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Memorandum

To: Malden City Council and its Rules and Ordinance Committee
From: Zaheer A. Samee, Assistant City Solicitor
Cc: Alicia McNeil, Acting City Solicitor; Michelle Romero, City Planner
Date: September 18, 2023
Re: Proposed Amendments to MCC §12.08.020, title 12, Code of City of Malden

The question posed by the city council is would the zoning amendment amount to unlawful “spot zoning.”

The proposed zoning amendment would reclassify an entire zoning district from highway business (BH) to neighborhood business (BN). There are four contiguous parcels in the district, which is located on Main Street, just south of the boundary with Melrose. Their addresses and uses are as follows:

Address	Current use
5, 6, 8 Island Hill Ave.	3 three-story multifamily buildings (150 units)
1038 Main St. (including 1036-1064 Main Street)	14 two-story multifamily buildings (118 units)
1100 Main St.	Motor vehicle repair shop
1128 Main St.	Animal Hospital, kennel

The four parcels are surrounded by Residence A zoning district. All the surrounding land uses are currently residential, with the exception of the Forestdale Cemetery.

Spot zoning “does not occur unless it is shown that a parcel has been singled out from similar surrounding parcels” for the economic benefit of a particular landowner. *W.R. Grace & Co-Conn. v. City of Cambridge*, 56 Mass. App. Ct. 569 559, 570 (2002). It is well-established that spot zoning (or reverse spot zoning, which singles out a landowner for some detriment) violates the Zoning Act’s principle of uniformity (G.L. c. 40A, § 4) as well as the equal protection guarantees of the state and federal constitutions. *Van Renselaar v. City of Springfield*, 58 Mass. App. Ct. 104, 109 (2003).

Arguably, the proposed zoning amendment does the opposite of spot zoning. All the property surrounding the district (except for the Forestdale Cemetery) is residential. By reclassifying the district as neighborhood business (instead of highway business), the district is being converted to uses more in character with the predominantly residential nature of the surrounding neighborhood. Two of the four lots in the district already contain multifamily buildings with hundreds of units. The character of land uses adjacent to the parcels in question is a valid consideration, and it is not unreasonable to enact zoning amendments which result in “coherent and consistent” zoning districts. *Van Renselaar*, 58 Mass. App. Ct. at 109 (affirming “judge’s conclusion that the rezoning is valid because it results in a coherent and consistent zoning district”).

Attorney DiMarco's submitted a memo dated July 15, 2023 to the Ordinance Committee and Planning Board arguing that the proposed amendment was unlawful spot zoning. He did so on behalf of his client, the owner of the 1100 Main St. parcel which has a motor vehicle repair shop on it. In the memo he stated that the proposed zoning reclassification amounted to spot zoning because it would only impact his client's property because "it results in automotive repair being a disallowed use" (p. 2), although he acknowledges that it would not require the current use to be discontinued (p. 3). But he alleges that the proposed change is "a direct, unambiguous, reaction to my clients' attempt to sell their property and retire." His memo points to no evidence supporting this bald allegation, and it seems implausible that the city would want to prevent any business owner from retiring or selling his property.

The vice that spot zoning seeks to prevent is "the singling out of a particular parcel for different treatment from that of the surrounding area, producing, without rational planning objectives, zoning classifications that fail to treat like properties in a uniform manner." *W.R. Grace*, 56 Mass. App. Ct. at 570. But the proposed zoning amendment treats Attorney DiMarco's client no differently than any other property in this zoning district. All properties in the district will equally be placed in a neighborhood highway classification. True, under the new neighborhood business classification, the auto repair shop is the only use not allowed out of all the current uses of the four parcels. But that is simply a result of the rezoning and each property owner's choice of how to use their property – which need not be discontinued. Any rezoning decision would involve some change. It's not as if three of the parcels will remain highway business, and Mr. DiMarco's client's property alone will be rezoned as neighborhood business – that is what spot zoning looks like.

Regardless of any underlying motives, every zoning decision involves some potential or actual benefit or hardship to private interests. Simply because a zoning change may result in a benefit or detriment to a landowner does not transform it into unlawful spot zoning.