

CITY OF MALDEN
BOARD OF APPEALS



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**Minutes of the Board of Appeals Public Hearing
June 20, 2018 at 6:30 PM**

**John and Christina Markey Malden Senior Community Center, 7 Washington Street,
Malden, MA 02148**

The Board of Appeal meeting duly called in accordance with the City of Malden Ordinance and its by-laws was held in the John and Christina Markey Malden Senior Community Center, 7 Washington Street, Malden, MA on Wednesday evening, June 20, 2018 at 6:35 p.m.

Members Present: Chairperson James O'Brien, Adam Sherwin, Deputy Chief William Sullivan, Michael Steene, John King and Deano Summers. O'Brien announced Member Summers is an alternate board member this evening and will not be voting on any petitions presented.

PETITION OF:

Gentle Dental, (Expose' Signs & Graphics, Inc. on behalf of Irving Court Associates) for a variance of Section 3.35.9.2.2.1, Chapter 3, of the Revised Ordinances of 1991 as Amended of the City of Malden, Sign Design Control Ordinances regulating the appearance, size, placement and/or location of sign/signs on residential, commercial and/or industrial properties, at the property known as and numbered **225 Centre Street, Malden, MA** and also known by City Assessor's Parcel ID # **075-271-106**.

The property is described in the Assessor's records as Rst/Bar with Store built around 1983 and with 36,279 sf of land. This Petitioner is a tenant occupying a portion of space within this building.

All statutory notices have been met and this petition is properly before the Board.

The Board received a written request from the Petitioner asking if their hearing could be rescheduled to the Board's next monthly meeting (July 18, 2018) without prejudice. Chair O'Brien made a motion to grant the request for rescheduling, without prejudice, until next month's meeting of July 18, 2018, second by John King.

Vote: O'Brien yes, Sherwin yes, Sullivan yes, King yes, Steene yes

Motion carried – 5 in favor 0 opposed

PETITION OF:

Bay State Commons, LLC (Attorney Roberto DiMarco), for a variance of Section 300.3.2.6, Chapter 12, of the Revised Ordinances of 1991 as Amended of the City of Malden, (Dwelling, Multi Family), more than 3 stories but not exceeding 6 stories is not allowed in this Zoning District, as per submitted plans, at the property known as **368 Pleasant Street, Malden, MA 02148** and also known by City Assessor's Parcel ID # **030-134-416**.

All statutory notices have been met and this petition is properly before the Board.

The petitioner purchased this property on or about April 13, 2018 and is now proposing to build a thirty unit, multi-level building with varying stories on site. The units shall be all residential, owner occupied condominium units.

A building permit application was submitted by the Petitioner and denied by City Building Official Nelson Miller on February 29, 2018.

Chair O'Brien invited Mr. Miller to the podium and asked him to address and elaborate on his permit denial decision. He indicated the proposed use in the Petitioner's building permit application is a prohibited use in this RO Zoning District.

Chair O'Brien stated this hearing this evening is an administrative appeal of the Building Inspector's permit denial and not a request for a variance. This is a use issue, and the Board of Appeal does not hear or have the authority to grant use variances. Chair O'Brien read into the record a correspondence he received from City Solicitor Kathryn Fallon further supporting the variance/administrative appeal question.

The Petitioner's Attorney, Roberto DiMarco, appeared before the Board and requested that a variance be granted. He indicated this proposed project is beneficial to the City and is being spearheaded by a number of current Malden residents supportive of the Co-Housing concept which is being proposed. Attorney DiMarco mentioned that he could go before the City's Planning Board and receive a variance.

City Planner Michelle Romero was recognized by the Chair and reiterated what had already been stated that this proposed use is prohibited in the current RO zone where the property is situated.

Chairperson O'Brien opened the public comment section of meeting.

City Planner Michelle Romero was recognized by the Chair and asked if it could be clarified and restated that this hearing is an administrative appeal of Building Inspector's permit denial only and, if members of the public wish to voice their support for the overall project being built that is not what the Board of Appeals is charged with considering this evening.

Multiple letters of support for the proposed project being built were acknowledged and, the letter writer's identified, by name and address after Chair O'Brien discussed handling it that way with Attorney DiMarco, who agreed.

Derek Eggiman of 98 Lebanon Street, Malden
L. Alexis Hosea of 68 Converse Ave., Malden
Sean Abbott of 68 Converse Ave., Malden
Prisco Tammaro of 56 Pine Street, Malden
Alan Post and Erin Gannon of 29 Corey Road, Malden
Jennifer Magrone of 33 Olive Ave., Malden
Nancy Free of 141 Pierce St. #23 Malden
Michael MacDougall of 479 Pleasant Street, Malden

The following individuals were present at the meeting and rose to voice their support for the overall project being built:

Patricia Mahoney 100 Bainbridge Street
Ricardo Sedan 66 Olive Ave.
Paul Sherman 284 Ferry Street
Ginny Remedi-Brown 21 Ivy Road

No one else appeared to speak in support of the Board of Appeals overturning the Building Inspectors permit denial.

The following individuals rose to speak in opposition to the Board of Appeals overturning the Building Inspectors permit denial.

Deidre Campbell- Thompson of 15-17 Chester Street, Malden
Paul Condon of 52 Gale Street, Malden
Neil Kinnon of 11 Spruce Street, Malden
Jolene Coture of 51 Pearl Street, Malden

Michelle Romero of 34 Greystone Road, Malden

Kim Bowie-Pierce of 73 Bowman Street, Malden

No one else appeared to speak in opposition.

Chairperson O'Brien asked if there was a motion by any board member.

Member Steene made a motion, seconded by Member Sherwin that the Board deny the Petitioner's request that the denial of a building permit by the City Building Inspector being overturned through this administrative appeal.

Final vote was 5 – 0 in denying the Petitioners request to overturn the Building Inspector's permit denial.

Vote: O'Brien yes, Sullivan yes, Sherwin yes, Steene yes, King yes.

Motion carried – 5 in favor 0 opposed

PETITION OF:

Andrew Layman, (Trustee Sharon St. Trust) for a variance of Section 400.1.5.10, Section 400.1.5.10 and Section 500.1.5.10, Chapter 12, of the Revised Ordinances of 1991 as Amended of the City of Malden, dimensional controls for light manufacturing namely, to construct addition violating side and rear setback requirements, increasing nonconforming lot coverage and violating parking space/spaces requirement as per plans, at the property known as and numbered **60 Sharon Street, Malden, MA** and also known by City Assessor's Parcel ID # **127-436-602**.

The property is described in the City's Assessor records as an industrial building built around 1961 and situated on an 8,804 sf of land.

All statutory requirements have been met and this petition is properly before the Board.

Ed Spinney appeared before the Board and explained that his business has grown and his company would like to build an addition to help with the increased space needs that have resulted from the business success.

Chair O'Brien stated that the side setback issue is troubling given that the proposal is to build the new addition to the actual lot line of the abutting neighbor whose property is known as 205 Maplewood Street. O'Brien expressed further concern with the project proposal given the increase to the density of lot coverage, one of the ordinances (not to exceed 50%) quoted by the Building Inspector is denying this permit. O'Brien stated he reviewed the density metrics on the three abutting properties, as compared to the subject both, pre and post, the proposed addition and offered the following:

Subject – 60 Sharon St – currently	58.8%	post the new construction would be	72.2%
Left abutter 52 Sharon St - currently	24.3%		
Right abutter 205 Maplewood St. currently	49.3%		
Rear abutter 175-193 Maplewood St. currently	28.7%		

Member John King stated he's happy for the business success but the expansion needs are excessive in terms of zoning non compliance giving the three ordinances (parking, lot coverage and set backs) referenced in the City's Building Inspector's permit denial.

Chair O'Brien opened the meeting for public comment.

There was no one present to speak in favor of the Board granting this variance request.

Petitioner did present the Chair with letters of support, O'Brien confirmed with Mr. Spinney that it would be acceptable to identify the authors of letters of support by listing their respective names and addresses. Mr. Spinney agreed. O'Brien read the following into the record as letters of support for the Board to grant the variance request.

Hi-End Customs 173 Maplewood Street
The Print House 200 Maplewood Street
Smart Physical, Dennis Ponte 42 Sharon Street
Tony's Auto Body 34 Sharon Street
WM Body Work 171 Maplewood Street
Robinson Services 93 Maplewood Street
Malden Catholic 99 Crystal Street
Eliot Community Services 52 Sharon Street
IFES, SE Moy LLC 36 Crystal Street

O'Brien opened the hearing to anyone opposed to the variance being granted.

Andrew and Randall Carlson owners of 205 Maplewood Street (right abutter to subject) rose to oppose the granting of the variance. The Carlsons stated they have had an ongoing dispute with the Petitioners over the lot line delineation between their two respective properties. They further stated, regardless of the above issue, the Petitioner's request to build the proposed addition over, and onto, what they believe the legal lot line to be, is extremely excessive given the setback requirement in place for zoning in this district.

O'Brien stated this Board cannot help or address the lot line issue as that is a civil matter between the two property owner's. O'Brien did concur that the proposed setback, or lack thereof, seemed excessive.

Member King made a motion, second by Member O'Brien, to deny the variance request.

Vote: O'Brien yes, Sullivan yes, Summers yes, Steene yes, King yes

Motion carried by a vote of 5 yes and 0 no

Chair O'Brien announced that Board Member Steene has excused himself for a personal matter and is being replaced as the fifth voting Board Member by Deanno Summers.

PETITION OF:

Joseph Mazzoehia (c/o Attorney Tom Callaghan, Nancy Delaney), for a variance of Section 400.1.2.1, Chapter 12, of the Revised Ordinances of 1991 as Amended of the City of Malden, dimensional controls for residential dwellings namely, non-conformance with frontage requirements as per plans, at the property known as and numbered 57 Olive Ave. (along Monmouth Street), Malden, MA and also known by City Assessor's Parcel ID # 148-627-711.

All statutory requirements have been met and this petition is properly before the Board.

The property is described in the City's Assessor records as a one family dwelling situated on a 25,900 sf parcel of land.

The Petitioner is requesting a variance to recognize frontage along Monmouth Street for the purposes of creating a buildable single family lot. This proposed lot will be subdivided off from the current 25,900 sf parcel (see plot plan of land of 57 Olive Ave dated 04/12/18 and prepared by P.K.F. and Associates). Attorney Tom Callaghan stated there is a small garage on the proposed site which will be demolished. The Petitioner was present along with the builder, Patrick Larkin, who responded to Board member questions regarding whether there would be a need for blasting as there is some ledge on site. Builder responded no blasting. Attorney Callaghan stated that the proposed

lot of 18,325sf+-, is certainly larger than typical single family lots in Malden however, the shape presents what could be characterized as a hardship.

The meeting was opened for public comment.

Rosemarie Boardman of 61 Olive Ave. stated that she wasn't opposed to this variance being granted but did have a concern about possible water and flooding.

No one else was present to voice support for this petition.

There were a number of individuals (most from the immediate neighborhood) who voiced opposition to the variance being granted. Issues raised by opponents included parking on the roadway, the width of the roadway, the lack of street lights and sidewalks on the roadway, limited ability for snow plows, fire apparatus, fuel oil trucks and similar oversized vehicles to navigate the roadway. An issue was raised that address the response time by The City Fire Department to this proposed site as opposed to the frontage on and at 57 Olive Ave

The following individuals were present to express their opposition to the variance being granted:

Maryjo Koizumi of 5 Monmouth
Gloria and Hendy Meneses 19 Monmouth
Neil Kinnon 11 Spruce Street
(failed to get name) 72 Bowman Street

Chair O'Brien asked if any member would choose to make a motion.

Member John King made a motion, seconded by O'Brien, that the board approve the petitioner's request for a variance with the following condition:

The Petitioner is to construct designated "turn around space sized for two vehicles" on the subject lot and there is to be no overnight parking on the Monmouth roadway.

Vote: O'Brien yes, Sullivan no, Summers yes, Sherwin yes King yes

Motion carried by a vote of 4 yes and 1 no

PETITION OF:

Paul T. Murphy Insurance Agency, Inc. for a variance of Section 3.35.6.2 and Section 3.35.9.3.4.2 Chapter 3, of the Revised Ordinances of 1991 as Amended of the City of Malden, Sign Design Control Ordinances regulating the appearance, size, placement and/or location of sign/signs located on residential, commercial and/or industrial properties, at the property known as and numbered **628 Broadway, Malden MA**, and also known by City Assessor's Parcel ID **#160-625-510**.

The property is described in the Assessor's records as a comm/res building with 6,750 sf of land.

All statutory notices have been met and this petition is properly before the Board.

Attorney Chris Fallon, 15 Ferry Street, Malden, MA appeared before the Board representing the petitioner. Mr. Fallon acknowledged the zoning article regarding electronic signs and assured the Board that approval of this variance request would not be precedent setting. Mr. Fallon indicated that Malden's Sign Control Zoning Ordinance 3.35.1.3 does state that some of the intent and purpose of these Zoning regulations is to promote compatibility with adjacent land uses.

Chair O'Brien asked Mr. Fallon if he knew how many electronic signs currently exist within this specific commercial corridor (i.e) from the Broadway bend at Bowman Street to the Melrose line on Rout 99.

Mr. Fallon thought there were somewhere between 7 and 12 electronic signs currently.

Board member King stated he did not see a way around the prohibition that the zoning article states, i.e. electronic signs prohibited.

Chairperson O'Brien opened the meeting for public comment.

Lou Baretto of 11 Canal Street stated he believes the presence of an electronic sign is appropriate in this commercial highway area.

Maria Luise of the Mayor's Office stated she believes that the Board of Appeal has the authority to grant a variance in this circumstance and she is supportive of a variance being granted.

No one else was present to speak in favor of the variance being granted.

No one appeared to speak in opposition to the variance being granted.

A motion was made by Member Sherwin, second by Member King, to deny the issuance of a variance.

Vote: O'Brien no, King yes, Sullivan no, Summers no, Sherwin yes.

Motion carried – 2 in favor 3 opposed

Other Business

None stated.

Next scheduled hearing date July 18, 2018

Motion to adjourn the meeting by member Summers

Seconded by member King

Vote: O'Brien yes, Sullivan yes, Summers yes, Sherwin yes, King yes

Motion carried by vote of 5 yes 0 no

Adjourned at 10.25 p.m.

Respectfully submitted:

By: James O'Brien