



CITY of MALDEN PLANNING BOARD
NOTICE of DECISION

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CITY CLERK'S OFFICE
MALDEN, MASS.

CASE NUMBER 16-22

LOCATION of SUBJECT PROPERTY 36 Gilbert Street, Malden, MA

NAMES of PETITIONERS and OWNERS Deano Summers and Janell Pappas

DATE of PUBLIC HEARING October 12, 2016

DATE of DECISION October 12, 2016

DATE of FILING DECISION with CITY CLERK October 13, 2016

DATE of NOTIFICATION to BUILDING INSPECTOR October 13, 2016

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT November 2, 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 #16-22)

1. The petitioners are the owners, Deano Summers and Janell Pappas, 36 Gilbert Street, Malden, MA 02148.
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 information was submitted: plans, "Plan of Land 36 Gilbert Street (Parcel ID 112 804 419) Malden, Massachusetts," dated July 14, 2015, including a Site Plan, Erosion Control Plan and Drainage Calculations, and correspondence dated December 30, 2015, prepared by Richard A. Salvo, P.E., Engineering Alliance, Inc., Saugus, MA; plans, "Proposed Addition 36 Gilbert Street Malden, MA," dated November 22, 2015, prepared by DiLullo Associates Inc., Melrose, MA, including existing and proposed floor plans and front elevations; and geotechnical report dated July 23, 2015, prepared by Richard J. Groll, Industrial Seismologist, Hollis, NH.
4. This is a new public hearing on the same petition, for which the Planning Board held a public hearing on May 11, 2016 and granted a special permit in Case #16-10; this new hearing is required given that: prior to the approved project beginning, on or around September 15, 2016, it came to the City's attention that the list of abutters certified by the City Assessor, dated April 26, 2016, was inaccurate due to a clerical error; the City used this incorrect list to mail the notice of the public hearing and the notice of decision, and as a result, all abutters, as required by statute, were not notified of the public hearing on May 11, 2016 or the Board's decision in Case #16-10; the City Assessor certified a new and correct list of abutters, dated September 15, 2016, which list includes approximately twelve properties that were not included in the original certified list dated April 26, 2016; and the City Solicitor has advised that the City's failure to comply with the legal prerequisite of notification under the law is a significant deficiency of procedure that must be corrected by holding another public hearing on the petition, which public hearing must be properly noticed and allow actual abutters the opportunity to be heard.
5. The public hearing complied with statutory notice requirements of Massachusetts General Laws, c. 40A, §11.

FINDINGS of FACT (Case #16-22)

The City of Malden Planning Board finds the following facts:

1. The property is the site of a single-family dwelling containing two stories, three bedrooms and approximately 1,378 square feet of gross floor area; and an accessory shed, approximately 64 square feet in size.
2. Large outcroppings of ledge extend along the northern (rear) and eastern sides of the dwelling and lot.
3. The proposal is to remove ledge and alter the grades of the lot to prepare for the siting of an addition.
4. The proposed addition is two stories with 1,200 square feet of gross floor area, namely, 600 square feet per floor; is 24 feet in length by 25 to 26 feet in width; and has a balcony at the front of the second floor, 64 square feet in size.
5. The proposed addition will be used as a two-car garage on the first floor and family room on the second floor.
6. The proposal includes a driveway, 26 in width and 12 ½ feet in length, between the garage and front property line.
7. The second floor of the proposed addition will be connected inside and accessible from the existing dwelling.
8. The rear yard will be terraced behind the proposed addition, however, there will be no access from the addition.
9. The proposal is to remove the ledge by mechanical processes, namely, drilling, chipping/hammering and splitting; no blasting or ledge removal by any other mechanical means is proposed.
10. The proposal requires excavation of approximately 196 cubic yards, consisting of approximately 89% or 175 cubic yards, of ledge, and the remainder soil and other materials.
11. The proposed addition includes a rear foundation wall that is 18 ½ feet in height and serves as a retaining wall; the addition is designed to fit into and be built into the existing topography or ledge profile.
12. The subject property is located in the Residence A zoning district.
13. The existing single-family residential dwelling use is allowed in this district, per §300.3.2.1 of the Ordinance.
14. All direct abutters to the north, south and west are single-family dwellings; and to the east, on the other side of Gilbert Street, single-family dwellings and a two-family dwelling.
15. Surrounding land uses are single and two-family residential dwellings.

16. The existing dwelling on the property complies with all dimensional controls for single-family dwellings except lot area, and the property is considered preexisting nonconforming, per §§400.1.2.1 and 700.1 of the Ordinance.
17. The proposal creates a new violation, namely, the eastern side yard setback, per §400.1.2.1 of the Ordinance, for which the Board of Appeal granted a variance on October 15, 2015.
18. No offstreet parking exists at the property, however, there is a curb-cut of single-car width near the shed.
19. The property is exempt from current requirements to provide one space per bedroom; requires only two parking spaces; and is considered preexisting nonconforming, per §§500.1.2.1 and 700.1 of the Ordinance.
20. The proposal provides two offstreet parking spaces onsite, located inside the proposed garage.
21. The proposed excavation and site preparation are expected to take four weeks and use trucks that hold 30 yards.
22. A traffic route for the trucks that will haul the excavated ledge must be determined and approved by the City.
23. The Erosion Control Plan includes staked hay bales, siltation fence and stabilized construction entrance.
24. The addition includes a roof infiltration system to mitigate drainage and stormwater impacts of the proposal.
25. The proposal was reviewed by the City Engineer.
26. If ledge cannot be removed as anticipated under the proposal, the size and height of the addition could be reduced.
27. The special permit is subject to those conditions described in §700.13.4 of the Ordinance, which require pre-ledge removal surveys of abutting properties, seismographs, liability insurance, fire details, police details and delivery of written notice to abutters of the dates and times of the ledge removal activity.
28. Petitioner, its engineer and its ledge contractor met with the City in July 2016, "preconstruction," and specifically, before beginning the ledge removal, to review the project and the conditions of the special permit.
29. Petitioners reside at the property with their family.
30. The Ward 5 City Councilor, the Mayor and several residential abutters support the proposal.
31. There is no public opposition to the proposal.
32. As modified by the proposed conditions, the proposal is not detrimental to the neighborhood.
33. As modified by the proposed conditions, the proposal will not adversely affect the general welfare or public safety.
34. Petitioner consents to the proposed conditions of the special permit.

DECISION (Case #16-22)

Based on the foregoing Findings of Fact, the Planning Board granted a special permit subject to these 14 conditions: 1) All development shall be as per plans, except as modified by these conditions; 2) The footprint of the addition may be less than but may not exceed 26 feet in width and 24 feet in length; and the height of the addition may be less than two stories but may not exceed two stories; 3) Remove existing shed; any future accessory structure must comply with setback requirements and other applicable provisions of the zoning ordinance; 4) All ledge/rock removal may be only by drilling, splitting, "feather and wedge," and/or chipping/hammering; and no ledge removal by blasting or any other mechanical means is allowed; 5) During site development, implement erosion controls as per plan; 6) Conduct pre-ledge removal video survey of all buildings within 300-feet of the property lines of the subject property and provide video to property owner; before ledge removal begins, provide City with list of all properties surveyed and contacted; 7) During any ledge removal activity, place seismograph on site and at the following properties: 42 Gilbert Street, 27 Rear Blantyre Road, 24 Gilbert Street, 31 Gilbert Street and 37 Gilbert Street; submit seismograph tapes to Fire Chief for review daily; 8) Maintain liability insurance of a minimum of \$100,000.00/\$300,000.00 with City of Malden named as a loss-payee; 9) During site development, hire fire details as the Fire Chief deems appropriate in his reasonable discretion; 10) During site development, hire local police details as the Police Chief deems appropriate in his reasonable discretion; 11) Provide written notice to be delivered to all premises within 300 feet of the property lines of subject property, indicating the date(s) of ledge removal activity will be conducted and the hours of beginning and ending daily for the same; submit copy of notice(s) to City; 12) All retaining walls must comply with Sections 400.7.8 and 700.10 of this Ordinance; 13) The hours of operation for any ledge removal and/or any construction equipment operated for ledge removal or site grading/preparation, are 8 am to 5 pm Monday-Friday; and 14) Before ledge removal/construction begins, property owner, its engineer and its ledge contractor shall meet with the Ward City Councilor and City Planner.

RECORD of VOTES (Case #16-22)

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

Antonucci, yes; Chiu, yes; Chuha, yes; Fitzgerald, yes; Lawhorne, yes; MacCuish, yes; Mzaouakk, yes; Wolff, yes; Ioven, yes.

Motion by Chuha, seconded by Antonucci.

[Present but not voting: Henry. Absent: Hayes.]

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:

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