

# CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: City Council Urban Affairs Committee

Date: May 4, 2021

Time: 7:00 PM

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

RECEIVED  
CITY CLERK'S OFFICE  
CITY OF MARLBOROUGH

2021 APR 27 P 4: 47

This meeting will be held virtually with Councilors attending in person and/or remotely. **NO PUBLIC ATTENDANCE WILL BE 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](http://www.marlborough-ma.gov)).

- |            |  |
|------------|--|
| 21-1008255 | Request for Approval of a Flat Wall Sign, Best Value Kitchen & Bath, 796 Boston Post Road East, within the Wayside District.   |
| 21-1008222 | Order: That the City Solicitor be invited to a future Urban Affairs meeting to provide general information regarding the approval and denial of Special Permit Applications that may be referred to the committee. |

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.



## IN CITY COUNCIL

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Marlborough, Mass., \_\_\_\_\_ APRIL 5, 2021

### ORDERED:

That the Request for Approval of a Flat Wall Sign, Best Value Kitchen & Bath, 796 Boston Post Road East, within the Wayside District, be and is herewith referred to the **URBAN AFFAIRS COMMITTEE**.

**Yea: 11 – Nay: 0**

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

ADOPTED

ORDER NO. 21-1008255

11

*City of Marlborough*  
*Commonwealth of Massachusetts*

RECEIVED  
CITY CLERK'S OFFICE  
CITY OF MARLBOROUGH

2021 MAR 22 A 7:50



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

## City Council Sign Approval Form

*Vahan  
Affairs*

3/19/2021

To City Council President and all Councilors,  
Included in this form is an applicant seeking approval from City Council as it relates to the signage project at the below address. Attached to this form is a copy of the sign that has already been installed.

Please note that this sign permit application is for an internally lit sign. The company that is inside of the space named Best Value Kitchen & Bath is only allowed an externally illuminated sign per the zoning code. The zoning code as it pertains to the Wayside Zoning District for this exact style of sign has been included below for your convenience.

An image of what the sign will look like has been included below as well.

Address of Location seeking approval 796 Boston Post Road East  
BP-2021-000347

Zoning District:	Wayside Zoning
Meets Current Sign Code:	NO
Planning Board Variance:	NO

Code Enforcement Officer Ethan Lippitt

CC File  
City Council  
Acting Commissioner Htway  
Commissioner Cooke

**§ 650-37 Special Provisions Applicable to the Wayside Zoning District**

Within the Wayside Zoning District, the following provisions govern. Where these provisions conflict with other sections of the Zoning Chapter, the provisions of this section shall apply.

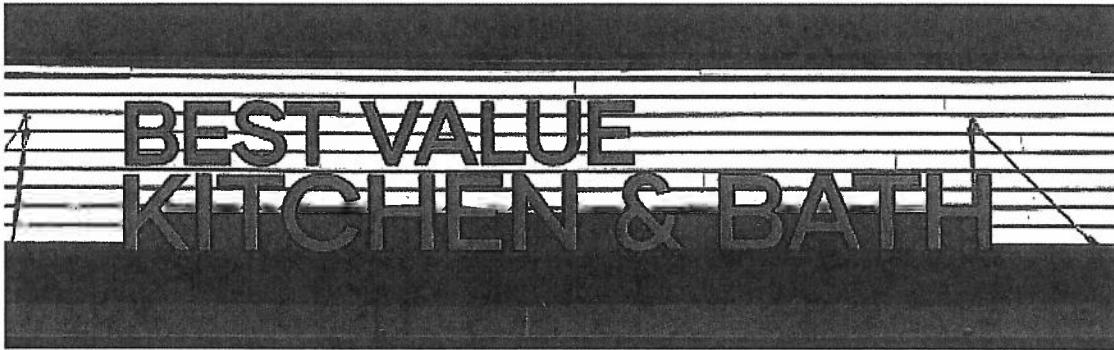
**D. Exclusivity/control.**

This section of the Zoning Chapter exclusively controls the establishment, development, and design of any development undertaken in the Wayside Zoning District and supersedes any other provision of the Zoning Chapter. In the event of any conflict between the provisions of this section and any other provision of the Zoning Chapter, the provisions of this section shall govern and control.

**I. Signage.**

(1) Except as otherwise provided in this section, signage shall conform to the provisions of Chapter 526 of the City Code, the Sign Ordinance.

(d) Signs, logos or cabinets should be externally illuminated where possible, otherwise with translucent or transparent faces if no reasonable alternative is possible.





CITY OF MARLBOROUGH

Building Department  
(508) 460-3776

BUILDING PERMIT

JOB WEATHER CARD

PERMIT NO BP-2021-000347  
ISSUE DATE 03/17/2021  
APPLICANT FAST SHAPES

PERMIT TO SIGN

AT (LOCATION) 796 BOSTON POST RD, MARLBOROUGH, MA 0 ZONING DISTRICT B Bldg. Type: Commercial

SUBDIVISION MAP BLOCK LOT 61-29-- BUILDING IS TO BE: CONST TYPE USE GROUP

WORK DESCRIPTION  
Sign installation for Best Value Kitchen & Bath. Sign Dimensions: length 170" in, width 29.5" in in an area of 34.5 sq. ft.  
Dimension facade: Length 240" in, width 24" in in an area of 80 sq. ft  
Slim line 3.5" in deep channel letters - front lit. 4" deep aluminum raceway painted grey to match 1 beam. Size of 2.45' x 14.16ft (34.5 sq. ft). Store front dimension 4x20ft (80 sq. ft)

CONTRACTOR  
LICENSE 0000  
Construction Supervisor  
SIGN INSTALLATION

AREA (SQ FT) EST COST (\$) 4995.00 PERMIT FEE (\$) 50.00

OWNER CENTRO CRISTIANO EMANUEL  
ADDRESS 814 BOSTON POST RD EAST  
MARLBOROUGH MA 01752

BUILDING DEPT BY PHONE 617 909 6008

THIS PERMIT CONVEYS NO RIGHT TO OCCUPY ANY STREET, ALLEY OR SIDEWALK OR ANY PART THEREOF, EITHER TEMPORARILY OR PERMANENTLY. ENCROACHMENTS ON PUBLIC PROPERTY, NOT SPECIFICALLY PERMITTED UNDER THE BUILDING CODE, MUST BE APPROVED BY THE JURISDICTION. STREET OR ALLEY GRADES AS WELL AS DEPTH AND LOCATION OF PUBLIC SEWERS MAY BE OBTAINED FROM THE DEPARTMENT OF PUBLIC WORKS. THE ISSUANCE OF THIS PERMIT DOES NOT RELEASE THE APPLICANT FROM THE CONDITIONS OF ANY APPLICABLE SUBDIVISION RESTRICTIONS.

MINIMUM INSPECTIONS REQUIRED FOR ALL CONSTRUCTION WORK: 1) FOUNDATIONS OR FOOTINGS. 2) PRIOR TO COVERING STRUCTURAL MEMBERS (READY FOR LATH OR FINISH COVERING) 3) FINAL INSPECTION BEFORE OCCUPANCY 4) REFER TO DETAILED INSPECTION SCHEDULE

APPROVED PLANS MUST BE RETAINED ON JOB AND THIS CARD KEPT POSTED UNTIL FINAL INSPECTION HAS BEEN MADE. WHERE A CERTIFICATE OF OCCUPANCY IS REQUIRED, SUCH BUILDING SHALL NOT BE OCCUPIED UNTIL FINAL INSPECTION HAS BEEN MADE.

WHERE APPLICABLE SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL PLUMBING/GAS AND MECHANICAL INSTALLATIONS.

POST THIS CARD SO IT IS VISIBLE FROM STREET

BUILDING INSPECTIONS APPROVALS

Table with 3 columns: Inspected by, Date, and Remarks. Middle column header: REQUIRED INSPECTIONS LISTED ON REVERSE. Includes 'OTHER:' row and a stamp.

WORK SHALL NOT PROCEED UNTIL THE INSPECTOR HAS APPROVED THE VARIOUS STAGES OF CONSTRUCTION

PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE PERMIT IS ISSUED AS NOTED ABOVE.

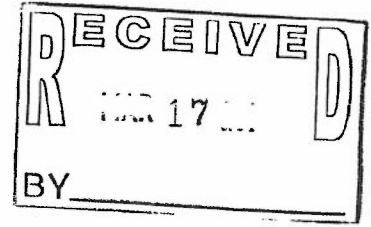
INSPECTIONS INDICATED ON THIS CARD CAN BE ARRANGED FOR BY TELEPHONE OR WRITTEN NOTIFICATION.



# City of Marlborough

## BUILDING DEPARTMENT

140 Main Street  
Marlborough, Massachusetts 01752



Date: ~~6/29/2020~~ 03/18/2021

Permit No. \_\_\_\_\_

Address/Location of Sign 796 Boston Post RD E

Name of Business BEST VALUE KITCHEN & BATH B 61-29

Name of Owner of Business Marc Mallegni Telephone 508-485-0555

Type of Sign: (check off which applies)

Flat Wall  Free Standing  Awning  Banner  Projecting

Does this site have a Special Permit  YES  NO

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

### Dimensions Sign:

Length 170" in Width 29.5" in Height (Free Standing) \_\_\_\_\_ Area 34.5 sq. ft

Location of Sign on Bld. North  South  East  West

### Dimensions Façade:

Length 240" in Width 48" in Area 80 sq. ft

Signature of Responsible Party \_\_\_\_\_ Telephone 617-909-6008

Installer Company Fast Shapes Telephone 617-909-6008

Custom3Dsign@gmail.com  
Email

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

M. Mallegni  
Signature

~~6/29/2020~~ 03/18/2021  
Date



Cost of Sign(s) \$4,995

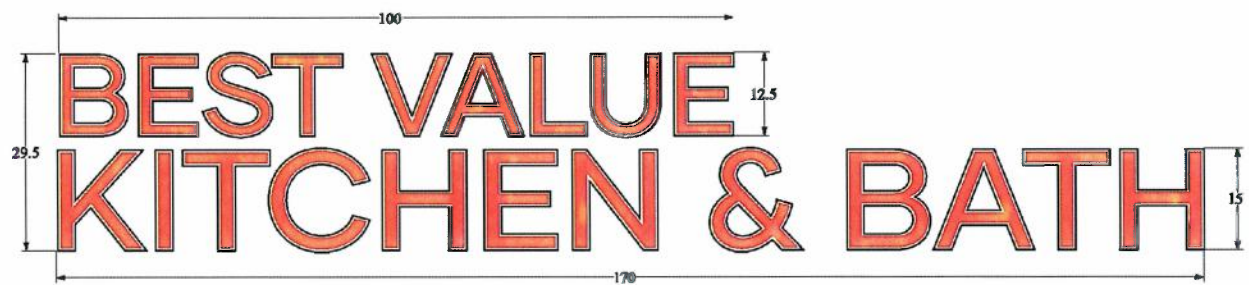
Permit Fee \$ \_\_\_\_\_

**SIGN MOCKUP**



- Tables
- Chairs
- Table c
- Birthd
- Center
- Weddin
- Bounc

*ELEVATION 13.5' ft*



# SIGN SPECIFICATIONS

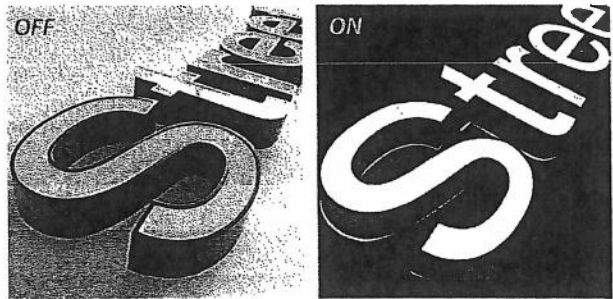
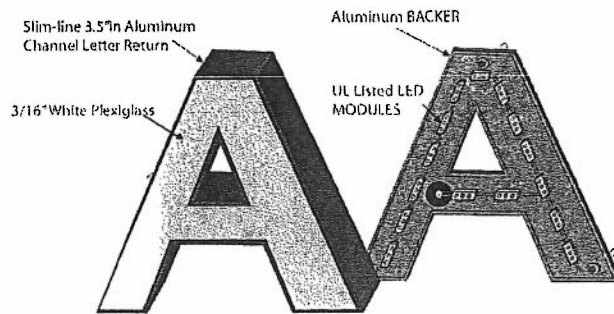
## **SIGN ADDRESS:**

- 796 Boston Post RD E, Marlborough, MA 01752.

## **SIGN TYPE:**

- Slim-Line 3.5" in deep Channel Letters (FRONT-LIT)
- 4" in deep aluminum raceway painted GREY TO MATCH I BEAM.
- Size: 2.45' x 14.16' ft (34.5 sq.ft)
- Store front dimensions: 4' x 20' ft (80' sq.ft)
- Sign colors: WHITE FACE WITH BLACK RETURNS

## **SAMPLE:**



## **MATERIALS:**

- Aluminum returns
- 3/16" acrylic faces.
- Aluminum RACEWAY

## **COLORS:**

- RED Faces w/ white outline.

## **SIGN ELECTRICAL COMPONENTS:**

- UL Listed, 6000k, 12v-DC LED modules. (Waterproof)
- UL Listed AC110V LED Power Supply/driver (Waterproof)
- 3/4" in. LIQUIDTIGHT FLEXIBLE PVC CONDUIT
- Tinned copper wire High temperature resistance (14AWG)

## **INSTALLATION:**

- Mount raceway with channel letters to building's "I BEAM".
- Sign Elevation 13.5' ft (from bottom of sign to the sidewalk).





# IN CITY COUNCIL

Marlborough, Mass., \_\_\_\_\_ APRIL 5, 2021

## ORDERED:

That the Communication from City Solicitor Jason Grossfield, re: Presentation Materials relative to the Grant/Denial of Special Permits prepared for future Urban Affairs discussion, be and is herewith referred to the **URBAN AFFAIRS COMMITTEE**.

**Yea: 11 – Nay: 0**

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

ADOPTED

ORDER NO. 21-1008222A



# 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

7  
RECEIVED  
JASON D. GROSSFIELD  
CITY SOLICITOR  
JASON M. PIQUES  
2021 ASSISTANT CITY SOLICITOR  
HEATHER H. GUTIERREZ  
PARALEGAL

March 30, 2021

*Urban Affairs*

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

Re: Council Order No. 21-100822  
Presentation Materials re: Grant/Denial of Special Permits

Dear Honorable President Ossing and Councilors:

In connection with the above-referenced item, enclosed please find a copy of presentation materials prepared in anticipation of a future meeting on this item in the Urban Affairs Committee. I look forward to discussing this subject in committee.

Please contact me if you have any questions.

Respectfully,

Jason D. Grossfield  
City Solicitor

Enclosure  
cc: Arthur G. Vigeant, Mayor



# MARLBOROUGH

## MASSACHUSETTS

## SPECIAL PERMITS: APPROVALS AND DENIALS

JASON GROSSFIELD, CITY SOLICITOR (MARCH 2021)

## Zoning and the “Special Permit”

- Zoning Act, G.L. c. 40A, § 1A, “Zoning” means ordinances adopted by city to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities to protect the health, safety and general welfare of their present and future inhabitants.
- Section 9 of the Zoning Act contemplates a zoning ordinance will require a special permit to permit certain types of uses. Special permits may be issued only for uses in a specific district which are in harmony with the general purpose and intent of the zoning ordinance, Chapter 650 of the City Code.

**ZONING**

*650 Attachment 1*

**City of Marlborough**

**Table of Use Regulations  
(§ 650-17)**

[Amended 5-9-2005 by Ord. No. 05-100713C; 11-23-2009 by Ord. No. 09-1002277F;

3-11-2013 by Ord. No. 12/13-1005235B; 10-7-2013 by Ord. No. 13-1005481D; 2-10-2014 by Ord. No. 13/14-1005578C; 4-28-2014 by Ord. No. 14-1005693C; 8-14-2014 by Ord. No. 12/13/14-1005247I; 12-1-2014 by Ord. No. 14-1005947C; 11-28-2016 by Ord. No. 16-1006631D; 10-16-2017 by Ord. No. 17-1006980B; 11-27-2017 by Ord. No. 17-1007002C; 4-2-2018 by Ord. No. 18-1007163-1C; 5-21-2018 by Ord. No. 18-1007163-2D; 9-10-2018 by Ord. No. 18-1007311C; 11-19-2018 by Ord. No. 18-1007337E; 12-16-2019 by Ord. No. 19-1007716E; 5-18-2020 by Ord. No. 20-1007915D; 6-22-2020 by Ord. No. 20-1007947H]

**KEY:**

All uses noted with "Y" are allowed as of right, subject to any referenced conditions.

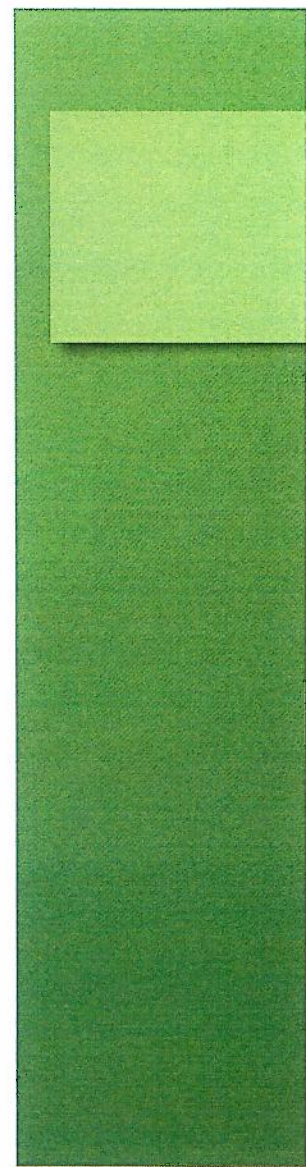
All uses noted with "SP" are allowed by special permit, subject to any referenced conditions.

All uses noted with "N" are not permitted.



	Zoning District Abbreviations													Wayside
	RR	A-1	A-2	A-3	RB	RC	RCR	NB	B	CA	LI	I	MV	
<b>Residential Use</b>														
Single-family	Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N	N	N
Single-family, attached (1)*	SP	SP	SP	SP	N	N	N	N	N	N	N	N	N	N
Conversion of detached one-family to a two-family (2)	SP	SP	SP	SP	Y	Y	N	Y	N	N	N	N	N	N
Two-family homes	N	N	N	N	Y	Y	N	Y	N	N	N	N	N	N
Conversion of a two-family dwelling to a three (3)	N	N	N	N	SP	SP	N	SP	SP	N	N	N	N	N
Multifamily dwelling (4)(42)	N	N	N	N	SP	SP	N	SP	SP	N	N	N	SP	SP
Comprehensive developments (§ 650-27)	Y	Y	Y	Y	Y	Y	Y	SP	Y	Y	Y	Y	N	Y

\* (Numbers in parentheses correspond to subsection numbers in § 650-18, Conditions for use as noted in the Table of Uses.)



# Process

- Application
  - Public Hearing
  - Deliberation
  - Decision
- Ord. 650-57 establishes procedures.
  - Interested persons may appear to express their views (pros and cons). Factual information is received on the application.
  - The Council (or Urban Affairs Cmte.) will deliberate on the application in open meeting.
  - A written decision containing findings, and any conditions is prepared.

# Special Permit: General Criteria

## GENERAL REQUIRED FINDING TO ISSUE SPECIAL PERMIT:

The Use and its impact and characteristics shall not be in conflict with public health, safety, convenience and welfare and shall not be detrimental or offensive, provided the conditions, safeguards or limitations imposed, if any, are met.  
Ord. 650-57(C)(12).

## PURPOSE OF Zoning Ordinance:

Promote and conserve the health and general welfare of the inhabitants of the City

Secure safety from fire, confusion or congestion

Facilitate the adequate provision of transportation, water, sewerage and other public services

Avoid undue concentrations of population

Encourage the most appropriate use of land

Increase the amenities of the City.

Ord. 650-2.

# Applying Criteria and Making Findings



Consider the criteria in the Zoning Ordinance, including any additional use/district specific provisions.



Base any findings on information in the record, and evaluate the information against these criteria.



# Example

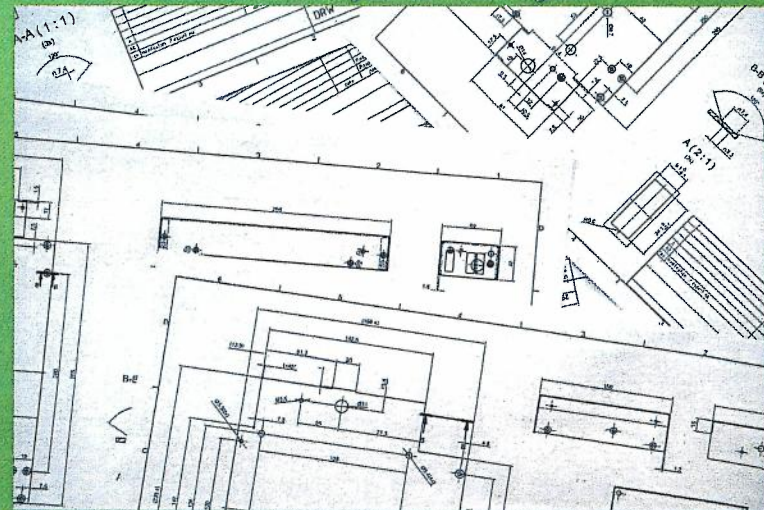
## *Criteria/Standard*

- Quality of design and materials for building facades visible from public ways

(Wayside Zoning District - Additional Criteria)

## *Findings Based on Record*

- A plan or rendering may show what is visible from the public way.



# In your discretion, with caveats

## Appropriate to Consider

- Impacts associated with proposed use
- Electing not to vary or waive dimensional limitations even if authorized

## Caution



- Applying criteria not in ordinance
- Reputation/Character of Applicant
- Past zoning violations
- Basing decision on factual information not in the record

# Conditions



The SPGA has authority to impose conditions based upon the interests and purpose of the Zoning Ordinance.



Examples of permissible conditions:

Hours of operation, Construction Start deadline, vehicle limits, parking spaces, landscaping, dust, limited to term of ownership/specific use, deadline for substantial use to commence



Example of invalid conditions: Vague undefined “problems” to fix, condition unrelated to special permit criteria

# Ensuring Fairness in Special Permit Process



- SPGA acts in a judicial or quasi-judicial role.
- Ensure a fair process for all involved.
  - Applicant has a right to an “an honest, uninfluenced opinion rendered in good faith”.
  - Conflict of Interest Law - Be mindful of any potential relationships that could even be perceived as a conflict and contact our office in advance for advice.
  - Take in Factual Information through the Public Hearing.
    - Avoid Ex Parte Communications
      - Comments from the Public: Maintain a uniform procedure; In person or via City Clerk.
      - Communications with applicants occur in the context of the public hearing or a public meeting.
- SPGA deliberations on an application occur in an open meeting per the Open Meeting Law. These generally take place after the public hearing is closed.

# Requirements for a Decision

- GRANT
- Required to make detailed findings in support of its decision
- The reasons must show why the proposed use meets the standards in the ordinance
- A decision that rests upon inadequate consideration of the relevant legal criteria must be vacated
- DENIAL
- Does not require detailed findings
- Requirement to provide reasons is less demanding than for a grant
- Reasons that are merely conclusory, (i.e. repeat regulatory phrases, unsupported by any facts in the record) are invalid
- If decision fails to give any reasons, or if the SPGA offers reasons at trial that are different than those offered in its decision, the court is not required to search for facts to justify the denial

# Special Permits in Court

- Common avenues for litigating special permits
  - Abutter appeals a Grant
    - Must meet the standard of an “aggrieved person”. A plaintiff will have to be able to demonstrate damage to the plaintiff that is definite and material and not predicated merely on “speculative personal opinion.”
  - Applicant appeals a Denial



# Judicial Review & Examples from the Courts

When a court reviews a special permit decision, the court will find the facts *de novo*, and, based on the facts found by the court, affirm the decision of the special permit granting authority “unless it is based on a legally untenable ground, or is unreasonable, whimsical, capricious or arbitrary.”

Inquiry, Part 1: Whether the special permit granting authority's decision applied incorrect standards or criteria.

Inquiry, Part 2: Discretionary power of denial extends up to those rarely encountered points where no rational view of the facts the court has found supports the [special permit granting authority]'s conclusion that the applicant failed to meet one or more of the relevant criteria found in the governing statute or ordinance

Thank you and please don't hesitate to  
contact our office with any questions.

Phone: (508)460-3771

E-Mail: [jgrossfield@marlborough-ma.gov](mailto:jgrossfield@marlborough-ma.gov)