



CITY of MALDEN PLANNING BOARD
NOTICE of DECISION

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CASE NUMBER 15-10

LOCATION of SUBJECT PROPERTY 140-144 Eastern Avenue, Malden, MA

NAME of PETITIONER and OWNER K & R Realty Trust

DATE of PUBLIC HEARING September 9, 2015

DATE of DECISION September 16, 2015

DATE of FILING DECISION with CITY CLERK September 16, 2015

DATE of NOTIFICATION to BUILDING INSPECTOR September 16, 2015

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT October 6, 2015

[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.]

CITY CLERK'S OFFICE
MALDEN, MASS.

PROCEDURAL HISTORY (Case #15-10):

1. Petitioner is the owner, K & R Realty Trust, c/o Richard Gottschalk, Jr., Trustee, 144 Eastern Avenue, Malden, MA.
2. The petition seeks to reinstate the rights authorized by the special permit granted in Case #13-23, subject to the same conditions, per §300.3.2.5, Chapter 12, Revised Ordinances of 1991, as Amended, of the City of Malden (the "Ordinance"), to allow multifamily residential dwelling use of the property.
3. The special permit granted in Case #13-23 on July 24, 2013 has lapsed because substantial construction or substantial use did not commence within one year from the date of granting, per §800.3.2.7 of the Ordinance.
4. The following plans were approved with the special permit granted in Case #13-23: set of plans, dated March 20, 2013, prepared by Cornerstone Architects, Inc., Westford, MA, "PROPOSED FIRST FLOOR PLAN, 140 EASTERN AVE., MALDEN, MA; PROPOSED SECOND FLOOR PLAN, 140 EASTERN AVE., MALDEN, MA; PROPOSED FRONT & RIGHT SIDE ELEVATIONS, 140 EASTERN AVE., MALDEN, MA; PROPOSED REAR ELEVATION, 140 EASTERN AVE., MALDEN, MA;" and a site plan, "Plan of Land in Malden," dated March 17, 2013, prepared by Robert E. Grover, P.L.S., P.E., Melrose, MA.
4. Two alternate site plans were submitted with the current petition: "Plan of Land in Malden," dated March 17, 2013, revised August 1, 2013, prepared by Robert E. Grover, P.L.S., P.E., Melrose, MA; and "Plan of Land in Malden," dated September 2, 2015, prepared by Robert E. Grover, P.L.S., P.E., Melrose, MA.
5. Petitioner did not file a new request for waiver of filing requirements for a traffic impact study, Section E.9, *Rules and Procedures of Malden Planning Board*, with the current petition; the Planning Board considered and granted petitioner's previous request for a waiver regarding the previous petition at a public meeting on June 19, 2013.
6. The public hearing complied with statutory notice requirements of Massachusetts General Laws, Chapter 40A, §11.

FINDINGS of FACT (Case #15-10):

The City of Malden Planning Board finds the following facts:

1. The subject property is the site of a 2 ½ story building, and the entire property is currently occupied by petitioner's landscaping business: the first floor for garages and storage; the second floor for administrative offices; and the rear yard area for parking of numerous construction and other commercial vehicles and storage of various construction and landscaping equipment and several metal storage containers/trailers.
2. The proposal is convert the second floor of the existing building to six residential dwelling units, consisting of five units with two bedrooms, 881 to 919 square feet in size, and one unit with one bedroom, 744 square feet in size; and includes removal of the southern-most garage door, construction of a two-story addition with residential entrance and enclosed stairwell at the eastern end of the building, and installation of windows on the second floor.
3. The proposal is to reconfigure the first floor of the building to three commercial storefronts, having a total gross floor area of 6,000 square feet and individual unit sizes of 1690, 1885 and 1980 square feet, to be occupied by the corporate/administrative offices of a contractor or for new uses allowed by right, tenants to be determined; and includes removal of two garage doors and installation of storefront doors and windows at the front of the building.
4. The subject property is located in the Central Business zoning district.
5. The proposed multifamily residential use is allowed by special permit, per §300.3.2.5 of the Ordinance.
6. Various institutional, business, industrial and other uses are allowed by right in this district, and other business and industrial uses are allowed by special permit, per §300 of the Ordinance.
7. The current industrial use of the property, building, construction and contracting, is prohibited in this district and is preexisting nonconforming, per §§300.3.5.1 and 700.1 of the Ordinance.
8. The existing industrial use of the property is not compatible with the proposed residential use of the property.
9. The direct abutter to the north and west are a self-storage facility and moving truck rental retail service business; to the east, Phillips Court, a private way off Eastern Avenue; to the east, on the other side of Phillips Court, a building, construction & contracting use, namely, petitioner's landscape yard; to the south, on the other side of Eastern Avenue, a motor vehicle repair shop and automotive sales business, and a Highway Business zoning district.

10. Phillips Court provides access for abutting industrial properties and has angled parking configured along one side.
11. Surrounding land uses are business; residential; the multimodal recreational trail, Bike to the Sea Path/Northern Strand Community Trail; and Malden High School.
12. Future surrounding land uses include two developments for which a special permit has been granted: a pharmacy with drive-thru containing 13,360 square feet at 32-54 Ferry Street (Case #14-15); and a multifamily residential dwelling containing six stories and 86 units at 180 Eastern Avenue (Case #13-37).
13. The proposal on the subject property complies with applicable dimensional controls, per §400.3 of the Ordinance.
14. The proposed residential use requires nine parking spaces, per §500.2.8.2 of the Ordinance; and any non-residential use allowed by right that may occupy the first floor requires no parking, per §500.2.8.1 of the Ordinance.
15. The site plan approved with the special permit granted in Case #13-23 depicts nine parking spaces on-site, configured as head-on, along the northern side of the lot, with a conforming layout, per §500.2 of the Ordinance.
16. The two alternate site plans propose nonconforming layouts that will require a variance of §500.2 of the Ordinance.
17. Currently on-site is a gated fence that separates the rear yard of the subject property from Phillips Court.
18. Residential vehicular access to the parking lot on the subject property will be only via the existing driveway and curb-cut off Eastern Avenue; residential pedestrian access for the parking lot to/from the building will be only via the existing door at the rear northwestern corner of the building; and there will be no residential access via Phillips Court.
19. Petitioner may decide to redesign the parking layout to install interior fencing in the rear yard to separate parking for the residential tenant from parking for future commercial/non-residential occupants of the building.
20. As modified by conditions of this special permit, the proposal creates no violations of parking requirements.
21. Regarding the special permit in Case #13-23, the City's peer review recommendation to grant a waiver of filing requirements for a traffic impact study is described in correspondence dated June 18, 2013 from BETA Group, Inc.
22. After the special permit was granted in Case #13-23, the City has peer reviewed the traffic impact of two major developments in the immediate area, referenced herein above in Finding of Fact #12.
23. Prior to residential occupancy, petitioner intends to remove from the property all vehicles, equipment and storage containers related to its landscape business and to move all to petitioner's property on the other side of Phillips Court.
24. Petitioner intends to maintain only its corporate administrative offices for its landscaping business at the subject property, and no other activity or operations of the landscape business will be conducted on-site.
25. Petitioner intends to begin the project this year or in the spring and expects the project will take nine months.
26. The Ward City Councilor is in favor of the proposal.
27. There is no public opposition to the proposal.
28. Petitioner consents to all proposed conditions of this special permit.
29. As modified by conditions of this special permit, the proposed residential use is in the interest of the common good.
30. As modified by conditions of this special permit, the proposal will not be detrimental to the neighborhood.

DECISION (Case #15-10):

Pursuant to the foregoing Findings of Fact, the Planning Board moved to grant a special permit that reinstates the rights authorized by the special permit in Case #13-23 to allow alteration of the first floor to create three storefronts and multifamily residential use of the second floor, subject to the following six conditions: 1) Nine (9) parking spaces shall be provided on-site for use of residential tenants only; access only via Eastern Avenue, no access via Phillips Court and maintain gated fence; screened with privacy fencing along northern and eastern sides; parking layout must conform to §500 of zoning ordinance; submit parking plan with layout, screening and snow storage to City; 2) The first floor may only be occupied for daycare; general offices, including corporate/administrative offices of a contractor; retail services; and/or artist/live work space; any other use is prohibited; 3) Landscape front yard and maintain; 4) Repair or replace sidewalks, including related incidental work, around the perimeter of the site, to the reasonable satisfaction of the DPW Director; 5) Install bicycle parking for three bikes; and 6) Clear all yard areas of trucks, construction equipment and vehicles, machinery, snow plows, storage containers/trailers, etc.; any outside storage or parking of any such vehicles or items is prohibited onsite.

RECORD of VOTES (Case #15-10):

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

Antonucci, yes; Chiu, yes; Chuha, yes; Hayes, yes; Henry, yes; Lawhorne, yes; MacCuish, yes; Wolff, yes; Ioven, yes.

I, Michelle A. Romero, City Planner for the City of Malden, hereby certify that the above is a true copy of the decision of the Malden Planning Board.

By: 
 Malden Planning Board
 Michelle A. Romero, City Planner