

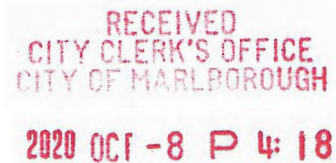
CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: City Council Urban Affairs Committee

Date: Wednesday, October 14, 2020

Time: 7:00 PM

Location: City Council Chamber, 2nd Floor, City Hall, 140 Main Street



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).

Order No.2020-1007995B: Application for Special Permit by WP Marlborough MA Owner, LLC (Wayside Residential), 339 Boston Post Road East, to construct a multifamily dwelling residential project (McGee Farm).

Time to Act Expires: January 20, 2021

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.

City Council

From: Falk, Brian R. <bfalk@MirickOConnell.com>
Sent: Thursday, October 8, 2020 2:31 PM
To: City Council
Cc: Karen Boule
Subject: Walcott Heritage Farms: Draft Special Permit Decision
Attachments: Walcott Heritage Farms Special Permit Decision - Draft 10-8-2020 (A6652633-3x7A575).docx

Greetings,

Attached is an initial draft of a special permit decision for Walcott Heritage Farms (McGee Farm).

We look forward to meeting with the Urban Affairs Committee.

Thanks,
Brian

MIRICK O'CONNELL

ATTORNEYS AT LAW

BRIAN R. FALK

Partner

Mirick, O'Connell, DeMallie & Lougee, LLP

100 Front Street | Worcester | MA | 01608-1477

t 508.929.1678 | f 508.983.6256

bfalk@mirickoconnell.com | Bio



Please visit our website: www.mirickoconnell.com

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**NOTICE OF DECISION
GRANT OF SPECIAL PERMIT**

In City Council
Order No. # 20-1007995B

Application of:
WP Marlborough MA Owner, LLC (Wayside Residential)

Locus:
339 Boston Post Road East, Marlborough, MA
Parcel 35 of Assessor Map 72, and Parcels 24, 26, 26A, and 28 on Assessors Map 73

DECISION

The City Council of the City of Marlborough hereby **GRANTS** the Application of WP Marlborough MA Owner, LLC, with a mailing address of 9 West Broad Street, Suite 800, Stamford, CT, as provided in the DECISION and subject to the Findings of Fact and Conditions contained therein.

Decision date: _____, 2020

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the [] day of [], 2020.

APPEALS

Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, MA.

A TRUE COPY
ATTEST:

City Clerk

ORDERED:

IN CITY COUNCIL

DECISION ON A SPECIAL PERMIT

Application of:
WP Marlborough MA Owner, LLC (Wayside Residential)

Locus:
339 Boston Post Road East, Marlborough, MA
Parcel 35 of Assessor Map 72, and Parcels 24, 26, 26A, and 28 on Assessors Map 73

**DECISION ON A SPECIAL PERMIT
ORDER NO. 20-1007995B**

The City Council of the City of Marlborough hereby GRANTS the Application for a Special Permit to WP Marlborough MA Owner, LLC (the "Applicant") to build and operate a 188-unit multifamily dwelling residential project at 399 Boston Post Road East, as provided in this Decision and subject to the following Findings of Fact and Conditions.

FINDINGS OF FACT

1. The Applicant, WP Marlborough MA Owner, LLC, is a Connecticut limited liability company with an address of 9 West Broad Street, Suite 800, Stamford, CT 06902.
2. The Applicant is the prospective owner of the property located at 399 Boston Post Road East, Marlborough, Massachusetts, being shown as Parcel 35 of Assessor Map 72, and Parcels 24, 26, 26A, and 28 on Assessors Map 73 (the "Site").
3. In accordance with Article V, Section 650-17 and Section 650-18(4), of the Zoning Ordinance of the City of Marlborough (the "Zoning Ordinance"), the Applicant proposes to build and operate a 188-unit multifamily dwelling residential project at the Site, in four buildings, with 376 on-site parking spaces, open areas, walking paths, and residential amenities (the "Use").
4. The Site is located in the Business and Residence A-2 Zoning Districts.
5. The Site has an area of 25.7 acres +/- as shown on the Plans referenced in paragraph 7 below.

6. 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.

7. In connection with the Application, the Applicant submitted a certified list of abutters, filing fees, a Fiscal Impact Analysis dated January 3, 2019 by Fougere Planning & Development, Inc., a Transportation Impact Assessment dated January 12, 2019 by Vanasse & Associates, Inc., and the following plans: a detailed site plan entitled “Site Development Plans for Walcott Heritage Farms” by Allen & Major Associates, Inc., comprised of Sheets 1 through 30, with the last revision date of _____, 2020 (the “Plans”), attached hereto as **“Attachment A.”**

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 Rule 4, items (a) through (m), of 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, July 20, 2020. The public hearing was held at the Marlborough City Hall, 140 Main Street, and by remote access in accordance with Section 17(d) of Chapter 53 of the Acts of 2020 and “An Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20” issued by Governor Charles D. Baker on March 12, 2020. The public hearing was conducted by remote participation, allowing the City Council, members of the public, and the Applicant to participate in the hearing through real-time audio and video conferencing, telephone access, and live internet streaming. The hearing was closed on July 20, 2020.

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, ten members of the public spoke in opposition to the Use. Twenty-five members of the public submitted written comments in opposition to the Use. One member of the public submitted written comments in favor of 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 to build and operate a 188-unit multifamily dwelling residential project 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. Compliance with Applicable Laws. The Applicant, its successors and/or assigns agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of the Use.

3. 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, its successors and/or assigns, 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.

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. The final architectural design of the Site shall be reasonably consistent with the Plans submitted by the Applicant. The final exterior features of the Site, including landscaping, shall be maintained in good condition and shall be reasonably consistent with the Plans submitted and representations made to 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, with a lighting plan for the Site to be reviewed and further conditioned during the Site Plan Review process.

7. Affordable Units. Fifteen percent (15%) of the dwelling units at the Site shall be made available as rental units at affordable prices to renters (whose annual income does not exceed eighty percent (80%) of the Area median income adjusted for family size as determined by the U.S. Department of Housing and Urban Development) in perpetuity or the longest period allowed by law (the "Affordable Housing Units"), in accordance with the provisions of Section 650-26 of the Zoning Ordinance and this condition. The Affordable Housing Units shall comply with all requirements for inclusion in the Subsidized Housing Inventory ("SHI") of the Commonwealth of Mass. Department of Housing and Community Development ("DHCD"). Prior to obtaining a certificate of occupancy for any unit within the Use, the Applicant, its successors and/or assigns, in coordination with the City and its Community Development Authority, shall file all required submissions to DHCD for inclusion of the Affordable Housing Units on the SHI and shall diligently take all actions necessary to include the Affordable Housing Units on the SHI, including without limitation, preparing and executing a regulatory agreement and declaration of restrictive covenants and/or any other restrictive instrument necessary to ensure compliance with said Zoning Ordinance and this condition, a marketing plan, and all other required documentation. All costs associated with complying with this condition, including but not limited to, the DHCD process, recording of all documents with the registry of deeds, and the marketing plan for the Affordable Units shall be borne by the Applicant, its successors and/or assigns.

8. Roadway Improvements. The Applicant, its successors and/or assigns, shall coordinate with the Massachusetts Department of Transportation to ensure that development of the Use does not conflict with planned improvements to Route 20 in the vicinity of the Site.

9. Sidewalks. The Applicant, its successors and/or assigns, shall be responsible for constructing a sidewalk between the main project site and the satellite parking lot, as shown on the Plans, provided that the Massachusetts Department of Transportation has not commenced the construction of such sidewalk prior to the issuance of a certificate of occupancy for any unit within the Use. The Applicant, its successors and/or assigns, shall be responsible for maintaining said sidewalk area clear of snow, ice, and debris, unless the Commonwealth of Massachusetts or the City assumes responsibility for such maintenance.

10. Transportation Alternatives.

- a. Prior to the issuance of a building permit, the Applicant, its successors and/or assigns, shall provide a payment to the City Council or its designee in the amount of \$ _____ to be used by the City Council or its designee to study and/or fund shared transportation options, including but not limited to a shuttle service, to provide access between the Site and its neighboring residential properties and Downtown Marlborough.
- b. The Applicant, its successors and/or assigns, shall use reasonable efforts to have a MetroWest Regional Transit Authority stop added in the vicinity of the Site and its neighboring residential properties.
- c. The Applicant, its successors and/or assigns, shall sponsor a program for the Site's residents to encourage shared trips and carpooling to reduce vehicle trips to and from the Site.

11. Open Space.

- a. The Applicant, its successors and/or assigns, shall grant a conservation restriction to the City's Conservation Commission or its designee over ____ acres of the Site as shown on the plan attached as Exhibit B (the "Restricted Land"). The form of the conservation restriction over the Restricted Land shall be approved by the City Solicitor and the City Conservation Officer prior to the issuance of a building permit, and the conservation restriction shall be granted and recorded prior to the issuance of a certificate of occupancy for any unit within the Use or at a later time agreed to in writing by the City Conservation Officer.
- b. Prior to the issuance of a building permit, the Applicant, its successors and/or assigns, shall provide a payment to the City Council or its designee in the amount of \$ _____ to be used by the City Council or its designee to study and/or fund a recreational trail for pedestrians and cyclists along the City-owned sewer land adjacent to the Site, to provide public access to the Restricted Land and connections between Route 20 and the Site's neighboring residential properties.

12. Other Approvals. The Applicant, its successors and/or assigns, shall comply with an order of conditions from the City's Conservation Commission and a floodplain special permit from the City's Zoning Board of Appeals.

13. 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.

DRAFT

Yea: _____ - Nay: _____ - Absent: _____

ADOPTED
In City Council
Order No. 20-1007995B

Adopted: _____ 2020

A TRUE COPY
ATTEST: _____ City Clerk

DRAFT