



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

CASE NUMBER 22-09

LOCATION of SUBJECT PROPERTY 204-210 Highland Avenue, Malden, MA

NAME of PETITIONER and PROPERTY OWNER 204-210 Highland Avenue Realty Trust

DATES of PUBLIC HEARING July 13, 2022 and September 14, 2022

DATE of DECISION September 14, 2022

DATE of FILING DECISION with CITY CLERK September 22, 2022

DATE of NOTIFICATION to BUILDING INSPECTOR September 22, 2022

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT October 12, 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 #22-09):

1. The subject property is known as and numbered 204-210 Highland Avenue and by City Assessor's parcel identification number 038 188 803.
2. Petitioner is the property owner, 204-210 Highland Avenue Realty Trust, c/o Bernard H. McGovern, Jr., Trustee, 204-210 Highland Avenue, Malden, MA.
3. At the public hearing on September 14, 2022, petitioner was represented by its attorney, Thomas P. Callaghan, Jr., One Centre Street, Malden, MA; architect, William Winder, Winder & Kironde, 11A Beecham Road, Cambridge, MA; contractor, Michael Deterding, 25 Sheridan Court, Medford, MA; and Kelly McGovern, 25 Franklin Avenue, Medford, MA.
4. The petition filed in permit application #CMID 046540-2022 seeks a special permit under Title 12, Chapter 28, Section 010(D), Code of the City of Malden, to alter, structurally change, extend and change use of a preexisting nonconforming property in the Residence A zoning district, namely, to convert the property to a four-family residential dwelling.
5. The following plans were submitted in support of the petition: set of plans, "Proposal for 204, 206, 208 & 210 (typo) Highland Avenue Malden, MA," dated April 11, 2022, revised September 6, 2022, prepared by William C. Winder, Reg. Architect, Winder & Kironde, Cambridge, MA, that includes: Cover Sheet (A-1) with renderings, "View from Highland Avenue," "View from Richards St" and "Building Cross Section" (from south); "Existing Plans" (A-2), floor plans of basement, first, second, attic/third floor; "Existing Views of Property" (A-3), with rendering, "Massing Study Existing Structure," and photos, "Existing Street View" (from Highland Avenue) and "Existing View from Richards St."; Proposed Basement Plan (A-4); Proposed First Floor Plan (A-5); Proposed Second Floor Plan (A-6); Proposed Third Floor Plan (A-7); Proposed Elevations, South, North, West and East (A-7); and a site plan, "Proposed Plan 204-210 Highland Ave 100 Emerald Street Malde (typo), MA. (Middlesex County)," signed/dated April 8, 2022, prepared by Richard J. Mede, Jr., P.L.S., Medford Engineering & Survey, Medford, MA.
6. The Planning Board allowed a similar petition for the subject property to be withdrawn without prejudice earlier this year in Case #22-06.
7. On July 13, 2022, the Planning Board opened the public hearing and immediately considered petitioner's request to table the public hearing, made via correspondence dated July 13, 2022 from its attorney, Thomas P. Callaghan, given that only seven Board members were present and not a full Board of nine members was present; the Board took no public comment and tabled the public hearing.
8. On September 14, 2022, the Planning Board took the matter off the table, held the public hearing and rendered a decision regarding the petition.
9. The public hearings complied with the notice requirements of §12.32.020(K) of the Ordinance and Massachusetts General Laws, Chapter 40A, §11, and in addition, the notice of the public hearing held on September 14, 2022 was mailed to abutters.

FINDINGS of FACT (Case #22-09):

The City of Malden Planning Board finds the following facts:

1. The property is the site of a 2 ½ story building; the first floor, 2,651 square feet, is vacant and was most recently used in 2020 as a restaurant with 79 seats, comprised of 59 seats in two dining rooms and 20 seats at a bar, and storage in the basement; and the second floor, 1,050 square feet, and attic floor, 527 square feet, were used as a single-family dwelling with five bedrooms.
2. The proposal is to construct additions to extend the second and third floors of the existing building and to alter the interior to convert the building to a four-family dwelling.
3. Under the proposal, each dwelling unit will have two bedrooms, and the four-family dwelling will be configured as follows: two dwelling units on the first floor, each approximately 1,240 square feet in size, with storage areas in the basement, 221 to 319 square feet in size; one unit on the second floor, approximately 1,351 square feet in size, with a home office, 82 square feet in size, and an open deck at the rear, 256 square feet in size; and one unit on the third floor, approximately 1,255 square feet in size, with an open deck at the rear, 105 square feet in size; the basement storage areas and open decks are not included in the unit sizes; and each unit will have laundry facilities within the unit.
4. Under the proposal, the basement will be used for mechanicals/utilities, crawl space and two storage areas; each storage area will have direct access to the dwelling unit directly above on the first floor, and access via a common hallway accessed via a bulk-head door at the exterior/rear yard.
5. The property is located in the Residence A zoning district.
6. The existing restaurant is prohibited in this district, predates the current Ordinance and is considered preexisting nonconforming, per §12.20.030 of the Ordinance.
7. The single-family dwelling is allowed by right in this district, per §12.12.030 of the Ordinance.
8. The proposed four-family dwelling is prohibited in this district, however, may be allowed by special permit as a conversion of a preexisting nonconforming use, per §12.28.010.D of the Ordinance.
9. Direct abutters to the north of the subject property are single-family dwellings; to the south are two-family dwellings; to the east, on the other side of Highland Avenue, two-family dwellings and a gasoline filling and service station; and to the west, on the other side of Richard Street, single-family, two-family and three-family dwellings.
10. Surrounding land uses are residential, namely, single, two, three and multifamily dwellings; business, namely, retail sales and retail services; and institutional, the Mystic Valley Regional Charter School.
11. The existing building, occupied for restaurant and single-family dwelling use, grossly violates dimensional controls for front and side yard setbacks and open space and is considered preexisting nonconforming, per §§12.16.010, 12.16.020 and 12.28.010.A of the Ordinance.
12. The proposal creates new and gross violations of lot area, namely, 57%, and density, namely, 33%; maintains a gross violation of open space; creates new violations of frontage and building coverage; reduces one side yard setback violation; and maintains the existing front yard setback violation and other side yard setback violation, per §12.16.010 of the Ordinance.
13. The proposal is 33% deficient of the required amount of open space, per §12.16.010 of the Ordinance.
14. Usable Open Space Requirements regulate dimensions, pervious nature, public visibility and location in yard setback areas, per §12.16.080 of the Ordinance; and the proposed 1,345 square feet of “lawn area,” in the rear yard, between dwelling and parking area, complies with the requirements; the proposed private decks do not comply; and the proposed areas of pavers at the rear and southern sides of the building do not comply.
15. Under the proposal, the roof line of the building will change, and the building height will comply with the requirement, per §12.16.010 of the Ordinance.
16. The property is grossly deficient of parking requirements for the most recent use, namely, 30 spaces or 71% deficient, given that a total of 42 parking spaces on-site are required, namely, 40 for the restaurant and two for the single-family dwelling, per §§12.20.010 and 12.20.020.15 of the Ordinance; and the paved parking lot comprising the entire rear yard of the subject property provides twelve parking spaces.

17. The proposal provides the required eight parking spaces for the proposed four-family dwelling with eight bedrooms, namely, one space per bedroom, per §12.20.010 of the Ordinance.
18. The required parking is proposed on-site in a parking lot area at the rear of the dwelling, with access/egress via an existing curb-cut on Richard Street.
19. The proposal eliminates the existing gross parking deficiency.
20. Under the proposal, more than the required 320 square feet of snow storage will be provided, namely, 561 square feet, per §12.20.020.I.6 of the Ordinance.
21. Petitioner intends to repave the parking area and install privacy fencing in the rear yard, which will screen parking from residential abutters.
22. The proposed paving of nearly the entire rear yard creates a new violation of the requirement that a minimum of 50% of the front yard, side yards and rear yards be devoted to lawn and/or landscaping area, not paving, per §12.20.020.17 of the Ordinance.
23. Petitioner intends to design a plan and to install a stormwater management system in the rear yard of the property.
24. Petitioner intends to store trash and recycling barrels in the rear yard and not along property lines.
25. The proposal includes renovation of the building's exterior with composite siding and new windows.
26. Petitioner proposes that the dwelling units will be owner-occupied condominiums.
27. The proposal in the current petition reduces the size of the dwelling units as compared to the proposal in the previous petition for the same property in Case #22-06.
28. The abutting property, 100 Emerald Street, also known by City Assessor's parcel identification number 038188805, is currently owned by the petitioner and has a legal use and occupancy as a single-family dwelling; the eastern side yard of this property is paved and has been used as offsite parking for the restaurant at 204-210 Highland Avenue, without a permit or license from the City, and in violation of the prohibition of use of residential property for offsite parking for customers or employees of any business, per §12.20.020.F of the Ordinance.
29. The abutting property, 100 Emerald Street, is not the subject of the current petition, and with respect to a special permit for the property that is the subject of this petition, 204-210 Highland Avenue, conditions regarding use of this abutting property may be unenforceable and may not legally binding.
30. Petitioner proposes a "Landscape Easement," planted with arborvitae, to be located along the northern side of the building at the subject property and the southern side of the abutting property, 100 Emerald Street, as depicted on the site plan.
31. Petitioner proposes to remove the existing asphalt parking lot on the corner of the abutting property, 100 Emerald Street, and to install grass and shrubbery, which will enhance greenery and open space for 100 Emerald Street and 204-210 Highland Avenue.
32. The Ward 2 City Councilor, the Mayor, more than two dozen residential abutters and a dozen other Malden citizens support the proposal.
33. There is no public opposition to the proposal.
34. Petitioner agrees to all proposed conditions of the special permit.
35. As modified by the conditions of the special permit, the proposal will not be more detrimental to the neighborhood.

DECISION (Case #22-09):

On July 13, 2022, the Planning Board tabled the public hearing at petitioner's request; the Board directed that notice of the tabled public hearing be mailed to abutters.

On September 14, 2022, pursuant to the foregoing Findings of Fact, the Planning Board granted a special permit subject to the following eleven conditions:

1. All development shall be as per plans, except as modified by these conditions.
2. The maximum number of units is four and the maximum number of bedrooms in each unit is two.
3. Basement may used only for mechanicals/utilities and storage; no residential living space is allowed.
4. Decks shall not be enclosed.

5. Maintain rear yard areas landscaped with lawn and pavers, as per plan; install walkway from parking area to building.
6. Paved areas are limited to the parking area depicted on the plan.
7. Screen trash and recycling in rear yard; no permanent dumpster is allowed.
8. Install privacy fencing around rear yard.
9. The units shall be condominiums; submit condominium documents to the City.
10. As proposed and agreed to by petitioner re: 100 Emerald Street (Parcel ID 038 188 805), record landscape easement and install shrubbery, as per site plan; and remove the asphalt parking lot at the eastern side and install grass, shrubbery and landscaping, except for driveway and required parking for that dwelling.
11. Install stormwater management system in rear yard, subject to reasonable approval of City Engineer.

RECORD of VOTES (Case #22-09):


On July 13, 2022, on the motion by MacCuish, seconded by Soucy, to table the public hearing, the vote was seven in favor, none opposed, and the motion passed (7-0):

Gebreselassie, yes; Gray, yes; Hayes, yes; MacCuish, yes; Soucy, yes; Verma, yes; Ioven, yes.
[Antonucci, Chuha, Henry, absent].

On September 14, 2022, on the motion by Chuha, seconded by Soucy, to grant a special permit subject to eleven conditions, the vote was seven in favor, two opposed, and the motion passed (7-2):

Chuha, yes; Gebreselassie, yes; Gray, yes; Hayes, yes; Henry, no; MacCuish, yes; Soucy, yes;
Verma, yes; Ioven, no. [Antonucci, absent].

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


Michelle A. Romero, City Planner