



IN CITY COUNCIL

Marlborough, Mass., DECEMBER 19, 2016

ORDERED:

DECISION FOR SPECIAL PERMIT IN CITY COUNCIL

NOTICE OF DECISION GRANT OF SPECIAL PERMIT

Special Permit Application of:
Ryan Development LLC
4 Lan Dr.
Westford, MA 01886
Order No. 16-1006635C

Locus:
22 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 Ryan Development, LLC, having a mailing address of 4 Lan Dr., Westford, MA 01866 as provided in the DECISION and subject to Procedural Findings and Findings of Facts and Conditions.

Decision date: December 19, 2016.

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on the 3RD day of January, 2017.

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 24TH day of January, 2017.

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

A TRUE COPY
ATTEST

City Clerk



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ORDERED:

DECISION ON A SPECIAL PERMIT

IN CITY COUNCIL

Special Permit
Ryan Development LLC
Order No. 16-1006635C

DECISION ON A SPECIAL PERMIT CITY COUNCIL ORDER NO. 16-1006635C

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Ryan Development LLC (the "Applicant") to build and operate a car wash in Zone B of the Water Supply Protection District located at 22 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 AND RULING

1. The 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 new car wash facility at the Site (the "Use") as part of the larger Apex Center development (the "Project").
4. The Site is located in the Hospitality and Recreation Mixed Use Overlay District (HRMUOD), following the City Council's approval of a Master Concept Plan for the Project (Order No. 16-1006443G-1), approval of the Development Agreement for the Project (Order No. 16-1006443G-2), and the Owner's acquisition of the Site (deed recorded at the Middlesex South District Registry of Deeds in Book 67444, Page 575).
5. The Site is also located in Zone B of the Water Supply Protection District (WSPD).



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6. The Applicant, by and through its counsel, filed with City Clerk of the City of Marlborough an application for a special permit for the Use in Zone B of the WSPD as provided in this Decision and subject to the following.
7. In connection with the Application, the Applicant has submitted a certified list of abutters, filing fees, and a detailed site plan entitled "22 Apex Drive Building Pad and Site Plan" prepared by Hancock Associates and dated May 16, 2014, last revised August 10, 2016 (the "Plans").
8. 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.
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 be 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, held a public hearing on the application on Monday, August 29, 2016. The hearing was opened and closed on that date.
11. 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 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.



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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 to the Applicant a Special Permit to build and operate a car wash in Zone B of the Water Supply Protection 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 shall 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, or increase the size, shape or position of the building, 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.



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6. Disposal of Chemicals Containers. No container that has been used for the storage of chemicals which are used in the carwash process will be disposed of in the dumpster located on the Site.

7. Hazardous Materials Spill Containment. Protection against toxic or hazardous material discharge or loss through corrosion, accidental damage, spillage or vandalism shall be provided. Such protection shall include provisions for spill control in the vicinity of chemical delivery points and shall include secure storage provisions for corrodible or dissolvable materials. Secondary containment structures must be provided which are large enough to contain the volume of the containers total storage capacity per local Fire Department requirements.

8. Emergency response. A spill prevention, control and countermeasure plan to prevent contamination of soil and water in the event of accidental spills or the release of materials shall be reviewed by the Fire Department. Compliance with recommendations of the Fire Department on said plan shall be required.

9. Sewer Discharge. The Applicant shall utilize some recycling of water (approximately 25% of their water usage) to reduce sewer discharge from the car wash. Prior to the issuance of a building permit, the Applicant shall review with the Assistant Commissioner of Utilities, Marlborough Public Works Department, the final process design and the need to apply for an Industrial Waste Discharge Permit for the proposed discharge.

10. Water Use - Well. The Applicant has proposed to drill a well to partially service the car wash to reduce the need for City water for this facility. Therefore, the following steps are necessary:

- a. Prior to the issuance of a building permit, the Applicant will provide a report on the well construction. The report shall indicate flow capacity and construction details of the well and its connection to the car wash system.
- b. The well report shall also confirm to the Board of Health Agent, the Conservation Officer, and the City Engineer that the well is deep enough so as not to interfere with surface water in the adjacent wetlands, or the supply of water to the Millham Reservoir.
- c. The well must be located outside of the Floodplain and Wetlands Protection District, and must be properly sealed to prevent potential contamination from entering the aquifer.



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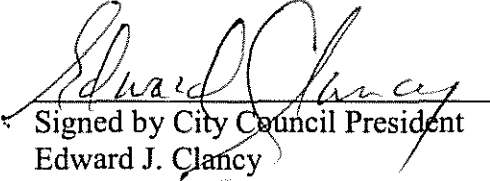
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- d. Any sinks located in restroom facilities or wash rooms which are for the use of car wash employees or employees of the Applicant, and which restroom facilities or wash rooms are located within the subject car wash building, must be serviced by potable water, and not well water, as per Board of Health requirements.
11. Storage of Flammables Prohibited. No flammable materials except those, like diesel and oil, that may be used to heat the premises, will be stored at the site.
12. Activity Prohibition in Zone A. No activity that is accessory to a carwash, including but not limited to the pre-washing of cars, will be allowed in Zone A.
13. Compliance with Related Special Permit. The Applicant has also applied for a special permit for the Use in the HRMUOD (Order No. 16-1006634). Any conditions attached to the approval of that special permit are also incorporated herein and made a part hereof.
14. Recording of Decision. In accordance with the provisions of M.G.L. c. 40A, § 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.

Yea: 11 – Nay: 0

Yea: Clancy, Delano, Doucette, Elder, Tunnera, Irish, Landers, Juaire, Oram, Ossing & Robey.


Signed by City Council President
Edward J. Clancy

ADOPTED
In City Council
16-1006635C