



IN CITY COUNCIL

MARCH 26, 2012

Marlborough, Mass., _____

ORDERED:

DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

Special Permit Application of:

Nissan Automobiles of Marlborough, Inc./Marlboro Nissan, 740 Boston Post Rd.

Marlborough, MA 01752

Order No. 12-1004033C

Locus:

740 Boston Post Rd.

Assessors Map 61, Parcel 28 & 28A

DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 12-1004033C

The City Council of the City of Marlborough hereby **GRANTS** the application of Nissan Automobiles of Marlborough, Inc./Marlboro Nissan, as provided in the **DECISION** and subject to Procedural Findings and Findings of Facts and Conditions.

Decision date: **April 2, 2012**

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the **2nd** day of **April, 2012**.

Twenty (20) days have elapsed since after the Decision was filed at the Office of the City Clerk. An appeal was filed, and such appeal has been dismissed with prejudice by agreement of the parties.

Given at Marlborough this 9th day of October 2012.

Given under Chapter 40A sec. 11 of the General Laws.

A TRUE COPY
ATTEST

City Clerk



IN CITY COUNCIL

Marlborough, Mass., _____ MARCH 26, 2012
PAGE 1

ORDERED:

DECISION ON AN APPLICATION FOR SPECIAL PERMIT

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Nissan Automobiles of Marlborough, Inc., having a usual place of business at 740 Boston Post Road, Marlborough, Massachusetts 01752 as provided in the Decision and subject to the following Procedural Findings, Findings of Facts and Conditions:

PROCEDURAL FINDINGS

1. Nissan Automobiles of Marlborough, Inc. is a corporation organized and existing under laws of the Commonwealth of Massachusetts having a usual place of business at 740 Boston Post Road, Marlborough, Massachusetts 01752, hereinafter referred to as the "Applicant."
2. 740-744 Boston Post Road LLC with a usual place of business at 740 Boston Post Road, Marlborough, Massachusetts 01752, is the owner of property located at 740 Boston Post Road, Marlborough, Massachusetts 01752 (the "Site"). Said property is further described as Assessor's Map 61 Parcel 28 and Parcel 28A and in a deed recorded in the Middlesex South District Registry of Deeds in Book 44617 Page 149.
3. The Applicant, on or about December 28, 2011, filed with the City Clerk of the City of Marlborough, an Application to City Council for the Issuance of a Special Permit (the "Application") under Section 650-12 B of the Code of the City of Marlborough to modify the front portion of its building within the current footprint by adding a second story of approximately 1,775 s.f. (the "Project").
4. The Application consisted of an original and two copies of the following: (a) Application to the City Council for Issuance of Special Permit, (b) Special Permit-Summary Impact Statement, (c) Filing Fee in the amount of \$500.00, (d) Plan Delivery Certification, (e) Tax Payment Certification, (f) Abutters List, (g) Preliminary Site Plan, and (h) Planning Department Certification (collectively, the "Documents") which Documents are incorporated herein and become a part of this Decision. Eleven sets of documents were delivered to the City Council and one set each to the Police Chief, Fire Chief, Building Commissioner, and City Engineer, all in accordance with Section 650-59 of the Code of the City of Marlborough.



IN CITY COUNCIL

Marlborough, Mass., _____ MARCH 26, 2012
PAGE 2

ORDERED:

5. The Applicant filed with the Application a Certificate of Completeness of Application on a form signed by the Building Commissioner for the City Planner for the City of Marlborough as having complied with the provisions of Section 650-59 C(7) of the Code of the City of Marlborough.
6. In accordance with the Rules and Regulations of the City Council and Massachusetts General Laws Chapter 40A, Sections 9 and 11, the City Council established a date for a public hearing on the Application and caused to be advertised notice of said hearing and the date thereof in the MetroWest Daily News and mailed said notice to those entitled thereto.
7. The Marlborough City Council held a public hearing on the Application on February 13, 2012 in accordance with the published notice (the "Public Hearing"). The Public Hearing, following the completion of testimony, was closed on that same date.
8. The Applicant presented written and oral testimony at the Public Hearing and at the following Urban Affairs Committee detailing the Project, its impact on the neighborhood, and such issues as the City Council and members of the public deemed appropriate. Members of the public had the opportunity to testify at the Public Hearing. Subjects of concern were snow storage, outdoor lighting, closure of garage doors during painting, trash, and shared driveway use with Applicant's neighbor to the rear.

BASED UPON THE ABOVE, THE CITY COUNCIL OF THE CITY OF MARLBOROUGH MAKES THE FOLLOWING FINDINGS:

- A. The City Council finds that it may grant a Special Permit (the "Special Permit") subject to such terms and conditions as it deems necessary and reasonable to protect the citizens of the City of Marlborough (the "City").
- B. The City Council finds the Application for the Special Permit does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough, or Massachusetts General Laws Chapter 40A, et seq.
- C. The City Council finds that the use of the Site for the Project is an appropriate use, and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough.



IN CITY COUNCIL

Marlborough, Mass., _____ MARCH 26, 2012
PAGE 3

ORDERED:

- D. The Site Plan, shown on a plan entitled "Site Plan, Prepared For Marlboro Nissan, 740 Boston Post Road, Marlborough, MA, Date: December 19, 2011, prepared by Bruce Saluk & Assoc., Inc., Civil Engineers & Land Surveyors, 576 Boston Post Road East, Marlborough, MA 01752, tel: (508) 485-1662, Scale 1" = 20' (the "Site Plan") as submitted to the City Council and the Urban Affairs Committee, will not be in conflict with the public health, safety, convenience and welfare and will not be detrimental or offensive and the conditions imposed will enhance the quality of life for the residential community abutting the Project. The City Council makes this determination subject to the completion and adherence by the Applicant to the conditions more fully set forth herein.
- E. The Applicant has complied with all the procedural rules and regulations of the City Council of the City of Marlborough and Section 650 of the Code of the City of Marlborough and Massachusetts General Laws Chapter 40A, Sections 9 and 11.

GRANT OF SPECIAL PERMIT WITH CONDITIONS

The City Council of the City of Marlborough, pursuant to its authority under Section 650 of the Code of the City of Marlborough and Massachusetts General Laws Chapter 40A, GRANTS to the Applicant a Special Permit to construct the Project to improve the front portion of the Nissan building, located at 740 Boston Post Road, Marlborough, Massachusetts 01752, by constructing a second story as per the Application materials submitted to the City Council and the Urban Affairs Committee, and subject to the following conditions:

1. Construction. Construction of the structure on the Site is to be in accordance with all building codes and zoning regulations in effect in the City of Marlborough and Commonwealth of Massachusetts and shall be built according to the Site Plan filed with the Permit Application. The Applicant's Site Plan indicates an existing footprint of the building within which the new building is to be located.



IN CITY COUNCIL

Marlborough, Mass., _____ MARCH 26, 2012
PAGE 4

ORDERED:

2. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review, in accordance the City of Marlborough Code, prior to issuance of the Building Permit. Any additional changes, alterations, modifications, or amendments as required by Site Plan Review to plans reviewed and approved by the City Council as the Special Permit granting authority shall be further conditions attached to the Special Permit, and no Occupancy Permit shall be issued until all conditions are complied with by Applicant. Site Plan Review shall be consistent with this Special Permit. Any violation of a condition of Site Plan Approval shall be a violation of this Special Permit.
3. 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, compliance of the provisions of Massachusetts General Laws Chapter 21E and any other applicable government codes and as they relate to the authority of the Fire Chief of the City of Marlborough.
4. Compliance with Local, State and Federal Laws. The Applicant shall comply with all applicable rules, regulations and ordinances of the City of Marlborough, Commonwealth of Massachusetts and Federal Agencies as they may apply to the construction, maintenance, and operation of the Project and Site, including, without limitation, compliance with local Conservation Commission Orders, the Massachusetts Environmental Policy Act (MEPA), Massachusetts General Laws Chapter 30, Section 61 and the Massachusetts State Building Code. The terms and conditions of such decisions and findings will become a part of this decision.
5. Snow Plowing and Storage. The Applicant, its affiliates, successors and/or assigns shall provide a snow plowing and storage plan to its snow removal personnel and shall not plow or discharge snow on the easterly neighboring land. The Applicant shall provide for snow storage on-site along the easterly portion of its land according to the Snow Plowing and Storage Plan attached hereto. Applicant shall direct snowmelt runoff toward the southeasterly portion of the Site.



IN CITY COUNCIL

Marlborough, Mass., _____ MARCH 26, 2012
PAGE 5

ORDERED:

6. Construction Traffic. During construction of the Project, the Applicant, its affiliates, successors and/or assigns shall impose on each of its contractors a requirement that all heavy equipment accessing the Site shall not block shared driveway along the west abutting the Project.
7. Parking Lot Lighting. The Applicant shall install lighting shields so as to minimize glare and light spillage onto adjacent properties. All parking lot lighting shall be turned off at 10:00 PM except that necessary for site security.
8. Painting of Vehicles. All painting of motor vehicles shall occur indoors and the Applicant shall keep garage doors shut during painting.
9. Common Driveway. The Applicant shall construct an expansion of the currently shared driveway adjacent to the westerly side of its building on the City property. The expanded driveway shall be consistent with the plan entitled "Driveway Concept for Marlboro Nissan, 740 Boston Post Road East, Marlborough, MA, Date: December 18, 2008, Revised: 4/27/09, 2/28/12, Scale: 1"=30', prepared by Bruce Saluk & Assoc., Inc." (the "Driveway Concept Plan") as presented to the City Council and license from the City for such use. Compliance with this condition shall occur provided the City obtains a release of the covenants in the deed from the Grantor as required for such use and provided that the City agrees to grant a license for said use. Applicant shall comply with this condition prior to the issuance of an occupancy permit.
10. Recording of Special Permit. This Special Permit shall be recorded at the Middlesex South Registry of Deeds in accordance with the provisions of Massachusetts General Laws Chapter 40A, Section 11, within 20 days after the expiration of the appeal period for the granting of the Special Permit. The Applicant shall be responsible for the recording of this Special Permit and the cost thereof and shall present evidence to the City Council and City Solicitor of compliance.
11. Requirements. All Plans, photo renderings, site evaluations, briefs, and other documentation provided by the Applicant as part of this Special Permit Application as amended during the application process and hearings before the City Council and/or Urban Affairs Committee are herein incorporated and become a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.



IN CITY COUNCIL

Marlborough, Mass., _____ MARCH 26, 2012
PAGE 6

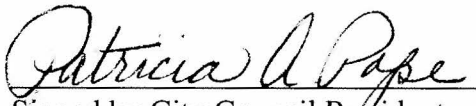
ORDERED:

12. Incorporated by Reference. The Project shall be constructed, maintained and operated according to the specifications, terms and conditions of the Applicant's Special Permit Application, as amended during the application/hearing process before the City Council and/or the Urban Affairs Committee, and in compliance with the Conditions of the Grant of Special Permit. All plans, applications and submissions to the City Council as part of the Special Permit Application are hereby incorporated by reference.

Condition 9 which reads "Compliance with this condition shall occur provided the City obtains a release of the covenants in the deed from the Grantor as required for such use and provided that the City agrees to grant a license for said use" was approved by hand vote.

Yea: 11- Nay: 0

Yea: Delano, Jenkins, Elder, Tunnera, Seymour, Clancy, Landers, Ossing, Pope, Oram & Robey


Signed by City Council President
Patricia A. Pope

ADOPTED
In City Council
Order No. 12-1004033C