



CITY of MALDEN PLANNING BOARD
NOTICE of DECISION

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CITY CLERK'S OFFICE
MALDEN, MASS.

CASE NUMBER 14-07

LOCATION of SUBJECT PROPERTY 62 Seaview Avenue, Malden, MA

NAME of PETITIONER and OWNER North American Homes LLC

DATES of PUBLIC HEARING February 12, 2014 and May 14, 2014

DATE of DECISION May 14, 2014

DATE of FILING DECISION with CITY CLERK May 23, 2014

DATE of NOTIFICATION to BUILDING INSPECTOR May 23, 2014

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT June 12, 2014

[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 #14-07):

1. The petitioner is the owner and developer, North American Homes, LLC, c/o Bernhard Arciero, Manager, 85 Maverick Street, Chelsea, MA 02150.
2. The petition seeks a special permit under §700.13, Chapter 12, Revised Ordinances of 1991, as Amended, of the City of Malden (the "Ordinance") to remove ledge and alter the grades of the lot by more than 25%.
3. The following plans and information were filed in support of the petition:
 - a) "PROPOSED PLOT PLAN 62 SEAVIEW AVENUE, MALDEN, MA 02148," dated July 12, 2013 with revisions through February 19, 2014, prepared by Peter M. Blaisdell, Jr., Reg. P.E., Williams & Sparages, Middleton, MA.
 - b) Elevation plans, "SINGLE FAMILY HOUSE SEA VIEW AVENUE MALDEN, MA," Front (A-3), Rear (A-4), Right (A-5), Left (A-6), dated May 15, 2013, prepared by Daveta Associates Architects, Somerville, MA.
 - c) Floor plans, "SINGLE FAMILY HOUSE SEA VIEW AVENUE MALDEN, MA." FIRST FLOOR (A-1) and SECOND FLOOR (A-2), dated May 15, 2013, prepared by Daveta Associates Architects, Somerville, MA.
 - d) "Comparative Drainage Analysis, Proposed Single Family Home 10 Seaview Avenue Malden, Massachusetts," dated November 19, 2013, prepared by Peter M. Blaisdell, Jr., Reg. P.E., Williams & Sparages, Middleton, MA.
 - e) "Excavation Impact Report 62 Seaview Avenue Malden, MA," dated October 2012, revised February 2014 prepared by Richard L. Williams, P.E., Williams & Sparages, Middleton, MA.
 - f) "VIBRATION ANALYSIS 62 Seaview Avenue Malden, Massachusetts," dated February 20, 2014, prepared by Richard J. Groll, Industrial Seismologist, Tyngsboro, MA.
 - g) "PROPOSED SEGMENTAL BLOCK RETAINING WALL SEAVIEW AVENUE, MALDEN, MA," dated November 7, 2013 (stamped November 6, 2013), prepared by Richard L. Williams, Reg. P.E., Williams & Sparages, Middleton, MA.
 - h) "FOOTING ON LEDGE DETAIL SEAVIEW AVE., MALDEN, MA," dated November 6, 2013, prepared by Richard L. Williams, Reg. P.E., Williams & Sparages, Middleton, MA.
 - i) Correspondence dated May 7, 2014 from Richard L. Williams, P.E., re: 62 Seaview Avenue, Malden, MA Proposed Building Height, with attached sketch.
4. Whereas the Proposed Plot Plan originally submitted with this petition differed significantly from the plan approved with the variance granted on October 18, 2012 in the following areas: grades of lot, usable open space, retaining walls, height of structure, elevations and slope of driveway; and the Excavation Impact Report originally submitted with this petition indicated locations of ledge removal and alterations of grade that differed substantially from those shown on the plan approved with the variance granted on October 18, 2012, on February 12, 2014, the Planning Board tabled the public hearing to allow petitioner the opportunity to petition the Board of Appeal to modify the variance granted on October 18, 2012 so as to address revisions to the Proposed Plot Plan and obtain any additional zoning relief; and to update the Excavation Impact Report to reflect the actual locations and amounts of ledge removal.
5. The Planning Board notified abutters of the tabling of the first public hearing and of the date of the second public hearing.
6. The public hearings complied with statutory notice requirements of Massachusetts General Laws, c. 40A, §11.

FINDINGS of FACT (Case #14-07):

The City of Malden Planning Board finds the following facts:

1. The property is a vacant parcel of land upon which petitioner began construction of a single-family dwelling, pursuant to a building permit that was revoked on October 22, 2013 because petitioner began to remove ledge and alter the grade without a permit.
2. The proposal is to remove ledge and alter the grades of the lot to prepare the property for the siting of a single-family dwelling with garage under, stepped foundation, driveway and utilities.
3. The proposal is to remove ledge using non-blasting techniques, namely, via hydraulic drilling and expansive grout; and there will be no blasting, chipping, hammering, splitting or ledge removal by any other mechanical means.
4. The Excavation Impact Report describes the type and amount of ledge, approximately 250 cubic yards, to be removed from the site.
5. The proposal is to use a hydraulic drill, both on a track rig and hand-held, to drill approximately 550 holes into the ledge, in layers/levels, into which expansive grout will be poured and left 18 to 24 hours to allow the grout to expand and crack the rock into pieces, 18 inches to two feet in size; the ledge will then be removed with an excavator and trucked from the site.
6. Petitioner estimates the ledge removal will take two weeks and require ten to eleven trucks to remove.
7. The Vibration Analysis prepared by petitioner's seismologist evaluates the impacts on abutting properties of the vibrations to be produced by the hydraulic drill, based on the operations of a drill at another site.

8. According to petitioner's seismologist, the level of vibration produced by the hydraulic drill is extremely low and at or below the threshold of human perception more than 10 feet away from the drill site; and the grout expansion itself does not cause any vibration.
9. The variance granted on April 17, 2014 is subject to the condition, "The petitioner shall place a seismograph on the closest piece of abutting property off-site with tapes to be delivered personally to Chief Jack Colangeli of the Malden Fire Department DAILY during the drilling operation and ALL rock removal will be accomplished using only expandable grout."
10. The following properties directly abut the subject property: 56 Seaview Avenue, 70 Seaview Avenue, 13 Baker Street and 17 Baker Street; however, the closest structures to the majority of ledge removal activity are located at 13 Baker Street and 17 Baker Street.
11. Petitioner's seismologist will be present at the site daily to install, remove, monitor the seismographs, remove records and submit to Fire Chief, and relocate the seismographs, as necessary, to the structure(s) closest to the location of drilling activity and ledge removal.
12. According to petitioner's seismologist, the hydraulic drill captures and contains all of its own dust.
13. The Comparative Drainage Analysis and Proposed Plot Plan describe pre-development and post-development conditions, the proposed roof recharge and subsurface infiltration system to mitigate drainage impacts of the proposal, and the storm water management plan; this information and the proposal were reviewed by the City Engineer, who provided comments and recommendations in a memorandum dated February 6, 2014 and an email dated May 12, 2014.
14. No formal erosion prevention or control plan was submitted; a silt fence will be located along the side yards and portion of front yard.
15. Any special permit granted to remove ledge is subject to those conditions described in §700.13.4 of the Ordinance, which require pre-ledge removal survey of all buildings within 300-feet of the property lines of the subject property; locating a seismograph on the site at all times, and placed at such distances as determined by the geotechnical professional engineer, with a copy of all tapes to be submitted on a daily basis to the Fire Marshall; liability insurance of a minimum of \$100,000.00/\$300,000.00, with the City of Malden named as a loss-payee; hiring of such fire details as the Fire Chief deems appropriate in his reasonable discretion; hiring of such police details as the Police Chief deems appropriate in his reasonable discretion; written notice to be delivered to all premises within 300 feet of the property lines of the subject property, indicating the date(s) of activity and the hours of beginning and ending daily.
16. The subject property is located in the Residence A zoning district.
17. The proposed single-family residential dwelling use is allowed in this district, per §300.3.2.1 of the Ordinance.
18. All direct abutters are single-family dwellings.
19. All surrounding land uses are residential.
20. The property contains 3,569 square feet and complies with all dimensional controls for single-family dwellings except lot area, per §400.1.2.1 of the Ordinance; and the Board of Appeal granted a variance of this requirement on October 18, 2012 and April 17, 2014.
21. The proposal includes paving more than 50% of the front yard, in violation of §400.7.9 of the Ordinance, and the Board of Appeal granted a variance of this requirement on April 17, 2014.
22. The proposed grades of portions of the side and rear yard setback areas exceed the 25% maximum required by §400.7.8 of the Ordinance, and the Board of Appeal granted a variance of this requirement on April 17, 2014.
23. Proposed retaining walls, 18 inches to four feet in height, comply with the maximum height, per §400.7.8 of the Ordinance.
24. The retaining walls currently on site were constructed without permits and do require permits.
25. The proposal provides three offstreet on-site parking spaces, more than the two required by §500.1.2 of the Ordinance.
26. The proposal is not detrimental to the neighborhood.
27. The proposal will not adversely affect the general welfare or public safety.

DECISION (Case #14-07):

On February 12, 2014, the Planning Board moved to table the public hearing and the motion passed.

On May 14, 2014, pursuant to the foregoing Findings of Fact, the Planning Board moved to grant a special permit subject to the following seven (7) conditions, and the motion passed:

1. All ledge/rock removal only by hydraulic drilling and expandable grout; no ledge removal by chipping, hammering, blasting or any other mechanical or other means.
2. During site development, install and maintain siltation fencing along the perimeter of the lot.
3. Compliance with all conditions enumerated in §700.13.4 of the Ordinance re: pre-ledge removal survey and written notice, insurance, fire and police details.
4. During any ledge removal activity, place seismograph on site and at the residential structure (s) closest to the location of active drilling and ledge removal; submit seismograph tapes to Fire Chief for review daily.
5. Install siding to cover exposed foundation walls on front and sides.
6. Hours of ledge activity, including drilling, excavating and trucking, are limited to Monday thru Saturday, 8 am to 5 pm.
7. Repair roadway and sidewalks damaged during site development to satisfaction of DPW Director.

RECORD of VOTES (Case #14-07):

The vote on the motion to table the public hearing was 9 in favor, none opposed:

Antonucci, yes; Chiu, yes; Chuha, yes; Cipriano, yes; Danca, yes; Ferratusco, yes; Hayes, yes; Mzaouakk, yes; Ioven, yes.

The vote on the motion to grant a special permit with conditions was 8 in favor, none opposed:

Antonucci, yes; Chiu, yes; Cipriano, yes; Ferratusco, yes; Hayes, yes; Lawhorne, yes; Mzaouakk, yes; Ioven, yes.