



IN CITY COUNCIL

MAY 7, 2012

Marlborough, Mass., _____

ORDERED:

DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

Special Permit Application of
Xcellerex, Inc.
170 Locke Dr.
Marlborough, MA 01752
Order No. 12-1005011B

Locus:
150-170 Locke Drive
Map 53, Parcel 86

DECISION

The City Council of the City of Marlborough hereby **GRANTS** the Application of Xcellerex, Inc. as provided in the DECISION and subject to the following FINDINGS OF FACTS AND CONDITIONS.

Decision filed: **May 8, 2012**

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the **8th** day of **May**, 2012.

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 29th day of May, 2012.

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

A TRUE COPY

ATTEST:

City Clerk



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ORDERED:

XCELLEREX, INC.

SPECIAL PERMIT (WATER SUPPLY PROTECTION DISTRICT) FINDINGS OF FACT AND CONDITIONS

DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 12-1005011B

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Xcellerex, Inc., its successors and assigns, to continue the existing operation of a manufacturing, research and development facility in Zone B of the Water Supply Protection District, as provided in this Decision and subject to the following Findings of Facts and Conditions.

EVIDENCE

- 1) Xcellerex, Inc. is a Delaware corporation having a business address of 170 Locke Drive, Marlborough, MA 01752, and is hereinafter referred to as "Applicant."
- 2) Applicant is the lessee of three industrial buildings located at 150-170 Locke Drive, Marlborough, Massachusetts, as shown on the Marlborough Assessors Maps as Map 53, Parcel 86 (the "Site"). The Site is entirely located in the Limited Industrial District and is also entirely located in Zone B of the Water Supply Protection District, which is an overlay zoning district.
- 3) The Site is owned in fee simple by U.S. REIF 111 Locke Drive Massachusetts, LLC.
- 4) For more than eight years, the Site has been used by Applicant as a manufacturing, research and development facility. In conjunction with Applicant's use, toxic or hazardous materials, as that term is defined in § 650-24.C of the Marlborough Zoning Ordinance, are manufactured, used, stored and disposed of on the Site.
- 5) Applicant's use of the Site as a manufacturing, research and development facility is permitted by right in the Limited Industrial District, pursuant to § 650-17 and § 650-18 of the Marlborough Zoning Ordinance.



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- 6) Applicant recently became aware that a Special Permit is required for Applicant's use of the Site under §§ 650-24.E(2)(c) and (d) of the Marlborough Zoning Ordinance.
- 7) Between January 30, 2012, and March 20, 2012, Applicant participated with the City in an informal preapplication review under § 650-24.G(1) and § 650-59.C(1)(a) of the Marlborough Zoning Ordinance. During the informal preapplication review, Applicant extensively communicated with the City's Conservation Officer, the Fire Department and the Department of Public Works. Further, Applicant has submitted for review a complete listing of the 365 chemicals used at the Site (the "Chemical List") and a draft of Applicant's Hazardous Materials Contingency Plan (the "Contingency Plan"). City officials provided comments to the documents which were incorporated therein by Applicant.
- 8) On March 20, 2012, Applicant was informed by City officials that no further edits needed to be made to the Chemical List or the Contingency Plan, and that the preapplication review process had been completed.
- 9) The Applicant, on or about March 22, 2012, filed with the City Clerk of the City of Marlborough an application for a special permit (the "Application") under the provisions of § 650-24 and pursuant to the procedures specified in § 650-59 of the Marlborough Zoning Ordinance.
- 10) In connection with the Application, Applicant filed a Summary Impact Statement, certified list of abutters, and filing fee, and had previously filed twenty-one (21) copies of the Site Plan.
- 11) In connection with the Application, Applicant submitted the Chemical List and its Contingency Plan, both as amended through the preapplication review.
- 12) The Site Plan was certified by the Building Commissioner for the City of Marlborough, on behalf of the City Planner for the City of Marlborough, as having complied with Rule 5, items A through J of the Rules and Regulations promulgated by the City Council for the issuance of a special permit.
- 13) Pursuant to the Rules and Regulations of the City Council and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing for the Application and the City Clerk caused to be advertised said date in the Metrowest Daily News and sent notice of said hearing to abutters entitled to notice under law.



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ORDERED:

- 14) The Marlborough City Council, pursuant to MGL c. 40A, held a public hearing on April 23, 2012, concerning the said Application. The hearing was opened and closed at that meeting.
- 15) Applicant's attorney and representatives of the Applicant presented testimony at the public hearing detailing the Application and describing Applicant's operations on the Site.
- 16) At the public hearing four members of the public spoke in favor of the Application. One member of the public asked questions about the Application. No members of the public spoke against the Application.
- 17) Following the public hearing, the Urban Affairs Committee of the City Council met on May 1, 2012, to consider the Application. Applicant provided additional information and responded to questions regarding appropriate permit conditions, and reported on conversations with representatives of relevant City departments.

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

- A. The City Council finds that Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application.
- B. The City Council finds that the continued use of the Site, subject to the conditions imposed below, will be in harmony with the general purposes and intent of the Zoning Ordinance, in that it will have no significant negative impact upon abutters. The continued use of the Site, subject to the conditions imposed below, will not be in conflict with the public health, safety, convenience and welfare and will not be detrimental or offensive. The City Council further finds that, subject to the permit conditions enumerated herein, the continued use of the Site will not have an adverse impact on the Marlborough water supply.
- C. The City Council, pursuant to its authority under MGL c. 40A, § 9 and under Chapter 650 of the Marlborough City Code, GRANTS the Applicant a special permit to maintain and operate a manufacturing, research and development facility on the Site (the "Special Permit"), SUBJECT TO THE FOLLOWING CONDITIONS:



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ORDERED:

- 1) Compliance with Local, State, Federal and International Laws. The Applicant, its successors and assigns shall comply with all rules, regulations and ordinances of the City of Marlborough; the Commonwealth of Massachusetts, including but not limited to the Department of Environmental Protection; the Federal Government, including but not limited to the U.S. Environmental Protection Agency, the U.S. Food and Drug Administration, and the National Institutes of Health; and the European Union, including but not limited to the European Medicines Agency, insofar as all such rules, regulations and ordinances apply to the maintenance and operation of Applicant's facility, including but not limited to any and all reporting requirements.
- 2) Incorporation of Plans and Drawings. All terms, conditions, requirements, approvals, plans, drawings and other documentation, including the Chemical List and the Contingency Plan, provided by the Applicant as part of the Application, and as amended during the application/hearing process before the City Council, are herein incorporated into and become part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
- 3) Toxic or Hazardous Materials. Applicant, its successors and assigns shall comply with all regulations and other directives promulgated by the City of Marlborough; the Commonwealth of Massachusetts, including but not limited to the Department of Environmental Protection; the Federal Government, including but not limited to the U.S. Environmental Protection Agency, the U.S. Food and Drug Administration, and the National Institutes of Health; and the European Union, including but not limited to the European Medicines Agency, relative to the on-Site manufacture, use, storage and disposal of toxic or hazardous materials, including but not limited to such materials as defined in § 650-24.C of the Marlborough Zoning Ordinance.



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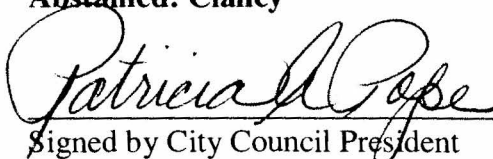
ORDERED:

- 4) Hazardous Materials Contingency Plan and Chemical List. Upon City Clerk certification that the twenty-day period for appealing this Special Permit has elapsed with no appeal having been filed, the Applicant shall immediately distribute to the Fire Chief, the Commissioner of Public Works and the Conservation Officer a copy of the Contingency Plan, which was submitted with the Application and amended through the preapplication process, and an updated copy of the Chemical List, which was submitted with the Application and amended through the preapplication process, said Chemical List being a list of each chemical stored at the Site, the typical quantity on hand, the typical order quantity, and the maximum quantity on hand at any one time. Thereafter, Applicant, its successors and assigns shall provide an updated copy of the Contingency Plan and of the Chemical List to said Fire Chief, Commissioner of Public Works and Conservation Officer on or before January 31 of every calendar year. If, at any time, there is a change in the names or contact information of the Xcellerex employees or agents listed in the Contingency Plan, or those of its successors or assigns, Applicant, its successor and assigns, shall notify in writing said Fire Chief, Commissioner of Public Works and Conservation Officer within thirty days of the date of said change.
- 5) Permits. Applicant shall continue to maintain all necessary permits from the Fire Department for the storage of combustible or flammable materials pursuant to 527 CMR 14.03.
- 6) Recordation. In accordance with the provisions of MGL c. 40A, § 11, Applicant, its successor and assigns shall at its expense 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 this Special Permit has elapsed with no appeal having been filed. Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.

Yea: 10- Nay: 0

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

Abstained: Clancy


Signed by City Council President
Patricia A. Pope

ADOPTED
In City Council
Order No. 12-1005011B