



CITY of MALDEN PLANNING BOARD
NOTICE of DECISION

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CITY CLERK'S OFFICE
MALDEN, MASS.

CASE NUMBER 16-24

LOCATION of SUBJECT PROPERTY 36 Fairmont Street, Malden, MA

NAME of PETITIONER and OWNER Jose Burigo

DATE of PUBLIC HEARING November 9, 2016

DATE of DECISION November 9, 2016

DATE of FILING DECISION with CITY CLERK November 15, 2016

DATE of NOTIFICATION to BUILDING INSPECTOR November 15, 2016

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT December 5, 2016

[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 #16-24):

1. Petitioner is the owner, Jose Burigo, 12 Birch Street, #2, Everett, MA; at the public hearing, petitioner was represented by its contractor, Eliomar Reis, RD Home Improvements, 222 Revere Street, Winthrop, MA.
2. The petition seeks a special permit under §700.1.3.1, Chapter 12, Revised Ordinances of 1991, as Amended, of the City of Malden (the "Ordinance") to structurally change and extend a preexisting nonconforming property in the Residence A zoning district.
3. The following plans were submitted in support of the petition, "Certified Plot Plan Showing Existing Conditions and Proposed Deck 36 Fairmont Street, Malden, Mass," dated August 25, 2016, prepared by William C. Wahlefield (stamped/signed August 28, 2016); and "Proposed Rear Deck," dated September 15, 2016, prepared by Arthur Choo, P.E., ANZZA Design, Medford, MA, that includes elevations, foundation and framing plans.
4. The public hearing complied with the statutory notice requirements of Massachusetts General Laws, Chapter 40A, §11.

FINDINGS of FACT (Case #16-24):

The City of Malden Planning Board finds the following facts:

1. The property contains 5,250 square feet of lot area and is the site of a 2 ½-story building used as a three-family dwelling.
2. The proposal is to construct a three-story porch with decks, staircases and landings at the rear of the dwelling, with an approximate footprint of 250 square feet and dimensions of 25 feet by 10 feet, for use as second means of egress by all dwelling units.
3. Under the proposal, the existing rear porches and staircases will be demolished.
4. The property is located in the Residence A zoning district.
5. The three-family residential use was allowed by variance granted in 1959 and is considered a legally nonconforming use, per §§300.3.2.3 and 700.1.1 of the Ordinance.
6. The proposal extends the nonconforming use, per §700.1.3.1 of the Ordinance.
7. Direct abutters to the east and west are three-family dwellings; to the north, a single-family dwelling; and to the south, on the other side of Fairmont Street, three-family dwellings.
8. Surrounding land uses are residential.
9. The building was constructed before 1959, grossly violates dimensional controls for lot area, side yard setbacks and density; and the property is considered preexisting nonconforming, per §§400.1.2.3 and 700.1.1 of the Ordinance.
10. The proposal maintains the existing nonconformities and creates no new violations.

11. The three-family dwelling use of the property requires a total of six parking spaces, namely, two per dwelling unit, under applicable zoning; and the property is exempt from the current Ordinance that requires parking based on the number of bedrooms, per §§500.1.2.3 and 700.1 of the Ordinance.
12. The site plan depicts the driveway located on the western side of the dwelling, of varying nonconforming width; no parking layout is depicted, however, the driveway appears to provide parking for three vehicles in a nonconforming tandem configuration, per §500.2.2 of the Ordinance.
13. Petitioner intends to use the driveway for access only and to establish parking for three vehicles at the rear of the building, near the proposed porch.
14. The proposal is exempt from a proposed amendment of §500.2.20 of the Ordinance, described in City Council Paper #418/2016, that would require landscaping of a minimum of 50% of the front yard, side yards and rear yard, given that the petition was filed prior to the date of first publication of the notice of public hearing regarding this amendment.
15. The proposal maintains the existing nonconformities and creates no new violations.
16. Petitioner purchased the property in June 2016.
17. Petitioner intends to reside at the property in the first floor unit.
18. Petitioner has renovated the interior and exterior of the building.
19. The basement will be used for utilities, storage and laundry facilities for all units.
20. According to petitioner, there are three bedrooms in each dwelling unit.
21. According to the City Assessor, the building has not been inspected in more than ten years; the City Assessor requests the owner be required to allow an inspection of the building by the City Assessor.
22. The Ward 1 City Councilor supports the proposal.
23. There is no public opposition to the proposal.
24. The proposal will not be more detrimental to the neighborhood.
25. Petitioner consents to the proposed conditions of this special permit.

DECISION (Case #16-24):

On November 9, 2016, pursuant to the foregoing Findings of Fact, the Planning Board granted a special permit subject to the following four conditions: 1) Basement may be used for storage, laundry and utilities only, and may not be used for bedroom or residential living space; 2) Rear porches/decks may be covered but may not be enclosed; 3) The length of the driveway and parking area may be extended provided the required open space is maintained onsite (1,500 SF); and 4) Allow inspection of building by City Assessor.

RECORD of VOTES (Case #16-24):

On November 9, 2016, the vote on the motion to grant the special permit with conditions was nine in favor, none opposed:


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

Motion by Antonucci, yes; seconded by Chiu.

[Absent: Lawhorne, Mzaouakk.]

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.

Malden Planning Board

By: 
Michelle A. Romero, City Planner