



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

CASE NUMBER 22-02

LOCATION of SUBJECT PROPERTY 140 Eastern Avenue, Malden, MA

NAME of PETITIONER Valteir Rosa/Mineirao Market LLC

NAME of PROPERTY OWNER K & R Realty Trust

DATE of PUBLIC HEARING February 9, 2022

DATE of DECISION February 9, 2022

DATE of FILING DECISION with CITY CLERK February 16, 2022

DATE of NOTIFICATION to BUILDING INSPECTOR February 16, 2022

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT March 8, 2022

*[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 #22-02):**

1. The subject property is known as and numbered 140 Eastern Avenue and by City Assessor's Parcel ID #086269904.
2. The petitioner is Valteir Rosa, 30 Berry Street, Unit 3108, North Andover, MA, for Mineirao Market LLC.
3. The property owner is K & R Realty Trust, 144 Eastern Avenue, Malden, MA, c/o Richard V. Gottschalk, Jr., 7 Nelson Way, Wilmington, MA.
4. At the public hearing, petitioner was represented by Valteir Rosa and property owner was represented by Richard Gottschalk and its attorney, Thomas Brennan, 114 West Foster Street, Melrose, MA.
4. The petition filed in Permit Application # CMID 040423-2021 seeks to amend the special permit granted in Case #19-02 under Title 12, Chapter 12, Section 030, Code of the City of Malden (the Ordinance), formerly known as §300.3.2.5, Chapter 12, Revised Ordinances of 1991, as Amended, of the City of Malden.
5. The special permit granted in Case #19-02 amended the special permit granted in Case #15-10, which reinstated the lapsed special permit granted in Case #13-23.
6. Petitioner submitted the following plans, which are incorporated herein by reference into this decision: Site Plan, "Prop. Freezer Plot Plan in Malden," dated November 17, 2021, prepared by Robert E. Grover, P.L.S., P.E., Melrose, MA; and a floor plan, unlabeled, undated, unsigned, that depicts refrigerator/freezer, as connected to the market.
7. In accordance with the City of Malden Local Executive Order of January 4, 2022 regarding COVID-19, the public hearing was held virtually and the petitioner and public attended and participated remotely via technological means.
8. 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 #22-02):** The City of Malden Planning Board finds the following facts:

1. The subject property is the site of a two-story building, currently occupied for six dwelling units on the second floor (five with two bedrooms, one with one bedroom); a window tinting business in 3,000 square feet of the first floor; and a food market/grocery store with deli and butcher in 3,000 square feet on the first floor.
2. Petitioner is the tenant and operator of the food market, at the subject premises, 138 Eastern Avenue, doing business as Mineirao Market, a Brazilian specialty foods market, with current permits from the Board of Health.
3. The proposal is to install a walk-in freezer/refrigerator, 15 x 22 feet and 330 square feet in size for use by the market; the freezer will be located at the rear of the building, in the current location of two parking spaces in the existing parking lot; and access to the freezer will be through the market and rear parking lot.
4. As determined by the Building Commissioner Nelson Miller, the proposed walk-in freezer is not "outside storage" and is an extension of the existing building that increases the gross floor area of the building and premises occupied for retail sales, based on the facts that the freezer is not a temporary structure, is not used independently of the principal building, and is accessible from the interior of the building, and the existing exterior door to the building is being removed and replaced with an interior mounted refrigeration door.
5. The proposal requires an amendment of the special permit granted in Case #19-02, which is subject to a condition that provides, "All development shall be as per plans, except as modified by these conditions; floor plan may only be revised subject to Board of Health approval."
6. The subject property is located in the Central Business zoning district.
7. The existing residential use, dwelling, multifamily, up to three stories, is allowed by special permit granted in Case #15-10; the existing business use, retail services, is allowed by right in this zoning district, per §12.12 of the Ordinance; and the existing retail sales use, with less than 5,000 square feet of gross floor area, is allowed by right in this zoning district, per §12.12 of the Ordinance, was prohibited by the special permit granted in Case #15-10, and is allowed by the special permit granted in Case #19-02.
8. The proposal complies with applicable dimensional controls, per §§12.16.010 and 12.16.030 of the Ordinance.
9. The residential use requires nine onsite parking spaces under applicable requirements, and is a preexisting nonconforming use, exempt from current requirements, per §§12.12.010 and 12.28.010.A of the Ordinance.

10. No parking or loading is required for the retail services or retail sales uses, which, as allowed non-residential uses in the Central Business zoning district, are exempt from requirements, per §12.20.020.H of the Ordinance.
11. The proposal requires no parking or loading and creates no violations of parking requirements.
12. The proposal eliminates two existing parking spaces at the rear of the building, used by the business tenants.
13. The site plan depicts 16 parking spaces, configured as head-on in the parking lot located behind the building: the required residential parking is located on the western side of the parking lot, separated from access via Phillips Court by fencing with emergency gate, with access/egress via the driveway off Eastern Avenue at the southwestern corner of the lot, in compliance with Condition 2 of the special permit granted in Case #19-02; and parking for the businesses, although not required, is provided by six spaces located in the parking lot behind the building and eleven located partially on site and on Phillips Court, on the eastern side of the parking lot, with access via Phillips Court.
14. The property is the subject of a variance granted on May 19, 2016 regarding nonconforming widths for the parking aisle and access/egress driveway; and a variance granted on September 18, 2019, as a modification of the 2016 variance, regarding vehicles backing out into a street/way.
15. Through the variances granted, the parking layout is considered to be in compliance with the Ordinance and conditions of the special permits, namely, Condition 1, Case #15-10 and Condition 2, Case #19-02.
16. The required screening of the parking lot in the fencing along the northern side is missing and/or in need of repair and will be corrected by property owner; and there is no screening in the fencing along the eastern side.
17. According to petitioner, the outside storage of empty milk crates and bread trays, stacked in the northeastern corner of the parking lot, is temporary until picked up when new deliveries are made.
18. Deliveries are currently made through the butcher area to the existing walk-in cooler inside the market; under the proposal, deliveries will be made directly into the new freezer, and the existing cooler will be used for other storage.
19. The market operation will continue as existing and will not sell alcohol, tobacco or vapor products, or lottery; not do wholesale; not do "live-kill," or slaughtering; and not serve food for dining on the premises or offer seating.
20. The Ward 7 City Councilor is in favor of the proposal.
21. There is no public opposition to the proposal.
22. Petitioner consents to all proposed conditions of this special permit.
23. As modified by the conditions of this special permit, the proposal is in the interest of the common good.

DECISION (Case #22-02): Pursuant to the foregoing Findings of Fact, the Planning Board modified the special permit granted in Case #19-02 and granted a new special permit, subject to the following twelve conditions:

1. All development shall be as per plans, except as modified by these conditions; floor plan may only be revised subject to Board of Health approval.
2. Nine (9) parking spaces shall be provided on-site for use of residential tenants only; residential access only via Eastern Avenue, no access via Phillips Court and maintain gated fence, screen with privacy fencing along northern side; parking layout must conform to §12.20.020 of zoning ordinance and shall be maintained as depicted on a site plan submitted to the City; and no parking is allowed in the driveway.
3. The first floor may only be occupied for general offices, including corporate/administrative offices of a contractor; retail services; retail sales (<5,000 SF gfa); and/or artist/live work space; and convenience store, supermarket, restaurant and any other use is prohibited.
4. Dumpsters are prohibited, unless sited and screened per §500.3.5.8 of Ordinance, and in accordance with Board of Health regulations.
5. Maintain landscaped front yard.
6. Repair or replace sidewalks, including related incidental work, around the perimeter of the site, to the reasonable satisfaction of the DPW Director.
7. Maintain bicycle parking for three bikes.
8. No outside storage allowed.
9. The sale of alcohol, tobacco, vapor products and accessories, and lottery is prohibited.
10. Bakery may only be accessory to a food market.
11. Any "live-kill" or slaughter is prohibited.
12. The walk-in freezer/refrigerator shall be for the use of the retail sales market, size and location as per plans.

RECORD of VOTES (Case #22-02): The vote on the motion by Antonucci, seconded by Soucy, to grant a special permit with twelve conditions 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. [Absent: Ferguson, 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