

APRIL 5, 2010

**DECISION
GRANT OF SPECIAL PERMIT**

In City Council
Order No. 09/10-1002361C

Application of:
JAM Enterprises, LLC
7 Ashley Court
Lynnfield, MA

Locus:
To be known and numbered as 230 Boston Post Road West.
To be shown on the Marlborough Assessor's Maps as Map 89, Parcel 77A.

DECISION

The City Council of the City of Marlborough hereby **GRANTS** the Application of JAM Enterprises, LLC as provided in the DECISION and subject to the following FINDINGS OF FACT AND CONDITIONS.

Decision filed: April 12, 2010

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on April 12, 2010.

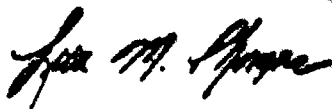
APPEALS

Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be file 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.

This is to certify that twenty (20) days have passed since the filing of the within decision and no appeal has been filed with this office.
Given at Marlborough this 3rd day of May, 2010.

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

A TRUE COPY
ATTEST:



City Clerk



IN CITY COUNCIL

APRIL 5, 2010

Marlborough, Mass., _____ PAGE 1

ORDERED:

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to JAM Enterprises, LLC, 7 Ashley Court, Lynnfield, MA for a restaurant with drive-through facilities, in connection with a proposed stand-alone restaurant, as provided in this Decision and subject to the following Findings of Facts, Rulings and Conditions.

FINDINGS OF FACT

1. JAM Enterprises, LLC is hereinafter referred to as "Applicant."
2. Applicant is a party to a contract calling for the acquisition of the premises to be known and numbered as 230 Boston Post Road West, Marlborough, Massachusetts containing 1.19 acres +- and to be shown on the Marlborough Assessor's Maps as Map 89, Parcel 77A, as further described by the metes and bounds shown on a conceptual site plan ("the Plan") numbered "CPT4" and entitled "Conceptual Site Plan, Proposed Sonic, Boston Post Road, Marlborough, Mass.," drawn by Hayes Engineering, Inc., 603 Salem Street, Wakefield, MA 01880, scale 1"=20', dated October 19, 2009, last revised March 16, 2010, and consisting of one page (hereinafter the "Site"). Applicant proposes to construct a stand-alone restaurant facility with drive-through on the Site ("the Project").
3. Applicant, by and through its attorney, Donald L. Conn, Jr., has filed with the City Clerk of the City of Marlborough an application for Special Permit ("Special Permit Application" or "Application"). Pursuant to Section 200, ¶ 14(B) of the Zoning Ordinance of the City of Marlborough (2008 Code), Applicant is seeking permission for the drive-through facility.
4. The Site is located in a Business zone as determined by the Zoning Map of the City of Marlborough.
5. In connection with the Special Permit Application, Applicant has submitted a document entitled, "Traffic Information, Proposed Sonic Drive-Through Restaurant, Boston Post Road (Route 20), Marlborough, Massachusetts" submitted by Hayes Engineering, a certified list of abutters, filing fees, and a conceptual site plan numbered "CPT4" and entitled "Conceptual Site Plan, Proposed Sonic, Boston Post Road, Marlborough, Mass.," drawn by Hayes Engineering, Inc., 603 Salem Street, Wakefield, MA 01880, scale 1"=20', dated October 19, 2009, last revised March 16, 2010, and consisting of one page.



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ORDERED:

6. The site plan was certified by 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.
7. 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 public hearing on the application for a Special Permit 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.
8. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, held a public hearing on the Application on January 11, 2010.
9. Applicant presented testimony at the public hearing detailing the application, describing its impact upon municipal services, the neighborhood, and traffic.

BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING RULINGS:

- A. The Applicant has complied with all the procedural rules and regulations of the City Council of the City of Marlborough and Chapter 200 (Zoning Code) of the City of Marlborough and Massachusetts General Laws Chapter 40A, Sections 9 and 11.
- 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 of Massachusetts General Laws c. 40A.
- C. 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 hereinafter. The City Council makes these findings subject to the completion and adherence by Applicant, its affiliates, successors and/or assigns to the conditions more fully set forth hereinafter.



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- D. The City Council, pursuant its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough, hereby GRANTS Applicant a Special Permit to construct and operate drive-through restaurant services as shown on the Plan filed, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding upon Applicant, its affiliates, successors and/or assigns:
1. 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 Commonwealth of Massachusetts and shall be built consistent with the Plan.
 2. The issuance of the Special Permit is further subject to detailed technical Site Plan Review in accordance with Chapter 270 of the City of Marlborough 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 Applicant has complied with all conditions. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be further conditions attached to this Special Permit, and any violations of such Site Plan Review conditions shall be violations of this Special Permit leading to its possible revocation by the City Council. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plan submitted, reviewed and approved by the City Council as the special permit granting authority. Any changes to the Plan which alter the traffic patterns or landscaping, or reduce the overall green space of the Project, will require subsequent approval by the City Council.
 3. Applicant agrees to comply with all municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of Applicant's facility.



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- a. Without limiting the foregoing, this condition includes the requirement that Applicant, its affiliates, successors and/or assigns conform the Site and the Project to the Massachusetts Environmental Policy Act ("MEPA") as determined by the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs ("EEA"). Any changes, alterations, modifications or amendments required in order to conform with MEPA as determined by EEA shall require that Applicant, its affiliates, successors and/or assigns apply forthwith to the City Council in order to amend this Special Permit.
 - b. Likewise without limiting the foregoing, this condition includes the requirement that Applicant, its affiliates, successors and/or assigns conform the Site and the Project to the Commonwealth of Massachusetts Department of Transportation ("MassDOT"). Any changes, alterations, modifications or amendments required in order to conform with MassDOT shall require that Applicant, its affiliates, successors and/or assigns apply forthwith to the City Council in order to amend this Special Permit.
4. The locations and design of signage shall be reviewed and approved during Site Plan Review in accordance with the sign ordinance of the City of Marlborough without variance therefrom. Notwithstanding the foregoing, in no event shall the signage contain so-called message board or LCD components. It is a further condition that the location of the signage shall not be substantially different than that shown on the plans submitted herewith allowing, however, for minor changes in the field so as to avoid any conflicts with existing City infrastructure.
 5. The location and placement of pavement markings and traffic directional signage, and all other traffic-related issues, shall be reviewed and approved during Site Plan Review in accordance with the applicable rules and regulations of the City of Marlborough.
 6. All illuminations of individual parking lot light fixtures shall not exceed 200-watt fixtures. Deflectors shall be utilized and configured to mitigate light from entering abutting properties.



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7. Snow storage and removal is to be maintained and conducted on-Site by Applicant, its affiliates, successors and/or assigns in accordance with the requirements of Site Plan Review. Applicant, its affiliates, successors and/or assigns shall provide off-Site snow removal as required and if deemed necessary by the City of Marlborough Commissioner of Public Works.
8. There shall be no overnight parking at the Site.
9. All catch basins shall be installed in accordance with plans to be reviewed and approved at Site Plan Review. The catch basins shall be monitored by Applicant, its affiliates, successors and/or assigns on a semi-annual basis with reports given to the City Engineer annually. The catch basins are to be cleaned by Applicant, its affiliates, successors and/or assigns annually, or at more frequent intervals as determined necessary by the City Engineer.
10. Applicant, its affiliates, successors and/or assigns agrees to plant and maintain the Project landscaping as shown on plans to be reviewed and approved at Site Plan Review.
11. The drive-through window shall employ a pedestal speaker system of a quality that seeks to minimize the noise emanating from the speaker system and with full compliance with the noise ordinance of the City of Marlborough. The drive-through audio speakers also shall not produce noise at the Site's property line greater than that which would be allowed at the Site's property line in accordance with the noise ordinance of the City of Marlborough.
12. Applicant, its affiliates, successors and/or assigns agrees to screen the Project's trash area. Applicant, its affiliates, successors and/or assigns further agrees that the dumpsters located on Site will be covered. No trash pickup shall occur weekdays before 7:00 AM or after 6:00 PM or at any time during weekends.



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13. Applicant, its affiliates, successors and/or assigns agrees that the Site will be subject to City Council review of the traffic configuration after one-year from the issuance of the Occupancy Permit to determine whether any alterations need to be made to the entrances and egresses to the Site to accommodate traffic flow and ensure public safety and agrees to make changes in compliance with the recommendations of the Marlborough Department of Public Works, the Marlborough Police Department and the Marlborough Traffic Commission.
14.
 - a. All plans, photo renderings, site evaluations, briefs and other documentation provided by Applicant as part of this Special Permit Application and as amended 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.
 - b. Notwithstanding condition a. hereof, engineering changes may be made to said plans by the Site Plan Review Committee so long as said changes do not change the use of the Project as approved herein, or materially increase the impervious area of the Project, reduce the green area, alter traffic flow or increase the size of the building shown on the plan.
15. In connection with all improvement work within public right-of-ways which requires a street opening permit, the City Engineer shall be provided by Applicant, its affiliates, successors and/or assigns with a schedule of work and the construction procedures to be utilized prior to the commencement of such work. To the extent a police detail is required for such improvements, the Applicant, its affiliates, successors and/or assigns, and not the City of Marlborough, will bear the costs of any police detail for any work performed within or associated with the public way.



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16. Parking areas will be swept and maintained by Applicant, its affiliates, successors and/or assigns as necessary. Pursuant to the provisions of Massachusetts General Laws Chapter 90, § 18, Applicant, its affiliates, successors and/or assigns shall submit, sixty (60) days prior to occupancy of the Project, a written request and grant of authority to the Marlborough Traffic Commission ("the Commission") to promulgate legally enforceable rules and regulations for the control of on-Site and off-Site traffic parking. Applicant, its affiliates, successors and/or assigns shall be responsible for providing, installing and maintaining all signage or markings required by the Commission. Such signage or markings shall meet the standards of the Manual on Uniform Traffic Control Devices.
17.
 - a. The hours of operation for the drive-through operation at the Site shall not exceed the following times: Monday through Sunday, 6 A.M. to 2 A.M.
 - b. The City Council, after one (1) year from the date when the drive-through commences operations, may review and amend the hours of operation for the drive-through.
18. Applicant, its affiliates, successors and/or assigns shall be required to hire a site engineer(s) who shall be competent in stormwater and erosion control management. This credentials of this individual(s) 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 stormwater regulations and the City's stormwater ordinance. This individual(s) shall ensure compliance with the sequence-of-construction plan and the erosion control plan to be reviewed and approved by the Site Plan Review Committee, and, if applicable, with the Order of Conditions issued by the Conservation Commission. The Applicant, its affiliates, successors and/or assigns shall grant this individual(s) complete authority of the Site as it relates to stormwater and erosion controls.



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19. If the drainage system (during construction and post-construction) constructed by Applicant, its affiliates, successors and/or assigns fails and the failure is the cause of damage to another's property, Applicant, its affiliates, successors and/or assigns shall be responsible to pay the owner of said damaged property the full cost of the repair or replacement of the damaged property. In the event Applicant, its affiliates, successors and/or assigns does not pay for the damage, it shall be a violation of this Special Permit.
20. As it is anticipated that Applicant, its affiliates, successors and/or assigns will need to conduct blasting operations during construction at the Site, Applicant, its affiliates, successors and/or assigns shall be responsible to pay the owner of any property damaged by said blasting the full cost of the repair or replacement of the damaged property. In the event Applicant, its affiliates, successors and/or assigns does not pay for the damage, it shall be a violation of this Special Permit.
21. As it is anticipated that the initial opening of the restaurant will generate higher traffic volumes than during normal operations, Applicant, its affiliates, successors and/or assigns shall meet with the Chief of Police or his designee, the Building Inspector and the Planning Director ("the City traffic officials") at least one (1) month prior to said initial opening in order to review the opening plans for the restaurant, and said plans must be approved in advance by the City traffic officials in order for the restaurant to conduct its initial opening. During the period of its initial opening, Applicant, its affiliates, successors and/or assigns, at its sole expense, must obtain a police detail adequate to maintain safe traffic flow eastbound and westbound on Route 20 during peak periods. Until normal traffic has resumed as determined by the City traffic officials, Applicant, its affiliates, successors and/or assigns must continue to meet with them, at such times as the City traffic officials determine, in order to assess the traffic volumes and associated traffic safety at the Site.
22. This Special Permit is dependent upon the Applicant, its affiliates, successors and/or assigns, reaching agreement with Marlborough/Northborough Land Realty Trust and/or with The Gutierrez Company, its affiliates, successors and/or assigns, for all cross-easements or other permissions necessary for access and infrastructure associated with the Site. If such agreement(s) is/are not reached, this Special Permit shall lapse forthwith.



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ORDERED:

23. Applicant, its affiliates, successors and/or assigns shall pay to the City of Marlborough an administrative review fee in the amount of \$5000.00 as mitigation of the time devoted by the Building Inspector, the City Engineer and the City Solicitor in resolving issues associated with the Special Permit Application, including those involving zoning, traffic and the drafting of the decision itself which the Zoning Ordinance expressly dictates is placed upon the applicant for a special permit. Said payment shall be made before a Building Permit is issued.
24. Applicant, its affiliates, successors and/or assigns, agrees to conduct a so-called "Job Fair" prior to the grand opening of the Project. Applicant, its affiliates, successors and/or assigns shall coordinate such Job Fair, to the extent feasible, with Marlborough schools and local or regional governmental employment agencies so that Marlborough residents are provided with adequate notice of employment opportunities at the Project. In addition, Applicant, its affiliates, successors and/or assigns shall coordinate a like Job Fair for Marlborough contractors for site- and building-related improvements at the Project, and shall encourage its own contractors to hire Marlborough construction workers for the Project.
25. In accordance with the provisions of M.G.L. c. 40A, § 11, Applicant, its affiliates, 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 a Building Permit is issued. Applicant, its affiliates, successors and/or assigns shall also furnish proof of recording to the City Solicitor's Office and the City Council immediately subsequent to recording.

Yea: 11- Nay: 0

Yea: Delano, Ferro, Elder, Juairé, Seymour, Clancy, Landers, Ossing, Pope, Levy & Vigeant

Signed by City Council President
Arthur G. Vigeant

ADOPTED
In City Council
Order No. 09/10-1002361C