



IN CITY COUNCIL

Marlborough, Mass., _____ MAY 9, 2016

ORDERED:

DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

Special Permit Application of:
Q Café, LLC, d/b/a Firefly's
350 East Main St.
Marlborough, MA 01752
Order No. 16-1006482C

Locus:
350 East Main St.
Assessors Map58, Parcel 42

DECISION

The City Council of the City of Marlborough hereby GRANTS the application of Q Café, LLC, d/b/a Firefly's, a Massachusetts limited liability company having a mailing address of 350 East Main St., Marlborough, MA 01752 as provided in the DECISION and subject to Procedural Findings and Findings of Facts and Conditions.

Decision date: May 9, 2016.

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 13th day of May, 2016.

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 6th day of June, 2016.

Given under Chapter 40A Section 17 of the General Laws.

A TRUE COPY
ATTEST


City Clerk



IN CITY COUNCIL

Marlborough, Mass., _____ MAY 9, 2016
PAGE 1

ORDERED:

DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 16-1006482C

The City Council of the City of Marlborough voted to **GRANT** an Amendment of the Special Permit to Q Café, LLC, d/b/a Firefly's, 350 East Main Street, Marlborough, MA 01752 to expand the outdoor patio/deck area; add a small bar; add serving/cooking kitchen; add acoustic music; add televisions; add games; add natural gas fire pits; and add outdoor heating at 350 East Main Street, Marlborough, MA and did **GRANT** said Special Permit on May 9, 2016, as per City Council Order No. 16-1006482C.

The City Council of the City of Marlborough now hereby **GRANTS** the application for an Amendment of a Special Permit to Q Café, LLC, d/b/a Firefly's, 350 East Main Street, Marlborough, MA, as follows:

FINDINGS OF FACTS - RULINGS AND CONDITIONS

1. The Applicant, Q Café, LLC, d/b/a Firefly's is a duly organized and existing Delaware limited liability company, licensed to do business in Massachusetts with its principal place of business located at 350 East Main Street, Marlborough, MA 01752 (the "Site"). Steven Uliss is a manager of Firefly's Restaurant and the applicant.
2. The owner of the Site is Commonwealth Club, LLC, a duly organized and existing Delaware limited liability company, licensed to do business in Massachusetts with its principal place of business located at 350 East Main Street, Marlborough, MA 01752.
3. The Applicant, in conjunction with the appropriate licenses and permits, seeks permission to amend an existing special permit in order to expand the deck/patio area to the restaurant; add a small bar; add serving/cooking kitchen; add acoustic music; add televisions; add games; add natural gas fire pits; and add outdoor heating (the "Project").
4. On June 3, 2002, the Applicant was issued by the City Council for the City of Marlborough a special permit pursuant to Article V, Section 200-15, paragraph C(1) of Chapter 200, entitled "Zoning," of the Code of the City of Marlborough (the "Original Special Permit").
5. On March 3, 2016, the Applicant filed with the City Clerk of the City of Marlborough an application to amend the Original Special Permit pursuant to Article VIII, Section 650-59, paragraph A(1) of Chapter 650, entitled "Zoning," of the Code of the City of Marlborough (the "Application").



IN CITY COUNCIL

Marlborough, Mass.,

MAY 9, 2016

PAGE 2

ORDERED:

6. The Site is currently improved with an existing structure which houses a restaurant, bar, billiards recreation area and outdoor patio area, and will be further improved in accordance with the plan including the expanded deck/patio area.
7. The location of the expanded patio/deck will be within a small portion of the land on which the restaurant sits, attached to the existing structure and patio area with proper emergency exits, and will be surrounded by a six-foot-high fence and the north side and east side of the deck/patio and a four-foot-high fence on the south side facing Route 20.
8. The Application seeks the establishment of a family-oriented, outdoor dining area consisting of 2,840± square feet of outdoor dining with a kitchen, bar and recreational lawn area surrounded by existing stone retaining walls, as well as by additional shrubbery, to be placed along the fenced borders of the deck, front and side parking areas. The patio/deck area shall also have a six-foot-high railing and will contain seating for approximately seventy-five (75) people with downward-facing lighting, background music, acoustic music, natural gas fire pits, a recreational lawn area and outdoor heating.
9. The Building Commissioner, on behalf of the City Planner, has certified, pursuant to to Section 650-59C(7) of the Rules and Regulations promulgated by the City Council for issuance (including amendment) of special permits, that the site plan meets all prior referenced informational requirements of Section 650-59C(7); that the plan conforms in all respects to the Code of the City of Marlborough to the Rules and Regulations; and that any necessary zoning variances have been already granted by the Marlborough Zoning Board of Appeals with any applicable appeal period therefor having run.
10. Pursuant to Section 650-59C(1) of said Rules and Regulations, the Applicant has distributed sets of Application material to the City officials listed therein.
11. Further, pursuant to the said Rules and Regulations and the provisions of M.G.L. c. 40A, as amended, 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 Main Street Journal and sent written notice of said Public Hearing to those abutters entitled to notice under applicable law.



IN CITY COUNCIL

Marlborough, Mass., _____ MAY 9, 2016
PAGE 3

ORDERED:

12. The Marlborough City Council pursuant to the appropriate provisions of MGL c. 40A, as amended, held a public hearing on the Application on April 4, 2016 and continued to April 25, 2016, when the hearing was closed.
13. The Applicant presented evidence at the public hearing detailing the Project and its limited impact upon municipal services, the neighborhood, and traffic and noise.
14. The Applicant's employees (i.e., host/hostess, wait staff, kitchen staff) will be present and in control of the outdoor patio/deck area as expanded.

REASONS FOR APPROVAL OF APPLICATION FOR SPECIAL PERMIT

The Marlborough City Council, having caused to establish a detailed record of its Conditions and Reasons for granting the Special Permit, makes the following findings:

- A. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council for the Application to amend the Original Special Permit.
- B. The establishment of an outdoor dining area shall consist of 2,840± square feet of outdoor dining with a kitchen, bar and recreational lawn area surrounded by fencing to be placed along the two visible borders of the deck, near the front and side parking areas. The expanded patio/deck area shall also have a six-foot-high fence on the north side and east side and a four-foot-high fence on the south side facing Route 20. The expanded patio/deck will contain seating for approximately to seventy-five (75) people with down-facing lighting, background music, acoustic music, natural gas fire pits, a recreational lawn area and outdoor heating. The area will have an outdoor kitchen and bar. The expanded patio/deck is an appropriate modification of the Original Special Permit. This amendment would be in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough, subject to the appropriate terms and conditions provided below.
- C. The City Council pursuant to its authority under M.G.L. c. 40A, as amended, GRANTS the Application to amend the Original Special Permit to expand the current patio/deck as described above as per plans filed with the City Council and the City Clerk, including plans discussed at the Urban Affairs Committee meeting on May 3, 2016 (the "Amended Special Permit"), SUBJECT TO THE FOLLOWING CONDITIONS which shall apply to the Applicant, its successors and assigns:



IN CITY COUNCIL

Marlborough, Mass.,

MAY 9, 2016

PAGE 4

ORDERED:

1. Construction of the expanded patio/deck on the Site is to be in accordance with all applicable building codes and zoning regulations in effect in the City of Marlborough and shall be built according to the site plan filed with the Application and as amended during the Application process and Site Plan Review.
2. The issuance of the Amended Special Permit is further subject to detail review by the Marlborough Site Plan Review Committee, in accordance with c. 270 of the City Code for the City of Marlborough, prior to the issuance of the actual building permit. Said Site Plan Review shall be consistent with and in conjunction with this Amended Special Permit. All further reviews, additions and/or amendments for the purpose of Site Plan Review shall become part of the terms, conditions, maintenance and operation of the Site, and shall become conditions of this Amended Special Permit.
3. The issuance of the Amended Special Permit is further subject to review by the Marlborough Licensing Board as to all matters within the scope of the Applicant's common victualer all-alcoholic beverages license (including the proposed bar) as may be amended, and within the scope of by the Applicant's entertainment license (including the proposed outdoor acoustic music and the proposed televisions) as may be amended. All further reviews, additions and/or amendments for the purposes of the Licensing Board shall become part of the terms, conditions, maintenance and operation of the expanded patio/deck on the Site, and shall become conditions of this Amended Special Permit.
4. The issuance of the Amended Special Permit is further subject to review by the Marlborough Board of Health as to all matters governed by the Applicant's food establishment permit (including the proposed kitchen) as may be amended. All further reviews, additions and/or amendments for the purposes of the Board of Health shall become part of the terms, conditions, maintenance and operation of the expanded patio/deck on the Site, and shall become conditions of this Amended Special Permit.
5. Application and Documents: All plans, drawings and documentation provided by the Applicant as part of this Application or later filed with the Urban Affairs Committee are herein incorporated into and become part of this Amended Special Permit and become conditions and requirements of the same.



IN CITY COUNCIL

Marlborough, Mass.,

MAY 9, 2016

PAGE 5

ORDERED:

6. Compliance with Local, State and Federal Laws: The Applicant agrees to comply with all rules, regulations, and ordinances of the City of Marlborough, Commonwealth of Massachusetts and the Federal Government as may be applicable to the construction, maintenance, equipping and operation of the expanded patio/deck on the Site.
7. Public Peace and Good Order: In the event that the Chief of Police, in his reasonable sole opinion, determines that either the business of the Applicant is, or the clientele of the Applicant are creating a condition that is contrary to public peace and good order, the Chief shall, in writing, notify the Applicant and demand reasonable corrective measures be put into effect within seven (7) days. Upon the failure or inability of the Special Permit holder to correct such conditions, the Police Chief may require the Applicant to employ one or more Police Detail Officers, during such hours and days as the Police Chief, in the exercise of his sole discretion, determines to be necessary for the purpose of correcting the condition.
8. Abutter Conditions: The Applicant agrees to fulfill the following conditions set forth by the abutters to the expanded patio/deck to be constructed on the Site located at 350 East Main Street, Marlborough:
 - Expanded patio/deck to be surrounded by a fence that is six-foot-high and on the north side and east side and a four-foot-high fence on the south side facing Route 20 to serve as both a light and sound-absorbent barrier;
 - Additional shrubbery shall be installed on the south side of the expanded patio/deck facing Route 20 as an additional barrier along the four-foot-high fence, and the railing along the walkway leading to the main entrance of the restaurant shall remain and be properly maintained. The additional shrubbery and the railing shall serve as an additional barrier for the south side of the expanded patio/deck;
 - No additional lighting to be erected or added to existing parking lot lights except for some downward-facing, shielded lamps on the expanded patio/deck itself;
 - Noise created on, at or from the expanded patio/deck shall be in compliance with local City Ordinance;



IN CITY COUNCIL

Marlborough, Mass., _____ MAY 9, 2016
PAGE 6

ORDERED:

- There shall be no access to the expanded patio/deck from the parking lot, except emergency exit access only;
 - All emergency exits shall be in compliance with the Americans with Disabilities Act;
 - The expanded patio/deck and the area underneath it shall be kept clean and in compliance with all Board of Health requirements;
 - Occupancy on the expanded patio/deck shall still be limited to 75 patrons or as otherwise directed by the Marlborough Building Commissioner and shall be in compliance with the Marlborough Zoning Ordinance.
9. Except as may otherwise be modified by the Marlborough Licensing Board and/or the Marlborough Board of Health, the hours of operation of the expanded patio/deck shall be the same as the existing restaurant business, with seating up until 10:00 P.M. Sunday through Thursday and up until 11:00 P.M. Friday and Saturday.
 10. The dumpster(s) on the Site shall have a cover and shall not be overfilled so that the dumpster lid cannot close.
 11. The Applicant must keep all fencing on the Site in good repair at all times.
 12. The Applicant shall not power-wash and flush any grease or other waste products into the storm drain(s). The Applicant shall place a berm around all grease containers, and also must properly dispose of materials from inside the catch basin(s) on a regular basis and in no case less than annually.
 13. In compliance with fire safety regulations, the Applicant shall properly store and secure, and keep separated from public access, all gasoline, propane and other flammables and/or combustibles on the Site. Prior to being issued a certificate of occupancy for the patio/deck, the Applicant shall obtain a letter from the Fire Chief or his designee that the Applicant has properly stored, secured and kept separated from public access said flammables and/or combustibles.
 14. All such conditions above shall be complied with prior to an issuance of an occupancy certificate from the Marlborough Building Commissioner.



IN CITY COUNCIL

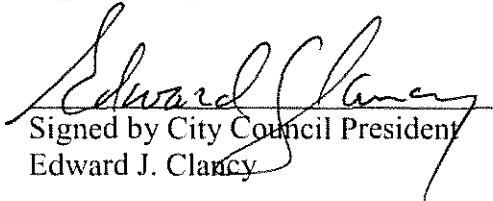
Marlborough, Mass., _____ MAY 9, 2016
PAGE 7

ORDERED:

15. In accordance with the provisions of M.G.L. c. 40A, § 11, the Applicant at its expense shall record this Amended Special Permit in the Middlesex South District Registry of Deeds after the City Clerk has certified that the twenty-day period for appealing this Amended Special Permit has elapsed with no appeal having been filed. Applicant shall provide to the City Council's office, the City Solicitor's office and the Building Department a copy of the recorded Amended Special Permit.

Yea: 11 – Nay: 0

Yea: Delano, Doucette, Elder, Tunnera, Irish, Clancy, Landers, Juair, Oram, Ossing & Robey


Signed by City Council President
Edward J. Clancy

ADOPTED
In City Council
16-1006482C
X02-9505
X99-7884B



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Decision date: May 9, 2016

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 13th of May, 2016.

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 filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, MA.

ATTEST:


City Clerk