



IN CITY COUNCIL

NOVEMBER 8, 2010

Marlborough, Mass.,

ORDERED:

Suspension of the Rules requested - granted

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

In City Council
Order No. 10-1002645A

Application of:
Fore Kick II, Inc.
190 Rolling Meadow Dr.
Holliston, MA 01746

Locus:
219 Forest St.
Map 90, Parcel 2

DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 10-1002645A

The City Council of the City of Marlborough hereby **GRANTS** the application of Fore Kicks II, Inc. as provided in the **DECISION** and subject to the following Procedural Findings and Findings of Facts and Conditions.

Decision filed: November 18, 2010

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 18th day of November, 2010.

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 9th day of December, 2010.

Given under Chapter 40A sec. 11 of the General Laws.

A TRUE COPY
ATTEST:

A handwritten signature in black ink, appearing to read "Lisa M. Spina", written over a horizontal line.

City Clerk



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6. The Application filed with the City Clerk on July 23, 2010 consisted of the following: (a) Application Fee in the amount of \$500.00; (b) three (3) original copies of the Application for Amendment to Special Permit # 07-1001465D; (c) Certification of Delivery of copies of application to City of Marlborough Departments and Office of the City Council; (d) Certification of Payment of Municipal Taxes; (e) Application outlining the project; (f) Special Permit Application Certification by Planning Department; (g) Certified copies of Abutters' Lists; (h) Special Permit-Summary Impact Statement; (collectively the "Documents"). Twelve sets of Documents were delivered to the City Council and one set each to the Police Chief, the Fire Chief, the City Planner, the Building Inspector, the City Engineer and the Conservation Officer, all in accordance with Chapter 650, Article VII Section 200-59 of the Zoning Code of the City of Marlborough. The documents are incorporated herein and become part of this Decision.
7. The Applicant filed with the Application a Certificate of Completeness of Application on a form signed on behalf of the City Planner for the City of Marlborough as having complied with the provisions of Chapter 650 (Zoning Code) Article VII Section 650-59, C. (7) (a), (b), and (c).
8. In accordance with the Rules and Regulations of the City Council and Massachusetts General Laws Chapter 40A Sections 9 and 11, the City Council established September 13, 2010 at 8:00 PM as a date and time for a public hearing on the Application, caused a notice of said hearing and the date thereof to be advertised on August 23, 2010 and August 30, 2010 in the Metrowest Daily News and caused said notice to be mailed to those entitled thereto. Proof of advertisement and mailing were submitted to the City Clerk to be placed with the Application documents.
9. The Marlborough City Council held a public hearing on the Application on September 13, 2010 at 8:00 PM in accordance with the published notice, (the Public Hearing). The hearing was opened and closed on said date.



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10. At the public hearing, the Applicant presented a slide presentation showing the area in the building known as the Kick Back Club. The slides showed the area where the service bar would be located and the area where the beer and wine would be consumed. Applicant gave testimony through its attorney that the ability to serve beer and wine would increase the applicant's competitiveness with other similar facilities in the area; that it would attract more men's leagues, company and corporate functions, private functions, such as adult birthday parties, bar Mitzvahs, and fundraising events to support youth and adult athletic leagues and other private fundraising functions; and that it would allow the Applicant to be more competitive in attracting local, regional and national events, resulting in the use by participants of the local hospitality facilities, such as hotels and restaurants. Members of the public had the opportunity to testify at the public hearing. Some members of the public spoke in favor of the granting of the Permit and others spoke against. There were letters and e-mails in support of the granting of the Permit and e-mails in opposition to Application.

BASED UPON THE ABOVE THE CITY COUNCIL OF THE CITY OF MARLBOROUGH MAKES THE FOLLOWING FINDINGS AND CONDITIONS:

- A. The City Council finds that it may amend Special Permit # 07-1001465D (Special Permit) subject to terms and conditions as it deems necessary and reasonable to protect the citizens of the City of Marlborough.
- B. The City Council finds the Application for Amendment to Special Permit does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough or Massachusetts General Laws Chapter 40A, et. seq.
- C. The City Council finds that the proposed use of the Site for the limited sale of beer and wine is an appropriate use and is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Marlborough.
- D. The Applicant has complied with all the procedural rules and regulations of the City Council of the City of Marlborough, Chapter 650 (Zoning Code) of the City of Marlborough and Massachusetts General Laws Chapter 40A Sections 9 and 11.



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GRANT OF AMENDMENT TO SPECIAL PERMIT

- E. The City Council of the City of Marlborough pursuant to its authority under Chapter 650 (Zoning Code) of the Code of the City of Marlborough and Massachusetts General Laws Chapter 40A, GRANTS to the Applicant an Amendment to Special Permit # 07-1001465D to allow the serving and consumption of alcoholic beer and wine. as set forth in the Application and subject to the following conditions:
1. The Special Permit # 07-1001465D is hereby affirmed, is deemed to be in full force and effect and applies to the Project without change or modification, except as provided for herein.
 2. Unless modified by the provisions hereof, conditions 1 through 18 and conditions 20 through 54 outlined in the Special Permit shall apply to the Project. Where reference is made to the issuance of the Special Permit, it shall also refer to the issuance of the Amended Special Permit.
 3. Condition 19 of the Special Permit shall be deleted in its entirety and in place thereof the following shall be inserted:
 19. **Serving of Alcoholic Beverages.** A. (a) During the period of time from the granting of the Amendment to Special Permit # 07-1001465D to August 31, 2011, Applicant may serve beer and wine on no more than 25 days, all in accordance with the terms and conditions in B. (a) through (j) hereof. (b) Each day the Applicant intends to serve beer and wine during said period, Applicant shall notify the Zoning Code Enforcing Authority of the intent to serve on that particular day. Prior to September 1, 2011, the City Council reserves the right to review the amended special permit allowing the serving of alcoholic beverages. (c) So long as there is no violation of Massachusetts General Laws Chapter 138 ALCOHOLIC LIQUORS, the City of Marlborough Licensing Board Rules and Regulations or Section 19 of this Grant of Amendment to Special Permit, and the Chief of Police and the Zoning Code Enforcing Authority state in writing that there has been no violation prior to September 1, 2011, then, on and after September 1, 2011, Applicant may serve beer and wine on any day in the Kick Back Club in accordance with the terms and



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conditions of this Grant of Amendment to Special Permit. B. Alcoholic beverages consisting of beer and wine only may be served by the Applicant to be consumed on the Site and only in the area on the second floor of the building designated as Kick Back Club under the following terms and conditions: (a) Alcoholic beverages may only be served in the Kick Back Club; (b) There shall be no bar facilities for patron seating. All seating shall be at tables in the Kick Back Club area; (c) No alcoholic beverages are allowed to be taken out of the Kick Back Club; (d) No alcoholic beverages are allowed to be served outside of the Kick Back Club; (e) The serving of alcoholic beverages shall be limited to the hours of 4:00 PM to 11:30 PM Monday through Sunday; (f) For special events and catered functions Applicant may serve beer and wine between the hours of 12:00 noon and 11:30 PM. Special Events are private events, such as a birthday party, a bar mitzvah, a fund raiser or other social functions which are held in the Kick Back Club; (g) Food such as snacks, hot dogs, sandwiches and pizza shall be available for purchase in the Kick Back Club during the time that beer and wine is served; (h) Alcoholic beverages shall not be served one half hour before, during and one half hour after public school or private school games. (i) No alcoholic beverages may be consumed at any time in any area outside of the permitted area, including but not limited to the parking lots; (j) The Applicant has provided the City Council with its Alcohol Policy Handbook; and the Applicant shall implement the policy and performance of the policy as a condition of the Amended Permit.

4. In accordance with the provisions of Mass. Gen. Laws c. 40A, § 11, the Applicant at its expense shall record this Amendment to 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. Upon said recording, Applicant shall forthwith provide a copy of the recorded Special Permit to the City Council's office and to the City Solicitor's office.



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5. The issuance of the Amended Special Permit is further subject to the issuance of a Beer and Wine License by the City of Marlborough Licensing Board with the approval of the Commonwealth of Massachusetts Alcoholic Beverages Control Commission.

Yea: 9- Nay: 0

Yea: Delano, Ferro, Tunnera, Seymour, Landers, Ossing, Pope, Vigeant, Levy

Elder and Clancy abstained

A handwritten signature in cursive script, appearing to read "Arthur G. Vigeant", is written over a horizontal line.

Signed by City Council President
Arthur G. Vigeant

ADOPTED
In City Council
Order No. 10-1002645A