



IN CITY COUNCIL

Marlborough, Mass., OCTOBER 15, 2018

PAGE 1

ORDERED:

IN CITY COUNCIL

DECISION ON A SPECIAL PERMIT

Application of:
27 Jefferson LLC
Locus:
27 Jefferson Street, Marlborough, MA
Map 56, Parcels 160 & 173

DECISION ON A SPECIAL PERMIT ORDER NO. 18-1007245C

The City Council of the City of Marlborough hereby GRANTS the Application for a Special Permit to 27 Jefferson LLC (the "Applicant") to build and operate a multifamily building at 27 Jefferson Street, Marlborough, Massachusetts, as provided in this Decision and subject to the following Findings of Fact and Conditions.

FINDINGS OF FACT

1. The Applicant, 27 Jefferson, LLC, is a duly organized and existing Limited Liability Company having a business address of 110 Pleasant Street, Unit 100, Marlborough, MA 01752.
2. The Applicant is the prospective owner of the property located at 27 Jefferson Street, Marlborough, Massachusetts, as shown on Marlborough Assessors Map 56 as Parcels 160 and 173 (the "Site"). The Site's current owner is the Donald C. Morris Trust, with a business address of 1047 Pikes Falls Road, Jamaica, VT 05343.
3. In accordance with Article VI, Section 650-17 and Section 650-18(4), of the Zoning Ordinance of the City of Marlborough, the Applicant proposes to build and operate an 11-unit, 19,503± square foot multifamily condominium building with 24 underground parking spaces (the "Use").
4. The Site is located in the Residence B Zoning District with frontage on Jefferson Street.



IN CITY COUNCIL

Marlborough, Mass., _____ OCTOBER 15, 2018

PAGE 2

ORDERED:

5. The Site has an area of 44,613 square feet +/- as per the City Council Special Permit Site Plan referenced in paragraph 7 below.
6. The Applicant, by and through its counsel, filed with City Clerk of the City of Marlborough an Application for a Special Permit ("Application") for the Use, as provided in this Decision.
7. In connection with the Application, the Applicant submitted a certified list of abutters, filing fees, a detailed site plan entitled "City Council Special Permit Site Plan" prepared for 27 Jefferson LLC by Hancock Associates, 315 Elm Street, Marlborough, MA and dated February 8, 2018, last revised October 10, 2018 (the "Site Plan"), and a set of architectural plans entitled "Project: 27 Jefferson St. Residences" prepared by Khalsa Design, 17 Ivaloo Street, Somerville, MA and dated April 18, 2018 (collectively with the Site Plan, the "Plans").
8. The Application was 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.
9. 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 a public hearing on the Application and the City Clerk for the City of Marlborough caused notice of the same to advertised and determined that notice of the same was provided to abutters entitled thereto in accordance with applicable regulations and law.
10. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, opened a public hearing on the Application on Monday, June 18, 2018. The hearing was closed on that date. On August 27, 2018, the Applicant and the City Council agreed to extend the deadline for the Council to take final action on the Application to October 30, 2018.
11. The Applicant, through its representatives, presented testimony at the public hearing detailing the Use, describing its impact upon municipal services, the neighborhood, and traffic.
12. At the public hearing, two members of the public spoke in favor of the Use. No members of the public spoke in opposition to the Use. Further, the Applicant submitted a petition signed by nine residents of the neighborhood near the Site in favor of the Use



IN CITY COUNCIL

Marlborough, Mass., _____ OCTOBER 15, 2018

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 build and operate a multifamily building 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 is to 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, and ordinances as they may apply to the construction, maintenance, and operation of the Use.
 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., _____ OCTOBER 15, 2018

PAGE 4

ORDERED:

4. Modification of Plans. Notwithstanding conditions #1 and #3 above, the City Council or the Site Plan Review Committee may make engineering changes to the Plans, so long as said changes do not change the Use as approved herein, or materially increase the impervious area of the Use, 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. 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, 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.
6. Storm Water and Erosion Control Management. The Applicant, its successors and/or assigns, shall ensure that its site superintendent during construction of the project is competent in stormwater and erosion control management. This individual(s)' credentials 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 and 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.



IN CITY COUNCIL

Marlborough, Mass., _____ OCTOBER 15, 2018

PAGE 5

ORDERED:

7. Owner-Occupancy. It shall be a condition of the by-laws of the condominium association governing the Use that all units that are sold will be purchased by a person or persons who intend to reside in the units. The condominium documents shall provide for appropriate daily fines for the violation of this section of the condominium by-laws, and will provide that this section may not be amended. No occupancy permit regarding the Use shall be issued unless and until the City Solicitor has certified to the Building Commissioner that the condominium by-laws, along with the condominium master deed, have been recorded. The Applicant, including its successors and assigns, may, following the issuance of the occupancy permit for a particular unit but prior to the conveyance thereof to the purchaser of the unit, rent said units to tenants; provided, however, that:
- a. No said unit shall be or continue to be rented after the fifth anniversary of the date of issuance of the occupancy permit of said unit;
 - b. No unit shall be rented or continue to be rented after the seventh anniversary of the date of issuance of the first occupancy permit for the site;
 - c. An executed "rent to own" contract shall qualify the subject unit as owner-occupied, so long as transfer of title for that unit occurs within 36 months of the starting date of the rental agreement for that unit;
 - d. The Applicant, including its successors and assigns, shall continue to market the units as condominiums;
 - e. No sign at the Site shall market any units as being for rent; however "rent to own" signs are permissible so long as they are in compliance with City's sign ordinance without variance; and
 - f. No unit shall be rented to any person or persons for more than three years unless, prior to the expiration of those three years, said person or persons execute(s) a purchase and sale agreement.

The term "Applicant, its successors and assigns," as used herein and for purposes of this Condition 7, shall include Applicant, its successors and assigns, and any entity controlled by said entities, or controlled by the principal and/or principals of said entities.



IN CITY COUNCIL

Marlborough, Mass., OCTOBER 15, 2018

PAGE 6

ORDERED:

8. Conditions Relating to Neighboring Properties. The following conditions are based upon the Applicant's discussions and agreements with the owners of properties located in the neighborhood of the Site:
- a. 60 Highland Street (Parcel 56-166): The Applicant shall install a 6-foot high black chain link fence with evergreen-colored plastic slats along the boundary line of the Site adjacent to 60 Highland Street. This new fence shall be connected to the existing chain link fence located near the boundary line with 64 Highland Street.
 - b. 50 Highland Street (Parcel 56-165): The Applicant shall install a berm of up to 2 feet, if/where possible, and install a 6-foot high black chain link fence with evergreen-colored plastic slats along the boundary line of the Site adjacent to 50 Highland Street.
 - c. 44 Highland Street (Parcel 56-164): The Applicant shall install a 6-foot high black chain link fence with evergreen-colored plastic slats along the boundary line of the Site adjacent to 44 Highland Street. The Applicant, or the successor condominium association, shall maintain the Site in good order and, except as may be specifically authorized herein, shall not grant an easement over the Site to abutting properties.
 - d. 23 Jefferson Street (Parcel 56-161):
 - i. The Applicant shall plant and maintain a hedge along and at a reasonable distance from the retaining wall that will be located above the new driveway connecting Jefferson Street to the new building garage, said reasonable distance to be sufficient to allow for the convenient maintenance of the hedge when it has grown to its mature height. The hedge location and plant type shall be mutually agreeable to the Applicant and the owner of 23 Jefferson Street, and shall at the time of planting be approximately three (3) feet in height and shall be maintained so as to not exceed five to six (5-6) feet in height at mature growth, said hedge to be located in substantially the same location as identified on the Plans. During the course of construction, the grade of the area on which the hedge will be constructed will be raised, but not to a grade that is higher than the current grade of the property at 23 Jefferson Street. The area in question will be planted after the completion of construction, but prior to the conveyance to owner of 23 Jefferson Street of an easement (described below).



IN CITY COUNCIL

Marlborough, Mass., _____ OCTOBER 15, 2018

PAGE 7

ORDERED:

- ii. The Applicant shall, within 30 days after the issuance of an occupancy permit for the Use, grant an exclusive use permanent easement extending from the side of the hedge fronting 23 Jefferson Street to the mutual property line with the Site, in a form acceptable to the Applicant and the owner of 23 Jefferson Street. Said easement shall be recorded at the Middlesex South District Registry of Deeds, with the cost of the easement preparation to be at the expense of the Applicant and the cost of recording to be at the expense of the owner of 23 Jefferson Street.
 - iii. The Applicant shall take care not to disturb and damage the wall located in front of and on the 23 Jefferson Street property during the construction process, and to assure that, to the extent that any portion of said wall that is on the Site is moved or removed as part of the driveway construction, the corner of the wall on the 23 Jefferson Street property will be rebuilt so as to be aesthetically appropriate. If any portion of the wall in front of or on the 23 Jefferson Street property is disturbed or damaged by the Applicant during construction, the Applicant shall restore the wall to its prior condition.
9. Lighting. Standard downward-facing lighting shall be used, with little to no light leaving the Site.
10. Trash Pick-Up. Trash pick-up at the Site shall be once per week and conducted during business hours only.
11. Delivery and Service Trucks. Delivery and service trucks shall conduct business at the Site during business hours only.
12. Sidewalk Reconstruction. As Jefferson Street was recently reconstructed by the City, the Applicant, its successors and/or assigns, shall repair and/or reconstruct the existing bituminous concrete sidewalk and the roadway, where excavated and/or damaged as a result of site construction, by the methods and to the limits directed by the City Engineer and set forth in the Road Opening Permit for said construction.



IN CITY COUNCIL

Marlborough, Mass., _____ OCTOBER 15, 2018

PAGE 8

ORDERED:

13. **Emergency Access.** The Applicant, its successors and/or assigns, shall keep the perimeter walkway around the building free from snow and ice for purposes of accommodating emergency access. Walkways shall be construction using materials acceptable to the Fire Chief. The Applicant, its successors and/or assigns, shall keep the driveway area clear of vehicles and obstructions in order to accommodate emergency access, and shall impose any parking/towing restrictions deemed necessary by the Traffic Commission and/or Fire Department.
14. **Notice to Residents Regarding Kelleher Field.** The Applicant, its successors and/or assigns, shall stipulate in the bylaws governing the Use an acknowledgement that residents will be living in a building adjacent to an active recreational facility, Kelleher Field, which is often used seven days per week.
15. **Payment to Recreation Department.** Prior to obtaining a building permit for the Use, the Applicant, its successors and/or assigns, shall make a payment in the amount of Fifteen Thousand Dollars (\$15,000) to the City's Recreation Department to be used for Kelleher Field.
16. **Retaining Wall Easement.** In the event that the City Council votes to assign to Applicant, its successors and/or assigns, the City's rights in an easement pertaining to an existing retaining wall situated along Jefferson Street on land described as Marlborough Assessors Map 56, Parcel 160 (27 Jefferson Street), Parcel 161 (23 Jefferson Street) and Parcel 162 (30 Highland Street), which easement is recorded at the Middlesex (South District) Registry of Deeds in Book 6397, Page 83, the Applicant, its successors and/or assigns, shall at its sole expense:
 - a. perform any and all work in the future for the purposes of reconstructing, relocating, maintaining and/or repairing the retaining wall; and
 - b. record the City's assignment at the Registry, with a copy of the recorded assignment provided to the City Council's office, the Engineering Division of the Department of Public Works, and the Legal Department.
17. **Recording of Decision.** In accordance with the provisions of Massachusetts General Laws, Chapter 40A, Section 11, the 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 the Applicant has applied to the Building Commissioner for a building permit. Upon recording, the Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office, the Building Department, and the City Solicitor's office.



IN CITY COUNCIL

Marlborough, Mass., OCTOBER 15, 2018

PAGE 9

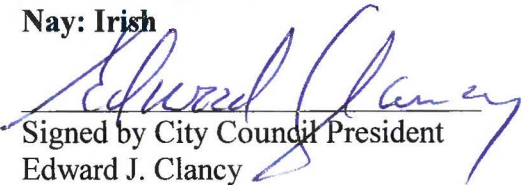
ORDERED:

Yea: 9 – Nay: 1 – Abstain - 1

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

Abstain: Dumais

Nay: Irish


Signed by City Council President
Edward J. Clancy

ADOPTED
In City Council
18-1007245C