



CITY of MALDEN PLANNING BOARD
NOTICE of DECISION

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CITY CLERK'S OFFICE
MALDEN, MASS.

CASE NUMBER 15-11

LOCATION of SUBJECT PROPERTY 64 at 54-72 Summer Street, Malden, MA

NAME of PETITIONER J & H 168 Enterprises, Inc.

NAME of OWNER 54-72 Summer Street LLC

DATE of PUBLIC HEARING September 9, 2015

DATE of DECISION September 9, 2015

DATE of FILING DECISION with CITY CLERK September 17, 2015

DATE of NOTIFICATION to BUILDING INSPECTOR September 17, 2015

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT October 7, 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.]

PROCEDURAL HISTORY (Case #15-11):

1. Petitioner is the proposed tenant and business operator, J & H 168 Enterprises, Inc., c/o Huang Jiang, 240 Marlboro Street, Quincy, MA.
2. Property owner is 54-72 Summer Street LLC, c/o Andreas A. Tsitos, 105A Ferry Street, Malden, MA.
3. The petition seeks a special permit under §§300.3.4.12 and 700.1.3.2, Chapter 12, Revised Ordinances of 1991, as Amended, of the City of Malden (the "Ordinance") to alter and change use of a portion of a preexisting nonconforming property for restaurant use in a Neighborhood Business zoning district.
4. The following plans were submitted in support of the petition: "Proposed Restaurant 64 Summer Street Malden, MA," dated June 19, 2015, prepared by Phung/Porzio Studio of Architecture, Dorchester, MA, depicting floor plans of first floor and basement.
5. Petitioner requested a waiver of filing requirements regarding updated site plan, floor plans of the entire building and building exterior elevations because no changes to these areas are proposed.
6. Petitioner requested a waiver of filing requirements for a traffic impact study, Section E.9, *Rules and Procedures of Malden Planning Board*, as described in correspondence dated June 29, 2015 and August 11, 2015 from Howard Stein Hudson, Boston, MA; and the Planning Board considered the request at a public meeting on August 12, 2015.
7. The public hearing complied with statutory notice requirements of Massachusetts General Laws, Chapter 40A, §11.

FINDINGS of FACT (Case #15-11):

The City of Malden Planning Board finds the following facts:

1. The subject property is the site of a four-story building containing a total of fifty-two apartments on the second, third and fourth floors, and eleven storefronts on the first floor.
2. The subject of the petition is the vacant storefront known as and numbered 64 Summer Street, which is approximately 900 square feet in size.
3. The proposal is to convert the subject premises to a "dine-in" restaurant with seating for thirty-four.
4. The proposed kitchen comprises more than half of the premises and contains various cooking equipment and food preparation facilities, such as a stove, deep fryer, two barbecue grills, griddle and smoothie bar.
5. The proposal also includes a "beer & wine cabinet," cashier counter and one restroom on the first floor, and 900 square feet of storage in the basement.
6. Petitioner proposes to employ four or five employees.
7. Petitioner's proposed hours of operation are 12 pm (noon) to 12 am (midnight).
8. The property is located in a Neighborhood Business zoning district.
9. The existing multifamily residential use is a preexisting nonconforming use; and the existing business uses, namely, retail sales and services, general offices, a tea/coffee shop restaurant and convenience store, are allowed by right or by special permit, or are preexisting nonconforming uses, per §§300.3 and 700.1 of the Ordinance.
10. The subject premises was most recently occupied for retail sales, allowed by right per §300.3 of the Ordinance.
11. The proposed restaurant use may be allowed by special permit, per §§300.3.4.12 and 300.7 of the Ordinance.
12. The direct abutters to the north and south are multifamily dwellings, and to the west, four-family dwellings and a multifamily dwelling; and to the east, on the other side of Summer Street, a restaurant and multifamily residential dwelling with general offices and retail services on the first floor.
13. The Residence A zoning district abuts to the west; the Neighborhood Business zoning district continues to the north, east and south; and the Central Business zoning district begins nearby to the south.
14. Surrounding land uses are residential, a public parking garage and a county courthouse.
15. The property grossly violates dimensional controls for all yard setbacks and density and is preexisting nonconforming, per §§400 and 700.1 of the Ordinance.

16. The proposal maintains the existing nonconformities and creates no new violations of dimensional controls.
17. The current use of the property requires a total of 152 onsite offstreet parking spaces: 104 for the residential use and 48 for the business uses, per §§500.1 and 500.2.18 of the Ordinance.
18. The site plan on file depicts 27 parking spaces on-site in a conforming layout, located in a paved lot at the rear (western) side of the building, accessed via a driveway off Maple Street.
19. The existing gross parking deficiency, 125 spaces or 82%, is preexisting nonconforming, per §700.1 of the Ordinance.
20. The proposed restaurant requires eleven parking spaces and increases the parking required for all businesses to 55 spaces and total required for the property to 159 spaces, per §§500.1.4.16, 500.1 and 500.2.18 of the Ordinance.
21. The proposal increases the parking nonconformity and creates a new deficiency of 132 spaces or 83%.
22. The City's peer review recommended granting the request for a waiver of Section E.9, *Rules and Procedures of Malden Planning Board* (Filing Requirements, Traffic Impact Study), as described in correspondence dated July 27, 2015 from BETA Group, Inc., subject to identifying parking supply for the projected demand.
23. The onsite parking at the property is for the use of residents and may not be used by the patrons or employees of the proposed restaurant.
24. There is limited on-street parking, subject to posted restrictions, adjacent to or near the property; parking may be available in the nearby public garage, or the MBTA parking lot located at the Malden Center station.
25. The abutting and surrounding residential neighborhoods already have traffic congestion and limited parking.
26. The violations of parking requirements exacerbated by the proposal will be more detrimental to the neighborhood.
27. To date, the proposed restaurant has not filed an application for Plan Review by the Board of Health and must comply with any conditions/requirements of a Plan Review, including but not limited to those regarding trash/waste, sanitary facilities and rodent control; and obtain all necessary permits.
28. The Ward City Councilor and Mayor are in opposition to the proposal.
29. A City Councilor-at-Large supports the proposal.
30. The proposal is not in the interest of the common good.
31. The proposal will be more detrimental to the neighborhood.

DECISION (Case #15-11):

On August 12, 2015, the Planning Board moved to grant a waiver of filing requirements for a traffic impact study, and the motion passed.

On September 9, 2015, pursuant to the foregoing Findings of Fact, the Planning Board moved to deny the petition for a special permit, and the motion passed.

RECORD of VOTES (Case #15-11):

On August 12, 2015, the vote on the motion to grant a waiver of the filing requirements for a traffic impact study was eight in favor, none opposed:

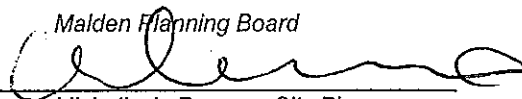
Billings, yes; Chiu, yes; Chuha, yes; Hayes, yes; Henry, yes; Lawhorne, yes; MacCuish, yes; Ioven, yes.

On September 9, 2015, the vote on the motion to deny the petition for a special permit was six in favor, three opposed:

Antonucci, yes; Chiu, no; Chuha, no; Hayes, yes; Lawhorne, yes; MacCuish, yes; Mzaouaak, no; 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.

Malden Planning Board

By: 
Michelle A. Romero, City Planner