



**CITY of MALDEN PLANNING BOARD
NOTICE of DECISION**

CASE NUMBER 21-03

LOCATION of SUBJECT PROPERTY 495-497 Broadway, Malden, MA

NAMES of PETITIONERS John Saroufin and Edward Colameta

NAME of OWNER Provident Realty Trust

DATES of PUBLIC HEARING October 14, 2020 and March 10, 2021

DATE of DECISION March 10, 2021

DATE of FILING DECISION with CITY CLERK March 24, 2021

DATE of NOTIFICATION to BUILDING INSPECTOR March 24, 2021

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT April 13, 2021

[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 #21-03):

1. The subject property is known as and numbered, 495-497 Broadway and by Assessor's Parcel ID #156 570 040.
2. The property owner is Provident Realty Trust, 87 Broadway, Malden, MA 02148.
3. The petitioners are the owners of the proposed motor vehicle shop, John Saroufin, 180 Norfolk Avenue, Swampscott, MA 01907, and Edward Colameta, 100 Trueman Drive, Malden, MA 02148.
4. At the public hearings, petitioners represented themselves and were also represented by their attorney, Patrick P. MacDonald, 479 Eastern Avenue, Malden, MA 02148.
5. The petition filed in permit application # CMID-032878-2020 seeks a special permit under Section 12.12.030 of Chapter 12, Revised Ordinances of 2020 (the "Ordinance"), to allow motor vehicle repair shop use of property in the Highway Business zoning district.
6. The following plans and information were submitted in support of the petition: site plan, "Proposed Plan of Land #497 Broadway Malden, MA P.I.D. 156-570-040 Owned by Provident Realty Trust," dated January 31, 2020, revised October 26, 2020, prepared by John J. Russell, P.L.S., Reading, MA; floor plans, "495 Broadway Malden, MA. Block Building Garage/Offices, Ground Floor," and "495 Interior Office Floor Plan, Ground Floor," both dated November 20, 2020, and "495 Interior Office Floor Plan, First Floor," dated November 19, 2020, all prepared by James Craig, P.L.S., Syed Architecture; and floor plan, "497 Broadway Malden, MA," dated January 7, 2021 (Stamped January 6, 2021), prepared by Nazeih R. Hammouri, P.E., Everett, MA.
7. On October 14, 2020, when the public hearing opened, petitioner requested to table the hearing to have the opportunity to clarify, correct and address discrepancies and missing information in the site plan and parking plan; to provide more information about the vehicle repairs being conducted by the used car sales business; and to clean up the property.
8. On October 14, 2020, the Planning Board immediately considered petitioner's request to table the hearing and did not hold the public hearing or take any public testimony; and the Board itemized the following information to be provided and issues to be addressed before the hearing reopens: size and dimensions of parking spaces (exterior and interior); size and dimensions of inside repair/work areas; information about the legality of light/minor repairs by the used car dealer/Class II License holder, including clarification from the Building Commissioner; discrepancies in plans regarding measurements and sizes of buildings; dimensions of snow storage areas; removal of boat stored on site; and cleaning of entire site and lot, including the hillside behind the buildings and all debris, pallets, marble/granite, metal braces/racks, and tires.
9. In accordance with Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, M.G.L. c. 30A, §18, Governor's March 23, 2020 Revised Guidance on Order by the Governor Prohibiting Assemblage of More than Ten People, and Governor's COVID19 Order No. 63, the public hearings were held virtually and public attendance and participation were remotely via technological means.
10. The public hearing complied with the notice requirements of §12.32.020(K) of the Ordinance and Massachusetts General Laws, Chapter 40A, §11.

FINDINGS of FACT (Case #21-03):

The City of Malden Planning Board finds the following facts:

1. The property is the site of two buildings: a two-story building, known as and numbered, 495 Broadway (the "495 Building"), currently occupied by a used car dealer, using the entire first floor of 4,361 square feet and 131 square feet of the second floor, and a psychic, using 588 square feet of the second floor; and a single-story

building, known as and numbered, 497 Broadway (the “497 Building”), currently vacant, containing 3,360 square feet, and the subject of this petition.

2. Petitioner Saroufin is the operator and manager of the proposed motor vehicle repair shop at the 497 Building, and petitioner Colameta is the owner and operator of the existing vehicle sales business at the 495 Building.
3. The proposal is to use the 497 Building for a motor vehicle repair shop, which will include a spray booth, paint room, two car lifts, two offices and five interior parking spaces.
4. Under the proposal, the existing vehicle sales business and psychic business at the 495 Building will continue.
5. The property is located in the Highway Business zoning district.
6. The motor vehicle repair shop is allowed by special permit in this district, per §12.12.030 of the Ordinance.
7. The current uses of the 495 Building, retail sales with 5,000 square feet or more of gross floor area, and retail services, are allowed by right in this district, per §12.12.030 of the Ordinance.
8. Direct abutters to the south are multifamily dwellings and single-family dwellings; to the east, a multifamily dwelling; to the west, retail sales; and to the north, on the other side of Broadway, multifamily dwellings.
9. Surrounding land uses are residential and business.
10. The proposed motor vehicle repair shop use is not in conflict with surrounding land uses.
11. The property does not comply with required side yard setbacks, as allowed by a prior special permit, and rear yard setback, and the property is considered preexisting nonconforming, per §12.28.010(A) of the Ordinance.
12. The property is considered preexisting nonconforming because there are two principal buildings on one lot, per §12.28.010 of the Ordinance.
13. The proposal increases the existing yard setback violations, per §12.16.010 of the Ordinance.
14. The increase in violations of dimensional controls will not be more detrimental to the neighborhood.
15. The proposal requires a total of thirty-seven parking spaces, based on gross floor areas indicated on the floor plans, namely, two spaces for the existing retail services use of 588 square feet; eighteen spaces for the existing retail vehicle sales use of 4,492 square feet; and seventeen spaces for the proposed motor vehicle repair shop use of 3,360 square feet, per §§12.20.010 and 12.20.030 of the Ordinance.
16. As depicted on the site plan, a total of forty-four parking spaces will be provided: twenty-two spaces labeled “Car Sale,” for the vehicle sales business, namely, sixteen spaces outside the 495 Building and six spaces inside the 495 Building; two spaces for the psychic, located outside the 495 Building; and twenty spaces for the motor vehicle repair shop, namely, fifteen spaces outside the 497 Building and five spaces inside the 497 Building.
17. Interior building areas that are used for vehicle repairs may not be counted as satisfying parking requirements, as stated in the email dated October 28, 2020 from Building Commissioner Nelson Miller.
18. The existing vehicle sales business is authorized by and subject to a Used Car Dealer’s License-Class II issued by the City Council (License No. 15-21) for 27 cars, subject to the plan on file in the City Clerk’s office, which is the plan, “Proposed Parking Plan of Land,” prepared by Bryan G. Parmenter, P.L.S., PFS Land Surveying, Groveland, stamped as approved by the Malden Fire Department on January 27, 2014; however, this plan only depicts the 495 Building and the western half of the lot.
19. The parking layout on the site plan submitted with this special permit petition differs from the parking layout on the site plan approved with the Used Car Dealer’s License-Class II.
20. According to petitioner, the vehicle sales business performs minor repairs related exclusively to the repair, maintenance, warranty work and preparation for sale of the vehicles; and the only warranty work done is limited and pursuant to required state warranties.
21. The repair of vehicles by the retail sales business is accessory to that use and the Class II license and limited to vehicles being sold, as stated in the email dated October 28, 2020 from Building Commissioner Nelson Miller.
22. According to petitioner, the proposed motor vehicle repair shop will operate independently of the vehicle sales business and also operate in conjunction with that business, to do repair work on vehicles that have been sold.
23. The required snow storage is depicted on the site plan.
24. The property has been cleaned and all trash and debris have been removed.
25. The large boat previously stored outside at the property has been removed.
26. The large metal items currently located in the western side yard of the 497 Building are components of an air purification and circulation system for the proposed motor vehicle repair shop, which might be installed on the roof of the 497 Building; and if not installed prior to occupancy, these items will be removed from the property.
27. The Ward 8 City Councilor, Ward 7 City Councilor, two abutters and one Ward 8 resident support the proposal.
28. One Ward 8 resident is in opposition to the proposal.
29. As modified by the conditions of the special permit, the proposal will not be more detrimental to the neighborhood.
30. As modified by the conditions of the special permit, the proposal is in the interest of the common good.

DECISION (Case #21-03):

On October 14, 2020, finding no exigent circumstances and given the request to table the public hearing was submitted less than seven business days prior to the public hearing, the Planning Board waived Section C(1)(g) of its Rules and Procedures to allow consideration of the request to table the public hearing.

On October 14, 2020, the Planning Board tabled the public hearing.

On March 10, 2021, a Planning Board member made a motion made to deny the petition for a special permit and this motion failed due to lack of a second. *[Motion by Henry; not seconded]*.

On March 10, 2021, the Planning Board granted a special permit subject to the following fourteen conditions:

1. All use of the property shall be as per plans, which are incorporated herein by reference and except where modified by these conditions.
2. File with the City Council a site plan with same parking layout approved hereunder by this special permit; seek and obtain approval of the same parking layout for the Class II license.
3. Changes to the parking layout shall require an amendment of this special permit.
4. Repair work by the vehicle sales business at 495 Broadway is an accessory use and limited to vehicles being prepared for sale, or sold and still under state sales warranty.
5. No motor vehicle repairs of any kind may be done outside either building.
6. Designate 17 exterior parking spaces on-site for the motor vehicle repair shop use.
7. A maximum of two vehicles may be parked inside the eastern side of the 495 Building.
8. No parking or storage of any vehicle may block access to the doors at any time and if stored inside, overnight, an oil/water separator is required inside the building.
9. The only retail services use of the 2nd floor of the 495 Building may be a psychic or fortune teller and no other retail service; any other retail service or other use shall require an amendment of this special permit.
10. Provide bicycle parking for two on-site.
11. No outside storage of any kind is allowed.
12. Maintain site clean and clear of all trash and debris.
13. Screen and enclose all dumpsters.
14. Install, repair or replace sidewalks, driveways and perform necessary incidental work adjacent to the property to the reasonable satisfaction of the DPW Director.

RECORD of VOTES (Case #21-03):

On October 14, 2020, the vote on the motion to waive Section C(1)(g) of its Rules and Procedures was nine in favor, none opposed, and the motion passed (9-0):

Chuha, yes; Fitzgerald, yes; Gebreselassie, yes; Gray, yes; Hayes, yes; Henry, yes; MacCuish, yes; Soucy, yes; Ioven, yes. *[Motion by Chuha, seconded by Fitzgerald. Absent: Antonucci, Ferguson].*

On October 14, 2020, the vote on the motion to table the public hearing was nine in favor, none opposed, and the motion passed (9-0):

Chuha, yes; Fitzgerald, yes; Gebreselassie, yes; Gray, yes; Hayes, yes; Henry, yes; MacCuish, yes; Soucy, yes; Ioven, yes. *[Motion by Fitzgerald, seconded by Chuha. Absent: Antonucci, Ferguson].*

On March 10, 2021, the vote on the motion to grant a special permit with fourteen conditions was eight in favor, one opposed, and the motion passed (8-1):

Chuha, yes; Fitzgerald, yes; Gebreselassie, yes; Gray, yes; Hayes, yes; Henry, no; MacCuish, yes; Soucy, yes; Ioven, yes. *[Motion by Fitzgerald, seconded by Soucy. Absent: Antonucci, Ferguson].*

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

By: _____
Michelle A. Romero, City Planner