

City of Malden

Massachusetts

Board of Appeal
110 Pleasant St.
Malden, Massachusetts 02148

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MALDEN MASS

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BOARD OF APPEAL DECISION

October 17, 2018 Hearing

Petition of:

Rialda Pellumbi (Little Elephant Learning Center) seeks a variance of Section 400.1.3.2, Chapter 12, of the Revised Ordinances of 1991 as Amended of the City of Malden, namely, open space requirements for day care facilities as per plans at the property known as and numbered as 148 Pleasant Street, Malden, MA, and also known by City Assessor's Parcel ID # 051-275-504.

Findings of Fact

Petitioner seeks to open a day care facility in a commercial location that has no open space. Pursuant to Section 400.1.3.2, this location must have a minimum of twenty square feet of open space.

Petitioner represents that the day care facility will have no more than ten children, and that she will use the nearby parks as a substitute for the open space requirement.

No one spoke in favor or in opposition of this request.

Findings of Law

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).

Petitioner offered nothing about 148 Pleasant Street that presented unique conditions justifying a hardship. This location has no open space and is not a property that the Zoning Ordinance intends for a day care facility. There are numerous other commercial

spaces of this type in the area that are suitable for uses not requiring open space. The Board is similarly concerned about the safety of any children in this day care facility, as the proposed location is in a busy commercial district with limited parking.

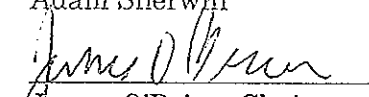
Conclusion

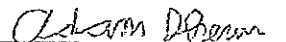
Upon motion by John King, which was seconded by Adam Sherwin, the Board voted unanimously to deny Rialda Pellumbi's petition.

Rialda Pellumbi's variance request for 148 Pleasant Street is DENIED.

Members of the Board Voting:

James O'Brien
John King
William Sullivan
Deano Summers
Adam Sherwin


James O'Brien, Chairman


Adam T. Sherwin, Esq., Legal Member