



IN CITY COUNCIL

Marlborough, Mass., NOVEMBER 28, 2016

ORDERED:

DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

Special Permit Application of:
Apex WR 1031 LLC/Walker Realty LLC
4 Lan Drive
Westford, MA 01886
Order No. 16-1006632D

Locus:
157 Apex Drive
Assessors Map 78, Parcels 12, 14, 38, 39
Assessors Map 89, Parcel 77

DECISION

The City Council of the City of Marlborough hereby GRANTS the Application of Apex WR 1031, LLC/Walker Realty, LLC, having a mailing address of 4 Lan Drive, Westford, MA 01886 as provided in the DECISION and subject to Procedural Findings and Findings of Facts and Conditions.

Decision date: November 28, 2016.

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 2nd day of December, 2016,

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 23RD day of December, 2016.

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

A TRUE COPY
ATTEST


City Clerk



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ORDERED:

DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

Special Permit
Ryan Development LLC
Order No. 16-1006632D

DECISION ON AN APPLICATION FOR SPECIAL PERMIT CITY COUNCIL ORDER NO. 16-1006632D

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Walker Realty LLC, its successors and assigns (the "Applicant") to build a third restaurant with a drive-through in the Hospitality and Recreation Mixed Use Overlay District (the "HRMUOD") located at 157 Apex Drive, Marlborough, Massachusetts, as provided in this Decision and subject to the following Procedural Findings and Findings of Facts and Conditions.

FINDINGS OF FACT & RULINGS

1. Applicant, is a duly organized and existing Limited Liability Company having a business address of 4 Lan Drive, Westford, Massachusetts 01886.
2. Apex WR 1031 LLC is the owner of the property located at 22 Apex Drive, Marlborough, Massachusetts, as shown on the Marlborough Assessors Maps as Map 78, Parcels 12, 14, 38 and 39, and Map 89, Parcel 7 (the "Site").
3. The Applicant proposes to build and operate a third restaurant with a drive-through at the Site (the "Use") as part of the larger Apex Center development (the "Project").
4. The Site is located in the HRMUOD, following the City Council's approval of a Master Concept Plan for the Project (See Order No. 16-1006443G-1), approval of the Development Agreement for the Project (See Order No. 16-1006443G-2), and the Owner's acquisition of the Site (See deed recorded in the Middlesex South District Registry of Deeds in Book 67444, Page 575).
5. The Applicant, by and through its counsel, filed with City Clerk of the City of Marlborough an application for a special permit for the third restaurant with a drive-through at Apex Center, as provided in this Decision and subject to the following.



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6. In connection with the Application, the Applicant has submitted a certified list of abutters, filing fees, and a detailed site plan entitled "157 Apex Drive Building Pad and Site Plan" prepared by Hancock Associates and dated August 2, 2016, last revised September 15, 2016 (the "Plans").
7. 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.
8. 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.
9. The Marlborough City Council, pursuant to Massachusetts General Laws, Chapter 40A, held a public hearing on the application on Monday, September 12, 2016. The hearing was opened and closed on that date.
10. The Applicant, through its representatives, presented testimony at the public hearing detailing the Project, describing its impact upon municipal services, the neighborhood, and traffic.

**BASED UPON THE ABOVE, THE CITY COUNCIL MAKES THE
FOLLOWING FINDINGS OF FACT 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.



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ORDERED:

- 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 restaurant with a drive-through in the Hospitality and Recreation Mixed Use Overlay District 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 Project.
 3. Site Plan Review. The issuance of the Special Permit is further subject to that certain Site Plan Review Decision issued on November 2, 2016 for the overall Project, which Site Plan Review Decision was issued in accordance with the HRMUOD Ordinance and the City of Marlborough Site Plan Review Ordinance.
 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 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 (if any), all as shown on the Plans.
 5. Incorporation of Submission. All plans, photo and other 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.



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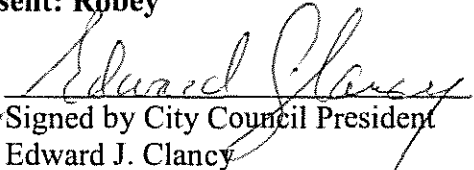
ORDERED:

6. Rendering. The City Council expressly approves the appearance of the building design for the Use, illustrated in the form of an architectural rendering by Upland Architects, dated 9.7.2016 (the "Rendering"), which is herein incorporated into and becomes a part of this Special Permit and which becomes a condition and requirement of the same, unless otherwise altered by the City Council, except that minor alterations substantially consistent with the Rendering may be granted by the Building Commissioner, pursuant to paragraph 2. of section L. of §650-35 (HRMUOD) of the City Zoning Code, in the Building Commissioner's reasonable discretion.
7. Change of Operator. The Applicant intends that the operator of the drive-through will be Friendly's Restaurant, or an equivalent or similar type of food service establishment. For so long as Apex Drive remains a private way, a type of food service establishment equivalent or similar to Friendly's Restaurant may operate the drive-through without an amendment to this Special Permit provided that the Building Commissioner, in his reasonable discretion, determines that (i) the proposed new type of food service establishment is not likely to generate significantly greater drive-through traffic volumes, or (ii) in the event that the Building Commissioner, in his reasonable discretion, determines that the proposed new type of food service establishment is likely to generate significantly greater drive-through traffic volumes as provided in (i) above, the Site Plan Committee or its successor, through a Site Plan Approval decision may, in the Site Plan Committee's reasonable discretion, impose reasonable site and/or layout modification conditions to ensure safe drive-through operations.
8. 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. 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

Yea: Clancy, Delano, Doucette, Elder, Tunnera, Irish, Landers, Juair, Oram, Ossing.

Absent: Robey


Signed by City Council President
Edward J. Clancy

ADOPTED
In City Council
16-1006632D