

**Order Establishing a Site Plan Review Process for Dover Amendment Uses
(G.L.c. 40A § 3) Religious and Educational Uses and Childcare Facilities**

Sponsors Councillor Stephen Winslow and Chris Simonelli

Version 3.1 2/11/2025 (Enrolled as Amended)

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.

12.12.500 Site Plan Review for Dover Amendment Use (G.L.c. 40A § 3)
Religious and Educational Uses and Childcare Facilities

A. Purpose and Intent:

To set forth a site plan review 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. 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.

B. Applicability.

Site plan review pursuant to Section 12.12.500 shall be required for any new, altered, changed or substantially expanded religious or education use or childcare facility that does not conform to all applicable requirements of the Zoning Ordinance.

C. Relationship to the Building Permit and Occupancy 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.

D. Materials the Building Commissioner May Require

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.

E. Site Plan Review Committee and Process:

1. Site Plan Review Committee.

- i. Composition: The Site Plan Review Committee (SPRC) shall have the following three regular members and one associate:
 - Building Commissioner (or designee)
 - Director of Public Health and Human Services (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 an alternate voting member.

- ii. Quorum. Three members of the SPRC are required to consider an application.

- iii. Voting by Simple Majority: A simple majority (2/3) is required to take any action.

2. Public Hearing

The SPRC shall hold a public project review meeting with the applicant no later than 45 days after submission of the site plan to the Building Commissioner. Such meeting shall be in accordance with public hearing provisions of M.G.L. c. 40A, § 11 and the notice provisions of this ordinance. The SPRC shall hold as many meetings as necessary within a 65-day review period to review the proposal

3. Scope of Review

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

Whether the applicant has established that compliance with regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements, including Chapter 91, would be unreasonable.

In instances where the SPRC determines the applicant meets that standard, the SPRC shall determine which specific regulations to grant relief from and the extent of relief. The SPRC may impose conditions related to the relief granted necessary to ensure public health, safety and welfare.

4. Decision

Within 65 days of the submission of the site plan to the Building Commissioner the SPRC shall provide recommendations in writing to the Building Commissioner. 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.

If no action is taken within 65 days, the application shall be deemed approved as submitted and the applicant may apply for a building permit without a Site Plan Review letter.

F. Appeal

Any appeal of the SPRC's decision under this section shall be made pursuant to G.L. c. 40A, § 17.

G. Expiration:

Any decision issued under this section shall lapse one year from the date that the decision is filed with the City Clerk unless a building permit or occupancy certificate has been issued or unless otherwise specified or extended by the SPRC in writing.

H. 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.