

PLANNING REPORT & RECOMMENDATION

To: Malden Planning Board  
 From: Malden City Planner  
 Date: December 13, 2017  
 Subject: Amendments of §§300, 400 and 700, Chapter 12, Rev. Ord. of 1991 (“MZO”) City Council Paper (“CCP”) 467, 468, 469, 470, 471, 472/2017

**PROCEDURAL:** The petitions are by the City Council (§800.5, MZO), sponsored by Ward 5 Councilor Barbara Murphy. Earlier this year, similar petitions were referred by the City Council to its Ordinance Committee, however, expired before referral for joint public hearing with the Planning Board (CCP 245/2017); and similar amendments were discussed at a joint public hearing on November 9, 2016, recommended favorably by the Planning Board, however, expired before action by the City Council (CCP 386/2016).

**I PROPOSED AMENDMENTS to USE REGULATIONS**

**1. Sections 300.1.1, 300.3.2.7 & 300.3.2.8. Multifamily Dwellings. 6 to 12 stories and More than 12 Stories (CCP 471/2017).**

- a) The proposal is to amend the use regulations to maintain the City Council as the special permit granting authority for multifamily dwellings of the greatest height in the City (where allowed by special permit under §300, MZO), namely, multifamily dwellings 3 to 6 stories. Under the current ordinance, the City Council is the special permit granting authority for multifamily dwellings of the greatest height in the City (where allowed by special permit under §300, MZO), namely, multifamily dwellings 6 to 12 stories.
- b) The proposal is to amend use regulations to prohibit multifamily dwellings 6 to 12 stories in the Central Business, the only zoning district where currently allowed by special permit (under §300, MZO).
- c) The proposal is to amend use regulations to eliminate the use category, “Multifamily dwelling, more than 12 stories.” Under the current ordinance, this use is prohibited in all zoning districts; the proposal intends to effectively preclude this use, per general use regulations (§300.1, MZO) and under any interpretation of nonconforming use regulations (§700.1.3, MZO).

The amendments are 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 (pages 27-28, “Moratorium Survey Results Presentation 2017,” released by City Council, April 25, 2017).

The Table of Regulations (§300.3, MZO) below indicates proposed amendments (italicized bold- CCP 471/2017) and recent amendments (underlined-CCP 202/2017).

MZO	Use Category	Zoning District									
		A	B	C	RO	BN	BC	BH	II	I2	
§300. 3. 2. 5	Up to 3 stories inclusive	No	SP	SP	SP	SP	SP	SP	SP	No	No
§300. 3. 2. 6	More than 3 stories but not exceeding 6 stories	No	No	<u>No</u>	<u>No</u>	No	<i>SP*</i>	<u>No</u>	No	No	No
§300. 3. 2. 7	More than 6 stories but not exceeding 12 stories	No	No	No	No	No	<i>SP*</i> <i>No</i>	No	No	No	No
<u>§300. 3. 2. 8</u>	<i><u>More than 12 stories Deleted</u></i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>

Note 1: \* SP by City Council; all other SP is by Planning Board.

A joint public hearing was held on October 11, 2017 re: pending amendments 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 (Proposed amendment of §700.1.3.1, CCP 390/2017).

**2. Section 300.10. All Structures More than Six Stories (CCP 472/2017).**

The proposal is to amend the use regulations to allow structures three to six stories only by special permit granted by the City Council and to delete reference to the Residential Overlay District, to correspond and conform to amendments proposed under CCP 471/2017 and CCP 469/2017.

This provision applies to all structures, whether for residential or other use. The maximum height for all institutional, business, industrial and other uses ranges from one to four stories, except for hospitals (6 stories) and offsite parking facilities (5 stories) (§400.1, MZO).

**3. Sections 300.13 and 300.14. Residential Incentive Overlay (RIO) and Residential Incentive Overlay B (RIO-B) and Site Plan Review for RIO and RIO-B (CCP 469/2017).**

The proposal is to eliminate both Residential Incentive Overlay districts (RIO and RIO-B), which are located in the Central Business zoning district; and the Site Plan Review regulations re: same.

Under the current ordinance, multifamily dwellings up to 12 stories are allowed by Site Plan Review in the RIO; and multifamily dwellings up to 6 stories are allowed by Site Plan Review in the RIO-B.

Under the current ordinance, the following properties are included in the RIO or RIO-B districts:

<i>Property</i>	<i>Zoning District</i>	<i>Current Use</i>
160 Pleasant Street	RIO/CB	Multifamily dwelling, 6 stories/206 units (RIO SPA 12/4/02 amended 7/29/10)
480 Main Street	RIO/CB	Multifamily dwelling, 6 stories/195 units (RIO SPA 5/22/12 amended 11/27/12, 8/27/13)
184-200 Pleasant Street	RIO/CB	Under construction: multifamily dwelling, 6-7 stories/320 units (City Council SP #549/2015)
100 & 150 Exchange Street	RIO-B/CB	Multifamily dwelling, 6 Stories/210 units (RIO-B SPA 11/21/12 amended 4/29/14)
70-76 Exchange Street	RIO-B/CB	Restaurant/Rec for Gainful Business
63-65 Centre Street	RIO-B/CB	Mass. Electric Power Station
40-66 Exchange Street	RIO-B/CB	CBD Garage

The original RIO was ordained in 2002 (CCP 67/2002) and amended in 2012 to enhance Site Plan Review regulations, to remove parcels that had not been developed under the RIO and to create the RIO-B (CCP 329/2010); and to add one parcel to the RIO that was contiguous with an approved RIO development site (CCP 32/2012).

To date, there have been two RIO developments and one RIO-B development (listed above). Under the proposal, these projects will be preexisting nonconforming and any changes will require a special permit (§700.1.3, MZO).

The *Malden Master Plan* (2010) recommends elimination of the RIO for any parcels where it has not been utilized (L1.3, *Malden Master Plan*).

**4. Section 700.14. Rowe's Quarry Reclamation and Redevelopment District (CCP 470/2017).**

The proposal is to eliminate the Rowe's Quarry Reclamation and Redevelopment District (RQRRD). At this time, the proposal does not identify the zoning district(s) that would replace the RQRRD.

The RQRRD was ordained in 2008 (CCP 208/2008) and classifies a portion of the development site (approximately 37.3 acres in Malden) into three subdistricts: the RQ1 subdistrict allows multifamily dwellings up to 8 stories, by Site Plan Review by the Rowe's Quarry Site Plan Review Committee (RQSPRC), and multifamily dwellings, 8 to 10 stories by Site Plan Review (SPR) by the RQSPRC and by special permit by the City Council; the RQ2 subdistrict allows the same multifamily dwellings as the RQ1 and also hotels and general offices up to 12 stories by SPR; and the RQ3 subdistrict allows hotels, general offices and medical centers up to 12 stories by SPR; all three subdistricts allow stand-alone buildings used for retail sales/services and restaurants up to two stories or 30 feet by SPR. The RQRRD was amended regarding mitigation fees in 2012 (CCP 61/2012).

The subject property was originally classified as Residence A or Highway Business zoning districts; portions approximately 22 acres) were rezoned to Residence C in 2001 and 2006 (CCP 308/2006, 89/2006, 160/2001).

To date, the subject property has been developed as follows:

<i>Property Address</i>	<i>Zoning District</i>	<i>Multifamily Dwelling Use</i>
10 Overlook Ridge Drive	Res C	6 stories/252 units
12 Quarry Lane	RQRRD/RQ1	4 stories/90 units (SPA 10/19/12)
16 Quarry Lane	RQRRD/RQ1	4 stories/94 units (SPA 10/19/12)
4 Stone Lane	Res C	4 stories/173 units
15 Quarry Lane	RQRRD/RQ1 & 2	4 stories/119 units (SPA 2/13/15)
8 Quarry Lane	RQRRD/RQ2	4 stories/90 units (SPA 10/19/12)
1 Stone Lane	RQRRD/RQ2	4 stories/90 units (SPA 10/19/12)
Lot 12	RQRRD/RQ2	4 stories/326 units (under pending SPR)

**II. PROPOSED AMENDMENTS to DIMENSIONAL CONTROLS**

**4. Section 400.3. Dimensional Controls for Allowed Uses in the Central Business District (CCP 467/2017).**

The proposal is to amend dimensional controls for allowed uses in the Central Business zoning districts to:

- a) Increase the minimum lot area requirement to 7,500 SF (from 5,000 SF).
- b) Reduce the maximum height requirement to 6 stories and 55 feet (from 12 stories).
- c) Increase the minimum density requirement for structures not exceeding 6 stories in height to 1,000 SF per dwelling unit (from 500 SF per dwelling unit).
- d) Reduce the maximum height requirement of any structure to 6 stories (from 12 stories).
- e) Provide that structures over 3 stories must comply with Section 300.10, which require a special permit from City Council (from over six stories), to correspond and conform to amendments proposed under CCP 471/2017 and CCP 472/2017.

This provision applies to all allowed uses. As proposed, the amendment re: lot area is not consistent with the current minimum lot area for restaurants (other/not “fast food”), which is 5,000 SF (§400.1.4.12, MZO).

**5. Section 400.11.1, Height Requirements (CCP 468/2017).**

The proposal is to amend the maximum building height to three stories and 35 feet for all zoning districts, except the Central Business zoning district, where the maximum building height is six stories and 50 feet, and to eliminate the certification provisions re: adequate water pressure.

This provision applies to all uses. As proposed, the amendment conflicts with the currently allowed maximum building height for two institutional uses (hospital, non-profit school); several business uses (business school, hotel/motel, medical center, general offices); most industrial uses (building construction & contracting, manufacturing & repair, marina, motor vehicle repair shop, warehouse, wholesale & distribution; self-storage facilities; research & development facilities); and one other use (offstreet parking facilities).

Via email dated December 13, 2017, the City Engineer recommends the following further amendment:

- a. Delete two references to “above the city base” and replace with “above the grade plane.”
- b. Delete last three clause re: certification of adequate water service and replace with the following: “Except where the City Engineer certifies that the proposed building will not reduce the water service of other users in the general area to less than existing levels.”

**CURRENT ORDINANCE: DEFINITION & HISTORICAL BACKGROUND re: 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.

Below is a representative history of use regulations for multifamily dwellings:

Time Period	Height/Stories	Zoning Districts
		<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
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*

**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.

The following projects under construction are exempt from the proposed amendments, given that a building permit and/or special permit was issued before the first publication of hearing notice (M.G.L. c.40A, §6 & §700.1.1, MZO):

Property Location	Zoning District	Use	Height
10 Florence Street	CB	Multifamily dwelling addition (22 units)	6 stories
126-150 Pleasant Street	CB	Multifamily dwelling (71 units) & Business use (TBD)	6 stories
184-200 Pleasant Street	CB	Multifamily dwelling (320 units) & Business use (TBD)	6-7 stories
171 Medford Street	I2	General offices	5 stories
341 Forest Street	Res B	Nursing/convalescent home (80 units)	3 ½ stories
490 Eastern Avenue	I1	Self-storage facility	3 stories/40 feet

*Note 3: 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 (November 24, 2017). Two applications were filed prior to the date of first publication: 1) a petition for site plan review for 326 multifamily dwelling units in three, 5-story buildings at Lot 12, Overlook Ridge Drive (filed on November 10, 2016; under review); and 2) an application for a building permit for a four-story addition for hotel use at 46-52 Pleasant Street (filed on November 21, 2017; under review).*

**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 December 13, 2017, the final date for action is March 13, 2018.

**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.*

**PLANNING RECOMMENDATION** (Prepared prior to the public hearing):

That the Planning Board recommends to the City Council:

- A. That the following amendments be approved as proposed:
  - 1. Sections 300.1.1, 300.3.2.7 and 300.3.2.8 (CCP 471/2017).
  - 2. Sections 300.10 (CCP 472/2017).
  - 3. Sections 300.13 and 300.14 (CCP 469/2017).
  
- B. That the following amendments be approved in part, and disapproved in part:
  - 1. Section 400.3: disapprove “seven thousand five hundred” (proposed minimum lot area) and approve all other proposed changes (CCP 467/2017).
  - 2. Section 400.11.1(CCP 468/2017):
    - a) disapprove “three stories and not more than 35 feet” (proposed maximum building height for all districts excluding Central Business) and insert “six stories and not more than 55 feet.”
    - b) Delete two references to “above the city base” and replace with “above the grade plane.”
    - c) Delete last three clauses re: certification of adequate water service and replace with the following: “Except where the City Engineer certifies that the proposed building will not reduce the water service of other users in the general area to less than existing levels.”
    - d) approve all other proposed changes.
  
- C. That the following amendment be disapproved: Section 700.14 (CCP 470/2017) and that a petition to amend the maximum heights of multifamily dwellings, hotels, general offices and medical centers in the RQRRD be filed and referred for joint public hearing.

SUMMARY: To amend zoning ordinances to allow multifamily dwellings only up to six stories.

To Amend Various Sections of Chapter 12, Revised Ordinance of 1991 as Amended, as follows:

I. CCP 471/2017

A. Section 300.1.1 (Use Regulations)

"Except for residential use "dwelling, multifamily, more than ~~3~~ 6 stories but not to exceed ~~6~~ 12 stories," where special permit shall be required by the City Council in accordance with section 300.10 (all structures more than ~~three~~ six stories), for all uses where a Special Permit is required, as indicated by the letters "SP", may be allowed only by Special Permit granted the Planning Board in conformance with the following controls:"

B. Section 300.3.2.7 (see attached Table of Use Regulations)

Change "SP" to "No" in Column BC for "Dwelling, multifamily, more than 6 stories but not exceeding 12 stories."

C. Section 300.3.2.8 (see attached Table of Use Regulations)

Eliminate in its entirety the use category, "Dwelling, Multifamily, more than 12 stories."

II. CCP 467/2017

Section 400.3 (Use Regulations for Central Business District):

"All allowed uses do not have to conform with lot area, frontage, front yard, side yard, rear yard, coverage, and court requirements as they appear in Table I of Intensity Regulations, but all lots must have a minimum lot area of ~~seven thousand five hundred~~ five thousand square ft, a frontage of fifty(50) feet, and not exceed a height of ~~fifty-five feet and six stories~~ (12) fifty five feet and six stories stories. Usable open space requirements may be reduced by fifty(50) percent. Density requirements may be reduced to not less than ~~one thousand (1,000)~~ (500) one thousand square feet of lot area per dwelling unit for structures not exceeding six(6) stories in height. All allowed uses ~~must~~ uses do not have to must conform to height requirements as specified in the Table of Intensity Regulations, provided that no structure shall exceed ~~six (6) twelve~~ (12) six(6) stories, and further provided that all structures with greater than ~~three (3) six~~ (6) three (3) stories shall comply with Section 300.11."

III. CCP 468/2017

Section 400.11.1 (Height Requirements)

"For all districts ~~excluding Central Business (BC)~~ the maximum building height shall be an elevation of ~~three (3) stories and not more than thirty-five feet~~ one hundred fifty feet above the city base. In the Central Business district, the maximum building height shall be six stories and not more than fifty feet above the city base. ~~except where the Inspector of Plumbing certifies that adequate water service is available at a higher elevation or where the Inspector of Plumbing approves the use of pump(s) to maintain adequate water service, and where the City Engineer certifies that the proposed building will not reduce the water service of other users in the general area to less than existing levels."~~

IV. CCP 469/2017

- A. Section 300.13 (Residential Incentive Overlay (RIO) and Residential Incentive Overlay B (RIO-B ))  
Delete in its entirety.
- B. Section 300.14 (Site Plan Review)  
Delete in its entirety.

V. CCP 470/2017

Section 700.14 (Rowe's Quarry Reclamation and Redevelopment District)  
Delete in its entirety.

VI. CCP 472/2017

Section 300.10 (All Structures More than Six Stories)

"All Structures More than ~~Three~~ Six Stories but no more than six (6) ~~twelve (12)~~ stories in height may be allowed in Central Business District only by special permit granted by the City Council in conformance with the dimensional controls ordinance. ~~Except for the properties designated by the Residential Incentive Overlay (RIO) in the Central Business (BC) District. Properties developed using the RIO shall be governed by Section 300.27 of this ordinance.~~"

CCP 471/2017: To Amend Sections 300.3.2.7 and 300.3.2.8, Chapter 12, Revised Ordinances of 1991 as Amended, as follows:

Table of Use Regulations\*\*

Section	Use	A	B	C	RO	BN	BC	BH	I1	I2
300.3.2.7	Dwelling, Multi-Family, more than 6 stories but not exceeding 12 stories	NO	NO	NO	NO	NO	<i>strike SP insert NO</i>	NO	NO	NO
300.3.2.8	Dwelling, Multifamily, more than 12 stories <u>STRIKE ENTIRE USE CATEGORY</u>	NO	NO	NO	NO	NO	NO	NO	NO	NO
					<u>STRIKE ENTIRE USE CATEGORY</u>					