



CITY of MALDEN PLANNING BOARD  
NOTICE of DECISION

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MALDEN, MASS.

CASE NUMBER 16-09

LOCATION of SUBJECT PROPERTY 52 Broadway at 36-54-60-88 Broadway, Malden, MA

NAME of PETITIONER Flaming Grill & Buffet

NAME of OWNER Malway Realty Associates LP

DATE of PUBLIC HEARING April 13, 2016

DATE of DECISION April 13, 2016

DATE of FILING DECISION with CITY CLERK April 27, 2016

DATE of NOTIFICATION to BUILDING INSPECTOR April 27, 2016

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT May 17, 2016

*[Any appeal must be made pursuant to M.G.L. c. 40A, §17 and filed within 20 days after date this Notice is filed with City Clerk.]*

PROCEDURAL HISTORY (Case #16-09)

1. Petitioner is the proposed tenant, business operator, Flaming Grill & Buffet; petitioner was represented at the public hearing by franchisee, Ling Chen, 70 Ridge Road, Revere, MA 02151, and project manager, John Fields, Leigha Project Management, 82 Follard Street, North Smithfield, RI 02896.
2. Property owner is Malway Realty Associates LP, c/o WS Asset Management W/S Development, 33 Boylston Street, Suite 3000, Chestnut Hill, MA 02467; owner was represented at the public meetings by Dan Hester, WS Development and at the public hearing by traffic engineer, Ron Mueller, Ron Mueller & Associates, Hopkinton, MA.
3. The petition seeks a special permit under §§300.3.4.12 and 700.1.3.2, Chapter 12, Revised Ordinances of 1991, as Amended, of the City of Malden (the "Ordinance") to alter and change use of a portion of a preexisting nonconforming property for restaurant use in a Highway Business zoning district.
4. The following plans and information were submitted with the petition: Floor plan, "FLAMING GRILL & BUFFET 38 Broadway, Malden, MA 02148," dated October 8, 2015, prepared by Frank D. Mileto, Reg. Architect, Frank D. Mileto A.I.A., Long Valley, NJ; "Site Plan Broadway Plaza 60 Broadway, Malden, MA 02148," dated October 19, 2015, prepared by Ryan L, WS Development the studio @WSD; "ALTA/ACSM Land Title Survey 52 & 88 Broadway Malden, Mass 02148 prepared for Malway Realty Associates," dated May 22, 2013, prepared by David A. Dwyer, P.L.S, Otte & Dwyer, Inc., Saugus, MA; and "Traffic Impact and Access Study, Broadway Plaza Reoccupancy Malden, Massachusetts," dated February 22, 2016, prepared by Ron Muller, P.E., Ron Muller & Associates, Hopkinton, MA.
5. Owner requested a waiver of filing requirements regarding floor plans of other areas of the subject and other buildings and building elevations because no changes to these areas are proposed.
6. Owner requested a waiver of filing requirements for a traffic impact study, Section E.9, *Rules and Procedures of Malden Planning Board*; owner requested that the Planning Board table its decision on the request for said waiver; the Planning Board considered the latter request at a public meeting on December 9, 2015 and the former request at a public meeting on January 13, 2016.
7. The public hearing complied with the statutory notice requirements of Massachusetts General Laws, Chapter 40A, §11.

FINDINGS of FACT (Case #16-09):

The City of Malden Planning Board finds the following facts:

1. The subject property, known as Broadway Plaza, is the site of four principal buildings containing a total 215,489 square feet of gross floor area: a one-story building, 36-54 Broadway, containing 99,240 square feet, configured and occupied as follows: 42 Broadway, 1,833 square feet, currently vacant and under construction for a restaurant; 42A Broadway, 2,822 square feet, currently vacant, most recently used for retail sales/services by a video store; 44 Broadway, 2,745 square feet, currently used for retail sales/services by a video game store; 46 Broadway, 2,745 square feet, currently used for retail services

- by a laundromat; 48 Broadway, 3,750 square feet, currently used for retail sales by a liquor store; 50 Broadway, 10,741 square feet, currently used for retail sales by a dollar store; 52 Broadway, 9,338 square feet, currently vacant, most recently used for retail sales by a clothing store and the subject of this petition; 54 Broadway, 27,346 square feet, currently used for retail sales by a clothing store; and 56 Broadway, 37,920 square feet, currently vacant, most recently used for retail sales/services by a furniture store; a four-story building, 34-36 Broadway, containing 58,000 square feet, occupied for a self-storage facility; a one-story building, 60 Broadway, containing 52,239 square feet, occupied for a supermarket; and a two-story building, 88 Broadway, containing 6,010 square feet, currently vacant, most recently occupied for bank and general offices.
2. The subject of this petition, 52 Broadway, is one of the middle storefronts, approximately 9,338 square feet in size, located in the subject building, 36-54 Broadway.
  3. The proposal is to alter and renovate the interior of the subject storefront to create a restaurant with seating for 226 to 254 in various areas, including a separate function dining area; a self-service area with buffet stations; a hibachi grill and sushi bar; a kitchen with cooking, dishwashing and storage areas; and an interior vestibule, waiting area and restrooms.
  4. The proposal includes the installation of three, walk-in refrigeration units, located at the rear of the subject premises, on the exterior and outside the existing footprint of the building; the units are two coolers, each 18 by 10 feet in size and one freezer, approximately 13 by 15 feet in size; according to petitioner, the units are considered equipment and temporary; however, due to the grade change at the property, the units will sit on permanent footings and a concrete slab foundation; the units will have a vinyl covering and compressors on top but no structural walls or roof; the units be only accessible from the interior of the building; and the units are insulated and made of galvanized aluminum/steel.
  5. No other changes to the subject building or other buildings are proposed.
  6. The property is located in a Highway Business zoning district.
  7. The proposed restaurant use is allowed by special permit, per §300.3.4.12 of the Ordinance.
  8. The existing and most recent retail sales and services uses of the property are allowed by right; the supermarket is a preexisting nonconforming use that requires a special permit under the current Ordinance; the self-storage facility was allowed by special permit in 2000; and the restaurant was allowed by special permit granted in January 2016; per §§300.3 and 700.1 of the Ordinance.
  9. The direct abutters to the south are single-family residential dwellings, multifamily dwellings and a retail vehicle sales business; to the west and north, the City of Malden South Broadway Park and the Malden Catholic High School and athletic field; to the east, retail service businesses, motor vehicle repair shops and a restaurant; to the east, on the other side of Broadway are a multifamily residential dwelling, motor vehicle repair shop and restaurant.
  10. The Residence A zoning district abuts to the south; the Residence B district abuts to the west; and the Industrial 1 district abuts to the north; surrounding land uses are residential, business and industrial.
  11. The proposed restaurant is not in conflict with abutting or surrounding land uses.
  12. The buildings on the property predate the current Ordinance and violate dimensional controls for front yard setback and one side yard setback, and the property is preexisting nonconforming, per §§400.1, 400.2 and 700.1 of the Ordinance.
  13. The proposal maintains the existing nonconformities and creates no new violations of dimensional controls.
  14. There are four principal buildings on the subject property, which violates the prohibition of multiple principal buildings on one lot; the buildings all predate this provision and the property is considered preexisting nonconforming, per §§700.1 and 700.1.7 of the Ordinance.
  15. The current, proposed and most recent uses of the entire property require a total of 778 parking spaces and 15 loading spaces, per §§500.1, 500.2.18 and 500.3.5 of the Ordinance.
  16. The proposal requires 112 parking spaces and increases the total parking required for the property from 703 to 778, per §§500.1.4 and 500.2.18 of the Ordinance.
  17. The Land Title Survey plan indicates there are 782 parking spaces onsite; however, this plan does not depict existing/current conditions and parking layout, including those parking spaces located at the

northeastern corner of the subject building and in the fenced-in area of the lot occupied by the self-storage building; and recently modified site access via roadways and parking layout on the eastern side of lot, adjacent to newly renovated South Broadway Park.

18. The plan does not depict all required improvements, including dimensions of parking spaces and parking aisles, per §§500.2.1.1 and 500.2.2 of the Ordinance; landscaping, including 50 trees in the parking lot, per §500.2.13 of the Ordinance; snow storage area of 29,800 square feet, per §500.2.14 of the Ordinance; bicycle parking for 22 in inverted U-shaped racks or designated secured areas, per §500.2.22 of the Ordinance; the number, location and dimensions of all loading spaces/bays, per §§500.3.1 and 500.3.5 of the Ordinance; the location of all dumpsters, access for servicing and enclosures/visual screening, per §500.3.5.8 of the Ordinance; and screening of abutting residential uses on Newland Street by foliage or fencing, in an area 10 feet wide, per §500.4.1 of the Ordinance.
19. The City's peer review recommended denial of petitioner's request for a waiver of Section E.9, *Rules and Procedures of Malden Planning Board* (Filing Requirements, Traffic Impact Study), as described in correspondence dated December 9, 2015 from BETA Group, Inc.
20. The City's peer review report of petitioner's Traffic Impact & Access Study is described in correspondence dated April 6, 2016 from Kenneth Petraglia, BETA Group, Inc., and includes recommended safety mitigation at the site access/egress drives and adjacent roadways.
21. As modified by the conditions of this special permit, the traffic generated by the proposal will not adversely impact surrounding streets or create a traffic or safety hazard.
22. Petitioner expects to employ thirty full-time employees.
23. Petitioner's proposed hours of operation are 11 am to 10 pm, Sunday through Thursday, and to 10:30 pm, Friday and Saturday.
24. Petitioner will receive deliveries via the rear of building.
25. Petitioner intends to use three dumpsters, two for trash and one for recycling, at the rear of the building.
26. The proposed restaurant is required to file an application for Plan Review with the Board of Health and will be subject to compliance with all conditions/requirements of any Plan Review issued; petitioner must obtain a Permit to Operate a Food Service Establishment.
27. Petitioner does not intend to serve alcoholic beverages.
28. The proposal is in the interest of the common good.
29. Petitioner's franchisee operates a similar restaurant in Revere, containing 12,000 square feet in size and 365 seats; and petitioner, as the franchiser, has thirty other locations on the East Coast.
30. Property owner owns thirty other shopping centers in the area, including one on Highland Avenue, Malden.
31. The City of Malden recently repaired and repaved, maintains and has rights to use the parking lot located on the eastern side of the property, adjacent to the newly renovated South Broadway Park, pursuant to an easement agreement with the property owner of the subject property.
32. The parking lot at the subject property is in serious need of repair and repaving, and according to property owner's representative, the work is expected to begin soon.
33. A condition of the special permit granted in Case #16-02 for the restaurant at 42 Broadway requires the repair and repaving of all parking lot areas and installation of the parking layout as per plan, within one year of issuance of the certificate of occupancy.
34. The City Councilor from the Ward that directly abuts the property, Ward 6, supports the proposal.
35. There is no public opposition to the proposal.
36. The proposal will not be more detrimental to the neighborhood.
37. The petitioner and the property owner consent to all conditions of the special permit.

DECISION (Case #16-09):

On December 9, 2015, the Planning Board tabled the request for a waiver of the filing requirements for a traffic impact study.

On January 13, 2016, the Planning Board denied the request for a waiver of the filing requirements for a traffic impact study.

On April 13, 2016, pursuant to the foregoing Findings of Fact, the Planning Board granted a special permit subject to the following ten conditions:

1. All development shall as per plans except as modified by these conditions; floor plans for the restaurant at 52 Broadway may be modified if required by Board of Health, Building or Fire Departments, however, any increase in size or seating shall require an amendment of this special permit; and walk-in coolers and freezers shall be allowed as per plans.
2. Any sale or service of alcoholic beverages by the restaurant at 52 Broadway is prohibited.
3. The restaurant at 52 Broadway must comply with all conditions/requirements of a Plan Review by Board of Health and obtain all necessary permits from Board of Health.
4. Submit site plan that depicts all parking and loading and includes the required snow storage area, landscaping, dumpsters and parking screening; install and/or maintain all required improvements.
5. Repair and repave all parking lot areas; install and maintain parking layout as per plan, within nine months of issuance of certificate of occupancy of 52 Broadway, or within one year of issuance of certificate of occupancy of 42 Broadway, whichever is earlier.
6. Provide bicycle parking on-site for 22.
7. Immediately upon issuance of this special permit, remove all litter, debris and trash from all areas of property, and begin to perform daily trash and litter management of entire property.
8. All prior special permits and variances (in effect) for the property and all conditions thereof shall remain in full force and effect.
9. Install all traffic mitigation described in City peer review report dated April 6, 2016.
10. Repair and replace sidewalks around perimeter of the property, subject to satisfaction of DPW Director.

RECORD of VOTES (Case #16-09):

The vote on December 9, 2015 on the motion to table the request for a waiver of the filing requirements for a traffic impact study was eight in favor, one opposed:

Antonucci, yes; Chiu, yes; Chuha, yes; Fitzgerald, yes; Hayes, yes; MacCuish, yes;  
Mzaouakk, yes; Wolff, yes; Ioven, no.

*Motion by Chuha, Seconded by Antonucci.*

*[Absent: Henry, Lawhorne]*

The vote on January 13, 2016 on the motion to deny the request for a waiver of the filing requirements for a traffic impact study was nine in favor, none opposed:

Antonucci, yes; Chiu, yes; Chuha, yes; Fitzgerald, yes; Lawhorne, yes; MacCuish, yes;  
Mzaouakk, yes; Wolff, yes; Ioven, no.

*Motion by Antonucci, Seconded by Lawhorne.*

*[Absent: Hayes, Henry]*

The vote on April 13, 2016 on the motion to grant a special permit with ten conditions was nine in favor, none opposed:

Antonucci, yes; Chiu, yes; Chuha, yes; Hayes, yes; Lawhorne, yes; MacCuish, yes;  
Mzaouakk, yes; Wolff, yes; Ioven, yes.

*Motion by Antonucci, Seconded by Mzaouakk.*

*[Present but not voting: Fitzgerald. Absent: Henry]*

I, Michelle A. Romero, City Planner for the City of Malden, hereby certify that the above is a true copy of the decision of the Malden Planning Board.

By:   
Michelle A. Romero, City Planner