

Order Establishing a Community-Led Site Plan Review Process for Educational and Religious Uses

Sponsor Councillor Stephen Winslow

Version 2.4 – 2/4/2025
(incorporates comments from additional Legal Review)

Be it hereby ordained that Section 12 of the Revised Ordinances of 2020 effective 1/1/2020 be amended by adding Section 12.12.500 Site Plan Review for Dover Amendment Use (G.L.c. 40A § 3) Religious and Educational Uses and Childcare Facilities.

~~Site Plan Review~~

12.12.500 Site Plan Review for Dover Amendment Use (G.L.c. 40A § 3) Religious and Educational Uses and Childcare Facilities
~~SITE PLAN REVIEW – EDUCATIONAL AND RELIGIOUS USES~~

A. Purpose and Intent:

To set forth a site plan review the process for the City to undertake in instances when: (1) the Building Commissioner determines a building permit application does not conform to the City of Malden Zoning Ordinance and (2) the applicant asserts that those zoning requirements unreasonably restrict the use of land or structures for religious or education purposes, or for a child care facility, as prohibited by G.L.c. 40A § 3. to apply reasonable regulations consistent with MGL Chapter 40A Section 3 for the design and layout of new or expanded educational use or religious use of any building, or property. In making such determination, the Building Commissioner may consider regulations created by the Commonwealth of Massachusetts for specific purposes and facilities under G.L.c. 40A § 3.

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B. Applicability.

~~No building or structure with a gross floor area exceeding 2500 square feet, or surfacing parking exceeding 2500 square feet for an educational or religious use shall be constructed or extended, or established in an existing building, except in conformity with a site plan prepared in conformance with this section.~~

~~Site plan review pursuant to Section 12.12.500 shall be required for any new, altered, changed or expanded religious or education use or childcare facility that does not conform to all applicable requirements of the Zoning Ordinance. This section shall not apply to properties subject to Special Permit or Site Plan Review otherwise under Section 12, including but not limited to Section 12.12.140 (Site Plan Review RIO), Section 12.12.200 (Malden River Site Plan Review) and Section 12.28.140 (Rowe's Quarry Reclamation and Redevelopment District).~~

C. Relationship to the Building Permit and Occupancy ~~Permit~~Certificate

~~The Building Commissioner shall not issue a building permit unless and until a Site Plan Review has been completed, and the site plan review decision, beyond appeal, has been forwarded to Building Commissioner by the **Site Plan Review Committee (SPRC)**. If the decision contains specific conditions, said conditions shall become conditions for the issuance of the building permit, among others, that the Building Commissioner may require. Further, the Building Commissioner shall not issue a final occupancy certificate unless and until all site plan conditions as required by the SPRC have been implemented by the developer~~

~~This section shall apply as a pre-condition of the issuance of any building permit, provided that this ordinance / amendment shall not apply to any application for a building permit filed before the posting of the City Council Agenda of the original paper proposing such ordinance / amendment.~~

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D. ~~Site Plan Submission~~Materials the Building Commissioner May Require Criteria:

~~The applicant shall submit 5 copies of a site plan proposal drawn at a scale not to exceed one inch equals 20 feet (1"=20'). The Site Plan Review materials shall be submitted to the Building Commissioner; said office shall forward all materials to the City Clerk for the Site Plan Review Committee. A registered Professional Surveyor or registered Professional Engineer must stamp the submitted site plan.~~

All applications for site plan review shall be in writing and shall provide the information identified in Title 4 of the Code of the City of Malden.

~~At a minimum, the submittal materials shall include the following items as applicable:~~

- ~~1. a cover letter generally describing the nature and location of the project;~~
- ~~2. parcel lot lines for the proposed project and abutting parcels; and all easements boundaries, if any;~~
- ~~3. locations of existing and proposed buildings and public/private ways on the project site to allow determination of lot area, setbacks and yard sizes;~~

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- ~~4. an architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings so as to allow determination of building coverage requirements, the bulk and height of structures.~~
- ~~5. a parking plan to allow determination of parking requirements, including the number of spaces to serve employees, the location of access and egress for employees and deliveries, loading bays, proposed pick up and drop off areas for building users (whether on or off site), pedestrian walkways, bicycle parking and the location of snow storage areas and solid waste containers, if any;~~
- ~~6. location, material, and size of all signs.~~
- ~~7. Landscaping plan, prepared by a Massachusetts Registered Landscape Architect showing to location of open space including playgrounds and recreational facilities;~~

E. Site Plan Review Committee and Process:

1. Site Plan Review Committee.

A. Composition: The Site Plan Review Committee (SPRC) shall have the following three regular members and one associate:

- City Engineer (or designee)
- Director of Parking (or designee)
- Director of OSPCD or designee (designee shall be member of OSPCD staff)

The Board of Appeals shall appoint one of its members as an associate member of the SPRC to serve as a voting member when needed.

B. Quorum. All regular members of the Committee are required to approve, approve with conditions, or deny an application for site plan approval, unless recused for a conflict of interest.

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C. Voting by Simple Majority: A simple majority (2/3) of the full regular membership is required to take any action.

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2. Public Hearing. The SPRC shall conduct a public hearing in accordance with M.G.L. c. 40A, § 11 and the notice provisions of this ordinance.

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3. Scope of Review

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Under this section, site plan review shall be limited to the following inquiries:-

Whether the applicant has established that:

a. The use qualifies for protection under G.L.c. 40A § 3M.G.L.c. 40A, § 3; and, if so,

b. ~~Whether the applicant has established that:~~

~~i. the dominant use of the land and structures will be for a use protected by MGL Chapter 40A Section 3,~~

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~~ii. strict compliance with regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements, would substantially inhibit the ability of the land and building to serve the use protected by M.G.L. Chapter 40A, Section 3.~~

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In instances where the SPRC determines the applicant meets those standards, the SPRC shall determine which specific regulations to grant relief

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from and the extent of relief. The SPRC may impose conditions related to the

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relief granted necessary to ensure public health, safety and welfare. ~~the City's ability to provide public safety and services to the area surrounding the land, and additional conditions to alleviate impacts to the peace and quiet enjoyment of neighboring uses that would not impose costs beyond the typical construction contingencies budgeted for similar projects.~~

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~~2.4.~~ Decision. The SPRC may approve, approve with conditions, or deny an application for site plan approval; provided, however, that any denial of an application shall be predicated only upon applicant's failure to provide necessary information. In making its decision, the SPRC shall be guided exclusively by M.G.L. c. 40A, § 3.

~~3.~~

The SPRC shall file a written decision with the city clerk within 14 days of the close of the public hearing.

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Failure to file a decision within said 14-day period shall constitute approval of the site plan.

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~~1. Composition:~~

~~The Site Plan Review Committee (SPRC) shall be comprised of 5 members:~~

- ~~• the Mayor or Mayor's designee;~~
- ~~• the President of the City Council or designee;~~
- ~~• the Ward Councillor representing the property or designee;~~
- ~~• the Executive Director or designee of the Office of Strategic Planning & Economic Development;~~
- ~~• One resident appointed by the Mayor and confirmed by the City Council.~~

~~The City Council President or his/her designee shall serve as the Chair of the SPRC.~~

~~2. Operation:~~

~~If the Building Commissioner determines the application requires variances, the Site Plan Review Committee shall provide comments to the Zoning Board of Appeals related to any requests for variances from zoning requirements within the schedule for public comment established by the Zoning Board of Appeals.~~

~~The Zoning Board of Appeals may request assistance of architects and engineers and other professionals during its deliberations and require that the~~

~~applicant assist in paying for review costs consistent with Mass. Gen. Laws, Chapter §53G.~~

~~Only Zoning Board of Appeal members may be party to any vote or agreement.~~

~~A majority of Zoning Board of Appeals members present shall be required to approve any and all site plan review conditions applied to a development under review.~~

G. Appeal

Any appeal of the ~~site plan review committee~~SPRC's decision under this section shall be made pursuant to ~~M.G.L.A.~~ c. 40A, § 17, ~~to a court of competent jurisdiction.~~

H. Expiration:

Any decision issued under this section shall lapse one year from the date that the decision is filed with the City Clerk ~~Site Plan Review determination will expire on the date that is one year from date of the decision of the SPRC~~ unless a building permit or occupy certificate has been issued or unless otherwise specified or extended by the SPRC in writing.

J. Severability.

If any provision of this ordinance is deemed to be invalid because contrary to MGL Chapter 40A Section 3A, all other provisions will remain in full force and effect.

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