



IN CITY COUNCIL

JULY 22, 2013

Marlborough, Mass., _____

ORDERED:

DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

Special Permit Application of:
587 Bolton St., Inc.
19 Westgate Rd.
Framingham, Ma 01701
Order No. 13-1005456B

Locus:
587 Bolton St.
Assessors Map 30, Parcel 7

DECISION

The City Council of the City of Marlborough hereby GRANTS the application of 587 Bolton St., Inc., as provided in the DECISION and subject to Procedural Findings and Findings of Facts and Conditions.

Decision date: **July 22, 2013**

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the **1st** day of **August, 2013**

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 **21st** day of **August, 2013**

Given under Chapter 40A Section 11 of the Massachusetts General Laws.

A TRUE COPY
ATTEST


City Clerk



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ORDERED:

**PROPOSED FINDINGS AND REASONS FOR APPROVAL
OF SPECIAL PERMIT APPLICATION
587 BOLTON ST., INC.
CITY OF MARLBOROUGH, MA COUNCIL ORDER 13-1005456**

The City Council of the City of Marlborough hereby **GRANTS** the Application for Special Permit of Applicant, as provided in the Decision and **SUBJECT TO THE FOLLOWING FINDINGS OF FACT AND CONDITIONS:**

EVIDENCE

1. The Applicant is 587 Bolton St., Inc., a Massachusetts Business Corporation with a principal place of business at 19 Westgate Road, Framingham, MA 01701 ("Applicant");
2. The location of the proposed project is 587 Bolton Street, Marlborough, MA and more particularly identified on the City of Marlborough Assessor's Map as Map 30 Parcel 7 ("Site");
3. The Applicant seeks a Special Permit to serve food and drink on an outdoor deck to be constructed on the Site ("Project");
4. The outdoor deck shall be constructed according to the attached Plan of Patrick J. Slattery, Architect ("Plan").
5. The Applicant is the Lessee of the Site for the purpose of this Special Permit Application;
6. The property is located in zone LI, which requires a Special Permit for the outdoor service of food;
7. The Building Inspector, on behalf of the City Planner, has properly provided a Certificate of Completeness of Application as required by Para. 7 of the Rules and Regulations of Application/Petition for Special Permit by the City of Council under the Marlborough Zoning Ordinance, Chapter 650-59;
8. The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application for a Special Permit to allow the service of food outdoors on the Site;
9. A Public Hearing was held on July 8, 2013 in compliance with the requirements of the Code of the City of Marlborough and by the provisions of MGL Chapter 40A, as amended; and that all necessary abutters were provided notice as required by law, as certified by the Office of the Board of Assessors of Marlborough; and



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ORDERED:

10. The Applicant presented oral testimony and demonstrative evidence at the Public Hearing and demonstrated that the Project meets all applicable Special permit criteria provided by MGL Chapter 40A, as amended, and the Code of the City of Marlborough including, without limitation, Chapter 650, Section 18, Attachment of Uses 1:3 (31) and generally Section 650-59;

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

The City Council, pursuant to its authority under MGL Chapter 40A and the City of Marlborough Zoning Ordinance, Chapter 650, **GRANTS** the Applicant its Special Permit, **SUBJECT TO THE FOLLOWING CONDITIONS A THROUGH H:**

1. The Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application for a Special Permit to construct an outdoor deck on the Site and serve food on the same;
2. The Marlborough City Council finds that all necessary fees for said Special Permit have been paid;
3. The Marlborough City Council finds that the Application for Special Permit ("Application") was properly completed and filed by Applicant, and that all necessary abutters were provided notice as required by law, as certified by the Office of the Board of Assessors of Marlborough prior to Application submission;
4. The Preliminary Site Plan accompanying said Application was completed in accordance with the all applicable Rules and Regulations;
5. The Summary Impact Statement filed with said Application is sufficient for said Application and that no further studies or requirements are necessary;
6. The City Department reports as required by the Code of the City of Marlborough have been received and incorporated as deemed appropriate by the said Marlborough City Council into this final decision;
7. The Marlborough City Council finds generally that the use sought by Applicant and its impact and characteristics, as conditioned hereinafter, are not in conflict with the public health, safety, convenience and welfare and are not detrimental or offensive; and further, that the construction of the outdoor deck and service of food on the same is appropriate for the Site and does not derogate from the intent and purpose of MGL Chapter 40A and/or the Code for the City of Marlborough;



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ORDERED:

8. The Marlborough City Council therefore GRANTS to the Applicant a Special Permit to construct an outdoor deck pursuant to the attached Plan and serve food on the same, pursuant to its authority under MGL Chapter 40A and the Code of the City of Marlborough, **with the following Conditions:**

- A. No Site Plan Review or approval as provided under Chapter 270, Building and Site Development, shall be required.
- B. Construction of the deck is to be in accordance with all applicable building codes currently in effect in the City of Marlborough and according to the attached Plan.
- C. Pursuant to recommendations from the Urban Affairs Committee of the Marlborough City Council, no patron shall be allowed on the deck except between the following hours on the following days:

Sunday: 10 am to 10 pm
Monday: 11 am to 10 pm
Tuesday: 11 am to 10 pm
Wednesday: 11 am to 10 pm
Thursday: 11 am to 10 pm
Friday: 11 am to 11 pm
Saturday: 11 am to 11 pm

The hours listed above shall be subject to a review by the City Council one year after the date of final approval of this Special Permit; if the Chief of Police and the pertinent ward councilor deem the hours listed above to be unacceptable, the City Council may revisit those hours.

- D. Applicant shall erect 2 signs advising patrons that smoking on the deck is prohibited; 1 sign shall be visible to patrons at the exit from the indoor restaurant onto the deck, and the other sign shall be visible to patrons who are located on the deck.
- E. The terms of this Special Permit will be reduced to writing in a recordable form acceptable to the City of Marlborough's Legal Department, and, prior to the issuance of any Building Permit, shall be recorded with the Middlesex South District Registry of Deeds at the Applicant's expense, with a copy of the recorded Special Permit provided forthwith by Applicant to the City Council, the Building Inspector, and the Legal Department.



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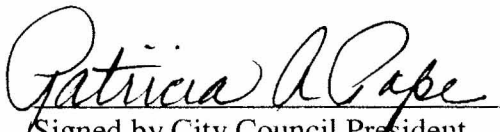
ORDERED:

- F. All work performed at the Site shall be in compliance with this Decision. No other building or construction shall occur or happen without a change or modification of this Special Permit.
- G. Given the existing green buffer serving as a so-called living fence between the Site and a residence located at 30 Reservoir Street, written evidence of a fully executed agreement between Applicant and the current owners of the residence at 30 Reservoir Street, declaring the owners' waiver of Applicant's construction of a minimum 6' high solid fence as otherwise called for by Chapter 650-18(31)(a)[2] of the Marlborough Zoning Ordinance, shall be provided by Applicant to the City Council, the Building Inspector, and the Legal Department simultaneously with the copy of the recorded Special Permit referenced in Condition E above; provided, however, that no building permit shall issue unless and until copies of said agreement have been so provided. If Applicant shall be unable to provide the said agreement as aforesaid, Applicant must, before the issuance of a building permit for the deck, either obtain a variance from the Marlborough Zoning Board of Appeals or establish compliance with the aforesaid Ordinance provision.
- H. Any service of alcoholic drinks on the deck shall be subject to prior approval by the Marlborough License Board and the Alcoholic Beverages Control Commission.

Yea: 10- Nay: 0 – Absent: 1

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

Absent: Seymour


Signed by City Council President
Patricia A. Pope

ADOPTED
In City Council
Order No. 13-1005456B