

**PLANNING REPORT & RECOMMENDATION**

**To:** Malden Planning Board  
**From:** Malden City Planner  
**Date:** January 9, 2019  
**Subject:** Amendment of §700.1.3.1, Chapter 12, Rev. Ord. of 1991 (“MZO”) City Council Paper #521/2018

**PROCEDURAL:** The petition is by the City Council (§800.5, MZO), sponsored by Ward 5 Councilor Barbara Murphy and Councilor at Large Craig Spadafora.

*Note 1: A joint public hearing was held on October 11, 2017 re: the same amendment (CCP 390/2017); the Planning Board recommendation was unanimously in favor; the City Council Ordinance Committee recommendation was also favorable; however, the paper expired before final action was taken. In accordance with §800.5.5, MZO and M.G.L.c.40A, §5, the amendment may be properly considered at this time; see memorandum dated January 7, 2019 from City Solicitor Kate Fallon.*

**PROPOSED AMENDMENT: To Amend General Regulations for Nonconforming uses, Lots, Buildings & Structures (§700.1.3.1, MZO).** The proposal is to establish a maximum height of three stories for residential conversion of preexisting nonconforming properties in the Residence A, Residence B and Residence C zoning districts. The provision will apply to new construction or reconstruction; existing buildings of greater heights may be converted but not increased in height.

Below is the existing provision with the proposed amendment (*italicized and underlined*) (§700.1.3.1, MZO):

“Preexisting nonconforming uses, lots, buildings or structures in the Residence A, Residence B and Residence C zoning districts, other than those provided for in Section 700.1.2, may be reconstructed in the same dimensions and a design compatible with the neighborhood and occupied for the same use, extended, structurally changed, altered or occupied for different use, only for the purposes of converting to:

1. residential use *except in the case of the conversion or change of use of an existing building containing more than three stories, no residential conversion to a multifamily dwelling greater than three stories is allowed; there shall be no variance of this provision;*
2. day care use in Residence B;
3. general office use and occupancy; or
4. general or convenience retail service use;
5. recreation for gainful business, secondary to existing principal club/lodge;

by special permit granted by the Planning Board, provided said Board finds that said reconstruction, extension, structural change, alteration or change of use is not more detrimental to the neighborhood. Reconstruction of a preexisting nonconforming porch or deck in the same location and of the same dimensions, or lesser dimensions not to exceed the location of the existing footprint, shall not require a special permit.”

**HISTORICAL BACKGROUND of CURRENT ORDINANCE re:Use regulations for Multifamily Dwellings.**

By definition, a multifamily dwelling contains five (5) or more units (§800.6.2.25, MZO). The City may not regulate use of property based on form of ownership, and dwelling units may be used as apartments or condominiums.

**A. Nonconforming use regulations for residential conversions.** History of amendments to §700.1.3, MZO:

<i>Time Period</i>	<i>Use Regulation: Conversion/change of use of preexisting nonconforming property (excluding single &amp; two-family dwellings) may be allowed by special permit, provided required findings are made.</i>
1977 to 2007	In all zoning districts, to any use (residential, institutional, business or industrial) ( <i>then §700.1.3</i> )
2007 to 2008	In residential zoning districts, to any residential use (CCP 92/2007) ( <i>now §700.1.3.1</i> )
2008 to 2010	In residential zoning districts, to any residential or general office use (CCP 342/2008)
2010 to 2016	In residential zoning districts, to any residential, general office or retail services use (CCP 103/2010)
2016 to present	In residential zoning districts, to any residential, general office, retail services or recreation for gainful business secondary to principal club/lodge use (CCP 15/2016)

**B. General use regulations for multifamily dwellings.** Below is a representative history of §§300 and 700, MZO:

<i>Time Period</i>	<i>Height/Stories</i>	<i>Zoning Districts</i>
		<b><u>ALLOWED BY RIGHT</u></b>
1977 – 2005	up to 3	Residence B, Residence C, Neighborhood Business, Central Business, Highway Business
1983 – 2005	up to 3	Residential Office
1977 – 1983	more than 3	Residence C, Central Business
1983 – 2005	3 to 6	Residence C, Central Business, Highway Business, Residential Office
1983 to 1986	3 to 6	Neighborhood Business
1983 to 1986	more than 6	Residence C, Central Business
		<b><u>ALLOWED by SPECIAL PERMIT</u></b>
1986-2005	6 to 12	Residence C

1986-present	6 to 12	Central Business ( <i>see Note 3</i> )
2005-present	1-3	Res B, Res C, Residential Office, Neighborhood Business, Central Business, Highway Business
2005-2017	3-6	Residence C, Residential Office, Highway Business
2005-present	3-6	Central Business
2008-present	8-10	Subdistricts 1 & 2, Rowe's Quarry Reclamation & Redevelopment
		<b><u>ALLOWED by SITE PLAN REVIEW</u></b>
2002-present	1-12	Residential Incentive Overlay of Central Business
2012-present	1-6	Residential Incentive Overlay-B of Central Business
2008-present	1-8	Subdistricts 1 & 2, Rowe's Quarry Reclamation & Redevelopment

**Note 2:** Since 1986, multifamily dwellings of more than 12 stories in any district have been prohibited (under general use regulations, §300.3.2.8, MZO). Scheduled for public hearing on this same date is a proposed amendment (CCP 509/2018) that would eliminate the use category, "Dwelling, Multifamily More than 12 stories," and effectively absolutely preclude this use under any interpretation of nonconforming use regulations (§700.1.3.1, MZO).

**Note 3:** Scheduled for public hearing on this same date are proposed amendments to change the use category, "Dwelling, Multifamily, 6 to 12 stories," to "Dwelling, Multifamily, 6 to 7 stories" (§§300 and 400, MZO, CCP 509/2018).

**APPLICATION/EXEMPTIONS:** The amendments will apply to new construction and new use/occupancy of existing buildings, unless exempt ("grandfathered in") by M.G.L. c. 40A, §6; §700.1.1, MZO; the State Permit Extension Act (2012); or the express language of the amendment.

**Note 4:** Per state statute, applications for permits that are in the processing stage when publication occurs are not protected; historically, the City interprets, in consideration of any pending petitioner's good faith reliance on current regulations, that proposed amendments do not apply to applications filed prior to the first publication of notice of public hearing (December 21, 2018). There are no applications in the processing stage.

**EFFECTIVE DATE:** The effective date of an amendment is the date of the City Council's vote to ordain the amendment (§800.5.7, MZO). The Council must act on the amendments within ninety (90) days after the hearing closes, otherwise, a new duly advertised public hearing must be held (§800.5.5, MZO); accordingly, if the public hearing closes on January 9, 2019, the final date for action is April 9, 2019.

**STANDARD of REVIEW:** The Planning Board's review and recommendation of the proposed zoning changes should be directed by *substantive planning objectives, community need and general welfare.*

The amendment corresponds to and ensures consistency with recent amendments to use regulations for multifamily dwellings (ordained by CCP 202/2017: applicable to new construction and conforming property by special permit per §300, MZO). The amendment extends the regulations to preexisting nonconforming properties in the residential zoning districts.

The amendment is supported by the results of the resident survey, the *Malden Land Use Survey*, conducted pursuant to the moratorium on permits for multifamily dwelling units (CCP 387/2016); and specifically, the results of Questions 13 and 13.2 (*Moratorium Survey Results Presentation 2017*, City Council, April 25, 2017).

The amendment promotes the elimination of nonconforming uses in the residential zoning districts and encourages conversion to residential uses in harmony with surrounding land uses.

The amendment is in accord with recommendations of the *Malden Master Plan* (2010) (review and revision of zoning regulations for preexisting nonconforming property in the Residence A zoning district/L1.7, Chapter 8).

**PLANNING RECOMMENDATION** (*Prepared prior to the public hearing*): That the Planning Board recommends to the City Council approval of the amendment in concept, and adoption of the following amendment (with revised language for clarity):

"provided that, in the case of an existing building or structure containing more than three stories and/or having a height of 35 feet or more, where the change of use is to multifamily dwelling use, no increase in height shall be allowed; and in the case of reconstruction or new construction, the only multifamily dwelling use of the property that shall be allowed is "Dwelling, Multifamily, up to 3 stories inclusive;" these provisions are use regulations and there shall be no variance of these provisions;"