



CITY of MALDEN PLANNING BOARD  
NOTICE of DECISION

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CASE NUMBER 16-18

CITY CLERK'S OFFICE

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

NAME of PETITIONER Café De Lu Lu Inc.

NAME of OWNER 54-72 Summer Street LLC

DATE of PUBLIC HEARING July 13, 2016

DATE of DECISION July 13, 2016

DATE of FILING DECISION with CITY CLERK July 21, 2016

DATE of NOTIFICATION to BUILDING INSPECTOR July 21, 2016

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT August 10, 2016

*[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 #16-18)

1. Petitioner is the tenant and proposed business operator, Café De Lu Lu Inc., c/o Gloria Sui Ling Lam, 13 Harnden Road, Malden, MA.
2. Property owner is 54-72 Summer Street LLC, 66 Summer 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. On March 9, 2016 in Case #16-07, the Planning Board granted consent under §800.4.10 of the Ordinance and Massachusetts General Laws, Chapter 40A, §16 to file the current petition within two years after the Board's unfavorable action on a petition seeking a special permit for a restaurant at the same property, namely, the Board's denial on September 9, 2015 in Case #15-11.
5. The following plans were submitted in support of the current petition: "Proposed Restaurant 64 Summer Street Malden, MA," depicting proposed floor plans of first floor and basement, dated March 24, 2016, prepared by Phung/Porzio Studio of Architecture, Dorchester, MA.
6. 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.
7. Petitioner requested a waiver of filing requirements for a traffic impact study, Section E.9, *Rules and Procedures of Malden Planning Board*, via correspondence dated March 10, 2016, prepared by Patrick P. MacDonald, Esq., Malden, MA and the Planning Board considered this request at a public meeting on May 11, 2016; and via correspondence dated May 27, 2016, prepared by Howard Stein Hudson, re: Review of Traffic and Parking Impact.
8. The public hearing complied with statutory notice requirements of Massachusetts General Laws, Chapter 40A, §11.

FINDINGS of FACT (Case #16-18):

The City of Malden Planning Board finds the following facts:

1. The subject property is the site of a four-story building containing fifty-two residential apartments on the second, third and fourth floors and eleven commercial spaces or storefronts on the first floor.
2. The subject of the petition is the commercial space or storefront known as and numbered 64 Summer Street, approximately 900 square feet in size.
3. The proposal is convert the subject premises to a restaurant with eight seats, that will offer principally take-out and delivery service.
4. The proposed kitchen comprises approximately two-thirds of the premises and contains various cooking equipment with hood above, including soup cooker, two deep fryers, three woks, rice cooker, grill, stove-top, barbecue machine; and three prep tables, a three-bay sink, two-bay sink, freezer and walk-in cooler.
5. The proposal includes a cashier's counter and restroom, and use of the basement for storage.

6. The interior of the subject premises is being renovated; no other changes to the property are proposed.
7. The floor plan submitted for the proposed restaurant is labeled, "Existing," however, actually depicts the proposed floor plan, given that the subject premises are currently vacant.
8. The property is located in a Neighborhood Business zoning district.
9. The restaurant use is allowed by special permit in this district, per §300.3.4.12 of the Ordinance.
10. The existing businesses at the property, namely, retail sales and services and general offices, and retail sales use that formerly occupied the subject premises, are allowed by right; the tea/coffee shop restaurant was allowed by special permit in Case #14-12; and the convenience store requires a special permit and is considered preexisting nonconforming, per §§300.3 and 700.1 of the Ordinance.
11. A portion of the multifamily residential dwelling use of the property was allowed by special permit in Case #13-38 and considered preexisting nonconforming, per §§300.3.2.6 and 700.1 of the Ordinance.
12. The direct abutters to the north and south are multifamily dwellings; 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 dwelling with six dwelling units and three storefronts occupied for general offices.
13. The Residence A zoning district abuts the property to the west; the Neighborhood Business district continues to the north, east and south; and the Central Business district begins nearby to the south.
14. Surrounding land uses are residential, a public parking garage, the district courthouse, and the Malden Center MBTA Rapid Transit and Commuter Rail Station.
15. The proposed restaurant is not in conflict with surrounding land uses.
16. The property grossly violates dimensional controls for all yard setbacks and density and is preexisting nonconforming, per §§400 and 700.1 of the Ordinance.
17. The proposal maintains the existing nonconformities and creates no new violations of dimensional controls.
18. The current uses of the property require a total of 152 parking spaces, namely, 104 for the multifamily dwelling and 48 for the businesses, per §§500.1 and 500.2.18 of the Ordinance.
19. The site plan on file, "Plan of Land in Malden," dated October 10, 2013, prepared by Robert E. Grover, P.E., P.L.S., J & B Survey, Melrose, MA, depicts 27 parking spaces in a paved parking lot with conforming layout, located at the rear (western) side of the building; however, the actual parking layout in effect onsite differs and is nonconforming, per §500.2 of the Ordinance.
20. Access to the parking lot is via a driveway off Maple Street of nonconforming width for one or two-way traffic and which traverses under a section of the building and has limited height clearance.
21. The existing parking deficiency, 125 spaces or 82%, is considered preexisting nonconforming, per §700.1 of the Ordinance.
22. The proposal requires eleven parking spaces and increases the total parking required for all principal uses of the property to 159 spaces, per §§500.1.4 and 500.2.18 of the Ordinance.
23. The proposal increases the parking deficiency to 132 spaces or 83%.
24. Petitioner intends to lease six parking spaced in the onsite parking lot located behind the building; the spaces will be identified and reserved for exclusive use of petitioner; the spaces will be contiguous and located as close as possible to the rear door of the subject premises.
25. Petitioner intends to allow use of the six onsite parking spaces for use of the restaurant delivery service drivers, customers and deliveries by purveyors of food supplies and products.
26. Petitioner intends to use a third-party delivery service that delivers using its own vehicles.
27. Restaurant delivery service drivers will pick up delivery orders at the rear of the subject premises.
28. Petitioner will instruct delivery purveyors of food supplies and products to use the parking at the rear of the property and to use smaller trucks that fit through the driveway that runs under the building.
29. Customers will not have access to the restaurant via the rear door of the restaurant and will be required to walk around the building to enter the restaurant through the front door on Summer Street.
30. Petitioner intends to install signage at the rear of the building, at the parking spaces, inside the restaurant, on menus, and on promotional materials and social media, to inform customers that there is parking available at the rear of the property and to encourage use of this parking.
31. Employees are expected to arrive via nearby public transit or to be picked up by owner.

32. Employees will not park onsite or on the street; petitioner may park its company car at the property.
33. Petitioner's proposal to allow employees to park at its nearby residence will not be allowed because use of residential property for commercial parking is illegal, per the Ordinance.
34. Limited on-street parking is available and restricted by posted signage; parking is available in the nearby public parking deck/garage located on the corner of Summer Street and Mountain Avenue.
35. The increase in violations of parking requirements will not be more detrimental to the neighborhood.
36. The City's peer review recommended disapproval of petitioner's original request for a waiver of Section E.9, *Rules and Procedures of Malden Planning Board* (Filing Requirements, Traffic Impact Study) and recommended a modified study, as described in correspondence dated May 11, 2016 from BETA Group, Inc.; and recommended disapproval of petitioner's second request for a waiver, as described in correspondence dated July 8, 2016 from BETA Group, Inc.
37. The subject property is located less than 600 feet from the Malden Center MBTA Rapid Transit and Commuter Rail Station.
38. The proposed restaurant expects to have a transient customer base.
39. The proposed restaurant will be an Asian-themed "noodle shop" offering breakfast, lunch and dinner.
40. Petitioner's proposed hours of operation are 7 am to 10 pm.
41. Petitioner's business will have four employees, including petitioner.
42. Traffic generated by the proposal will not adversely impact surrounding streets or create a traffic or safety hazard.
43. The Board's denial of the petition for a special permit in Case #15-11 was for a proposed restaurant with seating for thirty-four, offering principally dine in/sit-down service and service of beer and wine.
44. Petitioner does not intend to seek a license to serve alcoholic beverages at the proposed restaurant.
45. Petitioner currently operates a restaurant in Hanson, MA and previously has operated a similar restaurant in Chinatown, Boston.
46. To date, the proposed restaurant has not filed an application for Plan Review by the Board of Health, and the restaurant will need to comply with any conditions/requirements of a Plan Review, prior to the issuance of a Permit to Operate a Food Service Establishment, including, but not limited to, those regarding trash/waste, sanitary facilities and rodent control; and obtain all necessary permits.
47. There is no public testimony in favor of the proposal.
48. There is no public opposition to the proposal.
49. As modified by conditions of the special permit, the proposal is in the interest of the common good.
50. As modified by conditions of the special permit, the proposal will not be more detrimental to the neighborhood.
51. Petitioner consents to the proposed conditions of this special permit.

DECISION (Case #16-18):

On May 11, 2016, the Planning Board denied petitioner's request for a waiver of filing requirements for a traffic impact study and requested a modified study as recommended in the City's peer review.

On July 13, 2016, pursuant to the foregoing Findings of Fact, the Planning Board granted a special permit subject to the following eight (8) conditions: 1) All conditions of special permits granted in Cases #13-38 and #14-12 shall remain in full force and effect; 2) Any sale or service of alcoholic beverages is prohibited; 3) Any increase in seating, expansion of kitchen facilities or installation of additional equipment shall require an amendment of this special permit; 4) Comply with any conditions/requirements of a Plan Review by Board of Health and obtain all necessary permits from Board of Health; 5) Restaurant must lease six (6) on-site parking spaces from property owner for use only by customers and delivery service; the spaces must be contiguous, reserved and located as close to the rear door as possible; 6) Restaurant must use third-party delivery service that uses its own vehicles; 7) Notify customers by signage and media that parking is available at rear of building; and 8) Hours of operation are 7 am to 10 pm.

RECORD of VOTES (Case #16-18):

On May 11, 2016, the vote on the motion to deny the request for a waiver of the filing requirements for a traffic impact study was six in favor, three opposed:

Antonucci, yes; Chiu, no; Chuha, no; Hayes, yes; Lawhorne, yes; MacCuish, yes; Mzaouakk, no; Wolff, yes; Ioven, yes.

*Motion by Antonucci, seconded by MacCuish. [Present but not voting: Fitzgerald. Absent: Henry.]*

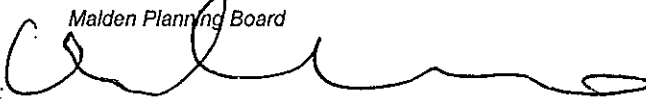
On July 13, 2016, the vote on the motion to grant a special permit with conditions was eight in favor, none opposed:

Antonucci, yes; Chiu, yes; Chuha, yes; Fitzgerald, yes; Hayes, yes; Lawhorne, yes; MacCuish, yes; Ioven, yes.

*Motion by MacCuish, seconded by Antonucci. [Absent: Henry, Mzaouakk, Wolff.]*

*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