

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

LAND COURT DEPARTMENT
CIVIL ACTION NO. 22MISC000076

BENEVOLENT BOTANICALS LLC and 926
EASTERN AVENUE, LLC,

Plaintiffs,

v.

CITY OF MALDEN,

Defendant.

**PLAINTIFFS' MOTION FOR
CLARIFICATION OF JUDGMENT**

Pursuant to this Court's March 26, 2026 docket entry, Plaintiffs Benevolent Botanicals LLC and 926 Eastern Avenue, LLC (together, "Plaintiffs") hereby seek clarification of the Judgment entered by this Court on January 29, 2026 in connection with the above-captioned matter. In support of this motion, Plaintiffs state as follows:

1. Trial for the above-captioned matter commenced on October 7, 2024 and continued on October 8 and 9, 2024, with closing arguments occurring on February 7, 2025.
2. On January 29, 2026, this Court entered Judgment in Plaintiffs' favor. A copy of the Judgment is attached hereto as **Exhibit A**. As part of the Judgment, this Court held, in relevant part, the following:

ORDERED, ADJUDGED and DECLARED on Count II of the Second Amended Complaint, judgment enters in favor of the Plaintiffs and against the Defendants. The court declares that Section 12.12.190 of the Malden Municipal Code is unreasonably impracticable in violation of Chapter 94G § 3(a) and § 3(a)(2)(ii). With Section 12.12.190, Malden's marijuana zoning bylaw, no longer in place, Benevolent may proceed to seek any other local permits that may be necessary.

3. Since issuance of the Judgment, Plaintiffs communicated with Defendant City of Malden (“Defendant”) for purposes of obtaining “any *other* local permits that may be necessary” for operation of a marijuana establishment. Defendant, however, informed Plaintiffs that Defendant would not take any action to consider the requests for any permits until Plaintiff Benevolent Botanicals LLC (“Benevolent”) obtains a special permit for operation of a marijuana establishment.

4. On March 25, 2026, this Court held a status conference in connection with *Dris Corporation, et al. v. City of Malden Board of Appeal, et al.*, Civil Action No. 24 MISC 000281. Plaintiffs, by and through counsel, appeared at the status conference and this Court, without objection by any party, converted the March 25, 2026 event into a joint status conference for that matter and the above-captioned matter. A copy of the transcript from the March 25, 2026 status conference is attached hereto as **Exhibit B**.

5. During the March 25, 2026 status conference, Defendant, through counsel, asserted that Benevolent must obtain a special permit pursuant to Section 12.12.010 of the Code of the City of Malden (the “MCC”). See **Exhibit B**, at 7:5-9:8.

6. In response to Defendant’s assertion that a special permit to operate a marijuana establishment was still required under MCC § 12.12.010, this Court stated: “So let me be clear. My intent was to invalidate the entire marijuana regiment. And if I missed a section, please seek clarification from me.” *Id.* at 10:2:5.

7. Also during the March 25, 2026 status conference, this Court stated further that, pursuant to the Judgment issued in the above-captioned matter, because Benevolent’s location is a commercial establishment in an area zoned for industrial use, which is a use allowed as of right in that area, “[t]hen you don’t need anything else. That’s the answer.” *Id.* at 18:16-19:1. This

Court stated further that “if this is an as of right use for that property, and they have the parking that they need, and whatever else the bylaws says, if they – if this is an as of right use, they don’t need to do anything else. They’re done. And they get to go to the next step.” *Id.* at 21:4:8.

8. This Court confirmed that, pursuant to the Judgment, “anything that references Section 12-12-190...is stricken.” *Id.* at 21:17-19. Despite Defendant’s assertion at the March 25, 2026 status conference that a special permit is required under MCC § 12.12.010, the clear language of such section provides that, as to marijuana uses, “a special permit shall be required by the City Council *in accordance with MCC 12.12.190.*” *See* MCC § 12.12.010.A (emphasis added), attached hereto as **Exhibit C.**¹ As MCC 12.12.190 is stricken, any reference to it in MCC § 12.12.10 (or elsewhere in the MCC) should equally be stricken based upon the language contained in the Judgment.

9. This Court continued by stating “Otherwise, what you're looking at -- the City's looking at clarification, that sounds like they're not in favor of, but they'll still have the opportunity to enact new bylaw, but it won't be -- it won't be applicable to Benevolent.” **Exhibit B,** at 25:3-26:1

10. This Court stated that, through this litigation, Plaintiffs have been put through an ordeal, and that, pursuant to the Judgment, “[t]hey need to get up and running in business as soon as possible.” *Id.* at 26:7-12.

11. Defendant’s refusal to consider Plaintiffs’ proper requests for any “other permits” necessary for Benevolent to obtain a Host Community Agreement suggests that clarification of the Judgment is needed in accordance with this Court’s statements during the March 25, 2026 status conference so that Plaintiffs may “get up and running in business as soon as possible.”

¹ An attested-to copy of the Code of the City of Malden may also be found as Trial Exhibit 1.

WHEREFORE, Plaintiffs request that this Court clarify that by ordering, adjudging, and declaring that “[w]ith Section 12.12.190, Malden’s marijuana zoning bylaw, no longer in place, Benevolent may proceed to seek any other local permits that may be necessary,” this Court ordered, adjudged, and declared through the Judgment, dated January 29, 2026, that: (i) Defendant must timely and properly accept, review, and act upon any and all permit requests submitted by Plaintiffs for operation of a marijuana establishment in the City of Malden; (ii) Plaintiffs are not required to obtain a special permit to operate a marijuana establishment in the City of Malden; (iii) any reference to MCC § 12.12.190 in Title 12 of the Code of the City of Malden is stricken; (iv) Plaintiffs are not subject to any modification to the MCC arising subsequent to the date of the Judgment with respect to Defendant’s zoning regulation of marijuana and (v) Defendant cannot use the non-existence of an ordinance setting forth the special permit process for retail marijuana establishments as a basis to deny or delay consideration of Plaintiffs’ pursuit of any other local permits, including, without limitation, a Host Community Agreement.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

PLAINTIFFS

**BENEVOLENT BOTANICALS LLC and
926 EASTERN AVENUE, LLC**

By their attorneys,

/s/ Adam G. Gutbezahl

Bradley L. Croft (BBO #633347)

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Dated: April 3, 2026

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2026, I caused a copy of the foregoing document to be served by e-mail on counsel of record for all parties.

/s/ Adam G. Gutbezahl

Adam G. Gutbezahl

EXHIBIT A

**COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT**

MIDDLESEX, ss.

Case No. 22 MISC 000076 (DRR)

BENEVOLENT BOTANICALS LLC and
926 EASTERN AVENUE, LLC,

Plaintiffs,

v.

CITY OF MALDEN, and NATHANIEL
CRAMER, WILLIAM SULLIVAN,
ADAM SHERWIN, JOHN KING, and
KATHRYN PAKENHAM BILGEN, as
Members of CITY OF MALDEN
BOARD OF APPEAL,

Defendants.

JUDGMENT

This action commenced in the Land Court on February 14, 2022, with Plaintiff Benevolent Botanicals (“Benevolent”), of 926 Eastern Avenue, Malden (the “Property”), filing a three-count complaint against the City of Malden (“Malden”), and Nathaniel Cramer, William Sullivan, Adam Sherwin, John King, and Kathryn Pakenham Bilgen, as Members of the City of Malden Board of Appeal (collectively, the “Defendants”): (1) Count I appealing pursuant to G.L. c. 40A, § 17 of a decision by the Malden Board of Appeal denying Benevolent’s request for a variance of the residential buffer zone in Section 12.12.190(F)(1)(c); (2) Count II alleging a violation of the Open Meeting Law, G.L. c. 30A, § 20; and (3) Count III for declaratory judgment pursuant to G. L. c. 231A, § 1, seeking determination that Malden Municipal Code §

12.12.190, the local marijuana zoning bylaw, constitutes an ordinance that is unreasonably impracticable, in violation of G.L. c. 94G, §3(a). On April 28, 2022, Benevolent filed an Amended Complaint omitting the Open Meeting claim (Count II) and proceeding with the other two counts.¹

On June 10, 2022, the Defendants filed a motion to dismiss both Counts I and II of the Amended Complaint under Mass. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. On August 31, 2022, the Court issued its decision, dismissing the zoning count brought under G.L. c. 40A, § 17 (Count I), and otherwise denying the motion to dismiss.² Following the dismissal of Count I, Trial was held on Count II on October 7, 2024 through October 9, 2024.

ORDERED AND ADJUDGED that Count I of the Second Amended Complaint, which appeals the Planning Board’s denial of Benevolent’s variance request pursuant to G.L. c. 40A, § 17, is **DISMISSED**. It is further

ORDERED, ADJUDGED and DECLARED on Count II of the Second Amended Complaint, judgment enters in favor of the Plaintiffs and against the Defendants. The court declares that Section 12.12.190 of the Malden Municipal Code is unreasonably impracticable in violation of Chapter 94G §3(a) and § 3(a)(2)(ii). With Section 12.12.190, Malden’s marijuana zoning bylaw, no longer in place, Benevolent may proceed to seek any other local permits that may be necessary. It is further

¹ In the First Amended Complaint, the declaratory judgment pursuant to G. L. c. 231A, § 1 became Count II following the omission of the Open Meeting Claim.

² On September 6, 2022, shortly after the Court issued its decision on the motion to dismiss, Benevolent, now joined by 926 Eastern Avenue, LLC (collectively, the “Plaintiffs”) filed a Second Amended Complaint, with the same two counts.

ORDERED, ADJUDGED and DECLARED that the Northern Strand Community Trail constitutes an impassable barrier, physically and effectively separating the nearest residential lots from the Property, with no feasible path for a pedestrian to reach the Property within the 75-foot residential buffer zone in Section 12.12.190. It is further

ORDERED, ADJUDGED and DECLARED that Plaintiffs are awarded sanctions in the amount of eighteen thousand five hundred sixty-eight dollars (\$18,568.00) for Malden's failure to comply with discovery obligations, as detailed in the Decision. It is further

ORDERED, ADJUDGED and DECLARED Plaintiffs are granted leave to file a post-judgment motion for attorneys' fees detailing which fees would not have been incurred had Malden timely complied with its discovery obligations. It is further

ORDERED that today's Decision, and this Judgment issued pursuant thereto, dispose of this entire case; the court has adjudicated or dismissed all claims by all parties in this action and has not reserved decision on any claim or defense. It is further

ORDERED that upon payment of all required fees, this Judgment or a certified copy of this Judgment, may be recorded at the Middlesex County Registry of Deeds and marginally referenced on all relevant documents.

So Ordered.

By the Court (Rubin, J.)

/s/ Diane R. Rubin

Attest:

/s/ Deborah J. Patterson
Deborah J. Patterson, Recorder

Dated: January 29, 2026

EXHIBIT B

Volume: I
Pages: 1-46
Exhibits: 0

SUFFOLK, SS COMMONWEALTH OF MASSACHUSETTS LAND COURT

* * * * *
* DRIS CORPORATION, ET AL., *
* * * * *
* Plaintiff, *
* * * * *
* v. * No. 24MISC000281
* * * * *
* CITY OF MALDEN *
* BOARD OF APPEALS, ET AL., *
* * * * *
* Defendant. *
* * * * *

STATUS CONFERENCE
BEFORE THE HONORABLE DIANE RUBIN

APPEARANCES:

For the Plaintiff:
Klein Law PLLC
747 Main Street, Suite 306
Concord, Massachusetts 01742
By: Benjamin S. Klein, Esquire

For the Defendant:
Law Offices of Alicia A. McNeil
15 Lincoln Street, Suite 190
Wakefield, Massachusetts 01880
By: Alicia Ann McNeil, Esquire

Also Present:
Michael Rosen, Esquire, Counsel for Benevolent

Boston, Massachusetts
March 25, 2026

(Transcript prepared from Audio Recording)
Reporter: Darlene M. Coppola

1 (Court in session)

2 (10:30 a.m.)

3 UNIDENTIFIED SPEAKER: Good morning.

4 UNIDENTIFIED SPEAKER: Good morning.

5 THE CLERK: I will announce this case, and we'll get
6 started.

7 This is Case Number 24 miscellaneous 281, Dris
8 Corporation versus the City of Malden Board of Appeal.

9 THE COURT: Good morning, Counsel. Would you introduce
10 yourselves, please.

11 MR. KLEIN: Good morning, Your Honor. Benjamin Klein
12 for the plaintiffs Dris Corporation, Christopher Fevry, and
13 Lourdharry Pauyo.

14 THE COURT: Thank you.

15 MS. MC NEIL: Good morning, Your Honor. Alicia McNeil
16 for the City of Malden.

17 THE COURT: Good morning.

18 So I think -- I'm here today -- we're here today for the
19 Court to understand where you want to go with this case now
20 (inaudible -- background noise) decided.

21 MR. KLEIN: Yes, Your Honor. Thank you.

22 So (indiscernible) the Benevolent decision, the
23 plaintiffs have been trying to determine is the best -- what
24 they want to do, whether it be, you know, requesting a
25 directed verdict, motion for judgment on the pleadings. But

1 the issue is they don't quite know how to approach it
2 because there's currently a disagreement between Benevolent
3 and the City of Malden as to the interpretation of the
4 Judge's -- of what the Court's judgment --

5 THE COURT: Okay.

6 MR. KLEIN: -- particularly as to -

7 THE COURT: I tried to avoid that, but I was -- I'm not
8 surprised to hear.

9 MR. KLEIN: Sure.

10 So the -- the particular disagreement is with Count 2
11 with the Court. And the judgment says, with
12 Section 12-12-190, Malden's marijuana zoning bylaw, no
13 longer in place, Benevolent may proceed to seek any other
14 local permits that may be necessary.

15 THE COURT: Uh-huh.

16 MR. KLEIN: My understanding is Benevolent is -- thinks
17 that they can just move forward and don't have to wait, and
18 they can just -- trying -- receive any other approvals or
19 permits needed from the City at this time.

20 And this -- the -- my understanding is the City has
21 taken the position that Benevolent, and by implication, Dris
22 can't move forward until a new marijuana zoning bylaw is put
23 in place to replace 12-12-190. And that's the crux of the
24 issue.

25 I can -- just for further elaboration, I can say that I

1 -- I attended virtually the -- the last meeting of the
2 Malden CLEC, the Cannabis --

3 THE COURT: Uh-huh.

4 MR. KLEIN: -- Licensing and Enforcement Commission,
5 which took place on March 4.

6 THE COURT: Yeah, Jen, that's -- please -- please let
7 Attorney Rosen in.

8 (Brief pause.)

9 THE COURT: Welcome, Attorney Rosen (phonetic). You
10 want to introduce yourself.

11 MR. ROSEN: Good morning, Your Honor. Attorney Michael
12 Rosen.

13 THE COURT: Yes.

14 Go ahead.

15 MR. KLEIN: And so at that last CLEC hearing, Benevolent
16 was on the agenda, and the Commission -- the CLEC took the
17 position that it wouldn't consider Benevolent's host
18 community agreement until a new marijuana zoning bylaw was
19 put in place.

20 And also, it's my understanding, unsurprisingly, I'm in
21 communication with Attorney Rosen, given our clients have
22 the same mutual interest. And so it's also my understanding
23 that the City is refusing to schedule the required community
24 meeting for Benevolent as well.

25 So I think in terms of as it pertains to our case and

1 | how to best move forward, I guess we were looking for some
2 | direction from the Court as to that disagreement as to its
3 | judgment between the City and Benevolent.

4 | MS. MC NEIL: Your Honor.

5 | THE COURT: Yeah, go ahead, Attorney McNeil.

6 | MS. MC NEIL: Your Honor, the City is not stating that a
7 | new 12-12-190 needs to be implemented before -- I guess
8 | we're talking about Benevolent and not Dris, but I'm going
9 | to (inaudible -- background noise) relate it to Dris; so
10 | we'll talk about Dris.

11 | Dris -- before Dris can move forward, what the City is
12 | stating is that as the Court has said, they can continue on
13 | forward with the local permitting requirements. And the
14 | local permitting requirements is that they need a special
15 | permit.

16 | So it's not that they cannot move forward. Dris can
17 | certainly move forward if: One, they have a location. And
18 | two, if they go through the process of getting a special
19 | permit.

20 | 12-12-190 is thrown out, totally. So we don't have a
21 | 12-12-190.

22 | THE COURT: Uh-huh.

23 | MS. MC NEIL: So we look to other sections of the
24 | zoning. And as -- looking to those other sections, the next
25 | step would be for anybody who has gone through the CLEC

1 process would be to seek a special permit.

2 In terms of a host community agreement, a host community
3 agreement is actually accepted by the Cannabis Commission.

4 And I was at the last CLEC meeting as well. And what
5 CLEC stated with regard to the host community agreement -- I
6 think we're getting a little ahead of ourselves in terms of
7 the Dris matter -- but as far as the host community
8 agreement, I believe that Benevolent stated that even though
9 they didn't believe they needed one, they would be -- needed
10 a new community meeting, they would actually hold a
11 community meeting.

12 So I'm -- I'm not really clear. I think there's some
13 miscommunication. We're not waiting until 12-12-190 is
14 enacted; although, the City Council is working on that.

15 THE COURT: So, Attorney Klien, does that help? Because
16 that's different than what you explained that your client --

17 MR. KLEIN: Yeah, I think that -- well, that's -- yeah,
18 that's not my understanding, based on what is going on with
19 Benevolent.

20 Perhaps, you know, Attorney Rosen was at the CLEC
21 meeting as well. And I know we're talking about Benevolent,
22 so I think he might be able to shed also some light in
23 regards to the -- that issue of whether -- of obtaining a --
24 a special permit, because the special permit requirement was
25 tied into 12-12-190. And I think to the extent that it's

1 referred to in other areas of the Malden zoning ordinances,
2 then it's really -- the special permit is basically, the
3 requirement is kind of null and void because there's --
4 there's no -- there's no longer a 12-12-190.

5 MS. MC NEIL: That's not how we see it, Judge.

6 I was also at that meeting. I attended virtually on
7 that meeting, as did attorney -- both of the attorneys.

8 And 12-12-190 is stricken, but the other parts of the
9 ordinances are not stricken.

10 The Zoning Enforcement Officer, who is our Building
11 Commissioner, has interpreted that section of the statute,
12 or the ordinance, rather, that --

13 THE COURT: Which section?

14 MS. MC NEIL: I believe it's 12-12-10 -- 00.

15 I -- I don't have that in front of me, but I believe
16 it --

17 THE COURT: Is that just a special permit provision?

18 MS. MC NEIL: That's the provision that I believe talks
19 about the marijuana.

20 I can get it, if the Court waits for one second. I can
21 just grab it --

22 THE COURT: Well -- well, no. Let's figure out what you
23 guys want to do.

24 MS. MC NEIL: So --

25 THE COURT: (Inaudible -- simultaneous speech) do.

1 MS. MC NEIL: -- Okay. So --

2 (Parties speaking simultaneously.)

3 THE COURT: Okay. Go ahead.

4 MS. MC NEIL: And so the Zoning Officer -- the zoning --
5 yeah, the Zoning Enforcement Officer --

6 THE COURT: And, Attorney McNeil, I don't understand
7 what -- I just don't -- I'm -- I'm just like, I want to let
8 you speak, but I don't understand what you're talking about.
9 And so I'm -- I don't know which provision you -- of the
10 bylaw -- what substantive provision of the bylaw you're
11 saying that the City now needs to act under.

12 I'm -- is it -- you're -- you're saying the Zoning
13 Enforcement Officer needs to be doing something consistent
14 with some section. And I don't know what that section is.

15 MS. MC NEIL: Well, I can tell you, Judge, if you --

16 THE COURT: Okay.

17 MS. MC NEIL: -- can give me one second.

18 THE COURT: Yes. Yes.

19 And I don't need the number. I just want to know the
20 substantive provision; what it -- what is it. What does it
21 govern.

22 MS. MC NEIL: Let me just find it, Judge. Just give me
23 a moment.

24 THE COURT: Okay. Yes.

25 MS. MC NEIL: But in -- in any event -- oh, here it is,

1 here.

2 In any event, Judge, that provision that we're
3 discussing is --

4 (Brief pause.)

5 MS. MC NEIL: It's 12-12-010. And it's a general
6 provision under the use regulations. And that provision
7 says that -- that a special permit is required for special
8 types of usage.

9 THE COURT: And which use of -- and which use of those
10 do you think is not applicable here?

11 MS. MC NEIL: The use is the marijuana establishment.
12 And it's --

13 THE COURT: Okay. Hold on.

14 Does it actually -- is there something in 12-12-010 that
15 deals with marijuana?

16 MS. MC NEIL: There is, Your Honor. It says that --
17 12-12-010 says that except for -- well -- well, it's long,
18 but it basically says, except for marijuana
19 establishments -- I'll --

20 (Parties speaking simultaneously.)

21 THE COURT: (Inaudible -- simultaneous speech) it says,
22 "except for marijuana," then why is marijuana being required
23 to get a special permit?

24 MS. MC NEIL: Well, it's -- it's talking about except
25 for marijuana, a particular section. And then it -- that's

1 Section A.

2 THE COURT: So let me be clear. My intent was to
3 invalidate the entire marijuana regiment.

4 And if I missed a section, please seek clarification
5 from me.

6 MS. MC NEIL: Judge, I -- this, it -- to me, this --
7 it's not that you missed a section.

8 This is talking about what -- who needs a special --
9 what use needs a special permit.

10 THE COURT: Okay. And what use is --

11 MS. MC NEIL: And --

12 THE COURT: -- it that needs a special permit?

13 MS. MC NEIL: So it's talking about --

14 THE COURT: Does anybody have --

15 MS. MC NEIL: -- usage --

16 THE COURT: -- (inaudible -- simultaneous speech) to put
17 it up on the screen?

18 MS. MC NEIL: I can get it, Judge. I can -- let -- let
19 me -- let me actually bring it up online.

20 THE COURT: Yes. That might be helpful. So at least
21 we're all looking at the same thing.

22 (Brief pause.)

23 MS. MC NEIL: Do I have --

24 THE COURT: Because my --

25 Oh, Jen (phonetic), can you give screen sharing

1 provisions to -

2 THE CLERK: Yeah, she should have it.

3 MS. MC NEIL: Okay. Thank you.

4 THE COURT: Thank you.

5 So right now, the -- well, I guess, are we talking -- do
6 you want to talk -- the -- are we talking about Dris, or are
7 we talking about Benevolent? I'm not sure which one we're
8 talking about right now.

9 MS. MC NEIL: Well, Judge, we're --

10 MR. KLEIN: (Inaudible -- simultaneous speech) --

11 MS. MC NEIL: -- here for Dris, is --

12 THE COURT: Okay.

13 MR. KLEIN: (Inaudible -- simultaneous speech) --

14 THE COURT: So Dris is in what -- Dris is in -- it has a
15 proposed location in which district?

16 MR. KLEIN: Well, it's working -- it's still working on
17 finding (inaudible -- cannot understand) -- it's -- it's
18 working on finding a new location.

19 But I think the -- Dris and Benevolent are in the same
20 -- well, essentially the same boat in terms of how the
21 ruling would apply to them.

22 And so really, what we're looking for is just, to the
23 extent there's any disagreement among the parties, the --
24 just the clarification from the Court that the -- that the
25 City -- the judgment is saying that the City can't hold up

1 the application --

2 THE COURT: But I'm not hearing that they're doing so,
3 Attorney Klein.

4 MR. KLEIN: Well, I guess, perhaps, that's some --
5 they --

6 THE COURT: Okay.

7 MR. KLEIN: -- my -- I could -- what I could -- what I
8 represented was that they -- what I -- from what I've seen
9 with what's going on with Benevolent, that they are, based
10 on what I saw at the hearing, that before the CLEC where
11 they said that they won't -- they won't engage in a host
12 community agreement until there's a new zoning bylaw.

13 And then, I believe that the City Counselor, for the
14 ward where Benevolent's location is, is refusing to hold a
15 community meeting until a new --

16 THE COURT: Okay. But let's hold on.

17 Attorney McNeil, can you take this down again. I'm
18 sorry. Because I want to be able to see you guys.

19 Let -- let's focus on Dris for the moment. Okay.
20 Because I don't want to -- I think that's -- that's what
21 we're here for today. That's what's been docketed.

22 But, Attorney Klein, if your client wants -- I think
23 we're a little bit in a conundrum here, from my perspective
24 as the Court, because it sounds like you don't have a
25 location. And Attorney McNeil had pointed this out some

1 time ago, but we stayed the case, and so we didn't have to
2 actually deal with that.

3 But if you -- this is the -- the case that was filed by
4 Dris was a 48 Section 17 appeal. But if you don't have a
5 location, then I think your appeal is -- is mooted. I guess
6 it's moot. It's -- and so I think you need to dismiss it.
7 Or the Court does.

8 I can issue a show cause order. But why should it be
9 dismissed.

10 When you find another location, hopefully it'll work.

11 And I'm happy, if Attorney Rosen wants to spend some
12 time talking about Benevolent's situation, we can do that.

13 But your client doesn't have a location right now. And
14 I -- I -- I appreciate that your client needs to know what
15 the process is. And I'm happy to spend time talking about
16 that, but it's all advisory. I don't really have
17 jurisdiction or authority to weigh in on an unknown site for
18 Dris. Right? I don't think I can do very much about that.

19 And I'm sorry if my decision wasn't clear enough. And
20 I'm happy to clarify it, but I think I have to do that for
21 Attorney Rosen, or I have to do it in the context of your
22 case, Attorney Klein. But first, we're going to have to
23 deal with the fact that your client doesn't have a location.

24 MS. MC NEIL: Right. No. And I -- I -- I think I agree
25 that probably on the zoning appeal case, that that is now

1 moot. Whether --

2 THE COURT: Okay.

3 MS. MC NEIL: -- even if -- whether they -- even if they
4 had a location, even if they still had that same location,
5 because the -- the zoning appeal was based on -- was
6 appealed from a variance of the bylaw, which is now
7 invalidated anyway. So I think that that case -- the --
8 that count is now mooted, which was Count 1.

9 THE COURT: And did -- did your client have a 240-14A
10 count in the -- in its complaint, or was it just the 48
11 Section 17?

12 MS. MC NEIL: They also had -- their second count was
13 for a declaratory judgment.

14 THE COURT: Okay. So presumably that piece of it.

15 So maybe the Court should just dismiss the 48 Section
16 17 appeal, and I can query whether the -- the Chapter -- the
17 declaratory judgment count is still viable or not in the
18 absence --

19 MR. KLEIN: Judge --

20 MS. MC NEIL: (Inaudible -- simultaneous speech) --

21 MR. KLEIN: -- I would say --

22 MS. MC NEIL: -- I think it's just that the issue is we
23 -- we're looking for, in terms of it's viable and that it's
24 -- we're look -- and we're looking to enter some kind of
25 whether it is a judgment on the pleadings.

1 But I think the issue is getting that clarification.

2 THE COURT: Do you want to file an amended complaint to
3 clarify that you're seeking clarification from the Court, a
4 declaration as to how the -- how an applicant for a
5 marijuana establishment in Malden would seek -- what
6 (indiscernible) whether zoning relief of any sort is
7 necessary?

8 I -- I suppose you could do something like that. Right?

9 MS. MC NEIL: Judge --

10 MR. KLEIN: (Inaudible -- simultaneous speech) --

11 MS. MC NEIL: -- Judge, if I may --

12 (Parties speaking simultaneously.)

13 THE COURT: Hold on. Let me hear from Attorney McNeil.

14 MR. KLEIN: Judge, if I may.

15 The second part of the complaint, Count 2, is about
16 12-12-190. That's invalidated.

17 And for a declaratory judgment, there has to be present
18 and immediate harm.

19 They do not have a location, so I don't know how he can
20 file something with the Court, or how Count 2 can even still
21 be valid when 12-12-190 is invalidated. That -- it's the
22 whole -- that whole section is mooted.

23 THE COURT: Fair point, Attorney McNeil.

24 The problem is is that I'm hearing from Attorney Klein,
25 and I need to -- I might want to hear from Attorney Rosen as

1 well -- that the folks who want to operate marijuana
2 establishments in Malden don't know how to do that.

3 And -- and given the amount of delay that has already
4 occurred, I think it's important for the Court to assist the
5 parties, if need be, if the Court -- if the City cannot
6 outline a process about what it is they think needs to
7 happen.

8 MS. MC NEIL: Judge, that -- that may be true. But as
9 it relates to Dris -- I think we're conflating both Dris and
10 -- and --

11 THE COURT: I'm not conflating. I am not conflating. I
12 am suggesting that amendment might be possible, because
13 there seems to be a vacuum of guidance right now about how
14 an applicant seeks a marijuana permit in Malden right now.

15 Do you want to file a written statement with the Court
16 that clarifies that so we all know?

17 MS. MC NEIL: I -- Judge, I -- I can talk to the City
18 Council. They're working on that. But I can tell you --

19 THE COURT: Oh, I didn't ask for a new bylaw. I'm
20 saying --

21 MS. MC NEIL: I understand that.

22 So yes, I can tell you what the process is currently,
23 Judge.

24 But in -- in terms of Dris --

25 THE COURT: I'm not going to separate the two things,

1 Attorney McNeil. I'm not going to dismiss this case until
2 this is clear. Okay?

3 MS. MC NEIL: That's fine, Judge.

4 So -- and if the plaintiff can -- if Dris can let me --
5 let the Court and me know what's unclear about the process,
6 then I can clarify that for the Court.

7 THE COURT: Attorney Rosen, do you want to speak now?

8 MR. ROSEN: Certainly. I'm happy to let the Court know
9 what we believe the inconsistencies are in a vacuum.

10 We read your order to cover the entire regiment. As you
11 previously stated, in your order, you say that we can move
12 forward with other permits. And we viewed the term "other"
13 to mean: No need for a special permit.

14 About a month ago, we were placed on the CLEC bylaw. We
15 didn't ask to be on it -- I'm sorry, the CLEC agenda. We
16 didn't ask to be placed on, but we were on it. They were
17 going to discuss next steps for Benevolent. So we attended
18 the meeting. We actually were not on the Zoom. We were
19 present at the meeting.

20 At that meeting, CLEC discussed the status of the case
21 and made a comment about the fact that City Council would be
22 working on a new ordinance; and when that new ordinance was
23 in place, Benevolent could then come forward.

24 I raised my hand and asked to be heard at that hearing.

25 Unfortunately, they forgot to tape the hearing, so I

1 can't ask you to watch a copy of it, because, for some
2 reason, that video does not exist.

3 I then asked them to look at the decision, and I pointed
4 out the language about "other permits."

5 And I was told that I was wrong, that there was still a
6 special permit section in the bylaw. And even though that
7 special permit section references or cross-references
8 12-12-190, that special permit section still exists, and we
9 need to wait for the City Council.

10 If you go to --

11 THE COURT: Well, why don't you just file a motion to --
12 for clarification of the order and ask -- ask what --
13 because I'll tell you that -- let me ask you this, Attorney
14 Rosen, so let's go back to the facts of your case.

15 MR. ROSEN: Yes, Your Honor.

16 THE COURT: What is the district in which the proposed
17 location -- that the location to -- Benevolent's location,
18 what's that zoning there?

19 MR. ROSEN: It is -- it is --

20 THE COURT: It's industrial, right?

21 MR. ROSEN: Yeah, it is in the industrial. Yeah.

22 THE COURT: And is -- it's a commercial establishment
23 and as of right use in that area?

24 MR. ROSEN: Yes, it is.

25 THE COURT: Retail.

1 Then you don't need anything else. That's the answer.

2 I'm happy to put it in writing, if you want to see it.

3 MR. ROSEN: So, Your Honor, rather than file a motion,
4 which we will do, we knew you had the hearing today, so we
5 felt as though we would join at this hearing here, because
6 based on, like, you could tell us in this hearing today, No,
7 I meant you still need a special permit, just not a
8 cannabis --

9 (Parties speaking simultaneously.)

10 THE COURT: You might need a special permit. Like, for
11 instance, if you were in a district that -- that a retail
12 establishment was not in as of right use, under typical
13 zoning, you might need --

14 MR. ROSEN: Or -- or we might not have -- we might not
15 have adequate parking. We do, but if we needed --

16 THE COURT: Exactly.

17 MR. ROSEN: Yeah. Okay.

18 So we -- we wanted to hear what you had to say today
19 before we filed a -- a motion for clarification.

20 But I can -- I can tell you that, you know, so we had
21 our community meeting four years ago.

22 In order to apply to CCC, you have to have one within
23 six months. So we asked for a community meeting. We were
24 told, You can't now have a new community meeting until the
25 new bylaw passes.

1 We asked CLEC to start negotiating our host community
2 agreement. We were told, You can't get a host community
3 agreement until the new bylaw passes.

4 So our thinking was we would watch today, we would be
5 present in case you had questions, and we would start
6 drafting tomorrow a motion for clarification. But by
7 listening to the debate today and the discussion today, that
8 would clarify for us what we needed to ask this Court relief
9 for. It would also give Attorney McNeil an opportunity to
10 hear your specific position on this so that, hopefully, this
11 is not a contentious issue.

12 Perhaps Attorney McNeil would even like to join with us
13 on a stipulation that we present to the Court that
14 identifies what our next steps are, because it has been four
15 and a half years, and we'd like to get this done in the next
16 60 to 90 days and move forward. But we thought -- and --
17 and I apologize if we're overstepping -- but we thought
18 since you already had this hearing on the books for today,
19 we would attend, listen, and -- and provide our input to the
20 extent you wanted it.

21 And we appreciate your giving us the opportunity to
22 speak.

23 THE COURT: I think a stipulation would be great,
24 Attorney McNeil. Why don't -- why don't you all just agree.
25 Or do you -- do you want -- how do you want this to proceed?

1 | Because my intent was that these folks -- and I don't see
2 | any reason for it. And if you want to -- you know, if you
3 | can tell me I'm wrong, of course, I'll hear from you. But
4 | they don't need to do -- if this is an as of right use for
5 | that property, and they have the parking that they need, and
6 | whatever else the bylaws says, if they -- if this is an as
7 | of right use, they don't need to do anything else. They're
8 | done. And they get to go to the next step.

9 | MS. MC NEIL: Well, Judge, according to the ordinance,
10 | the next step would be a special permit, either before a
11 | Planning Board or the City Council.

12 | THE COURT: I have -- again, Attorney McNeil, I think --
13 | I intend to strike down -- Attorney Rosen, you're going to
14 | ask me to strike down as well, 12-12-010, if that references
15 | -- any provision that references 12-12-190 will be stricken.

16 | MR. ROSEN: Thank you, Your Honor.

17 | MS. MC NEIL: So any -- anything that references
18 | 12-12-190 is -- is stricken.

19 | THE COURT: Correct.

20 | MS. MC NEIL: And the -- well, yeah, I -- I would prefer
21 | that the plaintiffs file a motion before the Court for
22 | clarification. And then I can respond to the motion, and
23 | the Court can make it's ruling.

24 | THE COURT: Okay. Good enough.

25 | Attorney Klein, what are you going to do with your

1 place? Are you going to dismiss it; wait until you get a
2 location?

3 You're welcome to attend the -- further proceedings.

4 MR. KLEIN: Right.

5 I guess -- I mean, if we wanted, we could either -- it's
6 fine. I guess with -- with Count 1, which is the appeal,
7 I'd be fine with dismissing that.

8 And then I think -- and then keep things -- I know we've
9 been stayed for a while, but keep it further stayed -- keep
10 Count 2 stayed pending the outcome of the -- of the motion.

11 I think that it's -- from what I'm hearing now, from the
12 Court, it sounds like after that, the -- the ruling on that
13 motion for clarification is put in place, then I think that
14 this case could probably be wrapped up, and after that, in
15 short order.

16 THE COURT: Well, I don't know. I mean, we're -- we're
17 back in question. I don't know the answer to is, I -- I --
18 my understanding is that the City withdrew its appeal. But
19 I don't know what happens if there's a clarification.
20 Right?

21 MS. MC NEIL: (Inaudible -- cannot understand).

22 THE COURT: The appeal period may start to rerun again,
23 so...

24 MR. KLEIN: Right. Well, I guess, you know, in some
25 ways, we're still in that same holding pattern, I guess,

1 | until -- we've always been in the holding pattern with the
2 | Benevolent case.

3 | THE COURT: I'll try to deal with it as quickly as I
4 | can.

5 | I also think that, you know, Attorney Rosen, there's a
6 | pending motion for attorney's fee, which is, you know, at
7 | some point, I was wondering where you were with that.

8 | MR. ROSEN: I think that we were waiting to see how all
9 | of this came out. And if we're going to have to spend the
10 | next year arguing over whether or not your ruling gives us
11 | permission to move forward with or without a special permit,
12 | and the City is going to continue to fight with us, then I
13 | do think that you should expect to see us back in on the
14 | legal fee issue.

15 | And if this matter is resolved and we're allowed to move
16 | forward, I'm hoping my client can take a step back, take a
17 | deep breath, and be happy with the results, and move forward
18 | and get its business operating; because to them, that,
19 | obviously, is the far more important element.

20 | But based on what we've seen in the last 60 days, it
21 | certainly seems like this litigation isn't over. While we
22 | wish it were, it may not be. And if that's the case, then
23 | we intend to pursue fees to the fullest extent, including
24 | potentially fighting now on the decision (inaudible --
25 | cannot understand).

1 MS. MC NEIL: Your Honor, to me, that's a
2 mischaracterization.

3 The City, we actually withdrew its appeal with the
4 understanding that both of these businesses could move
5 forward based on our understanding of the ruling.

6 And if -- yes, that's -- that's basically what I -- what
7 I have to say, Your Honor.

8 So there was no -- I -- I think the City has every right
9 to request an official ruling. We interpreted it one way.
10 The Court is now saying that it's --

11 THE COURT: No --

12 MS. MC NEIL: -- meant a different way.

13 So I don't think that it's -- so the City has not been
14 unreasonable.

15 I believe that -- that Benevolent actually has been a
16 little hostile towards the City when it came to the meeting
17 and ordered that they be heard. The City was gracious to
18 allow them to be heard at a meeting that wasn't a public
19 meeting.

20 UNIDENTIFIED SPEAKER: (Inaudible -- simultaneous
21 speech) --

22 MS. MC NEIL: That -- that being --

23 UNIDENTIFIED SPEAKER: Hold on.

24 MS. MC NEIL: -- that being said, Judge --

25 UNIDENTIFIED SPEAKER: But hold on.

1 MS. MC NEIL: Excuse me. I didn't interrupt you.

2 That being said, Your Honor, the City has withdrawn its
3 complaint.

4 If the Court is going to make a different rulings than
5 the understanding of the City, then I will have to go back
6 to my clients to see what my clients would like to do.

7 So I cannot stipulate to that at this point.

8 THE COURT: Okay. So let me say this, as I -- at the
9 time I was drafting the judgment, right, I was trying to
10 figure out how to be as clear and simple as possible. And I
11 thought about the thought of bringing the parties in, but I
12 thought, well, let me take a crack at this.

13 And so I'm not surprised that there's some level of
14 confusion, you know. And let's get this figured out right
15 away.

16 But, Attorney McNeil, it would seem to me that -- I'm
17 kind of -- I'm kind of inclined to send you to mediation
18 right now, to be honest with you, at a mediation screening;
19 because I think the idea of being able to go forward with a
20 simple bylaw -- and you have a sense of where I'm going with
21 this -- and not having to pay attorney's fees, that might
22 not be a bad deal for the City right now.

23 Otherwise, what you're looking at -- the City's looking
24 at clarification, that sounds like they're not in favor of,
25 but they'll still have the opportunity to enact new bylaw,

1 but it won't be -- it won't be applicable to Benevolent.

2 And if you want clarification on that, please let me
3 know that as well, Attorney Rosen. Okay.

4 MR. ROSEN: Uh-huh.

5 THE COURT: And -- and potentially Dris as well. Don't
6 know.

7 And but you're looking at -- you -- you have all this in
8 the future, but for these folks that were here and went
9 through this or deal, and I consider it to be an ordeal.
10 And I hope my decision was clear that I considered it to be
11 an ordeal. They need to get up and running in business as
12 soon as possible.

13 And if you -- if we have to go through an appeal, which
14 you have every right to, because I'm not -- you know, I just
15 do my job as a trial court judge. I'm not the final arbiter
16 of these things. If we're going to go there, it's just --
17 I'm just thinking about the time and the distraction. And
18 for the -- for the City, and maybe it would be better off,
19 just everybody, trying to set this aside and try to go
20 forward for these folks and get these -- get this up and
21 running consistent with what I think the -- the vote of the
22 -- of the residents of Malden was.

23 So I'm kind of inclined to send you to mediation,
24 Attorney McNeil.

25 I can't do mediation. If I could, I would. But I'm

1 | inclined to send you to mediation screening. Because I
2 | think somebody needs to hear -- I think --

3 | I wonder, Attorney McNeil, if somebody -- I guess it's
4 | the -- who would be -- it would be with the zoning board, or
5 | who is it with actually? Who's the party to this case?

6 | MS. MC NEIL: City Council.

7 | THE COURT: So if the City Council needs to sit in
8 | mediation with the folks from Benevolent, and they'd
9 | (indiscernible) hear from somebody else other than me --
10 | maybe it's one of the retired land court judges at REBA.
11 | Maybe it's a retired appeals court judge -- and hear about
12 | really what the future looks for you, and consider long and
13 | hard for everybody.

14 | It sounds like Attorney Rosen's clients are willing to
15 | turn the page. And I hear that you -- the City felt like
16 | there was some hostility here, but can we set this all aside
17 | and move on right now? I really kind of think you need to.

18 | MS. MC NEIL: Judge, I'm not saying that the City is not
19 | going to move on.

20 | The City actually wants to move on --

21 | THE COURT: Okay.

22 | MS. MC NEIL: -- with -- with whatever the pathway is
23 | for Benevolent and Dris. However, I cannot make a
24 | commitment to this Court that if this Court is going to make
25 | a clarification that was not the understanding of the City,

1 that the City is going to stipulate to that.

2 If Attorney Rosen puts it in writing, I have an
3 opportunity to go back to my clients and inform my client as
4 to what happened at this meeting.

5 And if my clients want to go forward, it's not my
6 decision, totally, Judge. But I can go back to my client
7 and express that to them.

8 But I -- I do not want to agree that I'm going to
9 stipulate to what Attorney Rosen is requesting from this
10 Court without going back and discussing it with my client.

11 THE COURT: No. Absolutely. I understand that. That's
12 why we're going to put a process (indiscernible).

13 I'm asking you what your thoughts are about mediation.
14 Because I -- I'd like to put this -- this case needs to end.

15 MS. MC NEIL: Well, Judge, I -- I would -- I -- I
16 wouldn't mind going to mediation. But I don't think
17 mediation is relevant at this point because once -- it may
18 be relevant after I receive Attorney Rosen's motion to the
19 Court, it may be relevant after that, if we're not going to
20 proceed. But if -- I mean, if we are going to proceed with
21 an appeal. But if we're not going to proceed with an
22 appeal, then there will be no reason for mediation.

23 So I think that the City needs time to digest what just
24 happened today.

25 I can hear attorneys -- look at Attorney Rosen, provide

1 | it to the City, and then we can make a decision from there.
2 | And if we can't come to a decision and the -- the City
3 | decides that it would like to appeal the matter, then if the
4 | Court wants to send us to mediation at that point, then the
5 | City would go to mediation.

6 | THE COURT: Okay.

7 | Attorney Rosen, thoughts?

8 | MR. ROSEN: We're happy to follow whatever process we
9 | can to get this done as quickly as possible.

10 | I -- the only thing I -- I would argue with Attorney
11 | McNeil with, it was a public meeting. CLEC meetings are
12 | always public. And my client's name was put on their
13 | agenda.

14 | We had every reason to be there. We didn't demand to
15 | speak. We asked permission of the Chair. The Chair said,
16 | Yes. We then started to present, and then one of the
17 | members of CLEC, who was a defendant in this case, took
18 | objection with us reading your decision and stating on the
19 | record that we don't believe we need to wait for a new
20 | ordinance and a new special permit; at which point, we were
21 | denied the opportunity to speak further.

22 | So if that's hostile, I apologize. And I apologize to
23 | Attorney McNeil and the City.

24 | But at the end of the day, we read your order, Your
25 | Honor, the exact way that you have indicated today that you

1 wrote it, which was we could go for our other permits.

2 And they put us on the agenda to discuss us at CLEC; so
3 we showed up.

4 MS. MC NEIL: That's okay, Judge. That's okay.

5 They -- they -- it was a public meeting. I'm not saying
6 that -- that anyone can't --

7 THE COURT: (Inaudible -- simultaneous speech) --

8 MS. MC NEIL: -- attend a public meeting --

9 THE COURT: Let's just figure (inaudible -- simultaneous
10 speech).

11 MS. MC NEIL: Just one last thing, Judge.

12 The only reason why -- there was no defendant that was
13 there, because the City's the defendant. But the witness,
14 Mr. Nelson -- Mr. Nelson Miller (phonetic) was there. And
15 what he said was that there was an open meeting law
16 complaint because we were -- they were discussing something
17 off topic at a previous meeting, and he did not want to have
18 another open meeting --

19 THE COURT: (Inaudible -- simultaneous speech) before
20 me. So let's try to keep focus.

21 So first of all, I want to say to everybody, I'm going
22 to docket today's hearing in both cases, both in Benevolent
23 and Dris, just so we have a clear -- it -- it's going to get
24 confusing, otherwise.

25 And, Attorney Rosen, you're going to file a motion for

1 clarification by when?

2 MR. ROSEN: We'll have it to you within two weeks from
3 today.

4 THE COURT: Okay. And today is the 25th.

5 MR. ROSEN: Yes.

6 THE COURT: Okay. So that would be by the 8th.

7 And then, Attorney McNeil, 22nd for you for opposition
8 or -- or response?

9 MS. MC NEIL: Yes, Your Honor.

10 THE COURT: Okay.

11 And why don't we all get together on the 28th for
12 further status conference.

13 I'll stay Dris until that time. And we'll call both
14 cases together at 9:30 on the 28th.

15 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

16 THE COURT: Okay?

17 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

18 THE COURT: It's a plan. We'll get through it.

19 UNIDENTIFIED SPEAKER: Thank you.

20 THE COURT: Thanks, everybody.

21 MS. MC NEIL: Thank you.

22 UNIDENTIFIED SPEAKER: All right. Bye-bye.

23 (Court recessed on this matter at 11:05 a.m.)
24
25

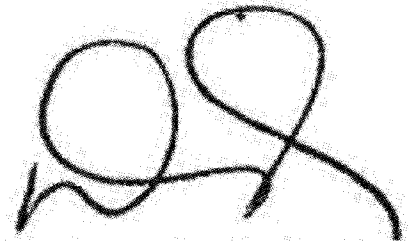
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CERTIFICATION

I, DARLENE M. COPPOLA, do hereby certify that the foregoing is a true and accurate transcript, prepared to the best of my ability, of an audio recording provided to me in the matter of DRIS CORPORATION, ET AL. VS. CITY OF MALDEN BOARD OF APPEAL, ET AL.

I, DARLENE M. COPPOLA, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, DARLENE M. COPPOLA, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.



DARLENE M. COPPOLA, RMR, CRR

EXHIBIT C

12.12.010 BASICALLY

No building, structure, or land shall be used, constructed, erected, placed, altered, or converted, in whole or in part, for any purpose or in any manner other than for one or more of the uses set forth in MCC 12.12.030 as permitted by right, indicated by the word "Yes", or as permitted by special permit, indicated by the letters "SP". The word "No" indicates the use is prohibited. The letters "SPR" indicate that Site Plan Review is required.

A. 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; and except for residential use 'dwelling, multifamily, more than six (6) stories but not to exceed seven (7) 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 for all residential uses where a Special Permit is required, as indicated by the letters "SP", may be allowed only by Special Permit granted by the Planning Board and in conformance with the following controls:

1. For construction of new buildings, compliance with the dimensional controls and parking requirements of this Ordinance. A variance shall be required to grant relief from any noncompliance with dimensional controls and parking requirements of this Ordinance.
2. For the addition of a residential use to a lawfully existing building, or for alteration, conversion or other change to a residential use, which was lawfully existing or begun prior to the first publication of notice of the public hearing on this amendment, 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.
3. The Planning Board must find that the residential use is in the interest of the common good.

B. Except as otherwise hereinafter provided, for all institutional, business, industrial and other uses, where a Special Permit is required, as indicated by the letters "SP", the use may be allowed only by Special Permit granted by the Planning Board in conformance with the following controls:

1. For construction of new buildings, compliance with the dimensional controls and parking requirements of this Ordinance. A variance shall be required to grant relief from any noncompliance with dimensional controls and parking requirements of this Ordinance.
2. For addition of the use to a lawfully existing building, or for alteration, conversion or other change to a use, which was lawfully existing or begun prior to the first publication of notice of the public hearing on this amendment, 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.
3. The Planning Board must find that the traffic and traffic patterns generated by the proposed use will not adversely impact any of the surrounding streets or create a traffic

or safety hazard. For purposes of determining traffic impact, the Planning Board may request an independent analysis of traffic data submitted by the petitioner, the cost of which will be borne by the petitioner.

4. The Planning Board must find that the proposed use will not be more detrimental to the neighborhood.
 5. The Planning Board must find that the proposed use is not in conflict with surrounding land uses.
 6. The Planning Board must find that the proposed use is in the interest of the common good.
 7. The owner of the property shall install, repair or replace sidewalks, driveways and perform necessary incidental work adjacent to the property to the satisfaction of the DPW Director; in the event the sidewalks and driveways are in satisfactory condition, as determined by the DPW Director, the owner of the property shall contribute to the Community Improvement Fund of the ward in which the property is located an amount equivalent to the cost of replacing the sidewalks, driveways and incidental work. The estimated cost shall be determined by the DPW Director in accordance with Engineering cost estimates done for the City of Malden in preparation for replacement of sidewalks pursuant to Mass. Gen. Laws ch 90.
- C. In addition to any other special permit that may be required as herein provided by this paragraph, in the case of any property, in any zoning district, that is or was the site of a building or structure that has been determined to be a Preferably Preserved Building by the Malden Historical Commission pursuant to the City of Malden Demolition and Alteration Delay Ordinance, a special permit shall be required for any new construction, structural changes and/or alterations to the building, structure or site; and a special permit may be granted only in conformance with the following controls:
1. For construction of a new building or structure, compliance with the dimensional controls and parking requirements of this Ordinance. A variance shall be required to grant relief from any noncompliance with dimensional controls and parking requirements of this Ordinance.
 2. For any extension, addition, structural change and/or alteration to an existing building, structure or site, which was lawfully existing or begun prior to the first publication of notice of the public hearing on this amendment, the special permit granting authority must find that any creation or increase in violations of dimensional controls or parking requirements will not be more detrimental to the neighborhood; and if the special permit granting authority 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.
 3. The special permit granting authority must find the proposal is in the interest of the common good.
 4. The special permit granting authority must receive and reasonably incorporate into a special permit that is granted the recommendations of the Malden Historical Commission regarding the preservation of the building, structure or site, which may include, but is not limited to, the rehabilitation, restoration, replication and/or reuse, in whole or in part, of the building, structure or site, or any historical features or elements of the property, the façade and the exterior of the building.
 5. Where the proposal may be allowed by special permit, as required by any other provisions of this paragraph, the special permit granting authority shall be the same;

where no special permit is otherwise required under this paragraph, the Planning Board shall be the special permit granting authority.

6. Prior to filing an application for a special permit, Applicant must file a Notice of Intent to Demolish or Alter a Building/Application for Review by the Historical Commission and all applicable Determinations by the Historical Commission under the Demolition and Alteration Delay Ordinance must be obtained.

D. The following uses are expressly prohibited anywhere in the City and there shall be no variance of any of these provisions:

1. Raising or keeping of livestock, fowl or any other animals, accessory to any residential, institutional, business, industrial or other use.
2. Except and only if allowed by special permit as provided by this Ordinance as a Marijuana Establishment; and except for personal growing of no more than six plants by an individual for personal use at his/her residence Mass. Gen. Laws ch 94G § 7 (2) and provided no more than twelve plants are cultivated if more than one adult resides therein, and provided this exception does not supersede and shall not be construed to limit landlord and/or property owner rights if said landlord and/or property owner prohibits tenants/occupants from cultivating plants, the raising of marijuana for individual, personal, family, caregiver/caretaker, provider or any other medicinal purposes, accessory to any residential, institutional, business, industrial or other use.
3. Except and only if allowed by special permit as provided by this Ordinance as a Marijuana Establishment, the sale, lease, rental, dispensing or any means of distribution of any accessories, supplies, equipment related to the growing, cultivation or processing of marijuana or products containing marijuana, as a principal use or use accessory to any existing or new residential, institutional, business, industrial or other use or use legally existing or begun prior to the first publication of notice of the public hearing on this amendment of the ordinance.
4. Marijuana Social Consumption Establishments are expressly prohibited anywhere in the City, including as an accessory use to any other use.

HISTORY

Amended by Ord. 386-19 on 2/12/2020

Amended by Ord. 319-22 Amends MCC 12.12.010, 060, 070, 150, 160 on 11/2/2022

Amended by Ord. 376-24 on 2/13/2025