



IN CITY COUNCIL

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DECISION ON A SPECIAL PERMIT DIVERSIFIED FUNDING ACQUISITION LLC

DECISION ON A SPECIAL PERMIT ORDER NO. 21-1008171C

The City Council of the City of Marlborough hereby **GRANTS** the application for a Modification of a Special Permit (hereinafter the “Special Permit Modification”) to Diversified Funding Acquisition LLC, having a usual place of business at 63 Atlantic Avenue, Boston, Massachusetts 02110, and its successors or assigns, as provided in the Decision and subject to the following Findings of Facts and Conditions:

FINDINGS OF FACTS

1. Diversified Funding Acquisition LLC is a limited liability company authorized to do business in Massachusetts having a usual place of business at 63 Atlantic Avenue, Boston, Massachusetts 02110, hereinafter referred to as the “Applicant.” Applicant is the prospective owner of the property.
2. Devki, LLC, is a limited liability company authorized to do business in Massachusetts having a usual place of business at 880 Donald J. Lynch Boulevard, Marlborough, MA 01752. Devki, LLC is the owner of the property known as 880 Donald J. Lynch Boulevard, Marlborough, Massachusetts, and shown on the City of Marlborough Assessor’s Maps as Map 50, Parcel 4B (hereinafter referred to as the “Site”).
3. On December 31, 2020, the Applicant filed with the City Clerk of the City of Marlborough an application (hereinafter referred to as the “Application”) for a modification of a special permit under Chapter 650 (Zoning) of the Code of the City of Marlborough (hereinafter referred to as the “Zoning Ordinance”), Article VIII, Section 650-57. The Application seeks to modify the special permit granted by the City Council on October 6, 1986 (Council Order No. 1102B, Recorded with the Middlesex South Registry of Deeds at Book 18318 and Page 218) for a 64-room hotel on the Site (hereinafter the “Special Permit”) as follows: (a) to approve the addition of kitchenettes to all guest rooms, and (b) to approve the conversion of the Manager’s residence to a guest room, for a total of 65 guest rooms (the “Project”). The Project does not include any external changes on or to the Site or any expansion or alteration of the shape or size of the existing building on the Site (hereinafter the “Building”).



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4. The Application consisted of the following: (a) an Application to City Council for Issuance of a Special Permit; (b) a Special Permit Application Certification by the Planning Department; (c) a Special Permit Summary Impact Statement; (d) a Certification of Payment of Municipal Taxes; (e) a filing fee of \$250.00; and (f) Exhibits to the Application, including (i) a Special Permit Narrative, (ii) a copy of the Special Permit, as recorded, (iii) a copy of architectural drawings setting out the proposed interior improvements to the Building, (iv) a copy of the Building Commissioner's letter denying the application for a building permit until such time as the Applicant obtains the Special Permit Modification, and (v) a Certified Copy of the Abutters List from the City of Marlborough Assessor's Office.
5. The Planning Department certified the Application under the provisions of Article VIII, Section 650-57(C)(7) of the Zoning Ordinance as complying with the information requirements of the application rules and being complete and conforming to the Zoning Ordinance and the rules and regulations for submission of an application for a modification of a special permit.
6. Pursuant to the Rules and Regulations of the City Council and Massachusetts General Laws Chapter 40A, the City Clerk established a date for a public hearing on the Application and caused to be advertised notice of said date and hearing in the appropriate newspaper and received confirmation that notice of said hearing was sent to abutters entitled to notice under law. Such notice was published, mailed, and posted in accordance with applicable law.
7. Pursuant to Massachusetts General Laws Chapter 40A, the City Council held a public hearing concerning the Application (hereinafter the "Public Hearing") on Monday, February 8, 2021.
8. The Applicant presented testimony at the Public Hearing detailing the Project, its impact upon municipal services, the neighborhood, and such other issues as the City Council deemed appropriate with due consideration to the concerns of members of the public.
9. The Applicant provided written and oral documentation and testimony to the City Council regarding (a) the improvements associated with the Project and (b) the Project's positive economic impact on the community. No person or organization spoke in opposition to the Application.
10. The Project is located on a 2.2±-acre parcel of land on the south side of Donald J. Lynch Boulevard. The Applicant seeks to improve a hotel that has been in operation on the Site for approximately 34 years.
11. The Site is zoned Limited Industrial, and the proposed use is allowed with a special permit from the City Council. The hotel use was authorized in 1986 by the Special Permit.



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12. There will be no change to the size or shape of the Site, to the area covered by impervious surface, or to the size or shape of the Building.
13. The Project consists of adding kitchenettes to the 64 hotel rooms in the Building without changing the dimensions of those rooms and converting the manager's residence to a 65th hotel room, also with a kitchenette. Other minor interior changes are proposed that are consistent with use as a hotel.
14. The Site presently has 70 parking spaces and will still have 70 parking spaces if the Special Permit Modification is issued. The Zoning Ordinance requires one parking space per guest room. The conversion of the manager's residence to a guest room, for a total of 65 guest rooms, does not require additional parking spaces to be added to the Site.
15. The Site is connected to the municipal water system, but not the municipal sewer system; rather, sewage disposal is currently handled through an on-site septic system. As a condition of approval set forth below, the Applicant will connect the building to the municipal sewer system. This connection will not adversely impact the municipal sewer system.
16. The Project will not create any material change to (a) the existing traffic impacts of the hotel or (b) the impact per room on the municipal water system.
17. The proposed work includes necessary upgrades to the electrical utilities serving the building. After the interior remodeling work is complete, the electricity service will be adequate to supply power to the kitchenettes added to the existing hotel rooms.
18. The Project facilitates extended stays by hotel guests, who will contribute disposable income to the local business community by purchasing goods and services.
19. The Applicant produced a report dated March 5, 2021, from Eric M. Camiel, P.E., C.E.T., a professional fire protection engineer with the firm Jensen Hughes (hereinafter referred to as the "Fire Code Report"). The Fire Code Report presents the results of an on-site inspection and code review of the existing fire protection sprinkler system, specifically evaluating the impact of the proposed guest room alterations on the code compliance of the existing sprinkler system layout. The Fire Code Report finds that the installation of cabinetry in accordance with the plans appended to the Application will not adversely affect the existing sprinkler layout in five of the six types of proposed unit layouts, those five being Type A, B, C, E, and F Units. The Fire Code Report finds that the installation of cabinetry in accordance with the plans appended to the Application will obstruct the existing sidewall sprinkler located in one type of proposed unit layout, that being Type D Units. There are four (4) proposed Type D Units. The Fire Code Report notes that the Applicant will modify the sprinkler layout for Type D Units so that these units are code compliant after the alterations are complete.



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

- A. The City Council finds that it may grant the Special Permit Modification, subject to the terms and conditions set forth in this Decision, to encourage the most appropriate use of the Site and promote and conserve the health and general welfare of the inhabitants of the City of Marlborough.
- B. Pursuant to Massachusetts General Laws Chapter 40A, § 9, the City Council finds that the Project is in harmony with the general purpose and intent of the Zoning Ordinance. In addition, pursuant to Article VIII, Section 650-57(C)(12)(a) of the Zoning Ordinance, the City Council finds that the proposed Special Permit Modification is not in conflict with public health, safety, convenience and the welfare and is not detrimental or offensive. The Project does not produce a material increase in the scale of a development, nor does it produce a material increase in impact on municipal services, the environment, or the neighborhood. The City Council makes this determination subject to the completion and adherence by the Applicant to the conditions more fully set forth herein.
- C. The Applicant has complied with all of the relevant rules and regulations promulgated by the City Council as they pertain to the Application.
- D. Pursuant to its authority under General Laws Chapter 40A, the City Council **GRANTS** the Applicant the Special Permit Modification to convert the manager's residence to a guest room for a total of 65 guest rooms and to add kitchenettes to each of the guest rooms, and to make other modifications all as set out on the plans appended to the Application, subject to the following conditions (the "Conditions"):
 - (1) Project Plans and Specifications. Construction of the interior improvements to the Building shall be in accordance with all applicable building codes and zoning regulations presently in effect in the City of Marlborough and the Commonwealth of Massachusetts
 - (2) The Project shall be constructed, maintained and operated according to the specifications, terms, and conditions of the Application, and in compliance with the Conditions.
 - (3) 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 Modification and become conditions and requirements of the same, unless otherwise altered by the City Council.



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- (4) Notwithstanding Condition (2) and (3) hereof, changes may be made to said plans as approved by the Building Commissioner so long as said changes do not change the use of the Site as approved herein, or increase the size or shape of the Building.
- (5) The Project shall be classified as Residential Group R-2 under the State Building Code and will receive a certificate of occupancy permitting guests to stay for longer than 30 days, but this classification does not prohibit guests from staying 30 days or less.
- (6) Hazardous Waste. The Applicant shall comply with all directives by the Department of Environmental Protection of the Commonwealth of Massachusetts relative to the existence of any hazardous waste which may be located on the Site, including compliance with the provisions of Massachusetts General Laws Chapter 21E and any other laws and as they relate to the authority of the City of Marlborough Fire Chief.
- (7) Compliance with Local, State and Federal Laws. The Applicant shall comply with all applicable rules, regulations and ordinances of the City of Marlborough and the Commonwealth of Massachusetts and Federal agencies as they may apply to the construction, maintenance, and operation of the Project, including, without limitation, the State Building Code.
- (8) Water-Sewer. The Applicant shall connect the existing building to the municipal sewer system within six (6) months of taking ownership of the Property, provided that this period may be further extended for good cause and with the consent of the City Council. Provided that it is feasible and legally permissible, the Applicant shall connect the building to the sewer system via the sewer line that serves the adjacent parcel with a street address of 876 Donald J. Lynch Boulevard, shown on the City of Marlborough Assessor's Maps as Map 50, Parcel 4A. If it is not feasible or legally permissible to connect via the service line at 876 Donald J. Lynch Boulevard, then the Applicant may connect to the municipal sewer system associated with Donald J. Lynch Boulevard, including excavating the road, if necessary, provided that the Applicant satisfy such conditions as are required by the Department of Public Works and are customary for similarly-situated connections. In either case, the Applicant shall present a design plan showing the proposed sewer connection for approval by the Department of Public Works and shall obtain all necessary permits and approvals prior to commencing the construction work on the sewer connection. The kitchenettes shall not include garbage grinders until the building is connected to the municipal sewer system. Water and sewer services provided to the Project shall be subject to applicable City-wide water and sewer charges subject to adjustment by the Commissioner of Public Works.
- (9) On Duty Employees: During the operation of the facility, at least one employee will be on duty at all times.



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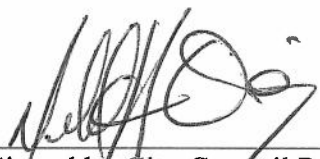
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- (10) Fire Protection Sprinkler System: The Applicant shall adhere to the Fire Code Report and shall modify the sprinkler layouts in Type D Units so that, upon completion of the alterations to the four Type D Units, these units shall have fire protection sprinkler systems that are code compliant. Upon completion of these modifications, the Applicant shall submit a follow-up report to the Fire Department presenting the opinion of a professional fire protection engineer that the modified sprinkler layout for all four Type D Units is code compliant.
- (11) Recording of Special Permit. In accordance with the provisions of Massachusetts General Laws c. 40A, Section 11, the Applicant at his expense shall record this Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing the Special Permit has elapsed with no appeal having been filed, and before the Applicant shall apply to the Building Commissioner for a building permit concerning the proposed expansion. Applicant shall provide a copy of the recorded Special Permit to the City Council's office, to the Building Department and to the City Solicitor's office.

Yea: 11 – Nay: 0

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



Signed by City Council President
Michael H. Ossing

ADOPTED
In City Council
21-1008171C