



IN CITY COUNCIL

AUGUST 26, 2013

Marlborough, Mass., _____

ORDERED:

DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

Application of:
Sandra & Anthony Antico Real Estate LLC
72 Jefferson Street
Marlborough, MA 01752
Order No. 13-1005426C

Locus:
72 Jefferson Street, Unit 103
Map 56, Parcel 150

DECISION

The City Council of the City of Marlborough hereby GRANTS the application of Sandra & Anthony Antico Real Estate LLC, as provided in the DECISION and subject to Procedural Findings and Findings of Facts and Conditions.

Decision date: August 26, 2013

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 6th day of September, 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 27th day of September, 2013

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

A TRUE COPY
ATTEST


City Clerk



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ORDERED:

DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 13-1005426C

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Sandra & Anthony Antico Real Estate LLC (the "Applicant Landlord") and Emad Guirguis d/b/a Hop N Jump (hereinafter "Applicant Tenant"), as provided in this Decision and subject to the following Findings of Facts and Conditions:

FINDINGS OF FACTS AND CONDITIONS

1. The Applicant Landlord is a duly organized and existing Massachusetts Limited Liability Company with its principal place of business located at 72 Jefferson Street, Marlborough, MA 01752. Applicant Tenant has duly filed his dba certificate with the City Clerk of the City of Marlborough to operate his business at the subject location.
2. The Applicant Landlord is the title owner of the property located at 72 Jefferson Street (the "Site"). Applicant Landlord and Applicant Tenant have executed or will execute a lease regarding Suite 103 at the Site, and its use pursuant to the terms of this special permit regarding Unit 103 at the Site.
3. The Applicants seeks permission to utilize Unit 103 as a commercial indoor recreation establishment and place of amusement.
4. The Applicant Landlord, on May 2, 2013, filed with the City Clerk of the City of Marlborough, an Application for a Special Permit under the provisions of §650-17 and pursuant to the procedures specified in §650-59 of the Marlborough Zoning Ordinance (the "Application"). Through a notice filed with the Urban Affairs Committee, Applicant Tenant was added as an Applicant.
5. The Site contains an existing commercial building as shown on the site plan submitted with the Application, said site plan entitled " 'Special Permit Plan,' Showing Existing Conditions at 72 Jefferson Street, Marlborough, Massachusetts, Date: April 25, 2013, Prepared by: Bibbo Brothers & Associates, 101 Hammer Street, Waltham, MA 02453, 1" = 20' " (the "Site Plan"), an 8½" x 11" version of which is attached hereto. No modifications are proposed to the exterior of the building, no structural modifications are proposed to the interior of the building, and no parking areas will be created or modified.



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6. The Applicants seek a special permit allowing the establishment of an indoor recreation area that will include various children's entertainment features for birthday parties and other special occasions, and for children who, accompanied by an adult, can take advantage of these same play features.

7. The Site Plan was certified by the Building Inspector, acting as the City Planner, 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.

8. Pursuant to the Rules and Regulations of the City Council and the provisions of M.G.L. c.40A, the City Council established a date for public hearing for the Application and the City Clerk caused to be advertised said date in the MetroWest Daily News and sent written notice of said hearing to those abutters entitled to notice under law.

9. The Marlborough City Council pursuant to M.G.L. c. 40A held a public hearing on June 17, 2013, concerning the Application. The hearing was opened and closed at that meeting.

10. The Applicants' attorney presented evidence at the public hearing detailing the proposed use and its limited impact upon City services, the neighborhood and traffic.

11. At the public hearing, Gihan Touson, who will be managing the operation of the business, and whose husband, Emad Guirguis, is the Applicant Tenant, described the proposed business as being one that would provide an indoor venue for children's birthday parties and for children who, accompanied by an adult, can take advantage of the proposed indoor play facilities. She indicated that the business would not include a child care component, and that all children using the facility would need to be accompanied by an adult to provide supervision. In response to questions from city councilors, she indicated that:

- a) the parties would be scheduled for weekdays and weekends
- b) no food would be prepared on the premises
- c) the facility would be open to the general public to provide indoor play space for children on a daily basis.
- d) all recreation would occur indoors.



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12. No member of the public spoke, either in favor or in opposition to the proposal.

13. Following the public hearing, the Urban Affairs Committee held meetings on June 24, 2013 and July 9, 2013 during which this Application was discussed. At those meetings, the parties discussed various issues and proposed permit conditions to deal with them.

REASONS FOR APPROVAL OF APPLICATION FOR SPECIAL PERMIT

A. The City Council finds that the Applicants have complied with all Rules and Regulations promulgated by the Marlborough City Council for an application as they pertain to the Special Permit.

B. The use of Unit 103 for an indoor recreation establishment and place of amusement is an appropriate use of the Unit 103-portion of the Site and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough, subject to appropriate terms and conditions provided for herein. The use sought and its impacts and characteristics are not in conflict with the public health, safety, convenience and welfare, provided the safeguards and limitations imposed herein are met.

C. The City Council, pursuant to its authority under M.G.L. c.40A, §9 and Chapter 650 of the Marlborough City Code, **GRANTS** the Applicants, their successors and assigns, a Special Permit to operate an indoor recreation establishment and place of amusement as per plans filed with the City Council and the City Clerk, **SUBJECT TO THE FOLLOWING CONDITIONS**, which shall be applicable to Applicants' successors and assigns, and a violation of which shall be a violation of this Special Permit:

1. Signage: Any signage installed or erected on the Site shall meet the requirements of the Sign Ordinance of the City of Marlborough, without variance.

2. Compliance with Local, State and Federal Laws: The Applicants agree to comply with all rules, regulations and ordinances of the City of Marlborough, Commonwealth of Massachusetts and the Federal Government as they may apply to the construction, maintenance, equipping and operation of the facility.



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3. Public Peace and Good Order: In the event that the Chief of Police determines that either the business of the Applicant Tenant is, or the clientele of the Applicant Tenant are, creating a condition that is contrary to public peace and good order, the Chief shall, in writing, notify the Applicant Tenant and demand corrective measures be put into effect within seven (7) days. Upon the failure or inability of the Applicant Tenant to correct such condition, the Police Chief may require the Applicant Tenant 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. Applicant Tenant shall obtain appropriate CORI information regarding all employees of Applicant Tenant, and shall keep said information available for inspection by local police upon request.

4. Hours of Operation: The hours of operation of the facility shall not be earlier than 8:00 AM or later than 9:00 PM on any day.

5. Limits of Use: The proposed use of the premises is to provide a place for birthday parties and other parties for children, and to otherwise provide an indoor play facility for children who are accompanied and supervised by an adult. No other kinds of public amusement shall be allowed on the premises except those ancillary to this use, including but not limited to object painting and clay art.

6. Food Preparation: No food will be prepared or handled on the premises unless and until the tenant at the premises has obtained any license or other approval deemed necessary by the Director of the Marlborough Health Department.

7. Certificate of Occupancy Required: No use of the premises will be made pursuant to this special permit unless and until a Certificate of Occupancy has been obtained from the Building Inspector regarding the change of use of the premises.

8. No Expansion of Use Area: Only the area of Unit 103, containing approximately 5,000 sq. ft, which has been specified in a sketch in the files of the Urban Affairs Committee, a copy of which is attached hereto, will be used for the proposed use. To the extent that a substantial increase in the area used for this use is desired, the Building Inspector shall determine whether such increase constitutes a substantial change of the permitted use, and if so, no such expansion shall be permitted unless and until this special permit has been modified by the City Council.



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9. Limitations on Use During Kelleher Field Events: The Applicant Tenant shall obtain information from the Marlborough Recreation Department to determine when Kelleher Field is being used for an event that is, in the opinion of the Recreation Director, a major sporting event. The Applicant Tenant shall not allow a party including more than 25 children to occur during the period beginning ½ hour before and ending ½ hour after the estimated time of said sporting event.

10. Subsequent Users: Before any successor tenant other uses Unit 103 for the uses allowed in this special permit, the Director of the Marlborough Health Department shall determine in writing that any permit required of Applicant Tenant, and any other permit determined by the Director to be necessary, has been obtained.

11. Required Approval regarding Sanitary Conditions: Prior to the beginning of operation of the business, the Director of the Marlborough Health Department shall determine in writing what, if any, special sanitary requirements are necessary in order to assure that the facility does not cause unusual health risks to those using the facility or to the public. The Director may later, in writing, amend and/or add to said requirements as he deems necessary. Such determination, and any such amendments and/or additions, shall be provided by the Director to the City Council. Any failure to comply with said sanitary requirements shall be a violation of this permit.

12. Maintenance Duties. Under the supervision of the Conservation Officer, the Applicant Landlord, its successors and assigns shall perform the following maintenance duties:

- a. Under the supervision of the Conservation Officer, the Applicant Landlord, its successors and assigns shall, at least once per month, from April 1 to November 1 of each year, maintain in perpetuity the portion of the Assabet River Rail Trail ("Rail Trail") to the extent it abuts 72 Jefferson Street ("the Building") and outward from the Building to a distance of three (3) feet on the other side (i.e., on the non-Building side) of the paved Rail Trail. Such maintenance shall include removal of all trash, debris, branches, leaves, etc.; mowing and trimming of all turf areas; pruning of trees; and the like.



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- b. Under the supervision of the Conservation Officer, the Applicant Landlord, its successors and assigns shall, after each storm event, maintain in perpetuity the drainage swale and the drain pipe located in the Rail Trail as that swale and pipe approach the catch basin in Hudson Street. Such maintenance shall include the removal of all trash, debris, branches, leaves, etc. that may serve to impede or otherwise interfere with the drainage flow of water in the Rail Trail as it approaches Hudson Street.

In performing the above maintenance duties, the Applicant Landlord, its successors and assigns shall hold harmless the City, its agents, officials and employees from any suits, claims, injury, liability, and costs arising from personal injuries and/or property damage sustained by or on behalf of Applicant Landlord, its successors and assigns.

13. Recordation: In accordance with the provisions of M.G.L. c.40A, §11, the Applicant Landlord shall, at its expense, record this Special Permit with 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 hearing being filed. The Applicant Landlord shall provide a copy of the recorded Special Permit to the City Clerk, the City Solicitor, and the Building Inspector.

Yea: 9 – Nay: 2

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

Nay: Clancy & Robey

Signed by City Council President
Patricia A. Pope

ADOPTED
In City Council
Order No. 13-1005426C