



CITY of MALDEN CITY COUNCIL
NOTICE of DECISION

CASE NUMBER 332-20

LOCATION of SUBJECT PROPERTY 323 Commercial Street and 323B Commercial Street, Malden, MA

NAME of PETITIONER Misty Mountain Shop, LLC

NAME of OWNER 323 Commercial Street LLC

DATE of PUBLIC HEARING October 13, 2020

DATE of DECISION October 13, 2020

DATE of FILING DECISION with CITY CLERK October 27, 2020

DATE of NOTIFICATION to BUILDING INSPECTOR October 27, 2020

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT November 16, 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# 332-20):

1. The subject property is collectively comprised of two parcels, held in common ownership and known as and numbered 323 Commercial Street and 323B Commercial Street and by City Assessor's Parcel numbers 059 246 603A and 059 246 603B.
2. The owner is 323 Commercial Street, LLC, 323 Commercial Street, Malden, MA 02148.
3. The petitioner is Misty Mountain Shop, LLC, 161 Boston Road, Chelmsford, MA 01824.
4. At the public hearing, petitioner was represented by its attorney, Patrick MacDonald, 479 Eastern Avenue, Malden, Massachusetts 02148 and Erik Gath, 161 Boston Road, Chelmsford, MA 01824.
5. The petition filed in Permit Application # CMID- 032303-2020 seeks a special permit under §12.12.190, Chapter 12, Revised Ordinances of 2020 (the Ordinance) (formerly §300.20, Chapter 12, Revised Ordinances of 1991), to allow a Marijuana Establishment in the Industrial 1 zoning district, specifically, a Marijuana Retailer.
6. The following plans and information were submitted in support of the petition:
 - A) Set of plans, "Permit Site Plan for 323 COMMERCIAL STREET (MAP 59, BLOCK 246, LOT 603A & 603B) MISTY MOUNTAIN SHOP," dated December 18, 2019, revised December 20, 2019, prepared by Anthony Donato, Reg. P.E., Hancock Associates, Boston, MA, that contain a site plan that depicts parking layout and circulation; Layout & Materials plan; Grading, Drainage & Utilities plan; Details sheet; "Existing Conditions Plan of Land in Malden, MA," dated December 10, 2019, prepared by Jason A. Ellis, P.L.S., Mass.; and "Misty Mountain Shop Lighting Calculation Medford, MA," dated December 19, 2019, prepared by Reflex Lighting, Wethersfield, CT.
 - B) "Proposed Floor Plans," (Drawing # A100), dated December 20, 2019, prepared by Jill Peebles, Reg. Architect, Mass., BKA Architects, Brockton, MA.
 - C) "Proposed Exterior Elevations," (Drawing # A300), undated, prepared by Jill Peebles, Reg. Architect, Mass., BKA Architects, Brockton, MA.
 - D) Renderings, "Proposed Exterior Misty Mountain Shop 323 Commercial Street, Malden, MA," (Sheets E-1, E-2, E-3) dated May 17, 2019, prepared by BKA Architects, Brockton, MA.
 - E) Floor plan breakdown (in color), "Site Plan/Report," that depicts public and employee areas, undated and unsigned.
 - F) "Traffic Impact Assessment," dated December 18, 2019, and revised February 7, 2020, prepared by The Engineering Corp (TEC) and follow-up response memorandum dated March 6, 2020.
7. The petitioner has been approved by the City of Malden Cannabis Licensing and Enforcement Commission to move forward to file a petition seeking a special permit.
8. The Malden Planning Board provided the City Council with an advisory report and recommendations, dated August 26, 2020, pursuant to §12.32.030.B.2 of the Ordinance.
9. The City's peer review report of petitioner's traffic impact and access study is contained in correspondence dated February 20, 2020 and March 16, 2020 from Kenneth Petraglia, P.T.O.E., Malden, MA.
10. 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 public hearing was held virtually and members of the public attended and participated remotely via technological means.

11. The public hearing complied with the notice requirements of §12.32.020(K) of the Ordinance and Massachusetts General Laws, Chapter 40A, §11.

FINDINGS of FACT (Case #332-20):

The Malden City Council finds the following facts:

1. The subject property is the site of an existing one-story building with 16,300 square feet on the first floor and 1,536 square feet on the mezzanine.
2. Petitioner is the proposed tenant, doing business as Misty Mountain Shop.
3. Petitioner has a long-term lease and is financially stable.
4. The proposal is to occupy the property for marijuana establishment use as a marijuana retailer.
5. Petitioner's use and occupancy of the building areas will be as depicted on the floor plans.
6. Petitioner will renovate the building and demolish a portion of the building to allow one-way traffic circulation around the building.
7. The property is located in the Industrial 1 zoning district.
8. The proposed marijuana establishment use is allowed by special permit in this district.
9. The proposed marijuana establishment will be the principal use of the property and there are no other uses of the property.
10. The proposed marijuana establishment is not located inside a building containing residential units.
11. The direct abutter to the north of the subject property is a manufacturing business, Hopwood Globe Metal Finishing; to the south, a retail sales business, New Wei Feng Market; to the west, the active MBTA and Commuter Rail railroad right-of-way; and to the east, on the other side of Commercial, a proposed wholesale & distribution roofing business.
12. Surrounding land uses include ABCD Headstart Program, Mystic Valley Elder Services offices, Comcast Service Center, the City DPW Yard, the Malden River, and the South Cove Community Health Center; and residential uses, to the west, on the other side of the railroad right-of-way, on Pearl Street and Medford Street, and to the south, at River's Edge Drive Medford.
13. The proposal complies with all required buffer zones, as determined by Nelson Miller, Building Commissioner.
14. The proposed use is not in conflict with surrounding land uses.
15. The proposal eliminates the existing side yard setback violation and building coverage violation; and the proposal maintains the front yard setback violation and creates no new violations or nonconformities.
16. The proposed marijuana establishment will be located in a permanent building.
17. The proposal requires 31 parking spaces and one loading bay/space offstreet and on-site.
18. As depicted on the site plan, there will be a total of 43 parking spaces and one loading space/bay onsite, namely, 28 spaces outside, around the building and 15 spaces inside the garage area of the building.
19. The two existing driveways will provide access or egress via two existing curb-cuts on Commercial Street.
20. Striping and pavement markings on Commercial Street in the area are faded and barely visible.
21. The City's peer review recommends the following traffic and safety mitigation: Install STOP traffic signs and STOP lines at each egress; add or update all pavement markings within the study area, including crosswalks and roadway edge lines, with updating limited to striping with white 12- inch striping on edge lines and crosswalks on both sides of Commercial Street to mimic prior treatment, and the improved area be extended from the approach to Medford Street, west to the western point of the median existing island that runs westerly past the ABCD Head Start Program at 359 Commercial Street; and assist the City in providing improvements related to signal timings at the Commercial Street intersection with Medford Street, specifically to optimize signal timings to meet current MassDOT standards.
22. There are outstanding concerns with traffic entering and exiting the site that must be addressed.
23. As modified by the proposed conditions of the special permit, the traffic and traffic patterns generated by the proposal will not adversely impact any of the surrounding streets or create a traffic or safety hazard.
24. The required on-site bicycle parking is not proposed.
25. Petitioner stated that for at least the first 60 days, sales would be by appointment only.
26. Petitioner agreed for the first 60 days, at a minimum, there would be a paid Police detail from Monday through Friday between the hours of 3:00P.M.-7:00 P.M.
27. Petitioner's business will provided thirty local jobs, with a minimum of 50% set aside for Malden residents, and with an emphasis on minority applicants.
28. The proposed business will generate revenues for the city with 3% of the sales going to the city as tax revenue and 3% of sales going for a community impact fee.

29. As modified by the proposed conditions of the special permit, the proposal will not generate any noise, odor, fumes, vibration, heat or other conditions that may be noxious or cause a nuisance to the community, a danger to public health, or impair public comfort and convenience.
30. Petitioner will also install carbon monoxide filters at the site.
31. Petitioner agrees to comply with all conditions recommended by the Planning Board.
32. The petitioner will negotiate to enter into a host community agreement with the City of Malden.
33. One resident of Malden spoke in support the proposal and there was no other public support.
34. Two residents of Malden spoke in opposition to the proposal and there was no other public opposition.
35. As modified by the proposed conditions of the special permit, the proposal is in the interest of the common good.
36. As modified by the proposed conditions of the special permit, the proposal is not detrimental to the public good.
37. As modified by the proposed conditions of the special permit, the proposal is not detrimental to the health, safety or welfare of the neighborhood or the city.

DECISION (Case#332-20)

On October 13, 2020, the City Council granted a special permit subject to the following 18 conditions:

1. All development shall be as per plans, which are incorporated herein by reference and except where modified by these conditions.
2. The retail sales area open to the public shall be limited to the location, area and size shown on the plans; any change shall require an amendment of this special permit.
3. Re: the portion of the building to be demolished, file Notice of Intent to Demolish/Application for Review by Historical Commission and obtain a Determination of Significance.
4. Install, repair or replace sidewalks, driveways and perform necessary incidental work adjacent to the property to the reasonable satisfaction of the DPW Director.
5. Merge parcels 323 Commercial Street (City Parcel ID 059 246 603A) and 323B Commercial Street (City Parcel ID 059 246 603B) via Approval Not Required subdivision control process.
6. Implement traffic and safety mitigation recommended by City Peer Reviewer in reports dated February 20, 2020 and March 16, 2020 regarding signage at site egresses; pavement markings in the area; and traffic signal timings at the intersection of Commercial and Medford Streets.
7. The special permit is non-transferable and non-assignable.
8. Design and implement a Security Plan approved by the Malden Police Chief, which shall include, without limitation: all security measures for the site and the transportation of Marijuana and Marijuana Products to and from off-site premises to ensure the safety of employees and the public and to protect the premises property from theft or other criminal activity; a detailed explanation of payment method, if applicable, acceptable at such establishment and the protection and security of such payments and, if applicable, cash on site; and the presence of a security guard on site at all hours of operation.
9. Consumption of Marijuana and/or Marijuana Products is prohibited at or within 500 feet.
10. Smoking or burning of Marijuana and/or Marijuana Products is prohibited on the premises.
11. Marijuana in any form, including plants, and Marijuana Products shall not be visible from outside of the building.
12. Any outside storage of any kind is prohibited.
13. Any outside display of any kind is prohibited.
14. Incorporate odor control technology and provisions, and ensure that emissions do not violate M.G.L. c.111 § 31C, including but not limited to those specified for odors.
15. Prior to issuance of any building permit or occupancy permit, submit copies of the following licenses and approvals: a) A valid license issued by the Massachusetts Cannabis Control Commission, as defined herein this Ordinance; b) A fully executed Community Host Agreement with the City of Malden, as defined herein this Ordinance; c). Any required license and/or approvals issued by the Malden License Board; and d) Any required license and/or approvals issued by the Malden Board of Health.
16. Petitioner shall work with the City peer reviewer and City officials to design a plan to regulate access/egress, that would include signage and pavement markings.
17. Install bicycle parking racks on-site.
18. The Special Permit shall be run concurrently with the Host Community Agreement.

RECORD of VOTES:

By a vote of 4-7, a motion to table the decision to grant a special permit until all traffic issues are resolved failed. A roll call vote was taken: Anderson (y), Camell (n), Condon (y), Crowe (n), DeMaria (n), Linehan (n), Murphy (y), O'Malley (y), Spadafora (n), Winslow (n), Sica (n).

By a vote of 11-0, the City Council added the condition that the petitioner work with the city peer reviewer and City officials to design a plan to regulate access/egress, that would include signage and pavement markings. A roll call vote was taken: Anderson (y), Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (y), Spadafora (y), Winslow (y), Sica (y).

By a vote of 11-0, the City Council added the condition that the site have bicycle racks. A roll call vote was taken: Anderson (y), Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (y), Spadafora (y), Winslow (y), Sica (y).

By a vote of 9-2, the City Council added the condition that requires the special permit to run concurrently with the Host Community Agreement. A roll call vote was taken; Anderson (y), Camell (y), Condon (y), Crowe (y), DeMaria (y), Linehan (y), Murphy (y), O'Malley (y), Spadafora (y), Winslow (y), Sica (y).

By a vote of 8-3, the City Council voted to grant the Special Permit with 18 conditions, motion by Crowe, seconded by DeMaria. The following roll call vote was taken: Anderson (y), Camell (y), Condon (n), Crowe (y), DeMaria (y), Linehan (y), Murphy (n), O'Malley (n), Spadafora (y), Winslow (y), Sica (y).

I, Gregory Lucey, City Clerk of the City of Malden, hereby certify that the above is a true copy of the decision of the Malden City Council.



By: _____
Gregory Lucey, City Clerk