



CITY of MALDEN PLANNING BOARD
NOTICE of DECISION

RECEIVED

CASE NUMBER 18-03

LOCATION of SUBJECT PROPERTY 1-13 Highland Avenue, Malden, MA

NAME of PETITIONER Terra Nossa Market

NAME of PROPERTY OWNER Maldex Limited Partnership

DATE of PUBLIC HEARING April 11, 2018

DATE of DECISION April 11, 2018

DATE of FILING DECISION with CITY CLERK April 23, 2018

DATE of NOTIFICATION to BUILDING INSPECTOR April 23, 2018

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT May 14, 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.]

2018 APR 23 P 2:10

CITY CLERK'S OFFICE
MALDEN, MASS.

PROCEDURAL HISTORY (Case #18-03):

1. Petitioner is Terra Nossa, c/o property owner, Maldex Limited Partnership, c/o WS Asset Management W/S Development, 33 Boylston Street, Suite 3000, Chestnut Hill, MA 02467; and petitioner and property owner were represented by Dan Hester, WS Development at the public hearing.
2. The petition seeks a special permit under §§300.3.4.12 and 300.3.4.13.2, Chapter 12, Revised Ordinances of 1991, as Amended, of the City of Malden (the "Ordinance") to allow a restaurant and retail sales use with 5,000 square feet or more gross floor area in the Highway Business zoning district.
3. The following plans and information were submitted in support of the petition: "Proposed Store Floor Plan Terra Nossa Center Market 1-13 Highland Avenue Malden, MA," dated December 19, 2017, prepared by JRA Architecture, Planning & Design, Inc., Abington, MA; "Proposed Store Front Elevation Terra Nossa Center Market 1-13 Highland Avenue Malden, MA," dated July 18, 2017, prepared by JRA Architecture, Planning & Design, Inc., Abington, MA; plan, "Townline Plaza 1-13 Highland Avenue Malden, MA Terra Nossa Restaurant Exhibit," dated July 10, 2017, drawn by "NS," WS Development, depicting "Tenant's Demised Premise;" site plan, "ALTA/ACSM Land Title Survey Townline Plaza Malden & Medford, MA," dated June 7, 2013 (stamped/signed June 12, 2013), prepared for WS Development, prepared by Edward P. Jacobs, P.L.S, RJ O'Connell & Associates, Inc., Stoneham, MA; and "Traffic Impact and Access Study Townline Plaza Re-Occupancy Malden, Massachusetts," dated February 22, 2018, prepared for Maldex Limited Partnership, Chestnut Hill, MA, prepared by Ronald Muller, P.E., Ron Muller & Associates, Hopkinton, MA.
4. Property owner requested a waiver of the filing requirements for a traffic impact study, Section E.9, *Rules and Procedures of Malden Planning Board*; and the Planning Board considered the request at a public meeting on January 10, 2018.
5. Property owner requested to withdraw the petition without prejudice via correspondence dated April 11, 2018 and in person at the public hearing.
6. The public hearing complied with the notice requirements of Massachusetts General Laws, Chapter 40A, §11.

FINDINGS of FACT (Case #18-03):

The City of Malden Planning Board finds the following facts:

1. The subject property, known as Townline Plaza, is located in Malden (approximately 6.4 acres) and Medford (approximately 4.5 acres), and the site of three, single-story principal buildings: one building, known as and numbered, 7-15 Highland Avenue, Malden, that contains approximately 87,752 square feet; a second building, known as and numbered, 1 Highland Avenue, Malden and 285-295 Middlesex Avenue, Medford, containing approximately 12,000 square feet in Malden and 46,252 square feet in Medford; and a third building, known as and numbered, 283 Middlesex Avenue, Medford, containing approximately 1,793 square feet.
2. The subject of the petition is a middle storefront, known and numbered, 13 Highland Avenue, currently vacant and a portion of which was most recently used for manufacturing.
3. Petitioner is the tenant and proposed market/restaurant operator, doing business as Terra Nossa Market.
4. The proposal is to alter and renovate the subject storefront, approximately 9,012 square feet in size, to create a market with grocery area and butcher; restaurant with total seating for 94; kitchen with cooking facilities, walk-in refrigerator and walk-in freezer; office; and dry stock and receiving areas.
5. The City's peer review recommended denial of the property owner's request for a waiver of Section E.9, *Rules and Procedures of Malden Planning Board*, the Filing Requirements for a traffic impact study, as described in correspondence dated January 9, 2018 from Kenneth Petraglia, BETA Group, Inc.

6. The City's peer review report of property owner's Traffic Impact & Access Study is described in correspondence dated April 5, 2018 from Kenneth Petraglia and includes recommended traffic and safety mitigation at the site access/egress drives and adjacent roadways and area intersections.
7. According to the property owner, the petitioner, who is the tenant, has decided to terminate its lease for the subject premises, and owner has mutually agreed to the lease termination.
8. Property owner would require the tenant to absorb the costs of the recommended traffic and safety mitigation improvements, which would be costly and unaffordable for the tenant; and according to property owner, this, in effect, caused the termination of the lease.
9. Property owner states it is in favor of the recommended traffic and safety improvements but is not willing to pay for all of them, however, in the future may be willing to consider contributing in part.
10. Property owner confirms that the subject premises are vacant and available for lease and acknowledges that a future tenant may be required to go through the same special permit process, which may require the filing of a traffic impact study and may recommend the same traffic and safety mitigation improvements.
11. Property owner presents no exigent circumstances to support its request to withdraw the petition without prejudice less than seven business days prior to the date of the public hearing.

DECISION (Case #18-03):

On January 10, 2018, the Planning Board denied the waiver of the filing requirements for a traffic impact study.

On April 11, 2018, the Planning Board waived its rule to allow consideration of property owner's request to withdraw the petition without prejudice in the absence of exigent circumstances.

On April 11, 2018, the Planning Board allowed the petition to be withdrawn without prejudice.

RECORD of VOTES (Case #18-03):

On January 10, 2018, the vote on the motion to deny the request for waiver of Section E.9 of the *Rules and Procedures of the Malden Planning Board*, the filing requirements for a traffic impact study, was five in favor, four opposed, and the motion passed:

Antonucci, yes; Chiu, yes; Fitzgerald, no; Hayes, no; Henry, yes; MacCuish, yes; Soucy, no; Wolff, no; Ioven, yes.

Motion by Antonucci, seconded by MacCuish. [Absent: Chuha. Present but not voting: Gebreselassie.]

On April 11, 2018, the vote on the motion to waive Section C.1(f) of the *Rules and Procedures of the Malden Planning Board*, the procedural rule regarding requests for withdrawal, was eight in favor, one opposed, and the motion passed:

Antonucci, yes; Chuha, yes; Fitzgerald, yes; Gebreselassie, yes; Hayes, yes; Henry, yes; MacCuish, yes; Soucy, yes; Ioven, no.

Motion by Fitzgerald, seconded by Hayes. [Absent: Wolff.]

On April 11, 2018, the vote on the motion to grant the request to allow the petition to be withdrawn without prejudice, was eight in favor, one opposed, and the motion passed:

Antonucci, yes; Chuha, yes; Fitzgerald, yes; Gebreselassie, yes; Hayes, yes; Henry, yes; MacCuish, yes; Soucy, yes; Ioven, no.

Motion by Antonucci, seconded by Fitzgerald. [Absent: Wolff.]

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


Michelle A. Romero, City Planner