

# **Chapter 270**

## **BUILDING AND SITE DEVELOPMENT**

### **GENERAL REFERENCES**

**Noncriminal disposition — See Ch. 315.**

**Wetlands — See Ch. 627.**

**Sewers — See Ch. 510.**

**Zoning — See Ch. 650.**

**Signs — See Ch. 526.**

**Subdivision of land — See Ch. A676.**

**Soil removal — See Ch. 534.**



ARTICLE I  
**General Provisions**

**§ 270-1. Definitions.**

In the interpretation of this chapter, the meanings of words and phrases shall be according to the definitions included in Chapter 650, Zoning, as amended, unless the context shows another sense to be intended.



ARTICLE II  
**Permits and Approvals**

**§ 270-2. Site plan review and approval.**

A. Site plan required.

(1) Purpose. The purpose of site plan review and approval shall be:

- (a) To assist those wishing to build projects within the City by providing them with the necessary information about the City's requirements prior to the start of any construction or issuance of permits.
- (b) To ensure compliance with all applicable codes and standards.
- (c) To the extent practicable:
  - [1] To assure that all elements of site use and layout are designed so as to protect the public health, safety and welfare, both on site and off site.
  - [2] To maximize convenience, improve visual appearance and enhance property values.
  - [3] To minimize negative environmental impact through means including both on-site and off-site improvements and other mitigating measures.

(2) Prior approval required.

- (a) General. No building permit shall be issued for and no person shall undertake any use or improvement subject to this section, including earth movement or site development (except as noted below), unless site plan approval therefor has been first granted to such person.
- (b) Prior earthmoving. Under certain circumstances set forth in Subsection F, a preliminary site plan may be approved allowing specified site work to proceed in advance of approval of a final site plan.

(3) Applicability.

- (a) General. Except as provided below under Subsection A(3)(b), Exceptions, site plan review and approval shall be required for any of the following: new construction of any building or structure; addition to an existing building or structure; increase in area of on-site parking or loading areas, whether paved or otherwise; change in location of any exterior feature required by the Code of the City of Marlborough, including but not limited to paving, parking, loading areas, access roads, driveways, curb cuts, sidewalks, fencing and exterior storage;

reduction of required landscaping or screening; change of use or expansion of use requiring a change in any exterior site requirements identified in Chapter 650, Zoning, or creating a different impact on the surrounding area; change in use of an existing curb cut creating an increase of 10% or more in vehicle trips caused by expansion of the project or by a change of use from one use category to another as listed in Chapter 650, Zoning, Table of Off-Street Parking Requirements, or by addition of a drive-through facility; or as otherwise required by Chapter 650, Zoning.

- (b) Exceptions. The only exceptions to the above shall be installation of new landscaping, ordinary repairs to existing site development work, minor changes in location of existing walkways, parking areas, loading areas or driveways constituting less than 100 square feet additional area (whether paved or unpaved), provided that the changes are in full compliance with Chapter 650, Zoning. Approvals under the Subdivision Control Law<sup>1</sup> shall not apply.

B. Site plan application.

- (1) Project definitions. For the purpose of this section, the following definitions shall apply:

MINOR RESIDENTIAL PROJECTS — One- and two-family dwellings, including all new construction, additions and site improvements thereto and minor modifications or site improvements to existing multifamily dwellings which do not increase the number of parking spaces or dwelling units.

NONRESIDENTIAL AND MAJOR RESIDENTIAL PROJECTS — All projects except those listed in the definition of "minor residential projects" above.

- (2) Preapplication review.

- (a) Minor residential projects. The applicant may request the applicable coordinating department identified in Subsection E(1) to schedule an informal preapplication review to establish submission requirements.
- (b) Nonresidential and major residential projects. The applicant shall request the applicable coordinating department identified in Subsection E(1) to schedule an informal preapplication review, with those people the coordinating department deems appropriate, for the purpose of reviewing preliminary proposals and alternatives. By this means, obviously inappropriate plans may be eliminated, the City may have the opportunity to have input into the planning and design process

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1. Editor's Note: See Ch. A676, Subdivision of Land.

at its earliest level and submission information can be established.

- (3) Formal submittal. One copy of a site plan shall be submitted to each of the City reviewing departments identified in Subsection E(3) as follows:
  - (a) An application form properly completed and signed.
  - (b) Information identified in the preapplication review and in Subsection C.
  - (c) Fees. [See Subsection B(4) below.]
- (4) Fees and expenses. To reimburse the City for the cost of site plan processing and review, inspection and other costs, fees as specified in Article III of this chapter shall be tendered to the City by the applicant at the time of application and shall constitute a part thereof.
- (5) Preparation. The site plan shall be prepared and stamped by a registered professional engineer and/or landscape architect, as appropriate, unless either the work is limited to minor modifications or additions to a structure or site not affecting utilities or parking requirements or the requirement is waived by the City coordinating departments identified in Subsection E(1) as being unnecessary for purposes of the particular site, in which case the site plan must be prepared with sufficient clarity and detail to show the nature of the work to be performed.
- (6) Public notice. The applicant shall provide public notice as follows:
  - (a) Applicability. All projects except the following:
    - [1] Minor residential projects as defined in Subsection B(1) above.
    - [2] Minor modifications to nonresidential and major residential projects as defined in Subsection B(1) above, provided that said modifications do not increase building floor space by more than 10% or 2,000 square feet, whichever is greater.
    - [3] Any project requiring a public hearing for a special permit or subdivision of land as a result of the particular application for site plan approval.
  - (b) Type of notice. The applicant shall publish a notice in a newspaper of general circulation within the area at least once within two weeks of filing a site plan application. Proof of said publication shall be provided to the coordinating department identified in Subsection E(1) prior to certification of completeness of submission under Subsection E(2).

- (c) Content of notice. The notice shall provide a brief description of the project, including size, use, street address and the name of the applicant and the availability of site plans for public inspection. Specific requirements for the notice may be established as provided under Subsection H.
- (7) Standing to file application. A site plan shall not be considered valid unless the applicant has written consent of the owner or owner's agent filed with the application.
- C. Submission requirements. The site plan shall contain the following information unless waived as indicated below for projects not requiring such material for purposes of review. Where appropriate, show existing conditions on one sheet and proposed conditions on a separate sheet. Sheet size should normally be a maximum of 24 inches by 36 inches unless otherwise approved as indicated below.
  - (1) Minor residential projects: See definition under Subsection B(1). Waivers to submission materials and sheet size may be requested from the coordinating departments identified in Subsection E(1).
    - (a) Small additions/site improvements. Submit information necessary for review as determined by the Building Commissioner. All information should be on one sheet, if possible. At a minimum, provide items in Subsection C(2)(a) and (b) below in their entirety. Other information should be limited to details of the specific improvement. All applications must be accompanied by a certified plot plan (survey) of the lot, showing lot lines, dimensions and setbacks. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**
    - (b) New construction and large additions. Submit all items listed under Subsection C(2) below except the following: those in Subsection C(2)(f)[2], (j)[2], (l), (m) and (n).
  - (2) Nonresidential and major residential projects: See definition in Subsection B(1). Waivers to submission materials and sheet size may be requested from the coordinating department identified in Subsection E(1). For small additions or site improvements, submit information necessary for review as determined by the coordinating department, similar to that required in Subsection C(1)(a) above. For new construction and large additions, submit the information listed below:
    - (a) Title block:
      - [1] Proper heading, containing project title (if any).
      - [2] Name and address of owner, engineer, landscape architect and/or surveyor.
      - [3] Street number (as assigned by the City Engineer).



- [4] Assessor's plate and parcel number.
- [5] Scale of drawing.
- [6] Date and revision date.
- [7] Approval signature block: Provide space for date and signature by all appropriate City reviewing departments listed in Subsection E(3).

(b) General information on cover sheet:

[1] Locus map: Show location of site and names of all surrounding streets within 1,000 feet of boundaries of lot. [See item in Subsection C(2)(d)[2] below concerning location of buildings on surrounding lots.] Identify on locus map all other parcels within 1,000 feet in which applicant has any financial interest.

[2] North arrow.

[3] Zoning: district in which the property lies and any zoning district boundary lines which may cross the locus, including floodplain and wetland protection districts. Show zoning lines on locus map and other plans, if appropriate.

[4] The lot: completely dimensioned or show dimensions on other sheets.

[5] Lot area: in acres and in square feet.

(c) Existing conditions. Show existing conditions, including buildings and structures, setback dimensions, parking, driveways, landscaped areas, boundaries of wooded areas and wetlands, topography and drainage easements.

(d) Proposed buildings and structures:

[1] Location of all proposed buildings and structures on the lot and those to remain: Show all building and yard dimensions, foundation and building limits, including overhangs, porches, decks and similar appurtenances.

[2] For proposed nonresidential and multifamily residential developments: Show approximate location of all existing buildings on all abutting lots and on lots across street. Use a separate sheet if necessary or incorporate on locus map.

[3] Building heights, stories and elevations: number of stories; elevations of foundation sill, cellar floor and first floor; and building heights, as defined by zoning.

[4] Floor areas: building floor areas for each floor and in total.

- [5] Side elevations: On a separate sheet, show side views of the building. For multiple structures or similar cases, this requirement may be waived by the coordinating department identified in Subsection E(1).
- (e) Parking, driveways and exterior features:
  - [1] Location: Locate all driveways, walkways, parking spaces, pickup, delivery, loading, storage and rubbish disposal areas, outdoor lighting and similar exterior site features.
  - [2] Uses: identification of all proposed uses on site, in proposed locations.
  - [3] Calculation of parking spaces required according to Chapter 650, Zoning. Provide specific listing of proposed uses, floor areas, and parking spaces, according to categories in Chapter 650, Zoning, Table of Off-Street Parking Requirements.
- (f) Floor area ratio (FAR), lot coverage and landscaping:
  - [1] FAR and lot coverage: identification of all areas included within lot coverage and landscape areas and calculation of FAR, if applicable, and percentage of lot coverage. (See definitions in Chapter 650, Zoning.) Show calculation on the same sheet.
  - [2] Plantings: planting plan in conformance with zoning requirements, showing plantings, fencing and screening. The general planting plan must be submitted with the initial application. A detailed plan with specified plantings can be submitted at a later date with approval of the coordinating department identified in Subsection E(1).
- (g) Topography: existing and proposed topography at two-foot contour intervals (NGVD datum preferred). Specify the datum plane on which elevations are based.
- (h) Easements: location and type of any easements and any drainage system (natural or otherwise) within the site and within 50 feet of the property, or that may be needed to evaluate issuance of permit.
- (i) Utilities: location of all existing utilities, septic systems and wells within 100 feet in any direction of the proposed work, unless waived by the City Engineer. Also show the location and all pertinent data relating to the proposed services. If a private sewage disposal system is involved in the project, a design plan shall be submitted with the site plan.
- (j) Wetlands and open space.

- [1] Wetlands: boundaries of wetland and floodplain areas as defined under MGL c. 131, § 40, Massachusetts Wetlands Protection Act; MGL c. 131, § 40A, Massachusetts Inland Wetlands Restriction Act; Marlborough Code Chapter 650, Zoning, § 650-23, Floodplain and Wetland Protection District.
  - [2] Open space: location of existing or potential publicly accessible open space parcels or trails abutting the project site or located within 500 feet of the project site. This information may be shown on a locus map, if appropriate.
- (k) Erosion control: plan for projects which will disturb more than 5,000 square feet of surface area.
- (l) Signs: Signs are included as part of a site plan, but the necessary information can be submitted and approved at a later date, at the option of the applicant. The proposed location and general features of all signs shall be submitted before building occupancy. Detailed information shall be shown on a separate plan submitted in accordance with Chapter 526, Signs.
- (m) Impact reports (general):
- [1] Information. In certain cases, particularly large or complex projects which are expected to create a substantial or unusual impact, the City Planner or Engineer may require the applicant to provide relevant reports or other information for purposes of demonstrating that proposed improvements on site or off site are adequate and will not create adverse impact on the neighborhood or City. The applicable City officials shall notify the applicant of this requirement within a reasonable period of time following submission of the site plan.
  - [2] Review. In particular cases where warranted (see below), the applicant may be required to assist said departments in review of said reports by providing for independent technical consultants to review technical reports on behalf of the City. The applicable City officials shall notify the applicant of the particular circumstances where such technical assistance may be necessary.
- (n) Traffic impact report (if required). If deemed necessary for purposes of review by the Planning and Engineering Departments, a traffic impact report shall be submitted by the applicant for site plan approval. The report shall, if so required, be prepared by a professional engineer.

- [1] Scoping meeting to identify streets or intersections to be studied:
  - [a] The streets or intersections to be studied shall be identified by the City Planner and Engineer within 14 days following a scoping meeting which the applicant may attend and which shall be held within 30 days of formal submission.
  - [b] The minimum percent of traffic (average daily or peak hour) generated by the proposed project and having an impact on the street or intersection to be studied shall be 5%.
- [2] Report content. The report shall generally include information on the items listed below, unless the scope is modified by the City Planner and Engineer because of special circumstances, such as coordination with other projects, with similar reports required by state agencies, with the City Master Plan or other long-range plans. No report shall be required if the applicant is required to file an environmental impact statement for traffic purposes by the Commonwealth of Massachusetts.
  - [a] Provide traffic accident data, average daily and peak hour vehicle volumes, and capacity analysis of streets and intersections scoped as provided for by Subsection C(2)(n)[1] above. The capacity analysis shall include level of service, volume-to-capacity ratio, period of delay, and other measures as appropriate and as defined by the Transportation Research Board of the National Research Council.
  - [b] Future "no build" traffic conditions: Provide similar information to that listed in Subsection C(2)(n)[2][a] above at the future design year specified for full occupancy of the entire project or at some other design year specified by the City Planner based upon long-range City transportation study needs. Include background growth and impact of other proposed developments, excluding the project in question.
  - [c] Future "build" traffic conditions: Provide similar information to that listed in Subsection C(2)(n)[2][a] and [b] above assuming full occupancy of the project, with and without proposed off-site mitigating road improvements. Alternative measures for mitigation shall be analyzed if appropriate.
  - [d] Traffic mitigation plan: description of proposed measures for mitigation, identifying those measures committed to by applicant and those measures

proposed to be implemented by others. Demonstrate how the mitigation plan is coordinated with the City and/or state long-range plan and/or with other projects in the same general area. Provide summary of costs of proposed measures, breakdown of component costs, calculation of pro-rata share of the cost attributable to the proponent based on impact of the project, and proposed cost sharing for improvements which may be undertaken by or funded jointly by others.

[3] Report evaluation. See Subsection D(2)(d) and (e) below for traffic planning and mitigation evaluation criteria.

(o) State curb cut permit.

[1] When the proposed development requiring site plan approval also requires a state curb cut permit, site plan approval by the City may be withheld until the applicant submits to the City Planner and Engineer a copy of the required permits issued by the Commonwealth of Massachusetts Department of Public Works.

[2] The applicant shall submit a copy of any application for a state curb cut permit to both the City Planner and Engineer at the same time as said application is submitted to the state.

[3] The location of any curb cut must conform to the site plan approved by the City. The issuance of any curb cut permit prior to approval of a site plan shall not constrain the conditions that may be imposed by the City at site plan approval.

D. Site plan review criteria.

(1) Applicability.

(a) Except as provided for below, the criteria shall apply to all principal and accessory buildings and structures and to all exterior site features, however related to the major buildings or structures.

(b) Exceptions: The criteria shall not apply to single- or two-family dwellings on their own lots.

(2) Criteria. The following criteria shall be considered by the appropriate departments in the review and evaluation of a site plan:

(a) General.

- [1] Purpose. These criteria are intended to provide general guidance to the applicant in the preparation of plans, as well as guidelines for review. The criteria are not intended to be exhaustive, nor to be applied in cases which may prove infeasible or inappropriate to the particular circumstances. Rather, each site should respond to its own unique conditions and problems. The criteria are not intended to discourage creativity, invention and innovation, but are intended to encourage good design and exemplary projects offering solutions to problems created on site and off site where possible. The issues and concerns represented by the criteria enumerated below shall be addressed in the final site plan.
  - [2] Design alternatives. Where an applicant believes that he or she will have serious practical difficulties in meeting these criteria or a site situation is presented that may call for a different approach, then the applicant may, at the applicant's option, present information which demonstrates this concern in the preliminary stages of preapplication review. The applicant may also submit for consideration more than one alternative site plan or part of said site plan intending to demonstrate the above concerns. City reviewing departments shall take these design alternatives into account and shall not be precluded by these criteria from approving a preferred alternative layout which, in their opinion, results in the best overall solution for the particular situation and which is also more beneficial to the City and the neighborhood.
- (b) Urban and natural landscape. The development shall be integrated into the surrounding urban or natural landscape and shall be designed to protect abutting properties and community amenities to the extent practicable and appropriate. Development shall, to the extent practicable: minimize destruction of unique, valuable, natural or historical features; minimize removal of mature trees and vegetation, and where tree coverage does not exist or has been removed, new planting may be required; maximize retention of open space; minimize noise and dust; screen objectionable features from neighboring properties and roadways; provide linkages and foot trails between open spaces accessible to the public or potentially accessible to the public, where practical and in accordance with the City's Open Space and Recreation Plan, Master Plan or Neighborhood Plan, subject to applicable law; provide important wildlife corridors to preserve existing habitat or enhance habitat where practical. These criteria shall be used for review by the Planning and Conservation Departments and others as may be appropriate.

- (c) Building and service area design and operation: Buildings shall, to the extent practicable, be related harmoniously with the prevailing character of buildings in the vicinity that have a visual relationship to the proposed buildings. The achievement of such relationship may include siting of buildings, use of appropriate building materials, screening, breaks in roof and wall lines and other techniques and shall provide adequate light, air, circulation and separation between buildings. Variation in detail, form and siting may be used to provide visual interest and avoid monotony. Exposed storage areas, machinery, service areas, loading areas, utility buildings and structures, exterior brightly lighted areas and other unsightly or noisy uses or uses having a potential adverse impact, if permitted in the district, shall be clearly identified on the site plan and shall be set back, buffered, screened or otherwise designed so as to protect the neighbors from objectionable impact or features. These criteria shall be used for review by the Planning and Building Departments and others as may be appropriate. Professional architectural advice may be sought in the review process where necessary.
- (d) Traffic and pedestrian movement. The plan shall maximize convenience and safety of vehicular and pedestrian movements occurring or likely to occur both within the site and also in relation to ways likely to be affected by traffic from the site. The plan shall demonstrate adequate circulation and access within the site, as well as adequate access to and from the site and along streets affected by the site, and shall include provision for proposed traffic or pedestrian improvements located off site if deemed necessary. [See following Subsection D(2)(e) for determination of adequacy of off-site mitigation.] Streets, sidewalks and raised curbing along the site frontage shall be upgraded to City standards if required. These criteria shall be used for review by the Engineering and Planning Departments and others as may be appropriate. The plan shall also demonstrate the following:
- [1] Efforts to minimize:
- [a] Points of conflict between vehicular and pedestrian movement and between different vehicular movements.
  - [b] Routing of traffic through predominantly residential streets.
  - [c] Left-turning movements on streets.
  - [d] Number of curb cuts.
  - [e] Number of vehicular trips on street.

- [2] Efforts to maximize:
  - [a] Distance between curb cuts.
  - [b] Sharing of curb cuts and common driveways with adjacent sites or lots, where warranted by traffic or topographic considerations.
  - [c] Interconnection between driveways, parking lots and pedestrian pathways on adjacent sites or lots, thereby avoiding congestion and inconvenience caused by use of streets for access to adjacent sites.
  - [d] Separation of pedestrian, bicycle and vehicular circulation.
  - [e] Convenience of circulation system layout in order to enhance pedestrian and/or public transportation.
  - [f] Site distance and safety.
- [3] Parking location and transportation systems management. Parking location and access may be required to meet City and/or state policies and plans related to transportation systems management intended to reduce reliance on the automobile and to reduce traffic congestion. For example, parking may be better located behind certain uses, such as offices, in order to encourage pedestrian access between buildings, public transit, ride-sharing and other modes of transportation.
- (e) Off-site traffic impact report and traffic mitigation criteria (where required): [See Subsection C(2)(n) for information which may be required in a traffic impact report.] These criteria shall be used for review by the Planning and Engineering Departments and others as may be appropriate. Traffic mitigation criteria shall include the following where appropriate:
  - [1] Mitigation measures. Mitigation measures may include but are not limited to nonstructural measures, e.g., transportation demand management, arrangement of uses on site, timing of lights, restriping, etc., as well as structural/engineering solutions, e.g., roadways, signalization and lane widening. Nonstructural mitigation measures should be used first to minimize the amount of traffic generated by a project, then structural measures should be pursued to minimize the traffic impacts of a project.
  - [2] State guidelines. Mitigation measures should be developed in a manner compatible with current MDPW/



MEPA Guidelines for EIR/EIS Traffic Impact Assessments, as may be amended and as may be deemed applicable.

- [3] Conformance to area-wide long-range plan for traffic. The traffic mitigation plan shall, where possible, be compatible with long-range plans developed or promulgated by various City or state departments, agencies or commissions or committees, so that construction of traffic improvements can take place, in phases if necessary, with minimal waste or disruption when future improvements are made by others.
- [4] Commitment to mitigation. Site plan approval may be subject to an agreement to perform an overall mitigation scheme or funding program meeting the above criteria.
- [5] Degree of mitigation:
  - [a] Pro-rata share. To the extent that the project impacts on state and/or local transportation systems, the project proponent shall provide a minimum of its pro-rata share of the cost of mitigating those impacts. Alternatively, the proponent may be required to carry out structural/engineering solutions at locations to be identified by the above-referenced City departments to the extent practicable and in proportion to their pro-rata share. Where pro-rata share cannot be established on a formula basis, then a share amount shall be established which, in the opinion of the above-designated City departments, is reasonable based on the information in the traffic report and other relevant information.
  - [b] Mitigation design goals:
    - [i] Preconstruction or better. For all intersections and segments, the goal of mitigation is to restore operations to preconstruction conditions or better.
    - [ii] Failing intersections. For failing intersections (Level of Service E or F) preconstruction, the goal of mitigation is to provide Level of Service D or better. (This may require pooling of mitigation funds by several proponents in order to carry out more costly but more effective long-term improvements.)
    - [iii] Coordinated design. For complex or major intersections requiring joint effort by several proponents: Project proponents will be expected to provide mitigation commensurate with the

impact of their project in a coordinated manner. Alternative plans may be required prior to approval which address mitigation for any future design year specified by the City Planner under Subsection C(2)(n)[2] commensurate with other projects or planning studies.

- (f) Public safety criteria. The development shall, at a minimum, provide adequate means for emergency vehicular access, and the site plan shall be reviewed for any factor affecting public safety. These criteria shall be used for review by the Police and Fire Departments and others as may be appropriate.
- (g) Storm drainage and erosion control. The site plan shall show adequate measures to prevent pollution of surface water or groundwater, to minimize erosion, sedimentation, increased rate of runoff and potential for flooding and other adverse impacts on abutting property. Drainage shall be designed so that the downstream rate of runoff shall not be increased. These criteria shall be used for review by the Engineering and Conservation Departments and others as may be appropriate.
- (h) Wetlands and floodplains. The site plan shall be consistent with the requirements of Chapter 650, § 650-23, of the Code of the City of Marlborough, as amended, and with MGL c. 131, §§ 40 and 40A, as amended.
- (i) Sewer and water. The development shall be serviced by adequate water supply and waste disposal systems and shall not place excessive demands on City infrastructure. These systems shall be in conformance with the City Master Plan or long-range plan for such infrastructure. These criteria shall be used for review by the Engineering Department and others as may be appropriate and, in cases where septic systems are required, by the Board of Health.
- (j) Utilities. Electric, telephone, cable television and other such utilities shall be underground where physically and environmentally feasible. These criteria shall be used for review by the Engineering and Planning Departments and others as may be appropriate.
- (k) Advertising features. The size, location, lighting and materials of all exterior signs shall conform to Chapter 526, Signs, as amended. The design of signs and abutting features shall not detract from the design of proposed buildings and structures and the surrounding properties. All signs shall be reviewed as an integral element in the design and planning of all development on the site, and all existing signs on site shall be brought into conformity as a requirement of site plan approval.

These criteria shall be used for review by the Planning and Building Departments and others as may be appropriate.

- (l) Construction impact. The development shall minimize dust, noise, erosion, inconvenience or other disturbance during the construction process. These criteria shall be used for review by the Planning, Building, Engineering and Conservation Departments and others as may be appropriate.
  - (m) City ordinances. The site plan shall comply with all requirements of Chapter 650, Zoning, and other applicable ordinances of the City of Marlborough, and with all other provisions of this section, as amended.
- (3) Time limit for compliance. All exterior site conditions existing at the time of adoption of this section shall be brought into compliance with this section to the maximum practical extent at the time when a new site plan or an amended site plan is required as specified by this section and before use or occupancy or change of use or occupancy of said site, subject to MGL Chapter 40A et al. If any elements of the existing development are nonconforming with zoning, they shall be upgraded so that they conform after the new proposal has been completed, to the maximum practical extent.
  - (4) Plan modifications. Before issuing approval of a site plan, the reviewing departments may request the applicant to make modifications in the proposed design of the project to ensure that the above criteria are met.
  - (5) Conditions. Site plan approval may be subject to conditions, modifications and restrictions imposed by the reviewing departments identified below. Such conditions may include requirements for contributions toward or implementation of off-site improvements needed as a result of the impact of the development, restrictions on the use of curb cuts accessing the site and requirements for securing the performance of all proposed work, including proposed off-site improvements, by a performance bond, covenant or similar instrument as appropriate.

E. Approval action by City departments.

- (1) Review and coordination.
  - (a) Coordinating department. The department identified below shall be the City coordinating department responsible for determining the requirements deemed applicable to the site plan and shall assist applicants by providing information about the City's requirements. In addition, said department shall coordinate review by other City departments responsible for site plan review as indicated in Subsection E(3) below:

- [1] Minor residential projects: the Building Department. [See definition of projects in Subsection B(1).]
  - [2] Nonresidential and major residential projects: the Planning Department. [See definition of projects in Subsection B(1).]
- (b) Phased approvals. Applicants may request approval of site plans in phases. Said request shall be in writing and must be agreed to by the coordinating department identified in Subsection E(1)(a) above.
- (2) Certification of completeness of application.
- (a) Certification. The coordinating department [identified in Subsection E(1) above] shall, within 30 days, review the material submitted with any formal written application as defined in Subsection B(3) and shall certify as to the completeness of the application. Said certification shall not imply that the application will be approved nor limit the conditions or modifications that may be required prior to site plan approval.
  - (b) Completeness. A submission shall not be considered complete until all items required under Subsections B and C, including impact reports required under Subsection C(2)(m) and (n), have been properly completed and submitted, until any environmental impact reports required by the Commonwealth of Massachusetts have been certified as adequately complying with state requirements, and until any special permit or variance required by Chapter 650, Zoning, has been granted. Any order of conditions required from the Conservation Commission may be issued after certification of completeness.
- (3) City departments responsible for final review and approval.
- (a) Minor residential projects: See definition in Subsection B(1). Site plan approval shall be required from the Engineering and Building Departments and, in addition, the Conservation Department, Board of Health and other departments as may be necessary, if so required by the Building Commissioner in writing. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**
  - (b) Nonresidential and major residential projects. Site plan approval shall be required from the following City departments: Planning, Engineering, Building and, in addition, Conservation, Fire, Police, Board of Health and other departments as may be necessary, if so required by the City Planner in writing.
- (4) Final action by City departments.

- (a) Transmittal. Final action by each department designated above shall be transmitted in writing to the coordinating department identified in Subsection E(1) above.
- (b) Final action shall consist of either:
  - [1] Approval of the site plan as submitted;
  - [2] Approval of the site plan subject to conditions, modifications and/or restrictions set forth therein which, in the opinion of the City reviewing departments, are necessary to cause the site plan to meet the site plan review criteria set forth in Subsection D; or
  - [3] Denial of the application for site plan approval if, in the opinion of the City reviewing departments, the application is incomplete or the site plan fails to meet any one or more of the site plan review criteria set forth in Subsection D and the applicant fails or declines to make such amendments to the site plan as are necessary to cause the site plan to meet said criteria.
- (c) Time period for action. Except as provided below under extensions of time, final action of the City reviewing departments shall be made within the time periods specified below following the date of certification of completeness of application:
  - [1] Minor residential projects: 45 days.
  - [2] Nonresidential and major residential projects: 90 days.
- (d) Extensions of time for final action: A department may communicate to the applicant the necessity for an extension of time, based upon clearly defined reasons. Said extension shall not exceed a period of 60 days unless agreed to in writing by the applicant and the reviewing departments.
- (e) Resubmittal of denied site plan: The applicant may, at the applicant's option, resubmit at any time a site plan with such modifications necessary to correct the reasons for denial. The City reviewing departments shall act on said resubmittal within the time periods provided in Subsection E(4)(c) above. Application fees for a resubmittal shall be 25% of any fees for a new submittal, provided that said resubmittal shall occur within one year of denial.
- (5) Certification of final site plan: As provided for by Subsection H, the City reviewing departments may adopt rules relating to the procedure for administration and recordkeeping of final action and approval of final site plans. Said procedures may include but shall not be limited to certification by all appropriate City reviewing

departments of an approved final site plan incorporating all changes and with conditions, if any, attached in writing.

- (6) Deviations from final site plan: Deviations may be allowed under the following circumstances:
  - (a) Minor deviations: if specifically sanctioned in writing by the Building Commissioner. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**
  - (b) Major deviations: if specifically sanctioned in writing by all reviewing departments listed in Subsection E(3) above as appropriate.
  - (c) All changes involving the requirements of § 270-3, Road opening/curb cut permit: if specifically sanctioned in writing by the City Engineer and City Planner.
- (7) As-built site plan required upon completion. Upon completion of the project requiring such site plan and prior to the issuance of an occupancy permit, there shall be forwarded to the Department of Public Works, Engineering Division, site plans depicting as-built conditions, as follows:
  - (a) For single- and two-family dwellings: a standard blueprint.
  - (b) For all buildings or developments other than single- and two-family dwellings: sepia Mylar.
- (8) Implementation and completion of plan.
  - (a) Time period. An approved or conditionally approved site plan shall be carried into effect and completed by the applicant within two years of the date of final action.
  - (b) Extensions of time. The City coordinating departments [identified in Subsection E(1) above] may, at the time of the approval or conditional approval of any site plan or thereafter, upon application therefor, grant such extensions of time, each not longer than one year, as they shall deem necessary to carry the site plan into effect.
- (9) Reapplication and resubmission.
  - (a) General. Any reapplication and resubmission required shall be in accordance with the provisions of the Code of the City of Marlborough at the time of reapplication. Submission materials required for reapplication shall be as deemed necessary by the coordinating departments identified in Subsection E(1) above.
  - (b) Nothing herein shall be deemed to extend the time periods for compliance with other state or local ordinances.

## F. Prior earthmoving.

- (1) Purpose. This section is intended to protect the public health, safety and welfare and the natural environment from destructive earthmoving operations prior to receiving approval of final site plans, while allowing commencement of prior earthmoving under certain safeguards.
- (2) Definitions. For the purposes of this section, "prior earthmoving" shall mean the removal, fill or change of grade of earth materials and the cutting of wooded areas which are undertaken in order to establish new uses on the site or to construct or locate buildings and features accessory thereto such as ways, driveways, areaways, walks or parking areas, and these activities shall be considered a part of construction and development.
- (3) Prior approval required. Prior earthmoving for the purposes defined above shall be subject to approval under this section. See Subsection A(2)(b).
- (4) Special provisions. Prior earthmoving, as defined above, shall be allowed without prior review and approval under this section for the following uses:
  - (a) Construction of one- and two-family dwellings.
  - (b) Land clearance for agricultural or forestry purposes.
- (5) Preliminary site plan. Where prior earthmoving is intended to precede construction by several months, the submission and approval of the site plan may be undertaken in two stages at the option of the applicant: a preliminary site plan stage and a final site plan stage.
- (6) Submission requirements. The information for the preliminary site plan shall be less than required for the final site plan. The information shall be limited to property boundaries, existing and proposed topography at two-foot or lesser contour intervals, the general character of soil to be removed (based on classification of the United States Soil Conservation Service) or soil to be added or relocated, the location of woodlands, wetlands and floodplains, the location and depth of any utility conduits or pipes and the approximate location of any existing and proposed buildings, structures, driveways or physical features accessory thereto. Other material shall be submitted only if deemed necessary by the reviewing departments.
- (7) Review and approval.
  - (a) The procedure for review and approval of preliminary site plans shall be identical to the procedure established above for final site plans, except that the reviewing departments shall be

limited to Planning, Engineering, Building and Conservation and shall not include other departments unless required by the coordinating department identified in Subsection E(1).

- (b) The preliminary site plan shall be treated as a separate site plan for the purposes of this section, and the approval of the preliminary stage of a site plan shall not be construed to assure the subsequent approval of the final site plan.

G. Enforcement.

- (1) Building permit effective date. A final site plan must be approved prior to issuance of a building permit which may otherwise be required for the development.
- (2) Compliance prior to issuance of certificate of use and occupancy. No certificate of use and occupancy shall be granted until the provisions outlined in § 270-6C have been complied with.
- (3) License or permit (if required). Approval of any license or permit application or license or permit renewal pending before any City board, agency or commission administering a municipal ordinance or regulation may be withheld at the discretion of said board, agency or commission until notification by the Building Commissioner or other department responsible for site plan review and approval that the development and any associated on-site or off-site improvements comply with the approved final site plan and any conditions imposed thereon. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**
- (4) Period of validity of site plan approval. See Subsection E(8).
- (5) Performance bond: See Subsection D(5).
- (6) Enforcement officer.
  - (a) Designated officer: The Building Commissioner is hereby authorized and directed to enforce all of the provisions of this article. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**
  - (b) Site inspections. The City reviewing departments, their agents, officers and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties for the administration and review of this chapter and may make or cause to be made such examinations, inspections or surveys as said departments deem necessary.
- (7) Penalties. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**
  - (a) Any owner of property who violates or permits a violation of this section shall be subject to a fine of \$50 per day, said fine to be assessed each and every day the violation continues after issuance of a violation notice by the Building Commissioner



upon the identified violator. All fines shall be payable to the City of Marlborough through the City Clerk's office.

- (b) In addition to the procedures for enforcement as described above, the provisions of this chapter, the conditions of an approval granted under this chapter or any decisions rendered by the City reviewing departments under this chapter may be enforced by the Building Commissioner by noncriminal complaint pursuant to the provisions of MGL c. 40, § 21D. The fine for any violation disposed of through this procedure shall be \$50 for each offense. Each day such violation continues shall be deemed a separate offense.
- H. Rules on procedure. The departments responsible for site plan review and approval may, upon joint agreement, periodically amend or add rules and regulations relating to the procedures and administration of this section. The Planning Department shall be responsible for issuing the rules, if any.
- I. Appeals. Appeals from this chapter shall be governed by MGL Chapter 40A.

**§ 270-3. Road opening/curb cut permit.**

- A. Permit required. When the lot to be built on abuts a state highway or City street or requires a state curb cut permit for any reason, the application for a building permit shall be accompanied by approval in writing issued by either the State Department of Public Works or the City of Marlborough Department of Public Works, or both, as the specific application may require, for any driveway openings, road openings and any and all connections for water, sewer or surface water drainage. Such requirement shall be extended to all applications for a building permit, including such special permits or variances as are issued by the City Council or any other City agency as specified under the regulations of Chapter 650, Zoning.
- B. Conformance to site plan. The location of any curb cut must conform to the approved site plan. The issuance of a curb cut permit prior to approval of a site plan shall not constrain the conditions that may be imposed at site plan approval.
- C. Conditions of permit. In all cases, said curb cut permit shall automatically be limited to the project granted site plan approval. Any substantial change in use of the curb cut (see below) shall require modification of the permit or application for a new permit which may contain new restrictions. "Substantial change" shall mean an increase of 10% or more in vehicle trips caused by expansion of the project or by a change of use from one category to another as listed in the Table of Off-Street Parking Requirements in Chapter 650, Zoning, of the Code of the City of Marlborough, or by addition of a drive-through facility or a

substantial impact on traffic caused by a change in the type, pattern or timing of such traffic.

#### **§ 270-4. Building permit.**

A. Permit required.

(1) Buildings.

(a) General. No building, structure or mobile home shall be erected, enlarged or altered by any person (except as noted below), unless a building permit therefor has been first granted by the Building Commissioner to such person. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

(b) Exception. The only exception to the above shall be ordinary repairs, as defined by the State Building Code, and one-story accessory wooden buildings less than 65 square feet, provided that they meet the zoning yard requirements and are not for human occupancy.

(2) Site work not including building or structure. No work described under § 270-2A(2) and (3) governing applicability of site plans shall be undertaken by any person unless approval therefor has first been granted by the Building Commissioner to such person. The only exceptions to the above shall be as listed under § 270-2A(3)(b). Unpaved or gravel areas shall not be paved without receiving prior approval therefor. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

B. Applications. Any person seeking a building permit shall file an application for such permit with the Inspector on forms furnished by the Building Commissioner. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

C. Construction standards. The applicant for a building permit shall submit plans and specifications for such work or buildings as required by the State Building Code.

D. Review and approval. The plans and specifications in Subsection C above shall be submitted to the Building Commissioner and any other department or agency the Building Commissioner designates for examination, approval and filing. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

E. Effective date. Such application shall not be considered complete and shall not take effect until a final site plan, if applicable, has been approved under this chapter.

#### **§ 270-5. Demolition permit.**

- A. Demolition permit required. Any person seeking to raze, demolish or remove a building or significant portions thereof shall first apply for a demolition permit from the Building Commissioner. No demolition permit shall be issued until after debris removal requirements have first been complied with. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**
- B. Debris removal requirements. Said person shall comply with the applicable provisions of § 540-23 of Chapter 540, Article III, Debris Removal, and applicable state and federal regulations regarding debris removal.
- C. Extermination required.
  - (1) Requirement. Extermination may be required by the Board of Health before issuance of a permit to demolish. The building owner or his agent shall carry out effective measures for rodent extermination over the entire premises.
  - (2) Method of extermination. The method of extermination employed shall be in successful use locally and shall meet with the prior approval of the Board of Health. Upon completion of the extermination work, the building owner or his agent shall present a statement to the Board of Health that the extermination of rodents has been carried out by the use of acceptable methods. The Board of Health shall then review the methods used, inspect the premises, and, if the results are satisfactory to the Board, it will issue a letter to the Building Commissioner informing him of the satisfactory completion of the requirement. The Building Commissioner shall then issue the demolition permit if all other requirements of the application for the permit have been met. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

**§ 270-6. Certificate of use and occupancy.**

- A. Certificate required. No person shall use or occupy any building of any type, mobile home or portion thereof before a certificate of use and occupancy is issued for such use by the Building Department, in accordance with the provisions of the State Building Code.
- B. Applicability and application. The owner of any building being built, altered, remodeled or modified in use shall be responsible for arranging for inspections by the various departments listed on the application for occupancy and shall submit a completed application to the Building Department.
- C. Conformance to site plan and Sign Ordinance. No certificate shall be granted by the Building Commissioner until the development, including buildings, site work, landscaping, signs and any associated off-site improvements, conforms to the approved final site plan and all conditions imposed on the final site plan have been complied with and

until all signs are in conformity with the requirements of Chapter 526, Signs. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

- D. Temporary certificate. Notwithstanding the above, a temporary certificate may be granted subject to conditions for completion of work.

**§ 270-7. Certificate of completion. [Amended 10-6-2014 by Ord. No. 14-1005921A]**

At the option of the Building Commissioner, prior to issuance of a certificate of use and occupancy, and upon satisfactory completion of a building or structure, or part thereof, the Building Commissioner may issue a certificate of completion for said project, such that it meets the terms of the approved building permit. The issuance of a certificate of completion shall not be authorization for use or occupancy.

**§ 270-7.1. Plumbing and gas fitting permits. [Added 8-16-2004 by Ord. No. 04-100377C]**

- A. Plumbing and/or gas fitting shall not be installed, altered, removed, replaced or repaired until the Inspector of Plumbing has issued a permit therefor. Any application for such permit shall be made to the Inspector of Plumbing and shall contain a statement of the work performed, the location of the building, the name of the legal owner of said property and the names of the persons for and by whom the work is to be done. Each permit which is issued by the Inspector of Plumbing shall be subject to the express conditions set forth therein as to compliance with all provisions of the statutes, rules and regulations promulgated by the Commonwealth of Massachusetts and found in the Uniform Plumbing Code (248 CMR 10.00) which relate to plumbing. A separate permit shall be required for each building.
- B. Permits to perform plumbing work shall be issued to licensed plumbers only. Permits to perform gas fitting work shall be issued to licensed plumbers or licensed gas fitters only.
- C. All new plumbing and/or gas fitting work and such portions of existing systems as may be affected by new work or any changes shall be inspected to ensure compliance with all the requirements of 248 CMR and to ensure that the installation and construction of the plumbing system is in accordance with the approved plans.
- D. Nothing contained herein shall restrict the Plumbing Inspector from enforcing the provisions of the State Plumbing Code.
- E. No person shall aid or abet any plumber to violate the provisions of this section or any provision of 248 CMR; connive at its violation; or employ an unlicensed person or permit his employment in the performance of any work, which is required by 248 CMR to be done by a plumber.
- F. Any person violating this section or any section of the State Plumbing Code (248 CMR) shall be punished by a fine as established by the said

Code or in the alternative by a noncriminal disposition as referred to in the Code of the City of Marlborough § 315-2B(25).

**§ 270-8. Building Department permits, standards and enforcement.  
[Added 6-7-2004 by Ord. No. 04-100395B]**

- A. Permit application: It shall be unlawful to construct, reconstruct, alter, repair, remove or demolish a building or structure where such activities are regulated by 780 of the Code of Massachusetts Regulations (hereinafter referred to as the "State Building Code"), or to change the use or occupancy of a building or structure; or to install or alter any equipment for which provision is made or the installation of which is regulated by 780 of the Code of Massachusetts Regulations (hereinafter referred to as the "State Building Code") or by an ordinance of the City of Marlborough (hereinafter referred to as the "City Code"), without first filing a written application with the Building Commissioner (hereinafter referred to as "Commissioner") and obtaining the required permit therefor.
- B. Maintenance. All buildings and structures and all parts thereof, both existing and new, and all systems and equipment therein which are regulated by either the State Building Code or by City Code shall be maintained in a safe, operable and sanitary condition. All service equipment, means of egress, devices and safeguards that are required by the State Building Code or by City Code in a structure or building or which were required by a previous statute, Building Code or City Code in a building or structure when erected, altered or repaired shall be maintained in good working order.
- C. Inspection of premises. The Commissioner shall have the right to enter upon the property of any person if he has reason to believe that any provision of the State Building Code or City Code is being violated. The Commissioner shall provide written notification to the owner of said property of the date and time of the proposed inspection. Any person who hinders or prevents or attempts to prevent the Commissioner or his agents from entering any building, structure or enclosure or part thereof in the performance of his duty in the enforcement of any provision of this section or any other provision of the City Code, the laws of the commonwealth and/or the State Building Code relating thereto shall be punished by a fine of \$100 per offense. Each day during which the person shall be in violation of this section shall constitute a separate offense.
- D. Unlawful continuance. Any person or any landowner who shall continue any work in or about the building or structure after having been served with a stop-work order pursuant to the State Building Code, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than \$300 per offense. Each day during which a violation exists shall constitute a separate offense.

- E. Violations. Whoever violates any provision of the State Building Code or of this section, except any provision contained within this section which provides for a specific penalty, shall be liable to a fine of not more than \$300 per offense. Each day during which a violation exists shall constitute a separate offense.
- F. Enforcement. Nothing contained within this section shall prohibit the Commissioner from proceeding against any individual for a violation of the State Building Code in any criminal court of jurisdiction or by seeking any other avenue of redress, thereunder, against any individual in law and/or equity.

**§ 270-8.1. In-building Fire Department and Police Department radio coverage. [Added 5-5-2014 by Ord. No. 14-1005649B]**

- A. The Marlborough Fire Department requires that, in accordance with 780 CMR 916.1, et seq., of the Code of Massachusetts Regulations, as amended, all new buildings and new additions to existing buildings provide reliable radio communications for emergency responders within the building based upon the existing coverage levels of the Marlborough Fire Department and the Marlborough Police Department communication systems at the exterior of the building. This section shall not require improvement of existing public safety communication systems. **[Amended 1-7-2019 by Ord. No. 18/19-1007481B]**
- B. The installation and operation of radio-based Fire Department communication systems must comply with the document entitled "Marlborough Fire Department Bi-Directional/Unidirectional Antenna Specifications For In-Building Fire Department Radio Coverage In Buildings," which document may be obtained at the Marlborough Fire Department and is incorporated herein by reference. The Marlborough Fire Department is authorized to promulgate and amend, from time to time, said regulations. No radio-based Fire Department communication systems shall be installed or operated without first filing with the Marlborough Fire Department a written application and obtaining a permit therefor. No occupancy permit shall be issued by the Building Department without said permit, or a written waiver therefrom by the Marlborough Fire Department.
- C. Each permit issued by the Marlborough Fire Department under this section is subject to the fee for installation and maintenance of a Fire Department and Police Department communications system which is listed in § 328-2 of Chapter 328.

## ARTICLE III

**Fees****§ 270-9. Permit fees. [Amended 2-10-1997 by Ord. No. 96-6884B]**

- A. Construction costs for all new buildings and structures will be determined from values as listed in the Building Valuation Data Report published by Marshall and Swift Publication Company, Los Angeles, California.
- B. Note: Permit holder retains rights granted under the permit. No permits are transferable.
- C. For all permits (building, plumbing, wiring and gas) there will be a charge of \$50 for every reinspection necessitated by faulty or illegal installation or not in conformance with requirements of Massachusetts codes. Reinspection fee shall be paid before reinspection is made. **[Amended 2-9-2004 by Ord. No. 04-9962C]**
- D. Any work started before applying for and obtaining a permit will be charged two times the permit fee.
- E. Fees. **[Amended 2-9-2004 by Ord. No. 04-9962C]**

<b>Type of Permit</b>	<b>Fee</b>
New buildings	
Residential	\$10 per \$1,000; minimum \$100
Residential, 3 or more units	\$10 per \$1,000; minimum \$300
Commercial	\$10 per \$1,000; minimum \$150
Accessory structure	\$10 per \$1,000
Additions and alterations	
Residential	\$10 per \$1,000; minimum \$25
Commercial	\$10 per \$1,000; minimum \$50
Miscellaneous fixed fees	
Demolition, residential	\$150
Demolition, commercial	\$250
Moving building	\$250
Woodstoves	\$25
Siding/reroofing	\$20
Tents	\$25
Pools, above ground	\$25
Pools, inground	\$40
Amusements	\$100
Fences	\$10

<b>Type of Permit</b>	<b>Fee</b>
Fences, appeals hearing	\$7 per Fence Viewer
Occupancy	
Application to occupy existing space	\$40
Occupancy permit, residential	\$50
Occupancy permit, commercial	\$50
Residential gas	
Single-family residence (new)	\$100
Residential, 3 or more units	\$65 per residential unit
Appliance replacement or addition (1-2 appliances)	\$25 base and \$5 per appliance
Commercial and industrial gas	
New building	\$10 per \$1,000 of cost; minimum \$50
Change or addition	\$50, plus \$5 each fixture
Propane gas service installation	\$50
Propane appliance replacement or addition	\$15 each
Residential plumbing	
1- and 2-family residence	\$100 per residential unit
3 or more units	\$65 per residential unit
Alterations, residential	\$20, plus \$5 per fixture
Residential single unit replacement	\$25
Single fixture alterations	\$25
Trailer, water or sewer	\$25
Commercial plumbing	
Commercial (new)	\$50 plus \$10 per \$1,000 of cost
Commercial (alterations)	\$50, plus \$5 per fixture
Commercial single unit (replacement)	\$25
Commercial backflow preventors	\$25 each
Wiring	
New house	\$100
New house with electric heat	\$125
Each additional dwelling unit	\$100
Service change, residential	\$25



<b>Type of Permit</b>	<b>Fee</b>
Oil or gas burner	\$25
Appliances (up to 2-same inspection)	\$25
0-10 outlets (switches, plugs, thermostat, lights, electric heaters, etc.)	\$25
Each additional 10 outlets	\$25
Christmas lights, 0 to 10 lights	\$25
Swimming pools	\$35
Carnivals and amusement events	\$100
Signs and billboards	\$25
Temporary service	\$50
Fire alarms/low-voltage wiring	\$20
Commercial and industrial (any new or addition)	\$50 plus \$10 per \$1,000 of contract cost
Industrial maintenance, annual	\$100
Replacement equipment (refrigerator, water heater)	\$25 each
New service (service change, new meter)	\$50, per meter socket
Temporary service	\$50

F. Site plan review fees shall be as follows (with an effective date of November 1, 2005 and a sunset clause of June 30, 2006). **[Added 10-24-2005 by Ord. No. 05-100881C]**

(1) Definitions. As used in this section, the following terms shall have the meanings indicated:

MINOR SITE PLAN — Any site plan containing less than 8,000 square feet of building gross floor area (with the exception of one- and two-family residences). Site plans for existing buildings shall be considered minor site plans for purposes of assigning fees.

MAJOR SITE PLAN — Any site plan containing more than 8,000 square feet of building gross floor area (with the exception of one- and two-family residences).

OTHER PLANS — Any site plan involving parking lots or landscaping only where no building is present and no utility changes are proposed.

(2) Fees.

- (a) The fee for minor site plans, as defined above, shall be \$1,000, plus \$0.03 per square foot of gross floor area.

- (b) The fee for major site plans, as defined above, shall be \$2,000, plus \$0.06 per square foot of gross floor area.
- (c) The fee for modifications to any plan shall be \$1,000, plus \$0.03 per square foot of gross floor area.
- (d) The fee for other plans, as defined above, shall be \$750.
- (e) The City Council may authorize the waiver of any fee in this section where a hardship, in its judgment sufficient, is presented.

ARTICLE IV  
**Condominium Conversion**  
**[Added 9-23-1985 by Ord. No. 85-556]**

**§ 270-10. Definitions.**

As used in this article, the following words shall, unless the context clearly requires otherwise, have the following meanings:

CONDOMINIUM OR COOPERATIVE CONVERSION EVICTION — An eviction of a tenant for the purpose of removing such tenant from a housing accommodation in order to facilitate the initial sale and transfer of legal title to that housing accommodation as a condominium or cooperative unit to a prospective purchaser, or an eviction of a tenant by any other person who has purchased a housing accommodation as a condominium or cooperative unit when the tenant whose eviction is sought was a resident of the housing accommodation at the time the notice of intent to convert is given to convert the building or buildings to the condominium or cooperative form of ownership pursuant to § 270-11; provided, however, that the eviction of a tenant for nonpayment of rent or other violation of a rental agreement shall in no event be deemed a condominium or cooperative conversion eviction.

CONDOMINIUM UNIT — A unit in a housing condominium as that term is defined in MGL Chapter 183A.

COOPERATIVE UNIT — A unit in a housing cooperative as set forth in MGL Chapter 157.

ELDERLY TENANT — A tenant who is a person or group of persons residing in the same housing accommodation, any of whom has reached the age of 62 years or over as of the date of the receipt of the notice provided for hereunder.

HANDICAPPED TENANT — A person entitled to occupy a housing accommodation who is physically handicapped as defined in MGL c. 22, § 13A, as of the date of receipt of the notice provided for hereunder.

HOUSING ACCOMMODATION — Any building, structure or part thereof or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, together with all services connected with the use or occupancy of such property, but not including the following:

- A. Housing accommodations which the United States or the commonwealth or any authority created under the law thereof either owns or operates.
- B. Housing accommodations in any hospital, convent, monastery, asylum, public institution or college or school dormitory operated exclusively for charitable or educational purposes or in any nursing or rest home for the aged.
- C. Buildings containing fewer than four housing accommodations.

- D. Housing accommodations in hotels, motels, inns, tourist homes, and rooming houses and boardinghouses which are occupied by transient guests staying for a period of fewer than 14 consecutive calendar days.

INTEREST SUBSIDY — Any payment made by the federal or state government to reduce the effective interest rate payable by a mortgager.

LOW- OR MODERATE-INCOME TENANT — A tenant who is a person or group of persons residing in the same housing accommodation so long as the total income for all such tenants for the 12 months immediately preceding the date of the notice provided for hereunder is less than 80% of the median income for the area set forth in regulations promulgated from time to time by the Department of Housing and Urban Development pursuant to 42 U.S.C. § 1437 et seq., and calculated pursuant to said regulations.

TENANT — A person or group of persons collectively entitled to occupy a housing accommodation pursuant to a rental agreement written or implied.

TENANT SUBSIDY — Any payment made by the federal or state government for or on behalf of any tenant to be applied toward the reduction of the tenant's rental payment.

### **§ 270-11. Procedures.**

A. Notice.

- (1) If a building submitted to the provisions of MGL Chapter 183A or 157 has been used in whole or in part for residential purposes within one year prior to the recording of a master deed creating a condominium or the filing of the articles of organization creating a housing cooperative, the owner thereof shall give each tenant of all housing accommodations in such building or buildings written notice of intent to convert the building or buildings to the condominium or cooperative form of ownership. Such written notice shall state in clear and conspicuous language the following:
  - (a) That the owner has filed or intends to file a master deed at a registry of deeds whose location is stated in the notice or has filed or intends to file articles of organization with the Secretary of the Commonwealth.
  - (b) That any tenant residing on the date the notice of intent is given in the building or buildings converted or to be converted to the condominium or cooperative forms of ownership shall have a period of time, which shall be stated in the notice, from the date of the receipt of such notice, as authorized by this article, before the tenant shall be required to vacate the housing accommodation occupied on the date the notice is received.
  - (c) That any tenant residing on the date the notice of intent was given in the building or buildings to be converted shall have a

period of time, which shall be stated in the notice, from the date of receipt of such notice, as authorized by this article, to purchase the unit occupied by the tenant on the date the notice is received on terms and conditions which are substantially the same as or more favorable than those which the owner extends to the public generally for the six months next following the expiration of said tenant's right to purchase as may be required by Subsection B.

- (2) All notices required under this subsection shall be deemed to have been given when a written notice is delivered in person or mailed by certified or registered mail, return receipt requested, to the party to whom the notice is being given.
  - (3) Whenever an owner is required to give notice of intent provided for in this subsection, the period of notice shall not be less than the expiration of any written agreement between the owner and the tenant of the housing accommodation which governs the use and occupancy of said housing accommodation or three years from the date the tenant of such housing accommodation is given said notice of intent, whichever is greater; provided, however, that in the case of a housing accommodation occupied in whole or in part by a handicapped tenant or occupied by an elderly or low- or moderate-income tenant, the period of notice shall not be less than five years from the date the tenant of such housing accommodation receives said notice of intent.
  - (4) No person shall bring any action seeking a condominium or cooperative eviction until the expiration of the periods of time for notice to tenants specified in this article.
  - (5) The burden of proving qualifications with respect to age, handicap and income shall rest with the tenant.
- B. Any owner of residential property who converts such property to the condominium or cooperative form of ownership shall give to any tenant who is entitled to receive notice pursuant to this section the right to purchase the housing accommodation occupied by such tenant at the time such notice is delivered on terms and conditions which are substantially the same as or more favorable than those which the owner extends to the public generally for the six months next following the expiration of said tenant's right to purchase. Such tenant may exercise a right to purchase such housing accommodations by executing a purchase and sale agreement prior to the expiration of said six months next after the date of receiving a copy of the purchase and sale agreement properly executed by the person offering the housing accommodation for sale.
- C. The owner of residential property converted to the condominium or cooperative form of ownership shall pay to any tenant who is entitled to receive a notice pursuant to this section and who does not purchase the

housing accommodation which he occupies or another housing accommodation in the same building or buildings relocation benefits for the actual, documented costs of moving, not to exceed \$750 per housing accommodation; provided, however, that if such housing accommodation is occupied in whole or in part by a handicapped tenant or is occupied by an elderly or low- or moderate-income tenant, the maximum relocation benefit shall not exceed \$1,000 per housing accommodation. Such relocation benefits shall be payable within 10 days after the date on which the tenant vacates the housing accommodation occupied by him; provided, however, that no tenant shall be eligible for such relocation benefits unless all rent due and payable for said unit under the rental agreement or extension of such agreement, if any, has been paid by the tenant prior to the date on which the housing accommodation is vacated and only as long as the tenant voluntarily vacates the housing accommodation for which recovery of possession is sought on or before the expiration of the notice period.

- D. Any owner of residential property converted to the condominium or cooperative form of ownership shall assist elderly, handicapped and low- or moderate-income tenants who qualified as such as of the date of receipt of the notice authorized pursuant to this section in locating, within the period of the notice to such tenants, comparable rental housing within the same City or town in which such tenant resides which rents for a sum which is equal to or less than the sum which such tenant had been paying for the housing accommodation occupied at the time of receipt of the notice authorized by this section. The failure of the owner of such residential property to find such substitute housing accommodation shall extend the period of notice for up to an additional two years.
- E. Any owner of residential property converted to the condominium or cooperative form of ownership shall give to any tenant who is entitled to receive a notice pursuant to this section an extension of the rental agreement at the expiration thereof. Such extension, where required, shall be for such periods of one year or such fraction thereof as shall equal the period of notice to which such tenant is entitled pursuant to the provisions of this section. The provisions of such rental agreement may not otherwise be modified by the property owner, except with respect to the amount of annual rent, any increase in which shall not exceed an amount equal to the sum which would result by multiplying said rent by the percentage increase in the consumer price index for all urban customers as published by the United States Department of Labor, Bureau of Labor Statistics, during the calendar year immediately preceding the date upon which such rental agreement is commenced, or 10%, whichever is less; provided, however, nothing herein shall limit the right of a property owner to any amounts which may be due under a valid tax escalation clause.

- F. Notwithstanding any other provisions of this article, any tenant or tenants who have not received a notice of eviction for the purpose of a condominium or cooperative conversion shall be refunded their prepaid rent and security deposits, in accordance with MGL c. 186, § 15B.

**§ 270-12. Number of conversions limited.**

No more than 25% of the housing accommodations in any building, structure or part thereof may be converted in any one calendar year.

**§ 270-13. Violations and penalties.**

- A. Any owner who converts residential property in violation of any provisions of this article shall be punished by a fine of not less than \$1,000 or by imprisonment of not less than 60 days. Each unit converted in violation of this article constitutes a separate offense.
- B. Any violation of this article by an owner of residential property shall not affect the validity of a conveyance of a condominium unit or an interest in a housing cooperative to a purchaser for value who has no knowledge of the violation.
- C. The district and superior courts shall have jurisdiction over an action arising from any violation of this article and shall have jurisdiction in equity to restrain any such violation.

**§ 270-14. Period of sufficient notice.**

In the case of any housing accommodation for which sufficient notice, as hereinafter defined, was given subsequent to April 1, 1983, the period of notice required pursuant to § 270-11 shall be deemed to have commenced on the date such sufficient notice was received by the tenant. Provided that "sufficient notice" for purposes of this section shall be defined as written notice to the tenant informing him, in substance, that said housing accommodation was being or had been converted to a condominium or cooperative form of ownership and that the tenant would be required to vacate not earlier than one year from the date of receipt of such notice, sufficient notice given on or prior to April 1, 1983, shall be deemed to have been given on April 2, 1983.

**§ 270-15. Applicability of regulations.**

The provisions of this article shall not be applicable to any unit in a building or buildings converted to the condominium or cooperative forms of ownership for which on the effective date of Chapter 527 of the Acts of 1983 a master deed has been recorded or articles of organization filed and a deed or, in the case of a cooperative, a proprietary lease, conveying the unit to a bona fide purchaser for value, who intends to occupy such unit as a principal residence, recorded, in the case of such deed, in the registry of deeds for the county in which such unit is located on or before October 15, 1983, or a purchase and sale agreement was entered into on or before

October 15, 1983, with a bona fide purchaser for value who intends to occupy such unit as a principal residence. Proof of payment of a reasonable deposit or down payment shall be evidenced by a canceled check or its equivalent establishing said value.

**§ 270-16. Waiver. [Added 7-25-2005 by Ord. No. 05-100821B]**

A. The provisions of §§ 270-10 to 270-12, 270-14, 270-15, 270-17 and 270-18 shall be waived as to an owner which, prior to the filing of a master deed regarding said property, has obtained the following:

- (1) A certificate from the Mayor certifying that the owner has paid to the Marlborough Affordable Housing Fund or to such other fund for the benefit of affordable housing as may be directed by the City Council the sum of \$1,250 for every residential unit to be created as the result of the filing of the master deed and that the total number of said units is no greater than 125.
- (2) A monitoring agreement signed by the owner and the Executive Director of the Community Development Authority, or such other person or entity as may be designated by the City Council, and binding on the successors and assigns of the owner, which shall provide that:
  - (a) The owner has agreed that at least 70% of the units sold will be sold to persons who intend to occupy the unit as their principal place of residence;
  - (b) The owner has deposited with the Community Development Authority (CDA) or such other person or entity as may be designated by the City Council a bond, in a form suitable to the CDA or to such other person or entity, in an amount equal to \$500 multiplied by the number of units in the proposed condominium, the condition of the bond being that the amount thereof will be forfeited to the Affordable Housing Trust, or to such other fund for the benefit of affordable housing as may be directed by the City Council, unless the owner has demonstrated to the CDA, or such other person or entity, within three years of the date of the bond, that the owner has sold and transferred units in compliance with Subsection A(2)(a) above. Compliance shall be shown by providing to the CDA, or such other person or entity as may be designated by the City Council, a certified copy of the affidavit of intended owner-occupancy executed by the individual unit buyers at the time of closing on the unit buyer's purchase or, at the owner's request, through some other method acceptable to the CDA, or such other person or entity;
  - (c) The owner has agreed to pay to any tenant who would otherwise be entitled to an expense reimbursement pursuant to § 270-11C:



- [1] The maximum amount that would have been due and payable thereunder on the day that the tenant vacates the unit, without any required proof of actual moving or other expenses; and
  - [2] A tenancy longevity bonus equal to \$250 for every year or fraction of an uncompleted year greater than two years that the tenancy was in existence on the date of the filing of the master deed.
- (d) The owner has paid to the CDA, in advance, or to such other person or entity as may be designated by the City Council, the sum of \$10,000 as compensation for administering the monitoring agreement.
  - (e) The owner has provided to the CDA or such other person or entity as may be designated by the City Council, a copy of the condominium bylaws to be recorded, which bylaws shall provide that:
    - [1] Seventy percent of the units in the condominium shall be owner-occupied at all times;
    - [2] The bylaw section requiring said seventy-percent owner-occupancy provision may not be amended or deleted.
- B. An owner of property which has received a waiver pursuant to this section shall continue to be required to comply with the provisions of state law, including but not limited to Chapter 527 of the Acts of 1983 regarding condominium conversion.

#### **§ 270-17. Prior unit conversions.**

The provisions of this article shall not be applicable to any unit in a building or buildings converted to the condominium or cooperative forms of ownership for which, on or before the date of adoption of this article, a master deed has been recorded or articles of organization filed and a deed or, in the case of a cooperative, a proprietary lease, conveying the unit to a bona fide purchaser for value, who intends to occupy such unit as a principal residence, has been recorded, in the case of such deed, in the registry of deeds for the county in which such unit is located.

#### **§ 270-18. Prior building conversions.**

The provisions of this article shall not be applicable to any building or buildings converted to the condominium or cooperative forms of ownership for which, on or prior to the effective date of this article, a master deed has been recorded or articles of organization filed prior to the adoption of such article or bylaw for not less than 1/3 of the units in such buildings, and either purchase and sale agreements were entered into, prior to October 15, 1983, with bona fide purchasers for value, who intend to occupy such units as principal residences, as evidenced by a canceled check or its

equivalent establishing said value, or deeds or, in the case of cooperatives, proprietary leases, conveying units in such building or buildings to bona fide purchasers for value, who intend to occupy such units as principal residences, were recorded, in the case of such deed, in the registry of deeds for the county in which such building or buildings are located, on or before October 15, 1983.

## ARTICLE V

**Fences****[Added 12-16-1985 by Ord. No. 85-325A]****§ 270-19. Permit required.**

- A. No fence, barrier, wall, plant or hedge wall may be erected, repaired, modified or installed within the City of Marlborough without a permit issued through the Office of the Building Commissioner. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**
- B. Application for said permit shall be made with the Building Department on forms prepared and supplied by the Department.
- C. The Building Commissioner will grant permits upon determination that the type of fence, its location and other specifications are in full compliance with all the provisions of this article and all other City ordinances. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**

**§ 270-20. Height limitations.**

- A. No fence or barrier shall exceed six feet in height, except in the case of manufacturing plants, truck and bus parking lots, school yards, electric transformer installations, commercial storage and auto salvage yards, aboveground storage tanks for volatile or hazardous materials, livestock pens and dog kennels, all municipal yards and facilities, road overpasses, ball fields and the like, where safety and security considerations shall require a greater height.
- B. Property side-line fences and/or barriers running from the street line or sidewalk line into a property shall not exceed three feet in height for a distance of 15 feet into said properties, except for the same safety and security needs indicated in Subsection A above. Within said fifteen-foot distance along the property side line, the Building Commissioner may further restrict or deny the erection of a fence when its height, added to a rise, embankment, wall or ridge along the same side line, would obstruct a clear view up and down the street from any proximate driveway, walkway or bicycle path entering the street, except, again, those situations where the safety and security requirements of Subsection A above shall override the traffic considerations of Subsection B. **[Amended 10-6-2014 by Ord. No. 14-1005921A]**
- C. Fences and/or barriers running or erected within 15 feet of the front property line and/or parallel to the same shall be no more than three feet in height and, as with side-line fences within the same fifteen-foot distance, must permit the same field of vision along the street from proximate driveways, walkways and bicycle paths entering said street. Safety and security considerations of Subsection A may override traffic considerations of this Subsection C as in the case of side-line fences in Subsection B.

**§ 270-21. Setback requirements.**

All lot perimeter fences or barriers shall be set back from property lines a reasonable distance to allow their construction and maintenance without trespass on neighbors' property, unless a fence is co-owned by all parties involved and application is made by the several parties collectively. These "party fences" may be erected along property lines as mutually agreed and described in the application form filed with the Building Department.

**§ 270-22. Living fences.**

All living (shrubs or bushes) fences or barriers or hedges shall conform to all height restrictions applicable to other fences in this article with regard to the fifteen-foot distance from street lines and side lines.

**§ 270-23. Barbed wire and electric fences.**

All barbed wire fences and electric fences shall be clearly marked with hunter orange blazes at intervals of 20 feet. Barbed wire and electric fences shall be permitted, and living fences with sharp thorns may be planted only on those properties in RR Zoned Districts where livestock numbering five or more are actually kept and raised. No type fence will be allowed in the City on which a person or domesticated animal could become impaled, torn, slashed, mutilated or otherwise grievously injured.

**§ 270-24. Easements and rights-of-way.**

- A. On any lot subject to an easement, the owner or applicant shall procure a release in writing from the holder of the easement, and said release shall be attached to the application for a fence filed with the Building Department.
- B. No fence shall be erected that will prevent the use of a right-of-way which has been established by adverse usage.

**§ 270-25. Recreational facilities.**

The foregoing restrictions on fence heights shall not apply to a fence erected to contain a recreational facility, such as baseball backstops, spectator bleachers, tennis courts, archery ranges, swimming pools and like installations.

**§ 270-26. Time limit for compliance.**

All fences and living fences existing at the time of this article's adoption shall be brought into compliance with this article at the time of their replacement, rebuilding or replanting, but no later than five years from the date this article became effective.

**§ 270-27. Violations and penalties.**

A fine of \$10 per day shall be imposed for violators of this article, commencing with the 10th day following constructive delivery of a violation notice from the Building Department.

**§ 270-28. Freestanding walls.**

- A. The height restrictions governing fences in this article shall be equally applicable to freestanding walls built in the City after the date this article came into effect.
- B. Notwithstanding any other provisions of this article, no wall shall be built or maintained at any time where said wall is capped with broken glass, stone shards, metallic points or other jagged objects which could do bodily harm to a person or animal coming into contact with the same.

**§ 270-29. Variances. [Amended 6-1-1987 by Ord. No. 87-1370B; 10-6-2014 by Ord. No. 14-1005921A]**

The Fence Viewers of the City of Marlborough, upon appeal to them by an applicant who has been denied a fence permit by the Building Commissioner, after due notice and open hearing, may waive or vary, in the particular case, specific requirement(s) of this article where, in their majority opinion, the enforcement thereof would do manifest injustice or cause undue hardship to an applicant for a permit, provided that the decision of the Fence Viewers shall not conflict with the spirit and safety concerns of this article. The burden of proof of the manifest hardship or injustice shall be the responsibility of the applicant.

**§ 270-30. Fee for appeals hearing.**

In addition to any fees to which they may be entitled under applicable Massachusetts General Laws, each Fence Viewer shall be paid the sum of \$7 for each appeal hearing the Fence Viewer attends and participates in. The applicant shall be responsible for payment of said fees, payment to be made to the City of Marlborough, prior to said appeal hearing, in an amount equal to \$7 times the number of Fence Viewers then holding said office. Seven dollars shall be abated to the applicant for each Fence Viewer not present and participating in said appeal hearing.

**§ 270-31. Maintenance. [Added 10-19-1992 by Ord. No. 91-3938B]**

Fences and walls shall be maintained in good repair and presentable appearance or replaced.