



CITY of MALDEN PLANNING BOARD  
NOTICE of DECISION

RECEIVED

CASE NUMBER 17-01

LOCATION of SUBJECT PROPERTY 10 Florence Street, Malden, MA

2017 FEB 22 P 3: 56

NAME of PETITIONER Daniel Gattineri

NAME of OWNER Dosi Dough Realty Trust

DATE of PUBLIC HEARING February 8, 2017

DATE of DECISION February 8, 2017

DATE of FILING DECISION with CITY CLERK February 22, 2017

DATE of NOTIFICATION to BUILDING INSPECTOR February 22, 2017

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT March 14, 2017

[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 #17-01)

1. Petitioner, Daniel Gattineri, is Trustee of the property owner, Dosi Dough Realty Trust, 30 Mystic Avenue, Winchester, MA 01890.
2. The petition seeks a special permit under §§300.3.2.6 and 700.1.3.2, Chapter 12, Revised Ordinances of 1991, as Amended, of the City of Malden (the "Ordinance"), to allow multifamily residential dwelling use and to extend a preexisting nonconforming use in the Central Business zoning district.
3. The following plans were submitted with the petition: "10 Florence Phase 2 10 Florence Street Malden Massachusetts," dated October 10, 2015 with revisions through November 29, 2015, prepared by Daniel F. DiLullo, Reg. Architect, Melrose, MA, that include garage floor plans, "Lower Level Garage Upper Level Garage" and floor plans, "First Floor Community Space, Apartment Floors 2 thru 5, Roof Deck," and "Site Plan 10 Florence Street (Tax Map 51 Lot 327) Malden, Massachusetts," dated October 9, 2015 with revisions through February 16, 2016, prepared by Richard A. Salvo, P.E., Engineering Alliance, Inc., Saugus, MA.
4. Petitioner also submitted two proposed roof plans for the existing building at 10 Florence Street, both entitled, "Roof Community Space Spring 2017," both prepared by DiLullo Associates, Inc., Melrose, MA; one plan, dated September 7, 2011 and one plan, dated December 29, 2016.
5. The petition was acted on by the Building Inspector on January 11, 2017 and filed with the City Clerk on January 13, 2017.
6. Via correspondence dated December 22, 2016, petitioner requested a waiver of filing requirements for a traffic impact study, Section E.9, *Rules and Procedures of Malden Planning Board*; in support of the request, petitioner submitted a memorandum, "Trip Generation Assessment 10 Florence Street, Malden, MA," dated October 6, 2015, prepared by Kenneth P. Cram, P.E., Bayside Engineering, Woburn, MA; and the Planning Board considered the request at a public meeting on January 18, 2017.
7. The public hearing complied with statutory notice requirements of Massachusetts General Laws, Chapter 40A, §11.
8. The subject property is the subject of decisions by the Planning Board in Case #14-17, decided November 12, 2014, to deny a petition for a special permit under §§300.3.2.6 and 700.1.3.2 of the Ordinance, to construct an addition for multifamily dwelling use containing six stories and 30 dwelling units; in Case #15-13, decided October 14, 2015, to deny a petition for consent under §800.4.10 of the Ordinance and Massachusetts General Laws, Chapter 40A, §16, to file a petition for a special permit under §§300.3.2.6 and 700.1.3.2 of the Ordinance, to construct an addition for multifamily dwelling use containing six stories and 24 dwelling units, within two years of Case #14-17; and in Case #16-13, decided June 8, 2016, to deny a petition for consent under §800.4.10 of the Ordinance and Massachusetts General Laws, Chapter 40A, §16, to file a petition for a special permit under §§300.3.2.6 and 700.1.3.2 of the Ordinance, to construct an addition for multifamily dwelling use containing six stories and 22 dwelling units within two years of Case #14-17.
9. On February 8, 2017, after the public hearing opened, petitioner requested that the public hearing be tabled; petitioner alleged procedural errors by the City regarding the petition, specifically, that the Building Inspector erred in his determination that the proposal requires a special permit under §300.3.2.6 of the Ordinance; as of the date of the public hearing, petitioner had not filed an administrative appeal of the Building Inspector's decision under §800.4.2 of the Ordinance; the Planning Board considered petitioner's request to table; the Planning Board expressed willingness to allow the petition to be withdrawn without prejudice and to waive the filing fee for a future petition; and petitioner declined to withdraw the petition.
10. The subject property is the subject of decisions by the Board of Appeal for a variance dated October 17, 2002 and a variance dated October 17, 2002 with Administrative Amendment dated March 29, 2004, of the density requirements for sixty dwelling units; and a variance dated March 17, 2016 of the density requirements for eighty-two dwelling units.

11. The application for the variance granted on March 17, 2016 was filed on February 18, 2016, and, as described in memoranda from the City Solicitor dated October 11, 2016 and December 22, 2016, this petition for a special permit is exempt from recent amendments of the Ordinance, for which the publication of the first notice of public hearing was after the date of the filing of the application for the variance, namely, the moratorium on permits for multifamily dwellings, ordained by City Council Paper 541/2015 as amended by City Council Paper 387/2016; open space requirements that provide open space may not be indoor facilities and must be pervious, visible to the public and located in yard setback areas, ordained by City Council Paper 334/2016; and parking requirements that require one parking space per bedroom, ordained by City Council Paper 334/2016.

FINDINGS of FACT (Case #17-01):

The City of Malden Planning Board finds the following facts:

1. Petitioner presented no exigent circumstances to support its request to table the public hearing.
2. Petitioner presented no compelling reasons to justify waiver of the Planning Board's Rules and Procedures regarding tabling in the absence of exigent circumstances.
3. Petitioner presented no information to substantiate its allegations of procedural errors by the Building Inspector regarding the petition.
4. The petition is properly before the Planning Board.
5. The subject property is currently the site of a principal building containing six stories, occupied for multifamily residential dwelling use on floors two through six, namely, sixty dwelling units, providing a total of 102 bedrooms and configured as one studio unit, 490 square feet in size; seventeen units with one bedroom, 480 to 650 square feet in size; and forty-two units with two bedrooms, 720 to 1050 square feet in size; a convenience store on the ground floor, approximately 450 square feet in size; an open kiosk area on the ground level, which formerly housed a bank automated teller machine; an open parking garage on the ground level of the building, which extends below grade under the accessory two-level parking deck structure.
6. The proposal is to construct a five-story addition at the northern end of the property, on top of the middle/at-grade level of the existing parking deck structure.
7. The City Building Inspector has determined that the proposed addition is not a separate building because connected with the existing building by the underground/below-grade parking level.
8. The proposed addition will be occupied for multifamily dwelling use on floors two through six, namely, twenty-two dwelling units, providing a total of thirty bedrooms and configured as fourteen units with one bedroom, 640 to 770 square feet in size, and eight units with two bedrooms, 980 to 1150 square feet in size; a community area on the first floor containing a total of 5,441 square feet, configured as a fitness center of 1,566 square feet; a meeting room of 700 square feet; an office center of 375 square feet; and residents' lounge of 2,800 square feet; and a community roof deck, 2,413 square feet in size, that includes flooring, decorative fencing and seating.
9. The subject property is located in the Central Business zoning district.
10. The existing multifamily dwelling was constructed in 2005, predates current use regulations requiring a special permit and is preexisting nonconforming, per §§300.3 and 700.1 of the Ordinance.
11. The proposed addition of a multifamily residential dwelling use, 3 to 6 stories, to the existing multifamily dwelling is allowed by special permit in the Central Business zoning district, per §§300.1 and 300.3.2.6 of the Ordinance.
12. Direct abutters to the north and east are a multifamily dwelling with two stories and eight units and accessory garage; to the south, a business school, restaurant, bank ATM and coffee shop, and to the west, the MBTA right-of-way; and to the east, on the other side of Florence Street, a multifamily dwelling with five stories and 84 units, and a City-owned park; the Residence B zoning district abuts to the north and east.
13. Surrounding land uses are the MBTA Malden Center rapid transit, commuter rail and bus station; and former Malden Government Center (former City Hall and Police Station), the subject of a special permit (City Council Case #549-15) and variance (Board of Appeal decision dated October 15, 2015, extended December 7, 2016) for a multifamily dwelling with six to seven stories and 310-320 units, retail sales/services and general offices; a daycare; and single and two-family dwellings and multifamily dwellings.
14. The proposal use is not in conflict with surrounding land uses.
15. The existing multifamily dwelling on the subject property has never complied with the density requirements of the Ordinance, even at the permissible reduction, per §§400.1.2.6 and 400.3 of the Ordinance.
16. The existing multifamily dwelling does not comply with dimensional controls for density and is 19% deficient; this violation was allowed by an Administrative Amendment dated March 29, 2004 of the variance granted by the Board of Appeal on October 17, 2002, which had allowed a minor violation of density, namely, a 2% deficiency.
17. The proposal significantly exacerbates the existing violation of density to create a 41% deficiency; this new violation was allowed by a variance granted by the Board of Appeal on March 17, 2016; and the proposal is thereby considered to meet the density requirements of the Ordinance.

18. The existing multifamily dwelling on the property has never complied with open space requirements, even at the permissible reduction and with other special provisions for the Central Business zoning district, per §§400.1.2.6, 400.3 and 400.8.3 of the Ordinance.
19. Since constructed in 2005, the existing multifamily dwelling is 100% deficient of open space and provides no interior or exterior open space to its residents, per the applicable §§400.1.2.6 and 400.3 of the Ordinance.
20. The rubber roof of the existing building, the site of numerous, unscreened mechanical utilities, and the patio area near the front entrance of the building containing 450 square feet, do not qualify as open space, per §§400.1.2.6 and 400.3 of the Ordinance
21. Last month, petitioner installed a ramp to provide handicapped access to the roof of the existing building.
22. Both proposed plans for the proposed roof deck on the existing building screen mechanical utilities with fencing; one plan depicts a roof deck of 1,500 square feet with flooring and one plan depicts a roof deck of 6,200 square feet with a lap walking track.
23. Any roof deck on the existing building requires a building permit and to date, no application has been filed.
24. The proposed addition will provide a total of 7,854 square feet of open space, comprised of community areas that total 5,441 square feet in size, located inside the first floor of the proposed addition and a community roof deck, 2,413 square feet in size, located on the roof of the proposed addition; petitioner also proposes to provide 6,200 square feet of open space by constructing a roof deck on the existing building; and these proposals will address concerns and issues regarding open space that have been raised by the Planning Board since 2014, as described in in all decisions regarding this property.
25. The existing use and the proposal require a total of sixty-eight off-street parking spaces, namely, 0.75 spaces per dwelling unit, and the convenience store requires no parking, per the applicable §500.2.8 of the Ordinance.
26. The site plan depicts a total of sixty-nine parking spaces onsite; and the proposal is to maintain the existing fifty parking spaces on the ground floor/below grade level garage, namely, thirty-three located below the existing building and seventeen underneath the existing parking deck; and nineteen spaces on the existing first level of the parking deck structure.
27. Access to the ground floor/below grade level garage will remain via the gated driveway on Florence Street, at the southern end of the property, and access to the upper parking level under the proposed addition will be via Florence Street Extension.
28. The proposal eliminates the upper level of the parking deck structure, which is not usable given the ramp's grade.
29. The City's peer review recommends conditionally granting petitioner's 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 September 30, 2014 from Kenneth Petraglia, BETA Group, Inc., subject to petitioner's implementation of recommended mitigation, namely, to install a STOP sign and STOP line at the Florence Street Extension approach to Florence Street; and to install NO PARKING signs along the Florence Street Extension.
30. The traffic generated by the proposal will not adversely impact surrounding streets.
31. A fire lane was designated on Florence Street Extension as a condition of the variance granted in 2002 for the existing building; currently, the pavement markings for the fire lane are extremely faded and barely visible.
32. Currently and historically, moving trucks used by tenants of the existing building park on Florence Street Extension, blocking access to the parking deck structure and the designated fire lane.
33. Under the proposal, moving trucks would park between the existing building and the proposed addition, which will block access to the parking deck structure.
34. Trash for the existing building is stored in an interior trash room; there is also a dumpster outside the building, sited on the middle level of the parking deck structure; numerous dumpsters and waste containers belonging to and used by the abutting property, 2 Florence Street, are sited in the rear yard of the subject property in a locked, gated area; and there is also an unmarked 55-gallon drum/industrial barrel in this area.
35. As modified by the proposed conditions of the special permit, the proposal will address concerns and issues regarding trash and trash storage that have been raised by the Planning Board since 2014, as described in all decisions regarding this property.
36. The proposal will create twenty-two new dwelling units in the same concentrated area and neighborhood of the City that is already extensively developed with multifamily housing units; has already experienced substantial growth of the same type of multifamily housing in the last two years, namely, 279 new units constructed and occupied; and in which there will be a tremendous additional increase in multifamily housing units in the coming months and years, namely, 691 new units pending occupancy, under construction, and/or with building permits and/or zoning approvals, most recently granted in 2015.
37. This quantity and type of housing may impact City infrastructure, such as schools and open space.
38. The proposed multifamily dwelling use and proposed extension of the preexisting nonconforming multifamily dwelling use will not be more detrimental to the neighborhood.

39. The Ward 4 City Councilor supports the proposal because it is a transit-oriented development and because he believes that this development will not contribute a lot more school-age children and that increasing density will help revitalize Malden Square.
40. As described in its correspondence dated March 17, 2016 to the Ward 4 City Councilor, petitioner will donate \$2,000 per new dwelling unit to the Ward 4 improvement fund.
41. The Malden Redevelopment Authority supports the proposal because it is transit-oriented.
42. There is no public opposition to the proposal.
43. The proposal is in the interest of the common good.

DECISION (Case #17-01):

On January 18, 2017, the Planning Board granted petitioner's request for a waiver of the filing requirements regarding a traffic impact study, subject to petitioner's implementation of mitigation recommended by the City peer reviewer.

On February 8, 2017, the Planning Board denied a waiver its Rules and Procedures regarding tabling in the absence of exigent circumstances.

On February 8, 2017, pursuant to the foregoing Findings of Fact, the Planning Board granted the petition subject to the following ten conditions: 1) Develop a qualified open space plan for the existing roof with the Ward Councilor and submit for approval to the building inspector, minimum coverage 60% of the gross roof area; 2) Develop/implement landscaping improvements at the street level elevation with the input of the Ward Councilor; 3) Contribute \$2,000 per new unit to the Ward 4 improvement fund; 4) Remedy all concerns regarding trash and trash storage to the satisfaction of the Board of Health; 5) Trash storage onsite only for 10 Florence Street; 6) Implement traffic mitigation measures recommended by the BETA peer review report; 7) Repaint and maintain all line striping for parking and loading area and the fire lane; 8) Review by Planning Board at a public meeting to determine compliance with conditions prior to issuance of any occupancy permit; 9) All development shall be as per plans; and 10) Repair or replace all sidewalks adjacent to the property to satisfaction of DPW Director.

RECORD of VOTES (Case #17-01):

On January 18, 2017, the vote on the motion to conditionally waive the filing requirements regarding the traffic impact study was nine in favor, none opposed; and the motion passed:

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

*Motion by Antonucci, seconded by Lawhorne.*

*[Absent: Fitzgerald, Mzaouakk.]*

On February 8, 2017, the vote on the motion to waive the Rules and Procedures of the Planning Board, regarding tabling in the absence of exigent circumstances, was four in favor, five opposed; and the motion failed:

Antonucci, yes; Chiu, no; Chuha, yes; Fitzgerald, yes; Hayes, no; Henry, no; Lawhorne, no; MacCuish, no; Ioven, yes.

*Motion by Antonucci, seconded by Fitzgerald.*

*[Absent: Wolff.]*

On February 8, 2017, the vote on the motion to grant the petition with conditions was seven in favor, two opposed; and the motion passed:

Antonucci, yes; Chiu, no; Chuha, yes; Fitzgerald, yes; Hayes, yes; Henry, yes; Lawhorne, yes; MacCuish, yes; Ioven, no.

*Motion by Antonucci, seconded by Chuha.*

*[Absent: 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.

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