

Board Members

Matthew J. Hayes, P.E., Chair
Robert Tucker, Vice Chair
Sarah Raposa, A.I.C.P., Clerk
Jessica Chabot, Member
Thomas Gay, Associate Member



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TOWN OF MEDWAY

COMMONWEALTH OF MASSACHUSETTS

PLANNING AND ECONOMIC DEVELOPMENT BOARD

Medway Commons Minor Site Plan and Drive-Through Facility Special Permit 67B and 67C Main Street

Decision Date: March 14, 2023

Name/Address of Applicant/Permittee: Charter Realty and Development Corporation
309 Greenwich Avenue
Greenwich, CT 06830

Name/Address of Property Owner: Hidden Acres Realty Trust (Medway, MA)
c/o Charter Medway II, LLC
309 Greenwich Avenue
Greenwich, CT 06830

Location: 67B and 67C Main Street

Parcel Size: 7.1 acres

Assessors' Reference: 23-067B and 23-067C

Zoning District: Central Business District

Engineer: Tighe & Bond
117 Corporate Drive
Portsmouth, NH 03801

Site Plan: *Minor Site Plan for Chipotle & Starbucks – Medway Commons, 67C Main Street, Medway, MA* dated December 22, 2022, last revised February 24, 2023, prepared by Tighe and Bond

Architectural drawings dated November 14, 2022, last revised February 3, 2023, prepared by Scott Griffin Architects, Waltham, MA.

Members Voting: Matthew Hayes, Robert Tucker, and Sarah Raposa; Tom Gay (special permit only)

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I. PROJECT DESCRIPTION – The applicant proposes to divide and renovate the interior and exterior of the former McDonald’s building in the Medway Commons shopping center to accommodate two new restaurant tenants. The main tenant space will be occupied by Chipotle and includes on-site seating, outdoor seating, and an order ahead, drive-through pick-up window. The tenant for the second restaurant space is not yet finalized. The building size will not change. There is no increase in parking. The applicant also proposes to substantially redesign and re-route the Starbucks drive-through lane, install a new dumpster enclosure at the northwest corner of the lot, construct additional crosswalks and sidewalks, install landscaping, and construct of a right-turn lane in the driveway area south of the subject building to provide better access to the businesses located in the southern portion of Medway Commons. Vehicular access and egress to the Chipotle building will as be established for McDonalds. There is no change in the number of parking spaces to be provided.

The Applicant seeks minor site plan approval pursuant to Section 3.5 of the Medway Zoning Bylaw and a drive-through facility special permit pursuant to Section 3.4 of the Zoning Bylaw. The planned improvements are shown on “Minor Site Plan for Chipotle & Starbucks – Medway Commons, 67C Main Street, Medway, MA” dated December 22, 2022, last revised February 24, 2023, prepared by Tighe and Bond, to be further revised as specified herein.

II. VOTES OF THE BOARD

- A. **MINOR SITE PLAN** - After reviewing the application and information gathered during the public hearing and review process, including statements of the Applicant and its representatives, comments offered by the public, and comments provided by the Board’s consultants and Town staff, the Medway Planning and Economic Development Board (PEDB), on March 14, 2023, voted 3 to 0 to APPROVE with CONDITIONS and WAIVERS from the *Site Plan Rules and Regulations* as specified herein, a site plan titled *Minor Site Plan for Chipotle & Starbucks – Medway Commons, 67C Main Street, Medway, MA*” dated December 22, 2022, last revised February 24, 2023, prepared by Tighe and Bond, with associated attachments including architectural plans by Scott Griffin Architects to be further revised as specified herein before plan endorsement. (Hayes, Raposa, and Tucker)
- B. **DRIVE-THROUGH FACILITY SPECIAL PERMIT** - After reviewing the application and information gathered during the public hearing and review process, including statements of the Applicant and its representatives, comments offered by the public, and comments provided by the Board’s consultants and Town staff, the Medway Planning and Economic Development Board, on March 14, 2023, voted 4 to 0 to GRANT with CONDITIONS a special permit to authorize a drive through pick up lane for Chipotle for 67C Main Street. (Hayes, Raposa, Tucker, and Gay)

III. PROCEDURAL HISTORY

- A. January 20, 2023 – Minor site plan approval and drive-through facility special permit applications were filed with the Board. The applications were provided to the Town Clerk on January 23, 2023.
- B. January 25, 2023 - Public hearing notice was filed with the Town Clerk and posted at the Town of Medway web site.
- C. January 26, 2023 - Public hearing notice was mailed to abutters by certified sent mail.
- D. January 31 and February 7, 2023 - Public hearing notice was advertised in the *Milford Daily News*

- E. January 26, 2023 - Notice was emailed to Town boards and departments requesting review and comments
- F. February 14, 2023 - Public hearing commenced. The public hearing was continued to February 28 and March 14, 2023 when a decision was rendered, and the hearing was closed.
- G. Associate PEDB member Tom Gay was designated by the Chair to sit on the special permit application, due to a vacancy on the Board.

IV. INDEX OF DOCUMENTS

- A. The following documents were provided at the time the site plan and drive-through facility special permit applications were filed with the Board:
 - Minor site plan application and drive-through facility special permit application both dated 1-19-2023 with submittal letter and project narrative.
 - *Minor Site Plan for Chipotle & Starbucks/Medway Commons*, dated 12-22-2022 prepared by Tighe and Bond
 - Architectural elevations and renderings dated 11-14-2022 by Scott Griffin Architects
 - Request for Waiver from the *Medway Site Plan Rules and Regulations*, last revised October 8, 2019.
 - Statement re: project consistency with Medway Design Review Guidelines, prepared by Karen Johnson, Charter Realty and Development
 - Traffic statement dated 12-22-2022 prepared by Tighe and Bond
 - Stormwater statement dated 12-22-2022 prepared by Tighe and Bond
 - Email from Building Commissioner Jon Ackley dated 12-16-22 confirming minor site plan status for the project
- B. During the course of review, the following materials were submitted to the Board by the Board's consultants and Town staff:
 - Plan review letter from Steve Bouley, P.E. Tetra Tech, dated 2-21-2023, last revised 3-2-2023
 - Review comments dated 1-26-2023 from Derek Kwok, Health Agent
 - Review comments dated 1-26-2023 from Police Chief William Kingsbury
 - Review comments dated 1-30-2023 from Director of Community and Economic Development Barbara Saint Andre
 - Review memorandum from Medway Design Review Committee dated 2-14-2023
- C. During the course of review, the following additional materials were submitted to the Board by the Applicant and its representatives and consultants:
 - Letter dated 2-24-2023 from Tighe and Bond in response to the 2-21-2023 Tetra Tech review
 - Revised *Minor Site Plan for Chipotle & Starbucks/Medway Commons* dated 1-31-2023
 - Revised *Minor Site Plan for Chipotle & Starbucks/Medway Commons* dated 2-24-2023
 - Annotated *Minor Site Plan for Chipotle & Starbucks/Medway Commons* dated 2-28-2023 for presentation at the 2-28-2023 hearing
 - Architectural elevations and renderings revised 2-3-2023 by Scott Griffin Architects

- Excerpts from *Trip Generation Manual* for fast food restaurants with and without drive-through windows.
- Starbucks queuing observations from October 21 and 22, 2022
- Package of documents for review by the Medway Design Review Committee
 - Email dated 3-2-23 from Karen Johnson, Charter Realty and Development
 - Revised Landscape Rendering (Chipotle) dated 2-28-2023 by Tighe and Bond
 - Roof access ladder detail (Chipotle) undated by O’Keeffe’s Inc.
 - Roof access ladder rendering (Chipotle) dated 2-28-2023 by Scott Griffin Architects
- Holliston Street/Medway Commons Entrance Reconfiguration by Tighe and Bond; provided at the 3-14-23 public hearing

D. Citizen Comments – None

E. Other Documentation

1. Certification under G.L. c. 39, §23D dated March 1, 2023 for Board member Robert Tucker pertaining to the February 14, 2023 hearing.

V. **TESTIMONY** – During the course of the public hearing, the Board heard and received verbal testimony from:

- Steve Bouley, P.E, Tetra Tech – Commentary throughout the public hearing process
- Courtney Sudak, P.E. Tetra Tech – Commentary related to parking and traffic
- Karen Johnson, Charter Realty and Development
- John Lorden, P.E., Tighe & Bond
- Greg Lucas, Tighe & Bond
- Tom Scott, Scott Griffin Architects

VI. **FINDINGS** - In making its Findings and reaching the decision described herein, the Board is guided by its *Site Plan Rules and Regulations*, and the special permit provisions of Section 3.4 of the *Medway Zoning Bylaw*. The Board also considered evidence and testimony presented at the public briefing and comments submitted by Town departments, boards, and committees as well as the Board’s peer review consultant placed in the public record during the course of the review.

A. **Site Plan Rules and Regulations Findings** – The Board shall determine whether the proposed development is in conformance with the standards and criteria set forth in the *Site Plan Rules and Regulations*, unless specifically waived. In making its decision, the Board makes the following Findings in accordance with Section 204-8 of the *Site Plan Rules and Regulations*, as amended October 8, 2019.

- 1) **Has internal circulation, queuing and egress been designed such that traffic safety is protected, access via minor streets servicing residential areas is minimized, and traffic backing up into the public way is minimized?** *The site plan and Traffic Statement have been thoroughly reviewed by the Board and its consulting engineer and the Applicant has adequately addressed all comments. No access from minor streets is necessary or available and there is no backing onto a public way. The revised route for drive-through queuing for Starbuck’s will alleviate vehicular overflow out to the Medway Commons driveway.*

- 2) **Does the site plan show designs that minimize any departure from the character, materials, and scale of buildings in the vicinity as viewed from public ways and places?** *The design of the proposed renovation of the former McDonald's building for Chipotle has been positively reviewed by the Design Review Committee. There are no particularly distinguished buildings in the vicinity with which the proposed building renovation and site improvements would conflict in terms of character, materials, and scale.*
- 3) **Is reasonable use made of building location, grading, and vegetation to reduce the visible intrusion of structures, parking areas, outside storage or other outdoor service areas (e.g., waste removal) from public views or from (nearby) premises residentially used and zoned.** *The Medway Commons property is located within the Central Business zoning district. The Chipotle and Starbucks facilities are abutted on the north by Main Street, and on the west, south and east by other Medway Commons business establishments. A new dumpster will be located within the rear parking area in the northwestern corner of the site; suitable screening is planned. Further, the landscaping plan shows enhanced buffering along the western façade of the former McDonald's building and will provide screening for entering and exiting traffic to Medway Commons at Main Street.*
- 4) **Is adequate access to each structure for fire and service equipment provided?** *Access for fire and service equipment is provided with paved surfaces on three sides of each of the subject buildings. The Fire Department was provided the project information and has not provided any comments or raised any issues of concern.*
- 5) **Will the design and construction minimize, to the extent reasonably possible, the following environmental impacts?**
 - a) the volume of cut and fill;
 - b) the number of trees to be removed with particular care taken with mature trees and root systems;
 - c) the visual prominence of man-made elements not necessary for safety;
 - d) the removal of existing stone walls;
 - e) the visibility of building sites from existing streets;
 - f) the impacts on waterways and environmental resource areas;
 - g) soil pollution and erosion;
 - h) noise.

The site plan has been reviewed by the Board and the Town's Consulting Engineer. The scope of work is limited to renovation of the former McDonald's building, the addition of landscaping, the rerouting of the Starbucks drive-through lane, and the addition of a right-hand turn from the main driveway adjacent to the subject area. There will be minimum site construction. The landscaping plan and building renovation have been reviewed and positively recommended by the Design Review Committee. No stone walls are being removed. There will not be adverse impacts to the interests listed above.

- 6) **Is pedestrian and vehicular safety both on the site and egressing from it maximized?** *The site plan has been reviewed by the Board and its consulting engineer. The Applicant has revised the plan based on that feedback. The re-routing of the Starbucks drive-through lane will provide a safer queuing environment.*

- 7) **Does the design and will the construction incorporate, to the maximum extent possible, the visual prominence of natural and historic features of the site?** *The site is already developed and there are no distinctive or visually prominent natural or historic features on the property.*
- 8) **Does the lighting of structures and parking area avoid glare on adjoining properties and minimize light pollution within the town?** *One light pole is being relocated 5-10 feet from its existing location adjacent to the realigned Starbucks drive-through and will be located further into the site away from Main Street. Relocating the pole is not expected to negatively impact abutters as light levels should remain consistent with existing conditions.*
- 9) **Is the proposed limit of work area reasonable and does it protect sensitive environmental and/or cultural resources?** *The site plan as designed should not cause substantial or irrevocable damage to the environment, which damage could be avoided or ameliorated through an alternative development plan or mitigation measures. The property is an established commercial development site and no substantive construction work to disturb land is planned. There are no sensitive environmental or cultural resources.*

Vote on Site Plan Findings - The Planning and Economic Development Board, at its meeting on March 14, 2023, voted 3 to 0 (Hayes, Tucker, Raposa) to approve the above noted **Site Plan Findings** regarding the minor site plan application for Charter Realty and Development Corporation for Medway Commons – Chipotle and Starbucks at 67B and 67C Main Street (the “Property”).

B. **Drive-Through Facility Special Permit Findings** – Pursuant to Section 3.4 of the Medway Zoning Bylaw, special permits shall be granted by the special permit granting authority only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In making its determination, the special permit granting authority, in addition to any specific factors that may be set forth in other sections of the Bylaw, shall make findings on all of the applicable criteria. The Board makes the following Findings in accordance with Section 3.4 of the Bylaw.

- 1) **The proposed site is an appropriate location for the proposed use.** *The proposed drive-through use is for a Chipotle restaurant which will open in a currently vacant building that was formerly occupied by McDonald’s which also provided a drive-through window for customers for almost 20 years. The subject building is located within the Medway Commons shopping center, located on Main Street (Route 109) Medway’s primary east/west travel route. The property is located within Medway’s Central Business zoning district.*
- 2) **Adequate and appropriate facilities will be provided for the operation of the proposed use.** *As documented in the plans and associated materials, and conditioned herein, adequate, and appropriate facilities will be provided for the operation of the drive-through lane for Chipotle’s. A new pick-up only window will be constructed for the renovated space and will be located on the south facing façade close to the previous position of the McDonalds window. Outdoor dining provisions will be offered. Town*

officials and the Town's Consulting Engineer have reviewed the proposed facility and associated site improvements.

- 3) **The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.** *The drive-through/pick up lane will be located in a similar position as its McDonald's predecessor. Estimated traffic volumes for the Chipotle pick-up lane are less than the higher traffic volume drive-through lane when McDonald's operated from this site. The site plan and traffic impact assessment have been reviewed by the Board and its Consulting Engineer. Pedestrian access to the site already exists. No new curb cuts are needed. Parking areas are provided.*
- 4) **The proposed use will not cause undue traffic congestion or conflicts in the immediate area.** *The Traffic Statement provided by Tighe and Bond indicates a net decrease in vehicle trips for the morning peak hour with Chipotle as compared to McDonald's which operated a breakfast serve and Chipotle does not. This will be beneficial to overall site operations.*
- 5) **The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials or other undesirable visual, site or operational attributes of the proposed use.** *The establishment of a drive-through pick up window for Chipotle does not represent any substantive change to the shopping center's operation that would impact adjoining properties.*
- 6) **The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.** *The establishment of a drive-through pick up window for Chipotle does not represent any substantive change to the shopping center's operation that would impact adjoining properties. The architectural design of the building has been thoroughly reviewed by the Design Review Committee and the Board and modified to further refine the building's style and character. Further, a landscaping plan to buffer the west facing façade of the Chipotle building has been provided and reviewed by the Design Review Committee.*
- 7) **The proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.** *The proposed use fulfills one of the purposes of the Zoning Bylaw which is to support the most appropriate use of land throughout the town. This presently vacant building is located in the Central Business District (CBD). As the Town has limited areas for commercial development, it is important to utilize the land area within the CBD to help strengthen the community's business tax base.*
- 8) **The proposed use is consistent with the goals of the Medway Master Plan.** *The drive-through/pick up lane is a critical component of the reuse of a vacant commercial building and is consistent with the Master Plan goals of facilitating smart redevelopment of the Route 109 corridor and encouraging commercial and industrial development in the community.*
- 9) **The proposed use will not be detrimental to the public good.** *As documented in the plans and application, and the Findings and Conditions of this decision, the proposed use will provide a popular restaurant facility for Medway and has been designed to protect against potential adverse impacts.*

For all of the above reasons, the Board finds the adverse effects of the proposed drive-through special permit for Chipotle at 67C Main Street will not outweigh the beneficial impacts of the proposed development to the town or neighborhood.

Vote on Drive-Through Facility Special Permit Findings - The Planning and Economic Development Board, at its meeting on March 14, 2023, voted 4 to 0 (Hayes, Tucker, Raposa, Gay) to approve the above noted Special Permit Findings pertaining to a drive-through facility for the Chipotle restaurant at Medway Commons at 67C Main Street.

VII. WAIVERS FROM SITE PLAN RULES AND REGULATIONS - At its March 14, 2023 meeting, the Board voted 3 to 0 to grant a waiver from the following provision of the *Rules and Regulations for the Submission and Approval of Site Plans, as amended October 8, 2019* for the reasons listed below. All waivers are subject to the *Special and General Conditions of Approval*, which follow this section.

Section 205-4. All existing and proposed elevations shall refer to the North American Vertical Datum of 1988 (NAVD88). *The Applicant has requested a waiver from this requirement and will use the NGVD29 vertical datum. The original survey and as-built plans for the center were completed using NGVD29 in 2003 and 2004. There is no impact to site design construction or floodplain by using the NGVD29 vertical datum. For the foregoing reason, the Board APPROVES this waiver request as being consistent with the purpose and intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.*

VIII. CONDITIONS OF APPROVAL - The *Conditions* included in this Decision are to assure that the Board's approval of the minor site plan and drive-through facility special permit are consistent with the *Zoning Bylaw*, and that the comments of various Town boards and public officials have been adequately addressed. These conditions are binding on the Permittee.

1. Notwithstanding any future amendment of the *Zoning Bylaw*, G.L. c. 40A, or any other legislative act, the portion of Medway Commons (67B and 67C Main Street) shown on the approved and endorsed Plan shall not be altered or used except:
 - A. as granted by this site plan and special permit decision;
 - B. substantially as shown on the site plan titled *Minor Site Plan for Chipotle & Starbucks – Medway Commons, 67C Main Street, Medway, MA* dated December 22, 2022, last revised February 24, 2023, prepared by Tighe and Bond including landscaping and architectural plans, to be further revised as specified herein before plan endorsement
 - C. in accordance with any subsequently approved field changes, modified plans, or amendments to this site plan/special permit decision
2. **Plan Endorsement** - Within 60 days after the Board has filed its Decision with the Town Clerk, the site plan entitled *Minor Site Plan for Chipotle & Starbucks/Medway Commons* dated December 22, 2022, last revised 2-24-2023 shall be further revised to reflect all Conditions and required revisions as specified herein and submitted to the Board to review for compliance with the Board's Decision. (*Said plan is herein referred to as the Plan*). Upon approval, the Applicant shall provide the revised Plan in its final form to the Board for its endorsement prior to recording at the Norfolk County Registry of Deeds. All plan sheets shall be bound together in a complete set.

- Prior to plan endorsement, the Permittee shall also provide a Certificate from the Town Clerk's office. The deadline may be extended by mutual agreement of the Permittee and Board.
3. **Recording** - No construction shall begin on the site and no building permit for any work shall be issued before this Decision and the Plan are recorded at the Norfolk County Registry of Deeds and proof of such recording is provided to the Board.
 4. **Cover Sheet Revisions**
 - A. Update waiver information to specify all APPROVED waivers
 5. **Other Plan Revisions**
 - A. Paint roof access ladder on the Chipotle building to blend with roof color per the recommendation of the Design Review Committee.
 - B. Add a "Do Not Enter" sign at the west Chipotle driveway as recommended by Tetra Tech.
 - C. Include a cross walk from the existing sidewalk on the east side of the westerly driveway for Chipotle to the meet the sidewalk at the southwest corner of the building.
 6. **Nuisance** – The Permittee shall renovate and maintain the property and site improvements so as to not create a nuisance to abutters or to the surrounding area, or create any hazard, including but not limited to fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure, or dwelling in the area. The Permittee shall comply with Section 7.3 Environmental Standards of the *Zoning Bylaw*.
 7. **Snow Storage and Removal** - On-site snow storage shall not encroach upon nor prohibit the use of any parking spaces shown on the Plan or required by the Bylaw. Accumulated snow which exceeds the capacity of the designated snow storage areas on-site shall be removed from the premises.
 8. **Water Conservation** – The property relies on the Town's public water system and the Town is being held to its Water Management Act Permit with the MA Department of Environmental Protection. The Permittee shall incorporate the following water conservation measures:
 - A. Any landscape irrigation system shall not be connected to municipal water supply. Irrigation wells must be permitted by the Board of Health.
 - B. rain-gauge controlled irrigation systems
 - C. low flow plumbing fixtures
 - D. water efficient appliances for toilets, etc.
 9. **Landscape Maintenance** - The project's landscaping installation shall be maintained in good condition throughout the life of the facility and to the same extent as shown on the Plan. Any shrubs, trees, bushes, or other landscaping features shown on the Plan that die shall be replaced by the following spring.
 10. **Applicability** – This Decision shall apply to any successor in control or successor in interest to the subject property

11. **Fees** - Prior to plan endorsement, the Board requires the Applicant to pay:
 - A. the balance of any outstanding project review fees owed to the Town for review of the application by the Town's engineering or other consultants;
 - B. construction observation fee – See Condition 15. B.
 - C. any other outstanding expenses or obligations due the Town of Medway pertaining to this property, including real estate and personal property taxes and business licenses.
12. **Compliance with Other Permits** – This special permit does not relieve the Applicant from its responsibility to apply for, obtain, pay for, and comply with all other required federal, state and Town permits, licenses, and approvals. The Permittee or agent shall apply for, obtain, pay for, and comply with all other required Town permits.
13. **Restrictions on Construction Activities** – During construction, all local, state, and federal laws shall be followed regarding noise, vibration, dust and blocking of Town roads. The Permittee and its contractors shall at all times use all reasonable means to minimize inconvenience to abutters and residents in the general area. The following specific restrictions on construction activity shall apply.
 - A. *Construction Time* - Work at construction sites and in the operation of construction equipment including start-up and movement of trucks, vehicles, and machines shall commence no earlier than 7 a.m. and shall cease no later than 7 p.m. Monday through Saturday. No construction shall take place on Sundays, federal holidays, or state legal holidays without the advance written approval of the Building Commissioner. The limits in this subsection do not apply to interior construction work such as painting, installation of drywall, flooring, and similar work.
 - B. *Neighborhood Relations* – The Permittee shall notify neighbors in the general area around the site when site work and construction are scheduled to begin and provide a phone number for them to use for questions and concerns that arise during construction.
 - C. The Permittee shall take all measures necessary to ensure that no excessive dust leaves the premises during construction including use of water spray to wet down dusty surfaces.
 - D. There shall be no tracking of construction materials onto any public way. Daily sweeping of roadways adjacent to the site shall be done to ensure that any loose gravel and dirt is removed from the roadways and does not create hazardous or deleterious conditions for vehicles, pedestrians, or abutting residents. In the event construction debris is carried onto a public way, the Permittee shall be responsible for all clean-up of the roadway which shall occur as soon as possible and in any event within twelve hours of its occurrence.
 - E. The Permittee is responsible for having the contractor clean-up the construction site and the adjacent properties onto which construction debris may fall on a daily basis.

- F. All erosion and siltation control measures as shown on the Plan shall be installed by the Permittee prior to the start of construction and observed by the Board's consulting engineer and maintained in good repair throughout the construction period.
 - G. *Construction Traffic and Parking* – During construction, adequate provisions shall be made on-site for the parking, storing, and stacking of construction materials and vehicles. All parking for construction vehicles and construction related traffic shall be maintained on site. No parking of construction and construction related vehicles shall take place on adjacent public or private ways or interfere with the safe movement of persons and vehicles on adjacent properties or roadways.
 - H. Construction areas shall be enclosed in fencing to the maximum extent practicable to protect the general public during construction.
15. **Construction Oversight**
- A. Pre-Construction Meeting – At least seven days prior to the start of any site preparation or construction, the Applicant shall meet with the Town's Consulting Engineer, Community and Economic Development staff, the Medway Department of Public Works, other Town officials as may be appropriate, and the Permittee's project engineer and site contractors for a pre-construction meeting. The construction schedule shall be reviewed and the procedures for inspections discussed.
 - B. Construction Account
 - 1) Inspection of infrastructure and utility construction, and inspection of installation of site amenities including landscaping by the Town's consulting engineer, and the review of legal documents by Town Counsel is required. Prior to plan endorsement, the Permittee shall establish a construction account with the Board. The funds may be used at the Board's discretion to retain professional outside consultants to perform the items listed above as well as the following other tasks - inspect the site during construction, identify what site plan work remains to be completed, prepare a bond estimate, conduct other reasonable inspections until the site work is completed and determined to be satisfactory, review as-built plans, and advise the Board as it prepares to issue a *Certificate of Site Plan Completion*.
 - 2) Prior to plan endorsement, the Permittee shall pay an advance toward the cost of these services to the Town of Medway. The advance amount shall be determined by the Board based on an estimate provided by the Town's Consulting Engineer.
 - 3) Depending on the scope of professional outside consultant assistance that the Board may need, the Permittee shall provide supplemental payments to the project's construction inspection account, upon invoice from the Board.

- 4) Any funds remaining in the Permittee's construction inspection account after the *Certificate of Site Plan Completion* is issued shall be returned to the Permittee.
 - C. Right to Enter Property - Board members, its staff, consultants or other designated Town agents and staff shall have the right to enter the property at reasonable times during construction and with advance notice to the Permittee to inspect the site for compliance with the terms and conditions of this Decision and the Plan and while on site, may acquire any information, measurements, photographs, and observations deemed necessary for that evaluation.
 - D. Monthly Project Engineer Reports - The Permittee shall have a professional engineer licensed in the Commonwealth of Massachusetts conduct progress inspections of the construction of the approved site improvements. Inspections shall occur at least monthly and shall start immediately once any work begins on the property. The Permittee's engineer shall prepare a written report of each inspection and provide a copy to the Board within five days of inspection. The Board may provide a template for such monthly reports.
16. **On-Site Field Changes**
- A. During construction, the Permittee may be authorized to make limited, minor, on-site field changes to the approved Plan based on unforeseen site or job conditions, situations, or emergencies necessitated by field conditions or due to practical considerations. These field changes shall not alter items which may affect the site's compliance with this Decision and the *Zoning Bylaw* nor conflict with a specific condition of the Decision. Field changes shall not substantially alter the intent, layout, or design of the approved Plan.
 - B. Prior to undertaking such field changes, the Permittee and/or contractor shall discuss the possible field changes with the Town's Consulting Engineer and Community and Economic Development staff and submit a letter and drawings to the Community and Economic Development Department and the Building Commissioner describing the proposed changes and what conditions, situations, or emergencies necessitate such changes. In accordance with Section 3.5.2.C of the *Zoning Bylaw*, the Building Commissioner may determine that the field change is insubstantial, authorize the change, and so notify the Board. Otherwise, the Board shall review the proposed field changes at a public meeting and determine whether the proposed field changes are reasonable and acceptable based on the unforeseen conditions, situations, or emergencies and whether other options are feasible or more suitable. A written authorization of field change will be provided. Any approved field change shall be reflected in the as-built plan to be provided at project completion.
17. **Modification of Plan and/or Decision**
- A. Proposed modifications, not including on-site field changes, to this Decision or the endorsed Plan shall be subject to review by the Board.
 - B. This site plan and special permit approval is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the site plan that may be required by the decisions

of other Town boards, agencies or commissions shall be submitted to the Board for review as site plan modifications.

- C. The request for a modification to a previously approved special permit and/or Plan shall be subject to the same application and review process including a public hearing. Whenever additional reviews by the Board, its staff or consultants are necessary due to proposed modifications, the Permittee shall be billed and be responsible for all supplemental costs including filing fees, review fees and all costs associated with another public hearing including legal notice and abutter notification. If the proposed revisions affect only specific limited aspects of the site, the Board may reduce the scope of the required review and waive part of the filing and review fees.
 - D. The Board shall issue a modification decision, file such with the Town Clerk, and provide copies to the Building Commissioner and other Town officials and the Permittee. Any modification approved by the Board shall be made a permanent part of the approved special permit documents and shall be shown on the final as-built plan
18. **Compliance with Plan and Decision**
- A. The Permittee shall construct all improvements in compliance with the approved and endorsed Plan and this Decision and any modifications thereto.
 - B. The Board or its agent(s) may use all legal options available to it, including referring any violation to the Building Commissioner/Zoning Enforcement Officer for appropriate enforcement action, to ensure compliance with the Decision including the Conditions of Approval.
 - C. The Conditions of Approval are enforceable under Section 3.1.F. of the *Zoning Bylaw*. Any work that deviates from the approved Plan or this Decision may be a violation of the *Zoning Bylaw* unless the Permittee requests approval of a modification and such approval is provided in writing by the Board, or as provided in Condition 16.
19. **Performance Security**
- A. Prior to grant of a final occupancy permit, the Board shall provide a *Certificate of Site Plan Completion* to the Building Commissioner. For a temporary or partial occupancy permit, the Permittee may request that the Board accept suitable performance security, to the Board's satisfaction, to cover the cost of all remaining site work, and that the Board so notify the Building Commissioner.
 - B. The Permittee shall propose a form of performance security which shall be of a source and in a form acceptable to the Board, the Treasurer/Collector and Town Counsel. The Board requires that the performance security be accompanied by an agreement which shall define the obligations of the Permittee and the performance security company including:
 - 1) the date by which the Permittee shall complete construction
 - 2) a statement that the agreement does not expire until released in full by the Board
 - 3) procedures for collection upon default.

- C. The amount of the performance security shall be equal to 100% of the amount that would be required for the Town of Medway to complete construction of the site infrastructure including installation of stormwater management facilities, utilities, services, pedestrian facilities, and all site amenities as specified in the approved Site Plan that remain unfinished at the time the performance security estimate is prepared if the developer failed to do so.
- D. The performance security amount shall be approved by the Board based on an estimate provided by the Town's Consulting Engineer based on the latest weighted average bid prices issued by the Mass Highway Department. The estimate shall reflect the cost for the Town to complete the work as a public works project which may necessitate additional engineering, inspection, legal and administrative services, staff time and public bidding procedures. The estimate shall also include the cost to maintain the infrastructure in the event the Permittee fails to adequately perform such and the cost for the development of as-built plans. In determining the amount, the Board shall be guided by the following formula in setting the sum: estimate of the Town's Consulting Engineer of the cost to complete the work plus a 30% contingency.
- E. Final release of performance security is contingent on project completion.

20. **Project Completion**

- A. Site plan approval shall lapse after two years of the grant thereof as provided in Section 3.5.7 of the Zoning Bylaw if a substantial use of the permit has not sooner commenced, or in the case of site plan approval for construction, if construction has not begun, except for good cause. As provided in Section 3.4 E of the Zoning Bylaw, a special permit shall lapse within two years from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or, in the case of a special permit for construction, if construction has not begun by such date except for good cause. Upon receipt of a written request from the Permittee filed at least thirty days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and specify the additional length of time requested. If no request for extension is filed and approved, the site plan approval shall lapse and may be reestablished only after a new filing, hearing, and decision.
- B. The work shown on the approved Plan shall be completed by the Permittee or its assignees within three years of the date of plan endorsement. Upon receipt of a written request from the Permittee filed at least thirty days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and specify the additional length of time requested. If no request for extension is filed and approved, the site plan approval shall lapse and may be reestablished only after a new filing, hearing, and decision.
- C. Prior to issuance of a final occupancy permit, the Permittee shall secure a *Certificate of Site Plan Completion* from the Board. The *Certificate* serves as the Board's confirmation that, in its opinion, the completed work conforms to the approved Plan and any conditions and modifications thereto, including the construction of any required on and off-site improvements. The *Certificate* also

serves to release any performance security that has been provided to the Town of Medway.

- 1) Before issuing such *Certificate*, the Board's Agent shall conduct a final inspection of the site and prepare a punch list to identify any remaining work to be completed. The Board may consult with its consulting engineer and various Town staff and boards or committees to determine whether the project is complete.
- 2) To secure a *Certificate of Site Plan Completion*, the Permittee shall complete or provide the following items to the satisfaction of the Board.
 - a. receipts to document cleaning of the stormwater system
 - b. a signed statement from the Permittee committing to the ongoing maintenance of the stormwater management facilities and replacement of landscaping.
 - c. removal of erosion controls
 - d. full stabilization of the site
 - e. a written certification from a Professional Engineer registered in the Commonwealth of Massachusetts that all building and site work has been completed in substantial compliance with the approved and endorsed site Plan, and any modifications thereto; and
 - f. an electronic version of a final As-Built Plan, prepared by a registered Professional Land Surveyor or Engineer registered in the Commonwealth of Massachusetts, to the Board for its review and approval. The As-Built Plan shall show actual as-built locations and conditions of all buildings and site work shown on the original site plan and any modifications thereto. The As-Built Plan shall also show all utilities found during the construction process. The final As-Built Plan shall also be provided to the Town in shapefile format for GIS use.

IX. CONFLICTS – If there is a conflict between the Plan and the Decision's Conditions, the Decision shall rule. If there is a conflict between this Decision and the *Zoning Bylaw*, the *Bylaw* shall apply.

X. APPEAL – The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms set forth herein. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Permittee, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §17, and shall be filed within twenty days after the filing of this decision in the office of the Medway Town Clerk.

In accordance with G.L. c. 40A, §11, no special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record, or is recorded and noted on the owner's certificate of title, bearing the certification of the Town Clerk that twenty days have elapsed after the Decision has been filed in the office of the Town Clerk and no appeal has been filed within said twenty-day period, or that an appeal has been filed. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be

ordered undone. The fee for recording or registering shall be paid by the Permittee. A copy of the recorded Decision, and notification by the Permittee of the recording, shall be furnished to the Board.

By a vote of 3 to 0, the Planning and Economic Development Board hereby APPROVES a minor site plan pursuant to Section 3.5 of the Medway Zoning Bylaw, and by a vote of 4 to 0, the Board GRANTS a drive-through facility special permit pursuant to Section 3.4 of the Zoning Bylaw to Charter Realty and Development to authorize the installation of a drive-through/pick up lane for Chipotle's restaurant associated with the reuse of the former McDonald's building development at 67C Main Street, and for further site improvements as described herein and as shown on the referenced site plan, to be constructed in accordance with this Decision, the noted site plan, the architectural plans, and subject to the CONDITIONS specified herein.

Matthew J. Hayes

Robert K. Tucker

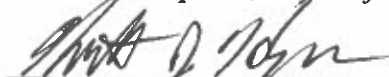
Sarah Raposa

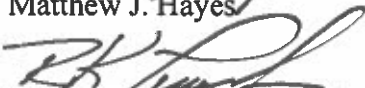
Tom Gay (special permit only)

Date Signed: _____

COPIES TO: Jonathan Ackley, Building Commissioner
Michael Boynton, Town Manager
Stephanie Carlisle, DPW Compliance Officer
Michael Fasolino, Deputy Fire Chief
Bridget Graziano, Conservation Agent
William Kingsbury, Police Chief
Derek Kwok, Health Agent
Jeff Lynch, Fire Chief
Christopher Park, Assessor
Pete Pelletier, DPW Director
Joanne Russo, Treasurer/Collector
Barbara Saint Andre, Director of Community and Economic Development
Jeff Watson, Police Department
Steven Bouley, Tetra Tech
Karen Johnson, Charter Realty and Development
David Cassidy, Hidden Acres Realty Trust

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Matthew J. Hayes


Robert K. Tucker


Sarah Raposa

Tom Gay (special permit only)

Date Signed: March 16, 2023

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