



City of Malden
Massachusetts

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December 12, 2024

Malden City Council
Malden City Hall
215 Pleasant Street
Malden, MA 02148

Re: Amendments of Title 12, Code of City of Malden
Sections 12.12.010A & 12.12.030 (Use Regulations); 12.32.030.B (Certificate and Permits, Special Permits); 12.28.010.B, C, D, E, F and H (Nonconforming Uses, Lot, Buildings and Structures); 12.20.020.H (General Offstreet Parking Requirements, Central Business District); 12.12.140.F (Site Plan Review Committee); 12.28.140.E (Rowe's Quarry Site Plan Review Committee); 12.32.060 (Definition of Working Artist)
City Council Paper #376/2024

Dear Councilors:

On December 11, 2024, the Planning Board and City Council Ordinance Committee jointly held a public hearing regarding the above-referenced proposed amendments.

After the public hearing, on December 11, 2024, a majority of the Planning Board, namely, all nine members present, decided to recommend to the City Council:

1. Approval of the proposed amendments as submitted and with the following revisions:
 - a) Section 12.28.010.C. Revise the proposed amendment to read as follows:
"Provided that ~~Any~~ addition ~~or extension~~ shall comply with the current Ordinance, including but not limited to dimensional controls and parking requirements, or shall seek and obtain a variance to allow any nonconformities."
 - b) Section 12.28.010.D. Revise the following provision of the proposed amendment to read as follows:
"~~For a~~ ~~Dormer~~ addition(s) to a preexisting nonconforming residential dwelling regulated by this section, ~~dormer addition(s) that increase the gross floor area of the floor where the dormer(s) is located by 50% or less~~ shall not require a special permit, provided that any addition or extension shall comply with the current Ordinance, including but not limited to dimensional controls and parking requirements, or shall seek and obtain a variance to allow any nonconformities."

For your reference, enclosed please find the Planning Report & Recommendation dated December 11, 2024, which was presented at the public hearing.

Finally, please be advised, that, if the City Council fails to act on the amendments within 90 days after the public hearing, a new duly advertised public hearing must be held; and the final date for action is **March 11, 2025**. Please do not hesitate to contact me with any questions. Thank you.

Sincerely,

Michelle A. Romero
City Planner

Enclosure

CC: Mayor Gary Christenson
Alicia McNeil, City Solicitor

PLANNING REPORT & RECOMMENDATION

To: Malden Planning Board
From: Malden City Planner
Date: December 11, 2024
Subject: Zoning Amendments- Various Administrative & Miscellaneous Revisions (CCP 376/2024)
Various Sections, Title 12, Code of City of Malden (MCC- all § references herein)

PETITION: The petition is made under §12.32.050; the City Council is the petitioner; the petition was sponsored by Ward 3 Councilor Amanda Linehan, Chair of Ordinance Committee; and the amendments are recommended for consideration by the City Planner and Building Commissioner, to clarify existing provisions, codify current protocol and interpretation, streamline permitting and/or update City ordinances to be consistent with state law. For full text of amendments, see attached petition (CCP 376/2024).

SUMMARIES of PROPOSED AMENDMENTS:

1. Use Regulations (§§12.12.010A & 12.12.030).
 - a) The proposed amendments to the provision re: dwelling multifamily, more than 6 not to exceed 7 stories, are administrative, not substantive and serve to clarify the existing provision.
 - b) The proposed amendments re: daycare and nonprofit schools update the ordinance to be consistent with state law, which provides these protected uses may not be prohibited or regulated by special permit (M.G.L. c.40A, Section 3).
2. Nonconforming Uses, Lot, Buildings and Structures (§12.28.010).
 - a) Single and two-family dwellings (§12.28.010.B). The proposed amendment clarifies the existing provision and codifies the current and historical protocol and interpretation of this provision.
 - b) Three-family dwellings (§12.28.010.C). The proposed amendment would allow reconstruction of a three-family dwelling to include an extension or addition, provided it complies with current zoning. (for revised/additional language see **PLANNING RECOMMENDATION** below)
 - c) Residence A, B and C zoning districts (§12.28.010.D). As proposed, the amendment:
 - i. deletes the special permit re: daycares to be consistent with state law (see 1b. above).
 - ii. clarifies and updates the provision re: the relief required for noncompliance and violations of dimensional controls and parking requirements; codifies the current and historical protocol, interpretation and administration of these regulations; and renders the language of the ordinance consistent with the current and historical interpretation.
 - iii. eliminates the special permit requirement for dormer additions of a certain size (for revised/additional language see **PLANNING RECOMMENDATION** below); the amendment streamlines the permitting process for certain, limited types of extension of preexisting nonconforming residential property.

Note 1: This section (12.28.010.D) does not apply to single and two-family dwellings.

- d) Residential Office, business, industrial zoning districts (§12.28.010.E). The proposed amendment:
 - i. eliminates the special requirement for certain proposals (reconstruction without increasing dimensions, structural changes or alterations that do not increase the size of the building); and thus streamlines the permitting process for reuse/ redevelopment of preexisting nonconforming property in business and industrial zoning districts.
 - ii. clarifies the existing provision re: uses allowed by right.
 - iii. clarifies and updates the ordinance re: the relief required for noncompliance and violations of dimensional controls and parking requirements; codifies the current and historical protocol and administration of the use regulations; and renders the language of the ordinance consistent with the current and historical interpretation.

- e) Extension (§12.28.010.F). The proposed amendment clarifies the existing provision and codifies the current and historical administration of this provision.
- f) Abandonment/non-use, extinguishment (§12.28.010.H). The proposed amendment clarifies the existing provision and eliminates the provision which creates a duplicative process for administrative appeals.

3. General Offstreet Parking Requirements, Central Business District (§12.20.020.H).

The proposed amendments are administrative, not substantive, clarify the provisions re: reduction of parking requirements, and codify current and historical administration of these provisions.

4. Certificate and Permits, Special Permits (§12.32.030.B).

- a) Subsection 2. The proposed amendment is administrative and corrects a typographical discrepancy.
- b) The proposed amendment updates the ordinance to be consistent with state law (M.G.L.c.40A, §9) re: the voting threshold (simple majority) for certain types of special permits.

***Note 2:** For certain types of zoning amendments, state law now provides the voting threshold is a simple majority (M.G.L. c. 40A, §5); this state threshold is effective (as of January 14, 2021), regardless of whether the City amends its ordinances, however, amendment is recommended so that the language of the City ordinance is consistent with state law.*

- 5. Various Sections. The proposed amendments are administrative, update the ordinance to reflect current composition of City government, and change reference to the “Malden Redevelopment Authority” to “Office of Strategic Planning & Community Development” in the following provisions: Site Plan Review Committee (§12.12.140.F); Rowe’s Quarry Site Plan Review Committee (§12.28.140.E); and Definition of Working Artist (§12.32.060).

APPLICATION and EXEMPTIONS: The amendments will apply to new construction and new use/occupancy of existing buildings, unless exempt by City ordinance (§12.28.010); the express language of the amendment; state law (M.G.L. c. 40A, §6), which exempts the subject of a building permit or special permit issued before the first publication of notice of the public hearing (November 22, 2024); or the state Permit Extension Act (Section 280 of Chapter 238 of the Acts of 2024).

EFFECTIVE DATE: The effective date of the amendment is the date of the City Council’s vote to ordain (§12.32.050.F). The Council must act on the amendment within ninety (90) days after the public hearing closes, otherwise, a new duly advertised public hearing must be held (§12.32.050.D); accordingly, if the public hearing closes on December 11, 2024, **the final date for action is March 11, 2025.**

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 approval of the amendments, as submitted, and with the following revisions:

- 1. Section 12.28.010.C. Revise the proposed amendment to read as follows:
“Provided that ~~Any~~ addition ~~or extension~~ shall comply with the current Ordinance, including but not limited to dimensional controls and parking requirements, or shall seek and obtain a variance to allow any nonconformities.
- 2. Section 12.28.010.D. Revise the following provision of the proposed amendment to read as follows:
“~~For a~~ ~~Dormer~~ addition(s) to a preexisting nonconforming residential dwelling regulated by this section, ~~dormer~~ addition(s) that increase the gross floor area of the floor where the dormer(s) is located by 50% or less shall not require a special permit, provided that any addition or extension shall comply with the current Ordinance, including but not limited to dimensional controls and parking requirements, or shall seek and obtain a variance to allow any nonconformities.



Legislation Text

File #: 376-24, Version: 1

Be it ordained by the Malden City Council that the Code of the City of Malden (MCC) Title 12 is hereby amended as follows:

Administrative & Miscellaneous Revisions to Title 12, Code of the City of Malden

Purpose and Intent of proposed amendments: To clarify existing provisions, codify current protocol and interpretation, streamline permitting, and update the ordinance in accordance with state law.

1. Section 12.12.010.A. Use Regulations.

Amend the following phrase to read as follows:

“and except for residential use, ‘dwelling multifamily, more than six stories but not to exceed seven stories,’ where a special permit shall be required by the City Council in accordance with **the requirements** of this section **herein under**, ‘All Structures More than Six Stories,’ **and** in conformance with the following controls:”

2. Section 12.12.030. Use Regulations.

- a) Day Care Centers. Under column, Residence B, change “No” to “Yes.”
- b) Non-profit schools. Under columns, I1 and I2, change “No” to “Yes.”

3. Section 12.28.010. Nonconforming Uses, Lots, Buildings and Structures.

- a) Section 12.28.010.B. Single and two-family dwellings. Amend to read as follows:

Any single or two-family residential structure may be altered or structurally changed provided said alteration or structural change **that increases the footprint and/or height of the structure** conforms to current dimensional controls of this Ordinance **or obtains a variance; alterations and structural changes that do not increase existing violations may continue and do not require conformance to current controls or variance.** Any single or two-family residential structure may be reconstructed in the same dimensions or lesser and in the same location.

- b) Section 12.28.010.C. Three-family residential dwellings. Add the following:

Any addition shall comply with the current dimensional controls of this Ordinance or shall obtain a variance to allow any nonconformities.

- c) Section 12.28.010.D. Residence A, B and C zoning districts.

- Delete subsection 2: “day care use in Residence B”
- Renumber subsections sections 3 through 5 to 2 through 4.
- Add the following:

Where a special permit is required, the Planning Board must make a finding that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood; and if the Planning Board makes the finding that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls or parking requirements may be allowed by special permit and shall not require a variance.

For dormer addition(s) to a preexisting nonconforming residential dwelling regulated by this section, dormer addition(s) that increase the gross floor area of the floor where the dormer(s) is located by 50% or less shall not require a special permit.

d) Section 12.28.010.E. Residential Office, business and industrial zoning districts.

- Amend to read as follows:

Preexisting nonconforming uses, lots, buildings or structures in the Residential Office, all business and all industrial zoning districts, other than those provided for in Paragraph B, may be reconstructed in the same or lesser dimensions and occupied for the same use, or extended, structurally changed or altered only for a use allowed by right in the district, by special permit granted by the Planning Board provided said Board finds that said reconstruction or, extension, structural change, or alteration is not more detrimental to the neighborhood; and provided however that a structural change or alteration that does not increase the size of the building shall not require a special permit. Change of use without extension or structural change may only be to a use allowed by right in the district and shall not require a special permit; except for Marijuana Retailer, Marijuana Cultivator, Independent Marijuana Testing Laboratory, Marijuana Product Manufacturer, Marijuana Research Facility and Marijuana Transporter, where a special permit shall be required by the City Council in accordance with MCC 12.12.190, in all cases, whether or not there is extension or structural change.

- Add the following:

Where a special permit is required, the Planning Board must make a finding that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood; and if the Planning Board makes the finding that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood, then any new or increased violations of dimensional controls or parking requirements may be allowed by special permit and shall not require a variance.

e) Section 12.28.010.F. Amend to read as follows:

As used herein, the meaning of “extend” or “extension” includes any increase of an existing nonconformity or violation; ~~any~~ **and** creation of a new nonconformity or violation; and any increase in **usable floor area or** habitable area, including but not limited to, enclosing a porch or deck or finishing an attic or basement or

constructing an addition.

f) Section 12.28.010.H. Amend to read as follows:

Any ~~nonconforming~~ building or structure ~~or~~ **with nonconforming** use abandoned or not used for a period of two or more years, the **nonconforming use is extinguished** and **the building or structure** shall thereafter be used only in accordance with the ~~provisions~~ **Use Regulations** of this Ordinance.

A nonconforming building or lot abandoned or not used for a period of two or more years shall thereafter be used only in accordance with the Use Regulations of this Ordinance and must comply with, or seek and obtain a variance of any violations of, dimensional controls or parking requirements, unless exempt by M.G.L. c. 40A.

~~When an application is filed regarding a nonconforming building, structure or use where the building is currently vacant or the use is inactive, this period will be determined by the Board of Appeal per a petition filed in accordance with the provisions of MCC 12.32.040 Paragraph A.3.~~

4. Section 12.20.020.H. General Offstreet parking Requirements, In the Central Business District.

- Reorder/renumber sections 2 and 3
- Amend to read as follows:

~~2. For residential uses,~~ 3. If parking requirements are reduced, the developer/owner shall contribute \$2,000 annually for each space reduced to a City of Malden Parking and Traffic Mitigation Trust Fund to be used at the City's reasonable discretion to mitigate future impacts on traffic and parking and/or for infrastructure improvements to parking and traffic systems.

~~3. 2.~~ The onsite parking requirements for residential uses may be further reduced by special permit granted by the City Council provided, however, that the Malden Traffic Commission certifies that the parking will be provided offsite in a city of Malden public parking facility within 400 feet of the residential property, and further provided that the reduction will not be detrimental to the public good.

5. Section 12.32.030.B. Certificates and Permits, Special Permits.

a) Amend Subsection 2 as follows:

In those cases where the Board of Appeal or City Council is the special permit granting authority, the Planning Board shall review the application and site plan, evaluate the proposed use and its relationship and conformity to the goals and objectives and policies established by the city Comprehensive Plan, and within twenty-one (21) days after the receipt of such application make a written report to the ~~Board of Appeal~~ **special permit granting authority** setting forth its findings and recommendations. In making its recommendations, the Planning Board may suggest any revision to the site plan or other plans as will, in its opinion, cause the proposed use to be in

substantial conformance with the Comprehensive Plan and its principles of land use and development. The Board of Appeal **special permit granting authority** shall not hold a public hearing for that particular application until either the Planning Board report is received or the elapse of the twenty-one (21) day time limit.”

b) Amend Subsection 5 to add the following (new voting threshold, M.G.L. c.40A, Section 9):

“A special permit issued by a special permit granting authority shall require a simple majority vote for any of the following: (a) multifamily housing that is located within 1/2 mile of a commuter rail station, subway station, ferry terminal or bus station; provided, that not less than 10 per cent of the housing shall be affordable to and occupied by households whose annual income is less than 80 per cent of the area wide median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period of not less than 30 years through the use of an affordable housing restriction as defined in section 31 of chapter 184; (b) mixed-use development in centers of commercial activity within a municipality, including town and city centers, other commercial districts in cities and towns and rural village districts; provided, that not less than 10 per cent of the housing shall be affordable to and occupied by households whose annual income is less than 80 per cent of the area wide median income as determined by the United States Department of Housing and Urban Development and affordability is assured for a period of not less than 30 years through the use of an affordable housing restriction as defined in section 31 of chapter 184; or (c) a reduced parking space to residential unit ratio requirement, pursuant to this section; provided, that a reduction in the parking requirement will result in the production of additional housing units.”

c) Amend Subsection 6 to add the following:

The special permit granting authority shall file its decision with the City Clerk within fourteen (14) days of the public hearing.

6. Various Sections. Delete, “Malden Redevelopment Authority,” insert, “Office of Strategic Planning & Community Development,” in the following sections:

- Section 12.12.140.F. Site Plan Review Committee.
- Section 12.28.140 Rowe’s Quarry Reclamation and Redevelopment District, RQ Site Plan Review Committee.
- Section 12.32.060. Definition of Working Artist.