

CITY OF MARLBOROUGH MEETING POSTING

Meeting Name: City Council Urban Affairs Committee

Date: November 22, 2011

Time: 5:00 PM

Location: City Council Chamber, 2nd Floor, City Hall

RECEIVED
CITY CLERK'S OFFICE
CITY OF MARLBOROUGH

2011 NOV 18 P 3 51

Agenda Items to be addressed:

8-1-11 – ORDER #11-1002985

Communication from City Councilor Robert J. Tunnera on behalf of his constituent, Attorney Arthur Bergeron, to amend the Code of the City of Marlborough, Zoning, Chapter 650-26 (A)(1)(a) Affordable Housing and Affordable Housing Units. The current requirement is that 15 percent of the units in any project of 20 units or more be affordable, without giving any definition of affordability. The revised section would require that, instead, 15 percent of the units be counted in the Subsidized Housing Inventory that the State uses in figuring out whether a community has met its 10 percent requirement under Chapter 40B, the Comprehensive Permit Law.

-REFER TO URBAN AFFAIRS AND PLANNING BOARD

PUBLIC HEARING: SEPTEMBER 12, 2011

Note: See City Council Regular Meeting Agenda Item #9 for Planning Board Recommendation

Continued Review:

8-1-11 – ORDER #11-1002986

Application for Special Permit from Atty. Arthur Bergeron for Marlborough/Northborough Land Realty Trust (Gutierrez) to construct a development consisting of 5 multi-family residential buildings with clubhouse, containing a total of 290 units on Rte 20, Map78, Lots 12, 14, 38 & 39

-REFER TO URBAN AFFAIRS

PUBLIC HEARING: SEPTEMBER 26, 2011

THE LISTING OF TOPICS THAT THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING IS NOT INTENDED AS A GUARANTEE OF THE TOPICS THAT WILL HAVE BEEN DISCUSSED. NOT ALL TOPICS LISTED MAY IN FACT BE DISCUSSED, AND OTHER TOPICS NOT LISTED MAY ALSO BE BROUGHT UP FOR DISCUSSION TO THE EXTENT PERMITTED BY LAW.

That the PUBLIC HEARING On the communication from Councilor Tunnera that the Zoning Ordinance of the City of Marlborough be amended by deleting Section 650-26(A)(1)(a) of the City Code as presently written and inserting in place thereof the following:

(a) Affordable Housing and Affordable Housing Units. The term “affordable housing” shall refer to “affordable housing units”. The term “affordable housing units” shall mean those units of housing that are countable in the so-called Subsidized Housing Inventory (SHI) or any subsequent housing inventory used by the Department of Housing and Community Development of the Commonwealth of Massachusetts to determine the number of housing units in a community that are countable in meeting the City’s obligation to maintain at least 10% of the total number of housing units in the city as affordable pursuant to Massachusetts General Laws Chapter 40B sections 20-23. Any development subject to this section shall provide that at least 15% of the housing units to be constructed are countable as affordable housing units in the SHI, or a sum not less than the amount necessary, in the opinion of the city council pursuant to the special permit process, to cause the construction of said number of affordable housing units shall be paid to the Marlborough Community Development Authority at such time as the City Council shall determine, Order No. 11-1002985, hearing recessed at 8:15 p.m.

Councilors Present: Vigeant, Pope, Levy, Delano, Ferro, Elder, Tunnera, Seymour, Clancy & Landers. Absent: Ossing

FAVOR: Attorney Bergeron thanked Councilor Tunnera for filing the Zoning amendment request on his behalf. He noted that he has represented a number of developers. Arthur had previously discussed this proposed zoning change with some Councilors. The current affordable housing section of the Zoning Ordinance was passed in 1992. It requires that any new multifamily property which is composed of twenty or more units must have at least 15% designated as affordable units. As an alternative to providing those affordable units, a developer can build the units off site. The proposed changes are relative to section S650 -26(A)(1)(a) of the City Code. The change would define affordable as a unit which would otherwise be countable in Subsidized Housing Inventory (SHI) which is maintained by the Department of Housing and Community Development (DHCD). SHI is the number which provides the percentage that allows you to determine whether or not your City has 10% or more housing units. Attorney Bergeron noted that within a few weeks he will be presenting a proposal from the Gutierrez Co. by which they plan on building the affordable units offsite in a standalone 60 unit building under the comprehensive permit law of which 25% of the units will be affordable. According to the new Federal Census numbers, Marlborough may dip below the 10% threshold.

This 60 unit proposal will put Marlborough the above 10% guidelines for the next ten years until the 2020 census is completed. Arthur then discussed the second portion of the proposed changes of which he again alluded to having discussion with some Councilors. As it currently reads, a developer can build affordable housing on or off site. A sensible alternative would be to allow City Council, as a condition of a Special Permit, to determine the cost to build the number of SHI off site and impose the cost upon the developer as opposed to building the affordable housing units.

QUESTIONS FROM THE PUBLIC:

Katie Robey, 97 Hudson St., questioned the difference between a Special Permit and Comprehensive Permit.

- ✓ Attorney Bergeron stated that if a developer files a Comprehensive Permit for construction of rental units as opposed to "for sale" units then under the DHCD regulations, 100% of these units are counted against the SHI, even though only 25% have to be affordable. This is provided as an incentive for rental housing construction pursuant to Chapter 40B.

OPPOSED:

There was no one that was opposed.

QUESTIONS FROM THE CITY COUNCILORS:

Councilor Pope declared that Marlborough is one of the communities that met the 10% threshold. Her concern is for development off site as the developers would have to purchase the property.

(IN URBAN AFFAIRS COMMITTEE)

ADOPTED

ORDER NO. 11-1002985A

*Proposed
decision from
Atty. Bergenon*

**In City Council
Marlborough, Massachusetts
November , 2011
Decision on a Special Permit Application**

The City Council of the City of Marlborough hereby GRANTS the application for a Special Permit to Marlborough/Northborough Land Realty Trust, a Massachusetts, having a mailing address c/o The Gutierrez Company, 1 Wall Street, Burlington, MA, pursuant to this decision and subject to the following Findings of Facts and Conditions.

1. Marlborough/ Northborough Land realty Trust, which has a mailing address of 1 Wall Street, Burlington, MA 01803, is herein referred to as Applicant.
2. Applicant is the owner of certain real property located at Boston Post Road West, Marlborough, MA, as shown on the Marlborough Assessors Maps as Map 78, Parcels 12, 14, 38 and 39 (hereinafter, " the premises") . The property is entirely located in a Business Zone, and is vacant.
3. The Applicant, on or about July 28, 2011, filed with the City Clerk of the City of Marlborough an application for a Special Permit under the provisions of Mass. Gen. Laws c. 40A, §6 and Marlborough Zoning Ordinance Article IV, § 650-16, 650-17 and 650-18. Applicant intends to construct on the property 290 residential apartment units in 5 buildings, together with a related ancillary clubhouse building (hereinafter "the Project")
4. In connection with the permit application, Applicant filed a Summary Impact Statement, certified list of abutters, filing fee and twenty-three (23) copies of the Site Plan.
5. The Site Plan was certified by the Acting City Planner for the City of Marlborough as having complied with Marlborough Zoning Ordinance Article VIII, § 650-59, Paragraph 7.
6. Pursuant to the Rules and Regulations of the City Council and applicable statutes of the Commonwealth of Massachusetts, the City Council established a date for a public hearing for the permit application and the City Clerk caused to be advertised said date in the Metrowest Daily News and sent notice of said hearing to abutters entitled to notice under law.
7. The Marlborough City Council, pursuant to Mass. Gen. Laws c. 40A, held a public hearing on September 26, 2011, concerning the said application. The hearing was opened and closed at that meeting.
8. Applicant presented testimony at the public hearing detailing the application. Applicant explained that the ingress/egress for the project would be on Boston Post Road, and that there would be a gated emergency access from Glen Street. Applicant indicated that the apartment units would be approximately 50% 2-bedroom and 50% 1-bedroom units, and that the market for these units would be primarily young professionals working in Marlborough office buildings. Applicant offered as a part of a mitigation package for the construction of the apartment units to alleviate the serious drainage problems that exists on several streets, including

Ripley Avenue, Hurley Circle and Conrad Road, by constructing a drainage structure that would divert the water from Millham Brook, which now floods these areas during major rain events, and carry it through the neighborhood to Applicant's property. Applicant would then provide sufficient drainage detention on its property to prevent further flooding downstream. Several neighbors spoke in opposition to the project, voicing concerns that the project would be visually unappealing and might increase traffic in their neighborhood. All comments by those attending the City Council public hearing have been duly considered in making this decision.

9. Applicant provided further written and oral documentation to the City Council's Urban Affairs Committee regarding the impacts of the proposed project, and proposed building and related site modifications, in the course of the Urban Affairs Committee meetings that occurred on October __, 2011 and _____.

BASED UPON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING FINDINGS OF FACT AND TAKES THE FOLLOWING ACTIONS:

A) The City Council finds that Applicant has complied with all the Rules and Regulations promulgated by the Marlborough City Council as they pertain to the Application.

B) The City Council finds that the proposed use of the site, subject to the conditions imposed below, will not be in conflict with the public health, safety, convenience and welfare and will not be detrimental or offensive. Further, the City Council finds that the mitigation being proposed by Applicants will substantially improve the neighborhood by reducing the likelihood of flooding in portions of the Glen Street neighborhood.

C) The City Council, pursuant to its authority under Mass. Gen. Laws c. 40A, § 6 and under Article IV, § 650-12, Paragraph B of the Marlborough Zoning Ordinance, GRANTS the Applicant a Special Permit to alter the pre-existing non-conforming use of the premises as specified in the plans referred to below (the "Project"), SUBJECT TO THE FOLLOWING CONDITIONS:

1. Compliance With Building Regulations. Construction and modification of all structures on the site is to be in accordance with all applicable building codes in effect in the City of Marlborough and Commonwealth of Massachusetts. The Project shall be constructed, maintained and operated according to the specifications, terms, and conditions of the Applicant's Special Permit Application and Site Plan. The Site Plan referred to in this condition is the 42 page set of plans entitled "Beacon @495 Residential/Retail Development" dated and last revised July 28, 2011, by Allen & Major Associates, Inc., filed with the Special Permit Application, as amended during the application/hearing process before the City Council and/or the City Council's Urban Affairs Committee. All other terms, conditions, requirements, approvals, drawings, and renderings required hereunder are made a part of and incorporated herein as a condition of the issuance of this Special Permit.

2. Compliance With Site Plan Review. The issuance of the Special Permit is further subject to detailed Site Plan Review, in accordance with the City of Marlborough Ordinance, prior to the issuance of the actual Building Permit. Any additional changes, alterations, modifications or amendments as required by Site Plan Review shall be further conditions

attached to the Special Permit and no Occupancy Permit shall be issued until the Applicant complies with all conditions. Subsequent Site Plan Review shall be consistent with the Conditions of this Special Permit and Plans submitted, reviewed and approved by the City Council as the Special Permit granting authority. Any changes to the plans which alter the traffic patterns within the site, require the removal of landscaping, or reduce the overall green space of the Project by more than 10% will require subsequent approval by the City Council.

3. Application and Documents. All plans, drawings, site evaluations, and documentation provided by the Applicant as part of this Special Permit Application are herein incorporated into and become a part of this Special Permit and become conditions and requirements of the same.

4. Compliance with Local, State and Federal Laws. The Applicant agrees 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, and operation of Applicant's facility, except pursuant to the terms of this Special Permit.

5. Incorporation of Plans and Drawings. All terms, conditions, requirements, approvals, plans, and drawings provided by the Applicant as part of this Special Permit Application and as amended during the application hearing process before the City Council and/or the City Council's Urban Affairs Committee are herein incorporated into and become part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council. The Site Plan referred to in this condition is the site plan referred to in Condition #1 above.

6. Improvements Installed Prior to Certificate of Occupancy. All site improvements that have been shown in renderings and/or are conditions of this Special Permit will be installed prior to the issuance of any temporary or permanent occupancy certificate; provided that if all work is completed between October 1st of one year and June 1st of the following year, all landscaping plants will be required to be installed by June 1st of that following year. Applicant agrees that the permanent maintenance of the landscaping and the other site improvements is an ongoing condition of this Special Permit.

8. No Modifications to Driveway Entrances. If any modifications are made to the driveway entrances and exits as shown on the Site Plan that in any way alter the traffic flows as represented in the final revision of the Site Plan submitted to the City Council as part of the Special Permit Application, and as revised during the Special Permit approval process, the Applicant shall return to the City Council for approval of these modifications to the Special Permit. Applicant shall apply for and obtain all necessary permits from the necessary parties.

9. Catch Basins. All catch basins shall be installed in accordance with the plans submitted to the City Council and/or the City Council's Urban Affairs Committee. The catch basins shall be monitored by the Applicant on a semi-annual basis with reports given to the City Engineer. The catch basins are to be cleaned annually, or at more frequent intervals, by the Applicant as determined necessary by the City Engineer.

10. Maintenance of Parking Areas. Parking areas will be swept and maintained as necessary. Pursuant to the provisions of Mass. Gen. Laws c. 90, § 18, the Applicant shall submit a written request and grant of authority to the Marlborough Traffic Commission (the "Commission") to promulgate legally enforceable rules and regulations for the control of on-site traffic and parking. Applicant shall be responsible for providing, installing, and maintaining all signage or markings required by the Commission. Such signage or markings shall meet the standards of the Manual of Uniform Traffic Control Devices. Signs demarcating compact spaces shall not detract from the "streetscape" established for the project as requested during Site Plan Review.

11. Compliance of Signs with Sign Ordinance. All building signage at the subject location shall comply with the City of Marlborough Sign Ordinance in effect at the issuance of the special permit without a variance.

12. Landscaping Maintenance. Applicant agrees to plant and maintain the Project landscaping as shown on the Site Plan as submitted to the City Council and/or the City Council's Urban Affairs Committee subject to Site Plan Review.

13. Fire Protection. Fire protection systems shall be acceptable in all respects to the City of Marlborough Fire Chief or his designee.

14. In accordance with the provisions of Mass. Gen. Laws c. 40A, § 11, the Applicant, 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.

15. Unless the context otherwise clearly requires, all references in the above conditions to "Applicant" shall also refer to Applicant's successors and assigns.

Yea: _____ - Nay: _____ - Absent: _____

ADOPTED

In City Council

Order No.

Adopted: _____ 2011

Approved by Mayor

Nancy E. Stevens

Date: _____ 2011

A TRUE COPY

ATTEST: _____ City Clerk