

**DECISION  
GRANT OF SPECIAL PERMIT**

In City Council  
Order No. 14-1005761A

Application of:  
Chick-Fil-A, Inc.  
5200 Buffington Road  
Atlanta, Georgia, 30345-2998

Locus:  
To be known and numbered as 230 Boston Post Road West.  
To be shown on the Marlborough Assessor's Maps as a portion of Map 89, Parcel 77.

**DECISION**

The City Council of the City of Marlborough hereby **GRANTS** a special permit to permit construction and operation of a restaurant with drive through services of Chick-Fil-A, Inc. as provided in the DECISION and subject to the following FINDINGS OF FACT AND CONDITIONS.

Decision filed: \_\_\_\_\_

The Decision of the City Council was filed in the Office of the City Clerk of the City of Marlborough on \_\_\_\_\_.

**APPEALS**

Appeals, if any shall be made pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and shall be file within twenty (20) days after the date of the filing of this Notice of Decision in the Office of the City Clerk of the City of Marlborough, MA.

ATTEST:

\_\_\_\_\_  
City Clerk

**ORDERED:**

The City Council of the City of Marlborough hereby **GRANTS** the application for a Special Permit to Chick-Fil-A, Inc., 5200 Buffington Road, Atlanta, Georgia, 30345-2998 for a restaurant with drive-through facilities, in connection with a proposed stand-alone restaurant, as provided in this Decision and subject to the following Findings of Facts, Rulings and Conditions.

## FINDINGS OF FACT

1. Chick-Fil-A, Inc. is hereinafter referred to as “Applicant.”
2. Applicant owns and operates the largest quick service chicken restaurant chain in the United States, operating more than 1,770 stores in over 40 states. Applicant is a party to a contract with Marlborough/Northborough Land Realty Trust calling for the acquisition of the premises to be known and numbered as 230 Boston Post Road West, Marlborough, Massachusetts containing 1.19 acres +/- and to be shown as a portion of Marlborough Assessor’s Maps as Map 89, Parcel 77, as further shown on a conceptual site plan entitled “Site Development Plans for Proposed Chick-Fil-A with Drive Thru, Location of Site: 230 Boston Post Road West (Route #20), City of Marlborough, Middlesex County, MA” prepared by Bohler Engineering, Inc. dated as of February 7, 2014, as last revised, consisting of a total of twenty (20) sheets (the “Plan”). The land reflected on the Plan is hereinafter referred to as the “Site”. Applicant proposes to construct a stand-alone restaurant facility with drive-through on the Site (“the Project”).
3. Applicant, by and through its attorney, Mark L. Donahue, Esquire, has filed with the City Clerk of the City of Marlborough an application for Special Permit (“Special Permit Application” or “Application”). Pursuant to Article V Section 650-17 of the Zoning Ordinance of the City of Marlborough (2008 Code), Applicant is seeking permission for the construction and operation of a single story restaurant consisting of approximately 4,900 square feet of building area.
4. The Site is located in a Business zone as determined by the Zoning Map of the City of Marlborough.
5. In connection with the Special Permit Application, Applicant has submitted a document entitled Traffic Impact Study for the Chick-Fil-A Restaurant, 230 Boston Post Road (Rt. 20) Marlborough, MA” prepared by McMahan Associates, Inc. and dated March, 2014, a certified list of abutters, filing fees, and the Plan as set forth above.
6. The site plan was certified by 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.
7. 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 for a Special Permit 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.
8. The Marlborough City Council, pursuant to Massachusetts General Laws Chapter 40A, held a public hearing on the Application on May 19, 2014.

9. Applicant presented testimony at the public hearing detailing the application, describing its impact upon municipal services, the neighborhood, and traffic.

**BASED ON THE ABOVE, THE CITY COUNCIL MAKES THE FOLLOWING  
RULINGS:**

A. The Applicant has complied with all the procedural rules and regulations of the City Council of the City of Marlborough and Chapter 650 (Zoning Code) of the City of Marlborough and Massachusetts General Laws Chapter 40A, Sections 9 and 11.

B. The City Council finds the Application for the Special Permit does not derogate from the intent or purpose of the Zoning Ordinance of the City of Marlborough, or of Massachusetts General Laws c. 40A.

C. 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 hereinafter. The City Council makes these findings subject to the completion and adherence by Applicant, its affiliates, successors and/or assigns to the conditions more fully set forth hereinafter.

D. The City Council, pursuant its authority under Massachusetts General Laws Chapter 40A and the Zoning Ordinance of the City of Marlborough, hereby GRANTS Applicant a Special Permit to construct and operate drive-through restaurant services as shown on the Plan filed, SUBJECT TO THE FOLLOWING CONDITIONS, which conditions shall be binding upon Applicant, its affiliates, successors and/or assigns:

1. 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 Commonwealth of Massachusetts and shall be built consistent with the Plan.
2. The issuance of the Special Permit is further subject to detailed technical Site Plan Review in accordance with Chapter 270 of the City of Marlborough 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 deemed further conditions attached to the building permit and no Occupancy Permit shall be issued until Applicant has complied with all conditions, except as specifically provided by such condition. Any additional changes, alterations, modifications or amendments, as required during the process of Site Plan Review, shall be deemed further conditions attached to this Special Permit, and any violations of such Site Plan Review conditions shall be deemed to constitute violations of this Special Permit leading to its possible revocation by the City Council. Site Plan Review shall be generally consistent with the conditions of this Special Permit and the Plan submitted, reviewed and approved by the City Council as the special permit granting authority. Any changes to the Plan which materially alter the traffic patterns or landscaping of the Project, will require subsequent approval by the City Council.

3. Applicant agrees to comply with all existing municipal, state, and federal rules, regulations, and ordinances as they may apply to the construction, maintenance, and operation of Applicant's facility.
  - a. Without limiting the foregoing, this condition includes the requirement that Applicant, its affiliates, successors and/or assigns conform the Site and the Project to the Massachusetts Environmental Policy Act ("MEPA") as determined by the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs ("EEA"). Any changes, alterations, modifications or amendments required of the Project or specific to the Site in order to conform with MEPA as determined by EEA shall be deemed to constitute an amendment to this Special Permit.
  - b. Likewise without limiting the foregoing, this condition includes the requirement that Applicant, its affiliates, successors and/or assigns conform the Site and the Project to the Commonwealth of Massachusetts Department of Transportation ("MassDOT"). Any changes, alterations, modifications or amendments required in order to conform with MassDOT shall require that Applicant, its affiliates, successors and/or assigns apply forthwith to the City Council in order to amend this Special Permit.
4. The locations and design of signage shall be reviewed and approved during Site Plan Review in accordance with the sign ordinance of the City of Marlborough subject to any duly granted variances or special permits. It is a further condition that the location of the signage shall not be substantially different than that shown on the plans submitted during the course of the hearing process allowing, however, for minor changes in the field so as to avoid any conflicts with existing City infrastructure.
5. Pursuant to that certain Comprehensive Permit issued to Gutierrez Company, managing agent for Marlborough/Northborough Land Realty Trust by the City of Marlborough Zoning Board of Appeals and dated January 29, 2013 and recorded at Middlesex South District Registry of Deeds at Book 61374, Page 405, the developer of the housing development permitted by said Comprehensive Permit is obligated to implement certain sidewalk and crosswalk improvements at the site intersection so as to facilitate pedestrian travel to and from the RK Plaza on the opposite side of Boston Post Road West. The land subject to the Comprehensive Permit has been sold to Fairfield Marlborough Limited Partnership by deed dated April 30, 2014 and recorded at Middlesex South District Registry of Deeds in Book 63559, page 518. The Comprehensive Permit requires by its terms that construction be commenced within three (3) years of the grant of the permit. The crosswalk improvements at the signalized intersection utilized by the Project are an important component to the proposed development and are to be installed by the developer of the residential development permitted by the Comprehensive Permit. In the event that the construction of the residential development has not commenced within eighteen (18) months of the commencement of operation of the Chick-Fil-A restaurant, the Applicant shall thereafter be required to proceed

with the construction of the crosswalk at the signalized intersection utilized by the Project, such design to be as previously approved in conjunction with the Site Plan Review of the Comprehensive Permit and, in all events, as and if approved and permitted by Mass Department of Transportation. The obligation of the Applicant to proceed with such construction may be waived by the Department of Public Works in the event that the developer of the residential development pursuant to the Comprehensive Permit or Gutierrez Company has adequately scheduled and secured the requirement for installation of the crosswalks, in the opinion of the Director of the Department of Public Works.

6. The location and placement of pavement markings and traffic directional signage, and all other traffic-related issues, shall be reviewed and approved during Site Plan Review in accordance with the applicable rules and regulations of the City of Marlborough.
7. All illuminations of individual parking lot light fixtures shall not exceed 200-watt fixtures. Deflectors shall be utilized and configured to mitigate light from entering abutting properties.
8. Snow storage and removal is to be maintained and conducted on-Site by Applicant, its affiliates, successors and/or assigns in accordance with the requirements of Site Plan Review. Applicant, its affiliates, successors and/or assigns shall provide off-Site snow removal as required.
9. There shall be no overnight parking at the Site.
10. All catch basins shall be installed in accordance with plans to be reviewed and approved at Site Plan Review. The catch basins shall be monitored by Applicant, its affiliates, successors and/or assigns on an annual basis with reports given to the City Engineer annually. The catch basins are to be cleaned by Applicant, its affiliates, successors and/or assigns annually, or at more or less frequent intervals as determined necessary by the City Engineer.
11. Applicant, its affiliates, successors and/or assigns agrees to plant and maintain the Project landscaping as shown on plans to be reviewed and approved at Site Plan Review.
12. The drive-through window shall employ a pedestal speaker system of a quality that seeks to minimize the noise emanating from the speaker system and with full compliance with the noise ordinance of the City of Marlborough. The drive-through audio speakers also shall not produce noise at the Site's property line greater than that which would be allowed at the Site's property line in accordance with the noise ordinance of the City of Marlborough.
13. Applicant, its affiliates, successors and/or assigns agrees to screen the Project's trash area. Applicant, its affiliates, successors and/or assigns further agrees that the dumpsters located on Site will be covered dumpster with a plastic lid or

similar device on the dumpster. No trash pickup shall occur weekdays before 6:00 AM or after 9:00 PM.

14. a. All plans, photo renderings, briefs and other documentation provided by 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 a part of this Special Permit and become conditions and requirements of the same, unless otherwise altered by the City Council.
- b. Notwithstanding condition 14(a) hereof, engineering changes may be made to said plans by the Site Plan Review Committee 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 materially alter traffic flow or materially increase the size of the building shown on the Plan.
15. In connection with all improvement work within public right-of-ways which requires a street opening permit unless the improvement work is within areas subject to State jurisdiction through Mass DOT, the City Engineer shall be provided by Applicant, its affiliates, successors and/or assigns with a schedule of work and the construction procedures to be utilized prior to the commencement of such work. To the extent a police detail is required for such improvements, the Applicant, its affiliates, successors and/or assigns, and not the City of Marlborough, will bear the costs of any police detail for any work performed within or associated with the public way.
16. Parking areas will be swept and maintained by Applicant, its affiliates, successors and/or assigns as necessary.
17. The hours of operation for the drive-through operation at the Site shall not exceed the following times: Monday through Sunday, 6 A.M. to 2 A.M.
18. Applicant, its affiliates, successors and/or assigns shall be required to hire a site supervisor as selected by the Applicant who shall be competent in stormwater and erosion control management. The credentials of this individual(s) shall be reasonably 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 implement such reasonable construction and erosion methods so that no untreated stormwater leaves the Site consistent with the State's stormwater regulations and the City's stormwater ordinance. This individual(s) shall cause compliance with the sequence-of-construction plan and the erosion control plan to be reviewed and approved by the Site Plan Review Committee, and, if applicable, with the Order of Conditions issued by the Conservation Commission. The Applicant, its affiliates, successors and/or assigns shall grant this individual(s) complete authority of the Site as it relates to stormwater and erosion controls.

19. If the drainage system (during construction and post-construction) constructed by Applicant, its affiliates, successors and/or assigns fails and the failure is the cause of damage to another's property, Applicant, its affiliates, successors and/or assigns shall be responsible to pay the owner of said damaged property the full cost of the repair or replacement of the damaged property. In the event Applicant, its affiliates, successors and/or assigns does not pay for the damage, it shall be a violation of this Special Permit.
20. As it is anticipated that Applicant, its affiliates, successors and/or assigns will need to conduct blasting operations during construction at the Site, Applicant, its affiliates, successors and/or assigns shall be responsible to pay the owner of any property damaged by said blasting the full cost of the repair or replacement of the damaged property.
21. As it is anticipated that the initial opening of the restaurant will generate higher traffic volumes than during normal operations, Applicant, its affiliates, successors and/or assigns shall meet with the Chief of Police or his designee, the Building Inspector and the Planning Director ("the City traffic officials") at least one (1) month prior to said initial opening in order to review the opening plans for the restaurant, and said plans must be approved in advance by the City traffic officials in order for the restaurant to conduct its initial opening. Until normal traffic has resumed as determined by the City traffic officials, Applicant, its affiliates, successors and/or assigns must continue to meet with them, at such times as the City traffic officials determine, in order to assess the traffic volumes and associated traffic safety at the Site.
22. This Special Permit is dependent upon the Applicant, its affiliates, successors and/or assigns, reaching agreement with Marlborough/Northborough Land Realty Trust and/or with The Gutierrez Company, its affiliates, successors and/or assigns, for all cross-easements or other permissions necessary for access and infrastructure associated with the Site. If such agreement(s) is/are not reached, this Special Permit shall lapse forthwith.
23. Applicant, its affiliates, successors and/or assigns shall pay to the City of Marlborough an administrative review fee in the amount of \$5000.00 as mitigation of the time devoted by the Building Inspector, the City Engineer and the City Solicitor in resolving issues associated with the Special Permit Application, including those involving zoning, traffic and the drafting of the decision itself which the Zoning Ordinance expressly dictates is placed upon the applicant for a special permit. Said payment shall be made before a Building Permit is issued.
24. In an effort to recruit Marlborough residents for employment opportunities the applicant, its affiliates, successors and/or assigns, agrees to conduct outreach with Marlborough schools, the Marlborough Chamber of Commerce and the

Marlborough Economic Development Corporation so that Marlborough residents are provided with adequate notice of employment opportunities at the Project.

- 25. In accordance with the provisions of M.G.L. c. 40A, § 11, Applicant, its affiliates, 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 a Building Permit is issued. 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:**      **Nay:**  
**Abstain:**

ADOPTED  
In City Council  
Order No. \_\_\_\_\_

\_\_\_\_\_  
Signed by City Council President