

City of Malden

Massachusetts

Board of Appeal
110 Pleasant St.
Malden, Massachusetts 02148

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CITY OF MALDEN
MALDEN, MASS.

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BOARD OF APPEAL DECISION

January 16, 2019 Hearing

Petition of:

Mohammed Hossain/Eshika Associates, LLC seeks a variance in accordance with Section 800.4.1.3, Chapter 12, of the Revised Ordinances of 1991 as Amended of the City of Malden, Administration - to hear and decide appeals of decisions or orders made by the Inspector of Buildings or other administrative official, as per plans, at the property known as and numbered 457-465 Lebanon Street, Malden, MA and also known by City Assessor's Parcel ID #138-788-806.

Mohammed Hossain seeks a variance of Section 700.1.5, Chapter 12, of the Revised Ordinances of 1991 as Amended of the City of Malden, General Regulations - any non conforming building, structure, or use abandoned or not used for a period of two (2) or more years shall thereafter be used only in conformance with the provisions of this ordinance, As per plans, at the property known as and numbered 457-465 Lebanon Street, Malden, MA and also known by City Assessor's Parcel ID #138-788-806.

Findings of Fact

Petitioner seeks an administrative appeal under Section 800.4.1.3, which requires the Board of Appeals to determine whether a non-conforming building, structure, or use has been abandoned or not used for a period of two or more years, under Section 700.1.5. Alternatively, Petitioner seeks a variance of Section 700.1.5.

Petitioner represents that he previously used 457-465 Lebanon Street as a convenience store, and needed to stop doing so due to a court order from his divorce proceeding. Petitioner acknowledged that he stopped operating the store over two years ago.

Petitioner represented that he held a public meeting last month to speak with local residents about their concerns with reopening this store. Petitioner has agreed to clean the outside of the store three times a day for trash and debris, install a surveillance camera, not apply for a license to sell alcohol, and maintain a closing time of no later than 9:00PM.

Numerous residents, including several City Councilors, spoke in support of Petitioner's request, citing concerns about leaving the existing building vacant and

the desirability of having a convenience store in the neighborhood. The Board read into the record a petition and letter in opposition to this request, citing the concerns of allowing an exemption to Section 700.1.5.

Findings of Law

Administrative Appeal

Section 700.1.5 states that “[a]ny nonconforming building, structure, or use abandoned or not used for a period of two (2) or more years shall thereafter be used only in conformance with the provisions of this ordinance. When an application is filed regarding a nonconforming building, structure or use where the building is currently vacant or the use is inactive, this period will be determined by the Board of Appeal per a petition filed in accordance with the provisions of Section 800.4.1.3.”

Petitioner argues that the Board has inherent power to overrule the non-compliance provision of Section 700.1.5 upon a showing of good cause. The Board is aware of no authority permitting such a finding of law. Rather, Section 700.1.5 unambiguously prevents such a finding if the non-use has exceeded two years. As this fact is undisputed, Petitioner’s requested for an administrative appeal under Section 800.4.1.3 is denied.

Variance

To grant a variance, the Board must find that (1) owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, (2) a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that (3) desirable relief may be granted without substantial detriment to the public good and (4) without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. G.L. c. 40A, § 10A. “[A] decision of the board of appeals granting a variance cannot stand unless the board specifically finds that each statutory requirement has been met.” *Planning Bd. of Springfield v. Bd. of Appeals of Springfield*, 355 Mass. 460, 462 (1969).

The Board finds that Petitioner has unique circumstances justifying an exception from Section 700.1.5, namely, that his court proceeding prevented him from using 457-465 Lebanon Street. As Petitioner has agreed to the limitations requested by the local residents in the neighborhood, the Board will include them as requirements for this variance.

Conclusion

Upon motion by John King, which was seconded by Adam Sherwin, the Board voted unanimously to deny Petitioner's administrative appeal.

Upon motion by John King, which was seconded by Kathryn Bilgen, O'Brien, Sullivan, Kind, and Bilgen voted in favor of the variance with conditions, with Sherwin voting in opposition.

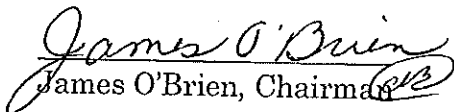
Mohammed Hossain/Eshika Associates, LLC's variance is GRANTED with the following conditions:


1. Petitioner shall clean the outside of the store three times a day for trash and debris;
2. Petitioner shall install a surveillance camera outside the store;
3. Petitioner shall not apply for a license to sell alcohol;
4. Petitioner shall maintain a closing time of no later than 9:00PM.

PURSUANT TO G.L. C. 40A, § 11, A COPY OF THIS DECISION SHALL BE RECORDED IN THE MIDDLESEX SOUTH REGISTRY OF DEEDS

Members of the Board Voting:

James O'Brien
William Sullivan
John King
Kathryn Bilgen
Adam Sherwin


James O'Brien, Chairman


Adam T. Sherwin, Esq.
Legal Member