



IN CITY COUNCIL

Marlborough, Mass., _____

JUNE 1, 2015

ORDERED:

DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

Special Permit Application of:
NGP Management LLC
3 Pluff Avenue
North Reading, MA 01864
Order No. 15-1006070F

Locus:
525 Maple St.
Assessors Map 104, Parcel 37

DECISION

The City Council of the City of Marlborough hereby GRANTS the application of NGP Management LLC as provided in the DECISION and subject to Procedural Findings and Findings of Facts and Conditions.

Decision date: **June 5, 2015**

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the **5th** day of **June, 2015**.

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 **26th** day of **June, 2015**.

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

A TRUE COPY
ATTEST

City Clerk



IN CITY COUNCIL

Marlborough, Mass., JUNE 1, 2015
PAGE 1

ORDERED:

DECISION ON A SPECIAL PERMIT IN CITY COUNCIL

Special Permit
NGP Management LLC
Order No. 15-1006070

DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 15-1006070F

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to NGP Management LLC (the "Applicant") for two (2) drive-through service windows for a restaurant located at 525 Maple Street, Marlborough, Massachusetts, as provided in this Decision and subject to the following Procedural Findings and Findings of Facts and Conditions.

FINDINGS OF FACT AND RULING

1. The Applicant is a duly organized and existing Limited Liability Company having a business address of 3 Pluff Avenue, North Reading, Massachusetts 01864.
2. The Applicant is the prospective owner of the property located at 525 Maple Street, Marlborough, Massachusetts, as shown on the Marlborough Assessors Maps as Map 104, Parcel 37 (the "Site").
3. The Applicant proposes to raze the existing structure on the Site and construct a new building for a restaurant with two (2) drive-through service windows (the "Project").
4. The Site is located in the CA Commercial Automotive Zoning District as determined by the Zoning Map of the City of Marlborough. The Site is a gateway to the City which is to be enhanced and beautified by the quality and character of the Project.



IN CITY COUNCIL

Marlborough, Mass., _____ JUNE 1, 2015
PAGE 2

ORDERED:

5. On September 30, 2014, the Zoning Board of Appeals issued a variance decision for the Site (the "ZBA Decision"), granting variances from certain requirements applicable to the Project under the Zoning Ordinance of the City of Marlborough (the "Zoning Ordinance").

6. The Applicant's use of the Site as a restaurant with drive-through service windows is allowed by special permit, pursuant to Section 650-14.B(2) and 650-17 of the Zoning Ordinance.

7. The Applicant, by and through its counsel, filed with City Clerk of the City of Marlborough an application for a special permit seeking two (2) restaurant drive-through service windows (the "Application").

8. In connection with the Application, the Applicant has submitted a certified list of abutters, filing fees, and a detailed site plan entitled "Site Plans Pursuant to City Zoning, Conservation Officer and Wetlands Ordinances for Dunkin Donuts 525 Maple Street (Route 85) in Marlborough Massachusetts (Middlesex County)", prepared by Waterman Design Associates, Inc., dated May 16, 2014, last revised December 22, 2014 (the "Plans").

9. The Plans were certified by the Building Commissioner of the City of Marlborough, acting on behalf of 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.

10. 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 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.

11. The Marlborough City Council, pursuant to Massachusetts General Laws, Chapter 40A, held a public hearing on the application on Monday, February 23, 2015.

12. The Applicant, through its representatives, presented testimony at the public hearing detailing the Project, describing its impact upon municipal services, the neighborhood, and traffic. No individual in attendance at the public hearing spoke in opposition to the project. The direct abutter residing at 168 Mill Street informed the City Council Urban Affairs Committee of her concerns that the operation of the drive-through window could have detrimental impacts on her property.



IN CITY COUNCIL

Marlborough, Mass., _____

JUNE 1, 2015

PAGE 3

ORDERED:

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

A. The Applicant has complied with all Rules and Regulations promulgated by the Marlborough City Council as they pertain to special permit applications.

B. 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 herein. The City Council makes these findings subject to the completion and adherence by the Applicant, its successors and/or assigns to the conditions more fully set forth herein.

C. The City Council, pursuant to its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough hereby GRANTS the Applicant a Special Permit to operate two (2) drive-through service windows as shown on the Plans filed, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding on the Applicant, its successors and/or assigns:

1. Construction in Accordance with Applicable Laws. Construction of all structures on the Site shall be in accordance with all applicable Building Codes and Zoning Regulations in effect in the City of Marlborough and the Commonwealth of Massachusetts, and shall be built according to the Plans as may be amended during Site Plan Review.

2. Compliance with Applicable Laws. The Applicant, its successors and/or assigns agrees to comply with all municipal, state, and federal rules, regulations, statutes, and ordinances as they may apply to the construction, maintenance, and operation of the Project.

3. Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review in accordance with the City of Marlborough site plan review 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 the Applicant has complied with all conditions. Subsequent Site Plan Review shall be consistent with the conditions of this Special Permit and the Plans submitted, reviewed and approved by the City Council as the Special Permit Granting Authority.



IN CITY COUNCIL

Marlborough, Mass.,

JUNE 1, 2015

PAGE 4

ORDERED:

4. Modification of Plans. Notwithstanding conditions #1 and #3 above, the Site Plan Review Committee may make engineering changes to the Plans, 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, increase the size, shape or position of the building, or alter the fencing bordering the property, all as shown on the Plans.

5. Signs and Awnings. The locations and design of signage shall be reviewed and approved by the City of Marlborough in accordance with the Sign Ordinance of the City of Marlborough without variance therefrom except as herein provided. No internally lit signs shall be used on the site or on the exterior of the building. External signage which advertises the Applicant's business and which is located on the building or on the site shall be wood of a design harmonious with the building design and aesthetics, shall be externally lit, and may include traditional Dunkin Donuts colors, letters, and logo against a white background. A photographic example of the desired wood exterior site sign is attached as Exhibit A. No internally lit interior signs shall be visible from the outside of the building. No posters, graphics, lettering or any other form of advertising shall be affixed to windows or hanging inside or in front of windows. Awnings shall not contain graphics or letters and shall not be orange or pink, but shall be a subdued color, harmonious with the design of the building. Electronic message boards and window signs are prohibited, with the exception of the menu board located inside the restaurant which is exempt from said prohibition.

6. Furniture, Equipment, and Umbrellas At The Patio. Patio furniture, equipment and umbrellas shall not be orange or pink, but shall be a subdued color which is harmonious with the design of the building.

7. No Parking, No Stopping and Loading Zone Signs, and the Loading Zone. The Applicant, its successors and/or assigns will reimburse the City for reasonable expenses for the installation of "No Parking" and "No Stopping" signage along Maple Street and "Loading Zone" signage in the loading zone along Mill Street South. The Applicant, its successors and/or assigns acknowledge that the loading zone at the rear of the proposed building is partially within a public way (Mill Street South). The Applicant, its successors and/or assigns will be responsible for paving, maintaining and plowing the loading zone area.



IN CITY COUNCIL

Marlborough, Mass., _____ JUNE 1, 2015
PAGE 5

ORDERED:

8. Building Design and Aesthetics. The appearance of the building shall be New England colonial style. The exterior materials for the building shall be red brick, or wood clapboards (including HardiePlank or equivalent cementitious clapboard siding) painted or stained in a muted color, or a combination of brick and wood clapboards. Architectural details, including without limitation trims, casings, rakes and fascias, shall be appropriate to the colonial style. Materials designed to imitate brick or stone are not permitted. With the exception of the drive-through windows, windows shall reflect the style of the building in scale and proportion, and shall be divided lite which may be simulated. Should the Applicant require a letter from the City to the Dunkin Donuts corporate office regarding the requirement of a colonial style building and/or muted exterior paint colors, the City will provide said letter. The building design and aesthetics shall be substantially in conformance with the revised Exterior Elevations submitted by the Applicant to the City Council on or about April 27, 2015 and attached as Exhibit B, which comply with the design and aesthetics conditions of this Decision. Photographic examples of other acceptable designs and materials found at other Dunkin Donuts facilities are attached as Exhibit C.

9. Incorporation of Submissions. 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, including Exhibits hereto, 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.

10. Hours of Operation. The hours of operation for the restaurant and drive-through windows shall not exceed Monday through Sunday, 4:00 a.m. to 11:00 p.m. There will be no 24-hour operation.

11. Trenching: All trenching shall be in compliance with Massachusetts law and pursuant to permits issued by the Engineering Division of the City's Department of Public Works.

12. Traffic Signage. The location and placement of pavement markings and traffic directional signage shall be reviewed and approved by the City of Marlborough during Site Plan Review in accordance with applicable rules and regulations of the City of Marlborough. Traffic and wayfaring signage shall be designed so as to complement the colonial style of the building.



IN CITY COUNCIL

Marlborough, Mass., _____

JUNE 1, 2015

PAGE 6

ORDERED:

13. Parking Area Rules. Parking areas will be swept and maintained by the Applicant, its successors and/or assigns as necessary. Pursuant to the provisions of Massachusetts General Laws c. 90, § 18, the Applicant, its successors and/or assigns shall submit to the Marlborough Traffic Commission a written request and grant of authority to promulgate legally enforceable rules and regulations for the control of on-Site and off-Site traffic and parking. The Applicant, its successors and/or assigns shall be responsible for providing, installing and maintaining all signage or markings required by the Marlborough Traffic Commission. Such signage or markings shall meet the standards of the Manual on Uniform Traffic Control Devices.

14. No Overnight Parking. There shall be no overnight parking at the Site.

15. Storm Water and Erosion Control Management. During construction, the Applicant, its successors and/or assigns shall be required to hire a site engineer who shall be competent in stormwater and erosion control management. The 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 and the City's stormwater regulations. This individual(s) shall ensure compliance with the approved sequence of construction plan, the approved erosion control plan. The Applicant, its successors and/or assigns shall grant this individual(s) complete authority of the Site as it relates to stormwater and erosion controls.

16. Easements to City. If deemed necessary by the City Engineer during Site Plan Review, prior to construction of the Project, the Applicant, its successors and/or assigns shall establish and grant to the City utility easements for the construction, maintenance or repair of existing City infrastructure including, but not limited to, water, sewer and drains. Landscaping in the area of such easements shall be coordinated by the Applicant, its successors and/or assigns with the Engineering Division of the City's Department of Public Works in the field so as to avoid conflicts with existing infrastructure.



IN CITY COUNCIL

Marlborough, Mass., _____ JUNE 1, 2015
PAGE 7

ORDERED:

17. Street Opening. In connection with the installation of improvements within public rights-of-way which require a street opening permit, the Applicant, its successors and/or assigns shall provide the City Engineer 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 successors and/or assigns, and not the City of Marlborough, will bear the costs of any police detail for any work performed within the public way.

18. Work in Public Ways. Any work performed within the travelled way on Maple Street and Mill Street South shall be done by the Applicant, its successors and/or assigns during off peak hours and, prior to commencement of such work, the Applicant, its successors and/or assigns shall provide a traffic management plan relating to the same for approval by the Engineering Division of the City's Department of Public Works.

19. Drive-Through Speakers. The drive-through window shall employ a pedestal speaker system of a quality that seeks to minimize the noise emanating from the speaker system, in accordance with the noise ordinance of the City of Marlborough. The drive-through audio speakers will be positioned directionally as shown on the Plans as submitted to the City Council and/or the Urban Affairs Committee. The drive-through audio speakers also shall not produce noise at the property line greater than that which would be allowed in a residential zone pursuant to the Noise Ordinance of the City of Marlborough. The City Council reserves the right to review the noise levels and positioning of the drive-through audio speakers for one year after the operation of the drive-through window commences.

20. Deliveries. In order to mitigate noise concerns for residential abutters, no deliveries to the Site shall occur prior to 7:00 a.m. except for the early morning, daily delivery of donuts and perishable items by a small box truck, van or similar sized vehicle. All possible measures shall be taken to avoid noise and not disturb neighbors. Deliveries by semi-trailers shall not occur prior to 7:00 a.m. or after 7:00 p.m. Delivery trucks making deliveries to the Site may only park on the Site or in the designated loading area along Mill Street South.



IN CITY COUNCIL

Marlborough, Mass., _____ JUNE 1, 2015
PAGE 8

ORDERED:

21. Lighting. All illuminations of individual parking lot light fixtures shall not exceed 200-incandescent-equivalent watt fixtures. Where ever feasible, such as at walks and at the building entrance, lighting fixtures shall be period or ornamental fixtures selected to complement the architecture. The parking lot light fixtures and light fixtures which are located on the exterior of the building shall be period or ornamental selected to complement the architecture. The design of the parking lot light fixture attached as Exhibit D complies with this paragraph of the Special Permit. The configuration, height, brightness and number of parking lot light fixtures shall be sufficient for safety purposes but shall be limited to the extent possible to avoid causing a nuisance to abutting properties. The final lighting plan shall be reviewed and approved by the Site Plan Review Committee, consistent with this Decision.

22. Landscaping. The Applicant, its successors and/or assigns agrees to plant and maintain in good condition the Project's landscaping substantially in conformance with the Plans as submitted to the City Council and/or the City Council's Urban Affairs Committee, as may be amended during Site Plan Review or by subsequent agreement of the Site Plan Review Committee or City Engineer.

23. Drive-Through Operations at Neighboring Restaurant. On or before the date that the Project first operates the drive-through windows authorized by this Decision, the Applicant, its successors and/or assigns, shall abandon with prejudice the drive-through window use at the restaurant currently operated by the Applicant located at 312 Maple Street in Marlborough. The Applicant, its successors and/or assigns shall cause this Special Permit Decision (once recorded in the Middlesex South Registry of Deeds) to appear in the chain of title for the 312 Maple Street property.

24. Drive-Through Window. The Police Chief or his designee, may, for the purposes of protecting public safety and in the exercise of his professional discretion, order the temporary closure of the drive-through facilities.

25. Trash. Applicant, its successors and/or assigns agrees to screen the Project's trash area by constructing a six foot (6') white vinyl fence screen of a design compatible with the building. Applicant, its successors and/or assigns further agrees that the dumpsters located on the Site will be covered. No trash pickup shall occur before 7:00 AM or after 7:00 PM.



IN CITY COUNCIL

Marlborough, Mass., _____ JUNE 1, 2015
PAGE 9

ORDERED:

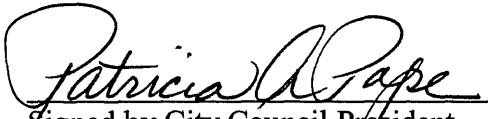
26. Snow Removal. Snow storage and removal is to be maintained and conducted on site by Applicant, its successors and/or assigns in accordance with Condition #2 of the Decision of the City of Marlborough Zoning Board of Appeals dated September 30, 2014, and as hereinafter provided. Applicant, its successors and/or assigns shall remove snow accumulation from the site if accumulation is more than two inches (2") in a 48 hour period.

27. Non-Severability of Conditions: If any of the above conditions is deemed to be invalid by a court of competent jurisdiction, then this Decision shall be null and void.

28. Recording of Decision: In accordance with the provisions of M.G.L. c. 40A, § 11, Applicant, its 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: 10 – Nay: 0 – Abstain: 1

Yea: Delano, Page, Elder, Tunnera, Irish, Clancy, Landers, Ossing, Pope, & Oram
Abstain: Robey


Signed by City Council President
Patricia A. Pope

ADOPTED
In City Council
15-1006070F