that Adrian has pulled together. The folks at Old Sturbridge village got back to us, they have been very helpful providing guidance and materials relative to defining historical materials and design choices. They also use Historic New England (HNE) as a guide post for these efforts. With regards to the color pallets, HNE "owns" the pallets, and Benjamin Moore owns the colors. End goal in this is to build out a resource to provide guidance to the community. The grant proposal guide is getting close but might need an actual situation to provide more guidance.

b. House sign initiative.

i. No progress made this month and we will continue to keep this on the meeting agendas until we begin to see forward progress.

c. MHC website edits.

i. Another copy of website about us page was reviewed. Further edits required before publishing.

3. New Business

a. Board officer elections.

i. Pushed to February so that we can have a full board.

b. 475 Elm St. – Looking for help preserving the property.

i. Board chair will contact the owner to get a better understanding of what the owner is hoping to achieve.

c. Pam Wilderman has communicated that she intends to resign her position on the historical commission.

4. A motion was put forth and seconded to adjourn meeting at 7:38 PM, the Commission voted as follows:

Downey AYE

Gilbert AYE

Ferrecchia AYE

Newton AYE

The motion passed. Meeting adjourned.

Respectfully submitted,

Brendan Downey



City of Marlborough Zoning Board of Appeals

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768 Facsimile (508) 460-3747

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2023 MAR -2 AM 7:00

Minutes
February 9, 2023

ZBA Case # 1495-2022

Location: 785 & 795 Boston Post Rd. East (Post Road Used Auto Parts)

Applicant: Alice Wright & Jean E. Rabelo Trustees (Represented by Atty. Dionisi)

**Meeting date - February 9, 2023 – 7:00 PM – 4 Board Members are present this evening.
Ralph Loftin-Chairman, Robert Levine, Thomas Golden and Thomas Pope**

This is a continuation meeting from December 31, 2022.

Robert Levine read into the file the petition. Ralph Loftin stated that, in the opinion of the City Solicitor, thru an e-mail dated Feb. 8, 2023 from City Solicitor, Jason Grossfield, on his legal opinion on whether the Zoning Board of Appeals has jurisdiction to consider the administrative appeal dated on or about Dec. 16, 2022. Stating in part "in my opinion, the board should not consider the merits of the appeal." Atty. Dionisi was e-mailed a copy of the City Solicitor's opinion memo prior to the meeting.

Atty. Dionisi did not provide any case-law regarding jurisdiction to the Board or the City Solicitor in advance of this meeting, and only cited M.G.L. c. 40A, Sections 8 and 14 with the following statements:

- a. This property is pre-existing nonconforming which has been in existence since 1940.
- b. The applicant is not asking for a permit.

Atty. Dionisi stated that Jason Grossfield's opinion is out of context. The Board Chair suggested that Atty. Dionisi contact Jason in respect to his opinion.

Atty. Dionisi stated that he is asking the Board for their decision that this property is zoned for auto sales. Chairman Loftin stated that the Board would not provide such a decision nor engage in any discussion of the merits of the petition.

Atty. Dionisi asked thru the Chair, if Tin Htway would set a date and time to meet after Feb. 15th. Mr. Htway responded with a meeting date of Sept. 5, 2023. Mr. Htway asked if the information he requested in his letter of Sept. 26, 2022 will be provided? Atty. Dionisi stated that he will provide what is needed.

On a motion by Robert Levine and seconded by Ralph Loftin to deny the appeal for lack of jurisdiction for the reasons cited in the Legal Department's opinion to the Board. By a vote of 4-0 the petition was denied.

On a motion by Robert Levine and seconded by Thomas Pope to close the public hearing. By a vote of 4-0 the public hearing was closed.

On a motion by Ralph Loftin and seconded by Thomas Pope to adjourned. By a vote of 4-0 the meeting was adjourned.

DECISION

Petition: An appeal to the failed response by the City’s Building Commissioner to opine as to the zoning status of the subject properties situated at 785 and 795 Boston Post Rd. East. Map 61, Parcels 22 and 31. Petitioner requests a “finding that the subject properties have been in continuous and uninterrupted use in excess of (80) years for the buying and selling of second-hand motor vehicles.” The applicants requested an opinion from the Building Commissioner pursuant to M.G.L. c 40A Section 7 to determine whether the owners/applicants possess the right, under pre-existing zoning status of the premises, to have granted to the owners a Class 2 license as defined in M.G.L. c 140 Section 58(c) that is to conduct the purchase and sale of secondhand motor vehicles. Located in Zoning District Business, with Wayside District as an overlay district.

Vote of the Board – In reviewing the City Solicitor’s opinion in an e-mail dated Feb. 8, 2023, the Board felt the applicant is unable to pursue this appeal with the Zoning Board of Appeals because there has been no appealable decision issued by the Building Commissioner. M.G.L. c. 40A Sections 7,8.

Based on the legal opinion to the Board, the Board finds that it has no jurisdiction to consider the administrative appeal for the reasons stated, including:

Section 8 provides for an appeal to the ZBA in certain circumstances including “...inability to obtain a permit or enforcement action from any administrative officer...” Under section 7, a request for enforcement action may be made to the Commissioner against “any person allegedly in violation” of zoning ordinances. The appellant’s initial request to the Commissioner is a request for a zoning interpretation for possible changes in use on their own property; it is not seeking enforcement action.

Regardless, the Commissioner is not required to respond within fourteen (14) days. The “fourteen-day period for a public official to notify the person requesting enforcement is considered directory rather than mandatory.” *Connors v. Annino*, 460 Mass. 790 at fn. 7 (2011)(emphasis added). Here, the Commissioner expressed a willingness to consider the request and asked for additional information from the appellant in order to make a determination.

Therefore, the Board voted 4-0 to deny the appeal for lack of jurisdiction.

Respectfully submitted,


 Ralph Loftin - Chairman
 Zoning Board of Appeals