



CITY of MALDEN PLANNING BOARD
NOTICE of DECISION

2018 JAN 19 A 9:57

CASE NUMBER 18-01

LOCATION of SUBJECT PROPERTY 477-479 Eastern Avenue at 471 Eastern Avenue, Malden, MA

NAME of PETITIONER Neelima, LLC

NAME of OWNER 471 Eastern Avenue, LLC

DATES of PUBLIC HEARING November 8, 2017 and January 10, 2018

DATE of DECISION January 10, 2018

DATE of FILING DECISION with CITY CLERK January 19, 2018

DATE of NOTIFICATION to BUILDING INSPECTOR January 19, 2018

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT February 8, 2018

[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 #18-01):

1. Petitioner is Neelima, LLC, c/o Shriprakash Lamichhane, 55 Oakland Street, Malden, MA 02148.
2. Property owner is 471 Eastern Avenue, LLC, c/o Andreas A. Tsitos, 148 Main Street, Malden, MA 02148.
3. Petitioner and owner were represented by Attorney Patrick P. MacDonald, 15 Ferry Street, Malden, MA 02148.
4. The petition seeks a special permit under §300.3.4.22, Chapter 12, Revised Ordinances of 1991, as Amended, of the City of Malden (the "Ordinance") to allow a convenience store in the Industrial 1 zoning district.
5. The following plans were submitted in support of the petition at the time of filing: site plan, "Existing Conditions Plan of Land 471 Eastern Avenue Malden, MA (Middlesex County), dated September 20, 2017, revised October 24, 2017, prepared by Richard J. Mede, PLS, Medford Engineering & Survey, Medford, MA; "Mortgage Inspection Plan," dated May 13, 2013, prepared by Richard J. Mede, Jr., PLS, ABV Survey, Medford, MA; floor plan of existing building, undated, unsigned, that depicts all six storefronts; and proposed floor plan, "Proposed Variety Store @477 Eastern Avenue, Malden, MA" dated August 9, 2017, prepared by Phung/Porzio Studio of Architecture, Dorchester, MA, with an interior elevation.
6. On November 8, 2017, the Planning Board opened the public hearing, received public testimony and tabled the public hearing and its decision, to allow petitioner the opportunity to provide additional information requested by the Board, namely, a revised site plan with a parking plan that includes one ADA compliant parking space at the northwestern corner of the building (first parking space, located closest to the building, adjacent to ramp); eliminates the parking space (7.7 by 20.3 by 8.6 feet) at the southeastern corner of the lot (northwestern corner of 85 Faulkner Street) located between the building and the travel lane proposed to run east to west from Faulkner Street; and provides the maximum number of parking spaces of dimensions required by current zoning (9 x 18 feet); and to allow the City Planner to provide clarification and guidance on tobacco and lottery uses, including proximity of both to a public park or school.
7. On December 12, 2017, petitioner submitted a revised site plan, "Existing Conditions Plan of Land 471 Eastern Avenue Malden, MA (Middlesex County)," dated September 20, 2017, revised through November 20, 2017, prepared by Richard J. Mede, PLS, Medford Engineering & Survey, Medford, MA.
8. On January 10, 2018, the Planning Board reopened the public hearing, received public testimony and made a decision.
9. The City posted notice of each tabled public hearing with the City Clerk and mailed notice to abutters.
10. The public hearings complied with notice requirements of Massachusetts General Laws, Chapter 40A, §11.

FINDINGS of FACT (Case #18-01):

The City of Malden Planning Board finds the following facts:

1. The property is located on Eastern Avenue, or state highway Route 60, at the block between Bryant and Faulkner Streets.
2. The property, known as and numbered 471 Eastern Avenue, is the site of a two-story building that is currently vacant, under renovation and configured as six separate storefronts, having a combined total 7200 square feet of gross floor area, and numbered and configured as follows: 471 Eastern Avenue with 850 square feet on the first floor; 473 Eastern Avenue with 650 square feet on the first floor; 475 Eastern Avenue with 1100 square feet on the first floor; 477 Eastern Avenue with 1100 square feet on the first floor; 479 Eastern Avenue with 1100 square feet on the first floor; and 481 Eastern Avenue with 2400 square feet, comprised of 1200 square feet on the first floor and 1200 square feet on the second floor.
3. The subject of the petition is two storefronts, 477 and 479 Eastern Avenue; the proposal is to combine the spaces to create premises of 2200 square feet for use as a variety store market or convenience store and install shelving, refrigerators, freezers, deli cases, display tables and cubicles, walk-in cooler, office and cashier counter.
4. Petitioner is the proposed business operator and tenant with a long-term lease, for ten years with a five year option.
5. The subject property is located in the Industrial 1 zoning district.
6. The proposed convenience store is allowed by special permit in this district, per §300.3.4.22 of the Ordinance.
7. Direct abutters to the south are a single-family dwelling and a two-family dwelling; to the west, on the other side of Bryant Street, a car wash; to the east, on the other side of Faulkner Street, a multifamily dwelling; to the north, on the other side of Eastern Avenue, a self-storage facility under construction.
8. Abutting zoning districts are Highway Business to the west, Residence B to the east, and Residence A to the south.
9. Surrounding land uses are residential, institutional, business and industrial.
10. The proposed convenience store use is not in conflict with surrounding land uses.
11. On November 8, 2017, the Planning Board opened and tabled the public hearing on a special permit petition for a proposed restaurant to occupy 1500 square feet of the subject property, at the two storefronts, 471 and 473 Eastern Avenue.
12. Occupancy of the remainder of the building is unknown at this time and to be determined.

13. The property violates dimensional controls for front yard and rear yard setback, predates the Ordinance and is considered preexisting nonconforming, per §§400 and 700.1 of the Ordinance.
14. The proposal does not increase the existing nonconformities and creates no new violations of dimensional controls.
15. The existing site plan depicts 33 parking spaces, however, many spaces are undersized, the width of the parking aisle at the rear of the building is nonconforming and onsite snow storage and landscaping are deficient, per §500.2 of the Ordinance.
16. The revised site plan depicts a total of 31 parking spaces, 29 spaces of the size required by Ordinance and two handicapped spaces at the northwestern corner of the building; increases the width of the parking aisle at the rear of the building; provides the required snow storage; and includes landscaping with location and species of plantings.
17. The proposed convenience store requires nine parking spaces, per §500.1.4.17 of the Ordinance.
18. Petitioner's long-term lease includes the exclusive right to use eight parking spaces onsite.
19. According to the Police Traffic Department, there are no regulations or restrictions along Eastern Avenue from Bryant Street to Faulkner Street and on-street parking is allowed in front of the subject property.
20. The proposal does not increase existing nonconformities or create any new violations of parking requirements.
21. Petitioner's proposed hours of operation are seven days per week, 6:00 a.m. to 11:00 p.m.
22. Petitioner estimates the total number of employees will be five, with two working at any given time.
23. Petitioner expects approximately three deliveries per week on site and will use the rear access door of the premises.
24. Petitioner expects significant net profit revenue to be generated from lottery and tobacco sales, namely, \$6000.00 per month.
25. Petitioner intends to sell "traditional" tobacco products, like cigarettes and cigars, and does not intend to sell vapor or electronic cigarettes, marijuana or marijuana-related products or alcohol.
26. Petitioner may file an application for a license to sell tobacco products before the new Board of Health Rules & Regulations, Restricting the Sale and Use of Tobacco Products, ordained on November 9, 2017, will go into effect on January 30, 2018.
27. Petitioner intends to sell "numbers" and "scratch" lottery tickets and does not intend to offer Keno.
28. The City Engineer certifies that the distance between the property lines of the subject property and the closest school, the Mystic Valley Charter School located at 576 Eastern Avenue, is 503 Feet.
29. All lottery sales are licensed by the state, and there are no known regulations regarding proximity to schools or parks.
30. The Ward City Councilor is in favor of the proposal.
31. One residential abutter is in opposition to the proposal due to concerns with parking and access to the dumpster.
32. As modified by the proposed conditions of the special permit, the proposal is in the interest of the common good and will not be more detrimental to the neighborhood.
33. Petitioner consents to the proposed conditions of the special permit.

DECISION (Case #18-01):

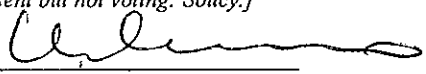
On November 8, 2017, the Planning Board tabled the public hearing until receipt of the requested revised site plan.

On January 10, 2018, pursuant to the foregoing Findings of Fact, the Planning Board granted a special permit, subject to the following eleven (11) conditions: 1) All development shall be as per plans, with only minor modifications of floor plan allowed; 2) Any sale or service of alcoholic beverages is prohibited; 3) Any sale of lottery must be licensed by the state and is limited to state and multi-state "numbers" tickets and instant "scratch" tickets; betting stations, keno or similar games, and gaming/amusement machines are prohibited; 4) Sale of any form of marijuana or any products containing marijuana, or related accessories, supplies and/or equipment, is prohibited; 5) Only the sale of prepackaged tobacco in the form of manufactured cigarettes, cigars and cigarillos is allowed; sale of all other forms of tobacco and nicotine products is prohibited, including but not limited to, chewing tobacco, hookah tobacco, loose tobacco, pipe tobacco, snuff tobacco, flavored non-cigarette tobacco products, nicotine solutions, and any delivery products, accessories and equipment, including but not limited to, pipes, hookahs, electronic cigarettes, vapor cigarettes, vending or rolling machines, filters, papers or wraps; 6) The display or storage of anything, outside the building, including goods or products to be sold, is prohibited; 7) Sublease/license of all or any part of the premises to any other retailer or purveyor of food/beverages is prohibited; 8) Comply with any conditions/requirements of a Plan Review by Board of Health and obtain all necessary permits from Board of Health; 9) Install, repair or replace sidewalks and driveways and perform necessary incidental work, adjacent to the property, to the satisfaction of the DPW Director; 10) Repair, replace, install and maintain privacy fencing along rear (southern) property lines to screen residential abutters; and 11) Perform litter control throughout the site a minimum of every four (4) hours.

RECORD of VOTES (Case #18-01):

On November 8, 2017, the vote on the motion to table the public hearing was nine in favor, none opposed, and the motion passed: Antonucci, yes; Chiu, yes; Chuha, yes; Fitzgerald, yes; Hayes, yes; Henry, yes; MacCuish, yes; Wolff, yes; Ioven, yes.
Motion by Antonucci, seconded by Fitzgerald. [Present but not voting: Gebreselassie, Soucy.]

On January 10, 2018, the vote on the motion to grant the special permit with conditions was nine in favor, none opposed, and the motion passed:
 Antonucci, yes; Chiu, yes; Fitzgerald, yes; Gebreselassie, yes; Hayes, yes; Henry, yes; MacCuish, yes; Wolff, yes; Ioven, yes.
Motion by Antonucci, seconded by MacCuish. [Absent: Chuha. Present but not voting: Soucy.]

I hereby certify that the above is a true copy of the decision of the Malden Planning Board. By: 

Michelle A. Romero, City Planner