



**CITY of MALDEN PLANNING BOARD  
NOTICE of DECISION**

CASE NUMBER 20-10

LOCATION of SUBJECT PROPERTY 190 Commercial Street at 184 Commercial Street, Malden, MA

NAME of PETITIONER Jeffrey Wu

NAME of PROPERTY OWNER Plaza 188 Associates LLC

DATES of PUBLIC HEARING August 19, 2019 and August 26, 2020

DATE of DECISION August 26, 2020

DATE of FILING DECISION with CITY CLERK September 9, 2020

DATE of NOTIFICATION to BUILDING INSPECTOR September 9, 2020

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT September 29, 2020

*[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 #20-10):**

1. The subject property is known as and numbered 184 Commercial Street and by City of Malden Assessor's Parcel ID # 055 232 211, and the subject of the petition is the portion of the building known as 190 Commercial Street.
2. The property owner is Plaza 188 Associates LLC, 39 Brighton Avenue, Allston, MA, c/o property manager, The Hamilton Company.
3. The petitioner is a lessee/tenant and owner and operator of the proposed restaurant and existing supermarket, Jeffrey Wu, 1095 Commonwealth Avenue, Allston, MA.
4. At the public hearings, petitioner was represented by Joseph "Jay" Duca, 179 Trenton Street, East Boston, MA, and F. Giles Ham, Vanasse & Associates, Inc., 35 New England Business Center Drive, Andover, MA.
5. The petition (Permit # CMID-030011-2019) seeks a special permit under §§12.12.030, 12.28.010(E) and 12.28.010(J) of Chapter 12, Revised Ordinances of 2020 (hereinafter, the "Ordinance;" formerly §§300.3.4.12, 700.1.3.2 and 700.1.7, Chapter 12, Revised Ordinances of 1991) and to amend the special permit granted in Case #11-13, to allow restaurant use of property in the Industrial 2 zoning district.
6. The following plans and information were submitted in support of the petition: Plans, "Super 88 188 Commercial Street, Malden, MA," dated September 7, 2017, prepared by Michael Kim Associates, Brookline, MA, that contain drawings, "Title," (A0.0) with project data, "Renovation Ground Floor Plan," (A1.1) and "Demolition Ground Floor Plan" (A1.0); Revised floor plan, "Renovation Ground Floor Plan," (A1.1) "Super 88 188 Commercial Street, Malden, MA," dated September 7, 2017 with revisions dated August 21, 2020, prepared by Michael Kim Associates, Brookline, MA; "Memorandum in Support of a Special Permit Application 184 Commercial Street," dated May 8, 2019, prepared by owner's representative, Jay Duca; "Transportation Impact Assessment Proposed Food Court 188 Commercial Street Malden, Massachusetts," Prepared for Plaza 188 Associates Brighton, Massachusetts, dated March 2019, prepared by Vanasse & Associates, Inc., Andover, MA; Memorandum re: Supplemental Parking Assessment, dated March 4, 2020 from F. Giles Ham and Jennifer Connors, Vanasse & Associates, Inc., re: parking supply and demand; and spreadsheet, "188 COMMERCIAL STREET COVER PROJECTIONS," undated and unsigned, received August 18, 2020, re: expected number of customers daily, for dine-in and take-out/delivery, during lunch and dinner periods, and statement that number of seats will be reduced from 252 to 154.
7. At a public meeting on December 13, 2017, the Planning Board considered petitioner's request for a waiver of the filing requirements for a traffic impact study, Section E.9, Rules and Procedures of Malden Planning Board.
8. The Board opened the public hearing on August 19, 2019, and after receiving public testimony from petitioner and other members of the public, the Board closed and tabled the public hearing and its decision, to allow petitioner to address outstanding issues with the proposal and the property, namely: the parking deficiency created by the proposal; maintenance of the public access area for the Malden River and compliance with MassDEP regulations and recommendations; removal of three storage trailers located on property; and compliance with all conditions of previous special permits.
9. On August 26, 2020, in accordance with Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, Massachusetts General Laws, Chapter 30A, §18, and Governor Baker's March 23, 2020 Revised Guidance on Order by the Governor Prohibiting Assemblage of More than Ten People, and due to the COVID-19 pandemic, the Board reopened the public hearing virtually and petitioner and members of the public attended the hearing remotely via technological means.

10. At the hearing on August 26, 2020, the Board received testimony from the petitioner, and before receiving any public comment, the Board considered petitioner's request to withdraw the petition without prejudice to allow petitioner the opportunity to further modify the proposal.
11. The public hearings complied with the notice requirements of §12.32.020(K) of the Ordinance and Massachusetts General Laws, Chapter 40A, §11.

FINDINGS of FACT (Case #20-10):

The City of Malden Planning Board finds the following facts:

1. The subject property is approximately 219, 901 square feet in size and the site of a commercial plaza with two single-story buildings, known as and numbered 140-144 Commercial Street and 184 Commercial Street, having an approximate combined total gross floor area of 71,000 square feet, and currently occupied by a supermarket (30,000 square feet); retail pottery store (11,500 square feet); laundromat (5,000 square feet); Social Security Administration offices (11,272 square feet); bank branch (2,400 square feet); Dunkin Donuts coffee shop (1,680 square feet); an awning manufacturer's offices (4,400 square feet); a financial services/insurance company offices (1,600 square feet); an educational tutoring service (1,400 square feet); and a beauty salon supply wholesaler & distributor (2,000 square feet).
2. The proposal is to renovate the premises currently occupied by the retail pottery store so as to construct a food-court style restaurant, comprised of a seating area of approximately 5,407 square feet; fifteen separate "food kitchen kiosk" spaces, ranging in size from 126 to 562 square feet; restrooms; and including an existing mechanical room of 307 square feet.
3. Per the original petition and plans, the proposed restaurant would have 252 seats and the kitchen kiosks would be for lease by tenants; and at the hearing on August 26, 2020, petitioner modified the proposal to 154 seats and the kiosks to be operated by petitioner and not leased.
4. Under the proposal, the existing premises containing approximately 11,500 square feet use will be expanded to 12,000 square feet by reconfiguring, removing and adding walls, to allow use of two areas that are currently part of the supermarket, namely, an existing kitchen area containing 607 square feet and equipment, including walk-in cooler, ovens, stoves, work tables, sinks; and an area of 140 square feet.
5. The property is located in the Industrial 2 zoning district.
6. Restaurant use is allowed by special permit in this district, per §12.20.030 of the Ordinance; however, Condition 3 of the special permit granted in Case #11-13 provides: "No restaurant use is allowed at the site, except for one 1,680 SF coffee shop at 200 Commercial Street."
7. The existing uses of the property are allowed by special permit or by right, and the property was the subject of various special permits to redevelop, change use of and structurally change the property, granted in Cases ##11-13, 10-13, 08-13, 08-12, 07-22, 06-19 and 04-26.
8. The Malden River directly abuts the property to the east; other abutting and surrounding land uses are industrial and business.
9. The property has two principal buildings on a single lot and is considered preexisting nonconforming, per §12.28.010(J) of the Ordinance.
10. The proposal creates no new violations of dimensional controls.
11. For all existing uses and the proposed new restaurant use, a total of 385 offstreet, on-site parking spaces and six loading bays/spaces are required, per §§12.20.010 and 12.20.030 of the Ordinance.
12. The proposed restaurant use of 11,500 square feet requires 138 parking spaces, or 12 spaces per 1,000 square feet of gross floor area; whereas the current retail sales use requires 44 spaces, or 4 spaces per 1,000 square feet of gross floor area, per §12.20.010 of the Ordinance.
13. Per the approved site plan with parking layout, "Plan of Land for a Proposed Redevelopment, Plaza 188, 188 Commercial Street in the City of Malden, Massachusetts, As-Built Parking Plan," dated October 26, 2010 with revisions through November 8, 2010, prepared by Beals Associates Inc., Charlestown, MA, there are 300 parking spaces on-site; six loading areas; and conforming driveways and aisles.
14. According to petitioner, there are currently 298 parking spaces on-site.
15. The proposal creates a deficiency of 87 spaces or 24%.
16. Petitioner estimates the parking demand for the restaurant is only 100 parking spaces, however, the basis for this projection is unclear.
17. On-street parking is prohibited on Commercial Street.

18. The City's peer review of petitioner's request for a waiver of the filing requirement regarding a traffic impact study is described in correspondence dated December 8, 2017 from Kenneth Petraglia, Traffic Engineer, BETA Group, Inc. and recommends disapproval of the requested waiver.
19. The City's peer review report of petitioner's Traffic Impact & Access Study and of petitioner's response memorandum dated August 14, 2019 are described in correspondence dated July 11, 2019 and September 16, 2019, respectively from Kenneth Petraglia, Traffic Engineer, and include recommendations for traffic and safety mitigation at the site access/egress drives and adjacent roadways and intersections.
20. When the public hearing opened on August 14, 2019, there were several storage trailers in the northeastern corner of the lot, in violation of Condition 9 of the special permit granted in Case #11-13, which prohibits the parking of storage trailers/containers on-site except for unloading; and lack of compliance is an on-going issue.
21. When the public hearing reopened on August 26, 2020, all storage trailers had been removed from the property.
22. When the public hearing opened on August 14, 2019, the landscaped walkway and passive recreation area along the rear property line abutting the Malden River, were in need of maintenance, in violation of Condition 7 of the special permit granted in Case #11-13, and not in compliance with: site plans approved with the special permit granted in Case #04-26; the Negative Determination of Applicability dated December 7, 2004 by the Malden Conservation Commission; and the Notice of Noncompliance with Waterways Jurisdictional Determination #JD05-1262, M.G.L. c. 91, §18 and Waterways Regulations 310 CMR 9.00 issued by the Massachusetts Department of Environmental Protection dated October 5, 2011 for failure to comply with its decision to install and maintain public access areas and amenities of a riverfront walkway, benches, signage, parking relocation, and plan of activity; and lack of compliance is an on-going issue.
23. When the public hearing reopened on August 26, 2020, the walkway and area were being properly maintained and the Massachusetts Department of Environmental Protection had found the property to be in compliance with Chapter 91, as stated in the email dated July 23, 2020 from Christine Hopps, Assistant Director, Waterways Regulation Program, Massachusetts Department of Environmental Protection.
24. As proposed, the restaurant is a "stand-alone" restaurant that will operate independently; however, according to the petitioner, the restaurant would operate under a "shared business" model, that includes sharing employees with the existing supermarket, selling foods that are cooked and prepared by the supermarket; and sharing customers of the supermarket and of other businesses at the plaza.
25. The current number of employees of the supermarket and other businesses in the plaza was not available at the hearing on August 26, 2020.
26. At the public hearing on August 14, 2019, two residents supported the petition; and the Friends of the Malden River conditionally supported the petition.
27. At the public hearing on August 14, 2019, the Ward 1 City Councilor, who represents the ward where the property is located; the Ward 2 City Councilor, who represents the abutting ward; the Ward 5 City Councilor, who is Chair of the City Council Waterfront Access Committee; one of the three City Councilors-at-Large, who is Vice Chair of the City Council Waterfront Access Committee; and the Ward 4 City Councilor, were in opposition to the petition due to lack of compliance with prior special permits, outstanding issues regarding public access to the Malden River, and concerns regarding the parking deficiency and expected parking demand for the proposed restaurant.
28. Petitioner intends to clarify the parking demands and its business model and may modify the proposal.
29. Petitioner requested that the petition be allowed to be withdrawn without prejudice.

DECISION (Case #20-10):

On December 13, 2017, the Planning Board denied petitioner's request for a waiver of the filing requirements for a traffic impact study.

On August 19, 2019, the Planning Board tabled the public hearing and its decision.

On August 26, 2020, the Planning Board allowed the petition to be withdrawn without prejudice.

RECORD of VOTES (Case #20-10):

On December 13, 2017, the vote on the motion to deny the petitioner's request for a waiver of the filing requirements for a traffic impact study was nine in favor, none opposed, and the motion passed (9-0):

Antonucci, yes; Chiu, yes; Chuha, yes; Fitzgerald, yes; Hayes, yes; Henry, yes; MacCuish, yes; Soucy, yes; Ioven, yes.

*Motion by Antonucci, seconded by Henry.*

*Present, not voting: Gebreselassie, Wolff.*

On August 19, 2019, the vote on the motion to table the public hearing and decision was nine in favor, none opposed, and the motion passed (9-0):

Antonucci, yes; Chuha, yes; Fitzgerald, yes; Gebreselassie, yes; Hayes, yes; Henry, yes; MacCuish, yes; Soucy, yes; Ioven, yes.

*Motion by Antonucci, seconded by Henry.*

*Present, not voting: Ferguson.*

On August 26, 2020, the vote on the motion to allow the petition to be withdrawn without prejudice was six in favor, two opposed, and the motion passed (6-2):

Chuha, yes; Ferguson, yes; Gebreselassie, yes; Hayes, yes; Henry, yes; MacCuish, no; Soucy, yes; Ioven, no.

*Motion by Henry, seconded by Ferguson.*

*Absent: Antonucci, Fitzgerald.*

*Present, not voting: Gray.*

*I, hereby certify that the above is a true copy of the decision of the Malden Planning Board.*

By: \_\_\_\_\_  
*Michelle A. Romero, City Planner*